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Regional Wastewater Management Plan
Guidance for Municipal Consistency:
State Revolving Fund
Zero-percent Interest-rate Loans

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This is a draft document. It is intended to provide municipalities with guidance about how the Cape Cod Commission will determine consistency with the regional plan for towns seeking zero rate-of-interest loans from the Massachusetts State Revolving Fund. This document will be revised and made available for formal public comment in the future. In the interim, comments about this guidance, or any other aspects of the Cape Cod Regional Wastewater Management Plan (RWMP), may be provided to the Commission via the RWMP website by clicking on the Feedback Form link, or via email at wastewater@capecodcommission.org, or via regular mail at 3225 Main Street, Barnstable, MA 02630.

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Introduction

The Cape Cod Commission (Commission) plays a role in determining whether communities in the Cape Cod region have demonstrated “flow neutrality” to qualify for zero-percent rate-of-interest loans for wastewater infrastructure construction. The Commission’s role is to provide a consistency determination to the Massachusetts Department of Environmental Protection (MassDEP) indicating that local plans and land use controls are consistent with the Cape Cod Regional Wastewater Management Plan (RWMP). The Commission’s role in consistency review is authorized by [Section 5\(4\) of Chapter 312 of the Acts of 2008](#).

The intent of the flow-neutral limitation is to ensure that availability of sewers does not lead to unplanned and sprawling growth. The term “flow neutral” means that towns are limited not to the amount of flow currently generated, but to the amount authorized by existing land use controls. This provision allows towns to make the choice to grow and add to their tax bases and economic vitality while complying with the flow-neutral principle. Despite some misconceptions, applicable law explicitly allows a town to grow according to the zoning, local land use regulations, and Title 5 limitations in place at the time of the state approval of a town’s CWMP, if there is still unrealized development potential in the watershed.



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Background

The Clean Water State Revolving Fund (SRF) helps fund water quality improvement projects by offering low interest-rate loans to local governments. The interest rate is typically 2% for 20- or 30-year term loans. MassDEP administers the Massachusetts SRF program in cooperation with the Massachusetts Water Pollution Abatement Trust (WPAT).

In recognition of the degradation of many of the state's waters due to the excessive amount of nutrients and the high cost of wastewater treatment required to reduce nutrients to protect water quality, Massachusetts passed legislation in 2008 to initiate a 0%-interest loan program to provide additional financial support to communities undertaking nutrient-management projects. Under the 2008 legislation, the 0%- interest rate is in effect between 2009 and 2019. (See [2008 Environmental Bond Legislation](#), and [310 CMR 44.00: DEP Selection, Approval and Regulation of Water Pollution Abatement Projects Receiving Financial Assistance from the State Revolving Fund](#).)



Eligibility for Zero-percent Financing

As set forth in [Chapter 312 of the Acts of 2008, Section 5](#), to be eligible for the 0% financing for wastewater treatment system projects, a community must meet the following criteria:

1. The project must be primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply.
2. The town must not be subject, because of a violation of a nutrient-related standard, to an enforcement action by the federal or state government.
3. The town must have a Comprehensive Wastewater Management Plan (CWMP) that has been approved by MassDEP. According to MassDEP, “The CWMP will describe how the project fits in as a nutrient-management strategy within the proponent’s overall wastewater management plan. CWMPs also describe the local wastewater-needs areas and potential wastewater-flow regime under current zoning. CWMPs will outline non-traditional and traditional approaches to wastewater management and allow communities to select the proposals that best address their particular watershed’s characteristics and plans. Finally, CWMPs will discuss regional options for the management of wastewater and nutrients.” (See [DEP Memo of January 17, 2012, Accompanying Promulgation of Regulations at 310 CMR 44 for Administration of the 0% Interest SRF Program.](#))
4. The project must be consistent with the regional water resources management plan. In the sections that follow, this guidance document sets forth the requirements for establishing consistency with the policies and recommendations in the RWMP. The Cape Cod Commission will review CWMPs and other Local Plans (see Section 2, General Requirements, of [Guidance for Cape Cod Commission Review of Local Wastewater Management Plans](#)) for consistency with this guidance document for the purpose of providing a consistency determination to MassDEP for zero-percent rate-of-interest SRF loan applications.



5. The town must demonstrate to MassDEP’s satisfaction (in consultation with the Massachusetts Department of Housing and Economic Development and the Cape Cod Commission) that it has adopted land use controls that ensure the overall wastewater flow in the community will not increase as a result of sewerage beyond the flow amount authorized under the land use controls in effect on the date the Massachusetts Secretary of Energy and Environmental Affairs issued a Massachusetts Environmental Policy Act (MEPA) certificate for the CWMP or other Local Plan.

Towns seeking eligibility for 0% rate-of-interest SRF loans must first determine wastewater flows allowed under existing conditions, which form the basis for a Watershed Benchmark Flow. The regulations at 310 CMR 44.03 define the Watershed Benchmark Flow as:

“the existing wastewater facility total flow amount in a planning area, including flow amounts from on-site subsurface disposal systems, collection systems, and wastewater treatments plants...”

Watershed Benchmark Flows do not include those parcel-level flows not identified for sewer connection as authorized in the CWMP if the town takes advantage of provisions for “checkerboard” sewer connections under [MGL Chapter 83 § 1B](#) by accepting the provisions of [MGL Chapter 83](#) at Town Meeting. For the purposes of Cape Cod Commission review, the Watershed Benchmark Flow is the amount of existing and future wastewater flow allowed under local zoning, other land use regulations, and Title 5 (the state sanitary code, [310 CMR 15](#)), as of the date of the MEPA approval of the town’s CWMP.

Towns must next prepare one or more build-out analyses consistent with MassDEP regulations at [310 CMR 44](#). A build-out analysis estimates the potential for new development if a community develops to the extent allowed under current zoning and other local and state regulations.

Towns seeking to demonstrate “flow neutrality” for 0% eligibility must show that they have adopted land use controls that will limit wastewater flows to no more than the flows identified in the Watershed Benchmark Flow.



Flow-neutrality Methodologies

MassDEP regulations at 310 CMR 44.04 offer towns two methods (see below) to demonstrate that they have adopted land use controls to ensure that the overall wastewater flow in the planning area will be “flow neutral” and will not increase flows beyond the Watershed Benchmark Flow. The “planning area” includes all parcels, including those parcels that remain on on-site systems, within the nitrogen-sensitive watersheds that are subject to the town’s jurisdiction. Each method set forth in 310 CMR 44 requires actual water-use data for estimating development build-out and associated wastewater flows.

METHOD 1: PRESUMPTIVE DETERMINATION OF FLOW NEUTRALITY

Method 1, described by 310 CMR 44.04(3)(a) as a Presumptive Determination of Flow Neutrality, requires a build-out analysis based on land use controls in effect at the time a CWMP is certified by MEPA, and based on actual water use. Actual water-use data from developed parcels are extrapolated to determine the benchmark flows for undeveloped parcels. Adopted land use controls would then be required to restrict future flows in the sewer service area to the benchmark flow established at the time of approval of the CWMP. The land use controls ensuring flow neutrality must be effective before the SRF construction loan may be granted.

METHOD 2: NON-PRESUMPTIVE DETERMINATION OF FLOW NEUTRALITY

Method 2, described by 310 CMR 44.04(3)(b) as a Non-presumptive Determination of Flow Neutrality and an alternative approach to Method 1, requires the preparation of two separate build-out analyses: the first, under land use controls in effect at the time the CWMP is certified by MEPA (“pre-sewer”); and, the second, under zoning in effect at the time of sewer



construction (“post-sewer”). Method 2 prescribes a rigorous analysis for the calculation of benchmark flows that considers development and redevelopment potential, variances, waivers, changes in non-conforming uses, and other factors. Method 2 allows a community to fine-tune the build-out analysis. Again, the land use controls ensuring flow neutrality must be effective before the SRF construction loan may be granted.

Both methods allow a community to consider changes in land use regulations to shift development potential to areas designated for growth and limit growth in other areas to achieve “flow neutrality.”

LOCAL LAND USE CONTROLS

Towns seeking a flow-neutral determination should identify areas targeted for new development such as growth incentive zones, areas of mixed-use zoning, village and economic centers, and industrial trade and service areas. Towns should also consider the potential for high-density affordable housing permitted under MGL Chapter 40B. The next step is to identify the wastewater infrastructure needed to support those areas in order to allocate wastewater collection, treatment, and disposal capacity accordingly.

Towns can provide wastewater infrastructure capacity for identified growth areas by shifting new development potential to targeted growth areas from areas with underutilized growth potential under current land use regulations. To the extent that a town wishes to demonstrate flow neutrality and also provide sewers or treatment plant capacity as an inducement for growth in targeted areas, options shall be identified to offset that growth elsewhere in the same watershed. The proposed offset will be examined on a case-by-case basis. The Local Plan should fully explore ways to make the plan “net growth neutral” and should identify the costs (overall and after funding incentives) for not doing so.

Towns should also be cautious of encouraging growth in watersheds for which specific nutrient-removal requirements are not yet identified. Be aware that watersheds may become nitrogen sensitive with the advent of new growth and that care must be taken in targeting areas for new growth.



Tools to accomplish this include:

- checkerboard sewer-connection systems (the ability to utilize checkerboarding can be obtained by local adoption of [MGL Chapter 83](#));
- adoption of nutrient-management bylaws;
- sewer regulations and other regulations limiting sewer flows to the level allowed under pre-sewer conditions;
- down zoning and upzoning; and
- other land use controls as described in the report [Sewers and Smart Growth: Challenges, Opportunities, and Strategies, dated March, 2009](#).



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Applying for an SRF Loan

MassDEP conducts a competitive, annual project solicitation each summer through which the department identifies the most-critical projects in terms of environmental and public health and ranks the proposals accordingly. Prior to the beginning of each calendar year, MassDEP establishes a Calendar Year Priority List of those projects that have been prioritized to receive financial assistance. The projects that have met all requirements and are ready to proceed and for which funds are available in the calendar year in which the priority list was established are then placed on the Intended Use Plan (IUP) Project Listing portion of the priority list.

The statute limits the volume of zero-percent interest loans to 35% of the total loans issued in any given year. Placement of a project on the IUP is independent of the availability of zero-percent funds; nor does qualification for zero-percent funding provide a project with a competitive advantage in the ranking process.

