

July 16, 2020

Town of Hardwick  
Attn: Board of Selectmen  
P.O. Box 575  
307 Main Street  
Gilbertville, MA 01031

**SUBJECT:** Town of Hardwick Water and Environmental Program Application  
Project Name: 2020 Combined Sewer Project  
Notification of Adverse Decision

To the Members of the Board of Selectmen of the Town of Hardwick,

After careful consideration, we are canceling the financial assistance previously obligated to the Town of Hardwick (hereafter "Town") on June 29, 2020. The specific reasons for our decision are as follows: 1) inability to meet the terms and conditions of the Letter of Conditions, specifically, the failure to execute the debt settlement agreement with the Eagle Hill School (hereafter "School") in a timely manner or, alternatively, to present to the Agency that there will be no adverse impact to residential rates or overall affordability following the failure to execute said agreement; 2) lack of evidence of the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements.

The Letter of Conditions that was issued to the Town on June 29, 2020, contained the following provision:

Eagle Hill Debt Settlement: the Town is currently operating under an agreement with the Eagle Hill School for the waiver of sewer user fees as repayment of previous construction on the sewer system executed by the School. The School has agreed to settle that debt for a cash payment of \$1,800,000. Evidence of a written agreement memorializing the debt settlement, signed by both parties and reviewed by the Town's attorney is required prior to release of these funds. Should the parties be unable to reach an agreement on the settlement, the funds will instead be re-assigned to the construction contingency.

This provision was included in the Letter of Conditions based on a verbal offer that was extended to the Town by PJ McDonald, headmaster for the School. The School and the Town executed a contract in 2015 where the School would build the main and pump station at their own cost, then transfer ownership of the project to the Town. No monies would be exchanged, instead, the School would get free service until the cost of the pipe had been repaid, as calculated using what would otherwise be the annual user fee. With that

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agreement in place, the project would not have been financially eligible under Agency underwriting. However, Agency monies could be used to refinance that debt as a settlement with the School – the underwriting through that option showed affordable user rates for the residential users on the system.

As of January 26, 2021, an offer for settlement had not been issued to the Eagle Hill School. The Agency met virtually with the Town Administrator and Town Counsel to discuss the delays surrounding the offer. After internal discussion and a public Town meeting, an official offer was extended to the Board of Trustees of the Eagle Hill School on March 9, 2021. A counter-offer was made by the School on March 26, 2021. That counter-offer requested specific conditions, including but not limited to:

- Costs to be calculated the same as a single-family home
- Exemption from any fees and surcharges
- Exemption from betterment assessment

On March 30, 2021, the Agency informed the School and the Town that agreeing to a counter-offer with these terms would be unacceptable, as it would result in preferential treatment for one user on the system. Further, such preferential treatment would impact the financial feasibility of the project. The federal regulations at 7 CFR § 1780.35 state:

The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus.

Execution of an agreement that results in reduced user rates, fees, and assessments for the Eagle Hill School is not reasonable and would fail to produce sufficient revenue for payment on the loan and operation and maintenance of the system.

On March 31, 2021, the Town held another public meeting, where it was indicated that the School would accept the offer for settlement without the demands for special consideration. On or about April 16, 2021, the Town Administrator resigned. She had been the primary contact with the Agency. To provide assistance to the Board of Selectmen, the Agency re-issued the Letter of Conditions with additional information to provide clarity and direction for the project moving forward. The section on the Eagle Hill School Repayment was updated with the following (information bolded and in red is the part that had been added for clarity):

Eagle Hill Debt Settlement: the Town is currently operating under an agreement with the Eagle Hill School for the waiver of sewer user fees as repayment of previous construction on the sewer system executed by the School. The School has offered to settle that debt for a cash payment of \$1,800,000. Evidence of a written agreement memorializing the debt settlement, signed by both parties and reviewed by the Town’s attorney is required prior to release of these funds. Should the parties be unable to reach an agreement on the settlement **by June 18th**, the funds **may** instead be re-assigned to the construction contingency pending **Agency re-evaluation of the Town’s ability to support Agency loan re-payment for the 40-year term. Failure to reach agreement with EHS presents risk not considered at Agency underwriting and will require National Office consideration**

**due to adverse change in credit. Under no circumstances will the Agency approve the Borrower's request to go to bid unless the EHS contract has been paid in full or the Agency able to confirm in writing the and/or operating costs. All contracts or Agreements related to EHS will require review and approval by Agency Office of General Counsel in coordination with the MA/CT/RI Community Programs Director. If Agency evaluation finds adverse impact to Borrower repayment ability or to residential rates the Agency will determine that the project exceeds affordability standards determined at initial review and award, in which case Agency approval required to move forward with the project will not be given. Overall affordability and sustainability of the project is contingent on EHS settlement as noted above, and settlement must be executed and payments from Eagle Hill School re-started prior to Agency approval of borrower going out to bid.**

On June 7, 2021, the Agency loan specialist received an email from Selectman Rob Ruggles which asked questions about betterments and said "I have talked to the Hardwick financial team about betterment and how to calculate. It's my understanding that they provide information to RCAP about it. Was the final calculation put on hold because of the grant hold? We really do need to have a public discussion about this issue so we can move forward with the EHS agreement." On June 8, 2021, the loan specialist sent a reply email: "I know that the agreement requires 'Eagle Hill will pay for its share of the Project through the assessment of betterments assessed in accordance with applicable law.' What I am not clear on is why this matter needs to be settled in order to accept the agreement. All users on the system will eventually be assessed betterments."

On June 10, 2021, the Town submitted a request for extension. The letter requested a forty-five (45) day extension to finalize the agreement with Eagle Hill School and requested "to have a considerable number of questions concerning betterments answered." A response was sent to the Town on June 11, 2021, stating that the Town did not provide any information on why the extension was necessary, nor did it explain the steps that would be taken to meet the requirements of the Letter of Conditions within the timeframe. It also referenced the communications above from June 7 and June 8.

On June 25, 2021, the Town submitted a revised request for extension. Regarding the Eagle Hill settlement, the letter states:

We do not believe that it is unreasonable for Eagle Hill School to have SOME estimate of what the betterments would be. As you know, any school is responsible to its Board of Trustees and its students in the long run, and all schools need to be able to have figures of some type in hand to plan an annual budget for the beginning of the fiscal year. We really need to be able to converse with RCAP Solutions to make this happen. This was to be the original plan. Eagle Hill is still eager to meet with us and go forward on this project (see attached email) and we want to meet with them as well, provide them as much knowledge as we can, and get things moving in a transparent and professional manner toward settlement. The Town aims, with assistance from RCAP Solutions, to have the settlement with Eagle Hill signed by August 9, and be ready to move forward with the bidding process.

On June 29, 2021, the Agency loan specialist responded with the following:

Item 1: Eagle Hill, Betterments, and Rate Schedule. Betterments do not go into effect until after the project is completed. Therefore, it will be at least two years until Eagle Hill will need to adjust their budget to compensate for betterment payments. They will also, of course, have a nice buffer of \$1.8 million that we are providing for them which they can use for both their regular payments (under the to-be updated rate schedule), and for the betterment payments. The regular users and other businesses in the Town of Hardwick are not getting any advance information to adjust their own budgets either. The Agency has made it clear that EHS should not be receiving preferential treatment. The betterments will fund half of the loan payment – a total of \$185,599.00/year, half of which is \$92,799.5. Forty years worth of betterment payments only is \$3,711,980. Picking a high, totally baseless number, let's say that EHS has to cover 1/16 of that based on the size of the property, and that they choose a 10 year betterment payment plan. That comes out to \$23,200 per year. They were previously getting a credit of approximately \$70,000 per year for their water usage. RCAP gave a presentation that estimates that the updated rate schedule will come out to a 15% increase, giving us annual use payments of \$80,500. Put together, the payments would be \$103,700. With the \$1.8 million, EHS will not need to “budget” at all for at least seventeen (17) years to come. These are quick, not totally accurate numbers, but you will see how arguments about budgeting are not persuasive when there is a \$1.8 million payment on the table. The Agency will not re-engage RCAP for this negotiation. The Agency has approved the draft agreement submitted to us. Any changes will need additional time for Agency review and approval.

On July 8, 2021, the Town submitted a revised extension request. On the matter of the Eagle Hill settlement, it says the following:

Steps that will be taken from now until conclusion date: Contact Town Counsel to revise the original agreement that was created in April 2021 to update for additional wording relative to betterments and classifications. Review by the Sewer Commission of classifications and betterments. Once the draft agreement is revised, contact PJ McDonald and the appropriate counsel for meeting to review draft agreement. Once negotiations are complete and a preliminary agreement on the settlement is reached, the information will be sent to USDA for approval as well as approval by the Hardwick Board of Selectmen.

It is clear that the Town is still negotiating with the Eagle Hill School to allow special language regarding betterments. This is the first mention of special “classifications” for the School, and it is not clear in which manner that will impact user rates or repayment ability. The Town continues to disregard Agency directions which state that an agreement will not be approved that results in preferential treatment of the Eagle Hill School. Failure to execute an approvable agreement, or alternatively, to present to the Agency evidence that user rates and overall affordability can still be met, is a violation of the Letter of Conditions and has resulted in the current adverse action decision.

That the Town is entertaining special considerations for the Eagle Hill School demonstrates that they are willingly jeopardizing the financial sustainability of the entire project. The delays in negotiation and noncompliance with the directions of the Agency to not provide special treatment for the School demonstrates a lack of managerial capability. The Federal Regulations at 7 CFR 1780.1(j) states: “Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability

necessary to consistently comply with pertinent Federal and State laws and requirements.” The Town of Hardwick’s handling of this issue, and through other instances not listed herein, indicates that the Town cannot properly administer the project even in this early stage.

De-obligation of funds does not adversely affect your ability to request funding for your projects in the future, and you are encouraged to re-apply when the intended project resumes and capability can be evidenced to the Agency.

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the Southern New England State Office, Liz Gariepy, Acting State Director (MA/CT/RI): 413-253-4313 to request a meeting with this office within fifteen (15) calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative or legal counsel with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with this office. See attachment for your appeal rights.

If you do not wish a meeting and as outlined above, wish to appeal a request for a hearing must be sent to the Area Supervisor, National Appeals Staff, PO Box 68806, Indianapolis, IN 46268-0806, postmarked no later than thirty days from the date of this letter.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Rural Development that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

Jennifer Lerch  
Director, Community and Business Programs

CC: Jennifer Sharrow, Loan Specialist  
USDA Southern New England Office, Acting State Director  
USDA Office of General Counsel  
USDA WEP Program Regional Coordinator

*Enclosure: Appeal Rights*

## **Attachment to Letter Notifying Customers of an Appealable Adverse Decision**

The decision described in the attached letter will terminate or reduce the assistance you are currently receiving. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

### Option 1 – Request an Informal Administrative Review

If you have questions concerning this decision or the facts used making it and desire further explanation, you may write this office to request an informal review. There is no cost for an informal administrative review. Your written request must be received no later than fifteen (15) calendar days from the date when you received this adverse decision letter. Include any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process at your cost. The informal administrative review may be conducted by telephone or in person at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip the informal administrative review and select one of the following two options. If you do, you will automatically waive your right to an informal administrative review.

### Option 2 – Request Mediation

You have the right to request mediation. The purpose of mediation is to resolve disputes through the use of a certified, neutral mediator. In most cases, a mediator is not a federal Government employee. A mediator will listen to all parties involved in the dispute and work with all parties to achieve a mutually agreeable resolution. Many cases that go to mediation are resolved without further action, extended delays, or the cost of formal litigation. You have thirty (30) days to request mediation, ten (10) days to select a mediator, and then forty-five (45) days to complete mediation. If you need information on the mediation process to assist you in deciding whether to utilize this option, please contact the Rural Development State Director listed below.

Liz Gariepy, Acting State Director  
USDA Rural Development  
451 West Street STE 2  
Amherst, MA 01002

There may be a cost for mediation. If so, it is Rural development policy to pay fifty (50) percent of the reasonable cost for mediation. When there is a cost, it is your responsibility to pay the other fifty (50) percent. Every effort, however, is made to keep any cost to a minimum, and in some cases, the mediator will waive the customer's fifty (50) percent share. If you elect to seek mediation, your written request for this service must be sent to the Rural Development State Director listed and ***must be postmarked no later than thirty (30) days from the date of the attached letter.*** Once you request mediation, it stops the thirty (30) -day period in which you may request an appeal hearing (described in Option 3), but does not waive your right to an appeal. Once you have requested mediation, the Rural Development State Director will

advise you of the mediation service provider, the estimated cost of mediation, the amount the Agency will contribute, and the process and procedures for this service:

1. In states with a USDA-funded mediation program, you will be referred to such service.
2. In states without a USDA-funded mediation program, you will be either directed to a local community mediation service; or you will be provided with the names of mediators from which to select one.
3. Also, you may suggest a mediator subject to the Agency's approval.

Once a mediation service provider has been identified, ***you will have ten (10) days to contact the mediator***: following the ten (10) days you are allowed to select the mediator, you will be advised directly by the mediation source if they can mediate your case. Once you have been referred to the mediator, ***you have forty-five (45) days to complete the mediation***. The Agency can agree to an extension. If mediation does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation is concluded, you will be notified of the result and your right, if applicable, to request an appeal hearing. Mediation does not take the place of, or limit your right to, an appeal to the NAD; however, a NAD appeal hearing would take place only after mediation. You may skip mediation and request an appeal hearing. However, in doing so, you will automatically waive your right to an informal meeting. Once the appeal hearing begins, you also waive your right to mediation.

### Option 3 – Request an Appeal Hearing

You may request an appeal hearing by NAD rather than an informal review or mediation. There is no cost for an appeal hearing. Your request for an appeal must be made no later than thirty (30) days from the date you received the attached letter. To request an appeal hearing, you must write the NAD Assistant Director for your region at the following address.

USDA National Appeals Division  
PO Box 68806  
Indianapolis, IN 46268-0806

Additional information and guidance can be found on the NAD website at:  
<https://www.nad.usda.gov/content/file-appeal>

Your request must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of this letter. A copy of your request must also be sent to the Rural Development State Director at:

Liz Gariepy, Acting State Director  
USDA Rural Development  
451 West Street STE 2

Amherst, MA 01002

You have the right to an appeal hearing within forty-five (45) days of the receipt of your request. You or your representative or counsel may contact this office any time during regular office hours in the ten (10) days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

You, or your representative or counsel, may contact this office anytime during regular office hours to examine or copy the Agency's record relative to this adverse decision. Photocopies will be provided to you. Your representative or counsel must have your written authorization to represent you and review your file.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.