

MEETING MINUTES
CAPE COD AND ISLANDS WATER PROTECTION FUND MANAGEMENT BOARD
EXECUTIVE COMMITTEE
January 18, 2024 MEETING

Committee Members:

Mark Ells (Vice Chair)	Barnstable	Present (arr. 9:09am)
Peter Lombardi	Brewster	Present
Bud Dunham	Sandwich	Present
Kevin Galligan (Chair)	Orleans	Present
Jacqueline Beebe	Eastham	Absent

Others Present:

Kristy Senatori	Cape Cod Commission
Erin Perry	Cape Cod Commission
David Still	Cape Cod Commission
Michele White	Cape Cod Commission
Robert Whritenour	Yarmouth Town Administrator
Andrew Gottlieb	Association to Preserve Cape Cod

Summary of Discussion/Action Taken: The Cape Cod and Islands Water Protection Fund Management Board Executive Committee (Executive Committee) approved meeting minutes from September 7, 2023, and discussed how to pursue additional revenue for the Fund.

Materials Used/Received: PowerPoint presentation prepared by the Cape Cod Commission, dated January 18, 2024; draft minutes of Executive Committee meeting on September 7, 2023

Chairman Kevin Galligan called the meeting to order at 9:06am. He announced that the meeting is being held virtually, with members of the Cape Cod and Islands Water Protection Fund (CCIWPF, or Fund) Executive Committee participating remotely, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain Covid-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, as further amended by Chapter 2 of the Acts of 2023. He called the roll for attendance, which is noted above.

Approval of Minutes

Mr. Galligan called for discussion of draft meeting minutes of the Executive Committee meeting on September 7, 2023. Peter Lombardi made a motion to approve the minutes; Bud Dunham seconded the motion. A roll call vote on the motion was called: Lombardi, yes; Dunham, yes; Galligan, yes.

Draft 2024 Clean Water Intended Use Plan

Mr. Galligan called for discussion on the draft 2024 Clean Water Intended Use Plan issued by the Massachusetts Department of Protection.

Kristy Senatori, Executive Director of the Cape Cod Commission (Commission), said there are eight towns with a total of 13 projects listed on the draft 2024 Intended Use Plan (IUP). In 2018, the financial model anticipated \$60 million in project costs per year. Last year, the project costs were re-evaluated and updated to \$125 million annually based on past IUPs and information provided by towns on upcoming projects.

The 2024 IUP has approximately \$248M in projects costs, which is a significant increase from what was anticipated. Some of the projects listed were not expected, so the more information towns can provide to help with predictions is helpful. She said projects on the 2024 IUP are not able to be funded at 25% and Commission staff are working with PFM Financial Advisors (PFM) to identify how much additional revenue is needed to maintain the 25% subsidy for 2024 projects and those through the decade.

She reviewed the financial model assumptions. One is that revenue will remain consistent with projections and revenue has been approximately \$22M per year. Due to increased project costs, the model now assumes project costs of \$350M for 2025-2029. She reminded members that American Rescue Plan Act (ARPA) funds from the Clean Water Trust (CWT) were used to increase the CWT subsidy for 2021 and 2022 projects to 15%, thereby reducing subsidy from the Fund to 10% for those years, which maintains a total 25% subsidy for those projects. She also reminded members they voted to reduce the annual set-aside to \$500,000 annually through 2027; it will return to 10% of revenues thereafter. Lastly, she said the model assumes that subsidy transfers are made from the Fund to the CWT at the end of the fiscal year, per request by the CWT.

She said there is a need for an influx of funds to support 2024 IUP projects and beyond and there is a significant amount of money that would be needed to support the Fund throughout the decade.

Mr. Lombardi asked if the \$350M in assumed project costs are for each of the following five years. Ms. Senatori said yes.

Mr. Galligan asked how likely \$350M in project costs may be. Ms. Senatori said it is likely based on the best information available and it is an estimate that seems reasonable.

Mr. Galligan recognized Andrew Gottlieb, Executive Director of the Association to Preserve Cape Cod.

Mr. Gottlieb said the CCIWPF is an example of good public policy, spurring the kind of activity it was designed to, and in exceeding expectations for advancing water quality projects, the towns have become a victim of their own success. The rate of activity is challenging the ability of the Fund to continue to provide a 25% subsidy, so the goal is to do what we can to maintain the level of subsidy that towns have found important to structure finance plans to move projects forward. He acknowledged the challenging state fiscal situation and said addressing additional revenue to the Fund through a state supplemental appropriation this year is not likely given the current state fiscal situation.

He suggested, for discussion by the Executive Committee, to address the viability of the Fund as a 25% subsidy through the end of this decade could include a two-part strategy. One, to support the projects on the 2024 IUP where towns will go to voters to seek authorization for funding this spring. The second approach would address the years 2025-2029.

For 2024, he said Massachusetts received \$1.1B through the Bipartisan Infrastructure Law (BIL) in capitalization funds for the State Revolving Fund (SRF) program. Federal law requires 49% of that to be awarded through principal forgiveness to disadvantaged communities. The CWT has a process to do that. He said some Cape towns meet the criteria for disadvantaged communities; there is a variable level of principal forgiveness based on how disadvantaged they perceive you to be. The towns of Barnstable, Dennis, Falmouth, Harwich, Mashpee, Yarmouth, and Sandwich have projects on the 2023 or 2024 IUPs and each meet the criteria for designation as a disadvantaged community. An additional 9% principal forgiveness for those disadvantaged communities that have projects on the 2023 and 2024 IUPs would be sufficient to replace money that would otherwise come from the Fund, freeing up additional revenue within the Fund to fully fund projects at 25% in the towns that are not disadvantaged - Wellfleet, Chatham, and Provincetown - that appear on the 2023 or 2024 IUP.

He said this is not unlike what was done with ARPA money from the CWT for projects on the 2021 and 2022 IUPs, where the source of subsidy was different, but the 25% subsidy was maintained. He said the attractiveness of this approach is that it is consistent with federal law requirements, it uses money that is available for this purpose, it does not require legislative action, and can be done administratively by a vote of at least two of the three trustees of the CWT board. He said this is within the discretion of the CWT board and could allow towns to go to town meetings this spring maintaining a 25% subsidy.

The second strategy is for projects on the 2025-2029 IUPs. Based on the assumptions Ms. Senatori reviewed, to support the next five years, each with an assumed \$350M in new project activity, the Fund would need another approximately \$300M to maintain its 25% subsidy level. He said in this environment, that will not come from a general operating revenue allocation. The idea here is to pursue bond funding authorization. He noted this could be pursued in one or more vehicles, including the housing bond bill and/or a future environmental bond bill.

Mr. Galligan called for discussion, noting that comments on the housing bond bill must be submitted by Friday, and some members will be speaking with the Lt. Governor on Saturday.

Mr. Lombardi asked if the strategy for 2024 was reviewed by PFM. Ms. Senatori said yes. Mr. Lombardi asked what amount the CWT would provide through this strategy. Mr. Gottlieb said \$32.5M. Mr. Lombardi asked if the CWT has allocated some portion of its money already. Mr. Gottlieb said they have not. It is in a fund under their control that they are allocating through their existing disadvantaged communities formula: either 3.3%, 6.6%, and 9.9% principal forgiveness to the communities that qualify. As is the case with most state financial aid formulas, the Cape is disadvantaged from the disadvantaged formula because we have relatively low taxes and high property values.

Mr. Lombardi asked if this strategy would require a simple vote by the CWT board. Mr. Gottlieb said yes, two of its three members. He said this idea has not been formally presented to the CWT board. Mr. Galligan noted that board has to commit this funding, and this proposal could assist them in doing so.

Mr. Lombardi asked what the Fund subsidy is for 2023 projects. Mr. Galligan said 25%.

For the medium-term plan, Mr. Lombardi said bond bill authorization is always helpful but asked do we have any sense that there could be money to follow the bond bill authorization. He said the administration's feedback to date has been to look at increasing the rental tax percentage in the legislation or some other local option tax to supplement the Fund. Mr. Gottlieb said that tax would need to be at or around 10% to fully fund these IUP projects.

Mr. Lombardi said it is important to know what that percentage would have to be to express to the administration how politically challenging it would be to take that approach. Mr. Gottlieb referred to data the Chamber of Commerce generated that argued there is an upper limit between taxes and fees in the mid- to upper-teens that would influence buying behaviors. He said adding 10% to the current tax rate would be way above the limit that would begin to see a decrease in the number of transactions, if not the amount of money.

Mr. Lombardi said we need to be prepared to make that argument and expressed concern that the administration may not currently be in a position to provide assistance. Mr. Gottlieb said this is the first time to suggest bonding as an alternative to both local taxes and direct tax revenue. He said there has been a long-standing track record of funding contract assistance, which is a state buy down of the interest rate on the loans, using operating money or capital money.

Mr. Galligan said an increase in the tax surcharge has been raised. The 2.75% tax brings in approximately \$22M annually. We have a \$30M gap in subsidy just this year. To close that gap with a tax increase in an election year seems unlikely. Mr. Gottlieb said changing the legislation to increase the tax is forward looking and would not help towns looking to fund projects this year, which is why a 2 part strategy approach makes sense.

Robert Whritenour asked if there were any insights into a delay from the CWT in determining how principal forgiveness from the BIL funds would be distributed. He also asked to confirm that an increase to the current 2.75% short-term rental tax would need to be increased to approximately 10% to continue to support a 25% subsidy from the Fund. Mr. Gottlieb said yes, for projects on the 2025-2029 IUPs. Mr. Whritenour suggested a combination strategy that included some increase in that tax may provide some additional flexibility for the Fund into the future.

Mr. Gottlieb said the needs may evolve through the legislative discussion process with the bonding strategy. He said the strongest starting point is to deal with this through bonding and let the state remain a partner in solving these wastewater issues that cannot be solved locally, nor should they be. Mr. Gottlieb did not have additional insight as to why the CWT has yet to allocate those funds.

Mr. Dunham said he supports what Mr. Gottlieb suggested and made a motion to support the concept that has been outlined. The motion was seconded by Mark Ells.

Mr. Ells asked to repeat the BIL funds the CWT received to be applied to disadvantaged communities. Mr. Gottlieb said the CWT received \$1.1B in capitalization money, of which 49% has to be used for principal forgiveness in disadvantaged communities. Mr. Ells suggested this strategy could allow the CWT to distribute those funds consistent with that requirement.

Mr. Ells asked if the request should be to apply those funds to two years' worth of projects for 2024 and 2025. He expressed that bonding is uncertain, but the BIL funds are available. Mr. Gottlieb said that could be a possibility.

He said in Barnstable, there are two major areas from a cost standpoint the town is focused on. One is the escalation in construction costs, which are unknown until bids are received. Historically it has been a 4-5% a year increase, but it has been a 70% increase in recent years. Second, anticipated regulations on emerging contaminants will make wastewater treatment more expensive. He suggested when thinking of future project projections, to consider when the cost estimate was made and future discharge permit requirements, which could add tens of millions of dollars to projects. Mr. Ells cautioned about repeated requests to the CWT when it is anticipated that cost increases are likely to be expected.

Mr. Lombardi said the project costs for 2024 IUP projects are known and while projections for 2025 project costs have been updated, that amount is not certain now. He shared Mr. Ells concerns about the timing of bond authorization versus capitalization of those funds and whether that would happen quickly enough to support maintaining the subsidy level next year. Taking this approach with the CWT for 2024 may prime the pump for a future request, but it is important we have a long-term strategy. Mr. Gottlieb said as more towns move to watershed permits the schedule of projects will be more transparent, though all acknowledged those permits will take time to get.

Mr. Galligan reminded members in regard to exploring other revenue sources, of the possibility of island communities joining the Fund. He noted that while those communities would then be contributing to the Fund, which still would not solve the immediate cash need, they would also be eligible for subsidy from the Fund as well.

Mr. Galligan noted a hearing later in the day on the housing bond bill, and that comments on the bill are due tomorrow. Members discussed submitting a comment letter from the Executive Committee requesting bond authorization through this vehicle that will support the infrastructure necessary to create needed housing in appropriate areas. They suggested the comment letter should raise the issue, need, and rationale behind it; how infrastructure is needed to support housing goals; and that housing should be in appropriate areas.

Mr. Lombardi said it should be clear this funding is not tied directly to certain projects that are creating new housing units. Mr. Gottlieb reminded members of limitations within SRF eligibility for qualifying projects that the majority of flow has to be for remedial work. He said 75-80% of flows must be existing for some period of time.

Mr. Gottlieb said APCC will be commenting on the housing bill and the organization does not support a build-your-way-out-of-it approach to the housing needs. Ms. Senatori said the Commission will also be commenting on the bill, with a focus on redevelopment and only new development in activity centers that can support housing. She said Commission staff could work with Mr. Galligan to draft a comment letter to be submitted by tomorrow.

Mr. Dunham amended the original motion to also authorize Mr. Galligan as the Executive Committee chair to sign a comment letter on the housing bond bill on behalf of the Executive Committee; seconded by Mr. Ells.

Mr. Lombardi said it would be helpful to know from PFM what the tax percentage would need to be to sustain projects based on mid-term projections. Ms. Senatori said PFM has looked at that and it would be around 10%.

A roll call vote was made on the motion: Lombardi, yes; Dunham, yes; Ells, yes; Galligan, yes.

Mr. Galligan again thanked Mr. Gottlieb and said he would work with Commission staff to draft a letter to submit on the housing bill.

Mr. Ells made a motion to adjourn; seconded by Mr. Lombardi. Ells, yes; Lombardi, yes; Dunham, yes; Galligan, yes. The meeting adjourned at 10:05am.