

MEETING MINUTES
CAPE COD AND ISLANDS WATER PROTECTION FUND MANAGEMENT BOARD
BYLAWS AND REGULATIONS COMMITTEE
April 14, 2020 MEETING

Committee Members:

Rae Ann Palmer	Truro	Absent
Mark Ells (Chair)	Barnstable	Present
Andrew Gottlieb	Mashpee	Present
Ben deRuyter	Brewster	Present
Don Howell (Vice Chair)	Harwich	Present

Others Present:

Kristy Senatori	Cape Cod Commission
Erin Perry	Cape Cod Commission
Gail Coyne	Cape Cod Commission
Sarah Colvin	Cape Cod Commission
Maria Pinaud	MA Dept of Environmental Protection
Brian Dudley	MA Dept of Environmental Protection
Nate Keenan	MA Clean Water Trust
Gareth Orsmond	Pierce Atwood

Summary of Discussion/Action Taken: Members reviewed and discussed a draft outline of regulations for the Cape Cod and Islands Water Protection Fund. Members agreed to changes in some sections and agreed to reconvene to continue discussions.

Mark Ells called the meeting to order at 2:11 pm and announced that the meeting is being held virtually as allowed by Governor Baker's Executive Order suspending certain provisions of the Open Meeting Law dated March 12, 2020. He also noted that roll call would be taken and that all votes taken would need to be done by roll call. He then called the roll for attendance, which is noted above.

Mr. Ells moved to the next item on the agenda, approval of the February 27, 2020 draft meeting minutes. Andrew Gottlieb moved to approve the minutes as presented. Ben deRuyter seconded. Ells, yes; Gottlieb, yes; deRuyter, yes; Don Howell, abstain.

Mr. Ells asked Kristy Senatori to facilitate the discussion on the drafted regulations. Ms. Senatori introduced Gareth Orsmond, author of the draft regulations, and noted he would provide an overview and walk through the regulations.

Mr. Orsmond noted that the draft includes points for discussion throughout. He also acknowledged the expertise at the Massachusetts Department of Environmental Protection

(DEP) and the Massachusetts Clean Water Trust (Trust) as helpful resources in drafting. He asked the committee if first outlining the State Revolving Fund (SRF) timeline on the Intended Use Plan (IUP) would be helpful and the committee agreed.

Mr. deRuyter asked if it has been determined that the Cape Cod and Islands Water Protection Fund (Fund) will be tied to the SRF process, or if that is a decision the Fund Management Board needs to make. Mr. Orsmond stated that both the Trust and DEP read it that way and it is also his own opinion that the Management Board is limited to those projects that qualify for SRF. The Management Board makes decisions on distribution of funds to SRF financed projects. Mr. deRuyter followed up to say that it is in the communities' collective best interest to enact regulations that encourage all towns to remain participants in the Fund for the long-term. He suggested that the committee develop regulations that lend themselves to giving the most opportunity to communities of different types and with different problems.

Don Howell acknowledged that communities not currently pursuing SRF loans are concerned about not getting subsidies from the Fund. Mr. Gottlieb responded that the committee has spent a couple of meetings discussing the variety of projects that are eligible for SRF.

Mr. Ells noted that these are valid comments and suggested going through the draft as prepared. Ms. Senatori noted that she was glad to learn that almost all projects towns are looking at are eligible for SRF and suggested Mr. Orsmond continue.

Mr. Orsmond said that each year DEP issues a solicitation for applications for the Intended Use Plan (IUP) in the summer. The draft IUP project listing is issued in December. A public hearing is held in January, followed by a 30-day public comment period. The final IUP is published in March, which includes the projects that have received conditional commitments for loans. To remain eligible, local funding appropriations must be made by June 30th and loan applications must be submitted by October 15th. Maria Pinaud added that the first contract must be signed by the following June 30th, one year after the funding appropriation deadline.

Mr. deRuyter ask if towns can achieve that timeline for spring town meeting warrants and Mr. Howell noted that Harwich appropriated funds a full year prior to the final IUP. Because they used an estimate, they ended up falling short by more than 30% of the actual project cost. Ms. Pinaud noted that the draft IUP is issued in December and towns can use that to prepare for spring Town Meeting. In response to a question from Mr. Gottlieb, Ms. Pinaud confirmed that the communities included in the draft IUP very rarely are removed from the final project listing. Nate Keenan also noted that all the dates mentioned are deadlines. Projects can move more quickly if towns choose.

Mr. Orsmond asked if members had comments on the introduction and purpose.

Mr. Howell asked for confirmation that projects need to go through the SRF process, not just that they must be eligible to go through the process. Ms. Senatori confirmed projects need to

go through the SRF process. Mr. Orsmond also noted that this shouldn't be viewed as a limitation. DEP and Trust staff have offered towns assistance with this process.

Mr. deRuyter asked for confirmation that SRF is only available to mitigate existing wastewater flow and nitrogen loads. Ms. Pinaud said that SRF is used to solve existing problems, not to create new systems.

Mr. Ells asked if a project that includes planned growth could be eligible, provided its part of a larger plan for the community? Brian Dudley noted that approved plans do have to contain growth management plans and a reasonable allowance for growth. Mr. Gottlieb noted that projects that include both new development and mitigation of existing flows can be eligible.

Mr. Ells asked if Section 29C refers specifically to Clean Water funds and that these are not water supply related. Ms. Senatori confirmed. He also asked if the fourth paragraph describing the types of projects eligible was necessary. Ms. Senatori noted it was added to make clear the extent of project types eligible for SRF.

The committee moved on to the definitions section. Mr. Ells noted that the definition of pre-existing debt includes the island communities, in anticipation of them joining, which may be confusing. Given that this definition comes straight from the act establishing the Fund, he did not suggest amending the definition in the regulations.

Ms. Senatori reviewed section 3, form of subsidy, with the members and asked if there were questions.

Mr. Gottlieb noted that the assumption as the idea of the Fund was working through the legislature was that it would be the debt service model. This spreads out the subsidy over the life of the debt and allows the Management Board to make money available to more projects. This will encourage towns to take on more water quality projects, as there will be less competition for the funds. The debt service model will better fulfill the purpose of the legislation that created the Fund.

Mr. Howell and Mr. deRuyter agreed that it is better to fund more projects.

Mr. deRuyter asked if the terms of loans vary and Mr. Keenan said that the Trust is flexible with terms and duration depending on the wishes of the community.

Mr. Ells noted his concerns about the reliability of the revenue stream over a long period of time. It is a marketplace that didn't exist five years ago, and the economy and other factors affect it. If this marketplace doesn't exist and the Management Board uses the debt service model, communities will be responsible for the entire bill, including the subsidy. Mr. Gottlieb agreed and noted that nothing is a guarantee. The debt service model puts some risk on communities as they are servicing a commitment to the Trust. The Management Board could mitigate risk by developing policies such as paying for existing commitments before allocating

money to new projects and, if revenues decline, the Management Board would not commit to new projects.

Mr. Ells asked Mr. Keenan how the debt service model is viewed. Mr. Keenan said the Trust doesn't use this model because communities would owe what was obligated and in the event that the funds aren't available, the Trust doesn't want to have to tell those communities they won't get the funds they were expecting.

Mr. Gottlieb noted that if the Management Board decides to use principle subsidy, the rate of subsidy will be relatively low because the Management Board will try to spread the funds to as many communities as possible. Certainty will result in lower overall subsidy than the debt service model. Mr. Ells said that, should the Management Board use the debt service model, towns will need to know they carry some risk if revenues are impacted.

Mr. Howell agreed that the debt service model is the best way to keep more towns engaged but stressed that a stabilization fund would be needed to address circumstances where there was a drop in receipts.

Adam Turner asked if the Management Board could have the ability to use both methods. The committee members agreed it was better to have clarity in the regulations about the method of subsidy.

Mr. Ells noted that the contents of section 5 rely on the decision made in section 3, regarding the form of the subsidy.

The committee agreed to move on to section 4. Mr. Ells asked why towns must opt out rather than opt in to receiving a subsidy. Ms. Senatori noted that it's more likely towns will opt in so that is where we started. Mr. Orsmond noted that to get to the point of being eligible for a subsidy, towns have made a big commitment going through the IUP process and they are likely to want to additional subsidy. Members agreed to leave this section as written.

Mr. Howell suggested leaving section 5, determining allocations, for the next meeting and the committee agreed.

The committee moved to a discussion of section 6. Mr. Gottlieb asked whether there is a deadline in the SRF process that might serve as the indicator that a community has met all the requirements and they are eligible for the Fund subsidy. Ms. Pinaud noted that the Project Regulatory Agreement (PRA) would work as that indicator.

The members tabled section 7, as it relies on the model chosen for the form of subsidy.

The committee moved to a discussion of section 8, regarding calendar year allocations. Mr. Gottlieb suggested revising this section to state that the Management Board will establish an annual percentage for carry over. Mr. deRuyter followed up stating that if the debt service model is chosen, the Fund should maintain a healthy balance. Mr. Gottlieb suggested articulating the process by which the Management Board will reserve funds.

By next meeting committee members requested that the concept around management of funds be expanded to address reserves. If the debt service model is chosen, more language will be needed.

Mr. Ells offered to bring in Mark Milne, Barnstable Finance Director, and bond counsel if needed in order to pursue and understand details of the debt service model.

Commission staff agreed to make edits to sections 6.2 and 8.1 prior to the next meeting, which is scheduled for Thursday, April 23, 2020.

Members unanimously voted to adjourn, by roll call vote, at 4:02 pm.