



PLEASANT BAY
ALLIANCE

January 9, 2019

Ms. Kristy Senatori
Executive Director
Cape Cod Commission
3225 Main Street
PO Box 226
Barnstable, MA 02630

Re: Comments on Water Resources Draft Technical Bulletin

Dear Ms. Senatori:

The Pleasant Bay Alliance is pleased to submit the enclosed comments on the Commission's draft Water Resources Technical Bulletin. It is our understanding that the bulletin is one of several related to regional planning goals and is intended to supplement the updated Regional Policy Plan. These comments focus on the protection of marine waters, Goal WR-3.

The Alliance and its consultant, Wright-Pierce, have participated in several telephone and email communications with Commission staff to discuss the technical bulletin. In addition, members of the Commission staff participated in a meeting with the Alliance on January 4th to explain the content of the bulletin and discuss comments and questions. We appreciate the Commission's efforts to work with us to understand and discuss this complicated subject matter within the allowed timeframe for public comment. This letter serves as a summary of those communications.

The bulletin describes standards that apply to nitrogen and phosphorus loadings from new development that are considered Developments of Regional Impact (DRIs). These standards do not apply to projects or activities that do not reach the DRI threshold, but the assumptions and procedures could serve as a basis for companion approaches by the four Pleasant Bay towns, such as in a nitrogen trading program or for procedures to manage growth in nitrogen load. Our understanding of the procedure is set forth below:

- a. Any DRI in a nitrogen-sensitive watershed must find a way to be nitrogen-neutral; that is, the developer must reduce existing loads in the same watershed to fully offset any new loads caused by the development.
- b. In locations where an approved CWMP lays out a nitrogen control plan that will be in place within 5 years, the offset requirement is waived, but only if the town nitrogen plan provides for new nitrogen loads equaling or exceeding the load from the development.
- c. In those cases where public infrastructure is planned, but will not be available in 5 years, the developer can pay an offset fee to cover some or all of new nitrogen load. The offset fee can be used only in certain Placetypes designated by the Bulletin. Those Placetypes are intended to be areas where towns expect to grow.
- d. Regardless of how the developer intends to offset new nitrogen, he/she must also meet the areal nitrogen loading requirement of 5 mg/l, estimated as the average nitrogen recharge concentration of the development. Steps taken to meet the areal loading standard may reduce the amount of new nitrogen to be offset. (These requirements apply both within and outside nitrogen-sensitive watersheds and address Goal WR-1, protection of groundwater quality.)

Use of Nitrogen Loading Offset

Regarding item (b) above, it is the Alliance's view that developers should not be granted a waiver from providing an offset just because a sewer is planned within five years. In watersheds where there is either an approved Watershed Permit (therefore deemed consistent with the 208 plan), or an approved nutrient management plan that has been deemed consistent with the 208 plan, the developer should be required to put in place nutrient management measures that are consistent with the approved plan, regardless of the implementation timeline for the applicable measures.

Regarding item (c) above, the Alliance believes that a developer should only be allowed to meet the nitrogen reduction requirement via a monetary offset in instances where the town concurs that that a monetary offset method is advantageous to the community, is consistent with the approved Watershed Permit plan, and is of an appropriate amount.

The Commission has clarified that a monetary offset may be provided by a DRI proposed within a certain Placetype. The use of the money would not be restricted to that Placetype, but the money would need to address the embayment to which the project contributes. It is the Alliance's view that the offset approach to be used (fee, sewer, actual in-place offset) should be selected by the town, not the developer. Towns should be allowed to use any funds collected within an allowed placetype anywhere within the entirety of the watershed. Furthermore, developers should not be allowed to absorb a larger amount of the town's planned growth than has been approved by the town. If a town has a plan in place that accommodates future nitrogen loads, it would be helpful if that future load increment is identified in advance by the town.

The Commission has clarified that the accommodation of nitrogen loads of DRI projects through local approved plans assumes that the plan identifies areas for wastewater collection infrastructure. If attainment of nitrogen limits is through non-traditional methods, then the capacity of that method to reduce new loads will be factored in.

The monetary-offset calculation described in the draft Technical Bulletin is consistent with the removal of 100% of future nitrogen loads (to the extent future development is reviewed by the Commission). Existing loads that exceed MEP thresholds will still need to be met, i.e. above and beyond the offset load, and future loads from development not reviewed by the Commission will be the responsibility of the towns through their Local Comprehensive Pplan, zoning regulations and wastewater planning.

Placetypes

The Alliance questions the identification and boundaries of placetypes. For example, if an area is not designated as a particular placetype, is a developer to propose a placetype? Is a developer able to propose reclassification of placetype if the proposed development results in significant changes?

The Commission has explained that three of the eight placetypes have defined boundaries: Natural Areas, Community Activity Centers, and Industrial Activity Centers. These placetypes are defined by existing characteristics through a GIS-based analysis. This analysis will be revisited within 24-36 months from the effective date of the RPP, or as needed based on available data and changes to existing conditions. The identification of placetypes does not eliminate the need for specific visioning and planning by the communities both within these areas and beyond. For example, while the identification of the Community Activity Centers can help serve as an element or foundation for a community to plan for the area, it does not determine what the vision for the area is or should be. The Alliance concurs that specific visioning for these and other areas should be conducted by the communities, with help from the Commission if desired. Placetypes are in important issue, and town planning boards should have input into their designation.

Offset Calculation

When an offset fee is allowed, it is to be computed as “up to \$8,290 per kilogram”. The Bulletin should be clarified as to the units. It is intended that this dollar amount be applied to one year of expected nitrogen load, and therefore should be expressed as “\$8,290 per kilogram per year.” Alternatively, it could be set as \$500 per kilogram applied to each and every kilogram released over the life of the project. The one-time fee is better from a practical perspective. The offset is applied to the project’s annual load.

The Alliance proposes that the monetary offset maximum amount should be increased to match the documented costs per kg per year in the Alliance towns. The documented costs based on the approved Watershed Permit is approximately \$13,000 per kg per year of nitrogen. The

Commission has suggested that during the public hearing process the towns could request that the Commission require that the developer include additional nitrogen removal measures. While the Alliance understands the Commission's desire to provide developers with the certainty of an upside fee, the maximum should reflect the costs incurred by the towns. Moreover, the towns should not have to negotiate with the developer for additional nitrogen reduction measures beyond the \$8300 per kg per year to make up the difference between that amount and the actual costs of nitrogen removal.

According to the Commission, collected offset funds are placed into a reserve account and made solely available for the town(s) to use to address the specific surface waters impacted by the project. Typically, the Commission must first accept the funds as proof of satisfaction of a DRI condition before a developer can obtain a certificate of compliance from the Commission, and then obtain local permits. Cape towns are all aware of DRI mitigation funds held in the County reserve account for specific purposes within their town. With respect to the amount of the offset, the Commission always accepts offered input from towns regarding all aspects of DRI review, including conditioning, and approval or denial.

It is the Alliance's view that towns should have the option of having monetary offset funds paid to the town directly, provided that they have established a mechanism to receive the funds with the appropriate restriction placed to ensure the use of the funds only for nitrogen reduction in the given watershed.

Thank you for your consideration of these comments.

Sincerely,



Allin P. Thompson, Jr.
Chairman
Steering Committee

Cc: Erin Perry
Watershed Work Group
Brian Dudley