REGULATIONS OF THE

CAPE COD AND ISLANDS WATER PROTECTION FUND MANAGEMENT BOARD

Adopted October 7, 2020
Amended January 27, 2021
Amended January 11, 2022
Amended March 22, 2024
Amended April 29, 2026

1.0 Introduction and Purpose.

The Cape Cod and Islands Water Protection Fund Management Board adopts these regulations pursuant to its authority under M.G.L. c. 29C, §§ 19 and 20. The Board[1] was established by the Enabling Act, which added two sections – §§ 19 and 20 – to M.G.L. c. 29C. The Enabling Act creates the Water Protection Fund and makes the Board responsible for determining the method for allocating subsidies from the fund, including, but not limited to, an equitable distribution among participating municipalities consistent with revenue deposited from each municipality into the fund. The Board also is responsible for ensuring that the Water Protection Fund is spent only for the purposes set forth in M.G.L. c. 29C, § 19.

The Board's regulations govern the manner in which the Board awards a subsidy to a water pollution abatement project, as defined in M.G.L. c. 29C and the Department of Environmental Protection's regulation at 310 CMR 44.03. The Board's regulations are to be construed and applied in conjunction with the Clean Water State Revolving Fund (SRF) Program established by M.G.L. c. 29C and 310 CMR 44.00 (DEP Selection, Approval and Regulation of Water Pollution Abatement Projects Receiving Financing Assistance from the State Revolving Fund).

The Board can only use the Water Protection Fund to award subsidies to Participating Local Government Units, *i.e.,* Local Government Units who are members of the Water Protection Fund under the Enabling Act. These subsidies are in addition to, not in place of, any financial assistance awarded under the SRF Program. The Water Protection Fund can be expended only with the Board's approval and only for projects that have obtained all other approvals required by M.G.L. c. 29C.

A broad array of water pollution abatement projects are eligible for financing under the SRF Program and thus for subsidies from the Water Protection Fund. These projects include, but are not limited to, the use of

[1] Capitalized terms in Section 1.0 (Introduction and Purposes) have the meaning set forth in Section 2.0 (Definitions).

innovative strategies and alternative septic system technologies, the completion and update of water quality and wastewater management plans, the construction of sewer collection systems and wastewater treatment plants, and the implementation of drainage improvements and water treatment programs to improve water quality in freshwater ponds and marine resources. The Board may keep "Information Releases" regarding the Projects that have been awarded Subsidies to help guide future projects.

2.0 Definitions.

As used in these regulations, capitalized terms have the meanings set forth below. Where a definition is followed by a citation to 310 CMR 44.03, the definition is substantially the same as set forth in 310 CMR 44.03. Capitalized but undefined terms shall have the meaning set forth in M.G.L. c. 29C.

"Board" means the Cape Cod and Island Water Protection Fund Management Board established by the Enabling Act.

"Calendar Year Allocation" means the amount of the Water Protection Fund that, for a given calendar year, is conditionally committed to Subsidies for (a) Qualified Projects first appearing on the Intended Use Plan Project Listing published in the same calendar year as the year in which the Board makes conditional commitments to subsidize these Qualified Projects, (b) Preceding Projects considered in that same calendar year; and (c) Pre-existing Projects considered in that same calendar year.

"Cape Cod Commission" means the commission established pursuant to Chapter 716 of the Acts of 1989, as amended by Chapter 2 of the Acts of 1990, as further amended from time to time, which shall provide administrative and technical support to the Board.

"Clean Water Act," or "CWA" means the Federal Water Pollution Control Act, Public Law 92-500, 33 USC § 1251, *et seq.* (310 CMR 44.03)

"Clean Water Trust" or "Trust" means the Massachusetts Clean Water Trust established by M.G.L. c. 29C.

"Department" means the Massachusetts Department of Environmental Protection. (310 CMR 44.03)

"Eligibility Notice" means a written notice from the Board, acting through the Cape Cod Commission, informing a Participating Local Government Unit that a Qualified Project or Pre-existing Project is eligible for a Subsidy.

"Enabling Act" means Chapter 337 of the Acts of 2018, as amended by Chapter 5 of the Acts of 2019, and Sections 59 through 63 of Chapter 140 of the Acts of 2024, codified in M.G.L. c. 29C, §§ 19 and 20.

"EPA" means the United States Environmental Protection Agency. (310 CMR 44.03)

"Excise Tax" means the excise tax imposed by M.G.L. c. 64G, § 3C on the occupancy of a room in a bed and breakfast establishment, hotel, lodging house, or short-term rental.

"Intended Use Plan" means the annual plan submitted by the Trust to EPA pursuant to § 606(c) of the CWA which identifies the intended use of the amounts available to the Water Pollution Abatement Revolving Fund as determined by the Trust and derived from the federal capitalization grant, state match amounts, loan repayments, investment earnings and any other moneys deposited by the Trust available to fund projects eligible for funding under Title VI of the CWA. The Intended Use Plan includes a project listing, a description of short- and long-term goals for the use of the funds, information on the activities to be supported, assurances for meeting certain Title VI requirements, and the criteria and method for the distribution of funds. (310 CMR 44.03)

"Intended Use Plan Project Listing" means a listing of those projects identified by the Department for inclusion on the fundable portion of the Project Priority List pursuant to 310 CMR 45.05(2). (310 CMR 44.03)

"Loan Agreement" means an agreement entered into between the Trust and a Local Governmental Unit pertaining to a loan or local governmental obligations. (310 CMR 44.03)

"Loan Commitment" means a written commitment by the Trust to make a loan to a Local Governmental Unit to finance a project approved by the Department on terms consistent with the Department's Project Approval Certificate. (310 CMR 44.03)

"Local Government Unit" or "Local Governmental Unit" means any town, city, district, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local government unit defined in M.G.L. c. 29C, which is responsible for the ownership or operation of a Water Pollution Abatement Project and is authorized by a bond act to finance all or any part of the costs thereof through the issuance of bonds. (310 CMR 44.03)

"Participating Local Government Unit" means a Local Government Unit that is or is part of a municipality (i) that is a member of the Water Protection Fund pursuant to M.G.L. c. 29C, §§ 19 and 20; and (ii) in which the Excise Tax is being collected. Participating Local Government Units do not include Local Government Units in municipalities where the Excise Tax is not being collected (*e.g.,* municipalities where the chief executive officers deferred collection of the Excise Tax to a later calendar quarter after joining the Fund pursuant to Section 11 of Chapter 337 of the Acts of 2018). Provided that the municipality is a

member of the Water Protection Fund, a Local Government Unit becomes a Participating Local Government Unit as soon as collections of the Excise Tax begin and remains a Participating Local Government Unit while the Excise Tax is being collected.

"Preceding Project" means a Water Pollution Abatement Project (i) undertaken by a Participating Local Government Unit and identified by the Participating Local Government Unit to the Board in the first year in which the Participating Local Government Unit participates in (*i.e.,* becomes a member of) the Fund, and (ii) for which the Participating Local Government Unit has not yet commenced payment on the debt. Preceding Projects include projects listed on the Intended Use Plan Project Listing prior to the first year in which a Local Government Unit becomes a Participating Local Government Unit, provided that the project is not a Pre-Existing Project. Preceding Projects do not include (i) projects for which the Local Government Unit has commenced payment on the debt prior to the Local Government Unit first becoming a Participating Local Government Unit; (ii) projects for which Participating Local Government Unit had not yet commenced payment on the debt when it first became a Participating Local Government Unit but not identified by the Participating Local Government Unit to the Board in the Participating Local Government Unit's first year of participation; and (iii) projects for which the Local Government Unit incurred debt after the municipality has withdrawn from the Fund pursuant to Section 9.2 if the Local Government Unit had previously received a Subsidy for a Preceding Project.

"Pre-existing Debt" means debt incurred prior to the enactment of the Enabling Act in connection with a Project apart from the Trust by a Participating Local Government Unit that is or is part of the towns of Nantucket, Edgartown, Tisbury, Oak Bluffs, Falmouth, Chatham and Provincetown, or is or is part of the city of Barnstable.

"Pre-existing Project" means a project financed through Pre-existing Debt.

"Project Approval Certificate" means the certificate issued by the Department to the Trust certifying that a project is approved for financing by the Trust and that the costs of the project are eligible for financial assistance pursuant to M.G.L. c. 29C, § 6. (310 CMR 44.03)

"Project Approvals" mean all approvals required for a Qualified Project by M.G.L. c. 29C, including the Loan Commitment, Loan Agreement, Project Approval Certificate, and Project Regulatory Agreement.

"Project Priority List" means the annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 44.00, as described in more detail in 310 CMR 44.05.

"Project Regulatory Agreement" means an agreement between the Department and a Local Governmental Unit, executed and delivered to the Trust on or prior to

the date of a loan from the Trust to the Local Governmental Unit to finance a Project approved by the Department, which includes a disbursement schedule, procedures for approval and payment of requisitions, conditions related to the borrower's compliance with the Department's regulations and other federal and state statutes and regulations applicable to the construction and operation of the Project, and provision for the Department's supervision of the Project in accordance with 310 CMR 44.00. (310 CMR 44.03)

"Qualified Project" means a Water Pollution Abatement Project undertaken by a Participating Local Government Unit and identified on the Intended Use Plan Project Listing after the enactment of the Enabling Act. Qualified Projects include Preceding Projects.

"Section" means a section of these regulations unless followed by an express reference to a different law.

"State Revolving Fund (SRF) Program" means the financial assistance program for Water Pollution Abatement Projects as set forth in M.G.L. c. 29.

"Subsidy" means a grant awarded by the Board for a Qualified Project or a Pre-existing Project to be paid from the Water Protection Fund.

"Term of the Trust Loan" means, with respect to a Qualified Project, the term of the loan from the Trust to the Participating Local Government Unit made to finance such Qualified Project.

"Uncommitted Funds" means the available funds for the current year within the Water Protection Fund that are not committed to be (a) paid to a Participating Local Government Unit for a Qualified Project or Pre-existing Project previously approved for a Subsidy from the Water Protection Fund or (b) restricted as reserve, as established by Section 8.1.

"Water Pollution Abatement Project" or "Project" means any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltrations and inflow, collection system, treatment works and treatment facilities as defined in M.G.L. c. 21, § 26A, and any eligible facilities for implementation of a nonpoint source pollution control management program or estuary conservation and management plan pursuant to the CWA. (310 CMR 44.03)

"Water Protection Fund" means the Cape Cod and Islands Water Protection Fund established by M.G.L. c. 29C, § 19.

"Withdrawal Notice" means a written notice from a Participating Local Government Unit withdrawing its Qualified Project or Pre-existing Project from consideration for a Subsidy from the Water Protection Fund.

3.0 Form of Subsidy.[2]

3.1. Grants Only. All Subsidies shall take the form of grants. The Board shall not use the Water Protection Fund to make loans to Participating Local Government Units for Qualified Projects or Pre-existing Projects.

3.2. Terms of Subsidy; Notification to Trust. The Board, in its sole discretion subject to the Enabling Act and these regulations, shall determine (i) the amount of Subsidy committed to a Qualified Project or a Pre-Existing Project, (ii) the amount thereof to be applied on each debt service payment date under the applicable Loan Agreement (for each Qualified Project) or other financing agreement (for each Pre-Existing Project), and (iii) any modifications, from time to time, to such amounts. Subsidies shall only be paid for projects that have obtained all Project Approvals required by M.G.L. c. 29C. The Board shall annually (i) approve and transfer to the Trust the aggregate dollar amount of Subsidy to be expended in the following fiscal year on Qualified Projects and (ii) direct the Trust as to the allocation of such aggregate amount to each Qualified Project on each debt service payment date therefor. The Board also shall annually (i) approve and transfer to the Trust the aggregate dollar amount of Subsidy to be expended in the following fiscal year on Pre-Existing Projects and (ii) direct the Trust as to the allocation of such aggregate amount to each community awarded Subsidy for Pre-Existing Project debt service payments.

4.0 Qualifications for Subsidy.

4.1. Application. Consideration for a Subsidy does not require a formal application. The Board will rely on the expertise of the Department and the Trust and their evaluations of a proposed project under the SRF Program.

4.2. Water Protection Funding Qualification. Except as set forth in this section, a Qualified Project shall automatically be eligible for a Subsidy (i) when the Qualified Project first appears on the Intended Use Plan Project Listing, or (ii) when a Local Government Unit with a Preceding Project first becomes a Participating Local Government Unit and identifies the Preceding Project to the Board in the Participating Local Government Unit's first year of participation. Within 30 days of the Department's publication of the Intended Use Plan, the Board, through the Cape Cod Commission, shall send an Eligibility Notice to all Participating Local Government Units with a Qualified Project on the Intended Use Plan Project Listing or a Preceding Project. The Participating Local

[2] Methodology for subsidies set forth herein shall apply to (i) Qualified Projects included on the 2023 and future IUPs and (ii) Preceding Projects. Nothing herein is intended to amend subsidies to Qualified Projects included on the 2022 and prior IUPs.

Governmental Unit may opt out of consideration for a Subsidy by sending the Board a Withdrawal Notice within 30 days of receiving the Eligibility Notice. Unless the Board receives a Withdrawal Notice, the Qualified Project shall remain eligible for a Subsidy so long as it meets the requirements set forth in Section 6.0. If a Local Government Unit with a Preceding Project first becomes a Participating Local Government Unit as of a date that is more than 30 days after the Department's publication of the Intended Use Plan, the Board may, in its discretion, consider the Subsidy for the Preceding Project at its annual meeting or at any later special meeting called by the Board, but in all events shall consider the Subsidy for the Preceding Project either (a) at the annual meeting for the following year, or (b) at a special called meeting if the Preceding Project would lose its eligibility as a Preceding Project prior to the Board's meeting for the following year because the Participating Local Government Unit must commence payments on the debt prior to the following year's annual meeting, in which case the Board shall call a special meeting to consider the Subsidy for the Preceding Project prior to the date on which the Participating Local Government Unit must commence payments on the debt.

5.0 Board Meetings to Determine Subsidy Allocation.

5.1 Annual Meeting. The Board shall meet no less than once annually to allocate Subsidies. The annual meeting will be held within 60 days of the Department's publication of the Intended Use Plan Project Listing. The Board's Chair, in his or her discretion, may schedule additional meetings as needed to adopt final allocations upon execution of Loan Agreements or for additional reasons that require action by the Board. At the annual meeting, the Board will adopt final allocations for any project for which a Loan Agreement was issued in the prior year, and for any Preceding Project for which the Loan Agreement was issued in any prior year, subject to the provisions of Section 4.2 with respect to the date on which a Local Government Unit becomes a Participating Local Government Unit; in either case, the Board shall not allocate a Subsidy to a project that has been acted on by the Board in a prior year.

5.2 Commitments of Subsidies. Unless the Board has received a Withdrawal Notice within the time frame required by Section 4.2, at the annual meeting, or at a subsequent meeting called by the Chair, the Board shall make a contingent commitment to award a Subsidy for (a) each Qualified Project first appearing on the Intended Use Plan Project Listing in that calendar year and (b) each Preceding Project, subject to the provisions of Section 4.2 with respect to the date on which a Local Government Unit becomes a Participating Local Government Unit. The commitment shall be contingent on the Qualified Project satisfying the requirements set forth in Section 6.0.

5.3 Amount of Subsidy Awarded for Qualified Projects. Except as otherwise determined by the Board, each Qualified Project not subject to a Withdrawal Notice on the Intended Use Plan Project Listing for a given year with a project cost of $1 million or more shall receive the same level of Subsidy (expressed as a percentage of the project costs financed by the applicable Loan Agreement) as every other such project on such list for such year, and each Qualified Project not subject to a Withdrawal Notice on such list for such year with a project cost less than $1 million shall receive a level of Subsidy twice as large as the percentage granted to projects on such list for such year with project cost of at least $1 million. The final Subsidy dollar amount shall be based on a calculation of the percentage established above multiplied by the total cost of a Qualified Project set forth in the Loan Agreement. The Subsidy amount (the Subsidy percentage multiplied by the total Project cost as established in the Loan Agreement) shall be set at the time of the award, and shall not be adjusted except to the extent the Project no longer qualifies as set forth in Section 7.3 or it is determined there is insufficient funding as set forth in Section 7.2.[3] The Board will notify Participating Local Government Units of any anticipated need to reduce a subsidy by December 31st of the preceding calendar year. Additional Loan Agreements issued for already financed projects shall receive the same subsidy percentage as applied to the original Loan Agreement for that project.

5.4 Subsidies for Pre-existing Projects.

5.4.1. Participating Local Government Units Only. The Board shall not award a Subsidy for a Pre-Existing Project unless (a) there are still amounts outstanding with respect to Pre-existing Debt at the time the Board considers making a commitment to grant a Subsidy; and (b) the obligor on such Pre-existing Debt is a Participating Local Government Unit.

5.4.2. Timing of Commitment. At its first Board meeting to approve Subsidies, the Board also shall consider Subsidies for Pre-existing Projects for Participating Local Government Units. For eligible towns or cities that become Participating Local Government Units after such meeting, the Board shall consider Subsidies for the applicable Pre-existing Projects in the first calendar year after such eligible Local Government Unit becomes a Participating Local Government Unit. The Board, through the Cape Cod Commission, shall notify Participating Local Government Units with Pre-existing Projects of their eligibility for a Subsidy at the same time

[3] For example, if the total Project cost approved by the Loan Agreement is $10 million and the Subsidy approved by the Board is 25%, the total Subsidy shall be $2,500,000, applied over the Term of the Trust Loan or as otherwise determined by the Board.

and in the same manner as set forth in Section 4.2, and the Participating Local Government Unit likewise shall send a Withdrawal Notice within the time required by Section 4.2 if it does not wish to be considered for a Subsidy. At the written request of the Participating Local Government Unit, the Board, in its complete discretion, may defer consideration of a Subsidy for a Pre-existing Project to a subsequent calendar year.

5.4.3. Amount of Subsidy. The Board shall consider Subsidies for Pre-existing Projects on equal footing with Qualified Projects appearing on the Intended Use Plan Project Listing in the same calendar year. Subsidies for Pre-existing Projects shall be determined in the same manner as set forth in Section 5.3, provided that the Subsidy amount shall be a percentage of the outstanding loan principal amount at the time of the approval by the Board, as opposed to the total original project costs.

5.4.4. Nature of Commitment. Commitments made for Subsidies for Pre-existing Projects shall not be contingent on final approval under Section 6.1, but shall be subject to the funding condition set forth in Section 7.2 and the calculations required for Section 8.2. Payment of subsidies for Pre-existing Projects shall commence in the calendar year in which the Board commits to the Subsidy.

6.0 Subsidy Commitment and Approval.

6.1. Contingent Commitment. The Board shall annually determine a list of Qualified Projects eligible for a Subsidy. The Board shall issue a contingent commitment in the first calendar year in which the Project appears on the Intended Use Plan Project Listing or the first calendar year in which a Local Government Unit with a Preceding Project becomes a Participating Local Government Unit, subject to the provisions of Section 4.2 with respect to the date on which a Local Government Unit becomes a Participating Local Government Unit, unless the Board has received a Notice of Withdrawal for the Project. A contingent commitment means that the Subsidy is contingent upon the receipt of an executed Loan Agreement for the Project.

6.2. Final Approval. For a Qualified Project receiving a contingent commitment, the Board shall issue a final approval following receipt by the Cape Cod Commission of a final (not draft) debt service schedule (Schedule C) from the Trust for the applicable fully executed Loan Agreement for the Participating Local Government Unit. Final approval shall be granted by the Board based upon such final debt service schedule (Schedule C) as appearing in the final Loan Agreement entered into by the Trust and the Participating Local Government Unit.

7.0 Conditions for Subsidy; Breach of Conditions.

7.1 No Agreement. The Board shall not require a Participating Local Government Unit to enter into an agreement with the Board. By accepting a Subsidy payment, the Participating Local Government Unit agrees that the terms of the Subsidy are governed by these regulations, as they may be amended from time to time, for the entire duration of the Trust loan.

7.2 Funding Condition. Each contingent commitment and each Subsidy is a commitment of future revenues from the Water Protection Fund solely to the extent available. The Board retains discretion to discontinue, reduce or suspend Subsidies if the Uncommitted Funds are insufficient to meet the total Subsidy commitments – both ongoing obligations for Subsidies awarded in prior years and new awards. When deciding to discontinue, reduce or suspend Subsidies, the Board shall treat all Qualified Projects and Pre-existing Projects as equally as practicable.

7.3 Breach of Conditions of Project Approvals. The Board will suspend or discontinue a Subsidy if the Participating Local Government Unit has breached any of the conditions of the Project Approvals or Loan Agreement in a manner that causes the Trust to call back the loan, suspend the Participating Local Government Unit's ability to draw down the loan funds, or require that the Participating Local Government Unit repay any loan funds previously provided. The Board shall compel a Participating Local Government Unit to pay back any Subsidy already provided. The Board may, in its discretion, reinstate the Subsidy if the Participating Local Government cures its breach of the Project Approvals or Loan Agreement in a manner that causes the Trust to reinstate the loan.

8.0 Management of Use of Water Protection Fund.

8.1 Reserve. In the first calendar year in which the Board makes contingent commitments to subsidize Projects, the Board may establish a reserve from Uncommitted Funds in an amount that the Board, in its complete discretion and with assistance from a qualified financial consultant, determines is sufficient to ensure that the Water Protection Fund does not become insolvent due to variability in annual deposits to the Water Protection Fund. In each calendar year, prior to determining the Calendar Year Allocation, the Board, in its complete discretion, shall decide whether to restrict and/or utilize funds from the reserve.

8.2 Calendar Year Allocation. Each calendar year, the Board shall consider the amount of deposits into the Water Protection Fund and the amounts required to maintain sufficient reserves per Section 8.1 to determine and establish the amount of any Uncommitted Funds. The Board has complete discretion to determine the portion of the Water Protection Fund that comprises Uncommitted Funds, including discretion to withdraw funds

from reserve so that they are deemed Uncommitted Funds. The Uncommitted Funds that the Board, in its discretion, determines are available in a given calendar year shall be the Calendar Year Allocation to be awarded to Participating Local Government Units for (a) Qualified Projects first appearing on the Intended Use Plan Project Listing published for that calendar year, (b) Preceding Projects considered in that same calendar year; and (c) Pre-existing Projects considered in that same calendar year. The Board will monitor revenues and subsidies amongst member communities over the life of the fund and provide this information in the annual report. The Board may evaluate and amend these regulations from time to time.

8.3 Monitoring. The board may direct the comptroller to transfer a specified amount not to exceed 10 percent of the annual revenue deposited into the fund to the Cape Cod Commission for the purposes of contracting with an entity or entities 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 and Nantucket counties and the county of Dukes County. See M.G.L. c. 29C, § 19.

9.0 Withdrawal from Water Protection Fund.

9.1 Withdrawal of Eligible Local Government Unit. If a Participating Local Government Unit obtains final approval of a Subsidy for a Qualified Project or is granted a Subsidy for a Pre-existing Project, it may not withdraw from the Water Protection Fund during the Term of the Trust Loan.

9.2 Reentry to the Water Protection Fund. A Local Government Unit that has withdrawn from the Water Protection Fund may rejoin the Water Protection Fund at any time after satisfying the requirements of M.G.L. c. 29C, §§ 19 and 20. In accordance with M.G.L. c. 29C, § 19, the Board shall not grant any subsidies to a Local Government Unit that returns to the Water Protection Fund (thus becoming a Participating Local Government Unit) for a period of two years from the date on which the legislative body of the Local Government Unit voted to return to the Water Protection Fund.