

ECOLOGICAL STANDING COMMITTEE

Fish and Wildlife
Habitat Enhancement and Restoration Fund

Guidelines for Fund Applications

Niagara Power Project
License Implementation

Fish and Wildlife Habitat Enhancement and Restoration Fund Guidelines for Fund Applications

BACKGROUND

On March 15, 2007, the Federal Energy Regulatory Commission (FERC) issued an order granting the New York Power Authority (Authority) a new 50-year license for the Niagara Power Project (Power Project) in Lewiston, New York. The Power Project license includes under Appendix A, "Water Quality Certification" (WQC) issued January 31, 2006, a \$16.2 million Fish and Wildlife Habitat Enhancement and Restoration Fund (HERF) to address impacts from water level fluctuations that are caused, in part, by Niagara Power Project operations. In particular, the HERF will fund future projects such as land acquisition; habitat improvement; habitat research; fish, wildlife and indigenous plant species restoration; and stewardship activities throughout the Niagara River, including within the Niagara Gorge, its headwaters at Lake Erie, the mouth of the river at Lake Ontario, its tributaries between these two points, and their associated watersheds (the "Niagara Basin").

The WQC includes and incorporates the provisions of the Relicensing Settlement Agreement Addressing New License Terms and Conditions (Agreement) dated July 18, 2005. The Agreement, in turn, establishes an Ecological Standing Committee (ESC) which will, among other duties, review detailed project proposals and select projects for funding from the HERF.

Upon inception, the ESC consisted of representatives from the Authority, U.S. Fish and Wildlife Service (Service), New York State Department of Environmental Conservation (NYSDEC), New York State Department of State, Seneca Nation of Indians, Tuscarora Nation, Tonawanda Seneca Nation, New York Rivers United, Niagara Relicensing Environmental Coalition; ESC membership has been amended as necessary over time. The ESC also has an Executive Committee, consisting of representatives from the Authority, the Service, and the NYSDEC, which makes decisions in circumstances where consensus cannot be reached by the ESC. The Authority provides administrative support to the ESC and communications with the ESC usually occur through the Authority's representative.

With respect to proposed future projects, the ESC, in consultation with technical advisors as necessary, shall:

1. Review project proposals and select projects and sponsors for funding from the HERF;
2. Ensure that selected projects meet the eligibility criteria listed in the license for expenditure of the HERF;
3. Review designs and management plans for the selected projects;

4. Review plans for effectiveness monitoring studies of the selected projects, and monitor the results of the studies performed;
5. Determine whether any of the selected projects should be cancelled in whole or in part, based on biological feasibility, engineering feasibility, operating feasibility, maintenance feasibility, and cost effectiveness, (see below for descriptions of these criteria); and
6. Provide technical advice to sponsors concerning the selected projects.

APPLICANT ELIGIBILITY

Eligible applicants, including non-profit 501-3(c) organizations, educational institutions, Indian Nations, and local, State, and Federal units of governments, are welcome to apply to the HERF as a project sponsor. The project sponsor may partner with other entities, but the project sponsor must take a lead role in project implementation, monitoring and reporting should funding be awarded.

Organizations with ESC representation may also apply to the HERF as a project sponsor; however, to avoid conflict of interest, their representative must abstain from final consensus-reaching discussions during the selection of projects to fund through the HERF. If an organization with ESC representation is awarded HERF monies, their representative should disclose the affiliation and abstain from decisions on future ESC actions connected with their organization's project.

ELIGIBILITY CRITERIA FOR PROPOSED PROJECTS

Proposals for funding shall not replace natural resource management programs funded by the General Fund of the State of New York or NYSDEC Environmental Programs. Further, the following criteria shall be considered when determining whether to fund projects under the HERF:

- Projects that address a demonstrated Power Project impact;
- Projects that preserve rare, threatened, and endangered ("RTE") plant, aquatic, or terrestrial species and/or their habitat in the Niagara Basin;
- Projects with a strong scientific foundation;
- Projects that contribute to long-term protection and enhancement of RTE plant, aquatic, or terrestrial species and/or their habitat in the Niagara Basin;
- Projects that achieve multiple ecological goals;
- Projects that preserve and restore Haudenosaunee cultural, religious, and historic features;
- Projects that involve multi-stakeholder collaboration;
- Projects consistent with applicable local, State, and Federal resource management plans;
- Projects that feature matching resources;

- Projects that are time-sensitive;
- Projects that have documented municipal, county, and Tribal support; and
- Projects that are feasible from a cost/probability of success perspective.

Projects do not have to meet all of the above-listed criteria to be eligible for funding under the HERF. Project proponents, however, must consult with the chief elected official or a designated representative of any affected municipal, county, Tribal and appropriate State and Federal agencies and provide written documentation in the form of a letter of such consultation with any application for funding.

PROPOSALS

Submission of a request for funding through the HERF is a two-stage process: 1) Conceptual pre-proposal, and 2) Detailed Proposal.

Conceptual Pre-Proposal

Initially, requests for funding projects through the HERF involve the submittal of a brief conceptual pre-proposal for consideration by the ESC. The pre-proposal is intended to screen proposed projects to minimize the initial efforts of applicants and to help guide the development of proposals that more fully meet the requirements of the HERF. The pre-proposal shall include the information described in Attachment A. If the ESC determines that the proposed project should be considered for funding, it will request submittal of a more detailed proposal.

Detailed Proposal

Following notification by the Authority that the ESC has agreed to consider a proposed project for funding, the sponsor(s) will need to submit a detailed project proposal for review by the ESC. The proposal must include the information described in Attachment B, as well as any additional information specifically requested by the ESC following its review of the conceptual proposal.

ESC EVALUATION GUIDELINES

In selecting projects (*i.e.*, land acquisition; habitat improvement; habitat research; fish, wildlife and indigenous plant species restoration; and stewardship activities throughout the Niagara Basin) to be funded through the HERF, the ESC shall consider the eligibility criteria outlined above, as well as the following:

- Projects or project features that meet multiple eligibility criteria and either directly or indirectly address Power Project water level impacts will be favored.

- Consistency of the proposed project with the Niagara River Greenway Plan (NRGP)¹ and with other applicable legal requirements. (It is not intended that applicants seek a formal determination of consistency from the Niagara River Greenway Commission.)
- Consistency of the proposed project with applicable ecological conservation plans developed for the Niagara River basin (e.g., the Niagara River Remedial Action Plan (RAP))
- Biological feasibility – likelihood of achieving the intended ecological or stewardship benefits. The evaluation will be based on the demonstrated ability of similar projects to accomplish their intended function and/or the ESC’s informed judgment.
- Engineering feasibility – ability of a project to be constructed/implemented/permitted and to function in the Niagara Basin and surrounding environment.
- Durability – ability of a project to provide long-term benefits in a manner that requires little or no human intervention. If human intervention is necessary, it shall be at a reasonable level consistent with the project benefits. Projects that offer benefits for the life of the Power Project license will be favored.
- Maintenance feasibility – ability of a project to be monitored, maintained and adapted over the long term with reasonable future maintenance expense.
- Cost effectiveness – ability of a project to provide worthwhile ecological or stewardship benefits when compared to the benefits that could be provided at similar cost by other project(s).
- Cost sharing – degree to which total project costs can be off-set by other sources, including but not limited to co-funding, in-kind services, donations, volunteer participation, or other funding mechanisms beyond the HERF.

Before selecting any projects proposed for funding, the ESC shall consider the demonstrations of support from the county and the town, city or village, or Indian Nation in which the project would be located (the host community), the landowner, and the adjoining landowners that the applicant has provided. The ESC may in its discretion seek additional comments from the host community prior to reaching a decision. The project sponsor should describe in the proposal any discussions about the proposed project that have taken place with local officials and/or other interested parties (e.g., adjoining landowners).

In addition to the above criteria, ESC selection of project proposals shall consider the ability of the project sponsor and/or other supporting entity(ies) to successfully design, obtain permits for, construct, operate, or otherwise execute, maintain, and monitor the proposed project. Factors for consideration regarding sponsor’s abilities shall, as a minimum, include:

- Experience with similar projects;
- History of the organization;

¹ The NRGP is a multi-faceted document that includes an inventory of resources, implementation concepts and a Generic Environmental Impact Statement. The information within the NRGP that has the most utility in evaluating projects are the “Principles, Goals, and Criteria” as articulated in Sections 3 and 4 of the NRGP. If the NRGP is terminated these protocols will be amended to reflect language in the various settlement agreements.

- Financial standing;
- Technical expertise; and
- Availability of personnel.

Any HERF project proposed within the Power Project boundary will require approval by the Authority, and the Authority may choose to be the project sponsor.

REPORTING OBLIGATIONS

For all projects selected by the ESC for funding through the HERF, the project sponsors shall prepare progress reports to the level of detail and on a frequency as specified by the ESC. For example, the ESC may require project sponsors to submit detailed designs drawings and plans, construction/implementation progress reports, and effectiveness monitoring reports. This information will be identified by the ESC following its review of the conceptual pre-proposal. The reporting requirements for construction and effectiveness monitoring may be supplemented by the ESC upon reviewing the detailed proposal. At a minimum, the project sponsors will be required to provide the Authority with a progress report by September 1st each year to fulfill their annual reporting requirements to FERC.

The HERF is a requirement of the Water Quality Certification as referenced in Article 401 of the new FERC license. Article 401 requires NYPA to document that HERF funds have been established in accordance with Section 4.1.4 of the Relicensing Settlement Agreement. NYPA will report back to FERC on an annual basis regarding HERF projects and expenditures. Sponsors of projects receiving HERF monies may be required to assist the Authority in the preparation of such reports as it applies to their project. Any assistance required will be identified by the Executive Committee following its review of the pre-proposal.

SUBMITTAL DATES

The HERF will have one submission and review cycle per year, according to the following schedule:

1. Conceptual pre-proposals must be submitted to the ESC by March 15th.
2. The ESC will review pre-proposals and inform the project sponsors in writing by April 15th, (1.) if they should submit a detailed proposal for consideration, (2.) if the ESC has decided not to consider the proposed project, or (3.) if the ESC needs further information to complete its evaluation.
3. Detailed proposals are due to the ESC by July 15th.
4. The ESC will provide written responses to project sponsors concerning the status of their detailed proposal by December 1st.

DISBURSEMENT OF HERF FUNDS

Funds will be released for approved projects within 30 days of receipt of invoices for qualifying project costs. The subject invoices may be funds earmarked for distribution in advance of expenditure (prefunding), upon actual expenditure (milestone payments) or for retainage of previous invoiced amounts. The actual format and percentage of prefunding, milestone payments or amount of retainage will be determined by the ESC. Qualifying costs shall include:

- (1) cost associated with the planning and development of approved projects;
- (2) personnel costs directly associated with planning, development, and implementation of approved projects;
- (3) costs associated with the construction and/or implementation of the approved projects;
- (4) operation and maintenance costs for approved projects, on a case-by-case basis; and,
- (5) contingency costs for approved projects, on a case-by-case basis.

Project sponsors are required to apply for and obtain all applicable local, State and Federal permits and authorizations (i.e., environmental, building, zoning, etc.), and payment of any retainage is contingent upon receipt of all applicable permits prior to construction.

HERF funds will not be released to defray: (1) any obligation existing as of August 31, 2007 or (2) operation and maintenance costs associated with any project existing as of August 31, 2007.

As noted above, during the period in which an approved project is funded, the ESC shall require each project sponsor to provide an annual report detailing the status of a project, including a summary of all fund expenditures.

ATTACHMENT A

**FISH AND WILDLIFE
HABITAT ENHANCEMENT AND RESTORATION FUND
INFORMATION FOR CONCEPTUAL PRE-PROPOSALS**

FISH AND WILDLIFE HABITAT ENHANCEMENT AND RESTORATION FUND

Information for Conceptual Pre-Proposals

Persons or organizations requesting funding for a project from the Fish and Wildlife Habitat Enhancement and Restoration Fund (HERF) will submit a conceptual pre-proposal for consideration by the Ecological Standing Committee (ESC). The pre-proposal should be brief and should not exceed two pages of text in addition to a map showing the project location, any figures, and a preliminary cost estimate. Applicants shall submit five typewritten copies of their proposals, as well as an electronic copy in Adobe Acrobat (.PDF) format. Pre-proposals must contain the following information.

- **SPONSOR** identification, including contact information for the primary contact (affiliation, address, phone number, fax number, and email address). If there is more than one project sponsor or other supporting organizations, these entities shall be identified along with the above information.
- **PROJECT LOCATION** including a map showing the area for the proposed project and any pertinent adjacent features. The name of the town in which the project would be located and the ownership of the land associated with the project must be provided. If the project sponsor has discussed the project with local officials or other local parties (e.g., adjoining landowners), this should be discussed.
- **SUMMARY** will provide a brief description of the proposed project including a statement of how the project will benefit the Niagara Basin, and which eligibility criteria will be met should the project be funded. The description must indicate who will be responsible for the design, construction, execution, operation and maintenance, and monitoring work for the project. The description needs to identify the primary objectives (e.g., species or habitats that would benefit) and discuss the mechanism(s) for and the anticipated magnitude of the benefit to the Niagara Basin.
- **FUNDING REQUESTED** will provide the total estimated cost to design, build, execute, and monitor the project as well as any co-funding to be provided by the project supporters. If funding for operation and maintenance is being requested, the annual cost and anticipated duration of these activities must be provided. This information will be provided on the attached pre-proposal cost sheet.

Applicants shall submit five typewritten copies of their Conceptual Pre-proposals, as well as an electronic copy in Adobe Acrobat (.PDF) format (either via e-mail or on CD), to:

**Stephen M. Schoenwiesner
Licensing Manager
New York Power Authority
123 Main Street
White Plains, NY 10601**

**(914) 287-3457 (Voice)
(914) 681-6613 (Fax)
Steve.Schoenwiesner@nypa.gov (e-mail)**

Fish and Wildlife Habitat Enhancement and Restoration Fund
Conceptual Pre-Proposal
Estimate of Project Cost and Funding Requested

Name of Proposed Project: _____

	Design/Build/Execute	Operate/Maintain
Total Project Cost:	\$ _____	\$ _____
Cost Sharing:	\$ _____	\$ _____
Funding Requested: <i>(Total cost minus co-funding)</i>	\$ _____	\$ _____

ATTACHMENT B

**FISH AND WILDLIFE
HABITAT ENHANCEMENT AND RESTORATION FUND**

INFORMATION FOR DETAILED PROPOSALS

FISH AND WILDLIFE HABITAT ENHANCEMENT AND RESTORATION FUND

Information for Detailed Proposals

Persons or organizations that have requested funding for a project from the Fish and Wildlife Habitat Enhancement and Restoration Fund (HERF) and have had their Pre-proposal approved are encouraged to submit a detailed proposal to the Ecological Standing Committee (ESC). Detailed proposals for funding shall include a description of the project, a statement of its goal(s), a schedule for its implementation and operation, detailed conceptual designs and engineering, a budget, identification of the project sponsor, and any other pertinent material. Applicants shall submit five typewritten copies of their proposals, as well as an electronic copy in Adobe Acrobat (.PDF) format. Specific information to be included in a proposal is provided below.

Description of proposed project: Proposals will provide a detailed description of the proposed project and the annual operational and maintenance requirements. The proposal's description will identify the primary objectives (e.g., species that would benefit) and will discuss how the project will benefit the Niagara Basin, including how the project is consistent with applicable ecological conservation plans developed for the Niagara Basin. Proposals will include a map(s) showing sufficient detail on the proposed project location and any pertinent adjoining structures or features. Submission of other materials, including but not limited to maps, figures, photographs, and drawings, that help explain what is being proposed is encouraged.

In addition to this information, proposals shall include a description of:

- Preconstruction activities (e.g., baseline monitoring, physical surveys) that need to be completed before the project can be designed or initiated. The project sponsor should demonstrate support for the project from the host community and other interested parties (e.g., letters of support from the host community and adjoining landowners). The project sponsor should explain and describe any discussions about the project with local officials or other local parties (e.g., adjoining landowners).
- Arrangements for the design. If the designer is known, the proposal should include the designer's qualifications and experience with similar projects. If the designer is not known, the proposal should identify the qualifications of the person(s) or firm(s) that will be required of the selected designer.
- Detailed conceptual designs and engineering. Proposals must include engineering drawings that depict plan views, section views, and other pertinent details, including a description of anticipated permits, to enable a full understanding of what will be constructed.
- Arrangements for construction. If the constructor is known, the proposal should include the constructor's qualifications and experience with similar projects. If the constructor is not known, the proposal should identify the qualifications and experience of the person(s) or firm(s) that will be required of the selected constructor.

- Projects not involving construction. Proposals for projects that do not involve construction should provide sufficient pertinent details to enable a full understanding of what is being proposed. These proposals should provide narrative and graphical descriptions of the proposed work, identify all involved parties and their role in the proposed project, and identify who will be performing the work and their experience and qualifications.
- Schedule. All proposals must contain a detailed schedule that includes planning, implementation, and post-implementation activities. These schedules should identify the period for which HERF monies would be used to support project activities.
- Arrangements and requirements for operation and maintenance. All proposals must describe the qualifications and experience of the person(s) or group that will be responsible for the operation and maintenance of the project.
- Effectiveness monitoring and reporting. All proposals must describe the proposed monitoring to assess the effectiveness of the project as well as the person(s) responsible for the monitoring and reporting. If the project's effectiveness will be measured against pre-construction data, the baseline data should be identified. In addition, the proposal should address any reporting requirements identified during the Pre-Proposal process.
- Cost sharing. All proposals must describe the approach for and degree to which total project costs can be off-set by other sources, including but not limited to co-funding, in-kind services, donations, volunteer participation, or other funding mechanisms beyond the HERF. Sources and amounts of cost sharing should be identified and described in detail. Applications shall also provide a letter of commitment that identifies and enumerates the source, level, and duration of any cost sharing to be included with the proposed project.

Funding Requested: The proposal shall provide a complete itemization of funds requested for each phase of the project (e.g., pre-construction monitoring, design, construction/implementation, operation, maintenance, and effectiveness monitoring and reporting). For each phase for which funding is requested, the proposal shall provide an itemization of material, equipment, labor costs, professional services (e.g., engineering services), and administrative expenses. Contingency costs due to engineering and other uncertainty may be included in the total project cost and funded through the HERF; however, such requests must be approved by the ESC in writing prior to the submission of a proposal. Approved contingency funds would be released only upon actual expenditure and would only cover actual project related expenses.

Applicants shall submit five typewritten copies of their detailed proposals, as well as an electronic copy in Adobe Acrobat (.PDF) format (either via e-mail or on CD), to:

Stephen M. Schoenwiesner
Licensing Manager
New York Power Authority
123 Main Street
White Plains, NY 10601

(914) 287-3457 (Voice)
(914) 681-6613 (Fax)
Steve.Schoenwiesner@nypa.gov (e-mail)

Fish and Wildlife Habitat Enhancement and Restoration Fund

Estimate of Project Cost and Funding Requested

Name of Project: _____

	Pre- construction Studies (A)	Design (B)	Construction/ Implementation (C)	Annual Operation and Maintenance (D)	Monitoring and Reporting (E)	TOTAL (A+B+C+D+E)
Total Cost						
<i>Salaries</i>	\$	\$	\$	\$	\$	\$
<i>Labor/Contractors</i>	\$	\$	\$	\$	\$	\$
<i>Equipment</i>	\$	\$	\$	\$	\$	\$
<i>Overhead</i>	\$	\$	\$	\$	\$	\$
Total Cost:	\$	\$	\$	\$	\$	\$
Contingency[†]						
<i>Percent</i>	%	%	%	%	%	
<i>Amount</i>	\$	\$	\$	\$	\$	\$
Total Cost with Contingency:	\$	\$	\$	\$	\$	\$
Cost Sharing	\$	\$	\$	\$	\$	\$
Funding Requested: <i>(Total cost with Contingency minus cost sharing)</i>	\$	\$	\$	\$	\$	\$

† - Requests for Contingency funds must be approved by the ESC in writing prior to the submission of a proposal.