

MEETING MINUTES
CAPE COD AND ISLANDS WATER PROTECTION FUND MANAGEMENT BOARD
BYLAWS AND REGULATIONS COMMITTEE
July 29, 2020 MEETING

Committee Members:

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|-------------------------|------------|--------------------------------|
| Rae Ann Palmer | Truro | Present (departed at 12:04 pm) |
| Mark Ells (Chair) | Barnstable | Present (arrived at 11:10 am) |
| Andrew Gottlieb | Mashpee | Present |
| Ben deRuyter | Brewster | Present |
| Don Howell (Vice Chair) | Harwich | Present |

Others Present:

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| Kristy Senatori | Cape Cod Commission |
| Erin Perry | Cape Cod Commission |
| Gail Coyne | Cape Cod Commission |
| David Still | Cape Cod Commission |
| Nate Keenan | MA Clean Water Trust |

Summary of Discussion/Action Taken: The Cape Cod and Islands Water Protection Fund Management Board Bylaws and Regulations Committee reviewed and discussed revised draft regulations that incorporated a 4-year principle forgiveness subsidy model as approved at its July 7, 2020 meeting.

Don Howell called the meeting to order at 11:08 am 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. Mark Ells joined at 11:10 and resumed his role as chair. Mr. Ells called the roll for attendance, which is noted above.

Mr. Ells moved to the next item on the agenda, approval of the July 7, 2020 meeting minutes. Ben deRuyter moved to approve the minutes as presented, seconded by Andrew Gottlieb. deRuyter, yes; Gottlieb, yes; Palmer, yes; Howell, yes; Ells, abstain.

Mr. Ells moved to the next item on the agenda, review of the draft Cape Cod and Islands Water Protection Fund regulations. He asked Kristy Senatori to review the draft with members.

Ms. Senatori thanked Nate Keenan from the Massachusetts Clean Water Trust for his presentation at the last meeting.

Ms. Senatori noted that the draft regulations are shared on the screen and she would walk through section by section. She asked for comments on section 1, introduction and purpose, which is largely the same as previous versions. No members offered comments on section 1.

Ms. Senatori then moved to section 2, definitions, and noted that some minor amendments were made to definitions. Erin Perry noted that two additional definitions were added – one for “Cape Cod Commission” and one for “Section”. No members offered comments on section 2.

Ms. Senatori moved to section 3, form of subsidy. Mr. deRuyter asked about the changes made to section 3.2, which speaks to adjusting the final subsidy payment to reflect final costs. He asked if that means that the subsidy will be amended to address final costs, or is that something the Management Board will take up. Mr. Gottlieb said that the contingent approval for subsidy is based on costs in the Intended Use Plan (IUP). The final costs often vary from the cost estimate in IUP and therefore, in order to meet the percent subsidy voted by the Management Board, that final payment may need to be adjusted. Mr. deRuyter noted that the fourth payment could be dramatically different than originally anticipated.

Mr. Keenan added that the Clean Water Trust would prefer to disconnect the percent subsidy from the IUP cost and tie it to the Project Regulatory Agreement (PRA). A broad commitment could be made upon issuance of the IUP, with a vote of the Management Board on the percent subsidy at the time the PRA is executed. Mr. Keenan also noted that he feels section 3.2 is in conflict with section 5.3, which states that the award will not be changed unless the project no longer qualifies. Mr. Keenan also noted that if the fourth payment varies, that will throw off projections for the fund balance.

Mr. Gottlieb added that it is important to give towns the assurance that they are expecting a certain percentage of funds from the Water Protection Fund and that they can go to Town Meeting with that. If the award is tied to the PRA, that can't happen, because Town Meeting occurs about a year before that. He also added that, if we wait until the PRA, we don't have four years from the time of PRA to the time the Trust permanently finances. Mr. Keenan said that is not something the Board has to be concerned with.

Mr. Ells asked if a not-to-exceed cost could be used, such as a percentage of the project cost, not to exceed a set amount. The regulations could also allow for a reconsideration if the actual costs significantly exceed the IUP costs. Mr. Keenan agreed that is an option. Mr. Gottlieb said that, in that case, section 5.3 could be worded that the subsidy is a fixed number. If the project costs go up, that risk is on the town rather than the Water Protection Fund.

Mr. Ells asked if the members are comfortable using a percentage subsidy rather than a fixed cost. Mr. Gottlieb suggested funds could be set aside in the reserve to accommodate for fluxes in the project costs. Those funds could then be released at a later date, when they are not needed. Mr. Howell asked if the actual percent needs to be codified in the regulations. Mr. Gottlieb and Mr. Ells suggested that should be determined on an annual basis.

Mr. deRuyter asked if the suggestion is that the subsidy percentage is applied to each project on the IUP, regardless of the cost of the project. He noted that he does not agree with that approach. Mr. Gottlieb said that has been his understanding all along. Mr. deRuyter said that a fixed dollar amount would be his preferred approach. Mr. Gottlieb added that would put the

Management Board in a position where it needed to weigh the merits and values of projects based on criteria that would need to be established.

Mr. Ells asked for a point of clarification around the percent subsidy. He noted that the regulations do not state that the percentage is not a uniform percentage in any given year. He added that the Management Board could look at individual projects and apply a percentage to each project. Ms. Senatori said that the original intent was to apply the same percentage to all projects in a given year, with the flexibility to change the percentage on an annual basis.

Mr. Gottlieb reiterated his concern about applying different percentages to different projects in a given year. Criteria would need to be included in the regulations to do that. Mr. Ells added that those criteria could have to do with the scope and cost of the project. Mr. Gottlieb expressed concern that the decisions could be seen as arbitrary.

Mr. Howell brought up the contributions from the various towns to the Water Protection Fund from short-term rentals. Mr. deRuyter said that it will be difficult to go back to his selectboard and town meeting and show how much they are putting into the Water Protection Fund and how little subsidy they are getting back. Mr. Gottlieb clarified that the town is not putting money into the Water Protection Fund, but that the funds are coming from a new source of revenue specifically for the Water Protection Fund.

Mr. Ells summarized that, in section 5.3 we reference the percentage allocation of subsidy to projects on the IUP and we are applying that percentage to the cost in the PRA. That percentage will be utilized by the Trust in subsidizing the project. We recognize that number can change and the Management Board needs to anticipate that. Mr. Ells said that the members need to tighten this up and move it to the full Management Board.

Mr. deRuyter noted that the regulations as drafted do not call for a percentage that is applied across all projects. Mr. Ells agreed. Mr. Howell suggested adding language that clarifies a percentage is determined by the Management Board on annual basis. Mr. Gottlieb suggested language for sections 3.2 and 5.3 to clarify this approach.

Mr. Howell suggested that the Commission draft final language and the committee come back to review final language. The Commission staff and committee members agreed.

Members agreed to move on to other sections of the regulations. Prior to moving on, Mr. deRuyter asked if he could share a statement from Ms. Palmer, who had to drop off the call at noon. She wanted to communicate for the record that she would vote no on the regulations as presented today. Mr. Howell and Mr. Ells suggested waiting on the final language before discussing a vote on the regulations.

Ms. Senatori moved to section 4, qualifications for subsidy. Members did not offer comments on this section.

Ms. Senatori moved to section 5, board meeting to determine subsidy allocation, nothing members had already discussed this in detail related to the discussion on section 3. Members did not offer additional comments on section 5.

Ms. Senatori moved to section 6, subsidy commitment and approval. Mr. Gottlieb suggested adding the specificity related to the percent subsidy to section 6.1. He also noted that section 6.1 gives towns the detail they need for town meeting.

Ms. Senatori moved to section 7, conditions for subsidy; breach of conditions. Members did not offer additional comments on section 7.

Ms. Senatori moved to section 8, management of use of water protection fund. Mr. Keenan suggested that the regulations may be getting too into the weeds actually setting up a reserve fund. He suggested that laying it out as a separate fund may be more complicated than is necessary. No money will leave the fund unless directed by the Board. Mr. Gottlieb said the idea is to have some cushion to deal with variability in income and we could just refer to it as a reserve and is made up of unallocated funds. Members agreed that some cushion needs to be maintained and to refer to section 8.1 as reserve, without creating a specific fund.

Ms. Senatori moved to section 9, withdrawal from Water Protection Fund. Members did not offer comments on section 9.

Members discussed a next meeting date of either Tuesday August 4, 2020 or Wednesday August 5, 2020 at 1pm. Commission staff agreed to confirm with the committee after coordinating with Ms. Palmer, who had to leave the meeting early.

Mr. Howell moved to adjourn, seconded by Mr. deRuyter. deRuyter, yes; Howell, yes; Gottlieb, yes, Ells, yes.

Materials Used/Received: Draft 2020-07-07 Cape Cod and Islands Water Protection Fund (CCIWPF) Bylaws and Regulations Committee minutes; Draft 2020-07-27 CCIWPF Regulations