

**REGULATIONS OF THE
CAPE COD AND ISLAND WATER PROTECTION FUND
MANAGEMENT BOARD**

DRAFT – For Discussion

1.0 Introduction and Purpose.

The Cape Cod and Islands Water Protection Fund Management Board adopts these regulations pursuant to its authority under M.G.L. c. 29C, §§ 19 and 20. The Board¹ was established by the Enabling Act, which added two new sections – §§19 and 20 – to M.G.L. c. 29C. The Enabling Act creates the Water Protection Fund and makes the Board responsible for determining the method for allocating subsidies from the Water Protection Fund, including, but not limited to, an equitable distribution among participating municipalities. The Enabling Act also makes the Board responsible for ensuring that the Water Protection Fund is spent only for the purposes set forth in M.G.L. c. 29C, § 19.

These regulations govern the manner in which the Board awards subsidies to a water pollution abatement project, as defined in the Department of Environmental Protection’s regulation at 310 CMR 44.03. These regulations are to be construed and applied in conjunction with M.G.L. c. 29C, including the Enabling Act; the Department’s regulations set forth at 310 CMR 44.00, entitled “DEP Selection, Approval and Regulation of Water Pollution Abatement Projects Receiving Financing Assistance from the State Revolving Fund”; and the Bylaws of the Cape Cod and Islands Water Protection Fund Management Board.

The Board may use the Water Protection Fund to award subsidies only to Participating Local Government Units, *i.e.*, Local Government Units who are members of the Water Protection Fund under the Enabling Act. These subsidies are in addition to, not in place of, any financial assistance awarded by the Clean Water Trust pursuant to M.G.L. c. 29C. Under the Enabling Act, the Water Protection Fund can be expended or applied only with the Board’s approval, after all necessary approvals required by M.G.L. c. 29C are met.

2.0 Definitions.

As used in these regulations, capitalized terms have the meanings set forth below. Where a definition is followed by a citation to 310 CMR 44.03, the definition is substantially the same as established for that term by 310 CMR 44.03 and is restated here for convenience and clarification.

¹ Capitalized terms in Section 1.0 (Introduction and Purposes) have the meaning set forth in Section 2.0 (Definitions).

“Board” means the Cape Cod and Island Water Protection Fund Management Board established by the Enabling Act, specifically M.G.L. c. 29C, §§ 19 and 20.

“Calendar Year Allocation” means the amount of the Water Protection Fund that will be used for subsidy awards for Projects in the calendar year that corresponds to the Intended Use Plan Project Listing for that same calendar year.

“Clean Water Act,” or “CWA” means the Federal Water Pollution Control Act, Public Law 92-500, 33 USC § 1251, *et seq.* (310 CMR 44.03)

“Clean Water Trust” or “Trust” means the Massachusetts Clean Water Trust established by M.G.L. c. 29C. The Trust administers the Commonwealth’s SRF programs, which are authorized by federal legislation – the Water Quality Act of 1987 for the clean water SRF and the Safe Water Drinking Water Act of 1996 for the drinking water SRF – to provide financial assistance to borrowers for wastewater projects and drinking water projects. (310 CMR 44.03)

“Department” means the Massachusetts Department of Environmental Protection. (310 CMR 44.03)

“Enabling Act” means Chapter 337 of the Acts of 2018, as amended by Chapter 5 of the Acts of 2019.

“EPA” means the United States Environmental Protection Agency. (310 CMR 44.03)

“Intended Use Plan” means the annual plan submitted by the Trust to EPA pursuant to § 606(c) of the CWA which identifies the intended use of the amounts available to the Water Pollution Abatement Revolving Fund as determined by the Trust and derived from the federal capitalization grant, state match amounts, loan repayments, investment earnings and any other moneys deposited by the Trust available to fund projects eligible for funding under Title VI of the CWA. The Intended Use Plan includes a project listing, a description of short and long term goals for the use of the funds, information on the activities to be supported, assurances for meeting certain Title VI requirements, and the criteria and method for the distribution of funds. (310 CMR 44.03)

“Intended Use Plan Project Listing” means a listing of those projects identified by the Department for inclusion on the fundable portion of the Project Priority List pursuant to 310 CMR 45.05(2). (310 CMR 44.03)

“Loan Agreement” means an agreement entered into between the Trust and a Local Governmental Unit pertaining to a loan or local governmental obligations. (310 CMR 44.03)

“Loan Commitment” means a written commitment by the Trust to make a loan to a Local Governmental Unit to finance a project approved by the Department on

terms consistent with the Department's Project Approval Certificate. (310 CMR 44.03)

“Local Government Unit” or “Local Governmental Unit” means any town, city, district, commission, agency, authority board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local government unit defined in M.G.L. c. 29C, which is responsible for the ownership or operation of a Water Pollution Abatement Project and is authorized by a bond act to finance all or any part of the costs thereof through the issuance of bonds. (310 CMR 44.03)

“Participating Local Government Unit” means a Local Government Unit that is or is part of a municipality that is a member of the Water Protection Fund pursuant to M.G.L. c. 29C, §§ 19 and 30.

“Pre-existing Project” means a Project undertaken by a Participating Local Government Unit that is or is part of the towns of Nantucket, Edgartown, Tisbury, Oak Bluffs, Falmouth, Chatham and Provincetown, or is or is part of the city of Barnstable, and for which debt was incurred prior to the enactment of the Enabling Act.

“Project Approval Certificate” means the certificate issued by the Department to the Trust certifying that a project is approved for financing by the Trust and that the costs of the project are eligible for financial assistance pursuant to M.G.L. c. 29C, § 6. (310 CMR 44.03)

“Project Approvals” mean all approvals required for a Qualified Project by M.G.L. c. 29C, including the Loan Commitment, Loan Agreement, Project Approval Certificate, and Project Regulatory Agreement.

“Project Permits” mean all permits and approvals required for a Qualified Project under any federal or state statute or regulation and under any municipal, county or regional ordinance, bylaw, or regulation, but not including the Project Approvals.

“Project Priority List” means the annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 44.00, as described in more detail in 310 CMR 44.05.

“Project Regulatory Agreement” means an agreement between the Department and a Local Government Unit, executed and delivered to the Trust on or prior to the date of a loan from the Trust to the Local Governmental Unit to finance a project approved by the Department, which includes a disbursement schedule, procedures for approval and payment of requisitions, conditions related to the borrower’s compliance with the Department’s regulations and other federal and state statutes and regulations applicable to the construction and operation of the project, and provision for the Department’s supervision of the project in accordance with 310 CMR 44.00. (310 CMR 44.03)

“Qualified Project” means a Water Pollution Abatement Project undertaken by a Participating Local Government Unit and identified on the Intended Use Plan Project Listing.

“State Revolving Fund (SRF) Program” means the financial assistance program for water pollution abatement projects authorized under M.G.L. c. 21, § 27A, and the CWA, including the Clean Water State Revolving Fund Program established pursuant to M.G.L. c. 29C, the Department’s related authority and responsibilities set forth in M.G.L. c. 21, § 27A, and elsewhere in M.G.L. c. 21, and the Water Pollution Abatement Revolving Fund established pursuant to M.G.L. c. 29, § 2L. (410 CMR 44.03)

“Uncommitted Funds” mean the funds within the Water Protection Fund that are not committed to be paid to a Participating Local Government Unit for a Qualified Project through a subsidy awarded in a prior year.

“Water Pollution Abatement Project” or “Project” means any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltrations and inflow, collection system, treatment works and treatment facilities as defined in M.G.L. c. 21, § 26A, and any eligible facilities for implementation of a nonpoint source pollution control management program or estuary conservation and management plan pursuant to the CWA. (310 CMR 44.03)

“Water Protection Fund” means the Cape Cod and Islands Water Protection Fund established by G.L. c. 21C, § 19.

3.0 Form of Subsidy.

3.1 Grants. All subsidies awarded by the Board for Qualified Projects shall take the form of grants. The Board shall not use the Water Protection Fund to make loans to Participating Local Government Units for Qualified Projects.

3.2 Terms of Subsidy.

- Option [For Discussion]: The Board could limit its use of the Water Protection Fund to granting subsidies for Qualified Projects in either of the following ways (but not both):
 - (a) Principal Reduction Model: A one-time upfront subsidy that reduces the principal amount borrowed by the Participating Local Government Unit for the Qualified Project by up to **[__%]** or **[\$__]**, whichever is less;
 - (b) Debt Service Model: An annual payment of up to **[25%]** of the annual debt service on the principal amount

borrowed by the Participating Local Government Unit for a Qualified Project.

4.0 Applications for Subsidy.

- 4.1 Application. No formal application process.
- 4.2 Water Protection Funding Qualification. Upon a Qualified Project appearing Intended Use Plan Project Listing, a Participating Local Governmental Unit shall be considered for funding. The Qualified Project remains eligible upon successfully meeting the project performance requirements in M.G.L. c. 29C. The Participating Local Governmental Unit may decline an offer of subsidy by providing written notice to the Board.

5.0 Board Meeting to Determine Subsidy Allocation.

- 5.1 Annual Meeting. The Board shall meet no less than once annually to allocate subsidies. The annual meeting will be held within [45] days of the Department's publication of the Intended Use Plan Project Listing. At the annual meeting, the Board, in its discretion, may schedule additional meetings. The Board's Chairman, in his or her discretion, may call additional meetings not scheduled at the annual meeting.
- 5.2 Award of Subsidies. Projects properly listed on the Intended Use Plan shall receive a subsidy.
- 5.3 Amount of Subsidy Awarded for Qualified Projects. The subsidy for each Qualified Project shall be awarded as follows:
- Option for Principle Reduction: Distributed equally among all Qualified Projects that will be subsidized for that year. For instance, if requests for funding were filed for four Qualified Projects and the Calendar Year Allocation is \$2 million, then each Project receives a subsidy of \$500,000.00
 - Option 2: [If Debt Service Model] The Debt Service Pro Rata Percent times the Calendar Year Allocation. The Debt Service Pro Rata Percent is the percent calculated by dividing (x) a numerator that is the debt service to be paid on the Qualified Project to be subsidized, by (y) a denominator that is the total debt service to be paid on all Qualified Projects to be subsidized.

In all cases the amount of the subsidy shall be capped in accordance with Section 3.2 above.

- 5.4 Subsidies for Pre-existing Projects.

First Year of Awards. For a Pre-existing Project for which loan payments are ongoing, the Board shall consider subsidies for the Pre-existing Project on equal footing with Qualified Projects appearing on the Intended Use Plan Project Listing for the calendar year in which a request for funding was submitted. Subsidies for Pre-existing Projects shall be applied to any remaining loan balance and shall be allocated in the same manner as Qualified Projects appearing on the Intended Use Plan Project Listing (*i.e.*, as if they are appearing on the Intended Use Plan Project listing for the first time), with the exception that the total subsidies paid for Pre-existing Projects shall not exceed the Pre-Existing Project cap established by Section 5.4.1 above.

6.0 Approval of Subsidy.

- 6.1. Contingent Approval. For Projects awarded subsidies, the Board shall issue a contingent approval. A contingent approval means that the subsidy is contingent upon the receipt of all Project Approvals and all Project Permits.
- 6.2. Final Approval. For a Project receiving a preliminary approval, the Board shall issue a final approval upon proof that all Project Approvals and all Project Permits have been obtained. A request for a final approval shall include a certification signed under oath by a duly-authorized representative of the Participating Local Government Unit that all Project Approvals and all Project Permits have been obtained. Final approval shall be an administrative matter handled by the Board through its administrator, the Cape Cod Commission, and shall be granted or denied solely on the basis of whether the Participating Local Government Unit has obtained all Project Approvals and all Project Permits.

7.0 Conditions for Ongoing Subsidy; Breach of Conditions.

- 7.1 No Agreement. The Board shall not require a Participating Local Government Unit to enter into an agreement with the Board. By accepting the first subsidy payment, the Participating Local Government Unit agrees that the terms of the subsidy are governed by these regulations, as they may be amended from time to time, for the entire duration of the subsidy.
- 7.2 Funding Condition. **[If Debt Service Model]** Each subsidy is a commitment of future revenues from the Water Protection Fund solely to the extent available. The Board retains discretion to discontinue, reduce or suspend subsidies if the Uncommitted Funds in the Water Protection Fund are insufficient to meet the total subsidy commitments – both ongoing obligations for subsidies awarded in prior years and new awards. When deciding to discontinue, reduce or suspend subsidies, the Board shall treat all Qualified Projects as equally as practicable.

7.3 Breach of Conditions of Project Approvals.

- **[If Debt Service Model]** The Board will discontinue the subsidy if the Participating Local Government Unit has breached any of the conditions of the Project Regulatory Agreement. Breach shall be determined by the Trust. The Board will not compel a Participating Local Government Unit to pay back any subsidies already provided.
- **[If Principal Reduction Model, will Board compel repayment of some or all of the subsidy for a breach of the Project Approvals?]**

8.0 Management of Use of Water Protection Fund.

8.1 Calendar Year Allocation. Each calendar year, the Board shall use up to **[__%]** of the Uncommitted Funds within the Water Protection Fund for the Calendar Year Allocation to be awarded to Participating Local Government Units for Qualified Projects first appearing on the Intended Use Plan Project Listing for that calendar year.

9.0 Withdrawal from Water Protection Fund.

9.1 Withdrawal of Eligible Local Government Unit. If a Participating Local Government Unit is awarded a subsidy for a Qualified Project, it may not withdraw from the Water Protection Fund during the term of any loan awarded from the Trust for any project also receiving a financial assistance award from the fund to the Participating Local Government Unit.

9.2 Reentry to the Water Protection Fund. A Local Government Unit that has withdrawn from the Water Protection Fund may rejoin the Water Protection Fund at any time after satisfying the requirements of M.G.L. c. 29C, §§ 19 and 20. In accordance with M.G.L. c. 29C, § 19, the Board shall not grant any subsidies to a Local Government Unit that returns to the Water Protection Fund (thus becoming a Participating Local Government Unit) for a period of two years from the date on which the legislative body of the Local Government Unit voted to return to the Water Protection Fund.

Tabled for Future Discussion and Potential Amendment of Regulations: The board, subject to a memorandum of understanding with the department of environmental protection, may direct the comptroller to transfer a specified amount not to exceed 10 per cent of the annual revenue deposited into the fund to the department for the department to contract with a regional planning agency, institution of higher education or non-profit corporation to evaluate and report on the efficacy of adaptive management measures to reduce nitrogen pollution of coastal waterways undertaken pursuant to an area wide wastewater management plan or a suitable equivalent plan, to monitor the water quality and watersheds of areas subject to the study and to support further assessment and water

quality modeling to further refine area wide wastewater management plans or suitable equivalent plans in Barnstable and Nantucket counties and the county of Dukes County. See M.G.L. c. 29C, § 19.

DRAFT