

**State Water Infrastructure Authority**  
**Meeting Date: July 13-14, 2022**  
**Agenda Item U – Summary of Public Comments on Proposed Plan to Administer American Rescue Plan Act's Funding for Stormwater Projects**

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**Division of Water Infrastructure Staff Report**

**Background**

At its meeting on April 14, 2022, the State Water Infrastructure Authority (SWIA) approved for public review the following related to the new American Rescue Plan Act (ARPA) funding for stormwater projects available through the Division of Water Infrastructure (DWI): the draft eligibility requirements, draft stormwater construction grant priority rating system (PRS), draft stormwater planning grant PRS, and draft grant limits. On May 4, 2022, DWI staff posted for public comment the Proposed Plan to Administer American Rescue Plan Act's Funding for Stormwater Projects. The comment period ended at 5:00 p.m. on June 3, 2022.

DWI received approximately 135 comments from the following 23 respondents:

<b>Respondent No.</b>	<b>Respondent Organization</b>	<b>Comment Starts on Page No.</b>
1	Town of Wilkesboro	6
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3	City of Hendersonville	7
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14	North Carolina Coastal Federation	24
15	Triangle J Council of Governments	26
16	Stormwater Association of North Carolina and North Carolina League of Municipalities	27
17	North Carolina Conservation Network, North Carolina League of Conservation Voters, Sound Rivers, and American Rivers	29
18	American Rivers	32
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## **SWIA Stormwater Funding Committee June 23, 2022 Meeting**

Staff reviewed the following ten items with the SWIA Stormwater Funding Committee at its meeting on June 23, 2022. Staff and Committee comments are included in the bullet below each item.

- A. **Requesting changes to the type of entities that are eligible for ARPA stormwater grants and the requirement to “... demonstrate ... that it would experience a significant hardship ... ”** per North Carolina General Assembly (NCGA) Session Law 2021-180 Section 12.14.(d): “Eligible Entity. – An eligible entity for a grant under this section shall be a city or county that (i) documents in a form and manner as the Department may specify a stormwater quality or quantity issue and (ii) demonstrates that it would experience a significant hardship raising the revenue necessary to finance stormwater management activities within its jurisdiction based on income and unemployment data, population trends, and any other data determined relevant by the Department. A regional council of government created pursuant to Part 2 of Article 20 of Chapter 160A of the General Statutes or a nonprofit entity is also an eligible entity under this section if the regional council of government or nonprofit entity partners with a city or county.”
- Staff explained that because the above requirements are contained in NCGA Session Law 2021-180 Section 12.14.(d), the requirements cannot be changed at this level. Ms. Mary Lucasse, Special Deputy Attorney General in the Environmental Division of the NC Department of Justice stated that if people want to be included in this, they could reach out to the legislature as a path for moving forward. Mr. Eskaf stated that water and sewer authorities and wastewater utilities are eligible for stormwater funding under the Clean Water State Revolving Fund (CWSRF) program but are not eligible for this funding. There was no discussion on this item by the SWIA Stormwater Funding Committee.
- B. **Stormwater Enterprise Fund Operating Ratio as Eligibility Criterion 1 for ARPA Construction and Planning Grants.** Given the complexity of using the operating ratio of a stormwater enterprise fund to adequately assess an entity’s ability to generate revenues for stormwater activities mentioned in comments, staff recommend that proposed Criterion 1 be deleted.
- Staff stated that Proposed Criterion 1 currently reads: “The City or County has a Stormwater Enterprise Fund, and the operating ratio (total operating revenues divided by total operating expenses) in the most recent audit of this Enterprise Fund is less than 1.00.”
- Staff explained that stormwater work can be funded from various sources, such as taxes, which would not be reflected in an operating ratio. In this context, the operating ratio may not be an indicator of hardship to generate revenue since that revenue may be provided from other sources. In addition, legislation requires that fees imposed “... may not exceed the city’s cost of providing a stormwater management program ...” which means that an operating ratio could never exceed 1.00. Based on the comments received, staff recommended that Proposed Criterion 1 be deleted; this recommendation would be presented in an upcoming agenda item and the Committee could act on the recommendation under that agenda item. There was no discussion on this item by the SWIA Stormwater Funding Committee.
- C. **Stormwater Construction PRS Category 1 – Project Purpose: Provides points for either stormwater quality projects or stormwater quantity projects, but does not provide points for a project that addresses both stormwater quality and stormwater quantity.** Staff propose revisions to the stormwater construction PRS Line Items 1.A and 1.C to clarify that points can be awarded to projects that address both stormwater quality and stormwater quantity.

- Staff stated that the proposed PRS did contain a footnote that addressed this issue but that it was likely unclear. Staff recommended that each line item be written more clearly to state that project points will be based on whether the majority of the construction cost is for a stormwater quality project or for a stormwater quantity project. Staff stated that this recommendation would be presented in an upcoming agenda item and the Committee could act on the recommendation under that agenda item. There was no discussion on this item by the SWIA Stormwater Funding Committee.

**D. Stormwater Construction PRS Category 1 – Project Purpose: Unbalanced Points for Stormwater Quality versus Stormwater Quantity Projects.** Staff propose changes to stormwater construction PRS Line Items 1.A and 1.C as shown in the staff report for Agenda Item E as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2).

- Staff stated that the proposed points for non-nature-based water quality projects and water quantity projects have always been equal at 25 points. The PRS proposed to provide 30 points for nature-based water quality projects, which is a five-point increase over non-nature-based water quality projects and water quantity projects. However, a 10-point increase for nature-based water quality projects over non-nature-based water quality projects was endorsed by several respondents. Staff stated that this recommendation would be presented in an upcoming agenda item and the Committee could act on the recommendation under that agenda item. There was no discussion on this item by the SWIA Stormwater Funding Committee.

**E. Stormwater Construction PRS Category 2 – Project Benefits: Unbalanced Points for Water Quality Improvement versus Flood Reduction.** Staff propose changes to stormwater construction PRS Line Item 2.A as follows: Reduce the maximum points that can be awarded in Line Item 2.A (Water Quality Improvement) to 15 points to equal the maximum points that can be awarded for Line Item 2.B (Flood Reduction).

- Staff stated that the proposed maximum points available for water quality improvement project benefits are 10 points higher than the maximum points available for flood reduction/water quantity project benefits. Since a 10-point increase for nature-based water quality projects over water quantity projects was recommended in the previous item for Category 1 – Project Purpose, it would be reasonable to make available an equal number of maximum points for water quality and water quantity benefits (15 points) in Category 2 – Project Benefits. Staff stated that this recommendation would be presented in an upcoming agenda item and the Committee could act on the recommendation under that agenda item. There was no discussion on this item by the SWIA Stormwater Funding Committee.

**F. Stormwater Construction PRS Line Item 2.F and Stormwater Planning PRS Line Item 1.C: Questions/comments related to Municipal Separate Storm Sewer System (MS4) permits.** Respondents that provided comments about MS4 permits and proposed priority points are Numbers 3, 5, 7, 9, 10, 12, 13 and 17. As currently worded, the line item could be construed to provide points for an entity complying with its MS4 permit and it would also limit the applicants that could be awarded these points. Staff recommend that this line item be removed from the stormwater construction PRS for those reasons and modified in the stormwater planning PRS to provide for the study of procedures to implement stormwater management best practices. This may include the MS4 six minimum control measures.

- Staff stated that a number of comments had been received concerning these line items, including that it seemed that priority points would be awarded to applicants that are not in compliance with their MS4 permit and, if that was the case, points should be provided to applicants that are complying. In addition, it seemed that if an applicant did not have an MS4 permit, it would not be eligible for these points at all. Staff agreed with the comments and recommended that this line item be removed entirely from the Stormwater Construction PRS and that the wording be modified in the Stormwater Planning PRS to provide points to investigate new procedures to implement MS4 Six Minimum Control Measures (MCM) or add to or improve existing MCMs. Staff stated that this recommendation would be presented in an upcoming agenda item and the Committee could act on the recommendation under that agenda item. There was no discussion on this item by the SWIA Stormwater Funding Committee.

**G. Stormwater Construction PRS Line Item 2.A – Water Quality Improvement.** One comment suggested providing priority points for a project in a subwatershed that is not itself impaired, but is upstream of one that is. Staff recommend that the distance upstream of an impaired water segment needs to be defined and suggest considering a maximum distance of 0.5 miles upstream.

- Staff stated that in the proposed PRS, points would be awarded if the project directly benefits subwatersheds that are impaired as noted on the final version of the Integrated Report (formerly known as the 303(d) List). Staff recommended that if the requested change were approved, the distance upstream of the impaired water segment would need to be defined because there is a need for consistency. There is also recognition that this could be very different in a mountainous watershed versus a coastal plain watershed. A possible consideration would be to establish a maximum distance upstream, and a distance of 0.5 miles was presented for discussion.

The Committee commented that the percentage of the watershed that was upstream of the impaired segment would be a better consideration. The Committee also noted that the percentage of the pollutant load causing impairment partially caused by the upstream area was also important. It is not necessary for the project to be located within the impaired watershed, because a project just upstream of an impaired area could provide valuable benefits, and there may be no area within the impaired watershed to physically locate a project.

Mr. Eskaf stated that the best course of action was for DWI staff to discuss this further with other state agencies and divisions to obtain their recommendations.

DWI staff has discussed this issue with other divisions and recommends that the line item not be modified to include priority points for a watershed that is not itself impaired. The Guidance Document for this program will clarify that a project qualifies for points under this line item only when the applicant demonstrates a direct connection between what the proposed project will accomplish and the improvement of water quality in an impaired water.

**H. Clarify Use of Funds for Purchase of Land or Easements.** Staff recommend that the following be clarified by SWIA:

- Funds can be used to acquire property or easements that are necessary as part of an eligible stormwater control measure construction project under Construction PRS Line Item 1.A and as part of an eligible restoration project under Construction PRS Line Item 1.B.
- Funds cannot be used for a project with a primary purpose of land conservation, including the purchase of land in fee simple or the purchase of easements for the purpose of permanently conserving the property, including farmland. Other sources of funding for land conservation

projects are available, such as the NC Department of Natural and Cultural Resources, Division of Land and Water Stewardship Land and Water Fund.

- Staff stated that there are other sources of funding that are available specifically for land conservation, including programs administered by the NC Department of Natural and Cultural Resources Land and Water Fund, and the NC Department of Agriculture Farmland Preservation Trust Fund for farmland preservation. The Committee stated that it agreed with the staff recommendation to provide funds only for property or easements that are necessary for the construction of an eligible stormwater project.

- I. **Population Trend Considerations.** Session Law 2021-180 Section 12.14.(d) states that the entity must demonstrate "... that it would experience a significant hardship raising the revenue necessary to finance stormwater management activities within its jurisdiction based on income, unemployment data, population trends, and any other data determined relevant by the Department." The LGU indicator used by DWI is "population change".

However, LGUs with high growth face increased financial need to implement projects to alleviate new stormwater challenges brought about by that growth. Should areas with high growth be considered as having a "significant hardship in generating revenues ..."? Since the LGU is growing and adding new population, is it reasonable to expect that they will be able to generate more revenue quickly enough through fees and taxes? In LGUs with declining populations, revenues will decrease, but the projects are still needed, which is the reason that declining population can be an indicator of "significant hardship in generating revenues..."

- The Committee discussed that areas of high growth most likely have expanding tax bases and growing economies. Increasing population alone is not an indicator of significant hardship but it possibly could be a contributing factor under "other data determined relevant by the Department." The Committee also questioned whether communities can require stormwater control measures and, if so, then the community does not have to raise additional revenue because it can prevent new stormwater issues by, for example, requiring stormwater control measures.

Staff confirmed that new development within communities with MS4 permits must have requirements for stormwater control during construction as well as post-construction stormwater control; this is a permit requirement. Communities that do not have MS4 permits often put similar requirements in place.

Mr. Eskaf stated that based on the Session Law, it is the Department that determines data that is relevant and it does not appear that an applicant can propose the consideration of data other than that determined relevant by the Department. This issue was discussed again in a separate agenda item and at that time, the Committee stated that it believes that high growth is not an indicator of significant financial hardship and should not be proposed as a new LGU Indicator to determine eligibility.

- J. **Reserving Funds.** The following respondents provided suggestions regarding the reserving, holding back, or setting aside funds as follows:

- Respondent No. 15: "Separate from the draft PRS approach, we recommend that DWI funding be reserved for Jordan Lake One Water (JLOW) for innovative planning processes"
- Respondent No. 17: "As this program moves forward, we believe there would be a benefit to holding back at least some portion of the available funds. While we acknowledge that \$82 million only goes so far when considering the split between planning and construction grants as

well as the maximum grant amount under each of those categories, we believe the Division, applicants, and other stakeholders can learn much from a first round of projects. However, if no funding remains for additional rounds, the lessons learned and potential improvements to the program will matter less.”

- Respondent No. 18: “The Division should take this opportunity to support an Integrated Water Management (IWM) approach to managing stormwater. To that end, the Division should set aside a portion of the funds outside of the priority points system and allocate them to facilitate the IWM planning efforts that are underway ...”
  - The Committee stated that these funds must be expended by a certain date and also that it was not necessary to decide at this point. Applications that are submitted for the Fall 2022 funding cycle could be reviewed, with a decision then made.

Mr. Eskaf stated that this item will be discussed with the Department’s General Counsel to determine if it is possible to reserve funds as suggested in the public comments.

At the completion of the discussion of the ten items above, staff asked if the Committee wanted to discuss any other public comments that had been received. No other public comments were brought up by the Committee.

### **Excerpts from Public Comments**

This staff report presents excerpts from public comments received. The complete public comment email and/or letter from each respondent is provided in a separate document. Staff seek SWIA’s input on the potential responses.

## **Summary of Public Comments Received and Draft Responses**

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### **1. Town of Wilkesboro**

Ken Noland, Town Manager

5-16-22

**Comment 1:** Stormwater construction PRS Line Item 1.B.2 – Increase points for the establishment of riparian buffers to 5 points, ensuring that very high priority stream restoration projects also provide riparian buffers

- **Response:** If the restoration project includes restoration of permanent riparian buffers to at least 30 feet on both sides of a stream, the draft stormwater construction PRS Line Item 1.B.2 includes 2 additional points to be added to the 25 points for Line Item 1.B (totaling 27 points) out of the total of 35 points available for Category 1 – Project Purpose.

**Comment 2:** Stormwater construction Line Item 2.A.1 – Since riparian buffer requirements have been required by DEQ in the past for the entire watersheds of nutrient sensitive waters, stream restoration projects should automatically receive Line Item 2.A.1 points (directly benefits impaired streams)

- **Response:** Revised Line Item 2.A.3 is proposed to provide points for the reduction of Total Nitrogen and Total Phosphorus in nutrient sensitive waters.

**Comment 3:** Stormwater construction Line Item 2.A.2 – Extend prioritization of higher quality waters to include waters that could be higher value with stream restoration projects (i.e., a stream could become designated Trout waters with additional stream restoration). Suggest providing

information from NC Wildlife Commission or other agency that the stream is routinely stocked with trout, or the Commission could provide a statement that with habitat improvement, the stream would better support trout.

- **Response:** This may be a consideration in the future and will require coordination with the NC Wildlife Resources Commission.

**Comment 4:** Stormwater construction PRS Line Item 2.C – Suggest including community organizations, not just local government units (LGUs), working together. Example of Yadkin River Greenway Council that works with all communities in Wilkes County to support stream restoration resulting in a greenway network across LGU boundaries. Suggest deleting the requirement for interlocal agreements between municipalities working together.

- **Response:** LGUs can work with community organizations, but would not receive priority points. A resolution from each unit of local government that will work together is required as part of the application, and local governments are encouraged to work toward interlocal agreements for funded projects, as appropriate.

## 2. City of Lexington

Mike Horney, Public Services Director  
5-18-22

**Comment 1:** Stormwater Planning PRS Line Item 2.E – 5 out of 12 possible points is too high for a new Stormwater Utility. Many “newer” utilities (5 years or less) still struggle with implementation of their programs and within the early years learn about their deficiencies. Request this category be reconsidered or possibly have a tiered point system (i.e., 3 points if 5 years or less) that also takes into account the early utilities that will benefit as much as new ones.

- **Response:** Revised Line Items 2.E.1 and 2.E.2 are proposed to provide points for either an applicant having a Stormwater Utility and a Stormwater Enterprise Fund, or if the applicant has a Resolution to develop and implement a Stormwater Utility or a Stormwater Enterprise Fund.

**Comment 2:** Stormwater Planning PRS Line Item 3.A – Provide a point for cities under 20,000, even if only 1 point.

- **Response:** This will be presented to the SWIA Stormwater Funding Committee for consideration. Note that a population of 20,000 is approximately the same size as a wastewater utility with 10,000 connections, for which points are awarded in the Wastewater PRS.

## 3. City of Hendersonville

Michael S. Huffman, CSM; Stormwater Administrator  
5-19-22

**Comment:** Stormwater construction PRS Line Item 2.F and stormwater planning PRS Item 1.C – Consider offering points to communities who are already compliant with their NPDES Municipal Separate Storm Sewer System (MS4) permit. The line items provide points to projects for communities that will improve compliance which means that community is currently NOT in compliance and the project would help them become compliant.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

#### 4. Town of Leland

Kelli Newton, Grant Manager  
6-1-22

**Comment:** Leland does not fit the eligibility requirements listed; we have a need for these funds due to the rapid growth of our community and natural disaster-prone location. The stormwater construction PRS and the stormwater planning PRS both have Affordability categories – Leland does not fit any of this criterion. Most of our flooding and stormwater concerns are associated with NCDOT roadways/crossing/culverts; funding would allow us to study these locations and collaborate on future projects.

- **Response:** The Town would meet the proposed ARPA stormwater grant Revised Eligibility Criterion 1 requirement that at least 1 of the 5 LGU indicators must be worse than the state benchmarks, and SWIA provides Revised Eligibility Criterion 2 as a way to demonstrate eligibility. An application would also be considered for a Clean Water State Revolving Fund (CWSRF) if the project is eligible for those funds.

#### 5. City of Raleigh

Scott Bryant, PE, Stormwater Administrator / Planning & Business Operations  
6-1-22

- a. Entity Eligibility Requirements: Demonstration of “Significant Hardship Raising the Revenue ...”; Criterion 3

**Comment 1:** For Criterion 3, it is not clear what is meant by a project “serving or benefitting” a disadvantaged area. Must the project be physically located within an area designated as disadvantaged, or could it be located in another area yet serve or provide benefits for a disadvantaged area? Suggest that it be clarified that at least 75% of the proposed project be located within an area designated by the State of NC DEQ as disadvantaged. An alternative, if the project cannot be physically located within a disadvantaged area, would provide that the applicant clearly explain how the project would directly benefit a disadvantaged area. Also, it would be helpful to define specific and consistent criteria for how an applicant might demonstrate that a project would benefit a disadvantaged area. This may also assist the State in comparing and prioritizing projects for important equity considerations.

- **Response:** Proposed changes to Revised Criterion 2 were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item D as follows: “If the proposed project does not benefit ~~fall within~~ a Potentially Underserved Block Group or Tribal boundary layer on the map, the applicant must provide information in the application explaining ~~what~~ the factors that would qualify the direct beneficiaries of the project ~~area~~ as disadvantaged (such as demographic, historical, cultural, linguistic, low-wealth factors, or other considerations deemed relevant).” The Guidance Document will clarify that for this criterion, the proposed project is not required to be located within an area designated as disadvantaged, but the project must result in water quality improvements in and/or reduced water quantity impacts to the disadvantaged area.

- b. Stormwater Construction PRS Category 1 – Project Purpose

**Comment 2:** Provides points for either stormwater quality or stormwater quantity projects. To maximize value from proposed projects, it is suggested that the State consider granting additional points for projects that advance *both* stormwater quality and stormwater quantity



considerations. The highest points could be garnered for fully integrated, high priority stormwater quality and quantity projects.

It appears that *stormwater quality* projects (Line Item 1.A) receive more favorable scoring than *stormwater quantity* projects (Line Item 1.C). It is suggested that important projects that are stormwater quantity-based have the potential to receive equivalent points that water quality-based projects can receive. Stormwater quantity-based projects can often entail and help mitigate safety-related considerations.

If higher potential points are deemed important *for stormwater quantity-based projects*, it is suggested that Line Item 1.C could also be expanded to provide a detailed breakout of points and additional points for quantity-related project elements, similar to Line Items 1.A and 1.B for quality-based projects.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E, as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2). In addition, stormwater construction PRS Line Item 2.B provides benefit points for projects that address flood reduction.

c. Stormwater Construction PRS Category 2 – Project Benefits

**Comment 3:** Line Item 2.B.1 – In addition to the critical facilities and important infrastructure categories listed, suggest including consideration for *limited access areas* with an example being areas that have only one way in and out that could be compromised by hazardous flooding or other safety-related conditions. It is important to note that a proposed project should seek to reduce flooding hazards even if actual flood levels are not being directly addressed by the project. In Line Item 1.C, this clarification could be added to the current wording of “...to control stormwater quantity and reduce flooding.” In Line Item 2.B.1, this addition could prioritize access-limited residential areas, along with the public infrastructure already listed in Line Item 2.B.1. Moreover, this could also help clarify footnote 3 on page 6 in situations whereby improving a transportation corridor serving a disadvantaged area to reduce or mitigate a flooding hazard would be an acceptable project.

- **Response:** Proposed changes to stormwater construction PRS Line Items 2.B.1 and 2.B.2 were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E include this language: 2.B.1 – “including designated evacuation routes” and 2.B.2 – “or improves ability to access habitable structures during a flood event”.

**Comment 4:** Line Item 2.D – Consider applying information on social and community vulnerability including urban heat islands to further prioritize projects as these areas would likely have less capacity to deal with the effects of climate change.

- **Response:** Proposed changes to stormwater construction PRS Line Item 2.D were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E are as follows: “Project has been identified through a local or regional resilience planning process that included a vulnerability assessment for future conditions and long-term strategies for addressing flooding, sea level rise, or other environmental changes.”

**Comment 5:** Line Item 2.F – Suggest deleting this item with assumed mandatory compliance with NPDES MS4 regulatory permit requirements. If this section is deleted, the points could be re-allocated to increase the scoring potential for stormwater quantity-related projects to balance with stormwater quality-related projects.

- **Response:** Staff will review the MS4 line item with the SWIA Stormwater Funding Committee.

Staff proposes changes to stormwater construction PRS Line Items 2.A as shown in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E as follows: Reduce the maximum points that can be awarded in Line Item 2.A (Water Quality Improvement) to 15 points to equal the maximum points that can be awarded for Line Item 2.B (Flood Reduction).

d. Stormwater Construction PRS Category 3 – System Management: Line Item 3.C

**Comment 6:** Line Item 3.C – Supports having a stormwater utility as a best practice for generating dedicated funding for local stormwater improvement projects, ongoing maintenance, meeting regulatory requirements, etc. We can envision that communities applying for needed ARPA funds may or may not have a stormwater utility in place currently. Line Item 3.C would favor applicants with a dedicated stormwater utility. If the intent of this line item is to award more points to applicants that are better prepared to operate and maintain the project enabled by grant funds, perhaps an alternative approach would be for applicants that do not have a dedicated stormwater utility to be able to demonstrate their ability to maintain the proposed project over time through other funding means.

- **Response:** Staff proposes no changes to Line Item 3.C.

e. Category 4 - Affordability

**Comment 7:** Line Item 4.B – No points are allowed for meeting 2 of 5 LGU indicators although at least 2 of 5 was indicated earlier in the eligibility requirements (Criterion 2).

- **Response:** Staff proposes changes to Revised Eligibility Criterion 1 to include cities and counties that have one LGU indicator worse than the state benchmarks and changes to Line Item 4 to provide points to include cities and counties that have one or two LGU indicator worse than the state benchmarks.

## 6. Town of Surf City

Kyle Breuer, AICP, Town Manager

6-2-22

**Comment 1:** Consider the restrictive nature in providing grants to entities that must experience a significant hardship raising revenue necessary to finance stormwater management activities. Other programs not as restrictive have been utilized to develop plans and priorities to make their communities more resilient. By placing this restriction to further analyze funding, taxing authorities, etc., it seems that you are not allowing units to “get over the hump” by applying for and securing funds under this program.

- **Response:** The eligibility requirements for ARPA grant funds are contained in NCGA Session Law 2021-180 Section 12.14.(d).

**Comment 2:** Consider the negative effects of population increase and stormwater quantity and quality. By placing additional restrictions on growth rate, this hurts communities that are experiencing high growth rates and contributing to stormwater issues.

- **Response:** Staff presented this consideration to the SWIA Stormwater Funding Committee on June 23, 2022, as part of this Agenda Item.

**Comment 3:** Stormwater can affect evacuation routes and critical routes to everyday goods and services, including emergency personnel response.

- **Response:** Proposed changes to stormwater construction PRS Line Item 2.B.1 were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2022 meeting Agenda Item E and include this language “including designated evacuation routes.”

## 7. Charlotte-Mecklenburg Storm Water Services

Daryl Hammock, PE, Assistant Manager  
6-3-22

### a. Eligibility Requirements

**Comment 1:** Session Law indicates that NCDEQ may consider any data that it finds relevant to determine eligibility and hardship. The draft Plan outlines data to be used centered on LGU indicators and disadvantaged communities. While these factors play a role, they are not primary indicators of stormwater program needs or indicators of hardship. It should first be noted that funding approaches and regulatory requirements of storm drainage programs differ from those of other water systems. This is particularly true as it relates to flood control services, which are determined by the local government and those service levels can vary widely. As a result, municipalities may change their standards *or reduce or eliminate services* to match available funding as Charlotte has done. Program reductions were needed despite Charlotte having one of the higher stormwater utility fees and higher median incomes than most other locations.

There are additional indicators of stormwater program needs and hardships that are not part of the eligibility requirements or ranking:

*Flooding and safety concerns – important factors that should be considered:*

- Mileage of closed drainage system
- Ratio of closed drainage system (pipe) versus open system (channels, streams)
- Mileage of drainage system per user account (rate base)
- Average age of drainage system assets
- Land development regulations in place when drainage systems initially installed
- Municipal growth rate and land cover (imperviousness), which affects system capacity
- Availability of suitable outfalls to convey flood waters, and the degree of urbanization (which escalates costs)

Less than half of Charlotte’s annual stormwater program needs are met with the funding level that is able to be put into place. Charlotte can rehabilitate or replace only about half of the drainage system annually that the industry recommends. *Therefore, the extent of capital needs should be considered in the ARPA eligibility ranking process.*

*Protecting and improving surface water quality – important factors that should be considered:*

- NPDES MS4 Permit requirements
- Presence and extent of impaired waters, source and pollutant types, and pollutant loads (urban areas tend to have more impaired waters)

Municipal stormwater program needs were affected in 2018 by the State Legislature who at that time prohibited municipalities from requiring stormwater controls on redeveloping properties. This decision had a disproportionate effect on older municipalities with impaired surface waters who relied on redevelopment activity to help address impairment. The action shifted stormwater management costs from polluters to rate payers and is a driver of need in areas that already have significantly developed areas with impaired waters. Rate payers are affected who must raise revenues to remain compliant with NPDES permit conditions. *The presence and extent of impaired surface waters in urbanized, older areas should be an indicator of need.*

The Clean Water Act compels Cities to invest in surface waters to the *Maximum Extent Practicable*. Yet, for Charlotte, this means the investments that can reasonably be afforded for surface water quality improvements will only be able to be realized after many decades of investment exceeding several billions of dollars. *Therefore, the eligibility process should better identify the depth of funding gaps needed to restore impaired waters as an indicator of need.*

- **Response:** The suggested metrics are well thought out and they would measure needs. They do not necessarily measure hardship in generating revenues. The Session Law limits the ARPA funds to those that have significant hardship raising revenue. In order to focus on those entities that have difficulty generating stormwater revenues, SWIA is utilizing LGU economic condition indicators and the improvement of stormwater issues in disadvantaged areas.

**Comment 2:** One of the funding eligibility criteria includes having at least two out of five Local Government Unity (LGU) Indicators that are worse than the state benchmarks. *Please update the Plan to specify which data sources and tools the applicant should rely on for determining these five local indicator values.*

- **Response:** This information is currently posted on the DWI website and will be referenced in the Guidance Document for this program. The LGU indicators and data sources are the same as those used in the existing water and wastewater funding programs.

b. Stormwater Construction PRS Category 1 – Project Purpose – Line Items 1.A and 1.B:

**Comment 3:** Line Items 1.A and 1.B – Nature-based SCMs, non-nature-based SCMs, and restoration projects are given either full points (25 or 30) or zero points. *We suggest a sliding scale based on specific metrics so that projects that are more effective are awarded more points.*

- **Response:** DWI and SWIA do not use sliding scales in the Category 1 – Project Purpose sections of the current water and wastewater construction PRS, and propose the same approach for the stormwater construction PRS for consistency.

**Comment 4:** For SCMs, wetland restoration, and estuary restoration impervious acres treated, or cost per impervious acre treated, are metrics we would recommend. For wetland restoration, it would also be beneficial to consider the scarcity of the resource. Wetlands in urban areas are rarer; opportunities for restoration in urban areas could return valuable ecosystem services that are otherwise largely absent. For stream restoration, the following factors should be considered: reduction of the pollutant of concern and restoration approach. The restoration approach can be seen as a surrogate for functional uplift; as projects undertaking a full, priority one

restoration will presumably restore more stream functions than a simple bank stabilization project aimed at reducing a point source of sediment. For buffer restoration, acres of buffer or cost per acre of buffer is recommended.

- **Response:** Staff proposes no changes to Line Item 1.B.

c. Stormwater Construction PRS Category 2 – Project Benefits

**Comment 5:** Line Item 2.A.1 – Points are awarded for projects benefitting impaired subwatersheds based on the state’s Integrated Report. Water bodies that have TMDLs are removed from the impairment listing but may still not be meeting surface water quality criteria. *We recommend expanding this language to include water bodies with a TMDL that are not meeting surface water quality and aquatic life standards. In cases where local water quality data shows a stream to be impaired but this impairment is not listed on the Integrated Report, we also recommend that applicants be allowed to provide local data that demonstrates impairment.*

- **Response:** Water bodies with a TMDL are assigned a Category 4 in the Integrated Report and are thereby eligible for points under Line Item 2.A.1.

**Comment 6:** Line Item 2.A.3 – Awards points based on 35% reduction of Total Nitrogen and Total Phosphorus. In many communities in NC, there are other pollutants such as total suspended solids (TSS) that are the primary pollutants of concern or primary drivers of water body impairment. *We recommend modifying this language to assign a pollutant reduction for “primary pollutant of concern” or to at least add TSS to the list of pollutants in this category.*

- **Response:** DWI and SWIA specifically proposed not to include total suspended solids (TSS) in Line Item 2.A.3 based on the following information in the NC DEQ Stormwater Control Measure Credit Manual: “In the past, 85% TSS removal has been used as a standard. DEQ is no longer using that standard because it is not reflective of the actual field performance of SCMs. Most SCMs do not remove 85% of TSS, especially at lower concentrations of TSS in the influent.”

**Comment 7:** Line Item 2.B – Recommend including flood prevention as well as flood reduction. Fixing failing infrastructure that is leading to flooding, or which may result in future flooding, and addressing the causes of street flooding are a major focus of our flood control program. *We recommend providing points for fixing failing infrastructure to reduce current or potential future flooding, and increasing the points awarded for reducing street flooding to 10 or 15.*

- **Response:** Line Item 2.B does not exclude fixing failing infrastructure and proposed projects can earn priority points if the project results in the benefits listed in Line Items 2.B.1, 2.B.2 or 2.B.3.

**Comment 8:** For all project types, connectivity to larger or multi-objective projects should also be considered.

- **Response:** Construction PRS Line Item 2.D as revised provides for connectivity to a local or regional resilience planning process, and Line Item 3.A.1 provides points if a proposed project is included in a local flood resiliency plan, watershed plan, stormwater management plan, stream restoration plan, or estuary restoration plan, as of the date of application.

d. Stormwater Construction PRS Category 4 – Affordability

**Comment 9:** Line Item 4.A – Recommend not penalizing larger cities by awarding points for communities with less than 10,000 people.

- **Response:** This will be presented to the SWIA Stormwater Funding Committee for consideration. Note that a population of 20,000 is approximately the same size as a wastewater utility with 10,000 connections, for which points are awarded in the Wastewater PRS.

**Comment 10:** Line Item 4.B – Recommend points be given for having 2 out of 5 LGU indicators worse than the state benchmark rather than giving points only for having at least 3 indicators worse than the state benchmark.

- **Response:** Staff recommends revising Line Item 4.B to provide points for having 1, 2, 3, 4 or 5 LGU indicators worse than the state benchmarks.

e. Grant Limits

**Comment 11:** In section D of the Plan under Grant Limits, it is stated that session law allows for construction grants up to \$15,000,000 but that the state will limit these grants to \$5,000,000 per applicant per grant cycle. *We recommend increasing the funding limit to \$15,000,000 as session law allows.*

- **Response:** It is a priority of SWIA to maximize the use of funds and to stretch the limited grant funds to benefit as many local government units as possible. An application would also be considered for a Clean Water State Revolving Fund (CWSRF) if the project is eligible for those funds.

8. NC Department of Natural and Cultural Resources, Division of Land and Water Stewardship

Misty Buchanan, Deputy Director for Natural Heritage

5-25-22

North Carolina's Natural Heritage Program (NCNHP) recommends adding points for protecting natural heritage resources to the proposed PRS by adding simple prioritization criteria for both stormwater construction grants and stormwater planning grants. Maps and information can be found at: <https://ncnhde.natureserve.org/content/map>. This information is updated quarterly to incorporate the most current information known about NC's protected species and habitats.

**Comment 1:** Construction PRS Line Item 2.A and Planning PRS Category 1 – Add the following language: "Directly Benefits NC Natural Heritage Program natural area" for 5 to 10 points.

- **Response:** Staff recommends adding Line Item 2.C.5 for 3 points to the construction PRS and revising Line Item 1.E of the planning PRS to prioritize direct benefits to a NC Natural Heritage Program natural area that is rated "General" or above.

**Comment 2:** Stormwater Construction PRS Line Item 2.A and Stormwater Planning PRS System Category 1 – Add the following language: "Directly Benefits a Dedicated Nature Preserve or lands that have a permanent conservation or historic preservation agreement in place"

- **Response:** Any land that, for any reason, has a permanent conservation or historic preservation agreement does not appear to support the prioritization of the use of stormwater funds.

## 9. Municipal Engineering, Inc.

Vincent Tomaino, PE, Principal Project Manager/Engineer  
5-16-22

**Comment 1:** Construction PRS Line Item 4.A and Planning PRS Item 3.A – Propose more categories. The difference between populations of 500 and 10,000 is more significant from a financial hardship perspective than the difference between populations of 10,000 and 100,000

- **Response:** Staff recognizes that there may be additional hardship for smaller LGUs. SWIA may consider different prioritization points following the first round of funding under this new program.

**Comment 2:** Planning Grant PRS Line Item 1.C – How will a study improve compliance of an MS4? Do you mean that the study's recommendations – IF FOLLOWED – will improve compliance?

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 3:** Planning Grant PRS Line Item 2.A – Do you mean at least one person has explicit responsibility even if that person has dozens of other duties that prevent him/her from paying attention to stormwater management? Or do you mean at least one FTE?

- **Response:** Staff recommends revising Line Item 2.A as follows: At least one person working for or with the applicant is designated as responsible for stormwater management and provides at least 0.5 Full Time Equivalents (FTEs) on stormwater management activities.

**Comment 4:** Planning Grant PRS Line Item 2.D: Entity has, or the study will create or update, a stormwater management plan for the study area – Doesn't this just state the purpose of the study?

- **Response:** Staff recommends revising Line Item 2.D as follows: Applicant has already adopted a stormwater management plan for the study area or by the completion of this project will have adopted a stormwater management plan for the study area.

## 10. McAdams

Annette M. Lucas, PE, Stormwater Program Practice Lead  
6-1-22

### a. Stormwater Construction PRS Comments

**Comment 1:** Can you confirm that point systems are “all or nothing” and not sliding scale?

- **Response:** Stormwater construction PRS points are “all or nothing” and are not a sliding scale. The stormwater planning PRS is also “all or nothing” except for Line Item 1.A for which an application can earn 0, 1, 2, 3, 4, or 5 points, and for Line Item 1.B for which an application can earn 0, 1, 2, or 3 points.

**Comment 2:** Line Item 1.B – Restoration is provided as an appropriate project purpose; however, the structure of the remainder of the scoring system is not well suited to stream projects. Also, restoration projects do not typically control stormwater quality but instead repair natural systems that are damaged due to hydrologic impacts that are caused by stormwater.

- **Response:** The scoring system provides many line items for which points may be earned by restoration projects.

**Comment 3:** It is possible to address both stormwater quality and quantity in the same project; for example, the construction of a new stormwater wetland. If the intent is to highly prioritize a project like this, this prioritization matrix may not accomplish that because the applicant can only pick one project purpose and the maximum number of points that may be collected is 30.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E to separately prioritize projects that primarily address stormwater quality (Line Item 1.A) or primarily address stormwater quantity issues (Line Item 1.C).

b. Stormwater Construction PRS Category 2 – Project Benefits Comments

**Comment 4:** Line Item 2.A.1 – what is meant by “directly benefits?”

- **Response:** A project qualifies for these points only when the applicant identifies a direct connection between the proposed project and the benefit to an impaired water. This is the requirement used in DWI’s current water and wastewater funding programs and will be the same for the stormwater program.

**Comment 5:** Line Item 2.A.1 – does the term “most recent Integrated Report” refer to the 2020 report or the draft 2022 report?

- **Response:** The reference is to the most recent final version of the Integrated Report published on the NC DEQ Division of Water Resources website.

**Comment 6:** Line Item 2.B – suggest allowing applicants to collect points for BOTH structural and street flooding benefits, as these typically coincide together.

- **Response:** The points are intentionally not additive.

**Comment 7:** Line Item 2.C – if two or more communities collaborate on a single project, may the applicants use the LGUs of the most distressed community in the partnership?

- **Response:** If the applicant claims points for Line Item 2.C, the LGU indicators must be a weighted average of each of the indicators for all of the units of local government that will work together on the proposed project, regardless of the physical location of the proposed project. The weighted average of each of the indicators must be based on the population of each of the LGUs that will work together on the project. This is the approach used in DWI’s current water and wastewater funding programs and will be the same for the stormwater program.

**Comment 8:** We are having trouble reconciling the maximum possible points for Category 2 (35 total).

- **Response:** Note that the statement contained within the box directly below the title of the PRS table addresses this comment: “Note that some categories have a maximum allowed points that may be less than the total of individual line items.”

c. Stormwater Construction PRS Category 3 – System Management Comment

**Comment 9:** Line Item 3.A – suggest allowing applicants to collect points for BOTH a local watershed/ stormwater/resiliency plan AND an operation and maintenance plan.

- **Response:** The points are intentionally not additive.



d. Stormwater Planning PRS Comments

**Comment 10:** It would be ideal to rescale this matrix so it adds to 100 instead of 41.

- **Response:** Stormwater planning projects are more similar to DWI's current Asset Inventory and Assessment (AIA) grants and Merger/Regionalization Feasibility (MRF) grants; the PRS scales for the two current programs total to less than 100 points.

**Comment 11:** Line Item 1.C – Many of the communities with LGUs below state benchmarks will not be large enough to need MS4 permits. They will benefit from the points awarded in the affordability section but will not be able to collect the 3 points for compliance with MS4 or likelihood of being designated MS4.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 12:** If a local government needs a stormwater utility, an asset inventory, and a CIP plan, can all of those be packaged together in a single planning grant application? The asset inventory and CIP plan would be important steps in determining the budget that is needed for an effective SW program so rates could be established appropriately. What is the standard for “developing a stormwater utility?” Would this be a feasibility study, rate study, public involvement, etc.? Developing a stormwater utility is a multi-step process that ultimately must be approved by the local elected officials.

- **Response:** An applicant may include these activities in a single application to develop and implement a new stormwater utility.

**11. WK Dickson**

Angela G. Mettlen, Vice President, and Anita Robertson, PE, Project Manager  
6-2-22

**Comment 1:** We think that water quality-based stormwater projects may be prioritized and/or some smaller units of government may feel pressed to include specific stormwater quality components to be most competitive. This could result in the installation of specific stormwater control measures that will require long-term maintenance in areas that do not have the annual funding in place to adequately address this.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2022 meeting Agenda Item E as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2).

**Comment 2:** Some of the state's beach communities are in most need of funding for water quantity-based projects; however, many will not meet any of the current eligibility requirements for participation this funding opportunity.

- **Response:** Staff proposes changes to Revised Eligibility Criterion 1 to include cities and counties that have one LGU indicator worse than the state benchmarks and changes to Line Item 4 to provide points to include cities and counties that have one or two LGU indicator worse than the state benchmarks.

**Comment 3:** Does the Division anticipate separating out stormwater funding that could be included under CWSRF going forward using this or a similar PRS as opposed to scoring under the wastewater PRS?

- **Response:** For the Fall 2022 funding round, the proposed stormwater construction PRS and proposed stormwater planning PRS will be used to evaluate projects that are eligible for ARPA funding. If an application will not be awarded ARPA funds, it will then be evaluated under the latest Clean Water PRS for CWSRF loans, if the project is eligible for CWSRF.

**Comment 4:** As was done with the drinking water/wastewater ARPA funding round, will an entity be able to apply for both planning and construction funding? And if the planning is specifically to develop final design for a construction project, will those need to be scored based on the stormwater construction PRS? If the answer to this “yes”, the maximum for a single entity could secure through this funding opportunity would be \$5.4 million, correct? (Assuming no multi-jurisdictional partners).

- **Response:** The final engineering design and project permitting work is eligible for stormwater construction funds and should be included in the same application as the funds requested for the project construction, which are proposed to be capped at \$5 million.

An applicant is not limited to a specific number of stormwater funding applications that can be submitted. Each application for construction funds must be for a specific project purpose because applicants can only earn priority points for one construction project purpose.

**Comment 5:** It is assumed that where the PRS includes an element that is the same as or very similar to the drinking water/wastewater PRS, the necessary documentation to successfully claim those points will be the same or very similar.

- **Response:** Yes.

**Comment 6:** A full understanding of how these points can be successfully claimed is more difficult without the accompanying guidance that lays out the documentation requirements. When will this guidance be made available?

- **Response:** The Guidance Document for this program will be posted on DWI’s website when application materials are posted for the Fall 2022 funding round.

**Comment 7:** For stormwater construction grant eligibility under Criterion 3, it states that 75% of the project cost must be used to serve or benefit disadvantaged areas. Please clarify what project cost entails. In the existing drinking water and wastewater programs, over 50% of the construction cost of the project is used to determine eligibility for line items. Will that be the case for the stormwater program, both for eligibility and line item 4.C? Typically, the entire project cost includes engineering fees, easements, environmental, permitting, etc. If taken into consideration, these are costs additional that will make the benchmark much more difficult to achieve.

- **Response:** Total project costs are to be used for Revised Eligibility Criterion 2 and for Line Item 4. Costs such as engineering fees, construction easements, etc. should be split proportionally between the non-disadvantaged area portion of the project and the disadvantaged area portion of the project.

**Comment 8:** Stormwater Construction PRS Line Item 2.A.3 – Can these points be claimed if a portion of the project can meet this nutrient reduction threshold (i.e., for a portion of the project area

rather than an entire watershed)? What documentation will be needed, and will any post-construction monitoring be required?

- **Response:** For Line Item 2.A.3 and proposed new Line Item 2.A.4, points will be awarded if the proposed project is the construction of a SCM that itself or in combination with other SCMs will achieve at least 35% reduction in both Total Nitrogen (TN) and Total Phosphorus (TP) based on the NC Stormwater Control Measure Credit Document requirements for regulatory credits.

## 12. WithersRavenel

Steve Marks, PE, CFM, Director of Stormwater  
6-3-22

**Comment 1:** How will the demonstration of “significant hardship raising the revenue” will be determined for partnering communities where hardship ratings for each community may vary.

- **Response:** If the applicant claims points for construction PRS Line Item 2.C or planning PRS Line Item 1.D, and any one of the entities meets the eligibility criteria, then the regional project that benefits that entity is eligible as a whole.

**Comment 2:** What would be required to show a project is protective of sensitive waters? Please also publish the priority rating system guidance as the public should be able to comment on the guidance before it is finalized.

- **Response:** The Guidance Document for this program will be posted on DWI’s website when application materials are posted for the Fall 2022 funding round.

**Comment 3:** More priority is given to water quality components over water quantity and flood mitigation projects. There are currently other funding mechanisms (e.g., CWSRF, NC Land and Water Fund, Environmental Enhancement Grant program) for water quality projects. Equalizing water quantity projects will provide opportunities for high benefit-cost projects.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2022 meeting Agenda Item E as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2).

**Comment 4:** For construction grants, please include eligibility for repairing dams. Existing dams serve a critical aspect of public health and safety across the state. Dam rehabilitation often requires significant capital cost and the consequence of dam failure can be significant and catastrophic.

- **Response:** This activity is eligible for funding but staff proposes no priority points for repairing dams.

**Comment 5:** NCDEQ is in the process of identifying communities that will become MS4 permittees under NPDES. It is expected that there will be many new permittees based on population from the 2020 census as well as additional criteria such as density or location in an “urbanized area”. It is not expected that this process will be complete by the September application deadline. These communities that are potential new MS4s would greatly benefit from eligibility for points to plan for compliance with future permitting. The priority rating system should note that communities that have yet to be designated as permittees but meet the state MS4 designation criteria are eligible for these points. It is unclear if these communities fall under the criteria for “will help the entity prepare to comply with a future NPDES MS4 permit”.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 6:** We recommend up to \$600,000 total award for collaborative effort with other local government units to provide greater incentive for collaboration.

- **Response:** Answer: Session Law 2021-180 Section 12.14.(f)(2) provides that planning grants may not exceed five hundred thousand dollars (\$500,000).

### 13. Hazen & Sawyer

Seth Robertson, Associate Vice President

Jessica Leggett, Associate

6-3-22

#### a. Eligibility

**Comment 1:** Documentation of a Stormwater Quality or Quantity Issue, sub-section B states “A map and/or a narrative that identifies the location of the stormwater quality and/or stormwater quantity issue. The map and/or narrative must show ... “. Does this mean a map will not be required for the application?

- **Response:** SWIA recognizes that some applicants for the ARPA stormwater funds may not have the ability to create a map and will accept a descriptive narrative instead of a map.

**Comment 2:** There are certain types of projects (i.e., stream restoration) where this information doesn’t appear to be applicable. In addition, this appears to be more appropriate as supporting information as part of a technical review as opposed to information necessary to document priority points. Will this information be required for all SCM projects or stormwater quality projects?

- **Response:** As required by NCGA Session Law 2021-180 Section 12.14.(d), this information is required from all applicants that seek ARPA stormwater funding in order to demonstrate that there is a stormwater quality or quantity issue.

**Comment 3:** Regarding Criterion 1, NC General Statute 160A-314, Section (a1)(2) states “Rates, fees and charges imposed under this subsection may not exceed the city’s cost of providing a stormwater management program and structural and natural stormwater and drainage system.” The current stormwater utility legislation discourages entities from accruing additional funds over what is needed for the cost of service (this structure is different than water and sewer utilities). Also, many entities that do have a stormwater enterprise fund, only have flat fee rate structure that will not allow the utility to have an operating ratio above 1. Per a NC stormwater Fees Report from September 2021, 72 entities (approximately 72%) use a flat fee for stormwater. It appears this criterion would expand the number of eligible entities. Is that the Division’s intent? Is there a greater priority to fund local governments that don’t currently have a stormwater enterprise fund or those that have LGU indicators worse than the state benchmark?

- **Response:** This was discussed with the SWIA Stormwater Funding Committee on June 23, 2022, under Agenda Item D.

**Comment 4:** Does the Division plan to use any other factors to demonstrate significant hardship, such as the CDC/ATSDR Social Vulnerability Index? Unlike water and sewer utility fees,

stormwater fees often have a greater impact on non-residential users which means economic indicators may not be applicable for demonstrating significant hardship.

- **Response:** It does not appear that the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Social Vulnerability Index which is used to help public health officials and emergency response planners meet the needs of socially vulnerable populations in emergency response and recovery efforts, is a demonstration of a local government's "significant hardship raising the revenue necessary to finance stormwater management activities within its jurisdiction ...". However, under Revised Eligibility Criterion 2, an applicant may use that index as a factor to qualify the direct beneficiaries of a project as disadvantaged.

**Comment 5:** How does the Division define benefit? The term benefit is understood in reference to a project that would decrease flooding issues in a disadvantaged area, but what about stream restoration or stormwater control measures that generally benefit all downstream portions of the watershed?

- **Response:** The Guidance Document for this program will be posted on DWI's website when application materials are posted for the Fall 2022 funding round.

b. Demonstration of "Significant Hardship Raising the Revenue..." for applications to Develop and Implement a New Stormwater Utility:

**Comment 6:** Please provide guidance as to what specific project deliverables will be required. Can this funding be used to perform an evaluation to determine what a stormwater utility would look like for the applicant and if there is political support or opposition?

The heading states "develop and implement" a new stormwater utility. Please define what the Division will determine as develop and implement. If it is determined, with this funding, that the utility has evaluated a potential stormwater utility but has determined, due to circumstances beyond their control (i.e., political change), that the applicant will not pursue implementation of a stormwater utility, would this funding have to be paid back to the Division? Generally, a current government body cannot impose requirements on future iterations of the governing body. What level of stormwater utility creation is expected? Are there specific requirements that must be met for this funding?

- **Response:** Session Law 2021-180 Section 12.14.(e)(1) provides that a construction grant is available for the development and implementation of a new stormwater utility, meaning that a new stormwater utility will be implemented. If approved for funding, a resolution will be required as part of an applicant's acceptance of the funding offer and conditions.

The Guidance Document for this program will be posted on DWI's website when application materials are posted for the Fall 2022 funding round.

c. Stormwater Construction PRS Category 1 – Project Purpose

**Comment 7:** On Page 5, Footer #1 states "Stormwater quantity control projects are eligible for Line Item 1.A points if more than 50 percent of the construction cost of the project is for the stormwater quality portion of the project. Differentiating the cost of quantity and quality control elements could be difficult, as many components of an SCM serve both functions. Differentiating stormwater conveyance elements from quantity and quality controls may be more practical if that aligns with the Division's intent. Will guidance be provided on how to differentiate cost elements?"

- **Response:** Staff proposed revisions to the stormwater construction PRS Line Items 1.A and 1.C to clarify that points can be awarded to projects that address both stormwater quality and stormwater quantity to the SWIA Stormwater Funding Committee June 23, 2002 meeting under Agenda Item E. On the application form, the applicant will be required to differentiate between construction costs that are quality and quantity components of the project.

**Comment 8:** Does the Division have a specific definition for “nature-based solutions?” Definitions used throughout the stormwater industry often include some aspect of using natural materials or mimicking natural water flow, but vary substantially.

- **Response:** Yes. NCGA Session Law 2021-180 Section 12.14.(h) defines nature-based solutions as “sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to store, infiltrate, and treat water by enlisting natural features and processes in efforts to promote resilience, reduce flood risks, improve water quality, protect coastal property, restore and protect wetlands, stabilize shorelines, and add recreational space.”

**Comment 9:** Will there be a maintenance of nature-based solutions requirement with this funding? It is understood that the grant will pay for implementation of the nature-based solution but how will the Division determine if the maintenance will be funded by the applicant?

- **Response:** A financial information form will be required to demonstrate the applicant’s inclusion of operation and maintenance costs in its budget which is similar to requirements of the NC Department of Natural and Cultural Resources, Division of Land and Water Stewardship Land and Water Fund.

**Comment 10:** Does the Division plan to place any differentiation in prioritization of rehabilitating existing SCMs versus new SCMs?

- **Response:** No.

**Comment 11:** Line Item 1.B – The project types listed in Line Item 1.B may not be eligible per the legislation definitions establishing this program (it appears these projects were examples from the CWSRF priority system). Additionally, some of the nature-based solutions listed in the accompanying definition may not be eligible based on the CWSRF Eligibility Handbook.

- **Response:** The U.S. Department of the Treasury in 31 CFR Part 35; RIN 1505-AC77 Coronavirus State and Local Fiscal Recovery Funds Final Rule provides that CWSRF funds can be used for Line Item 1.B projects.

**Comment 12:** Line Items 1.B and 1.C – The Stormwater Infrastructure Funds Section in Senate Bill 105 (Section 12.14.(a) states “The Fund shall be used to provide grants to eligible entities as defined in the section for projects that will improve or create infrastructure for controlling stormwater quantity and quality. Line Item 1.B only states “stormwater quality” and Line Item 1.C only states “stormwater quantity.” Is the Division’s interpretation that this means quantity *or* quality? Legislation states the project must control stormwater quantity *and* quality issues. If the proposed project would increase pipe size, that would meet controlling stormwater quantity but not necessarily quality. Please provide additional information on how the proposed projects will meet the intent of the legislation if projects only receive points for either 1.B or 1.C.

- **Response:** Staff proposed revisions to the stormwater construction PRS Line Items 1.A and 1.C to clarify that points can be awarded to projects that address both stormwater quality and stormwater quantity to the SWIA Stormwater Funding Committee June 23, 2002 meeting under Agenda Item E.

e. Stormwater Construction PRS Category 2 – Project Benefits

**Comment 13:** Line Item 2.B.1 – states “Increases public safety by improving the entity’s ability to access and operate critical infrastructure during flood events such as water and/or wastewater treatment infrastructure, schools, hospitals, and/or emergency response facilities.” Please provide a definition for critical infrastructure. Also, please provide guidance as to what would be categorized/considered as improving? Will the Division provide specific measures of improvement? We recommend that the Division adopt the definition provided by FEMA and utilized in the current Building Resilient Infrastructure and Communities program.

- **Response:** Examples of critical infrastructure are provided in Line Item 2.B.1 but are not intended to be an exhaustive list. The applicant must describe why it considers the infrastructure to be of a critical nature and how the proposed project will improve access to the critical infrastructure during flood events.

**Comment 14:** Line Items 2.B.2 and 2.B.3 – references “reduction” of flooding. Please confirm how much reduction in flooding is needed to claim points for these line items and how that would be determined. Will there be additional guidance on the proposed project’s design based on a specific level of service and storm recurrence interval?

- **Response:** The applicant must adequately describe in the narrative the extent to which flooding will be reduced by the proposed project and how the proposed project will achieve the degree of flood reduction proposed.

**Comment 15:** Line Item 2.C – please provide additional information as to why a partnership between entities is given additional prioritization instead of increased funding similar to the previous ARPA Plan. Coordination on SCMs does not provide a benefit analogous to partnerships for the provision of drinking water or treatment of wastewater.

- **Response:** Part D of the DWI’s Proposed Plan to Administer American Rescue Plan Act’s State Fiscal Recovery Fund Appropriated in the State Budget for Stormwater Projects as posted for public comment on May 3, 2022 provides for increased funding for applicants that will work together on projects.

**Comment 16:** Line Item 2.F – provides prioritization for compliance with MS4 permits. Many smaller communities do not have MS4 permits and whether the community could be subject to a future NPDES MS4 permit may be unclear. Suggesting that the project align with at least one of the six NPDES MS4 minimum control measures, whether the community is an MS4 permittee or not, may be more readily understood by applicants.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 17:** Line Item 2.G – provides prioritization if the proposed project includes a public education component. With all MS4 permits, an education component is required for compliance. An education component should be a project requirement instead of additional prioritization. Please refer to the six minimum control measures that are the basis for MS4 compliance.

- **Response:** SWIA discussed this Line Item and proposes to offer one point if the project includes a public education component such as signage describing the function of the stormwater quality or quantity infrastructure.

f. Stormwater Construction PRS Category 3 – System Management

**Comment 18:** Line Item 3.A.1 – please provide guidance to the level of detail needed and at what stage in the process of developing the plans listed will be accepted to claim the points for this line item.

- **Response:** The Guidance Document for this program will be posted on DWI’s website when application materials are posted for the Fall 2022 funding round.

**Comment 19:** Line Item 3.A.2 – provides prioritization for implementing an Operations and Maintenance Plan. This is a requirement for MS4 permits. Is it the Divisions intent to categorically provide more priority to applicants that have an MS4 permit?

- **Response:** The stormwater management plan listed for this Line Item is not required to meet the requirements of a NPDES Municipal Separate Storm Sewer System (MS4) Permit Stormwater Management Plan.

**Comment 20:** Line Item 3.B – many local governments have shorter stormwater capital improvement plans spanning less than 5 years and may not be based on 100% system knowledge. Some local governments will only have 2-year capital improvement plans. Will there be specific guidance requirements on adoption as similar funding programs to claim these points and will the Division be flexible on the time span of stormwater capital improvement plans?

- **Response:** SWIA discussed this Line Item and proposes that the current Stormwater Capital Improvement Plan (CIP) must span at least five (5) years and that the proposed project must be included in the CIP.

g. Stormwater Planning Grant PRS Category 1 – Project Benefits

**Comment 21:** Line Item 1.C – provides prioritization for compliance with MS4 permits. Many smaller communities do not have MS4 permits and much of the proposed work should improve MS4 compliance.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**14. North Carolina Coastal Federation**

Todd Miller, Executive Director  
6-1-22

**Comment 1:** To clearly prioritize nature-based projects, these scoring criteria should be consistent with the set of Principles and Guidelines for Financial Support of Coastal Resiliency Projects recently adopted by the Division of Coastal Management (DCM). DWI should embrace these principles as did the N.C. Land and Water Fund (NCLWF) when it created its just adopted scoring criteria for its new Flood Risk Reduction Program. DWI should adopt scoring criteria that disincentives projects that work at cross-purposes with the resiliency efforts of Governor Cooper, other DEQ divisions such as DCM, NCLWF, and other state agencies. A consistent approach across state government to resilience funding that prioritizes nature-based strategies is vital. This policy approach is necessary to ensure the state does not fund projects that transfer and make worse flood and water quality problems to



downstream communities. Calls for this type of consistent policy coordination is embedded in Governor Cooper’s North Carolina’s Natural and Working Lands Action Plan and Climate Risk Assessment and Resilience Plan (2020) which states that “the time to implement nature-based solutions (NBS) is now due to the time required to plan, implement and grow these solutions.”

- **Response:** Staff recommends the following wording for construction PRS Line Item 2.D: Project has been identified through a local or regional resilience planning process that included a vulnerability assessment for future conditions and long-term strategies for addressing flooding, sea level rise, or other environmental changes.

a. Summary of Types of Projects that Should Score High and Receive Priority for Receiving These Stormwater Dollars

**Comment 2:** Design and construction of nature-based stormwater management projects that are engineered to protect, restore and/or mimic the natural hydrology by promoting infiltration, water storage and evapotranspiration as outlined in the NC DEQ stormwater manual. These techniques include infiltration measures described in the state’s stormwater design manual including disconnecting impervious surfaces, small and large-scale infiltration systems, bioretention cells, wetlands, level spreader-vegetated filter strips, sand filters, and permeable pavement.

- **Response:** The proposed stormwater construction PRS Line Item 1.A.1 provides points for stormwater control measures that are nature-based. NCGA Session Law 2021-180 Section 12.14.(h) defines nature-based solutions as “sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to store, infiltrate, and treat water by enlisting natural features and processes in efforts to promote resilience, reduce flood risks, improve water quality, protect coastal property, restore and protect wetlands, stabilize shorelines, and add recreational space.”

**Comment 3:** Strategic land or easement acquisition to provide space for nature-based stormwater measures. This strategy is essential to provide for floodplain and wetland restoration, riparian buffers, and green space or natural infiltration areas to collect and absorb stormwater runoff and store and slow floodwaters.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

b. Specific Text Recommendations for Draft Scoring Criteria

**Comment 4:** The Federation recommends the following text amendments and changes in the draft scoring criteria language:

1. Incorporate preamble language stating a clear priority for funding nature-based planning and projects. Other state agencies are doing so currently to help achieve Governor Cooper’s resiliency policies and orders. Language from these other state funding guidelines that should be incorporated into these stormwater scoring criteria include:
  - a. DCM guiding resiliency principles: In its Resilient Coastal Communities Program Request for Proposals, DCM has listed principles that promote a consistent approach to community resiliency stating that: *“Communities .... are highly encouraged to submit a project that includes a nature-based component. “Nature-based” components mean incorporating natural features or processes into the project design; working with nature to promote resilience, reduce flood risks, improve water quality, protect coastal*

*property, restore, and protect wetlands, stabilize shorelines, and address other coastal hazards. See FEMA's "Building Community Resilience with Nature Based Solutions" for guidance on projects that incorporate nature-based components."*

- b. NC LWF scoring guidelines for its legislative Flood Risk Reduction Program funding: In its scoring guidelines and criteria the NC LWF states that *"The primary purpose of the program is to reduce flood risks through the design, implementation, and preservation of nature-based infrastructure."*
  - **Response:** The proposed PRS language is consistent with other DWI funding programs' PRS language. It is not the purpose of the PRS to specifically encourage or discourage certain types of eligible projects, but presents to all applicants what is prioritized over other types of projects as demonstrated by the priority points. However, other documents, such as the Guidance Document, can provide additional text.
2. Create a 10-point advantage for nature-based construction projects. Reduce the points for non-nature-based projects from 25 to 20 to provide applicants with substantial incentives to consider and utilize nature-based projects.
  - **Response:** Proposed changes to stormwater construction PRS Line Item 1.A were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E would provide 35 points for SCMs that are nature-based solutions (Line Item 1.A.1) and 25 points for SCMs that are not nature-based solutions (Line Item 1.A.2).
3. Create a 10-point advantage for nature-based planning projects. The current draft scoring criteria contain no specific reference or points for plans that will result in nature-based projects. Any proposed planning project that is focused on using nature-based approaches should receive a 10-point advantage under these scoring criteria for planning projects.
  - **Response:** Proposed stormwater planning PRS new Line Item 1.F would provide points if the study will evaluate nature-based solutions to address the identified stormwater quality or stormwater quantity issue.

## 15. Triangle J Council of Governments

Emily Barrett, Jordan Lake One Water Advisory Committee Administrative Support  
6-2-22

**Comment 1:** DRAFT Stormwater Construction PRS – supportive of projects that explicitly improve stormwater quantity AND quality receiving more points.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E, as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2). The proposed change also clarifies that points can be awarded to projects that address both stormwater quality and stormwater quantity.

**Comment 2:** Construction Grant PRS Line Item 2.E – cites North Carolina Land and Water Fund's definition of an innovative stormwater project, but since the NCLWF's definition focuses only on water quality and excludes the words "water quantity" we believe that a better approach would

modify to include water quantity as well. Additionally, we believe that if it is innovative for both quantity and quality that one additional point should be given.

- **Response:** Proposed revised stormwater construction PRS Line Item 2.E would provide points for an innovative stormwater project that addresses stormwater quantity.

**Comment 3:** DRAFT Stormwater Planning PRS – additional points for planning projects for innovative solutions and additional points for collaborative multi-jurisdictional solutions should be provided in a manner like that in the Construction PRS. We also think that some indication of the quality of the innovation should be included. Consider the following language modification for 2.E of the Construction PRS and as an addition to the Planning PRS:

*Includes a well-researched and documented innovative stormwater project as defined and described in the “Innovative Stormwater Program FAQs” section of the current NC Land and Water Fund Innovative Stormwater Program Manual <https://nclwf.nc.gov/media/92/open>. Please note that while this definition includes only water quality, for the purposes of LASII funding, the definition can be for water quality or water quantity or both.*

- **Response:** Proposed stormwater planning PRS new Line Item 1.G would provide points if the study will investigate the applicability of an innovative stormwater project that addresses stormwater quantity or stormwater quality. The stormwater planning PRS Line Item 1.D provides points if the study is a collaborative effort with other units of local government.

**Comment 4:** Separate from the draft PRS approach, we recommend that DWI funding be reserved for Jordan Lake One Water (JLOW) for innovative planning processes, and implementation and construction projects that allow JLOW to coordinate with members and partners, like NCDEQ, to demonstrate projects and regulatory pathways that yield better overall outcomes for the Jordan Lake watershed. We hope to develop a model that can be a state and national model to more cost-effectively achieve water quality and holistic water management objectives while improving communities.

- **Response:** The Session Law Session Law 2021-180 Section 12.14.(d) defines the entities that are eligible for the ARPA stormwater funds: “A regional council of government created pursuant to Part 2 of Article 20 of Chapter 160A of the General Statutes or a nonprofit entity is also an eligible entity under this section if the regional council of government or nonprofit entity partners with a city or county.”

## **16. Stormwater Association of North Carolina (SWANC) and the North Carolina League of Municipalities (NCLM)**

Sarah Collins, SWANC Affiliate Liaison on behalf of the SWANC Board  
6-3-22

**Comment 1:** SWANC and NCLM request that the construction project limit increase to \$10 million for one applicant and up to \$15 million for two or more partnering communities since the legislation allows up to \$15 million. The current bid environment supports this request; \$5 million and \$7.5 million will not accomplish the most meaningful projects. Since these funds are currently a one-time opportunity, there would be more ability to do transformative projects that are bigger and broader, but only if the limits allow.

- **Response:** It is a priority of SWIA to maximize the use of funds and to stretch the limited grant funds to benefit as many local government units as possible. An application would also be

considered for a Clean Water State Revolving Fund (CWSRF) if the project is eligible for those funds.

**Comment 2:** We hope that water quantity and infrastructure improvement construction projects will score as high as water quality projects. It has been our members' experience in other funding programs where there are increased priority points for water quality benefits that the end result is communities take the same infrastructure/water quantity project they were going to propose and shoehorn in the water quality elements, causing the costs to increase. The legislation for this funding is unique in that it specifically allows funding for straight infrastructure and water quantity, which few other grant programs offer. The program could fund a greater number of projects at a greater cost effectiveness if the scoring prioritized water quantity projects equally to water quality.

- **Response:** Proposed changes to stormwater construction PRS Line Items 1.A and 1.C were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E, as follows: Projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2).

**Comment 3:** Request that the benchmark data has a standardized source, and that those sources be shared with applicants. Is population considered by census data or the state demographer, where to locate poverty rate, etc.

- **Response:** This information is currently posted on the DWI website and will be referenced in the Guidance Document for this program. The LGU indicators and data sources are the same as those used in the existing water and wastewater funding programs.

**Comment 4:** When applying for funding to develop or implement a new stormwater utility, would a feasibility study, which hopefully leads to establishing a utility, be applicable for funding? Creating a utility depends on many factors, including approval by elected officials, and those officials will not support unless a feasibility study promotes it.

- **Response:** An applicant may include these activities in a single application to develop and implement a new stormwater utility.

**Comment 5:** For Criterion 3 on page 3 of the draft plan, it is not clear what is meant by a project "serving or benefitting" a disadvantaged area. Must the project be physically located within an area designated as disadvantaged, or could it be located in another area yet serve or provide benefits for a disadvantaged area?

- **Response:** Proposed changes to Revised Criterion 2 were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item D. The Guidance Document will clarify that for this criterion, the proposed project is not required to be located within an area designated as disadvantaged, but the project must result in water quality improvements in and/or reduced water quantity impacts to the disadvantaged area.

**17. North Carolina Conservation Network, North Carolina League of Conservation Voters, Sound Rivers, and American Rivers**

Grady O'Brien, Policy Associate, North Carolina Conservation Network

Robin Smith, Director of Policy and Environmental Enforcement, NC League of Conservation Voters

Heather Deck, Executive Director, Sound Rivers

Peter Raabe, Southeast Regional Director, American Rivers

6-3-22

**Comment 1:** We offer comments that are guided by three basic principles: the ongoing transition of stormwater policy, the effect of climate change on stormwater management, and equity in state investments. We are pleased to see that the draft plan has largely incorporated those principles. At this time, we have just a few suggestions on how to further align the program with this vision of stormwater management and equitable distribution of funds. Overall, we support the proposed criteria for documenting a stormwater quality or quantity issue. We have two additional suggestions for documentation:

**First Suggestion:** Applicants are asked to provide a map or narrative that identifies the location of the stormwater issue. Eventually, the NC DEQ Division of Mitigation Services will release a Flood Resiliency Blueprint, which is meant to “support the establishment and furtherance of local government stormwater maintenance programs.” We hope this blueprint will include tools that allow a forward-looking estimate of flood risk in communities across the state, and we recommend that site- or jurisdiction-specific information be included among the required application materials. For now, where such information exists – as it increasingly does, given other programs that are funding risk and vulnerability assessments – it should be rolled into the application.

- **Response:** DWI has participated in meetings with the Division of Mitigation Services concerning the Flood Resiliency Blueprint. When the Blueprint is finalized, DWI will review to determine if and how to incorporate the Blueprint in the application or project implementation phases.

**Second Suggestion:** In some cases, local entities find themselves facing stormwater issues due to violations of their ordinances. We believe that if an entity is facing a stormwater issue due to ordinance violations, this should be documented in the application, as it will offer DWI and sister divisions more context to help the jurisdiction avoid future violations and future stormwater problems.

- **Response:** Applicants may include this information in the application to demonstrate that a stormwater quality or quantity issue exists, which is required as part of the demonstration of eligibility for these grant funds. The issue itself does not affect the scoring of a project application; it is only part of the eligibility demonstration in the application.

**Comment 2:** We are encouraged by the new method of allowing applicants to provide qualitative explanations of their designation as a disadvantaged or underserved area as opposed to strictly quantitative measures. We specifically appreciate the proposal to prioritize projects designed to benefit “disadvantaged communities” and the proposal to consider racial demographic data, as well as “other considerations deemed relevant,” to identify these communities. We remain interested in what criteria will be used to determine that 75% of the project cost is being delivered to serve disadvantaged areas and look forward to continuing to work with the Division on those methods.

- **Response:** On the application form, the applicant will be required to differentiate between costs that are for the non-disadvantaged area portion of the project and the disadvantaged area portion of the project.

**Comment 3:** Stormwater Construction PRS Category 1 – Project Purpose – We are encouraged to see that the priority rating system generally awards the most points for projects that combine quality and quantity issues while also prioritizing nature-based solutions. However, to ensure that both applications received and projects funded reflect this prioritization, we suggest a 10-point difference between nature-based solutions and non-nature-based solutions. We believe further emphasis will incentivize applicants to choose nature-based projects while also steering awarded funds toward these projects.

- **Response:** Proposed changes to stormwater construction PRS Line Item 1.A were included in the staff report for the SWIA Stormwater Funding Committee June 23, 2002 meeting Agenda Item E would provide 35 points for SCMs that are nature-based solutions (Line Item 1.A.1) and 25 points for SCMs that are not nature-based solutions (Line Item 1.A.2). In addition, projects that primarily address stormwater quantity issues (Line Item 1.C) would receive the same number of points as projects that primarily address stormwater quality issues but are not nature-based solutions (Line Item 1.A.2).

**Comment 4:** Stormwater Construction PRS Line Item 2.A – We encourage consideration of the benefit of load reductions in subwatersheds that are not themselves impaired, but are upstream of those that are. This may seem less direct, but could provide a substantial benefit due to combined loading from multiple sources.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 5:** Stormwater Construction PRS Line Item 2.B – We echo an earlier comment that the eventual Flood Resiliency Blueprint may prove useful for applicants as they develop their narratives and we hope the Division will use it in assessing project scores.

- **Response:** DWI has participated in meetings with the Division of Mitigation Services concerning the Flood Resiliency Blueprint. When the Blueprint is finalized, DWI will review to determine if and how to incorporate the Blueprint in the application or project implementation phases.

**Comment 6:** Stormwater Construction PRS Line Item 2.D – addressing impacts of increased precipitation levels and frequency should be kept in the rubric, even if the Division is still developing a way to assess this benefit. Increased precipitation levels and frequency will be the result of changing climate conditions and the scoring system should reflect that, even if this line item may need to be refined and reprioritized later.

- **Response:** Staff proposes revisions to Line Item 2.D as follows: Project has been identified through a local or regional resilience planning process that included a vulnerability assessment for future conditions and long-term strategies for addressing flooding, sea level rise, or other environmental changes.

**Comment 7:** Stormwater Construction PRS Line Item 2.F – Might warrant increased prioritization as compliance with a current or future MS4 permit encourages responsible stormwater management. We also think adding a qualification that the project “addresses noncompliance with local ordinances” under this line item is worthwhile. We mentioned earlier that ordinance violations can lead to stormwater issues; this could be an opportunity to allow applicants to receive credit for attempting to remedy those violations.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

**Comment 8:** Stormwater Construction PRS Category 3 – System Management – Line items are prioritized well. However, System Management has been allotted fewer total points in this rubric than it receives in other similar priority rating systems. While we understand that stormwater system management is a new endeavor for the Division, we think this category should be prioritized at least equally with its counterpart rating systems — in this case, 15 points. As this program goes forward, the Division and applicants will continue to understand more about system management and we do not want a rating system that undervalues that aspect of stormwater projects.

- **Response:** Similar to DWI’s approach when it proposes a modified priority rating system for water and wastewater projects, such decisions are made after a PRS has been utilized for some time to assess how it performs. For this first round of funding, more emphasis is placed on Category 1 – Project Purpose than in DWI’s PRS for water and wastewater projects, and less emphasis is placed on Category 3 – System Management, anticipating that through this funding and other activities, more LGUs will advance in stormwater system management practices, at which time, SWIA could reconsider shifting the balance of points.

**Comment 9:** Stormwater Planning PRS – Suggest that applications that involve planning for a nature-based project receive extra points (perhaps 5 or 10). Because the budget allows “nature-based solutions where feasible and possible,” we think priority points for planning these projects will incentivize applicants to take them into consideration.

- **Response:** Proposed stormwater planning PRS new Line Item 1.F would provide points if the study will evaluate nature-based solutions to address the identified stormwater quality or stormwater quantity issue.

**Comment 10:** With the limited amount of total funding for this program, we understand the need to set limits on the maximum amount an applicant can be awarded per grant cycle. Due to these constraints, we suggest that directed funds appropriated in section 12.14(b) of S.L. 2021-180 count toward those award limits. This will allow most of the program funds to be awarded to applicants that have not had appropriations directed toward them through legislation and provide for the funding of more projects.

- **Response:** Any ARPA funds directly allocated to recipients in the Current Operations Appropriations Act of 2021 will count towards the specified funding limits. This is similar to the ARPA Administration Plan that was published in February 2022.

**Comment 11:** As this program moves forward, we believe there would be a benefit to holding back at least some portion of the available funds. While we acknowledge that \$82 million only goes so far when considering the split between planning and construction grants as well as the maximum grant amount under each of those categories, we believe the Division, applicants, and other stakeholders can learn much from a first round of projects. However, if no funding remains for additional rounds, the lessons learned and potential improvements to the program will matter less.

- **Response:** DWI acknowledges this request and will take it into consideration before applications are received.

## 18. American Rivers

Peter Raabe, Southeast Regional Director  
6-3-22

**Comment 1:** Stormwater Planning PRS seems to be primarily designed to support the development of individual projects by individual communities; this is useful and needed. However, the impacts of stormwater are diffuse and planning to reduce the impacts from stormwater can often benefit from taking a broader more integrated approach. The Division should take this opportunity to support an Integrated Water Management (IWM) approach to managing stormwater. To that end, the Division should set aside a portion of the funds outside of the priority points system and allocate them to facilitate the IWM planning efforts that are underway in watersheds like the upper Neuse River and the Haw River (Jordan Lake) watersheds. The Division has the flexibility to do this since these funds are not derived from the federal SRF program but are part of the State allocation of the American Rescue Plan Act funds and have minimal restrictions associated with them.

- **Response:** DWI will investigate whether this is possible under the Session Law General Statutes, and its implications for potential applicants. In either case, the stormwater planning PRS Line Item 1.D provides 3 additional points if the study is a collaborative effort with other local government units

**Comment 2:** Stormwater Construction PRS Project Benefits – consider including points for projects that incorporate the protection of natural infrastructure in the management of water quality or water quantity. The likely shifting of regulatory authority around the protection of the Waters of the State or the Waters of the U.S. means that there are wetlands that could be impacted that would have a detrimental impact on water quality or water quantity. Additionally, state regulatory authorities may allow an impact with off-site mitigation which would cause a localized water quality or water quantity problem. A local government that would be interested in acquiring and managing those wetlands to provide their natural value should be encouraged as part of this Priority Rating System.

- **Response:** Staff will review this with the SWIA Stormwater Funding Committee.

### ❖ Four Comments About Eligibility Per North Carolina General Assembly Session Law 2021-180 Section 12.14.(d)

The four following comments are related to the eligibility requirements that are defined in Session Law 2021-180 Section 12.14(d). *The Response to each of these comments is the same.*

## 19. Yadkin Valley Sewer Authority

Nicole Johnston, Executive Director  
5-25-22

I would like to provide a comment about the proposed plan for stormwater funding. **I would like to see that these new grants be made available to sewer authorities**, not just to cities and counties. We, as a sewer authority, have a lot of issues with stormwater I & I and would really like to be able to get the chance to apply for these new grants to get some stormwater assistance funds to help eliminate our excessive I & I from our collections system and wastewater treatment plant. Thank you for your help with this matter.

I would like to add a clarification to my previous email for your consideration: I would like to provide a comment about the proposed plan for stormwater funding. **I would like to see that these new grants be made available to sewer authorities**, not just to cities and counties. We,



as a sewer authority, have a need for such funds (such as stream restoration and flood mitigation projects that protect sanitary sewer infrastructure from damage due to stormwater). Thank you for your help with this matter.

**20. Yadkin Valley Sewer Authority Board of Directors**

Woodruff Faulk, Chair of the Yadkin Valley Sewer Authority Board of Directors and Incorporator, Secretary/Treasurer of Watershed NOW and Friends of Big Elkin Creek  
5-25-22

The NC DEQ Division of Water Infrastructure's Proposed Plan to Administer American Rescue Plan Act's State Fiscal Recovery Fund Appropriated in the State Budget for Stormwater Projects does not specifically indicate, so far as I can tell, that an entity such as the Yadkin Valley Sewer Authority would be eligible to apply for this grant funding. I believe it should be.

**21. NC Commission of Indian Affairs**

Gregory A. Richardson, Executive Director  
5-27-22

The above eligibility requirements as defined appear to exclude Indian Tribes and Tribal Governments from participating in the APRA application process, which is concerning and prevents Indian tribes from benefiting from the \$82,000,000 in stormwater funding. Why are tribal governments excluded from the application process? I see that non-profit entities are eligible to participate by partnering with city and county government, however, again, tribal governments are excluded!

**22. Southeastern Drainage Office (located in Grifton)**

Kendall Paramore, District Manager  
6-2-22

Will Drainage Districts be allowed to apply for a grant?

- **Response to each of these four comments:** As defined in the North Carolina General Assembly Session Law 2021-180 Section 12.14.(d), an eligible entity for a grant is "a city or county that (i) documents in a form and manner as the Department may specify a stormwater quality or quantity issue and (ii) demonstrates that it would experience a significant hardship raising the revenue necessary to finance stormwater management activities within its jurisdiction based on income and unemployment data, population trends, and any other data determined relevant by the Department. A regional council of government created pursuant to Part 2 of Article 20 of Chapter 160A of the General Statutes or a nonprofit entity is also an eligible entity under this section if the regional council of government or nonprofit entity partners with a city or county."

Units of local governments that are not eligible for funding under this section of the Session Law are encouraged to apply for stormwater SCM projects, which will be considered for funding under the Clean Water State Revolving Fund.

**23. Michael Stambaugh**

Resident of New Hanover County  
5-31-22

I was writing for a proposal for New Hanover County as a resident of the northern part of the county. The northern section – Ogden – has serious storm water management issues. New

Hanover County has started a storm water management committee to help deal with these issues. They have also been granted some money due to hurricane Florence damaging some of the watersheds. These watersheds are where much of our water drains. Now there is a new highway cutting through northern New Hanover creating more impermeable space. No one has any idea how the next rain event will impact our area until it happens. Our current stormwater drains are for a 25-year rain event. We've had 2 100-year rains events with Florence and Dorian that caused excessive flooding and damage. I believe any grant money NHC can receive will help with further improvements of the drain and swale systems we use to move excess rainwater to the appropriate watersheds or areas to hold the water.

- DWI appreciates the comment, which demonstrates an example of the stormwater infrastructure needs in a local government. Local governments must apply for funding and their applications will be scored according to the Priority Rating System.

### **End of Public Comments**

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