310 CMR 44.00: DEP SELECTION, APPROVAL AND REGULATION OF WATER POLLUTION ABATEMENT PROJECTS RECEIVING FINANCIAL ASSISTANCE FROM THE STATE REVOLVING FUND

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44.01: Introduction ~~Authority~~

The Massachusetts Clean Water State Revolving Fund ("CWSRF") Program is a federal-state partnership that provides below-market-rate financing to assist municipalities in complying with federal and state water quality requirements. The CWSRF Program is jointly administered through the Clean Water Trust by the Commissioner of the Department of Environmental Protection ("Department"), the State Treasurer, and the Secretary of Energy and Environmental Affairs pursuant to M.G.L. c. 29C, §2~~ and the Massachusetts Clean Water Trust~~. Every summer, the Department solicits projects from Massachusetts municipalities and wastewater districts for consideration for subsidized State Revolving Fund ("SRF") loans. The current standard subsidy is provided via a 2% interest, twenty-year loan, but there are opportunities for some projects to receive 30 year loans, or lower interest rates. The SRF Program continues to emphasize public health needs and watershed management priorities. A major goal is to provide incentives to communities to undertake projects with meaningful water quality and public health benefits and which address the needs of the communities and the watersheds. After evaluating the project requests submitted in response to the annual solicitation, the Department develops a list of projects eligible to receive financial assistance. From this annual list, and on the basis of projects' readiness to proceed and priority rating, the Department assigns projects to a fundable list called the Intended Use Plan Project Listing ("IUP"). Projects placed on the IUP are eligible to apply for financing in the coming year, with the total cost of all projects on the IUP not to exceed the amount of funding available for that year. To qualify for placement on the IUP, a project must have a high enough ranking, have received a local funding appropriation or be scheduled for funding appropriation by June 30 of the coming year, and the applicant must be able to file a complete loan application no later than October 15 of the coming year.
~~310 CMR 44.00 has been adopted pursuant to M.G.L. c. 21, § 27A.~~

44.02: Purpose and Authority

310 CMR 44.00 implements the CWSRF Program. Under federal and state law, the primary purpose of the CWSRF Program is to provide financing for eligible projects to protect and promote the health, safety, and welfare of the inhabitants of the state. 310 CMR 44.00 sets forth the Department's authority and responsibilities to select, approve and regulate water pollution abatement projects receiving financial assistance under the SRF Program. 310 CMR 44.00 has been adopted pursuant to M.G.L. c. 21, § 27A. The Department may issue supplemental policies, guidelines, guidance documents and/or administrative procedures to assist in the implementation and administration of 310 CMR 44.00.

44.03: Definitions

For the purposes of 310 CMR 44.00 *et seq.*, the following terms shall have the meaning set forth in 310 CMR 44.00 unless the context clearly requires otherwise.

208 Plan: An Areawide Waste Treatment Management Plan certified by the Governor or his or her designee and approved by EPA pursuant to § 208 of the Clean Water Act, 33 U.S.C. § 1288, including any update thereto.

Best Management Practices ("BMPs"): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Note: Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498; Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482; Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260-7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276-0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at http://www.epa.gov/owm. These EPA guidance documents are listed here only for informational purposes; they are not binding and the Department does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

Clean Water Act ("CWA"): The Federal Water Pollution Control Act, Public Law 92-500, 33 USC § 1251, *et seq.*~~, as amended.~~

Collection System Projects: Projects for the construction of a collection system or its related components. Collection systems generally consist of each and all of the common lateral sewers and appurtenances of publicly owned treatment works which are primarily installed to receive wastewaters from individual structures or from private property, and which include service connection "Y" fittings and service connections within the boundary of the public way or easement.

Community Septic Management Program: As authorized by St. 1996, c. 15, § 2, or by any other applicable law, a loan program to Local Governmental Units administered within the Fund and under 310 CMR 44.00 to assist eligible homeowners to upgrade failed septic systems in compliance with 310 CMR 15.000 (Title 5) through underlying betterment agreements between the Local Governmental Unit and such homeowners pursuant to M.G.L. c. 111, § 127B½.

Comprehensive Water Resource Management Plan ("CWMP"): In accordance with the Department's Guide to Water Resource Management Planning, a ~~Comprehensive Water Resource Management Plan~~CWMP identifies all the community's needs/problems in one sector of its water resource structure, evaluates alternative means of meeting those needs, selects the most cost- effective and environmentally appropriate remedy, and proposes an implementation plan and schedule. There are three types of ~~Comprehensive Water Resource Management Plan~~CWMPs: Comprehensive Wastewater Management Plans that evaluate the community's wastewater infrastructure/ management needs, Comprehensive Water Supply Management Plans that focus on the community's water supply infrastructure and management issues, and Comprehensive Stormwater Management Plans that focus on the community's stormwater management needs.

Cost: As applied to any water pollution abatement project, any or all costs, whenever incurred, approved by the Department in accordance with M.G.L. c. 21, § 27A, of carrying out a project including, without limiting the generality of the foregoing: costs for planning, preparation of studies and surveys, design, construction, expansion, facilities, improvement and rehabilitation, acquisition of real property, personal property, materials, machinery or equipment, start-up costs, demolitions and relocations, reasonable reserves and working capital, interest on loans, local governmental obligations and notes in anticipation thereof prior to and during construction of such project or prior to the date of such loan, if later, administrative, legal and financing expenses, and other expenses necessary or incidental to the aforesaid.

Department: The Massachusetts Department of Environmental Protection.

EPA: The U.S. Environmental Protection Agency.

Federal Cross-cutters: Federal laws and authorities that apply by their own terms to projects receiving federal financial assistance such as the federal SRF. Such federal cross-cutters include, but are not limited to, environmental laws and authorities such as the Clean Air Act, Safe Drinking Water Act, Endangered Species Act, Coastal Zone Management Act, Wild and Scenic Rivers Act and the National Historic Preservation Act of 1966, and economic and miscellaneous authorities such as the procurement and contractor requirements associated with financial assistance programs under the Clean Water Act and Clean Air Act.

Fiscal Sustainability Plan: A plan prepared in compliance with § 603(d)(1)(E) of the CWA, 33 U.S.C. §1383, for treatment works proposed for repair, replacement, or expansion, that includes at a minimum the following four items: (i) inventory of critical assets that are part of the treatment works; (ii) evaluation of the condition and performance of inventoried assets or asset groupings; (iii) certification that the applicant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (iv) a plan for maintaining, repairing, funding, and as necessary, replacing the treatment works.

Green Infrastructure: Practices involving the management of water, stormwater and wastewater to achieve water quality mandates set forth in the CWA; practices designed using natural or engineered techniques to capture, remove or prevent nutrient, nitrogen and phosphorous loading to any part of a water system including groundwater deposits and discharges to surface waters from septic systems, wastewater treatment facilities and stormwater runoff.

Green Infrastructure Projects: Projects which shall include, but shall not be limited to: decentralized wastewater systems that infiltrate treated water; water reuse for other beneficial purposes; low impact development projects; the conservation, enhancement and restoration of natural landscape features that naturally filter and remove silt and pollution from surface waters, maintain or restore natural hydrologic cycles, minimize imperviousness in a watershed through preservation and restoration of natural landscape buffers such as forests, floodplains, wetlands and other natural systems and restoration of natural stream channels; land acquisition and restoration projects that protect and filter drinking water supplies and buffer reservoirs; and the mitigation of risks of flooding and erosion using the restoration of saltmarsh, oyster reefs and eelgrass beds from sea-level rise, storm surges and extreme weather events, including the protection and restoration of natural coastal landscapes; provided, that green infrastructure projects may be stand-alone and shall also be used to complement built water management infrastructure technologies such as pipes, dikes and treatment facilities; and provided, further, that green infrastructure projects may include innovative technologies that further the mandates under the CWA.

Indirect Discharge: means the introduction of pollutants into a POTW from any non-domestic source regulated under § 307(b), (c) or (d) of the CWA.

Infiltration: Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Infiltration/Inflow Projects: Projects which remove infiltration and inflow (*i.e.* water other than wastewater) from a sewer system, including construction associated with infiltration/inflow rehabilitation.

Infiltration/Inflow Rehabilitation: Construction associated with the rehabilitation of a sewer

system to remove or reduce infiltration/inflow.

Inflow: Water other than wastewater that enters a sewer system (including sewer service connections) from sources which include but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from infiltration.

Integrated Water Resources Management Plan: In accordance with the Department's Guide to Water Resource Management Planning, an Integrated Water Resource Management Plan is a plan that identifies all of a community's/(ies') water resource infrastructure and management needs/problems including wastewater, water supply and stormwater, evaluates alternative means of meeting those needs, selects the most environmentally appropriate and cost-effective remedy, and proposes an implementation plan and schedule.

Intended Use Plan: An annual plan submitted by the Trust to EPA pursuant to § 606(c) of the Clean Water Act which identifies the intended use of the amounts available to the Fund as determined from time to time 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 Clean Water Act. 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.

Intended Use Plan Project Listing: Those projects identified by the Department for inclusion on the fundable portion of the calendar year priority list pursuant to 310 CMR 44.05(2).

Land Use Controls: Local and regional government zoning ordinances and by-laws and health and sewer use regulations for wastewater.

Loan: Any form of financial assistance subject to repayment, in whole or in part, which is provided by the Trust to a Local Governmental Unit for all or any part of the cost of a water pollution abatement project.

Loan Agreement: Any agreement entered into between the Trust and a Local Governmental Unit pertaining to a loan or local governmental obligations.

Loan Commitment: 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.

Local Government Unit or Local Governmental Unit: 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 governmental 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 cost thereof through the issue of bonds.

MEPA: The Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H.

NEPA: The National Environmental Policy Act, 42 U.S.C. 4321 *et seq*.

Nonpoint Source Project: Projects which implement or are consistent with the Nonpoint Source Management Plan, developed and updated by the Department pursuant to § 319 of the Clean Water Act, which may include, but are not limited to, the repair replacement and/or upgrading of subsurface sewage disposal systems regulated under 310 CMR 15.000 (Title 5), landfill capping and closure, remediation of leaking underground storage tanks, erosion control, the control of stormwater runoff, brownfields remediation projects, and other water pollution prevention projects.

Nutrient Removal Project: A water pollution abatement project that is being undertaken by a Local Governmental Unit primarily to remediate or prevent nutrient enrichment of a surface water body or a source of water supply to comply with effluent limitations established under a NPDES permit or an EPA-approved TMDL or to otherwise implement a nutrient management plan approved by the Department. Nutrient Removal Projects include those portions of such projects approved by the Department as reasonably necessary for cost-effective nutrient removal

or recovery, and as evidenced by the Local Governmental Unit's ~~Comprehensive Water Resource Management Plan~~CWMP or a corresponding engineering report or a 208 Plan or watershed restoration plan that is consistent therewith, as determined by the designated areawide planning agency that prepared the 208 Plan.

Nutrient Sensitive Watershed: Any watershed or sub-watershed containing a water body impaired by nutrients that has been listed, accordingly, on Massachusetts' list of impaired waterbodies under §~~Section~~ 303(d) of the Federal Clean Water Act or that has been designated as nutrient sensitive~~,~~ by the Department.

Policy on Eligible Project Costs: The Department's document entitled "Policy on Eligible Project Costs,"~~,~~ which identifies the specific types of project costs determined by the Department to be generally within the eligible project categories identified in 310 CMR 44.~~07~~08(1) and (2).

Publicly Owned Treatment Works ("POTW"): A treatment works as defined by § 212 of the CWA, 33 U.S.C. § 1292, which is owned by a State or municipality (as defined by § 502(4) of the CWA, 33 U.S.C. § 1362(4)). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in § 502(4) of the CWA, 33 U.S.C. § 1362(4), which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

POTW Treatment Plant: That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Project Approval Certificate: The certificate issued by the Department to the Trust approving the project and certifying those costs of the project determined by the Department to be eligible for assistance from a loan and those costs eligible for financial assistance pursuant to M.G.L. c. 29C, § 6.

Project Regulatory Agreement: 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 contains provisions relating to the Department's regulation and supervision of the project in accordance with 310 CMR 44.00.

Regional Land Use Planning Agency: Any one of the public bodies corporate established as a regional planning district commission pursuant to M.G.L. c. 40B, § 3.

Regional Local Government Unit: Any Local Government Unit which is responsible for the ownership or operation of a Regional System.

Regional System: Any system established by mutual agreement of two or more municipalities or by a county in which all municipalities of said county have an agreement to provide drinking water or wastewater services, or both, through shared facilities, sources or distribution networks.

State Revolving Fund ("SRF") Program: The financial assistance program for water pollution abatement projects authorized under M.G.L. c. 21, § 27A~~, as amended,~~ and the C~~lean~~ W~~ater~~ A~~ct~~, including the Clean Water State Revolving ~~Loan~~ Fund Program established pursuant to M.G.L. c. 29C, the Department's related authority and responsibilities set forth in M.G.L. c. 21, § 27A, and elsewhere in M.G.L. c. 21~~, § 27A,~~ and the Water Pollution Abatement Revolving Fund established pursuant to M.G.L. c. 29, § 2L.

Title 5: Title 5 of the State Environmental Code, 310 CMR 15.000.

Trust: The Massachusetts Clean Water ~~Pollution Abatement~~ Trust ~~established by M.G.L. c. 29C~~, formerly the Massachusetts Water Pollution Abatement Trust, established by M.G.L. c. 29C~~, as amended~~.

Wastewater: Sewage, industrial waste, other wastes or any combination of the three, as defined in 314 CMR 3.00 and 5.00.

Wastewater Treatment Project: Abatement facilities eligible for SRF assistance under the Clean Water Act providing, or being upgraded or rehabilitated to provide, secondary or more stringent wastewater treatment (or any cost effective alternatives), including conveyance components (such as interceptors) and appurtenances related to such facilities as well as the correction of

combined sewer overflows. Wastewater treatment project does not, however, include activities and/or facilities within the definitions of an Infiltration and Inflow Project or a Collection System Project under 310 CMR 44.03.

Watershed Benchmark Flow: The existing wastewater facility total flow amount in a planning area, including flow amounts from on-site subsurface disposal systems, collection systems, and wastewater treatment plants, as set forth in a Local Governmental Unit's Department-approved ~~Comprehensive Water Resource Management Plan~~CWMP.

Watershed Management Plans: Plans developed, updated and/or approved by the Department to assess and manage the water resources of any watershed or subwatershed, including plans which implement or are consistent with the Department's Nonpoint Source Management Plan. Watershed Management Plans may include watershed related plans developed and updated by other parties which, as approved by the Department, implement or are consistent with the Department's Nonpoint Source Management Plan.

Water Pollution Abatement Project: Any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltration 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 Clean Water Act.

44.04: Eligible Projects

(1) Any water pollution abatement project, as defined in 310 CMR 44.03, is eligible to receive financial assistance from the Trust pursuant to 310 CMR 44.00. More specifically, eligible projects fall into the following categories:

(a) Wastewater Treatment Projects, as defined in 310 CMR 44.03;

(b) Infiltration Inflow ("I/I") Projects, as defined in 310 CMR 44.03;

(c) Collection System Projects, as defined in 310 CMR 44.03, provided, however, that at least 85% of the expected wastewater flow into the proposed collection system will be for wastewater flows in existence as of July 1, 1995, except, subject to the approval of the Department, in areas designated as city or town centers, rural village districts, or brownfields redevelopment areas, areas designated under M.G.L. c. 40R as "smart growth districts" or projects in Growth Districts designated by the Executive Office of Housing and Economic Development with the concurrence of the Executive Office of Energy and Environmental Affairs;

(d) Nonpoint Source Projects, as defined in 310 CMR 44.03, including but not limited to projects financed under the Community Septic Management Program within the Fund to assist eligible homeowners to upgrade failed septic systems in compliance with 310 CMR 15.000 (Title 5) through underlying betterment agreements between a Local Governmental Unit and such homeowners;

(e) The planning and/or design for any one of the project categories identified in 310 CMR 44.04(1)(a) through (d), including but not limited to comprehensive wastewater management planning under 310 CMR 44.~~08~~09(2) and (3) and planning projects which implement the Nonpoint Source Management Plan, as developed and updated by the Department pursuant to § 319 of the Clean Water Act, provided that the total funding allocated for planning and/or design projects shall not exceed 10% of the total financial assistance authorized on the calendar year Intended Use Plan Project Listing portion of the priority list. The Department may modify the allocation of funds consistent with its identification of planning and/or design projects as a funding priority in a particular calendar year pursuant to 310 CMR 44.06(3); ~~and~~

(f) Any project in the categories identified in 310 CMR 44.04(1)(a) through (d) which utilizes a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 44.00. The operational costs of such projects shall be ineligible for SRF assistance;

~~(f)~~(g) Projects for the development and implementation of a conservation and management plan under §~~section~~ 320 of the CWA, 33 U.S.C. § 1330;

(h) The construction, repair, or replacement of publicly- or privately-owned decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(i) Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(j) Projects that reduce the demand for POTW capacity through water conservation,

efficiency, or reuse, regardless of whether the activity takes place at publicly or privately owned properties;
(k) Projects that develop and implement a watershed pilot project related to at least one of the six areas identified in § 122 of the CWA, 33 U.S.C. § 1274: watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works;
(l) Projects that reduce energy consumption needs for POTWs and related planning activities, such as energy audits and optimization studies;
(m) Projects that include the equipment and piping required to reuse or recycle wastewater, stormwater, or subsurface drainage water;
(n) Projects that provide financial assistance to any qualified nonprofit entity to provide assistance to small- and medium-sized POTWs for training activities, planning, design, and associated preconstruction activities and to assist POTWs in achieving compliance with the CWA. Ongoing operation and maintenance activities are not eligible;
(o) Acquisition of land that is an integral part of the treatment system (*e.g.*, land for spray irrigation or subsurface disposal) and that is necessary for construction of POTWs, including surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible projects (*e.g.*, pumping stations), and land integral to the treatment process;
(p) Projects that increase the security of POTWs; and
(q) Projects that use regional water resources to offset, by at least 100 per cent, the impact of water withdrawals on local water resources in the watershed basin of the receiving community.

~~(2) Subject to the limits on contract assistance provided in M.G.L. c. 29C, § 6, a Local Governmental Unit applying for a Nutrient Removal Project, as defined in 310 CMR 44.03, on the Intended Use Plan for calendar year 2009 to calendar year 2019, inclusive, is eligible for loans and other forms of financial assistance at the financial equivalent of a loan made at an interest rate at zero per cent if the Local Governmental Unit demonstrates to the Department's satisfaction that it meets all of the following criteria:~~
~~(a) the Local Governmental Unit is not currently subject, due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a Department enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project, excluding any such order or action establishing a schedule for coming into compliance with more stringent effluent limitations contained in a NPDES renewal permit or permit modification;~~
~~(b) the Local Governmental Unit has a Comprehensive Wastewater Management Plan ("CWMP") that has been approved by the Department;~~
~~(c) the project is consistent with the regional water resources management plan, if such a plan exists, as evidenced by written notice of such by the Regional Land Use Planning Agency for the region where the Local Governmental Unit is located; and~~
~~(d) the Local Governmental Unit demonstrates in accordance with 310 CMR 44.04(3) to the Department's satisfaction, in consultation with the Massachusetts Department of Housing and Community Development and, where applicable, the Regional Land Use Planning Agency for the region where the Local Governmental Unit is located, that it has adopted Land Use Controls that ensure the overall wastewater flow amount in the community will not increase as a result of sewering beyond the flow amount authorized under the Land Use Controls that were in effect on the date the Secretary issued a MEPA certificate for the CWMP.~~

~~(3) To demonstrate that it has adopted adequate Land Use Controls to ensure that the overall wastewater flow in the community will be "flow neutral," as required by M.G.L. c. 29C, § 6 and 310 CMR 44.04(2)(d), a Local Governmental Unit must estimate wastewater flow volume to demonstrate that overall wastewater flow in the sewered watershed will not increase as a result of the project for which a zero rate of interest is sought. A Local Governmental Unit will be deemed to have established such "flow neutral" Land Use Controls if (1) the Local Governmental Unit has a Department-approved CWMP that includes a watershed benchmark flow, and (2) the Local Governmental Unit has established Land Use Controls that limit future wastewater flow volume to the watershed benchmark flow contained in the Department-approved CWMP. Such Land Use Controls must be in effect prior to closing to receive zero rate of interest loans. In demonstrating that it has established such "flow neutral" Land Use Controls , a Local Governmental Unit may use either one of the two methods in 310 CMR 44.04(3)(a) or 44.04(3)(b). In doing so, the Local Governmental Unit should express all flow volumes as an annual average in gallons per day per acre.~~
~~(a) Method 1: Presumptive Determination of Flow Neutrality. To demonstrate that the Local Governmental Unit has established Land Use Controls that limit future wastewater flow volume~~

~~to the watershed benchmark flow, the Local Governmental Unit shall establish as the watershed benchmark flow the total flow volume for all parcels of land within the nutrient sensitive watershed subject to the Local Governmental Unit's jurisdiction, as identified in the CWMP, excluding only those parcels whose owners have been allowed to opt out in accordance with M.G.L. c. 83, § 1B, calculated as follows:~~

~~1. Flow volume for the developed residential parcels. The Local Governmental Unit shall utilize actual water meter flow data to establish the annual average flow volume for the developed residential parcels. If no actual water meter flow data exists to establish an annual average residential flow, then the Local Governmental Unit shall utilize actual water meter flow data for comparable developed residential parcels in the same or similarly-sized city or town or watershed to estimate the annual average flow volume for the developed residential parcels.~~

~~2. Flow volume for the undeveloped residential parcels. The Local Governmental Unit shall utilize actual water meter flow data for comparable developed residential properties in the same city or town or watershed to estimate the annual average flow volume for the undeveloped residential properties under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP.~~

~~3. Flow volume for the developed non-residential parcels. The Local Governmental Unit shall utilize actual water meter flow data to establish the annual average flow volume for the developed non-residential parcels. If no actual water meter flow data exists to establish such annual average flow volumes, then the Local Governmental Unit shall utilize actual water meter flow data for comparable developed non-residential parcels in the same city or town or watershed to estimate the annual average flow volume for the developed non-residential parcels under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP.~~

~~4. Flow volume for the undeveloped non-residential parcels. The Local Governmental Unit shall utilize actual water meter flow data for comparable developed non-residential parcels in the same city or town or watershed to estimate an annual average flow volume for the undeveloped non-residential properties under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP.~~

~~(b) Method 2: Non-presumptive Determination of Flow Neutrality. As an alternative to Method 1, a Local Governmental Unit may elect to establish flow neutrality by demonstrating that future total wastewater flow volume under full build-out conditions will not exceed the total wastewater flow volume under full build-out conditions in effect as of the date the Secretary issued a MEPA certificate for the CWMP. Under this alternative, the watershed benchmark flow is considered the total wastewater flow volume under full build-out conditions in effect as of the date the Secretary issued the MEPA certificate. To demonstrate that the Local Governmental Unit has established Land Use Controls that limit future wastewater flow volume to the watershed benchmark flow, the Local Governmental Unit shall prepare two separate build-out analyses for all parcels of land within the nutrient sensitive watershed subject to the Local Governmental Unit's jurisdiction, as identified in the CWMP, excluding only those parcels whose owners have been allowed to opt out in accordance with M.G.L. c. 83, § 1B, as follows:~~

~~1. The first build-out analysis shall establish wastewater flows based on a full build-out under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP (i.e., the "pre-sewer build-out").~~

~~2. The second build-out analysis shall establish wastewater flows based on a full build-out under the local Land Use Controls in effect at the time construction of the project for which a zero rate of interest is sought is expected to be completed (i.e., the "post-sewer build-out").~~

~~3. For both the pre-sewer and post-sewer build-out analyses, the residential and non-residential flows must be calculated utilizing actual water meter flow data to establish the annual average flow volume. For the pre-sewer build-out analyses, if no actual water meter flow data exists, then the Local Governmental Unit shall utilize actual water meter flow data for comparable parcels in the same city or town or watershed to estimate the annual average flow volume or the flow volume allowable under local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP, whichever is less. For the post-sewer build-out analysis, if no actual water use data exists, then the Local Governmental Unit shall utilize actual water meter flow data for comparable parcels in the same city or town or watershed or the flow volume allowable under local Land Use Controls at the time construction of the project for which a zero rate of interest is sought is expected to be completed, whichever is less.~~

~~4. Each build-out analysis shall include an analysis of all built and buildable parcels, including redevelopment potential, and a rigorous analysis of typical exceptions to Land Use Controls , such as use/dimensional variances, special permits, waivers, expansion and change of use in pre-existing non-conforming uses, M.G.L. Chapter 40A, § 3 exempt uses, municipal uses and vested rights (e.g., grandfathered uses).~~

~~5. All assumptions made in the build-out analyses shall be clearly identified and explained. Future infrastructure needs, such as parking, wastewater infrastructure, landscape, and driveways, shall be factored into the build-out analyses and include the source and rationale for any ratios, multipliers or variables used in calculating such needs.~~

44.05: Priority System

(1) Establishment of Calendar Year Priority List.

(a) Prior to the beginning of each calendar year, the Department shall establish a single, annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 44.00. The Department will prioritize projects in the order of their numerical rating, as determined by the Department based on the proponent's responses to questions in the Project Evaluation Form. For the purpose of prioritizing projects financed under the Community Septic Management Program, which has its own legislatively dedicated funding allotment, the Department may distinguish the priority and the funding status of Community Septic Management Program projects from other projects on the priority list.

(b) In establishing the priority list, the Department may require Local Governmental Units to submit a Project Evaluation Form containing information deemed necessary by the Department for project evaluation, including but not limited to, information which addresses the proposed project's compliance with the Intended Use Plan Project Listing criteria in 310 CMR 44.03(2) and the Project Selection Criteria in 310 CMR 44.06. The Department may establish a reasonable deadline for its receipt of such information, and may decline to evaluate and prioritize a project if the Department determines that the Local Governmental Unit has failed to provide sufficient information.

(c) Prior to adopting the priority list, the Department shall conduct a public hearing to receive and consider public comment on the proposed list. The Department will ensure that notice of the public hearing will be published in one or more newspapers of general circulation 30 days prior to the date of the hearing.

(2) Intended Use Plan Project Listing.

(a) Eligible projects which the Department finds are ready to proceed and for which funds are available in the calendar year in which the priority list is established shall be placed on the Intended Use Plan Project Listing portion of the priority list. The Department reserves the right to expand the Intended Use Plan Project Listing during the course of the relevant calendar year based on an additional allocation of available funding.

(b) The Local Governmental Unit proposing the project must show that its project meets each of the following criteria in order for the Department to place the project on the Intended Use Plan Project Listing:

1. As determined by the Department, the project's environmental, and/or public health benefits, as evidenced by its ranking on the priority list, are sufficiently high to warrant its funding as a priority in the relevant calendar year;

2. As determined by the Department, based on a review of reliable and relevant information, the project's environmental and/or public health benefits outweigh any expected negative impacts to water quality or water quantity or to the public health which are directly attributable to the project;

3. The Local Governmental Unit has already obtained its local funding authorization for the project, or has committed to a specific schedule to obtain such funding authorization by June 30th of the relevant calendar year; and

4. The Local Governmental Unit demonstrates to the Department's satisfaction that its project is sufficiently advanced in its implementation such that the Local Governmental Unit will file a complete loan application with the Department for the project by October 15th of the relevant calendar year.

A complete application includes, as applicable, approvable plans and specifications for the project and evidence that the Local Governmental Unit has, at a minimum, filed applications for any permits or environmental reviews applicable to the project. As provided in 310 CMR 44.~~11~~12(1)(b), the Department may deny any application which it determines to be incomplete.

(c) In the event that a project placed on Intended Use Plan Project Listing fails during the course of the calendar year to meet one or more of the criteria in 310 CMR 44.05(2)(b), the project may be removed from the Intended Use Plan Project Listing. In such event, the Department reserves the right to raise one or more project(s) which are determined by the Department to be of the highest priority and which meet the criteria in 310 CMR 44.05(2)(b), consistent with available funding, to the Intended Use Plan Project Listing. Subject to the availability of funding and the project's priority, the Department further reserves the right to restore any project removed from the Intended Use Plan Project Listing for failure to meet the criteria in 310 CMR 44.05(2)(b) if the project thereafter meets those criteria prior to the end of the relevant calendar year.

(d) The implementation of some projects on the Intended Use Plan Project Listing will take place over two years or more. For such multi-year projects, the Department will limit the amount of actual funding reserved for the project on each annual Intended Use Plan Project Listing to the amount needed to fund the project for two years. In the event that a multi-year project receives a project approval certificate from the Department by the end of the relevant calendar year, the Department will reserve another annual increment(s) of funding for the project on subsequent calendar year Intended Use Plan

Project Listings, subject to the availability of funding, and provided the project is implemented in accordance with the schedule in the project approval certificate, as determined by the Department. The limitation on financial assistance in 310 CMR 44.05(3) shall apply to any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(3) Limitation on Financial Assistance.

(a) No Local Governmental Unit shall receive Department approval for financial assistance from the Trust for a project or projects in a calendar year in any amount in excess of 33% of the total financial assistance authorized on the Intended Use Plan Project Listing portion of the priority list in that calendar year, including any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(b) The Department reserves the right to waive the borrower limitation on financial assistance set forth in 310 CMR 44.05(3)(a) if the Department determines that one or more projects on the Intended Use Plan Project Listing portion of the applicable priority list has failed or will fail to meet the criteria in 310 CMR 44.05(2)(b) by October 15th in the relevant calendar year, or if the Department allocates additional available funding to the Intended Use Plan Project Listing during the course of the relevant calendar year.

(c) The Trust reserves the right to call due the unpaid loan balance of any loan and/or other form of financial assistance at the financial equivalent of a loan made at an interest rate at zero per cent if the Local Governmental Unit awarded such loan amends, or suffers the amendment of, any Land Use Control upon which approval of such loan and/or other form of financial assistance was based, unless the Local Governmental Unit demonstrates to the Department's satisfaction that such amended Land Use Controls will ensure that overall wastewater flow in the community will not increase as a result of sewering beyond the flow authorized under the Land Use Controls that were in effect on the date the Secretary issued a MEPA certificate for the CWMP or the date of a 208 Plan.

44.06: Project Selection Criteria

(1) Except as provided for in 310 CMR 44.06(2), (3) and (4), the Department will use the evaluation criteria in 310 CMR 44.06(1)(a) and (b) to determine a project's priority and ranking on the calendar year priority list. The Department, through written guidance, will assign a numerical point range to each of the evaluation criteria in 310 CMR 44.06(1) which will be used to further determine a project's ranking on the priority list.

(a) Environmental Criteria.

1. The extent to which the project will eliminate or mitigate a risk to public health. Relevant factors to consider may include but are not limited to:

a. The extent to which the project is needed to improve, restore or protect a public or private drinking water supply.

b. The size and character of the population threatened or negatively impacted by the identified risk to public health *(e.g.,* users of a community public water system, owners of private wells, the number of children, the elderly, persons with pre-existing health risks), and the extent to which the project will eliminate or mitigate the public health risk to the identified population.

c. The extent to which the project will eliminate or mitigate a public health hazard or public nuisance, as determined by the local health authority and/or the Department *(e.g.,* sewerage surcharging; failed 310 CMR 15.000 (Title 5) systems).

2. The severity of the environmental problem which the project is intended to address. Relevant factors to consider may include but are not limited to:

a. The severity of the specific water quality or sediment parameter problems in the relevant water body *(e.g.,* biochemical oxygen demand, suspended solids, pH, temperature, nitrogen, phosphorus, metals).

b. Whether the relevant water body has been identified on the Commonwealth's § 303(d) list as failing to meet water quality standards for specific parameters.

c. Whether the relevant water body currently meets water quality standards and its designated water quality uses under 314 CMR 4.00, including any Total Maximum Daily Load (TMDL) established by the Department for the relevant water body.

d. Whether the relevant water body is a significant public recreation resource, a state Area of Critical Environmental Concern, an outstanding resource water as determined by the Commonwealth, a federally designated river, *etc*.

e. Whether there are adverse impacts to living resources such as commercial

or recreational fisheries, or endangered or wildlife species and their habitats.

f. The extent to which there are other sensitive environmental resources (such as wetlands, Zones I and II of public water supplies, shellfish or cold water fisheries) or water dependent recreational uses which are threatened or negatively impacted by the identified environmental problem.

3. The extent to which the project will have demonstrable water quality benefits which will effectively address the identified environmental problems. Relevant factors to consider may include, but are not limited to, the extent to which the Local Governmental Unit's jurisdiction and the project's objectives, scope and proposed implementation demonstrate the project's capability to eliminate or significantly mitigate the identified environmental problems.

4. The extent to which the project is needed to come into or maintain compliance with applicable federal and/or state discharge permit(s) or other federal and/or state water pollution control requirements, and the effect of compliance on water quality and/or public health. Relevant factors to consider may include but are not limited to:

a. The extent to which the project is needed to ensure compliance with an existing federal or state court or administrative order.

b. The extent to which the project is needed to ensure compliance with a federal or state discharge permit *(e.g.,* NPDES permit limits) or federal or state water pollution control regulations and requirements *(e.g.,* 310 CMR 15.000 (Title 5) control of stormwater discharges, compliance with Total Maximum Daily Load Limitations).

c. The extent to which the project's maintenance of compliance with an order, discharge permit or regulation demonstrably benefits or protects the water quality and/or public health *(e.g.,* projects which rehabilitate or upgrade existing facilities and are designed to keep a facility in compliance and/or to prevent water resource degradations).

(b) Program and Implementation Criteria.

1. The extent to which the project implements or is consistent with one or more current watershed management plans *(e.g.,* DEP basin plans) and/or watershed protection plans *(e.g.,* local Zone II land use controls, comprehensive conservation management plans), or otherwise effectively addresses a watershed priority, as determined by the Department.

2. The extent to which the capacity provided by the project is needed, including, more specifically, whether the project will duplicate existing treatment or disposal capacity available at an economic cost within the relevant region.

3. The extent to which, as determined by the Department based on a review of reliable and relevant information, the project's environmental and/or public health benefits outweigh any expected negative impacts to water quality, water quantity or to the public health which are directly attributable to the project.

4. The extent to which the project is consistent with local and regional growth and/or infrastructure plans, and promotes the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic (re)use.

5. Whether the project constitutes or is a component of a multi-community or regional approach to addressing the identified environmental problem.

6. The extent to which the project utilizes Department-approved innovative/alternative technology to effectively address the identified environmental problem.

7. Whether the Local Governmental Unit has implemented a pricing system for sewer services in accordance with the provisions of M.G.L. c. 40, § 39J and St. 1985, c. 275.

~~7.~~8. The extent to which the Local Governmental Unit has implemented the guidelines for best management practices in water management established by the board of the Trust.

(2) Certain of the project selection criteria in 310 CMR 44.06(1) do not apply to planning projects (*e.g.,* the extent to which the project will have demonstrable water quality benefits which will effectively address the identified problem). The Department will limit its evaluation of planning projects to the relevant criteria.

(3) In establishing the calendar year priority list pursuant to 310 CMR 44.05(1), the Department may:

(a) identify project categories and/or watersheds as funding priorities warranting a high priority status in a particular calendar year, consistent with the Project Selection Criteria in 310 CMR 44.06(1); and

(b) modify and/or further specify the factors or point system to be used to evaluate the

extent to which a project meets the Project Selection Criteria in 310 CMR 44.06(1), including any project or program priorities identified by the Department as a funding priority in a particular calendar year pursuant to 310 CMR 44.06(3) and (4).

(4) Before finally adopting substantial modifications to the Project Selection Criteria and/or the related point system, the Department will notice such modifications in the *Environmental Monitor* and provide an opportunity for public comment for a period of not less than 30 days, including conducting a minimum of one public hearing.

44.07: Financing Criteria

(1) In general, the Trust is authorized to structure the debt service costs on loans and other forms of financial assistance for Eligible Projects that provide the financial equivalent of a loan made at an interest rate equal to two per cent. Notwithstanding the foregoing, subject to the limits on contract assistance provided in M.G.L. c. 29C, § 6, the Trust may provide additional financial assistance that is the financial equivalent of a loan made at an interest rate equal to zero per cent, as provided in 310 CMR 44.07(1)(a) for Nutrient Removal Projects in communities that have established Flow Neutral Land Use Controls, as provided in 310 CMR 44.07(2). Notwithstanding the foregoing, subject to the limits on contract assistance provided in M.G.L. c. 29C, § 6, the Trust may provide additional financial assistance that is the financial equivalent of a loan made at an interest rate less than two per cent, as determined by the Trust, for Qualifying Designated Projects, as provided in 310 CMR 44.07(4).

(2) Nutrient Removal Projects. Subject to the limits on contract assistance provided in M.G.L. c. 29C, § 6, a Local Governmental Unit applying for financial assistance for a Nutrient Removal Project, as defined in 310 CMR 44.03, on the Intended Use Plan for calendar year 2009 to calendar year 2069, inclusive, is eligible for loans and other forms of financial assistance at the financial equivalent of a loan made at an interest rate at zero per cent if the Local Governmental Unit demonstrates to the Department's satisfaction that it meets all of the following criteria:

(a) the Local Governmental Unit is not currently subject, due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a Department enforcement order, administrative consent order or unilateral administrative order, enforcement action by the EPA or subject to a state or federal court order relative to the proposed project, excluding any such order or action establishing a schedule for coming into compliance with more stringent effluent limitations contained in a NPDES renewal permit or permit modification;

(b) the Local Governmental Unit has a CWMP that has been approved by the Department or the Department determines that the project is consistent with a 208 Plan;

(c) the project is consistent with the regional water resources management plan, including but not limited to a 208 Plan, if such a plan exists, as evidenced by written notice of such by the Regional Land Use Planning Agency for the region where the Local Governmental Unit is located; and

(d) the Local Governmental Unit demonstrates in accordance with 310 CMR 44.07(3) to the Department's satisfaction, in consultation with the Massachusetts Department of Housing and Community Development and, where applicable, the Regional Land Use Planning Agency for the region where the Local Governmental Unit is located, that it has adopted Land Use Controls -that ensure the overall wastewater flow amount in the community will not increase as a result of sewering beyond the flow amount authorized under the Land Use Controls -that were in effect on the date the Secretary issued a MEPA certificate for the CWMP or, if none exists, the date of a 208 Plan, if such a plan exists.

(3) Flow Neutral Land Use Controls. To demonstrate that it has adopted adequate Land Use Controls to ensure that the overall wastewater flow in the community will be "flow neutral," as required by M.G.L. c. 29C, § 6, and 310 CMR 44.07(2)(d), a Local Governmental Unit must estimate wastewater flow volume to demonstrate that overall wastewater flow in the sewered watershed will not increase as a result of the project for which a zero rate of interest is sought. A Local Governmental Unit will be deemed to have established such "flow neutral" Land Use Controls if (1) the Local Governmental Unit has a Department-approved CWMP or 208 Plan that includes a watershed benchmark flow, and (2) the Local Governmental Unit has established Land Use Controls that limit future wastewater flow volume to the watershed benchmark flow contained in the Department-approved CWMP or 208 Plan. Such Land Use Controls must be in effect prior to closing to receive zero rate of interest loans. In demonstrating that it has established such "flow neutral" Land Use Controls-, a Local Governmental Unit may use either one of the two methods in 310 CMR 44.07(3)(a) or 44.07(3)(b). In doing so, the Local Governmental Unit should express all flow volumes as an annual average in gallons per day per acre.

(a) Method 1: Presumptive Determination of Flow Neutrality. To demonstrate that the Local Governmental Unit has established Land Use Controls that limit future wastewater flow

volume to the watershed benchmark flow, the Local Governmental Unit shall establish as the watershed benchmark flow the total flow volume for all parcels of land within the nutrient sensitive watershed subject to the Local Governmental Unit's jurisdiction, as identified in the CWMP or 208 Plan, excluding only those parcels whose owners have been allowed to opt out in accordance with M.G.L. c. 83, § 1B, calculated as follows:

1. Flow volume for the developed residential parcels. The Local Governmental Unit shall utilize actual water meter flow data to establish the annual average flow volume for the developed residential parcels. If no actual water meter flow data exists to establish an annual average residential flow, then the Local Governmental Unit shall utilize actual water meter flow data for comparable developed residential parcels in the same or similarly-sized city or town or watershed to estimate the annual average flow volume for the developed residential parcels.

2. Flow volume for the undeveloped residential parcels. The Local Governmental Unit shall utilize actual water meter flow data for comparable developed residential properties in the same city or town or watershed to estimate the annual average flow volume for the undeveloped residential properties under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP or the date of a 208 Plan.

3. Flow volume for the developed non-residential parcels. The Local Governmental Unit shall utilize actual water meter flow data to establish the annual average flow volume for the developed non-residential parcels. If no actual water meter flow data exists to establish such annual average flow volumes, then the Local Governmental Unit shall utilize actual water meter flow data for comparable developed non-residential parcels in the same city or town or watershed to estimate the annual average flow volume for the developed non-residential parcels under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP or the date of a 208 Plan.

4. Flow volume for the undeveloped non-residential parcels. The Local Governmental Unit shall utilize actual water meter flow data for comparable developed non-residential parcels in the same city or town or watershed to estimate an annual average flow volume for the undeveloped non-residential properties under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP or the date of a 208 Plan.

(b) Method 2: Non-presumptive Determination of Flow Neutrality. As an alternative to Method 1, a Local Governmental Unit may elect to establish flow neutrality by demonstrating that future total wastewater flow volume under full build-out conditions will not exceed the total wastewater flow volume under full build-out conditions in effect as of the date the Secretary issued a MEPA certificate for the CWMP or the date of a 208 Plan. Under this alternative, the watershed benchmark flow is considered the total wastewater flow volume under full build-out conditions in effect as of the date the Secretary issued the MEPA certificate for the CWMP or the date of a 208 Plan. To demonstrate that the Local Governmental Unit has established Land Use Controls that limit future wastewater flow volume to the watershed benchmark flow, the Local Governmental Unit shall prepare two separate build-out analyses for all parcels of land within the nutrient sensitive watershed subject to the Local Governmental Unit's jurisdiction, as identified in the CWMP or the 208 Plan, excluding only those parcels whose owners have been allowed to opt out in accordance with M.G.L. c. 83, § 1B, as follows:

1. The first build-out analysis shall establish wastewater flows based on a full build-out under the local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP or~~f~~ the date of a 208 Plan (*i.e.*, the "pre-sewer build-out").

2. The second build-out analysis shall establish wastewater flows based on a full build-out under the local Land Use Controls in effect at the time construction of the project for which a zero rate of interest is sought is expected to be completed (*i.e.*, the "post-sewer build-out").

3. For both the pre-sewer and post-sewer build-out analyses, the residential and non-residential flows must be calculated utilizing actual water meter flow data to establish the annual average flow volume. For the pre-sewer build-out analyses, if no actual water meter flow data exists, then the Local Governmental Unit shall utilize actual water meter flow data for comparable parcels in the same city or town or watershed to estimate the annual average flow volume or the flow volume allowable under local Land Use Controls in effect as of the date the Secretary issued a MEPA certificate for the CWMP or the date of the 208 Plan, whichever is less. For the post-sewer build-out analysis, if no actual water use data exists, then the Local Governmental Unit shall utilize actual water meter flow data for comparable parcels in the same city or town or watershed or the flow volume allowable under local Land Use Controls at the time construction of the project for which a zero rate of interest is sought is expected to be completed, whichever is less.

4. Each build-out analysis shall include an analysis of all built and buildable parcels, including redevelopment potential, and a rigorous analysis of typical exceptions to Land Use Controls-, such as use/dimensional variances, special permits, waivers, expansion and change of use in pre-existing non-conforming uses, M.G.L. c. 40A, § 3, exempt uses, municipal uses and vested rights (*e.g.*, grandfathered uses).
5. All assumptions made in the build-out analyses shall be clearly identified and explained. Future infrastructure needs, such as parking, wastewater infrastructure, landscape, and driveways, shall be factored into the build-out analyses and include the source and rationale for any ratios, multipliers or variables used in calculating such needs.

(4) Qualifying Designated Projects.

(a) Subject to the limits on contract assistance provided in M.G.L. c. 29C, § 6, a Local Governmental Unit applying for financial assistance for a Qualifying Designated Project, as set forth in 310 CMR 44.07(4), on the Intended Use Plan for calendar year 2017 or later, unless otherwise authorized by the Legislature, is eligible for additional subsidies that may include loans and other forms of financial assistance at the financial equivalent of a loan made at an interest rate less than two per cent or other additional subsidies such as principal forgiveness, as determined by the Trust, if the Local Governmental Unit demonstrates to the Department's satisfaction that it meets all of the following criteria:

1. the project is consistent with the current priorities established by the Trust, as set forth in the Department's annual project solicitation;
2. the project implements Best Management Practices; and
3. the Local Governmental Unit meets the Trust's affordability criteria established pursuant to § 603(i) of the CWA, 33 U.S.C. § 1383(i).

(b) The following projects may be considered for the additional subsidies described in 310 CMR 44.07(4)(a):

1. projects developed pursuant to a regional water resources management plan, including but not limited to a 208 Plan, if such a plan exists, as evidenced by written notice of such by the Regional Land Use Planning Agency for the region where the Local Governmental Unit is located;
2. projects that are necessary to connect a local or Regional Local Governmental Unit to a facility of the Massachusetts Water Resources Authority, if the local or regional Local Governmental Unit has paid or committed to pay the entry fee of that authority;
3. Green Infrastructure Projects;
4. projects that are a direct result of a disaster affecting the service area that is the subject of a declaration of emergency by the governor; or
5. innovative water projects that utilize new technology and which improve environmental or treatment quality, reduce costs, increase access and availability of water, conserve water or energy or improve management in the areas of wastewater, stormwater, groundwater or coastal resources; provided, that the technology has not been commercially deployed, other than as a pilot project, previously in the Commonwealth.

44.08~~7~~: Eligible Project Costs

(1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.

(2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.

(3) The Department will base its eligible project cost determinations on its "Policy on Eligible Project Costs", which identifies the specific types of costs that are within the two categories under 310 CMR 44.~~07~~08(1) and (2).

(4) Project costs incurred by an applicant prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:

(a) Preliminary engineering, comprehensive wastewater management planning, design or related professional services and construction work, may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:

1. the applicant has submitted a written and adequately substantiated request for approval;
2. written approval by the Department is obtained before initiation of the project and award of any loan for the project; and
3. the project is included and maintains its status on the current calendar year priority list.

(b) The Department's prior approval of costs in accordance with 310 CMR 44.~~07~~08(4)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an applicant receiving the Department's prior approval of costs in accordance with 310 CMR 44.~~07~~08(4)(a) proceeds at its own risk.

(5) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.

(6) A loan recipient shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department, nor the Trust, is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.

(7) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.

44.0~~9~~8: Planning Requirements

(1) Introduction. 310 CMR 44.~~08~~ 09 addresses ~~two categories of~~ requirements related to planning. 310 CMR 44.~~08~~09~~(2)~~ requires a Local Governmental Unit to demonstrate that its proposed SRF project is consistent with existing state, regional and local water resource and wastewater planning requirements. The Department's Guide to Water Resource Management Planning identifies three levels of planning (Project Evaluation or Engineering Reports, ~~Comprehensive Water Resource Management Plan~~CWMPs and Integrated Water Resource Management Plans) which may be used to evaluate different types of SRF projects. Unless determined otherwise by the Department, Comprehensive Wastewater Management Plans or Integrated Water Resource Management Plans are required only for controversial or complex wastewater projects. Unless otherwise determined by the Department, a less comprehensive report, the Project Evaluation Report or Engineering Report, is required for all other wastewater projects eligible for financial assistance from the SRF.

(2) Consistency of SRF ~~projects~~ Projects with Water Resource and Wastewater Planning Requirements.

(a) As provided in M.G.L. c. 21, § 27A(d), a Local Governmental Unit applying for assistance from the Trust must demonstrate that its project is consistent with existing state, regional and local water resource and wastewater planning requirements, including but not limited to:

1. river basin water quality plans pursuant to § 303(e) of the ~~Clean Water Act~~CWA, 33 U.S.C. § 1313;
2. nonpoint source management plans pursuant to § 319 of the ~~Clean Water Act~~CWA, 33 U.S.C. § 1329;
3. estuaries management plans pursuant to § 320 of the ~~Clean Water Act~~CWA, 33 U.S.C. § 1330;
4. local water resource management plans pursuant to regulations of the ~~w~~Water ~~r~~Resources ~~c~~Commission; ~~and~~
5. water emergency planning pursuant to M.G.L. c. 21G;
~~5.~~6. areawide waste treatment management plans approved by EPA pursuant to § 208 of the CWA, 33 U.S.C. § 1288.

(b) Applicants shall also certify that land use and other controls in place (*e.g.*, zoning bylaws) are consistent with the wastewater system service populations projected in any ~~comprehensive wastewater management plan~~CWMP of the applicant. An applicant's certification shall include a description of all such land use and other controls in place as supporting documentation for its certification.

(3) Planning Required for SRF Projects.

(a) Comprehensive Wastewater and Integrated Water Resource Management Planning. Unless otherwise determined by the Department, major, complicated or controversial wastewater projects shall be the result of a ~~Comprehensive Wastewater Management Plan~~CWMP or an Integrated Water Resource Management Plan that systematically:

1. assesses the need for the project;
2. examines alternatives to the project;
3. proposes a plan and schedule for the project;

4. evaluates all the environmental impacts of the project including without limitation secondary growth impacts and impacts of the overall water balance in the watershed or subwatershed;
5. identifies means of mitigating those impacts;
6. demonstrates that the project is not only environmentally appropriate and cost-effective, but also implementable from a legal, institutional, financial and management standpoint. The Department will determine the scope of work for any ~~Comprehensive Management Plan~~CWMP or Integrated Water Resource Management Plan used to fulfill the requirements in accordance with the Department's Guide to Water Resource Management Planning. The Scope of Work for all ~~Comprehensive Management Plans~~ CWMPs and Integrated Water Resource Management Plans must provide for a public participation program that includes at a minimum one public meeting to discuss the alternatives to the project and their environmental impacts and a public hearing on the environmental impacts, plan, and schedule of the project.

(b) Project Evaluation or Engineering Report. Unless otherwise determined by the Department, planning for projects other than the project categories identified in 310 CMR 44.~~08~~09(3)(a) shall be limited to the development of a Project Evaluation or Engineering Report. Based on the nature and duration of the proposed project, the Department will determine the required scope of the Project Evaluation or Engineering Report in accordance with the Guide to Water Resource Management Planning. Unless otherwise determined by the Department, a complete Project Evaluation or Engineering Report for a wastewater project shall include:

1. A description of the proposed project;
2. An analysis of the cost-effectiveness of the project and the alternatives considered;
3. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:
   a. the relevant design parameters for the project;
   b. the estimated capital construction and operation and maintenance costs of the project;
   c. the cost impacts on system users and non-users, or where the project is not user-based, cost impacts on the Local Governmental Unit budget; and
   d. the institutional, financial, legal and management arrangements necessary for successful implementation of the project.
4. A public participation program that includes, at a minimum, one public meeting on the proposed project.

(c) Targeted Watershed Management Plans. Notwithstanding 310 CMR 44.09(3)(a), an applicant may submit to the Department for approval a targeted watershed management plan that is consistent with a 208 Plan, as determined by the designated areawide planning agency under § 208 of the CWA, in lieu of a CWMP or an Integrated Water Resource Management Plan for projects that will be carried out under a watershed-based permit issued by the Department.

(d) Fiscal Sustainability Plan. Starting October 1, 2015 the Department will require all applicants to submit a FSP for projects that involve~~s~~ the repair, replacement, or expansion of a treatment works. This requirement does not apply to a loan if, prior to this date, the project was listed on a CWSRF Intended Use Plan or the loan recipient has submitted an application for CWSRF funding assistance.

(e) Cost Effectiveness Study. Starting October 1, 2015, the Department will require all applicants to certify that they have studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for the funded project and that they have selected, to the maximum extent practicable, a project that maximizes the potential for efficient water and energy conservation, taking into consideration capital cost, operation and maintenance, and replacement cost. This requirement does not apply to a loan if, prior to October 1, 2015, the project was listed on a CWSRF Intended Use Plan or the loan recipient submitted an application for CWSRF funding assistance. Prior to October 1, 2015, the Department will be finalizing the cost and effectiveness analysis requirements and guidance and will post them on the Department's CWSRF website.

44.~~09~~10: Environmental Review and Federal Cross-cutter Requirements

(1) Environmental Review Requirements.

(a) All projects approved by the Department to receive a loan from the Trust shall, at a minimum, comply with the requirements of MEPA and the regulations promulgated thereunder at 301 CMR 11.00. In addition, a public hearing shall be held on the project if the Department determines that the project is controversial, or if the Department otherwise determines that a hearing is in the public interest. The Department may also require the Local Governmental Unit to consider project alternatives and to provide the public an opportunity to comment on such alternatives.

(b) Projects required to be the result of comprehensive wastewater management planning, as provided in 310 CMR 44.~~08~~09(2)(a) and (3), shall also comply with the environmental review and process requirements in the Department's Guide to Water Resource Management Planning.

(2) Federal Cross-cutter Requirements. All projects to be funded by funds directly made available by federal capitalization grants shall comply with all federal cross-cutters applicable to the project, as determined by the Department. The Department may require any other project to comply with one or more of the federal cross-cutters deemed applicable to the project by the Department.

44.~~10~~11: Affirmative Action and Minority/Women Business Enterprise Requirements

Local Governmental Units receiving financial assistance from the Trust shall comply with applicable federal and state anti-discrimination laws and requirements, including the Department's requirements in the areas of Affirmative Action in employment and ~~Minority and Women~~Disadvantaged Business Enterprise (~~M/W~~DBE) utilization in contracting.

44.~~11~~12: Project Approval and Regulation

(1) Application.

(a) A Local Governmental Unit whose project is on the Intended Use Plan Project Listing portion of the calendar year priority list must first apply to the Department to receive a loan from the Trust to finance costs of the project. The Local Governmental Unit must file a complete application with the Department containing the following information and documentation:

1. General Information which must include evidence of a funding authorization by the Local Governmental Unit sufficient to cover the project cost, and certification of the authority of the Local Governmental Unit to file the application.
2. Financial Information pertinent to the Trust's evaluation of the applicant's ability to repay the loan.
3. Project Information which demonstrates to the Department's satisfaction that the project is sufficiently advanced in its implementation, including, as applicable:
   a. approvable plans and specifications for the project;
   b. evidence that the Local Governmental Unit has, at a minimum, filed applications for any permits or environmental reviews applicable to the project;
   c. the project scope of work, project evaluation report or the comprehensive wastewater management planning for the project; and
   d. the project schedule that demonstrates to the Department's satisfaction that the project will commence no later than six months from the expected date of issuance of a project approval certificate, assuming the Department determines that the project is approvable.
4. Supplemental Information such as title to project site or evidence of some other appropriate property interest in the project site, any necessary inter-municipal agreements, documentation related to the user charge system, *etc*.
5. Applicant Certification as to the completeness of the application in accordance with the Department's application form and requirements, and as to the accuracy and completeness of the information provided by the applicant in its application.

(b) The Department may deny any application which it determines to be incomplete. Prior to taking final action on an application, the Department may request the applicant to clarify and/or supplement information contained in its application, or to attend an informal conference(s) with the Department to discuss the application.

(2) Project Approval Certificate.

(a) The Department's approval of an applicant's project shall be contained in a Project Approval Certificate issued to the Trust. As provided in the Act, the Department's issuance of a Project Approval Certificate is a prior necessary condition to the award of a loan by the Trust to finance the costs of a project.

(b) The Department shall not approve a project for a loan from the Trust unless the Local Governmental Unit:

1. demonstrates that its project is consistent with existing state, regional and local water resource and wastewater planning requirements as described in 310 CMR 44.~~08~~09(2) ("Consistency of SRF Projects with Water Resource and Wastewater Planning Requirements");and
2. adopts a user charge system in accordance with the Department guidance which is designed to provide adequate revenues required for operation and maintenance, including replacement, of the project.

The Department reserves the discretion to determine that the user charge system

requirement does not apply to certain Nonpoint Source Projects (*e.g.*, a stormwater control project that is not providing ongoing service to an identified set of users).

(c) In addition to approving the project, the Project Approval Certificate shall certify those costs of the project determined by the Department to be eligible for assistance from a loan, and those costs determined to be eligible for a subsidy or interest rate under the loan. The Project Approval Certificate shall also identify the level of subsidy applicable to the project in accordance with M.G.L. c. 29C and, as applicable, any additional subsidy applicable to the project authorized by special law. Subsidy is expressed as an interest rate in the Project Approval Certificate.

(d) The Project Approval Certificate may also contain such other conditions and limitations as the Department deems necessary to ensure compliance by a Local Governmental Unit with 310 CMR 44.00 and with all other federal and state statutes and regulations applicable to the construction and operation of the project. Such conditions shall include, but are not limited to, a project completion schedule which shall require the Local Governmental Unit to initiate the project, as determined by the Department, no later than six months from the date of the Department's issuance of the Project Approval Certificate. The Department, at its sole discretion, may extend this six-month deadline based on evidence demonstrating to the Department's satisfaction that the delay is beyond the reasonable control of and without the fault of the Local Governmental Unit or its contractors or other agents.

(e) The Department shall issue the Project Approval Certificate to the Trust for its action and forward a copy of such certificate to the Local Governmental Unit concurrently. The Trust shall thereafter enter into a loan commitment with a Local Governmental Unit consistent with the terms of the Project Approval Certificate. Following entry into a binding loan commitment, the Trust shall prepare and deliver a loan agreement for execution by the Local Governmental Unit, consistent with the terms of the Project Approval Certificate as incorporated into the Department's Project Regulatory Agreement.

(3) Project Regulatory Agreement.

(a) On or prior to the date of a loan from the Trust for a project approved by the Department, the Local Governmental Unit and the Department shall execute and deliver to the Trust a Project Regulatory Agreement relating to the Department's regulation and supervision of the project in accordance with 310 CMR 44.00. The Project Regulatory Agreement shall be in form and substance satisfactory to the Department. The Project Regulatory Agreement shall be incorporated by reference in the Trust loan agreement and failure by the Local Governmental Unit to comply with the Project Regulatory Agreement shall constitute an event of default under the loan agreement.

(b) The Project Regulatory Agreement shall contain provisions consistent with the Project Approval Certificate. In addition to incorporating pertinent conditions in the Project Approval Certificate, the Project Regulatory Agreement may also contain such other conditions and limitations as the Department deems necessary for its regulation and supervision of the project in accordance with 310 CMR 44.00, including but not limited to:

1. the schedule for disbursement of loan proceeds;
2. the payment requisition requirements and procedures;
3. the requirements and procedures for the Department's audit of payment requisitions;
4. covenants by the Local Governmental Unit related to the project, including a covenant to comply with all federal and state statutes and regulations applicable to the Local Governmental Unit's construction and operation of the project;
5. the measures available to the Department to remedy a default by the Local Governmental Unit under the Project Regulatory Agreement;
6. any requirements regarding certification of a project's performance in accordance with the Department's approval;
7. compliance with the Department's guidance on the use of and requirements for professional subagreements.

REGULATORY AUTHORITY:

310 CMR 44.00: M.G.L. c. 21, § 27A~~, M.G.L. c. 21A, § 13, M.G.L. c. 29C, § 6~~.