

# Local Assistance for Stormwater Infrastructure Investments (LASII) Stormwater Program Questions and Answers

Last updated Sept. 16, 2022

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## Background

This document consists of two parts as follows:

- **Part 1** contains questions that were posted during the August 16, 2022 LASII webinar presented by the NC Dept. of Environmental Quality's Division of Water Infrastructure (Division), and from questions recently emailed to the Division.
- **Part 2** contains comments and responses that were received by the Division during the public comment period for the LASII Administration Plan (May 4 – June 3, 2022). These comments and responses were provided to the State Water Infrastructure Authority (SWIA) at its meeting on July 14, 2022. Note that some of the responses have been revised as the Division has worked through the questions contained in Part 1 of this document.

This document will be updated periodically to address additional questions that may be received by the Division. **Updated responses are highlighted in blue.**

All materials needed for applying for funds through the LASII Stormwater Program are posted on the [Division's website](#).

Applicants are strongly encouraged to watch the "How to Apply" [training video](#) recorded on August 10, 2022 for detailed information about the LASII program and completing application materials. Note that all applications must be submitted electronically to be considered for funding.

## **PART 1**

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**QUESTION 1:** Could a city or county apply for stormwater LASII funds and via Interlocal Agreement with a water/sewer authority allow funds to be used on stormwater infrastructure owned by the water/sewer authority?

**ANSWER:** Yes. A water/sewer authority is a unit of local government and can work collaboratively with a city or a county on a regional stormwater project. The city or county must be the Applicant. Via Interlocal Agreement, the LASII funds can be used on stormwater infrastructure owned by the water/sewer authority. The Interlocal Agreement must specify which unit of local government is responsible for ownership and on-going maintenance of the stormwater infrastructure. If both units of local government (the city or county and the water/sewer authority) actively collaborate on the project, the maximum amount of construction funds for which the application would be eligible is \$7.5 million.

**QUESTION 2:** Is culvert replacement under NC Department of Transportation (NCDOT) roads eligible for funding? If a town maintains a NCDOT culvert and the town applies to repair/replace the culvert using a LASII grant, is this project eligible for LASII funds?

**ANSWER:** This is possible using one of two methods. First, if the application is submitted with formal documentation from NCDOT that the proposed construction work is approved, the project is eligible for LASII funding. Second, if the application is submitted with some form of NCDOT documentation that clearly states that the NCDOT agrees in principle with the proposed construction project, would agree that that Applicant may perform construction work on the

stormwater infrastructure owned by the NCDOT, and that NCDOT would agree to provide formal documentation approving the proposed project during its review of the plans and specifications, the project is eligible for LASII funding.

**QUESTION 3:** If two local government units partner together for a stormwater construction application, they are eligible for up to \$7.5 million maximum in LASII funding. If a council of government or a non-profit partners with a local government unit, is the construction funding limit also \$7.5 million?

**ANSWER:** No. The Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds ([available here](#)) makes clear on Page 4 that a maximum of \$7.5 million is only available if two or more local government units work together. If a council of government or a non-profit partners with a local government unit, the maximum amount of construction funds the application would be eligible for is \$5 million.

**QUESTION 4:** Does a city and a county working together count as collaboration?

**ANSWER:** Yes, this meets the definition of collaboration between two units of local government.

**QUESTION 5:** Can a housing authority and a non-profit partner and receive LASII funding for a project within the limits of a city?

**ANSWER:** No. The non-profit would need to partner with the city to be considered for LASII funding.

**QUESTION 6:** Is North Carolina State University an eligible applicant?

**ANSWER:** No. Universities are not a city or county and are not eligible for LASII funding.

**QUESTION 7:** Are “green streets” eligible for LASII funding? Green streets are bioretention areas spattered through a neighborhood to treat runoff from the neighborhood streets.

**ANSWER:** Yes, as long as the proposed project addresses stormwater quality and quantity. More information about green streets is available from the [US Environmental Protection Agency](#).

**QUESTION 8:** A project will restore a non-functional wetland and “dam”. Will the dam be eligible for funding as it was mentioned as non-eligible? Stream restoration may also be part of the project.

**ANSWER:** The Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds makes clear on Page 7 that constructing or repairing dams or other structures designed to retain waters within a stream channel is not eligible for funding. If the dam mentioned in the question is designed to retain waters within a stream channel, that portion of the project is not eligible for funding. If the project will create a berm needed to create the functional wetland, but not retain waters within a stream channel, the berm is an eligible part of the project. The stream restoration project should be a separate application from an application for a stormwater wetland, which is considered an SCM.

**QUESTION 9:** How do you determine if the infrastructure is critical that is being protected by the stormwater infrastructure?

**ANSWER:** The Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds guidance for Construction Priority Rating System Line Item 2.B.1 states that the following is required in the narrative: Description of the infrastructure and why the Applicant considers it qualified as critical infrastructure. It is the responsibility of the Applicant to demonstrate that the infrastructure is critical.

**QUESTION 10:** If we have adopted a Stormwater Management Plan under a town ordinance that the Mayor signs instead of a resolution or board meeting minutes, are we eligible for points for a Stormwater Management Plan?

**ANSWER:** Providing a Town Ordinance with the application is an acceptable alternative to providing a “resolution or board meeting minutes...”. All other information that is required to support points for the applicable line item must be provided.

**QUESTION 11:** If we are applying for a stormwater planning grant to do both the development of a stormwater utility and also master planning/capital improvement plan (CIP) and rate study, are two different applications required: one for the master planning/CIP/rate study, and a separate application for the development of the utility? Or can we roll it all into one application? Are the limits \$400,000 for all planning activities for stormwater or do you get an additional \$400,000 if developing a utility?

**ANSWER:** Either approach is fine. The Applicant should be aware that there are different Resolutions required and different funding caps based on whether the application is to develop and implement a stormwater utility with stormwater enterprise fund or other planning grant activities.

If one stormwater planning grant application is submitted for master planning/CIP/rate study work and the development and implementation of a stormwater utility with stormwater enterprise fund, the following maximum amounts would be available:

- \$400,000, **OR**
- \$500,000 if the master planning/CIP/rate study portion of the work is a collaborative effort with other local government units, **OR**
- \$500,000 if developing and implementing a stormwater utility with stormwater enterprise fund and three or more of the Applicant’s Local Government Unit Indicators are worse than the state benchmarks.

If separate stormwater grant applications are submitted for master planning/CIP/rate study work and the development and implementation of a stormwater utility with stormwater enterprise fund, the following maximum amounts would be available:

- \$400,000 or \$500,000 if the master planning/CIP/rate study work is a collaborative effort with other local government units, and
- \$400,000 or \$500,000 if developing and implementing a stormwater utility with stormwater enterprise fund, depending on the number of Local Government Unit (LGU) indicators that are worse than the state benchmarks.
- However, the scopes of work to be completed for the master planning/CIP/rate study work and the work to develop and implement a stormwater utility with stormwater enterprise fund must be different. In other words, if the Applicant intends to complete the same scope of work under each application, then only one application will be considered for funding.

The resolution of the governing body of the Applicant that is submitted with the application(s) will be used to determine if the grant funds are paid from the LASII construction funds or the LASII planning funds.

**QUESTION 12:** Under “Activities that are NOT eligible for stormwater construction or stormwater planning grants on Page 7 of the Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds, Number 17 states that “costs to comply with NPDES MS4 permit requirements” are not eligible. Can you clarify this?

**ANSWER:** LASII funds cannot be used to pay for costs associated with a NPDES Municipal Separate Storm Sewer System (MS4) permit for program administration, annual reporting, regular operation and maintenance of the stormwater system, routine sampling, and staff salaries. A construction project to address a Total Maximum Daily Load (TMDL) is eligible for LASII funds. Under the Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds

Planning Grant Line Item 1.C, LASII funds are available for planning activities to support the six Minimum Control Measures (MCMs).

**QUESTION 13:** In the Construction Priority Rating System, the project cost “for compliance with MS4 permit” is not eligible (for points) but you give points in the Planning Priority Rating System to plan for implementation of MS4 Minimum Control Measures (MCMs)?

**ANSWER:** Any Applicant, whether or not it holds a NPDES MS4 permit, is eligible for points under the Priority Rating System Guidance and Form for the Stormwater Funding Program through LASII Funds Planning Priority Rating System Line Item 1.C.

**QUESTION 14:** Ineligible activities include removal or construction of levees. Is there a clear definition of levees that will be used for this funding program?

**ANSWER:** For this program, the definition of levee will be as defined by the US Army Corps of Engineers<sup>1</sup> as follows: an earth embankment, floodwall, or structure along a water course whose purpose is flood damage reduction or water conveyance.

**QUESTION 15:** If we have two or more planning projects, should we have a separate application for each? Likewise for construction?

**ANSWER:** Yes. A separate application is required for each planning project and for each construction project. Each application is considered as a stand-alone application and must contain all of the documents required in each application package.

**QUESTION 16:** Can Councils of Government apply for a regional effort to implement top priorities in several town's stormwater inventories?

**ANSWER:** There are three considerations in this question. First, any entity partnering with a council of government (COG) must itself be an eligible municipality or county. Second, if a COG is working with each eligible town individually on a project that will address stormwater quality or stormwater quantity issues only within that town’s jurisdiction, then a separate application must be submitted for work with each individual town. Third, if the project is regional in scale, meaning that the project as a whole will address stormwater quality or stormwater quantity issues within the jurisdictions of more than one eligible town and that it is necessary for each town to participate in the project in order to accomplish the construction project or accomplish the goals of the planning study, then only one application needs to be submitted by the COG. Note however, that in accordance with the LASII Fund Entity Eligibility Certification Form (Stormwater Eligibility Form) Item 3.D, the application must contain a copy of the executed instrument used to establish each partnership arrangement between the COG and each individual eligible town.

**QUESTION 17:** Is a LASII Fund Entity Eligibility Certification Form (Stormwater Eligibility Form) required with each funding application?

**ANSWER:** Yes. Each application is considered as a stand-alone application and must contain all of the documents required in each application package.

**QUESTION 18:** Sometimes it takes 30 days to get an item on a local government’s agenda. With seven (7) weeks to the deadline, this may not be able to be met?

**ANSWER:** As part of the funding application process, the Applicant is required to submit a resolution that must be approved by the governing board of the local government unit at the time of application.

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<sup>1</sup> [Levee Terms & Definitions \(army.mil\)](http://www.army.mil)

**QUESTION 19:** Is there a sample resolution available?

**ANSWER:** Yes. Resolution templates are available on the [Division's website](#).

**QUESTION 20:** To apply to create a new stormwater utility with stormwater enterprise fund, is it correct to use the Planning Grant application and Priority Rating System?

**ANSWER:** Yes, that is correct. An eligible entity should file a Planning Grant application and follow the Planning Grant Priority Rating System to apply for funds to create a new stormwater utility with stormwater enterprise fund.

**QUESTION 21:** The Construction Priority Rating System Line Item 1.A provides Project Purpose points if more than 50 percent of the construction cost of the project is to address stormwater quality, and Line Item 1.C provides Project Purpose points if more than 50 percent of the construction cost of the project is to address stormwater quantity. The Guidance Document states that all parts of the project must meet the claimed Project Purpose. Please clarify.

**ANSWER:** The project will be evaluated under either Line Item 1.A or 1.C depending on whether the majority of the construction cost of the project is to address stormwater quality or to address stormwater quantity. For example, if 60 percent of the construction cost is to address stormwater quality issues and 40 percent of the construction cost is to address stormwater quantity issues, the project would be evaluated under Line Item 1.A.

**QUESTION 22:** Can the Project Resolution be modified?

**UPDATED ANSWER:** Yes. The Project Resolution is a template and is provided as a suggested format for the Project Resolution and Certification. If an Applicant is willing to accept loan funds for stormwater quality projects, the language regarding loans and repayment of principal and interest should remain in the Resolution. If an Applicant is willing to accept only grant funds, the language regarding loans and repayment of principal and interest can be deleted from the Resolution. Alternately, an Applicant may add wording such as “if applicable” after references to loans and repayments.

- **For LASII Construction applications**, as shown in the following paragraph of the Resolution, some version of the text highlighted in yellow must be included in the Resolution and may include replacing the word “system” with “project” as shown by the strikethrough and underline. Note that this modification is only allowed in the Resolution for LASII Construction applications:

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the ~~system~~ project and the repayment of all principal and interest on the debt.

- **For LASII Planning applications only**, the following paragraph may be deleted from the Resolution:

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

**QUESTION 23:** If an entity is not eligible for LASII funds, are other funds available for stormwater work?

**ANSWER:** Only if the project is eligible for both Clean Water State Revolving Funds (CWSRF) Green Project Reserve funds and Local Assistance for Stormwater Infrastructure Investments (LASII) funds. CWSRF funds are available for stormwater quality projects. The Applicant will need to apply for both

CWSRF and LASII funding programs separately. If applying for CWSRF funding, please use the “Priority Rating System Guidance and Form for Division of Water Infrastructure Construction Funding Programs (Not including CDBG-I)” and other applicable application requirements posted on the [Division's website](#).

**QUESTION 24:** Would we be reimbursed for ongoing planning projects that are underway currently?

**ANSWER:** LASII funds can be used to complete the watershed planning project. Ensure that the narrative is clear about the tasks that have been completed, including already expended costs, and the tasks that remain to be completed, and how the scope of work for which funding is requested is related to the planning project.

**QUESTION 25:** We plan to request a construction grant for a set of stream restoration projects that will be bid out at the same time. Can we just submit one application for all of the stream restoration projects since they will be bid out at the same time?

**ANSWER:** Yes.

**QUESTION 26:** NCDOT is participating both financially and completing a section of the stormwater construction project that is within a state road corridor. If they provide a letter of support/commitment to their portion of the project, can this secure the project benefit points under Line Item 2.C for 2 units of government working together?

**ANSWER:** No. Line Item 2.C points are only available if two or more cities or counties (or city and county) work together, and not any other type of government entity.

**QUESTION 27:** Are LASII-funded construction projects required to be on publicly owned land? If allowed on privately owned land, are there restrictions? What if the property is located on a university campus? Can LASII-funded planning projects inventory, assess, and evaluate stormwater infrastructure located on private land?

**ANSWER:** A permanent easement on private land and on a university campus is required in order to construct, operate, and maintain the stormwater infrastructure on that land. The inventory and assessment of stormwater infrastructure on private land is eligible for funding.

**QUESTION 28:** We only perform one time reactive maintenance and/or like kind replacement of existing stormwater infrastructure. We do not have a program whereby we install, rehabilitate, etc. any type of stormwater control measure (SCM).

**ANSWER:** Per Session Law 2021-180 Section 12.14.(e), LASII stormwater construction grants are “available for the development and implementation of a new stormwater utility or stormwater control measure (SCM), the rehabilitation of existing SCMs, the retrofitting of existing stormwater conveyances to provide SCMs for quantity and quality control purposes, or the installation of innovative technologies or nature-based solutions.”

Stormwater Construction Priority Rating System (PRS) Line Item 1.C provides points for projects that create or improve, retrofit, repair, rehabilitate or replace existing stormwater infrastructure. For all LASII projects, the resolution required to be submitted as part of the application includes a requirement for the applicant will provide for efficient operation and maintenance of the project on completion of construction thereof, and will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system. This to encourage applicants to move away from reactive operation and maintenance.

**QUESTION 29:** Does the fact that we’ve already gone through the Request for Qualifications (RFQ) and consultant selection process impede our ability to get a grant? Would we need to wait to execute a

contract with the consultant until after we receive confirmation of a grant award? Or could the Town potentially execute a contract and reimburse ourselves later if we receive the grant?

**ANSWER:** All LASII-funded projects will be required to show that the Engineer was selected via a Qualification-Based Selection process using an RFQ, since this is needed for compliance with Federal Uniform Guidance (2 CFR 2000) as well as NC State Statute. All LASII-funded projects will be required to provide the Division's standard Engineer Services Procurement Certification. This is required regardless of how a town elects to pay their engineer such as through local funds, LASII, etc. The Division requires a signed copy of the Engineering Services contract, assuming the town is later seeking reimbursement for Engineering Services. The Division does not reimburse for any costs (engineering or construction) until the construction contract has been executed.

**QUESTION 30:** The Fall 2002 Stormwater Construction and Planning PRS and Guidance contain requirements for narratives. To submit a planning grant application, should I rely primarily on Section D for the format and content of the narrative, and provide the narrative required in Section A for context and background? Also, just to confirm, the Eligibility Certificate Form requires a separate narrative: "documentation of a stormwater quantity or quality issue (item 1, with form for narrative (a), maps/location narrative (b), and photos (c) ". I'm assuming that since there is a separate narrative for the application and PRS that this narrative should be very brief, a summary of a few high points, and does not need to nearly cover all of the items contained in the full application.

**ANSWER:** Four narratives are required: (1) For Section 1.A of the Entity Eligibility Certification Form; (2) the Narrative per Section A of the Guidance Document; (3) Items 1 – 7 for the "Opening" Narrative for Stormwater Planning Study per Section D of the Guidance Document; and (4) a narrative for each of the PRS Line Items per Section D of the Guidance Document.

The narrative for the Entity Eligibility Certification Form must clearly demonstrate that there is a stormwater quality or stormwater quantity issue and how the proposed project will be used to address the issue – this is a requirement in order to demonstrate to the Division that the applicant is eligible to be considered for LASII funding.

The Section A Project Narrative should provide the big picture of the study and how it relates to your stormwater program including all of the items listed in Section A the Guidance Document. The "Opening" Narrative for Section D allows you to narrow the focus to specific stormwater issues that need to be addressed and how the proposed project will help resolve those issues. The Line Item narrative for Section D must provide justification as to why priority points should be given for each line item.

**QUESTION 31:** If an application is for a collaborative project, do both entities need to complete the Entity Eligibility Certification or just the primary entity submitting the application? If the primary applicant is missing an LGU metric, can the missing metric for the collaborative partner entity be used?

**ANSWER:** Only the primary applicant needs to complete the Entity Eligibility Certification Form. To qualify for points for a collaborative project, the narrative must describe how the collaboration is necessary to accomplish the project.

For Line Item 4.B on page 22 of the Guidance, there is the following note in a box: If the applicant is claiming points for Line Item 2.C (By working together, two or more units of local government improve stormwater quality and/or quantity control through collaborative efforts that are necessary in order to accomplish the project), use the indicators for the most distressed of the municipalities or counties participating in the collaborative effort. Indicators from different collaborators cannot be "mixed and matched"; use the numbers for only one of the entities. If a metric is missing from the LGU Indicator Calculator for Stormwater Funding Eligibility on the Division's website, insert a



statement that reads “Data are not available from the LGU Indicator Calculator for Stormwater Funding Eligibility.”

**QUESTION 32:** Construction PRS Line Item 4C states “If the proposed project will address both stormwater quality and stormwater quantity issues, a separate narrative must be provided for each issue, and separate descriptions must be provided for each issue.” Please clarify.

**ANSWER:** Separate narratives are required – one that addresses the stormwater quality issue and one that addresses the stormwater quantity issue. In addition, provide separate narrative descriptions for how the proposed project will directly improve the stormwater quality issue and for how the proposed project will directly improve the stormwater quantity issue.

**QUESTION 33:** For Construction PRS Line Item 4.C – Project benefits disadvantaged areas, if the city’s overall Median Household Income, Poverty Rates, Per Capita Appraised Property Values and Unemployment Rates were all worse than the State Benchmarks, does that automatically meet the requirements for to receive points for Item 4.C above? If not and there are only a handful of residences within the benefited area within the City, can we assess those residences to see if they meet the criteria?

**ANSWER:** No; on Page 25 of the Guidance Document for SW Construction Projects Line Item 4.C, it is stated that the applicant can use the “Median household income, poverty rates, per capita appraised property values of property, and/or employment rates of the targeted project area”; this means that the city’s overall numbers cannot be used for this Line Item. The residences can be surveyed to find out if they meet the criteria and be sure to provide all of the documentation that you gather in order to support the justification in the application.

**QUESTION 34:** The Planning score sheet does not have a column to include our claimed score, as does the Construction scoring sheet? Do we need to add one?

**ANSWER:** No. The Stormwater Planning score sheet is similar to the Division’s score sheets for AIA and MRF applications, in that the applicant does not claim the points.

**QUESTION 35:** Is it acceptable for someone other than the authorized representative (such as the application preparer) to complete and initial the Completeness Checklist (page 7 of the Application)?

**ANSWER:** Yes, but make sure that the Authorized Representative signs the application or it will be considered ineligible.

**QUESTION 36:** On the application form, under Applicant Type, if a COG is not the applicant but is partnering with a city or county, should the box that reads “Council of Government or Non-Profit Entity Partnering with Municipality or County for LASII Stormwater Project” be checked? Should the COG provide a Letter of Support and include that in Section 7 of the application as “Additional Information for Consideration”?

**ANSWER:** On the application form, only one box under Applicant Type may be checked. If the COG is not the applicant, do not check the box that reads “Council of Government or Non-Profit Entity Partnering with Municipality or County for LASII Stormwater Project”. The COG may provide a letter of support but that is not necessary. Within the narrative and/or in the “Additional Information for Consideration” it should be explained that the COG is partnering with the applicant and include a general description of the tasks which with the COG may be assisting.

**QUESTION 37:** Can a single project resolution be used to cover more than one project?

**ANSWER:** Yes, a project resolution can be used for more than one project but a copy of the resolution must be included within each separate application package in order for each separate



application to be complete. In the following statement from the resolution, include the name or description of each project that is covered by the resolution: “WHEREAS, The (unit of local government or applying utility) has need for and intends to construct, plan for, or conduct a study in a project described as (use project name from application form, or give a brief description of the project in the application), and ...”

**QUESTION 38:** Our project is constructing a stormwater pump station that will reduce flooding and the study that recommended that project also recommended a pipe replacement project in the same drainage area. The projects are complementary; may they be submitted as one application? If so, should they be listed on one budget page, or two separate budgets?

**ANSWER:** The construction projects can be submitted in one application. On the budget page, more lines can be added under the main headings (Construction Cost, Engineering Cost, and Administration Cost) and add a subheading for each of the projects. At the bottom of the budget form, the “Total Project Cost” that will be shown must be the total for all components for which you are requesting funding. The Division compares the total from the budget form with the amount shown in the box for “Funding Amount Requested” on Page 1 of the application, and the numbers must match.

**QUESTION 39:** The LASII Guidance document in several places requests information about stormwater revenues/expenses for "the last 12 months." Is it acceptable to simply reference the last fiscal year? Line Item 3.C.1 also requests an "official record" of Stormwater revenue in the past 12 months. Is an excerpt of the City's FY2022-23 adopted budget acceptable? It would show actuals for the prior year. If not, what is an appropriate record?

**ANSWER:** If the information provided in the application is for the immediate prior fiscal year and the information shows the actual numbers for revenue and expenses, not just the budget numbers, this is acceptable.

**QUESTION 40:** Line Item 4.C, project benefits disadvantaged areas, references DEQ's Community Mapping System and also several bullet items of required narrative documentation. One of the requested items is "per capita appraised property values." We have per capita property values for the entire City, but we do not have that data for the Census tracts specifically served by our project, though those tracts are identified as underserved on the Community Mapping System. Is it truly necessary to provide per capita values for our project area in this instance?

**ANSWER:** If the project area is designated in DEQ's Community Mapping System, then the city may use the Community Mapping System as the demonstration that the project is located in or directly benefits disadvantaged areas. If using this means of demonstration to support the awarding of points for this Line Item, it is not required to also provide the median household income, poverty rates, per capita appraised property values of property, and/or employment rates of the targeted project area.

However, if the project area is not designated in DEQ's Community Mapping System, then the city can use either the median household income, poverty rates, per capita appraised property values of property, and/or employment rates of the targeted project area OR provide information about the additional factors that may qualify the targeted project area as disadvantaged, such as but not limited to demographic, historical, cultural, linguistic, socioeconomic stressors, or cost-of-living stressors may also be considered. These methods are outlined in the bullets on Page 25 of the Guidance Document for Line Item 4.C.

## PART 2

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### **Background**

The following excerpts of comments were received by the Division during the public comment period for the LASII Administration Plan (May 4 – June 3, 2022). The responses were provided to the State Water Infrastructure Authority (SWIA) at its meeting on July 14, 2022. Note that some of the original responses have been revised as SWIA worked through the comments. Revised responses are highlighted in blue. The Division received comments from 23 separate respondents.

**Comment 1:** Stormwater construction PRS Line Item 1.B.2 – Increase points for the establishment of riparian buffers to 5 points.

- **Response:** If the restoration project includes restoration of permanent riparian buffers to at least 30 feet on both sides of a stream, 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:** Line Item 2.A.3 provides 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. 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.

**Comment 5:** Stormwater Planning PRS Line Item 2.E – 5 out of 12 possible points is too high for a new Stormwater Utility. Request this category be reconsidered or possibly have a tiered point system.

- **Response:** Line Items 2.E.1 and 2.E.2 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 6:** Stormwater Planning PRS Line Item 3.A – Provide a point for cities under 20,000, even if only 1 point.

- **Response:** SWIA added Line Items 3.A.1 and 3.A.2.

**Comment 7:** 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 MS4 permit.

- **Response:**

SWIA determined that the Construction PRS Line Item 2.F should be removed and that the Planning PRS Line Item 1.C be revised to provide points to investigate new procedures to implement, add to, or make improvements to at least one of the six stormwater minimum control measures as defined in the MS4 permit

**Comment 8:** An LGU does not fit the eligibility requirements listed because it has only 1 of the 5 LGU indicators worse than the state benchmark; consider allowing 1 of 5 indicators to be eligible.

- **Response:** SWIA revised Eligibility Criterion 1 to allow LGUs that have at least 1 of the 5 LGU indicators worse than the state benchmark to be eligible.

**Comment 9:** Entity Eligibility Requirements Criterion – for Criterion 3 (revised to Criterion 2), 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:** SWIA revised this criterion and clarified that 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.

**Comment 10:** Stormwater Construction PRS Category 1 – Project Purpose provides points for either stormwater quality or stormwater quantity projects. It is suggested that the State consider granting additional points for projects that advance *both* stormwater quality and stormwater quantity considerations.

- **Response:** SWIA revised Line Items 1.A and 1.C.

**Comment 11:** Stormwater Construction PRS Category 2 – Project Benefits 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.

- **Response:** SWIA revised Line Items 2.B.1 and 2.B.2.

**Comment 12:** Stormwater Construction PRS Category 2 – Line Item 2.D – Consider applying information on social and community vulnerability to further prioritize projects as these areas would likely have less capacity to deal with the effects of climate change.

- **Response:** SWIA revised Line Item 2.D.

**Comment 13:** Stormwater Construction PRS Category 2 – Line Item 2.F – Suggest deleting this item with assumed mandatory compliance with NPDES MS4 regulatory permit requirements.

- **Response:** See Response to Comment 7.

**Comment 14:** Stormwater Construction PRS Category 3 – System Management: 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.

- **Response:** No changes made to Line Item 3.C.

**Comment 15:** Category 4 – Affordability – Line Item 4.B – No points are allowed for meeting 2 of 5 LGU indicators.

- **Response:** SWIA revised Line Item 4.B.

**Comment 16:** 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 are not as restrictive.

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

**Comment 17:** 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:** SWIA discussed and made no changes.

**Comment 18:** Stormwater can affect evacuation routes and critical routes to everyday goods and services, including emergency personnel response.

- **Response:** SWIA revised Line Items 2.B.1 and 2.B.2.

**Comment 19:** Eligibility Requirements – 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.

- **Response:** 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 20:** 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 specify which data sources and tools the applicant should rely on for determining these five local indicator values.

- **Response:** This information is 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 21:** Stormwater Construction PRS Category 1 – Project Purpose – Line Items 1.A and 1.B – Nature-based SCMs, non-nature-based SCMs, and restoration projects are given either full points or zero points. We suggest a sliding scale.

- **Response:** SWIA revised the points for Line Items 1.A, 1.B and 1.C but did not add a sliding scale.

**Comment 22:** For SCMs, wetland restoration, and estuary restoration impervious acres treated, or cost per impervious acre treated, are metrics we would recommend.

- **Response:** No changes made to Line Item 1.B.

**Comment 23:** Stormwater Construction PRS Line 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.

- **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 24:** Stormwater Construction PRS 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.

- **Response:** SWIA specifically did not include 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 25:** Stormwater Construction PRS Item 2.B – Recommend including flood prevention as well as flood reduction.

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

- **Response:** Construction PRS Line Item 2.D 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.

**Comment 27:** Stormwater Construction PRS Category 4 – Affordability – Line Item 4.A – Recommend not penalizing larger cities by awarding points for communities with less than 10,000 people.

- **Response:** SWIA added Line Items 4.A.1 and 4.A.2 but did not provide points for populations greater than 20,000.

**Comment 28:** Stormwater Construction PRS 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:** SWIA revised Line Item 4.B to provide points for having 1, 2, 3, 4 or 5 LGU indicators worse than the state benchmarks.

**Comment 29:** The 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:** No changes made by SWIA to the \$5 million limit for LASII construction funds.

**Comment 30:** Consider prioritizing projects that provide a direct benefit to a NC Natural Heritage Program natural area.

- **Response:** SWIA revised Line Item 2.C.5 for the construction PRS and Line Item 1.E for the planning PRS to prioritize direct benefits to a NC Natural Heritage Program natural area that is rated “General” or above.

**Comment 31:** Consider prioritizing projects that provide a direct benefit to a Dedicated Nature Preserve or lands that have a permanent conservation or historic preservation agreement in place.

- **Response:** SWIA did not make this change.

**Comment 32:** Construction PRS Line Item 4.A and Planning PRS Item 3.A – Propose more categories.

- **Response:** SWIA added Line Items 4.A.1 and 3.A.2.

**Comment 33:** 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:** See Response to Comment 7.

**Comment 34:** 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:** SWIA revised Line Item 2.A.

**Comment 35:** 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:** SWIA revised Line Item 2.D.

**Comment 36:** 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 37:** 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.

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

**Comment 38:** 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.

- **Response:** SWIA revised Line Items 1.A and 1.C.

**Comment 39:** Stormwater Construction PRS Category 2 – Project Benefits 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 the Division’s current water and wastewater funding programs and will be the same for the stormwater program.

**Comment 40:** Stormwater Construction PRS Category 2 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 41:** Stormwater Construction PRS Category 2 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 42:** Stormwater Construction PRS Category 2 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, enter the LGU Indicator values for the most distressed of the municipalities or counties.

**Comment 43:** 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.”

**Comment 44:** Stormwater Construction PRS Category 3 – System Management 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.

**Comment 45:** Stormwater Planning PRS – It would be ideal to rescale this matrix so it adds to 100.

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

**Comment 46:** Stormwater Planning PRS 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:** See Response to Comment 7.

**Comment 47:** 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?

- **Response:** The work can be packaged in a single planning application or can be split into two planning applications. The Applicant should be aware that there are different Resolutions required and different funding caps based on whether the application is to develop and implement a stormwater utility with stormwater enterprise fund or other planning grant activities.

If one stormwater planning grant application is submitted for master planning/CIP/rate study work and the development and implementation of a stormwater utility with stormwater enterprise fund, the following maximum amounts would be available:

- \$400,000, **OR**
- \$500,000 if the master planning/CIP/rate study portion of the work is a collaborative effort with other local government units, **OR**
- \$500,000 if developing and implementing a stormwater utility with stormwater enterprise fund and three or more of the Applicant’s Local Government Unit Indicators are worse than the state benchmarks.



If separate stormwater grant applications are submitted for master planning/CIP/rate study work and the development and implementation of a stormwater utility with stormwater enterprise fund, the following maximum amounts would be available:

- \$400,000 or \$500,000 if the master planning/CIP/rate study work is a collaborative effort with other local government units, and
- \$400,000 or \$500,000 if developing and implementing a stormwater utility with stormwater enterprise fund, depending on the number of Local Government Unit (LGU) indicators that are worse than the state benchmarks.
- However, the scopes of work to be completed for the master planning/CIP/rate study work and the work to develop and implement a stormwater utility with stormwater enterprise fund must be different. In other words, if the Applicant intends to complete the same scope of work under each application, then only one application will be considered for funding.

The resolution of the governing body of the Applicant that is submitted with the application(s) will be used to determine if the grant funds are paid from the LASII construction funds or the LASII planning funds.

**Comment 48:** 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.

- **Response:** SWIA revised Line Items 1.A and 1.C.

**Comment 49:** 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.

- **Response:** SWIA revised Eligibility Criterion 1 to allow LGUs that have at least 1 of the 5 LGU indicators worse than the state benchmark to be eligible.

**Comment 50:** 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 LASII stormwater construction PRS and stormwater planning PRS will be used to evaluate projects that are eligible for LASII. Funding available under the Clean Water State Revolving Fund (CWSRF) must be applied for using the CWSRF PRS which is completely different from the LASII PRS.

**Comment 51:** 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:** For the same infrastructure project, an applicant may submit a Planning Application for the engineering design and a separate Construction Application for the project construction. Two separate applications are required. The LASII Construction PRS is entirely separate from the LASII Planning PRS with different line items and priority points and are reviewed and scored completely separately.

The narratives for both the Planning Application and the Construction Application need to each state that funds are being requested for the same project so that the applicant's intent and scope of work is made clear in each application and also need to include a description about how the two applications are related but separate.

If the engineering design scope of work included in the Planning Application is the same as the engineering design scope of work included in the Construction Application – for the same project – then only the Construction Application will be considered for funding, and the Planning Application will be considered ineligible because it covers the same scope of work for engineering design.

There is no assurance that both the Planning Application and the Construction Application for the same project would be awarded funding.

**Comment 52:** 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 53:** 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 was posted on the Division’s website when the application materials were posted for the Fall 2022 funding round.

**Comment 54:** 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:** Over 75 percent of the project’s construction costs must be used to provide these benefits to the disadvantaged areas to qualify under Criterion 2 (Criterion 3 was deleted by SWIA). 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 55:** 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 Items 2.A.3 and Line Item 2.A.4, points will be awarded if the proposed project is the construction of a stormwater control measure (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.

**Comment 56:** 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 Line Item 2.C, enter the LGU Indicator values for the most distressed of the municipalities or counties.

**Comment 57:** 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 was posted on the Division’s website when the application materials were posted for the Fall 2022 funding round.

**Comment 58:** 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:** SWIA revised Line Items 1.A and 1.C.

**Comment 59:** For construction grants, please include eligibility for repairing dams.

- **Response:** The Guidance Document states on Page 7 that constructing or repairing dams or other structures designed to retain waters within a stream channel is not eligible for funding. If the dam mentioned in the question is designed to retain waters within a stream channel, that portion of the project is not eligible for funding. If the project will create a berm needed to create the functional wetland, but not retain waters within a stream channel, the berm is an eligible part of the project.

**Comment 60:** 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”. 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:** See Response to Comment 7.

**Comment 61:** We recommend up to \$600,000 total award for collaborative effort with other local government units to provide greater incentive for collaboration.

- **Response:** The Session Law provides that planning grants may not exceed \$500,000.

**Comment 62:** 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 63:** 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:** Per the Session Law, 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 64:** 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:** SWIA deleted this criterion.

**Comment 65:** 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 66:** 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 was posted on the Division’s website when the application materials were posted for the Fall 2022 funding round.

**Comment 67:** Demonstration of “Significant Hardship Raising the Revenue...” for applications to Develop and Implement a New Stormwater Utility – 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:** The Session Law 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. A resolution is required as part of the application. The Guidance Document for

this program was posted on the Division's website when the application materials were posted for the Fall 2022 funding round.

**Comment 68:** Stormwater Construction PRS Category 1 – Project Purpose – 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:** SWIA revised Line Items 1.A and 1.C.

**Comment 69:** 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:** The Session Law 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 70:** 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:** The resolution required as part of the application states that “That the Applicant will provide for efficient operation and maintenance of the project on completion of construction thereof” and “That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.”

**Comment 71:** Does the Division plan to place any differentiation in prioritization of rehabilitating existing SCMs versus new SCMs?

- **Response:** No.

**Comment 72:** Construction PRS 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 funds can be used for Line Item 1.B projects.

**Comment 73:** Construction PRS 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:** SWIA revised Line Items 1.A and 1.C.

**Comment 74:** Stormwater Construction PRS 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 75:** Stormwater Construction PRS 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 how the proposed project will reduce structural flooding per the Guidance Document.

**Comment 76:** Stormwater Construction PRS 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:** No changes were made to Line Item 2.C.

**Comment 77:** Stormwater Construction PRS 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:** See Response to Comment 7.

**Comment 78:** Stormwater Construction PRS 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 revised Line Item 2.G to provide one point if the project includes a public education component such as signage describing the function of the stormwater quality or quantity infrastructure.

**Comment 79:** Stormwater Construction PRS 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 was posted on the Division’s website when the application materials were posted for the Fall 2022 funding round.

**Comment 80:** Stormwater Construction PRS 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 81:** Stormwater Construction PRS 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 requires 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.

**Comment 82:** Stormwater Planning Grant PRS Category 1 – Project Benefits 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:** See Response to Comment 7.

**Comment 83:** To clearly prioritize nature-based projects, 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 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:** SWIA revised Line Item 2.D.

**Comment 84:** 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:** Stormwater construction PRS Line Item 1.A.1 provides points for stormwater control measures that are nature-based.

**Comment 85:** 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:** SWIA determined that 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 is not eligible for LASII funding. This is included in Section B of the Guidance Document. Two state funding programs that provide funds for this type of work are the NC Department of Natural and Cultural Resources Land and Water Fund, and the NC Department of Agriculture Farmland Preservation Trust Fund.

**Comment 86:** 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.

- **Response:** The PRS language is consistent with other Division 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.

**Comment 87:** Create a 10-point advantage for nature-based construction projects.

- **Response:** SWIA revised Line Item 1.A.

**Comment 88:** Create a 10-point advantage for nature-based planning projects.

- **Response:** SWIA revised Line Item 1.F.

**Comment 89:** DRAFT Stormwater Construction PRS – supportive of projects that explicitly improve stormwater quantity AND quality receiving more points.

- **Response:** SWIA revised Line Items 1.A and 1.C.

**Comment 90:** Construction 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:** SWIA revised Line Item 2.E.

**Comment 91:** 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.

- **Response:** SWIA added Line Item 1.G. Line Item 1.D provides points if the study is a collaborative effort with other units of local government.

**Comment 92:** 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 Department of Environmental Quality General Counsel advised that the Session Law makes it clear that there must be an application process and applications must be scored according to the PRS. SWIA determined that it was not necessary to decide at this time on the amount of funding to be awarded in the Fall 2022 application round.

**Comment 93:** 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.

- **Response:** No changes made by SWIA to the \$5 million limit for LASII construction funds for one entity or the \$7.5 million limit for LASII construction funds if two or more LGUs work together to improve stormwater quality and/or quantity control under one project.

**Comment 94:** We hope that water quantity and infrastructure improvement construction projects will score as high as water quality projects.

- **Response:** SWIA revised Line Items 1.A and 1.C.

**Comment 95:** Request that the benchmark data has a standardized source, and that those sources be shared with applicants.

- **Response:** This information is 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 96:** 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:** See Response to Comment 47.

**Comment 97:** For Eligibility Criterion 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:** See Response to Comment 9.

**Comment 98:** 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:** The Division has participated in meetings with the Division of Mitigation Services concerning the Flood Resiliency Blueprint. When the Blueprint is finalized, the Division will review to determine if and how to incorporate the Blueprint in the application or project implementation phases.

**Comment 99:** 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 100:** 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 101:** 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:** SWIA revised Line Items 1.A and 1.C.

**Comment 102:** 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:** No changes made to Line Item 2.A.

**Comment 103:** 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:** See Response to Comment 98.

**Comment 104:** 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:** SWIA revised Line Item 2.D.

**Comment 105:** 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.

- **Response:** See Response to Comment 7.

**Comment 106:** Stormwater Construction PRS Category 3 – 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 the Division’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 the Division’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 107:** 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:** SWIA added Line Item 1.F.

**Comment 108:** 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 109:** 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:** The Division acknowledges this request and will take it into consideration before applications are received.

**Comment 110:** 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:** See Response to Comment 92. Planning PRS Line Item 1.D provides 3 additional points if the study is a collaborative effort with other local government units.

**Comment 111:** 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:** See Response to Comment 85.

**Comment 112:** 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.

- **Response:** 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 use the wastewater guidance and PRS to apply for stormwater SCM projects in order to be considered for funding under the Clean Water State Revolving Fund.

**Comment 113:** 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.

- **Response:** See Response to Comment 112.

**Comment 114:** 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!

- **Response:** See Response to Comment 112.

**Comment 115:** Will Drainage Districts be allowed to apply for a grant?

- **Response:** See Response to Comment 112.

**Comment 116:** 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.

- **Response:** The Division 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.
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