

**BYLAWS OF THE CAPE COD AND ISLANDS WATER PROTECTION FUND
MANAGEMENT BOARD**

ARTICLE I

Name and Offices

Section 1.1. Establishment. The Cape Cod and Island Water Protection Fund Management Board (the “**Board**”) is established by M.G.L. c. 29C, §§ 19-20 (the “**Act**”).

Section 1.2. Offices. The Board has its principal office at the office of the Cape Cod Commission, 3225 Main Street (Route 6A), Barnstable, Massachusetts 02630

Section 1.3. Official Website. The Board shall maintain a website to share information that the Board relevant to its purpose and procedures. The Board shall post the public notices and agendas for all public meetings on the website. Aside from posting these notices and agendas, the Board has complete discretion to determine what information to publish on the website.

ARTICLE II

Purpose and Powers

Section 2.1. Purpose. The purpose of the Board is to fulfill the statutory duties set forth in the Act. Those duties include:

- (a) Ensuring that money from the Cape Cod and Islands Water Protection Fund established by the Act (the “**Fund**”) is spent only for the purposes set forth in M.G.L. c. 29C, § 19;
- (b) Determining the method for subsidy allocation, including, but not limited to, an equitable distribution among participating municipalities consistent with revenue deposited into the Fund from each municipality that is a member;
- (c) Considering and, where appropriate, approving expenditures and disbursements from the Fund and determining the manner in which these expenditures and disbursements are used.
- (d) Entering into a memorandum of understanding with the Massachusetts Department of Environmental Protection (the “**Department**”) direct the comptroller to transfer an amount not to exceed 10% of the annual revenue deposited into the fund to) 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, Nantucket, and Dukes counties;

- (e) Maintain records of all receipts, expenditures, and disbursements from the Fund, to produce and distribute an annual written report, and to subject its records to an annual audit by an independent certified public accountant, as set forth in more detail in paragraphs 3 through 5 of M.G.L. c. 29C, § 20.

Section 2.2. The Board shall have all powers necessary and convenient to fulfill the purposes described above and any other purpose served by the Act.

ARTICLE III

Members

Section 3.1. Membership and Qualifications. The Act establishes the membership of the Board. The Board consists of one person appointed by the board of selectmen or town council in each municipality that is a member of the Fund. The appointee must be a member of its appointing authority (i.e., Board of Selectmen or City Council), a town manager, a town administrator, or other municipally employed professional staff. The Board also includes three non-voting ex-officio members: the executive director of the Cape Cod Commission, the executive director of the Martha's Vineyard Commission, and the town manager of Nantucket.

Section 3.2. Term. As established by the Act, each member of the Board shall serve a three-year term and shall be eligible to be reappointed for successive terms without any limit as to the number of terms an individual may serve, regardless of whether the terms are successive or intermittent. The Cape Cod Commission shall keep a list of members and the dates on which their terms start and end. Each Board member shall be responsible for providing the Cape Cod Commission with date on which he or she was appointed or reappointed.

Section 3.3. Removal and Resignation. The Board shall not have the power to remove members, who are appointed by the board of selectmen or town council in each member municipality (the "**Appointing Authority**"), but may, by majority vote, recommend to the board of selectmen or town council that its appointee be removed for good cause. If a Board member chooses to resign, he or she must do so by tendering resignation to his or her Appointing Authority.

Section 3.4. Vacancies. Vacancies shall be filled by the Appointing Authority and not the Board. In accordance with the Act, a new Board member shall be appointed to fill the Vacancy for the remainder of the unexpired term of the vacant position.

Section 3.5. Ex-Officio Members.

Discussion Point: What is the roll of three nonvoting, ex-officio members?

ARTICLE IV

Officers

Section 4.1. Chairperson and Vice Chairperson. As required by the Act, the Board shall have a Chairperson and a Vice Chairperson.

Section 4.2. Qualifications.

Section 4.3. Appointment of Chairperson and Vice Chairperson; Vacancies

- Authorize interim chairs
- Describe method of appointing Chairperson and Vice Person
- Describe method for filling vacant Chair or Vice-Chair office.

Section 4.4. Term

- Term served by Chairperson and Vice Chairperson? [The Act leaves this to the Board to decide.]

Section 4.5. Duties of Chairperson.

Discussion Point: Do you want to give the Chairperson some guidance by describing his or her duties?

Section 4.6. Duties of Vice Chairperson. In the event that the Chairperson is not present or the office of Chairperson is not filled, then the Vice Chairperson shall act as the Chairperson.

Section 4.7. Other Officers. The Board shall have the authority to appoint additional officers by a majority vote.

Discussion Point: Do you want to create and require any officers not mandated by the Act?

Section 4.8. Removal and Resignation. By a majority vote, the Board shall have the power to remove the Chairperson, Vice Chairperson, or any other officer in the event that the officer is not fulfilling his or her duties under these Bylaws.

ARTICLE V

Committees and Designees

Section 5.1. Power To Appoint Committees. The Board shall have the power to appoint committees, subcommittees, advisory boards, and other panels consisting of a subset of the Board members as necessary to fulfill its responsibilities under the Act. **[Recommended]** Any committees or other panel shall consist of no less than five and no more than seven members of the Board. The Board may appoint alternate members to fulfill the responsibilities of a member of a committee or other panel if that member is unavailable to act on a matter.

Section 5.2. Standing Committees. The Board shall appoint and maintain the following committees:

- a. Executive Committee.

Discussion Point: An Executive Committee is recommended. Suggested membership is Chairperson, Vice Chairperson, and through other Board members. What powers should the Executive Committee have to act without approval from the full Board?

- b. Bylaws Committee. The Bylaws Committee shall consist of ___ members and shall be responsible for preparing and recommending Bylaws for Board approval with a majority vote. The Bylaw Committee shall reevaluate the Bylaws no less than once every two years.

Discussion Point. Any other standing committees? Regulations Committee? Finance Committee? Monitoring/Evaluating/MOU Committee? [Under the Act, the Board may enter into an MOU with the Department to direct funds toward contracts with planning agencies and certain other organizations to evaluate management measures, and so on.]

- c. Powers of Committees. With the exception of the Executive Committee, which shall have the powers enumerated in Section 5.2.a., the powers of any committee, subcommittee, advisory board, or other counsel shall be limited to holding public meetings and hearings, investigating and research matters within their scope, and making recommendations to the full Board.
- d. Designees. The Board may appoint one or more Board members or other persons, including Cape Cod Commission staff, to act as a designee for purposes of attending meetings or other events and being a point of contact with governmental authorities or other organizations.

ARTICLE VI

Action by Board; Meetings

Section 6.1. Official Actions. Except as stated in other provisions of these Bylaws, the Board will take official actions solely through a majority vote of a quorum of the Board at a public meeting.

Discussion Point: Any action requiring a supermajority vote? General rule is that unless an act requires a supermajority vote, the majority of a quorum of a public body can act; it is unclear whether a public body can adopt a different requirement where the statute does not address the required vote; if this is important to the Board counsel should look into it.

Section 6.2. Actions Taken without a Board Vote.

Discussion Point: Recommended that some actions can be taken by an officer, by the Executive Committee, or by Cape Cod Commission staff. This needs to be spelled out.

Section 6.3. Quorum. Unless otherwise determined by a court or the office of the attorney general, non-voting, ex-officio members of the Board do not count for purposes of having a quorum.

Section 6.4. Remote Participation. [Recommended] In accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, and the regulations at 940 CMR 29.10, as both may be amended from time to time, Board members shall be allowed to participate remotely in meetings of the full Board and of any committees or other panels.

Discussion Point: Board and adopt limits on remote participation beyond those imposed by the regulations, e.g., number of times in an FY one member participates remotely. Any additional limits here?

[Note: the majority of the Board will have to approve this – probably by separate vote rather than simply adopting the Bylaws]

Section 6.5. Participation by Members in Matters Involving their Appointing Authority.

Discussion Point: Nothing clearly prohibits a member from voting on this type of matter. It may be an appearance of conflict, and we may want to get SEC opinion that there is no need to make a written disclosure is not necessary each time a Board member votes on an application by the municipality it represents. The Board may nonetheless adopt its own procedures or limitations – e.g., require disclosures, affirmations that member is acting in an unbiased, official capacity, and so on.

Section 6.6. Notice of Meetings. [Recommended] In accordance with 940 CMR 29.03(3)(b), the Board will publish notice of its meetings on its website as its official notice posting method. The Board shall file and post notice of its website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

[Note: the majority of the Board will have to approve this – probably by separate vote rather than simply adopting the Bylaws]

ARTICLE VII

Administration, Finance, and Record-Keeping

Section 7.1. Fiscal Year. The Board's fiscal year will be coterminous with the fiscal year of the Commonwealth of Massachusetts.

Section 7.2. Official Records. The official records of the Board will be maintained by the Cape Cod Commission at the Commission's offices. The records will be retained and destroyed in accordance with applicable law for regional public bodies.

Section 7.3. Annual Report. The Cape Cod Commission shall be responsible for preparing the annual written report required by the Act for review and for submitting the annual report to the chairs of the joint committee on environment, natural resources and agriculture and to each

representative and senator who represents at least one municipality in the county of Barnstable, the county of Dukes County or the county of Nantucket (collectively the “**Report Recipients**”). As required by the Act, the annual report shall include, but not be limited to: (i) an account of revenue generated under section 3C of chapter 64G; (ii) itemized expenses of the board; (iii) summaries of the projects funded through the Fund; (iv) an account of administrative expenses of the Cape Cod Commission and the Martha’s Vineyard Commission; and (v) 5-year projections relative to expected revenue and upcoming projects. **The [“full Board” or the “Executive Committee”?] shall review and approve the annual report prior to its submittal to Report Recipients.**

[Note: this provision assumes proposed amendments to the Act will pass.]

Section 7.4.

Section 7.5. Annual Audit. The Cape Cod Commission shall be responsible for making arrangements for an annual audit by an independent certified public accountant, as required by the Act, and for submitting a copy of the annual audit report to the chairs of the joint committee on environment, natural resources and agriculture and to each representative and senator who represents at least one municipality in the county of Barnstable, the county of Dukes County or the county of Nantucket collectively the “**Audit Recipients**”). . **The [“full Board” or the “Executive Committee”?] shall review and approve the audit report prior to its submittal to Audit Recipients.**

[Note: this provision assumes proposed amendments to the Act will pass.]

Section 7.6. Reimbursement of Cape Cod Commission Expenses. By a majority vote, the Board may compensate the Cape Cod Commission for administrative and technical support and associated costs provided to the Board.

ARTICLE VIII

Execution of Instruments

Section 6.7. Authorized Signatories. The Chairperson and the Vice Chairperson shall have the authority to execute agreements and other documents on behalf of the Board

Discussion Point: Authorize anyone else? Cape Cod Commission?

Section 8.1. Designees. **[Recommended]** By majority vote, on either a general or a case-by-case basis, the Board may designate other persons to execute agreements and other documents on its behalf by majority vote. The Cape Cod Commission shall include any such designation in the Board’s official records.

Section 8.2. Electronic Signatures. Wherever a written instrument must be executed, an electronic signature, to the extent permitted by applicable law, shall be deemed a written signature.

ARTICLE IX

Regulations, Forms, and Fees

Section 9.1. Regulations. **[Recommended]** The Board shall adopt regulations governing the process for submission and review of applications for subsidies, the method of allocating subsidies, and other matters that the Board, in its discretion, deems necessary or convenient to fulfilling the purposes of the Act.

Discussion Point: Does the Board want to spell out any procedural requirements for adopting regulations? Public hearing in one location, etc.?

Section 9.2. Forms and Fees. **[Recommended]** The Board may require an applicant for subsidies to apply using a form created by the Board, and, in its discretion, may charge fees for processing and reviewing an application in accordance with a published schedule of fees, including the costs of retaining a consultant to review an application.

ARTICLE XI

Code of Conduct

Section 11.1. Non-Discrimination. In all of its dealings, the Board shall discriminate against any individual or group for reasons of race, color, creed, sex, age, culture, national origin, marital status, sexual preference, mental or physical handicap, or any category protected by Massachusetts or federal law.

Section 11.2. Open Meeting Law Training and Conflict of Interest Training. The Board members shall comply with all training requirements under the Open Meeting Law, G.L. c. §§18-25, and the Conflict of Interest Law, G.L. c. 261A. The Cape Cod Commission shall be responsible for informing Board members about their training requirements and including all certificates and other required records of this training in the official records of the Board.

Section 11.3. Conduct of Official Business.

Discussion Point: Any statements about how the Board will conduct business? Courtesy toward each other? Courtesy toward public? Attendance at meetings? And so on. Reason is to set expectations and a basis on which to report someone not meeting expectation to the appointing authority, or to remove a chair, and so on.

Section 11.4. Recourse for Violations of Code of Conduct

Discussion Point: Any repercussions for misconduct. Presumably only the appointing authority can remove a board member, but the Board can make requests etc.? The Board retains broad power over how to deal with its officers, committees, etc.

ARTICLE XII

Effective Date; Amendments

Section 12.1. Effective Date. These Bylaws shall take effect as of the date on which a majority of the Board votes to adopt them.

Section 12.2. Amendment and Repeal. These Bylaws may not be amended, repealed, or altered except by a majority vote of the Board.

ARTICLE XIII

General Provisions

Section 13.1. Conflict with Applicable Law. These Bylaws are adopted subject to any applicable law. Whenever these Bylaws may conflict with any applicable law, the conflict shall be resolved in favor of the law.

Section 13.2. Invalid Provisions. If any one or more of the provisions of these Bylaws, or the applicability of any provision to a specific situation, is invalid or unenforceable, the provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of these Bylaws and all other applications of any provision will not be affected.