



Ohio Public Works Commission
Columbus, Ohio

December 12, 2023

To: NRAC Chairs & Liaisons
Cc: OPWC Program Representatives

Re: FY 25 (Round 19) Guidance

Allocations

Page 6 of this document contains the allocations for the next round, FY 25 (Round 19). Allocations are being requested in the forthcoming state capital budget which will be effective July 1, 2024. NRACs should not award funds from a future round to fund a project in a current round. The director is prohibited from approving an application in which the financial assistance exceeds the NRAC's annual allocation.

Schedules & Methodologies

Slates will be due to the OPWC by November 30, 2024. Agreements will be released on March 1, 2025, unless a project has a tight schedule for acquisition. Methodologies may be submitted for review/approval at any time ahead of your solicitation for project applications but please allow time for review and expedite turn-around by clearly indicating any substantive changes. Remember to include your schedule.

NRAC Appointments & Rosters

It is critical that appointments comply with the Law (Ref: [R.C. 164.21](#)). In addition to the member from the District Integrating Committee and one representing a soil and water conservation district, the remaining nine members must be appointed from a category of "organizations, units of government, or agencies and shall include at least one member from each of those categories." These are as follows:

- 1) A county, municipal corporation, township, conservancy district, regional or joint district or unit of local government, or regional or joint political subdivision that is located within the geographical jurisdiction of the appointing integrating committee;
- 2) A conservation organization, an environmental advocacy organization, an organization with a primary interest in watershed protection and restoration, the department of natural resources, the environmental protection agency, or the United States natural resources conservation service;
- 3) A city park system or metropolitan park system or a board of park commissioners from a county that is located within the geographical jurisdiction of the appointing integrating committee, a statewide parks and recreation organization, or the United States national park service;
- 4) A statewide organization representing agriculture, an organization representing forestry interests, the department of agriculture, or the United States department of agriculture;
- 5) An organization representing business, local realtors, or a planning agency, including a port authority, located within the geographical jurisdiction of the appointing integrating committee.

The OPWC's counsel has confirmed that if a member appointed under a category should change employment and that member's new employment does not meet that category description, the member would need to resign. In addition, if a member retires, they aren't a part of that organization, unit of government or agency anymore and would need to resign. If you have any questions, please ask but any member that doesn't meet a category is not eligible for reappointment. It is encouraged to share nomination materials with your program representative before forwarding them to the district integrating committee for consideration.

Rosters are now being maintained in WorksWise. Please ask your Program Representative for any assistance.

Rules

The OPWC received 29 comments on the proposed Clean Ohio rules. Of those, 21 public comments and 3 commission initiated changes have been incorporated into 12 rules which require they be refiled. Refiling adds 60 days to the rules process. Pages 3 through 6 of this document provide additional information – rules that will become on/about January 12, 2024, rules that were refiled to become effective on/about March 12, 2024, and rules identified that specifically impact how an NRAC conducts business. It is strongly encouraged that NRAC members read all the rules to become familiar with what is/will be required and, perhaps, review R.C. 164.20 through 164.27. Once the rules become effective, we will add a link on our website. Any remaining advisories will also be listed but will be limited to items that provide more information or are optional policies.

Roles & Responsibilities

The Roles & Responsibilities document has been revised for clarification and is posted on our website, <https://publicworks.ohio.gov/districts/district-liaison/district-liaison>. The various parties' primary roles are provided below but every NRAC member and liaison is encouraged to review the document to be certain of their understanding as to what is required.

- NRACs are responsible for developing and submitting methodologies which consider criteria contained in [R.C. 164.24](#), and for scoring applications.
- Liaisons serve as a conduit between the OPWC and the NRAC, and aide the NRAC to ensure that requirements are met.
- The OPWC administers the program.

Eligibility Determinations

Recall that a previous language change to [R.C. 164.26\(C\)](#) specifies that technical assistance provided by the OPWC director or staff does not constitute approval or denial of an application. This permits the OPWC to legally assist NRACs and applicants before resources are expended by an applicant for a potential project which may ultimately be denied by the director. This does not prevent an application from entering the system that has eligibility concerns. An NRAC should always first review for eligibility prior to scoring. Depending on an NRAC's meeting schedule and process, an NRAC may choose to delegate this responsibility to the liaison. Applications that are ineligible should not be vetted, scored, ranked, and advanced to the director. If the director determines a recommended application to be ineligible, it will be returned to the NRAC to determine the appropriate course of action. Furthermore, applications must comply with all NRAC policies, the Revised Code, and the Administrative Code. An NRAC cannot deviate from any legal requirement.

Administrative Costs

This is a reminder that the Law permits for reimbursement of those costs directly incurred because of the need for labor, materials, supplies, equipment, travel, and support services to perform the committee's or counsel's statutory requirements. This program cannot be used to supplement any other costs or expenses not directly related to the administration of the OPWC's programs.

Clean Ohio Rules – Ohio Administrative Code 164

Rule No.	Title	Revision	Impacts NRACs
Effective in January 2024			
<u>164-2-11</u>	Mineral rights, oil, and gas		
<u>164-2-12</u>	Natural resources assistance council (NRAC) methodologies		X
<u>164-2-13</u>	Project signs		
<u>164-2-14</u>	Park districts and park authorities project support documentation		
<u>164-2-15</u>	Privacy policy		
<u>164-2-16</u>	Project agreement; scope changes		X
<u>164-2-17</u>	Project schedule		
<u>164-2-18</u>	Protected rule property exchange		X
<u>164-2-19</u>	Requests to proceed and title insurance		X
<u>164-2-20</u>	Resolutions of support, improvements only projects		
<u>164-2-21</u>	Restoration work on clean Ohio property		
<u>164-2-22</u>	Revenue-producing activities		
<u>164-2-23</u>	Stream restoration and property ownership		
<u>164-2-24</u>	Structures		X
<u>164-2-25</u>	Subdivision codes		
<u>164-2-26</u>	Surveys		
<u>164-2-27</u>	Utility easements		
Refiled; Effective in March 2024			
<u>164-2-01</u>	Definitions	Minor correction	
<u>164-2-02</u>	Access to funds and late infrastructure loan payments	Clarification	
<u>164-2-03</u>	Appraisals	Correction; clarification	
<u>164-2-04</u>	Carbon credits	Revision	
<u>164-2-05</u>	Deed restrictions and long-term ownership or control	Revision	X
<u>164-2-06</u>	Eligible, ineligible items and activities	Clarification	
<u>164-2-07</u>	Engineering fees	Addition for existing policy	

164-2-08	Environmental site assessment and suspected environmental contamination	Revision	X
164-2-09	Farmland preservation	Revision	
164-2-10	Forest ecosystem health and sustainability	Revision	
164-2-21	Restoration work on clean Ohio property	Revision	
164-2-22	Revenue-producing activities	Revision	

The rules have hyperlinks for the postings on the Ohio Register’s website. Alternatively, you may visit the site by going to <https://www.registerofohio.state.oh.us/rules/search> and select “164 – Ohio Public Works Commission” in the *Search For* section and hit “Search.”

Scroll to the bottom of the screen and change the number of rows to show to “100” to enable the view of all Clean Ohio rules which are 164-2-01 to 164-2-27. When you select a specific rule by choosing it’s hyperlink, as either provided in the table in this document or on the website, you’ll see a row of documents but “Rule” contains the text.



Direct Impact to NRACs

Refiled Rules

164-2-05: If any application contains both acquisition in fee and an easement, then points may only be awarded for the ownership interest. *This prevents easements being added only to gain additional points but not otherwise necessary. The deed of restrictions is the primary and court-tested document to protect property.*

164-2-08: Properties are assumed to be unlikely to be contaminated but an applicant, if uncertain, must include a phase 1 ESA providing that determination if they were previously uncertain. If an NRAC is concerned that a property may be contaminated, it must ask the director to consider requiring the applicant to submit a phase 1 ESA prior to the commission issuing a project agreement. If the phase 1 ESA concludes that the property is likely to contain contamination, the project application will be returned to the natural resources assistance council for review. *This addresses the potential for the NRAC's concern if there is knowledge about a proposed project that is not being addressed by the applicant.*

Rules in Effect January 2023

164-2-12: NRAC methodologies must include a two-tier tiebreaker using the methodology's criteria and a minimum score. In addition, NRACs must provide for no less than 90 days after the director's approval of their methodologies to accept project applications. *Tiebreakers and minimum scores have been determined to be best practices; whereas, 90 days for solicitation addresses customer concerns that sometimes application cycles don't give enough time.*

164-2-16: Any change in the scope in the project agreement requires an amendment, which must be approved by the NRAC. Applications submitted to a NRAC for which there is an existing active project agreement for the same scope or portion of the same scope are not eligible for funding and must be rejected. *This is a long-standing policy.*

164-2-18: While uncommon and discouraged, a grant recipient who owns a Clean Ohio protected property may request the NRAC to remove the deed restrictions from a portion of the property in exchange for placing restrictions upon other real property (the "exchange") under the recipient's ownership. The NRAC must review and may approve if it finds all the following: 1.) The appraised value of the real property upon which the clean Ohio deed restrictions are to be placed must be greater than the appraised value of the real property whose clean Ohio deed restrictions are proposed to be removed. The appraisal of the real property that is currently restricted with clean Ohio deed restrictions shall be made without taking into consideration the clean Ohio deed restrictions. 2.) The exchange will not result in an exchange for property of a lesser value proportionate to the original investment of the grant award. 3.) The exchange is not based on the desire of the landowner to profit financially through the removal of the clean Ohio deed restrictions from the currently existing real property. 4.) The exchange will result in the achievement of greater conservation value to the public and provide the public with property that is of greater benefit to the public. *There have been a handful of instances over the years but this should be a rare occurrence.*

164-2-19: If the title information submitted to the Commission as part of the request to proceed documentation discloses real property interests that could compromise conservation value of the property interest to be acquired, at the director's discretion, the project application will be returned to the NRAC for review and the acquisition costs of the real property interest to be acquired shall not be funded until the NRAC has completed its review. *This is a long-standing policy.*

164-2-24: An NRAC may fund the acquisition and/or demolition of existing structures but the NRAC's policy must be stated in its funding round documents. Existing structures are permitted for nature and/or outdoor education centers, park offices, and/or storage relating to conservation activities occurring on the property but cannot be used as a residence. *This is a long-standing policy.*

Clean Ohio Conservation Program

FY 25 Allocations

1	\$3,229,479
2	\$2,168,017
3	\$3,514,621
4	\$1,437,994
5	\$2,007,607
6	\$1,251,838
7	\$1,827,497
8	\$1,436,648
9	\$1,653,583
10	\$2,552,618
11	\$2,337,291
12	\$1,162,374
13	\$1,793,590
14	\$1,792,169
15	\$2,157,646
16	\$2,026,924
17	\$2,189,077
18	\$1,932,984
19	\$1,028,044
TT	\$37,500,000