

Article 17 Flood Hazard Mitigation Implementation Program

Chapter 17:00

17:00:00. Program Goals

1. The long term goal of the Flood Hazard Mitigation Implementation Program (the “Program”) is to supplement existing sources of funding for structural and nonstructural projects to improve the flood resilience of communities located within the boundaries of the New York City water-supply watershed, west of the Hudson River. Repeated flood damage endangers residents and degrades regional water quality, and challenges Watershed communities in their efforts to achieve economic stability and sustainability. Projects supported by this Program will assist in preventing and mitigating flooding impacts.

2. The Program will fund projects that are expected to have measurable impacts on the hazards caused by flooding. Projects funded by the Program must (with limited exceptions as noted herein) be identified through a Local Flood Analysis (“LFA”), as defined below, and designed to remedy situations where an imminent and substantial danger to persons or properties exists or improve community-scale flood resilience while providing a water quality benefit.

17:00:01. Definitions

1. Anchor Business: a private gas station, grocery store, lumber yard/hardware store, medical doctor’s office or pharmacy, located in a Floodplain in an MOA hamlet, which if damaged or destroyed would immediately impair the health and/or safety of a community
2. Board: the Board of Directors of the Catskill Watershed Corporation
3. Critical Community Facility: a public facility located in an MOA Hamlet (such as a firehouse, school, town hall, public drinking water treatment or distribution facility, or wastewater treatment plant or collection system), which if destroyed or damaged would impair the health and/or safety of a community
4. CWC: the Catskill Watershed Corporation
5. DEP: the New York City Department of Environmental Protection
6. Floodplain: 100 year floodplain as determined by Federal Emergency Management Agency in its most recent approved maps
7. Force Account Work: Labor performed by a Project Sponsor, excluding any and all work performed by publicly elected officials
8. LFA: an engineering and feasibility analysis, that is consistent with the goals of the Program, and which:
 - a) confirms that there is a significant flood hazard in the target area through engineering analysis;
 - b) uses engineering analysis to develop a range of hazard mitigation alternatives with the primary focus of identifying the potential for reducing flood elevations; and
 - c) evaluates both the technical effectiveness and the benefit/cost effectiveness of each solution and compares different solutions to identify the most practical, sustainable outcome

9. MOA Hamlet: hamlet, village, or village extension identified pursuant to paragraph 10 of the 1997 Water Supply Permit
10. NYC: the City of New York
11. Project Sponsor: person or entity responsible for the implementation of a project that has been selected for funding under the Program
12. Relocation: projects identified herein that would move existing uses from real property located in a Floodplain (“former property”) to real property outside the Floodplain within the same town (“relocation property”)
13. Residence: a building wholly or partially used for living or sleeping by human occupants in an MOA Hamlet
14. Stream Debris: flood debris including all items washed from the interior and exterior of households and commercial enterprises, and large woody debris if it can be mobilized and cause infrastructure damage in a significant flood event
15. Stream-related Construction Work: construction work that will change the physical shape or hydraulic capacity of stream channels, banks and floodplains
16. Substantially Damaged: a loss of value exceeds 50% of the value of structure before the flood
17. Watershed: the West of Hudson River Watershed serving the New York City Water Supply
18. Watershed MOA: the 1997 New York City Watershed Memorandum of Agreement

17:00:02. Program Funding

1. The total amount of money to be made available under the Program shall be determined annually by the Board.
2. Eligible Projects, as described herein below, are not guaranteed funding under the Program.

17:00:03. Eligible Projects

1. Projects eligible for funding under the Program (“Eligible Projects”) must be:
 - a. located wholly in the Watershed;
 - b. located in a town that has completed an LFA;
 - c. recommended in a LFA (except for Stream Debris Removal, or Anchor Business/Critical Community Facility relocation projects);
 - d. approved by the Town or Village (except for Anchor Business Relocation and Stream Debris Removal Projects); and
 - e. located in a town that has completed a Community Assistance Visit or Community Assistance Contact with the New York State Department of Environmental Conservation within five (5) years of the date of application, and is in good standing with the National Flood Insurance Program.
2. In addition, Eligible Projects must fall into one of the following categories:

- a. Relocation of an Anchor Business that has been Substantially Damaged by flooding at least three times in the past twenty (20) years to a location within the same town (unless such requirement has been waived by the Town).
- b. Relocation of a Critical Community Facility to a location within the same Town that has been Substantially Damaged by flooding at least three times in the past twenty (20) years.
- c. Relocation of a residence or business to a location within the same town where the need for such relocation is identified by LFA.
- d. Alterations to an aspect of public infrastructure identified in the LFA that is expected to reduce water surface elevations, alter flow paths, reduce velocities, and otherwise minimize the potential for flood damage (e.g. enlarging a bridge, installing floodplain drains, but not including road relocation).
- e. Property Protection measures identified by an LFA that provide off-site flood-elevation relief by decreasing or alleviating downstream flooding and flood related damage (e.g. proper venting of a building to allow flow through a basement or crawl space).
- f. Activities identified by an LFA that will eliminate a potential source of manmade pollution that could result from a flood event in the MOA Hamlet studied by an LFA (e.g., the relocation or securing of a fuel tank; does not include pollution clean-up costs).
- g. Stream Debris removal from stream channels and/or Floodplains following a storm event as described in Section 17.00.09 herein (“Emergency Stream Debris Removal Projects”).
- h. Stream Related Construction Work identified by LFA that provide off-site flood elevation benefit.

17:00:04. Ineligible Projects

Projects that fall into any of the following categories are not eligible for funding under the Program:

1. structural flood control practices such as flood walls, berms and levees;
2. stream dredging or channelization;
3. projects or groupings of projects where, in the sole discretion of the Board, the cost outweighs the benefit;
4. maintenance projects, the need for which has recurred more than once due to a flood event and/or;
5. projects that can be fully funded under another program -(Projects that are eligible to apply for 100 percent funding under another public program in the twelve months proceeding or following the due date of applications to CWC.) Projects that are denied full funding under the other public program may reapply to CWC in the following application cycle.

17:00:05. Evaluation of Applications

Eligible Projects will be evaluated by CWC, in consultation with DEP, based on the following additional considerations:

1. opportunity for cost sharing and availability of in-kind services;
2. availability of funds from sources other than the Program to cover any portion of the total cost of an eligible project);
3. participation in the National Flood Insurance Program Community Rating System Program (“NFIP CRS”);
4. flood Hazard Mitigation benefit to the community: Priority consideration will be given to projects that are described in an LFA to have a Flood Hazard Mitigation benefit to the community in which the project is located. Areas downstream of the project, even if outside the town where the project is located, may be considered as part of the area being benefitting by the project;
5. degree of Flood Hazard Mitigation or water quality benefit as described in the LFA;
6. degree of positive social and economic impacts to the Watershed;
7. cumulative benefit with other projects (or even other flood hazard programs) within same community (or town);
8. construction readiness;
9. cost effectiveness; and
10. applicant’s and/or proposed Project Sponsor’s record of compliance in other CWC programs

17:00:06. Coordination with DEP

1. CWC will send one copy of the application form and all supporting documentation submitted to CWC by the Applicant to DEP for review and comment.
2. Applicants and Project Sponsors of projects that include stream and Floodplain related construction work must attend a pre-application meeting with CWC and DEP. A pre-application meeting may also be required for other types of projects by CWC, in consultation with DEP.
3. Predesign and design plan approval by CWC and DEP may be required for certain projects at intervals to be determined on a project by project basis following a pre-application meeting. Project Sponsors may not proceed to construction of any portion of a Project without said approval(s).
4. The decision to open the Emergency Stream Debris Removal component of the Program following a storm event will be made by the Board, in consultation with DEP.
5. Project Sponsors shall provide written notice to CWC of substantial completion of all stream-related construction work so that CWC and DEP, and any other entity CWC and DEP determines to be necessary, can inspect such work and provide comments prior to final completion. DEP must inspect all Stream related Construction work and provide written comments to CWC and the Project Sponsor within 10 business days of receiving such notice from the Project Sponsor.

6. DEP and CWC must approve the completion of all Stream related Construction Work prior to the release of any retainage amounts held under funding provided by the Program.
7. Eligible Projects that are to be funded with funds transferred by the Board pursuant to Paragraphs 128 and 127 of the Watershed MOA shall be jointly evaluated and selected by the Board and DEP (“Transferred Funds Projects”).

17:00:07. Coordination with Regulatory Agencies and SEQRA

1. Project Sponsors shall coordinate and comply with all statutory and regulatory requirements applicable to a project, including acquiring all necessary permits to undertake the project. No design shall be considered complete until all regulatory reviews are complete and all approvals and permits have been obtained.
2. Project Sponsors are responsible for complying with the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617. If a SEQRA Lead Agency determines that Project may have a potentially significant adverse impact on the environment, the Project Sponsor may apply to CWC for approval of costs of additional environmental review. If such review is needed, the project shall not be funded for construction until the SEQRA process is complete.

17:00:08. Project Selection

1. Except as provided herein or otherwise determined by the Board, there shall be one application cycle each calendar year. Applications must be postmarked or delivered on a date and time to be determined by the Board.
2. CWC staff shall screen all applications to determine those projects that are eligible for funding under the Program based on the eligibility criteria set forth in section 17.00.03 above.
3. CWC staff, in consultation with DEP, shall evaluate, rank, and recommend to the Board for selection, Eligible Projects in accordance with the evaluation considerations set forth in section 17:00:04 above. CWC staff will prepare written evaluations that assess the evaluation considerations with respect to each Eligible Project. Evaluations shall be provided to DEP for review and comment prior to review by the CWC Stormwater/Wastewater Committee.
4. After an opportunity for DEP review and comment, evaluations will be provided by CWC staff to the CWC Stormwater/Wastewater Committee with a recommended amount of funding for each Eligible Project.
5. Except for Transferred Funds Projects, the Board shall, in its sole discretion, make the final determination on which Eligible Projects to fund (“Selected Projects”) and the level of funding. The Board may award less to Selected Projects than the amount requested in the application

or included in the staff recommendation. For evaluation and selection of Transferred Funds Projects see section 17:00:06 (7)

6. CWC will provide prior notification of Selected Projects to identified signatories of the Watershed MOA pursuant to paragraph 107 of the Watershed MOA prior to entering into a Program Agreement.

17:00:09 Emergency Stream Debris Removal Project Applications

Applications for Emergency Stream Debris Removal Projects will be accepted only after a serious storm event and at identified locations, both as determined by the Board, in consultation with DEP. Applications may be made by a municipality and/or affected property owners. The Board annually may budget FHMIP funds for the Emergency Stream Debris Removal component of the Program.

17:00:10. Amendment of Rules

The Board may amend these Flood Hazard Mitigation Implementation Program Rules (“Rules”) at any time. CWC shall work in consultation with DEP with respect to amending the Rules.

Chapter 17:01 –Applicants and Application Process

17:01:01. Eligible Applicants

Applications will be accepted from towns, villages, counties, Anchor Business owners, and, with respect to Emergency Stream Debris Removal Projects, from private property owners.

17:01.02 Application Process

1. Applications will be accepted no later than the date(s) established by the Board.
2. Four copies of each completed project application must be submitted to CWC.
3. A complete project application consists of the following items:
 - a. a completed application form provided by CWC;
 - b. a narrative description of the project which also discusses the need for the proposed project as substantiated by an LFA;
 - c. a description of the costs and benefits of the proposed Eligible project;
 - d. a resolution authorizing the application if Applicant is a municipality;
 - e. a site location map, if applicable;
 - f. photos, including aerial photos if applicable and available, drainage area, wetlands, other mapped characteristics as applicable and available;

- g. a site schematic (or detailed plans) of the project, if applicable;
 - h. a description of the proposed project team and the qualifications and role of each team member;
 - i. except for Anchor Business relocations, a resolution of support from the Village, if project is located in a village; and
 - j. an affidavit from the record owner of any private property on which work is to be performed as part of the proposed project authorizing such work.
4. CWC may, as it determines necessary, require an Applicant to submit additional information to facilitate the review of the project application.
5. Applicants must demonstrate to CWC's satisfaction that good faith attempts were made to seek other available public funding and that none is available during the same funding cycle.
6. An Applicant or Project Sponsor that has previously received Funding from this or any other program managed by CWC and applies for funding for another project or projects must demonstrate compliance with contract terms of the previously funded project(s) before another application will be considered.
7. Any Applicant or Project Sponsor that is in default of any CWC contract may be denied further consideration under the Program by CWC.

Chapter 17:02 Project Administration

17:02:01 Project Agreements

1. Project Sponsors must enter into an agreement with CWC (Project Agreement) in order to receive Program funds.
2. The Project Agreement will be based on a model agreement developed in consultation with DEP.
3. Project Agreements shall contain milestones for design and construction of the Project, if applicable to the type of project being funded.
4. Project Agreements shall provide that if the cost of design, construction and installation of any project exceeds the maximum amount of Program funds allocated to the Project by CWC, the Project Sponsor shall complete construction of the project using its own resources or funding obtained from sources other than the Program.
5. Project Sponsors may apply to CWC for additional Program funds to cover additional unforeseen costs.
6. Applications for additional Program funds must be accompanied by documentation supporting the need for the additional funds.

7. The decision to award additional Program funds to a Project Sponsor is within the sole discretion of the Board.
8. Project Sponsors that are not required to comply with NYS General Municipal Law (e.g. private property owners) must solicit services on a competitive basis and in accordance with CWC's published procurement policy.
9. Project Sponsors that are municipalities must submit with the executed Project Agreement a resolution passed by the appropriate governing body authorizing a designated representative to enter into such contract.
10. Subcontracts between Project Sponsors and design firms to perform project-related work shall include the provision that the architect and/or engineer's scope of work shall include the full range of design services required for design, implementation and construction of the project.
11. Subcontracts between Project Sponsors and contractors for construction shall require the contractor to post a performance and completion bond in the full amount of the contractor's bid to secure the successful completion of all project-related construction work and a payment bond to insure that all parties are paid for work performed.

17:02:02 Additional Program Agreement Requirements for Relocations

Project Agreements for Selected Projects that include Relocations shall also include the following requirements:

1. the relocation property shall be outside of the Floodplain.
2. the relocation property shall be within the same town. This requirement may be waived by the town.
3. enforceable use limitations shall be recorded on the former property.
4. project Sponsor shall demolish or cause to be demolished all structures on the former property.
5. Project Sponsor may sell the former property pursuant to the NYCDEP 2013 Filtration Avoidance Determination Flood Buy Out Program.

17:02:03. Project Costs

1. Project Costs to be funded under the Program are costs incurred in connection with the implementation of a Selected Project that are determined by CWC in consultation with DEP to be reasonable and necessary and consistent with the restrictions set forth below.

2. To be eligible for payment, Project work must be performed in compliance with all applicable federal, State and local laws, ordinances regulations and/or rules, including the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources, as amended April 4, 2010.
3. Funds available under any other program, e.g., FEMA or NRCS Emergency Watershed Protection Program, shall be applied before seeking funds under this Program.
4. Project Costs for Relocations are limited to the following:
 - a. Business (including Anchor Business)
 - i.) feasibility studies (including appropriate business analysis for anchor businesses), including completing of Full Environmental Assessment Form (FEAF) required for SEQRA compliance and Phase I Environmental Site Assessment (ESA);
 - ii.) soft costs incurred in connection with the purchase of the relocation property including an appraisal prepared by an independent licensed appraiser; and
 - iii.) the appraised land value (absent improvements) of the relocation property to be purchased.
 - b. Critical Community Facility
 - i.) feasibility studies including completing of FEAF required for SEQRA compliance and a Phase I ESA; and
 - ii.) local match funds required under applicable federal or state programs; and
 - iii.) the appraised land value (absent improvements) of the relocation property to be purchased.
 - c. Residences
5. Project Costs for the alteration of an aspect of public infrastructure are limited to:
 - a. feasibility studies associated with reducing water surface elevations, altering flow paths, reducing velocities, or otherwise minimizing potential for flood damage;
 - b. design costs; and
 - c. construction costs
6. Project Costs for property protection measures are limited to:
 - a. feasibility studies;
 - b. design costs; and
 - c. construction costs.
7. Project Costs for community-wide activities for the elimination of potential source of manmade pollution are limited to:
 - a. design costs;
 - b. construction; and
 - c. project implementation costs.
8. Project Costs for Emergency Stream Debris Removal Projects are limited to labor, fuel, equipment, and materials necessary for flood-debris removal and site restoration.

9. Project Costs for Stream-related Construction Work are restricted to Design costs and construction costs.

17:02:04 Procurement of Goods/Services for Project Work by Project Sponsors

1. In the event that a bid is determined to be unreasonable based on prevailing prices for recent similar work in the same geographic area, the Project Sponsor may re-bid the project.
2. The procurement of goods and/or services by Project Sponsors that are public or municipal entities shall be in accordance with such entities' policies.
3. The procurement of goods and/or services by Project Sponsors who are private individuals or private entities shall be in accordance with CWC's procurement policies

17:02:05 Documentation of Project Costs Required for Payment

1. The Project Sponsor is responsible for submitting documentation to CWC that demonstrates that actual costs are reasonable. Such documentation should include recent actual costs for similar work performed in the same geographic area.
2. The cost of materials for project work procured through competitive bidding will be deemed reasonable by CWC provided the lowest cost vendor was selected.
3. The Project Sponsor must submit documentation to CWC to establish that those persons or entities selected to perform project work are qualified to perform such work.
4. The Project Sponsor must submit documentation that unit costs incurred are comparable to unit costs contained in a cost estimating manual in standard use.

17:02:06 Payments for Project Costs

1. Program funds may be paid to the Project Sponsor for eligible Project Costs incurred by the Project Sponsor (reimbursement) or directly to a vendor or contractor ("subcontractor") for the performance of Program work provided there is a written agreement between the Project Sponsor and the subcontractor and a copy has been submitted to CWC with the request for payment.
2. The Project Sponsor shall forward to CWC no more frequently than monthly an invoice describing the completed Project work [or the purchase agreement], and a CWC voucher itemizing the costs of the completed work, certifying that all work for which payment is being sought was performed in accordance with approved project plans and the Program Agreement.

3. CWC shall pay the Project Sponsor and/or subcontractor within 30 days of receipt of the certified voucher and supporting documentation.
4. The cost of any and all project work completed prior to the date of the Project Agreement is not an eligible Project Cost.
5. The Project Sponsor shall be responsible for reimbursing CWC for any project related cost for which payment was made by CWC under the Program that is or was eligible for funding under any other CWC program.