



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

INTRODUCTION

Pursuant to M.G.L. c. 30A, the MA Department of Environmental Protection (MassDEP) has proposed amending 310 CMR 9.00 *The Massachusetts Waterways Regulation* to require license and permit applications filed pursuant to M.G.L. c. 91 and 310 CMR 9.00 to consider the effects of climate change in certain respects. The proposed revisions are consistent with proposed revisions to the Massachusetts Wetland Regulations at 310 CMR 10.00.

The proposed regulatory text and a background document are available on MassDEP's website at: <https://www.mass.gov/regulations/310-CMR-900-the-massachusetts-waterways-regulation/>

MassDEP held virtual hearings on the proposed amendments on January 25, 2024, and conducted a public comment period beginning on December 22, 2023 that was extended until April 30, 2024, requesting written comment. All unique comments are included below.

Wetlands-401 Resilience Comments



Mon 4/29/2024 7:50 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>; patrick.kearney@mahouse.gov <patrick.kearney@mahouse.gov>

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I believe the proposed "Land Subject to Coastal Storm Flowage" standards is too stringent and should not be approved.

As a home owner in coastal community this proposal will undoubtedly be a financial burden if I have to replace my house, therefore I am against it.

Thank you,

Al Martignette

Humarock, MA

Waterways Resilience Comments

Don Keeran <dkeeran@apcc.org>

Mon 4/29/2024 12:00 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Jo Ann Muramoto <jmuramoto@apcc.org>; April Wobst <awobst@apcc.org>; Kristin Andres <kandres@apcc.org>; Andrew Gottlieb <agottlieb@apcc.org>

 1 attachments (263 KB)

Chapter 91 Waterways Regulations APCC Comments 4 29 2024 final.pdf;

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Please see the attached written comments from the Association to Preserve Cape Cod regarding MassDEP's draft Chapter 91 Waterways regulations.

Thank you,

Don Keeran
Assistant Director
Association to Preserve Cape Cod
508-619-3185 x 4
www.apcc.org

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Andrew Gottlieb
Executive Director

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April 29, 2024

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
Bureau of Water Resources Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Draft Chapter 91 Waterways Regulations

Dear Commissioner Heiple:

The Association to Preserve Cape Cod (APCC) submits the following comments regarding the Massachusetts Department of Environmental Protection's draft Chapter 91 Waterways regulations, which are part of the Climate Resilience 1.0 regulation updates.

Founded in 1968, APCC is the Cape region's leading nonprofit environmental advocacy and education organization, working for the adoption of laws, policies and programs that protect, preserve and restore Cape Cod's natural resources. APCC focuses our efforts on the protection of groundwater, surface water, and wetland resources, preservation of open space, the promotion of responsible, planned growth and the achievement of an environmental ethic.

APCC congratulates MassDEP on its extensive efforts to update and draft regulations to address climate resilience and to better facilitate ecological restoration that meets the challenges of a changing climate. We greatly appreciate and support many of the proposed provisions.

In particular, APCC supports the following provisions and encourages MassDEP to promulgate these new regulations:

- 310 CMR 9.05 (3)(g)(4): This provision exempts the replacement of culverts that meet Massachusetts Stream Crossing Standards from being required to obtain a Chapter 91 permit. The provision will encourage restoration managers to bring

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Tel: 508-619-3185 | info@apcc.org | www.apcc.org

forward more beneficial culvert replacement projects, while also expediting the permitting process and reducing project costs.

- 310 CMR 9.37 (1)(d): This provision requires that new development and redevelopment projects factor projected sea level rise into the project planning and permitting that extend through the life of the project. While APCC recognizes the value of this requirement in ensuring that structures and infrastructure are able to withstand the impacts of rising sea levels, we are primarily concerned that the projects falling under this requirement do not exacerbate or create adverse impacts to coastal resources as sea levels continue to rise.

APCC recommends that MassDEP make revisions to the following proposed provisions:

- 310 CMR 10.04: In proposing to eliminate the “Combined Application” option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications, MassDEP has not proposed a new procedure that would help expedite the permitting process for beneficial restoration projects. APCC recommends that a streamlined process be included to reduce the time and expense in permitting beneficial Chapter 91 restoration projects that enhance ecosystem function and promote climate resiliency.
- In drafting the proposed Chapter 91 Waterways regulations, MassDEP has included utilization of Resilient Mass mapping for up-to-date data on sea level rise. While APCC supports the use of this data, we note that there is no proposal to also utilize projected precipitation data. We believe a more accurate, and therefore more valuable, model should be used that incorporates both projected sea level rise and projected precipitation in order to provide a more reliable assessment of flood risk and the appropriateness of development in flood-prone areas, which if permitted, could adversely affect ecosystem function as well as pose a safety hazard.
- 310 CMR 9.02: APCC recommends that “salt marsh hay” be removed from the definition of “fill” in this section. As currently proposed in the definition, salt marsh hay, which is utilized in ecologically beneficial salt marsh restoration projects, falls within the same regulatory hurdles as other types of fill that are used in development projects. Restoration projects that incorporate the use of salt marsh hay should be exempt from the requirement of a Chapter 91 license.

Conclusion

APCC greatly appreciates the effort by MassDEP to update its existing regulations in order to improve climate resiliency in Massachusetts. Overall, the proposed Chapter 91 revisions are a positive step forward and should be promulgated as quickly as possible, along with the



recommended amendments identified above. After their promulgation, APCC urges MassDEP to move forward immediately in drafting and releasing Resilience 2.0 to further strengthen the Commonwealth's regulations and policies that will provide critical protections to wetlands in response to the challenges created by a rapidly changing climate.

Thank you for this opportunity to provide comments.

Sincerely,



Andrew Gottlieb
Executive Director



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Tel: 508-619-3185 | info@apcc.org | www.apcc.org

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Wetlands and Waterways Resilience Comments

Barden's Boat Yard <bardensboatyard@comcast.net>

Tue 4/30/2024 5:40 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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To Whom It May Concern:

Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need private sector money to invest in our coastal communities for real climate change adaptation.

There need to be more public hearings and consideration given for our future.

This should not be left to a volunteer Conservation Commission's discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water's edge.

Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not "nature based" retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.

We know how to design and adapt to storms, please let us do so. Thank you for your consideration.

Kind regards,

Frederick B. Coulson, President

Cheryl Souza, Manager

Barden's Boat Yard Inc.

508-748-0250

bardensboatyard@comcast.net

Waterways Resilience Comments

Mary Kate Schneeweis <mschneeweis@bealsandthomas.com>

Thu 4/11/2024 12:37 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (135 KB)

B+T Ch. 91 Comments-Certified.pdf;

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On behalf of Beals and Thomas, Inc., please find attached our comments on the Waterways (Chapter 91) Resilience 1.0 Draft Regulations. We thank MassDEP for the opportunity to comment and look forward to reviewing future regulatory updates.

Best,

Mary Kate (MK) Schneeweis

(she/her/hers)

Senior Environmental Planning Specialist

Beals and Thomas, Inc.

144 Turnpike Road, Southborough, MA 01772

T 508.366.0560 x4827 C 978.870.0162

bealsandthomas.com



April 11, 2024

MassDEP - BWR Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, 9th Floor
Boston, MA 02114

Via: dep.waterways@mass.gov

Reference: Comments on:
Waterways (Chapter 91) Resilience 1.0 Draft Regulations
B+T Project No. Corp

To Whom it May Concern:

Beals and Thomas, Inc. (B+T) appreciates the opportunity to provide comment on the above-referenced draft Waterways Regulatory Update. B+T is a multidisciplinary consulting firm with significant land use entitlement, natural resources, and inland and coastal wetlands experience. Our experience includes both development and restoration projects that intersect with the Chapter 91 regulations.

We commend MassDEP for its goals to account for sea level rise and future climate conditions in its decisions, as well as the incorporation of inclusive language into the regulations.

We participated in the public information session on January 17, 2024, both public hearings on January 25, 2024, and the three office hours on February 26, March 14, and April 3, 2024. Thank you for holding these sessions, and particularly the office hours, which we found to be very beneficial.

We have reviewed the draft regulations, and offer the following comments on the proposed revisions and the broader context of 310 CMR 9.00:

1. 310 CMR 9.02, Definitions

The proposed regulatory updates include new definitions of resource areas that overlap with those outlined in the Massachusetts Wetlands Protection Act regulations at 310 CMR 10.04, for example Land Subject to Coastal Storm Flowage and Primary Frontal Dune. These definitions could instead cross-reference 310 CMR 10.04, to avoid the need to promulgate multiple regulatory updates should these definitions change in the future. This cross-referencing approach would also clarify where the authority lies to determine the boundaries.

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32 Court Street
Plymouth, MA 02360

Specifically, we understand that the responsibility for determining the boundary of these resource areas will continue to lie with the local Conservation Commission pursuant to the MA Wetlands Protection Act 310 CMR 10.00. Regardless of whether the definitions are updated to cross-reference 310 CMR 10.04, we respectfully request that MassDEP append clarifying text to these definitions: "...*The boundaries of these areas shall be determined by the local Conservation Commission, or, in the case of appeal of the Commission's decision, the Department.*"

2. 310 CMR 9.04(1)(e), Streams Subject to Jurisdiction

Clarity is needed to be able to identify which non-tidal waterways are subject to jurisdiction. Jurisdictional waterways are defined as "*any non-tidal river or stream on which public funds have been expended for stream clearance, channel improvement, or any form of flood control or prevention work, either upstream or downstream within the river basin, except for any portion of any such river or stream which is not normally navigable during any season, by any vessel including canoe, kayak, raft, or rowboat; the Department may publish, after opportunity for public review and comment, a list of navigable streams and rivers;*"

It is infeasible to determine where public funds have been expended. MassDEP staff have previously indicated to assume that all non-tidal waterways are jurisdictional, and has noted jurisdiction over agricultural canals for example. We strongly urge MassDEP to clarify the scope of jurisdiction in this instance, and publish the referenced list of jurisdictional waterways.

3. 310 CMR 9.10(6), Renewal and Transfers of Licenses

This section should indicate that licenses may be renewed if the structure/fill conforms to the approved License plans, not the application plans, as plans are frequently modified during the licensing process.

Additionally, existing structures/fill should not automatically be held to new regulatory standards not in place at time of original permitting. An allowance to incorporate retrofitting as practicable is appropriate, but an automatic requirement to retrofit is not.

These comments are also relevant for Section 9.25(2).

4. 310 CMR 9.25, Expiration and Renewal

The proposed revisions to 310 CMR 9.25(2) require applications for both new licenses and licenses renewals to "...incorporate[] the impacts of projected sea level rise throughout the design life" per 310 CMR 9.37(1)(d). We understand from the March 14, 2024 office hours that MassDEP intends to evaluate whether a project adequately complies with these standards on a case-by-case basis, and that such review may focus on maintaining public access with sea level rise. However, as written, there is ambiguity for applicants pursuing renewal of licenses for existing structures, which may present barriers to obtaining financing. We urge MassDEP to develop specific guidelines and standards by which they will conduct their evaluation of license renewals, and provide those standards for public review and comment prior to the promulgation of these regulations.

5. 310 CMR 9.32(2), Categorical Restrictions on Fill and Structures (allowances)

As the Commonwealth grapples with sea level rise, placement of fill or structures to protect from associated flooding may be appropriate. Therefore, we recommend incorporating a new section (e) "*Placement of fill or structures the purpose of which is to provide protection from flooding associated with projected sea level rise, which is conducted by the public agency responsible for the infrastructure, or in the case of private flood protection fill or structures, when supported by the municipality.*"

6. 310 CMR 9.51, Conservation of Capacity for Water-dependent Use

The proposed revisions to 310 CMR 9.51(3)(e) add an exclusion for height limits for "...nonstructural elements relocated on the roof of an existing building for non-water dependent use, including mechanical elements and required enclosures...." However, we note that these provisions do not allow for increased building height to accommodate resiliency and heightened finished floor elevations. We encourage MassDEP to consider increased height allowances in order to balance the Commonwealth's resiliency goals with its need for housing.

7. As MassDEP progresses "Resiliency 2.0" regulatory updates, we strongly urge that streamlining considerations be incorporated for natural resource/restoration projects, including those that may not be eligible for Restoration Orders of Conditions. The permitting pathway/timeline and associated effort for natural resource restoration projects, both coastal and inland, run counter to the Commonwealth's resiliency goals. A crucial component to the Commonwealth's resiliency will be the maintenance and restoration/enhancement of our natural coastal systems. For example, facilitating salt marsh ditch remediation by excluding salt marsh hay placed in ditches from being considered fill should be adopted such that Ch. 91 licensing for these efforts is not required.

Similarly, new regulatory provisions that facilitate the use of living shorelines and other nature-based solutions is imperative. Under the present regulatory regime, such projects are extremely challenging to permit.

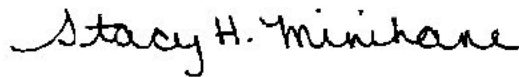
Thank you for considering our comments, and please do not hesitate to reach out if you have any questions on our input. We recognize and respect the hard work that went into these draft regulations, and look forward to promulgation of sound standards that will further the Commonwealth's goals in a clear and achievable way.

Sincerely,

BEALS AND THOMAS, INC.



Mary Kate Schneeweis
Senior Environmental Planning Specialist



Stacy H. Minihane, PWS
Principal

MKS/shm/ggp/mac/B+T Chapter 91 Comments

Wetlands and Waterways Resilience Comments

[REDACTED]
Mon 4/29/2024 11:13 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick.kearney@mahouse.gov <Patrick.kearney@mahouse.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>

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I just heard about the unprecedented regulatory changes proposed by MASS Department of Environmental Protection.

As a long time, coastal resident of Scituate, MA the proposed regulations would be catastrophic if implemented as I understand them.

If enacted, the regulations would:

- Prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded, or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks, and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

Regulations are not ready, major revisions are needed including:

1. Be more inclusive of impacted communities. Hold many more public hearings and listen.
2. Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which need to be at the water’s edge.
3. Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
4. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.
5. We know how to design and adapt to storms. Revisions are required using modern design engineering and technology to adapt, not just retreat.

Thank you for your consideration to this important issue.

Best regards,


Beatrice Luczkow
[REDACTED]

Wetlands and Waterways Resilience Comments

Peter Davidoff <peter@bosport.com>

Fri 4/19/2024 9:33 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (126 KB)

DEP Wetland & Waterways Resilience Comments 2024.pdf;

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Please see attached comment Letter

--

Peter K Davidoff

Bosport Docking, LLC d/b/a/ Constitution Marina

28 Constitution Road

Boston, MA 02129

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Cell: (617) 592-4119

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Monitoring: VIIF 69

RE: Wetlands and Waterways Resilience Comments

April 19, 2024

Please accept my comments as a concerned citizen and an owner of a water dependent business over my deep concerns over DEP's proposed changes.

BACKGROUND & EXPERTISE:

I am one of the owners of Constitution Marina based in the Charlestown section of Boston Harbor. We were the first recreational marina in Boston Harbor. I am a second-generation owner of this family-owned business in Boston since the 1960's. My business partner and I have owned and operated the marina since 1998 which is considered a premier marina nationwide.

As a 3rd generation life-time sailor, I grew up respecting the sea and climate. Understanding our environment is the only way to both survive the open ocean and coexist with climate changes to the waterfront. My marine background and many years of experience give me a unique perspective on the good, bad and the ugly of waterfront use and development.

I have been closely involved with Bosport Docking d/b/a Constitution Marina operations since the 1960's and have worked at the marina full-time for almost 40-years, the company having been founded by my father, Bob Davidoff and his partner Jack Roberts.

In addition to the business side of the marina, I am responsible for the management of marine contracting, marina maintenance, related consulting services and development of new sites.

I have sailed Boston Harbor and the Atlantic from Newfoundland Canada to the equator. Educated at Lehigh University and graduated with a BS in engineering, I also hold many professional certifications including: Certified Marina Manager (CMM), Construction Supervisors and Hoisting Engineers Licenses. I also hold Homeland Security documents: US Coast Guard Masters License and TWIC clearance.

I was responsible for the installation of Boston Harbors first marina based pumpout facility at Constitution Marina and instrumental in creating and building the infrastructure for a number of the Sail Boston – Tall Ship events.

I served on the Board of The Boston Harbor Associates now known as Boston Harbor Now, an advocacy group that monitors and comments on the commercial and private development of



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Monitoring: VHF 69

Boston's waterfront and islands and was one of the first voted to the **Citizens Advisory Committees** for the Department of Conservation Charles River Shoreline Improvement, for the National Park Service Boston Harbor Islands and for Stellwagen Bank, all dealing with infrastructure planning and development in and around Boston Harbor and Massachusetts Bay.

I was involved in formulating the **Massachusetts Clean Marina Guide** issued by the Coastal Zone Management Division of the Department of Environmental Protection.

CONCERNS & RECOMMENDATIONS:

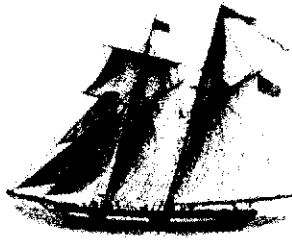
I am concerned that unlike many other countries, cities & private developers around the world creating workable solutions to sea level rise and climate change and have incorporated the views of concerned parties and technical experts, that the DEP's preliminary regulations do not allow for engineered and other technical solutions, but stress a retreat from the water's edge as the primary action. This managed action is impractical for many businesses like marinas and boat yards.

Proposed regulations **MUST** guarantee current water dependent entities the ability to survive and grow as protected in Ch91's water dependent regulations. Giving local conservation commissions the final word whether or not to permit a current water dependent business, to obtain or modify an existing license will bring all new development and current uses to a stop. Financing will become difficult or impossible to afford for the changes needed to expand to deal with climate change. Financing companies will not take the "Risk" of an existing permit that **MAY** be renewed or approved for climate infrastructure changes. As proposed, current water dependent uses are not protected under the DEP draft. Additionally, water dependent uses should be exempt from the bans on buildings in Land Subject to Coastal Storm Flowage. Water dependent uses must continue have the land at the waters edge to survive.

ADAPTABILITY & ENGINEERED SOLUTIONS:

As you have correctly discussed, sea level rise is here, we have to deal with it from now on. Engineering solutions seen all around the world offer almost any facility the ability to adapt and prosper during these changes.

Over the past 40-years I have worked on the waterfront, climate change has affected the harbor environment. At Constitution Marina, we have and plan to take a number of steps to manage sea level rise and environmental changes. Back in the 1980's we built a new marina office building raising the foundation well above grade, and more recently have raised all our utilities in anticipation of future sea level rise. The fender piles surrounding Hoosac Pier were cut short when installed by Massport in the 1980's. We are now in the process of engineering extensions to the fender pile system at locations where our docks may come in contact. This engineered solution solves the potential problem of our docks topping the short fender piles there by eliminating



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Monitoring: VIII' 69

damage to our docks and customers boats. Floating docks secured by pilings will be extended or replaced using engineered solutions. Most of the marina uses a mooring system that is easily extended as necessary. The water's edges of our parking lot have been modified over the years with a stone berm to limit topping. We continue to modify the parking lot for the few remaining areas that will need addressing. All the changes we have and plan to make are based on sound engineering solutions, not by retreating from the water's edge.

We have been able to live with the already changing environment by responsibly anticipating and planning using available solutions without the need to retreat from the water's edge. Your preliminary regulations would put us and all other marinas out of business. Boating in Massachusetts is a \$5+ Billion industry that would be significantly affected if the preliminary rules were not modified to allow solutions other than a managed retreat from the water's edge to deal with sea level rise and climate change.

I strongly request and recommend that you extend your comment period and meet with more stake holders that have the technical expertise or have hired professionals to meet and find solutions to climate change that works for the watershed, water dependent business and the citizens of the Commonwealth.

Thank you for your consideration.

Sincerely,

Peter Davidoff

Wetlands and Waterways Resilience Comments

Tom Cox <tom@bosport.com>

Thu 4/25/2024 1:59 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Dep.wetlands@mass.gov

Dep.waterways@mass.gov

RE: Wetlands and Waterways Resilience Comments

To Whom it May Concern:

Thank you for your concern and for bringing up climate change, rising sea levels, and resiliency for discussion. Change is inevitable and we, as a Commonwealth, must deal with it.

I would argue that this discussion should have started years ago, but better late than never.

As a past President of *Save the Harbor/Save the Bay* and also a past President of the *Massachusetts Marine Trades Association* I have a particular interest in how we address the enormous climate related challenges facing us and the next generation.

The new proposed inclusion and promotion of “managed retreat” via “nature-based planning” is commendable – but **not** to the exclusion of any other, often more viable, remedies. In some instances “managed retreat” may very well be the best option, however, there is not a “one size fits all” solution to every scenario – in some locations retreat is not an option and to ban construction in a velocity zone is both irresponsible and short-sighted. There are so many examples of meaningful climate resiliency solutions in our own backyard and around the world that do not include “retreat”. We need look no further than the St Regis Flood Barriers in the Seaport district of Boston, or Langone Park in the North End, or Ora Seaport’s use of passive flood barriers

in the Seaport area – or slightly further afield at Stuyvesant Park in Manhattan, or the San Francisco waterfront on our left coast. And we mustn't forget our neighbors across the pond at the Thames River Barrier built in the 1980's, or the ingenious Dutch that have been protecting the Netherlands for years and years without a large scale "retreat". The list goes on and on – the point being, that the Commonwealth should join them and lead the way in providing solutions and not just "retreat". If we are serious about solving these problems, we must be open to new ideas and proven remedies.

I would implore you to continue the discussion and to invite more people to the table. Stakeholders that will be most severely impacted by the proposed new regulations deserve a place at the table as you promote regulations with the potential to severely impact their lives.

As a marina owner and environmentalist that will suffer the consequences of some of the proposed changes I would like to offer a few suggestions:

1. Options allowed in DPA's should be extended to all marinas, boatyards, and other water-dependent entities. The citizens of the Commonwealth deserve continued access to the water that is provided by marinas.
2. Water-dependent companies need to have "predictable outcomes" as it relates to DEP and other governmental regulations. Marinas need to know, with certainty, under what set of regulations they will (not "may") be able to continue in business.
3. Banks, investors, and insurance companies need to know that waterfront properties have guarantees that protect the very existence of water-dependent entities so that loans will be available to invest in solutions that may take years to implement.
4. Before any new regulations are implemented the Commonwealth needs to formulate a comprehensive plan to address these important climate related issues. Perhaps a new agency modeled after the MWRA could be empowered with the task.
5. The plan should include a science-based analysis, engineering options, cost benefit analysis, and societal values.
6. Many adaptation options, including, but not limited to "retreat" must be available. Adaptive building should be allowable. There should not be an absolute ban on building in velocity zones and there

should not be an inflexible requirement to rebuild only on the exact same footprint.

7. Regulations must be based on objective criteria formulated by DEP and not the subjective opinions of local conservation commissions. Solutions need to be site specific and not generalized mandates.

8. Adaptation efforts should be allowed to be implemented over a reasonable time table, in some cases covering many years.

9. Distribution of the DEP's proposed changes should always go to cities and towns in general, and not just to their conservation commissions, to make sure the knowledge and contribution is widespread.

Time is of the essence. We have wasted precious years that we cannot recover. I, along with many in my industry, would be delighted to work with the DEP going forward. Let's work on this together to make a better, safer world for us in the future.

Yours truly,

Tom Cox, CMM
Co-Owner, Constitution Marina, Boston

--

Tom Cox
Constitution Marina/Bosport Docking
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Waterways Resilience Comments

Kathy Abbott <kabbott@bostonharbornow.org>

Tue 4/30/2024 4:23 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>

Cc: Moura, Stephanie (DEP) <Stephanie.Moura@mass.gov>; Padien, Daniel (DEP) <Daniel.Padien@mass.gov>

 1 attachments (152 KB)

20240430 Waterways 1.0 Regulatory Update.pdf;

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Dear Mr. Padien and Waterways Team,

Please see the attached comment letter regarding the Proposed Waterways Resilience 1.0 Draft Regulations I am submitting on behalf of the Boston Harbor Now team.

Let us know if you have any additional questions regarding this letter.

Thank you,
Kathy

--

Katherine F. Abbott

President and CEO

Pronouns: She/Her ([Here's why](#))

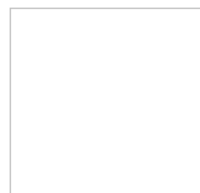
O: 617-223-8104

M: 617-548-6356

15 State St, Suite 1100

Boston, MA 02109

kabbott@bostonharbornow.org





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April 30th, 2024

Via email: dep.waterways@mass.gov

MassDEP - BWR Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, 9th Floor
Boston, MA 02114

Re: 310 CMR 9.00 Waterways (Chapter 91) Resilience 1.0 Draft Regulations

Dear Mr. Padien and the Waterways team,

Thank you for the opportunity to comment on the 310 CMR 9.00 Waterways (Chapter 91) Resilience 1.0 Draft Regulations. Boston Harbor Now's mission is to ensure that Boston's waterfront, harbor, and islands are accessible and inclusive and that these assets are properly adapted to the risks of climate change. We do this in order to realize our vision of a vibrant, welcoming, and resilient Boston Harbor, Waterfront, and Islands for the benefit of everyone. We are encouraged by the Massachusetts Department of Environmental Protection's (MassDEP) willingness to update the Public Waterfront Act (G.L. c. 91, §§ 1, 2, 14 & 18) to address the coastal impacts of climate change and the need to build new resilience and adaptation measures. We hope these changes will help advance climate-prepared designs in the same way that the regulations have historically ensured greater public access.

Boston Harbor Now and our predecessor organization, The Boston Harbor Association, have historically used the 310 CMR 9.00 comment process at MassDEP to ensure that private and public property owners provide a Harborwalk along the shoreline, facilities of public accommodations, and other amenities when they develop or modify property with non-water-dependent uses. Recognizing that the risks of coastal flooding are increasing as a result of sea level rise and storm surge and that the existing 310 CMR 9.00 regulations do not reference resilience, we have expanded our comments considerably beyond 310 CMR 9.00 to include other regulatory processes to ensure that projects are prepared for the anticipated impacts of climate change. We look forward to having new regulatory tools within 310 CMR 9.00 that better define the expectations for future projects and ensure that public benefits created today are not underwater in 2070 or 2100.

Engineering and Constructions Standards – 9.37(1)

We agree with using future sea level projections rather than historic flood data in reviewing projects and believe that projects need to show how they will address future sea level rise. To design their projects with coastal flooding in mind, they must know the design flood elevations (DFEs) associated with future highest annual tides and coastal storm flooding.

To learn more about MassDEP's flood resilience expectations, the proposed regulations direct users to Resilient.mass.gov, the Commonwealth's main website focused on statewide climate initiatives. On the whole, we have concerns about referencing websites in regulations. Websites, though easy to update, are not evergreen. They require maintenance and are not updated frequently. When updated, it is often done without warning, confusing website users. We are sympathetic that coastal flood modeling will continue to evolve and agree that encouraging developments to use the latest flood projections is a best practice.



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However, we'd like to see a different approach to sharing this information. Directing developers to use the Office of Climate Science's latest flood projections is a more elegant way of encouraging developers to use the most up to date DFEs.

We have suggestions if directing users to a website is unavoidable, and MassDEP plans to use Resilient.mass.gov. Resilient.mass.gov, while comprehensive, is quite complicated to navigate. The proposed regulations must be clear about what tool users should pick to determine flood levels (though we assume it is the *ResilientMass Climate & Hazards Viewer*, which is nested under *ResilientMass Maps and Data Center*). Once at the *ResilientMass Climate & Hazards Viewer*, several flood scenarios are shown, and MassDEP does not specify which flood scenario proponents are expected to design for. Additionally, the maps show the extent of flooding but do not specify Base Flood Elevations (BFEs).

To expedite the delivery of critical flood infrastructure, proponents must know what elevation to use for their flood infrastructure. We recommend MassDEP provide more explicit guidelines on using the *ResilientMass Climate & Hazards Viewer*, which should include what flood scenario MassDEP expects proponents to design for and equip the viewer with BFEs for different flooding scenarios, including the projected highest annual tides, projected 1% chance annual flood event, and other relevant datums. We also recommend that MassDEP devise a strategy for proponents seeking extended licenses that require understanding BFEs and DFEs beyond 2070, which is the current limit of the viewer. Flood modeling at present is only reliable to a 50-year horizon, and it is challenging to predict the nature of SLR and the extent of coastal flooding beyond this timeframe. As such, the department will need a protocol to determine an acceptable level of flood resilience for projects seeking licenses beyond our current flood model's capacity. Finally, the process of establishing and updating the projected elevations is critical. MassDEP and the Office of Climate Science should review the relevant climate science regularly and observe sea-level rise trends annually. Flood maps, BFEs, and DFEs should be updated accordingly every five to ten years.

Engineering and Constructions Standards – 9.37(2)

The 310 CMR 9.00 regulatory updates call for no new residential buildings in the V-Zone, with which we agree. Allowing new non-water-dependent uses in the V-Zone would set them up for failure, exposing them to extreme wave action during coastal storms. The proposed 310 CMR 10.00 regulatory updates forbid any uses other than “docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities,” from being built in the V-Zone. Although we believe that the proposed 310 CMR 10.00 regulatory update is too restrictive and instead should allow any water-dependent use, as defined by 310 CMR 9.00, including but not limited to coastal flood infrastructure and renewable energy infrastructure that cannot reasonably be located inland, we are concerned the proposed 310 CMR 9.00 restrictions are too lenient. Both 310 CMR 9.00 and 310 CMR 10.00 regulations should prohibit all new V-Zone development except 310 CMR 9.00-defined water-dependent uses.

Expiration and Renewal – 9.25

Every license renewal should consider projected sea level rise. Given the uncertainty of rising sea levels and other climate projections, licenses should be consistent with the project's design life, and the design should reflect plans to adapt



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over time if necessary. Projects seeking a license renewal should meet the new standards defined above to the extent feasible and should be provided with informational resources on different flood adaptation strategies, similar to the Coastal Flood Resilience Design Guidelines established by the Boston Planning and Development Agency (BPDA). There should be clear consequences for non-renewal and non-compliance, as well as a transparent public process for changes made to the site.

Extended Term Licenses – 9.15

New projects and those subject to renewal will need to go through a process that demonstrates both the structures, and the corresponding public amenities will remain accessible during future sea level rise. As we think about flood protection in the context of 310 CMR 9.00, we must maintain its original mission of creating a waterfront that benefits the public. To this end, MassDEP will need to balance resilience and the public's ability to enjoy the waterfront. Though not mutually exclusive, it will be essential to encourage flood protection that still connects people to the water, which may require elevating certain areas higher than others. The Harborwalk, for example, should be elevated above the future highest annual tides but may not need to be elevated to the 1% chance storm DFE if doing so inhibits visual and physical connections to the water. For amenities that are intentionally allowed to flood during storms, they should, at minimum, be elevated above the projected highest tide flooding for the length of their license or the useful life of the structure. They should also be designed and constructed with materials capable of withstand flooding, adequately maintained and cleaned up after floods, and include measures to ensure no harm to the public during floods, like warning signage, alarms, alerts, and closing gates.

Most project elements, however, should be prepared, or capable of being prepared, for the projected 1% chance storm event for their license length. Creating flood infrastructure capable of protecting against the projected 1% chance storm events while maintaining waterfront access may require creating flood infrastructure that can be adapted over time to meet the necessary elevation. Building flood infrastructure that can be adapted over time is also crucial because clear climate change projections are not currently available past 2070, and our understanding of design flood elevations may change over time. We support the recommendation that proponents requesting extended-term licenses commit to funding the cost of additional climate change adaptations and site modifications.

Building Height Provisions – 9.51

As noted in the BPDA's Coastal Flood Resilience Design Guidelines, encouraging elevation of critical systems helps "protect them from flood risk to avoid costly damage, safety risks, loss of habitability and other critical building functions during a flood event." In preparation for flood risks, more building owners and developers are moving mechanical systems to the upper floors of the building rather than installing them in basements and on the ground floor, a best practice we'd like to see further encouraged. In their new regulatory updates, MassDEP should clarify how building heights will be measured— specifying that they should be measured from a standardized design flood elevation (DFE) rather than the existing grade. The BPDA's Coastal Flood Resilience Overlay District (CFROD), which states, "Building Height shall be measured from the higher of: (a) Grade, or (b) two (2) feet above the Sea Level Rise - Base Flood Elevation (SLR-BFE)" is a model example of what we hope DEP to adopt.



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Minor Project Modification – 9.22

Modifications to projects that address sea level rise should be allowed under the new regulations. Nevertheless, all modifications and minor modifications should include a public process. While relocating building systems from the ground floor for flood resilience may be a minor change, any new ground floor spaces available in non-water-dependent structures on Commonwealth tidelands should be redesigned with the community. Where flood risks or persistent flooding threaten existing ground floor and outdoor public spaces, the scope, scale, and intent of Facilities of Public Accommodation may need to be physically changed and must be maintained during the term of the license and or design life of the project to address climate change impacts. Providing a mechanism under 310 CMR 9.22 will facilitate their implementation.

Long Term Considerations

We appreciate that MassDEP understands the threat climate change poses to the waterfront and is updating its regulations to embed climate resilience into its process. The 1.0 updates are an impressive first step to acknowledging the risks coastal flooding poses, but in the 2.0 updates, we want to see more done to expedite the permitting and deliverance of thoughtfully designed and innovative flood resilience measures and activation. With the threat of climate change looming, we expect a deluge of projects needing to modify their site to be more resilient. With this large influx in mind, MassDEP will need to be able to efficiently move projects through the permitting process to ensure that these spaces are able to protect themselves and their more inland neighbors.

MassDEP has an opportunity and obligation to work within the agency and across other state environmental offices to find ways to encourage nature-based approaches for shoreline protection and flood control. By tracking existing and proposed projects with living shorelines, such as Clippership Wharf, Island End River Flood Resilience Project, Encore Boston Harbor, and Stone Living Lab research, regulations for these adaptation measures can be improved and more consistently permitted. Similarly, MassDEP should also explore permitting pathways for floating and in-water infrastructure. Floating infrastructure provides the opportunity for resilient activation capable of adapting to rising sea levels.

Though perhaps not within the legal purview of 310 CMR 0.00, Boston Harbor Now would be remiss if we did not touch upon a concerning waterfront trend we hope to see addressed. Waterfront development in Boston has been a piecemeal process that, without proper coordination, can lead to disjointed waterfront activation and flood infrastructure that is, at best, challenging to align and, at worst, unable to contribute to district wide flood protection, leaving more inland properties vulnerable to coastal flooding. As an agency that reviews waterfront developments for their ability to enhance the public's experience of the waterfront, and now, their ability to withstand coastal flooding, we hope that MassDEP can help coordinate development along the waterfront to ensure that holistic district-wide flood protection is achieved, and waterfront activation is greater than the sum of its parts.

Additionally, we would like to recommend procedural updates that would improve equity for all people, including EJ populations traditionally excluded from planning discussions. Though better as of late, the current public meeting process could be



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made more equitable. MassDEP's shift to hosting multiple public meetings has significantly improved meeting accessibility, especially for those working during the typical 9-5 workday. To further enhance meeting accessibility, we recommend posting meeting recordings online for those unable to attend and providing interpretation for those who need it. In addition to these changes, we recommend MassDEP work to create a notification system that alerts members of the public to upcoming projects and public meetings, similar to the Boston Planning and Development Agency's email distribution list, which allows people to opt into notifications based on the types of processes and geography.

MassDEP has the potential to do for climate resiliency what it has done for public access by updating these regulations. We look forward to continuing to participate in the 2.0 conversation about longer-term changes to 310 CMR 9.00. We appreciate the opportunity to provide input to create the accessible and resilient waterfronts envisioned by the public trust doctrine and codified in the Public Waterfront Act. Thank you for your consideration of these comments. We look forward to continuing to be involved in the process as changes are considered.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine F. Abbott".


Katherine F. Abbott
President and CEO
Boston Harbor Now

Waterways Resilience Comments

Scott Haggerty <ScottH@reinauer.com>

Tue 4/30/2024 4:21 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 2 attachments (6 MB)

Waterways Comments.pdf; image001.jpg;

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Please see attached comment letter
Thank You

Scott Haggerty
General Manager

BTT Marine Construction Company LLC
338 Border Street
East Boston, MA 02128
[signature_3731135963]

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BTT MARINE CORPORATION
338 Border Street
East Boston, MA 02128

April 29, 2024

MassDEP - BWR Waterways Program
Attention: *Waterways Resilience Comments*
100 Cambridge Street, 9th Floor
Boston, MA 02114

Dear MassDEP Waterways, Wetlands, and Other Interested Parties,

Thank you for the opportunity to comment on four different yet related proposed regulatory changes all released December 22, 2023 concerning "Resilience from Coastal and Inland Flooding."

BTT Marine Construction is a family-owned business (i.e., Reinauer) that operates from its property at 330 -- 400 Border Street in East Boston, along with Boston Towing and Transportation which operates tug boats in Boston Harbor from its offices at 404 Border Street. This 13-acre marine campus is active and water dependent. As RTC New Street LLC, we also own property at 34 and 36 New Street in East Boston, which is essentially vacant and is not actively used for maritime industrial activities. Both properties are located within the East Boston Designated Port Area (DPA).

Our comments are limited to a few high-level observations and suggestions. Before sharing our "concerns," I do wish to acknowledge the importance of addressing flooding and coastal resiliency in the Commonwealth. Our criticisms of the draft regulations are not intended to give a different impression.

First, we believe that the DEP should delay the implementation of these draft regulations pending the development of a comprehensive Massachusetts coastal resiliency plan that provides a framework and a roadmap for the development of coastal resiliency regulations and policies by a variety of relevant state agencies and enterprises. While these draft DEP regulations have been in development for some time, the process of getting to draft regulations has been relatively secretive, in our opinion, and it is neither clear how these regulations intersect with economic development plans associated with harbor cities and ports, nor align with the climate work/energy transformation occurring in the State. It is our belief that an

overarching plan or framework should first be in place. These regulations feel like the tail wagging the dog.

Second, we believe that the DPA exemption from the general prohibition of construction in V zones should be expanded to include all marine industrial properties and water dependent users. Because our properties are located in the East Boston DPA, BTT benefits from the exemption from the new performance standard for Land Subject to Coastal Storm Flowage found at 310 CMR 10.36(4)(d). We strongly believe, however, that all water dependent users and marine industrial properties should be exempt. The regulations should support these entities that are a critical part of traditional water dependent maritime activities and services (e.g., boat repair yards) as well as emerging burgeoning “blue economy” activities and services (e.g., marine technology). This exemption feels to us like a bizarre carrot being offered to DPA private property owners while they are locked within a restrictive state program that limits many commercial and industrial property uses.

Third, we believe that the general prohibition on construction in V zones is misguided. The prohibition on building in challenging environments fails to reflect the skills, materials, and technologies emerging to address flooding, changing precipitation patterns, and potential elevated sea levels. The “can’t do” attitude conflicts with Governor Healey’s own words and vision. In an interview with WBUR’s Tiziana Dearing on 4/23/24, Governor Healey spoke about her excitement in participating in the Vatican’s Climate Summit of world leaders. She said: “I want to make Massachusetts the global hub of climate innovation and climate technology. In fact, it is a big part of our economic development bill.” How is retreating or just saying no to coastal businesses and enterprises consistent with that? Climate technologies are not limited to carbon reduction technologies. Why can’t Massachusetts also be a leader in adaptive coastal building? We oppose the ban. We believe that the proposed regulations should allow for modifications of existing engineering structures to make them higher, and use different materials or construction approaches to improve the structural integrity.

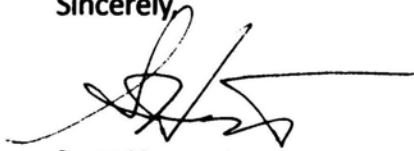
Fourth, as a marine construction company, we believe that these regulations could – at a most critical juncture – add permit and license legal uncertainties, financing challenges, and unnecessary costs to what is already the most expensive type of construction in the Commonwealth. If the purpose, in part, is to promote a more resilient coastline in a state with 400 years of a built shoreline, the regulations should expedite the path to coastal adaptation solutions, including marine construction activities and nature-based solutions. We believe that these regulations, if implemented, could delay the very action that the DEP wishes to support.

Fifth, with respect to our last point, we have concerns about the tools used to “adequately consider” projected Sea Level Rise (SLR). DEP proposes to revise the Engineering and Construction Standards at 310 CMR 9.37(1)(d) to “adequately consider SLR” with respect to any new licenses and the renewal of existing licenses. We agree in the intent, but we fear the use. SLR in Boston was projected in 2017 by Climate Ready modeling to be 9 inches by 2030. Seven years later, the actual SLR in Boston Harbor is less than one inch, according to NOAA data. Will it continue at that pace? Will the proverbial hockey stick curve commence in 2025? I don’t want

to get hung up on the numbers, but I do wish to point out the challenge of relying (even if you say you won't) on imperfect models that may heavily impact Chapter 91 license holders wishing to renew their licenses or modify uses on their properties. We support Massachusetts Marine Trade Association's (MMTA's) suggestions to (a) further clarify what adequately consider SLR actually means; and (b) allow for "rolling" capital improvements rather than requiring a water dependent user to do all significant upgrades to a property, based on projected SLR modeling, in order to obtain a renewed Chapter 91 license.

Thank you for the opportunity to share comments. I would be happy to discuss these comments, and observations from the maritime construction industry, in support of improved coastal resiliency regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Haggerty', with a long horizontal line extending to the right.

Scott Haggerty
BTT Marine Construction
917-416-8560 (cell)

Wetlands and Waterways Resilience Comments

Toby Burr <toby@burrbros.com>

Mon 4/29/2024 1:58 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Dear DEP,

Thank you for the opportunity to comment on the proposed regulations.

Our third-generation family business, a boatyard, is at the water's edge. It has to be to service boats. There is nowhere to retreat. We have invested our lives and all our capital in this business. Dozens of families rely on employment here. We have to keep reinvesting to react to changing consumer demands, changing technology, and deterioration due to age. If we can no longer invest, we go out of business--and we are not alone.

These regulations will have a devastating economic impact on the coastal communities of Massachusetts. Thousands of Massachusetts homes and businesses will lose their current value and lose future investments if these proposed regulations are not drastically changed. These regulations would reach hundreds of houses in the heart of our village. As the waterfront and village homes are valued less, the property tax burden will shift inland to the people who can afford it the least.

Please:

1) Acknowledge that water dependent uses need the certainty that they can continue to improve their services so citizens and their boats can have access to the water. We have been designing for, adapting to, and surviving hurricanes for generations. We have a hurricane preparedness plan; our electrical outlets are raised 7 to 8 feet off the floor, as are much of our tools and equipment; and new buildings are built to hurricane codes.

2) Continue public hearings at the local level. Only 1 out of 100 homeowners impacted know there are new regulations in the works, let alone what the regulations say.

Sincerely,

Toby Burr

Burr Brothers Boats, Inc.

309 Front St.

Marion, MA 02738



Comments

Andrew Dominick <drew@capeannmarina.com>

Tue 4/30/2024 10:34 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Tobin Dominick <tobin@capeannmarina.com>

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Attn: **Wetlands and Waterways Resilience Comments**

Our family developed, operates, maintains one for the largest marina operations in the state, and has for 51 years. The marina consists of 275 boats slips, fuel dock and pump-out facilities, a 30 unit hotel on the water connected to a lobby, indoor pool, 200 seat waterfront restaurant and conference center. The boat yard consists of indoor boat repair shops, retail space, offices and sales areas. With over 11 acres of marina, buildings and boatyard, we are very concerned about the following changes in regulations and all of these points will have significant devastation to our private businesses. We support both commercial and recreational boating markets and considered an essential business to our economy. We host thousands of guests every year by car or by boat, and a major contributor to our local economy for destination travelers. In our last 51 year we have built, maintained, and operate on a mixture of filled tideland our docks, piers, seawalls, and all the upland buildings. Not one penny has been funded by the state, except for a pump-out grant to help keep our waterways clean. We have built and rebuilt our buildings, piers, docks and seawalls. We are stewards of our waterfront and have taken great pride in maintaining our property at very heavy expenses to do so. As they say, "Rome wasn't built in a day." Well either was our water dependent use businesses, and we need to be able to continue to change with the times, and maintain what has been established all while supporting the waterways economy, please read below further for topics related to our business.

It has been brought to my attention by the Massachusetts Marine Trades Association, that the Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years. If enacted, the regulations would:

- prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.

- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term.

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. **This is not adaptive or resilient and clearly needs more thought and feedback.**

Regulations are not ready and I believe major revisions are needed. Please strongly consider the following:

- Failure to make changes to proposed regulations will cause the coastal economy which is our business to collapse fast. As a result we would not have access to financing, ordinary property transactions. This also includes no new money to invest in upgrading and adapting existing facilities. **We need all of these!**
 - We need private sector money to invest in our coastal communities for real climate change adaptation.
- You must please be more inclusive of impacted communities.
 - Hold many more public hearings, let property owners know and understand. Then listen to more comments. Not enough people know about such regulations and creative and concerned individuals especially need to know, we are all in this together and should have a collaborative solution.
- Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water’s edge.
- Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
- We know how to design and adapt to storms as well as engineering companies. Let us do so.

Thank you for your time in reading these comments and suggestions. We appreciate your consideration and thoughtfulness and look forward to further discussion for making future solutions viable.

In best regards,

Andrew A Dominick III

Attn: Wetlands and Waterways Resilience Comments

Tobin Dominick <tobin@capeannmarina.com>

Tue 4/30/2024 9:55 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Our family developed, operates, maintains one for the largest marina operations in the state, and has for 51 years. The marina consists of 275 boats slips, fuel dock and pump-out facilities, a 30 unit hotel on the water connected to a lobby, indoor pool, 200 seat waterfront restaurant and conference center. The boat yard consists of indoor boat repair shops, retail space, offices and sales areas. With over 11 acres of marina, buildings and boatyard, we are very concerned about the following changes in regulations and all of these points will have significant devastation to our private businesses. We support both commercial and recreational boating markets and considered an essential business to our economy. We host thousands of guests every year by car or by boat, and a major contributor to our local economy for destination travelers. In our last 51 years we have built, maintained, and operate on a mixture of filled tideland our docks, piers, seawalls, and all the upland buildings. Not one penny has been funded by the state, except for a pump-out grant to help keep our waterways clean. We have built and rebuilt our buildings, piers, docks and seawalls. We are stewards of our waterfront and have taken great pride in maintaining our property at very heavy expenses to do so. As they say, "Rome wasn't built in a day." Well either was our water dependent use businesses, and we need to be able to continue to change with the times, and maintain what has been established all while supporting the waterways economy, please read below further for topics related to our business.

It has been brought to my attention by the Massachusetts Marine Trades Association, that the Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years. If enacted, the regulations would:

- prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term.

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. **This is not adaptive or resilient and clearly needs more thought and feedback.**

Regulations are not ready and I believe major revisions are needed. Please strongly consider the following:

- Failure to make changes to proposed regulations will cause the coastal economy which is our business to collapse fast. As a result we would not have access to financing, ordinary property transactions. This also includes no new money to invest in upgrading and adapting existing facilities. **We need all of these!**
 - We need private sector money to invest in our coastal communities for real climate change adaptation.
- You must please be more inclusive of impacted communities.
 - Hold many more public hearings, let property owners know and understand. Then listen to more comments. Not enough people know about such regulations and creative and concerned individuals especially need to know, we are all in this together and should have a collaborative solution.
- Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water’s edge.
- Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
- We know how to design and adapt to storms as well as engineering companies. Let us do so.

Thank you for your time in reading these comments and suggestions. We appreciate your consideration and thoughtfulness and look forward to further discussion for making future solutions viable.

In best regards,

Tobin Dominick
Managing Partner

Cape Ann Marina
HOTEL | RESTAURANT | SERVICE

Office: (978) 283-3293 x 492
www.CapeAnnMarina.com
75 Essex Avenue – Gloucester MA 01930

Wetlands and Waterways Resilience Comments from Cape Cod Shipbuilding

Wendy Goodwin <wendy@capecodshipbuilding.com>

Thu 4/18/2024 5:44 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear DEP:

I'm writing regarding the December 22, 2023 proposed wetland waterways regulation changes. If enacted, these regulations would prohibit new buildings in high wind and wave areas, even if safely designed and elevated. The changes would leave decisions to the discretion of local volunteer Conservation Commissions whether existing buildings, piers and docks can be relocated, expanded or new ones built. The regulations would make relicensing uncertain for even existing buildings, docks and piers upon expiration of the current term.

These regulations are not ready, changes to the proposal are needed. Moving forward will cause the coastal economy to collapse. Financing, money to invest is needed in upgrading and adapting existing facilities, some of which have been around for decades. We need private sector money to invest in our coastal communities for climate change adaptation. Our family run boatyard has been in Wareham since 1899 and on the current waterfront location since 1920. This year we're celebrating 125 years in the boat business. Over the years we have invested where we could in infrastructure like our travel lift pier and storage buildings to assure we can continue building & repairing boats years to come. With the proposed changes, it appears like we would not be able to continue that in the future.

My family is asking you to be more inclusive of impacted communities. Hold more public hearings and listen to what the community is saying. We don't feel it should be left to each Conservation Commission's discretion to refuse waterfront property use especially for water dependent businesses like ours. We make, repair & store boats, our livelihood is at the water's edge. We need to continue to run our business, service our docks and piers in the Wareham river, and maintain our buildings which store boats in the off season. We need to remain at the waters edge as our customers sail to our dock each fall & sail away from our dock each spring. Do not prohibit water dependent businesses based on geography of high wind or high wave zones. It would be more wise to require sound, safe engineering and design for individual locations so how the wind and wave activity impacts that particular location will factor into any proposed improvement.

Our family business has been weathering the highs & lows of wind & waves for three generations now. We know how to design and adapt to the storms and have been doing so for 125 years. I'm writing today to urge you to let us continue to do so.

Sincerely,

Wendy J. Goodwin
President

Cape Cod Shipbuilding Co.
7 Narrows Rd. P.O. Box 152
Wareham, MA 02571-0152
508-295-3550
wendy@capecodshipbuilding.com
www.capecodshipbuilding.com



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Waterways Resilience Comments

Christine Liu <cliu@thecharles.org>

Fri 4/26/2024 12:30 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: ljasinski@thecharles.org <ljasinski@thecharles.org>

 1 attachments (244 KB)

CRC Comment Letter Chapter 91 Climate Resilience 1.0 Regulations.pdf;

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Hello,

Please see the attached comments on the draft Chapter 91 Waterways regulations as part of MassDEP's "Climate Resilience" 1.0 package from the Charles River Conservancy.

Thank you,
Christine Liu

--

Christine Liu (*she/her*)

Communications and Advocacy Associate

Charles River Conservancy, Inc.

43 Thorndike Street, S3-3

Cambridge, MA 02141

Office: (617) 300-8172

Help us make the Charles River and parks more active, attractive and accessible! Donate to [The River Bank](#) today!



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0 2 1 4 1

617 608 1410 t

crc@thecharles.org
www.thecharles.org

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Massachusetts Department of Environmental Protection
Bureau of Water Resources Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, 9th Floor
Boston, MA 02114

April 26, 2024

Dear Waterways Program Chief Padien,

Thank you for the opportunity to comment on the draft Chapter 91 Waterways regulations as part of MassDEP's "Climate Resilience" 1.0 package.

At the Charles River Conservancy, we strive to make the Charles River and its parks a well-maintained network of natural urban places that invite and engage all in their use and stewardship.

One major initiative of the Charles River Conservancy is the installation of floating wetlands, which explores an ecological intervention to reduce harmful algal blooms in the Charles River. We were fully aware that the current permitting framework is designed to be arduous in order to prevent intrusion and harm to water bodies. An unfortunate consequence is that nature-based solutions that are intended to provide net benefits are also more challenging to execute within the same framework. The floating wetland project was no exception, making the permitting phase a significant part of the overall effort. We therefore strongly support a simplified, streamlined permitting process to accelerate the pace of restoration projects.

We are pleased to see that these regulations advance climate resilience. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change. We appreciate the years of work MassDEP has spent crafting these draft regulations, and strongly support many of the proposed provisions. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations.

We support the following provisions, and recommend that MassDEP promulgate them swiftly:

- Clarifying that culvert replacements that meet Massachusetts Stream Crossing Standards do not need to obtain a Chapter 91 permit.¹ This exemption will help encourage culvert replacements, speed up their permitting process, and lower the cost for municipalities and practitioners.
- The new requirement for projected sea level rise data to be incorporated into new development and redevelopment for the life of those projects.² Sea level rise should be factored into coastal infrastructure plans for the longevity of the structure, as well as for human safety.

Where the regulations must be refined:

- MassDEP has proposed to strike out the “Combined Application” option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications,³ without proposing anything to fill its place. To accelerate the pace of restoration projects, we need a simplified permitting process that provides combined Wetlands Protection Act and Chapter 91 *approval* for applicants pursuing environmentally beneficial projects.
- As written, the definition of “fill” includes salt marsh hay,⁴ and treat it with the same long permitting pathway as fill used in development, even though salt marsh hay is part of ecological restoration. Instead, the definition of “fill” should exclude salt marsh hay, and those projects should be exempt from getting a Chapter 91 license.
- While MassDEP has proposed to use Resilient Mass mapping for updated sea level rise data, there is no inclusion of forecasted precipitation data. Greater precipitation combined with sea level rise will yield a more accurate picture of flood risk, and MassDEP should include reference to an appropriate, forward-looking dataset.

Though the draft regulations are, overall, moving the state in a positive direction, they do not go far enough in achieving the stated goals of “Resilience 1.0.” **After swift promulgation of these regulations, we strongly encourage MassDEP to begin the “2.0” process to continue improving Chapter 91 regulations.** There must be no delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

Specifically, Charles River Conservancy would like to see special conditions given to dam removal projects under 310 CMR 9.00. The regulations already provide for culvert replacements to be exempted from a Chapter 91 license, recognizing that those projects do not impede navigation and instead increase the resilience of the site. MassDEP’s public summary of the proposed changes state that these projects are exempt “when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation.”⁵ Removing dams that block wildlife passage, present flooding risks, or are abandoned, similarly meet those criteria. The Wetlands Protection Act regulations provide an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited Project;⁶ Chapter 91

¹ 310 CMR 9.05 (3)(g)(4)

² 310 CMR 9.37 (1)(d)

³ 310 CMR 10.04

⁴ 310 CMR 9.02

⁵ [Summary of Proposed Regulations](#) 310 CMR 9.00: Waterways. Massachusetts Department of Environmental Protection. December 22 2023. Page 1.

⁶ 310 CMR 10.00 (8)

should do the same by exempting them from obtaining a permit. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety. Removing many of these dams is essential to protecting our communities from the more intense storms that climate change is bringing to the Commonwealth. MassDEP should do its part in accelerating that work by providing a streamlined permitting pathway.

Thank you for the considerable time and effort the agency has invested in creating these draft regulations so far. We look forward to continuing to work together to protect Massachusetts’ rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Jasinski". The signature is fluid and cursive, with the first name "Laura" and last name "Jasinski" clearly distinguishable.

Laura Jasinski
Executive Director, Charles River Conservancy
ljaskinski@thecharles.org


Waterways Resilience Comments

Zeus Smith <zsmith@crwa.org>

Tue 4/30/2024 4:47 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Cabell Eames <ceames@crwa.org>

 1 attachments (215 KB)

2024 4 30 Final CRWA Waterways Comment Letter.pdf;

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Hello Waterways Program Chief Padien,

Please find Charles River Watershed Association's comments attached to this email. We're deeply grateful to the Waterways Program staff for their hard work to update 310 CMR 9 and to prepare Massachusetts for the effects of climate change. We welcome any questions you or your staff may have and look forward to working with you in the future.

Respectfully,

--

Zeus Smith, Esq. | he/him

Associate Attorney

Charles River Watershed Association

Lands of the Massachusett, Nipmuc, and Wampanoag tribes

41 West St. Floor 8 | Boston, MA 02111

t 617.540.5650 x 1077 **c** 971.280.7685

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April 30, 2024

Daniel Padien
MassDEP – BWR
100 Cambridge Street, Suite 900,
Boston, MA 02114

Via Email: dep.waterways@mass.gov

Re: Waterways Resilience Comments

Dear Waterways Program Chief Padien:

Charles River Watershed Association (“CRWA”) appreciates the opportunity to comment on the draft Waterways Resilience 1.0 regulatory updates to 310 CMR 9, “The Massachusetts Waterways Regulation.” As one of the country’s oldest watershed organizations, CRWA protects, preserves, and enhances the Charles River and its watershed through science, advocacy, and the law. Over the last five decades, our initiatives have dramatically improved water quality in the watershed, fundamentally changed approaches to water resource management, and protected the Charles River as a public resource for current and future generations.

CRWA has fully reviewed the draft regulatory updates. We appreciate the Massachusetts Department of Environmental Protection (“MassDEP”) Waterways Program’s promulgation of draft regulations that improve Massachusetts’ climate preparedness. The Commonwealth’s waterways must remain safe and accessible in the face of floods, sea-level rise, and changing precipitation patterns. We believe that these regulatory updates are a significant step in the right direction and submit the following comments in the spirit of further strengthening our state’s future climate resilience.

CRWA commends these updated provisions:

Consideration of sea-level rise is necessary and should be swiftly implemented

CRWA greatly appreciates the updates to 310 CMR 9 to require all applications for a license, amendment, or renewal to consider projected sea-level rise. We commend the changes to the engineering and construction standards at 310 CMR 9.37(1)(d) to require that all fill and structures shall be designed in a manner that “incorporates the impacts of projected sea-level rise throughout the design life of the building, structure.” We additionally appreciate the changes to 310 CMR 9.10 incorporating the updates to 310 CMR 9.37. We hope that projected sea-level rise will continue to be a priority in future regulatory updates.

Exemption of culvert replacement and similar measures from Chapter 91 licensing requirements will enable necessary restoration projects

CRWA appreciates the changes to 310 CMR 9.05(3)(g) that clarify limits for existing exemptions for certain projects that address increased precipitation/stream flow or climate vulnerability and do not reduce the space available for navigation. The changes to 310 CMR 9.05(3)(g)(4) that specifically add culvert

Charles River Watershed Association

41 West Street, Floor 8 Boston, MA 02111 t 617 540 5650 www.crwa.org

replacements that meet the Massachusetts Stream Crossing Standards to the list of exemptions are welcome. CRWA regularly assesses culverts across the watershed and has identified many significantly undersized culverts. Streamlining this work is necessary to improve stormwater infrastructure throughout our watershed and the state. The addition of scour protection measures and similar fill that does not extend into rivers or streams to the exemption list is likewise welcome. These projects protect Massachusetts waterways; lowering the regulatory barriers to this work will improve the health of our rivers and streams.

The change from “grandfathered” to “exempted” is a laudable shift away from a problematic term

CRWA appreciates the Waterways Program staff for their commitment to shifting away from problematic terminology and suggests that in addition to “exempted,” “legacied” or “legacy” can be used as another synonym. Additionally, while we appreciate the removal of the term “grandfathering,” we’d more so appreciate the removal of the concept itself. There are few instances in the environmental sector where - in the long-term - providing exemptions benefits the citizens of the Commonwealth or our environment.

The exemption of non-structural elements from height requirements allows latitude for developers to incorporate climate-resilient design

CRWA appreciates the changes made to 310 CMR 9.51(3)(e) and hopes that this will facilitate climate-resilient building design. Solar-powered facilities, battery storage, and the incorporation of other key green-building elements will result in new building requirements, and we appreciate the Waterways Program’s acknowledgment of changing design needs.

CRWA recommends further refinement in these areas:

Consideration of projected sea-level rise should be incorporated wherever possible and should protect public access

Climate-induced sea-level rise should not impact public access. Accordingly, waterways should always be measured from the more landward line or high watermark. Requirements to consider projected sea level rise should also apply to the maximum extent permissible by law; to project extensions and any other changes. Projected sea-level rise and changing flood elevations will impact all waterfront properties and may do so before some property owners apply for license renewals. **Accordingly, the Waterways Program should explore ways to uniformly apply the newly drafted requirements under 310 CMR 9.37(1)(d) to all jurisdictional properties as soon as possible.**

Dam removal should be included in 310 CMR 9.05’s list of activities not requiring a license or permit

In the Charles River watershed alone there are more than 108 jurisdictional dams, many in poor repair. CRWA, working with our indigenous partners, has identified dam removal as a priority restoration activity for supporting a biodiverse and healthy river. Today critical anadromous species like Shad and River herring are excluded from much of their historic range. For this, and many other reasons, addressing and mitigating the ill effects of dams should be a shared goal of the Commonwealth of Massachusetts. A tangible step toward this goal will be to streamline dam removal permitting. Dam removals are unique and important projects that are a poor fit for the existing regulatory structure designed to mitigate negative impacts on coastlines and flowed tidelands.

Charles River Watershed Association

41 West Street, Floor 8 Boston, MA 02111 t 617 540 5650 www.crwa.org

The rationale behind exempting culvert replacements is that such projects do not impede navigation and increase resiliency. Generally, the same rationale could and should be applied to dam removal efforts. The Wetlands Protection Act regulations recognize the value of dam removal by streamlining dam removal permit applications as Ecological Restoration projects¹ and by allowing dam removal as a river restoration mitigation measure for riverfront redevelopment projects.² The Massachusetts Waterways Regulation should similarly recognize the importance of dam removal by removing any requirements to secure a Chapter 91 license prior to dam removal.

The references to FEMA Special Flood Hazard Areas should be reconsidered

CRWA notes the continued utilization of and reference to Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Maps. These maps appear to no longer effectively predict areas of flooding. As reported by the Metropolitan Area Planning Council (“MAPC”):

FEMA Flood Maps are poorly predictive of where stormwater flooding is most likely to occur. **Ninety-six (96) percent of the disaster claims arose in areas outside of the FEMA Special Flood Hazard Areas (SFHAs), also known as the 1% chance flood zones.** As the vast majority of claims were outside the SFHA, most residents were unaware of their risk. As a result, damages were much greater than they otherwise might have been. Of the flood claims granted, 87% were for flooding levels of less than one foot and 71% were for flood heights of less than six inches, indicating that even moderate levels of flooding can cause significant, widespread damage to properties.³

CRWA understands that these are the most widely used maps and acknowledges their importance. However, CRWA recommends that the regulations be updated to utilize both FEMA mapping and other, more accurate flood maps. Additionally, if FEMA maps are used, the 500-year (0.2%) chance maps should replace the 1% maps so that developers and residents fully appreciate the scope of potential impacts from extreme weather.

There are currently several communities that - recognizing the inadequacy of FEMA flood maps - have completed climate-related flood risk assessment and mapping projects that are specific to their area (e.g., Cambridge and Boston). CRWA engages with participating communities to regionalize this planning and maintains a Charles River Flood Model that covers 33 upper watershed communities. In the short term, MassDEP should create a clearinghouse of regional flood models to be referenced alongside FEMA flood maps during the planning process. In the long-term MassDEP should work with the Massachusetts Climate Change Clearinghouse to create and maintain an accurate state-wide flood map that includes future flooding under various climate change scenarios. In the near future, MassDEP should incorporate these into regulations.

References to projected precipitation patterns should be added

While CRWA appreciates the draft provisions requiring potential licensees to consider projected sea-level rise, CRWA is disappointed that the Waterways Resilience 1.0 package does not contain a similar requirement for projected precipitation patterns. Even tools like NOAA Atlas 14+ that attempt to forecast

¹ 310 CMR 10.53(8)(e)(1).

² 310 CMR 10.58(5).

³ <https://www.mapc.org/news/greater-boston-susceptible-unpredictable-stormwater-flooding/>
Charles River Watershed Association

future patterns cannot supplant requirements to use the most current forecasts. As was done for sea-level rise, language should be added that requires licensees to consult to understand future precipitation and flood risks at their site. CRWA suggests adding the following language to 310 CMR 9.37 as 310 CMR 9.37(1)(e): “An applicant shall consult the Resilient.mass.gov website for most current projected precipitation data and other available information related to flooding or other similarly reliable sources, as deemed appropriate by the Department.” Similar language could be added to 310 CMR 9.15(1)(b)(2): “including but not limited to **climate-related changes such as** projected sea level rise **and future design storms.**”

Salt marsh hay should be excluded from the definition of fill material; placement of salt marsh hay should not require a Chapter 91 license

Currently, the definition of “fill” under 310 CMR 9.02 includes salt marsh hay and requires the acquisition of a Chapter 91 license to place salt marsh hay. Instead, CRWA urges the Waterways Program to add salt marsh hay to the list of exemptions⁴ in the definition of “fill” at 310 CMR 9.02 by adding the phrase “salt marsh hay placed in an area designated as a salt marsh for salt marsh restoration purposes.” CRWA does not consider that this will significantly conflict with any federal definitions of fill material and this will facilitate the restoration of Massachusetts’ ecologically important salt marshes.

CRWA eagerly anticipates Resilience 2.0 and looks forward to working further with the Waterways Program

CRWA is grateful for the opportunity to comment on these regulatory updates. They represent a new era in Massachusetts as we prepare for the realities of climate change. We appreciate that MassDEP has already recognized that more changes will be necessary through a Resilience 2.0 process. We look forward to working with the Waterways Program and MassDEP to continue to improve our Commonwealth’s climate resilience.

Thank you for your consideration of these comments.

Respectfully,



Zeus Smith, Esq.
Associate Attorney, CRWA

⁴ Other exemptions include: “material placed by natural processes not caused by the owner or any predecessor in interest; material placed on a beach for beach nourishment purposes; and dredged material placed below the low water mark for purposes of subaqueous disposal.” 310 CMR 9.02.

Waterways Resilience Comments

Chase Gerbig [REDACTED]

Thu 1/18/2024 12:14 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Good morning,

Please accept the following comment regarding the proposed amendments to 310 CMR 9.00: The Massachusetts Waterway Regulation.

310 CMR 9.37(1)(d) regarding Engineering and Construction Standards is proposed to be added and to read: "All fill and structures shall be designed and constructed in a manner that...incorporates the impacts of projected sea level rise throughout the design life of the building, structure, fill, open space or publicly accessible area or facility. An applicant shall consult the [Resilient.mass.gov](https://resilient.mass.gov) website for the most current mapping and other available information related to shoreline change and sea level rise or other similarly reliable sources, as deemed appropriate by the Department."

This revision is ambiguous and should be revised to provide more clarity as to what climate/sea level rise model outputs will be accepted by the Department. Specifically:

- Consider revising the regulation to provide presumptive certainty that the information at [Resilient.mass.gov](https://resilient.mass.gov) will be accepted as a reasonable basis for a design.
- Absent presumptive certainty the department and project proponents are left with little-to-no meaningful guidance as to what should for the basis for design standards. "And other available information related to shoreline change and sea level rise or other similarly reliable sources" is overwhelmingly and unworkably vague. Certainly, MassDEP wants to afford proponents an opportunity to consult other sources of information, but the regulation as written does not provide any weight to the State's determination of what is valid versus other models and interpretations. Adding a presumptive certainty statement regarding [Resilient.mass.gov](https://resilient.mass.gov) alleviates this ambiguity while still affording proponents the opportunity to present alternative evidence and information.
- The design life of projects could be decades long and climate models decades into the future have incredibly large degrees of uncertainty based on factors that are currently unknowable. It is preferable to have reasoned experts at the MassDEP who are responsible for maintaining [Resilient.mass.gov](https://resilient.mass.gov) determine which model outputs within that range of uncertainty are reasonable design standards. The difference between models many decades into the future could be feet of sea level rise.
- It is preferable from a design perspective to know that the inputs that are going to be accepted. For example, a preceding paragraph of the regulations (9.37(1)(b)) states that construction must "comply with applicable state requirements" in the State Building Code. This provides a definitive basis for a design. The regulations rightly do not state that applicants need to *consider* the State Building Code *and other available information related to building codes, as deemed appropriate by the Department*. That is obviously absurd.
- Project proponents and license/permit reviewers at MassDEP do not necessarily have the expertise to determine which climate model is the appropriate one to utilize. By adding a

presumptive certainty standard to the information at [Resilient.mass.gov](https://resilient.mass.gov) you are alleviating project proponents of enormous costs associated with determining which climate/sea level rise model is the appropriate one, which inputs and outputs are appropriate, and how to account for ranges in uncertainty. Frankly, this is a specialized skill set that only a limited number of people have. By creating ambiguity in the current regulation draft you are also setting up MassDEP to render divergent opinions on a regular basis about what is reasonable. Some of this will still happen and will be a challenge because you are correctly providing flexibility with models, but a presumptive certainty standard would significantly cut down on the potential for this to occur. A presumptive certainty standard also puts the onus on project proponents that are utilizing a different model to explain the differences in model information relative to the model that has presumptive certainty.

- Without a clear indication of the "right" model, MassDEP and project proponents are exposed to unnecessary challenges to decisions. For example, if a project proponent uses a set of inputs and models that show sea level rise to be six inches in 50 years, but a project opponent can show an equally credible model with a different set of equally credible inputs that result in a seal level rise of 18-inches - who is going to determine which is the correct model? Challenging MassDEP decisions to have the courts reach such a determination is a waste of resources and a court is a poor forum to dispute these topics. Certainly, project proponents may willingly open themselves up to these challenges by using alternative sources of information, but project proponents should be afforded the option to choose certainty that they will not get bogged down in fruitless disputes about climate models. Adding presumptive certainty regarding [Resilient.Mass.gov](https://resilient.mass.gov) resolves this ambiguity.
- Guidance documents that provide a degree of certainty regarding [Resilient.Mass.gov](https://resilient.mass.gov) are an inferior tool for this purpose. First, guidance documents will take a substantial amount of time to prepare. Furthermore, guidance documents only provide a degree of certainty regarding the usability of information at [Resilient.mass.gov](https://resilient.mass.gov), which helps but does not resolve the matters discussed above. You have an opportunity now to provide the necessary certainty about the information at [Resilient.mass.gov](https://resilient.mass.gov) and should take it by revising the regulations before promulgating them.

Note that I make these comments as an individual, although base them on my experience as both a member of the Littleton Conservation Commission and as a licensed environmental engineer in the Commonwealth who works with clients to navigate Massachusetts Wetlands Protection Act and Chapter 91 matters. Please also note that I have a related comment regarding the proposed WPA revisions and will submit a related comment to the same effect regarding the revision of those regulations.

Thank you for considering my comment.

c

--

Chase Gerbig

[REDACTED]

12/22/2023 Proposed DEP Changes

Christine Walsh [REDACTED]

Tue 4/30/2024 8:37 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; patrick.kearney@mahouse.gov <patrick.kearney@mahouse.gov>

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To Whom It May Concern,

I was just notified of this 4th hand last night.

As a coastal resident, I believe the proposed regulations (as I understand them) would be catastrophic if implemented.

I am vehemently opposed.

Without proper vetting & discussion of the entirety of the impact to residents, business', towns etc. this is wholly irresponsible.

Sincerely,

Christine R. Walsh

[REDACTED]
Scituate, MA [REDACTED]
[REDACTED]


City of Boston, Waterways Resilience Comments

Aladdine Joroff <aladdine.joroff@boston.gov>

Tue 4/30/2024 4:19 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Christopher Osgood <chris.osgood@boston.gov>; Oliver Sellers-Garcia <oliver.sellersgarcia@boston.gov>; Abigail Menendez <abigail.menendez@boston.gov>

 1 attachments (120 KB)

City of Boston, Waterways Resilience Comments.pdf;

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Good afternoon,

Please find attached comments from the City of Boston on DEP's proposed revisions to 310 CMR 9.00. We appreciate the opportunity to share this input for your consideration and are happy to discuss in more detail as helpful.

Thank you for your time,
Aladdine

--



Aladdine Joroff

Director of Climate Policy

Environment Department

1 City Hall Square, Room 709

Boston, MA 02201

[617.635.3407](tel:617.635.3407) (w)

Notice: This email is subject to the [MGL: Chpt.66, Sec.10 Public Records Law](#).



April 30, 2024

Massachusetts Department of Environmental Protection
BWR Waterways Program
Attn: Waterways Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: 310 CMR 9.00 Waterways Draft Regulations

By Electronic Submission to dep.waterways@mass.gov

Mr. Padien and the Waterways team,

Thank you for the opportunity to provide feedback on the Department of Environmental Protection's (the Department) proposed revisions to the 310 CMR 9.00 Massachusetts Waterways Resilience Regulations (the Draft Regulations). Reevaluating these regulations is necessary to efficiently facilitate meaningful resilience projects to address climate-induced flooding. Multiple reports from the Commonwealth and City underscore the need for more resilience projects that help us plan not just for the short term but also for the long-term. Since Boston's founding in 1630, the City's footprint has increased considerably as tidal marshes were filled to build entire neighborhoods. This means that much of the City's coastline consists of filled land just above high tide, leaving coastal areas at risk from flooding and sea level rise.

We appreciate that the Draft Regulations integrate up-to-date data. *e.g.* for precipitation and sea level rise, and require projects to incorporate such information throughout the design life of a project (*e.g.*, Section 9.37). Current forward-looking data is an essential building block for resilient design. However, much more needs to be done to allow projects to *respond* to that data. It is one thing to know what sea level rise may be in thirty years, it is another to have the ability to design projects to respond to those conditions.

While the proposals in the Draft Regulations are relatively narrow in scope, Section I below provides several recommendations for strengthening these revisions, including by taking preliminary steps to allow and/or expedite the implementation of more nature-based or hybrid resilience projects. Section II outlines issues that the Department should consider in a more holistic and substantive review and revision of 310 CMR 9.00. We respectfully urge the Department to initiate this next round of regulatory review as soon as the Draft Regulations are

finalized and to conduct the review as part of a comprehensive evaluation of regulations that affect coastal resilience work.

I. Recommendations for the Draft Regulations

Climate resilience should be a priority in the implementation of Chapter 91, including by allowing certain resilience projects to occur as of right or via an expedited/simplified permitting process. Examples of how this objective could be integrated into the Draft Regulations include the following:

- Section 9.05(3): The list of Activities Not Requiring a License or Permit should be expanded to include nature-based and hybrid resilience projects, including addition of fill and conversion of impervious surfaces to vegetated use, that are designed to protect buildings, structures, and infrastructure from coastal flooding.¹ As a starting point, this exemption could be limited to (i) resilience projects that are consistent with state or municipal plans to minimize or mitigate the impacts of flooding from sea level rise, storms, precipitation or other events, and/or (ii) projects of a specific size, *e.g.*, permanently affecting up to 1,000 square feet of jurisdictional area.
- Add a pathway for simplified procedures for nature-based and hybrid resilience projects that are consistent with state or municipal plans to minimize or mitigate the impacts of flooding from sea level rise, storms, precipitation or other events. Such projects could include modifications of existing buildings or Coastal or Shoreline Engineering Structures or development of new structures to help redress flooding in areas that are already developed or predominantly covered in impervious surfaces. (Section 9.10, regarding simplified procedures for small structures accessory to residences, could be a model.)
- Section 9.37(d): Clarify that when applicants are directed to consult the Resilient.mass.gov website for the most current mapping and other available information related to shoreline change and sea level rise, the “other similarly reliable sources” that an applicant may consult include municipal data and maps. This would mirror the Department’s proposal in the draft Wetlands Protection Act Regulations, which state that

¹ Nature-based solutions (often described as or as including green infrastructure) are one approach for addressing flood risks. The feasibility of nature based solutions will vary by location and type of development. For instance, much of the shoreline in Boston is already hardened and includes dense commercial and residential development. In these locations, the opportunities for softening the shoreline may focus on hybrid shoreline infrastructure, which combines gray and nature-based features, or green enhancements to existing gray shoreline infrastructure.

“Applicants shall consult the resilientma.org website for the most current mapping and other available information related to shoreline change and sea level rise or similarly reliable **local data** acceptable to the Issuing Authority.” 310 CMR 10.24(1)(b) (emphasis added).

As noted above, these are preliminary recommendations; a more comprehensive review and overhaul of the 310 CMR 9.00 regulations is needed.

II. Initiate a More Holistic and Substantive Review and Revision of 310 CMR 9.00

A comprehensive evaluation of the 310 CMR 9.00 regulations should be a component of the Department’s upcoming “Climate Resilience 2.0” process. Examples of issues that should be considered in that process include the following:

- Removing obstacles to, and increasing municipal authority for, resilience projects;
- Expediting the permitting process for resilience projects that are in the public benefit;
- Maintaining public access in light of changing climate conditions; and
- Aligning Chapter 91 with the revised Wetlands Protection Act Regulations (310 CMR 10.00), including revisiting how to streamline wetlands and Chapter 91 permitting in a complementary manner. (A copy of the City’s comments on the proposed revision to 310 CMR 10.00 are provided with this letter.)

We encourage the Department to convene more working groups to inform the 2.0 regulations and respectfully request that the City have a seat in such groups.

* * *

Thank you for your consideration of these comments and your work to ensure the resilience of the Commonwealth in the face of climate change.

Sincerely,



Aladdine Joroff
Director of Climate Policy
aladdine.joroff@boston.gov
617-635-3407


Waterways Resilience Comments

Maggie Sullivan <msullivan@clf.org>

Tue 4/30/2024 4:05 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>; Padien, Daniel (DEP) <Daniel.Padien@mass.gov>

Cc: Julia Carlton MacKay <jcarltonmackay@clf.org>; Deanna Moran <dmoran@clf.org>; Ali Hiple <AHiple@clf.org>; Maggie Sullivan <msullivan@clf.org>

 1 attachments (377 KB)

2024.04.30 CLF Comment Letter DEP Waterways Regs Updates.pdf;

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Hi Daniel,

Please see attached CLF's comments regarding the proposed amendments to the Waterways Regulations.

Best,
Maggie

Margaret L. Sullivan

Senior Attorney

CLF Massachusetts

She/Her/Hers

62 Summer Street

Boston, MA 02110

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E: msullivan@clf.org

For a thriving New England



Conservation
Law Foundation

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April 30, 2024

Via electronic mail: dep.waterways@mass.gov

Chief Daniel Padien
Attn: *Waterways Resilience Comments*
MassDEP-BWR, 100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Waterways Resilience Comments

Dear Chief Padien and Waterways Program Team:

Conservation Law Foundation (CLF) is pleased to submit these comments regarding the proposed Resilience 1.0 updates to 310 CMR 9.00: Waterways (“Waterways Regulations”). We support the Massachusetts Department of Environmental Protection’s (“MassDEP”) efforts to incorporate resilience standards and requirements into the Waterways Regulations. Climate change is a present and evolving threat to the Commonwealth’s waterways, and these amendments are an essential component of protection from climate impacts on this irreplaceable natural resource.

CLF is especially well-qualified to comment on these amendments because of its expertise and advocacy regarding tidelands and climate resilience. Since 1979, CLF has devoted significant resources to Chapter 91’s implementation and improvement—from direct participation in public waterfront legislation, public waterfront rulemakings, and individual project licensing, to engaging as a member of the advisory committee MassDEP convened regarding the resilience amendments now embodied in this rulemaking. CLF also published a report in 2019 that discussed regulatory amendments that would allow MassDEP and tidelands property owners to better account for the impacts of climate change on tidelands.

Our comments emphasize the importance of climate resilience in the Chapter 91 context and also suggest a number of improvements MassDEP should make to the amendments as currently proposed. Those improvements center on engineering and construction standards, building height provisions, license expiration and renewal, extended-term licenses, minor project modifications, the clarity and precision of various definitions and standards, and a number of other amendments on subjects the proposed amendments do not currently address.

I. Climate Resilience and Chapter 91

Numerous pieces of state legislation and state policy addressing climate mitigation and resilience in Massachusetts make it clear that the Commonwealth understands the dire threat that climate change poses to every aspect of the state's future success, not least of all its natural resources. And yet, up until now, the Waterways Regulations have not accounted for climate risks—but it is imperative that they do. The Waterways Regulations are the implementing regulations for the Public Waterfront Act, or Chapter 91, and as such, they are tasked with ensuring that all coastal tideland development serves a proper public purpose and does not impede the public's right to access and enjoy the waterfront. If the waterways fall prey to sea level rise or flood routinely during storms, the public cannot access those areas. In other words, failure to protect waterways from the impacts of climate change undermines Chapter 91's fundamental policy goals.

It is therefore unsustainable for the Waterways Regulations to continue to license designs and structures based on the climate patterns of the past—those patterns no longer reflect the risks that waterfront development needs to withstand. Instead, the regulations must explicitly account for the climate risks relevant today and that reliable projections tell us will be relevant in the future. Amending the Waterways Regulations to account for those risks will protect the underlying Chapter 91 policy goal of ensuring public access while also bringing the regulations into alignment with the Commonwealth's whole-of-government approach to combatting climate change.

II. Engineering and Construction Standards

CLF applauds MassDEP's updates to the Waterways Regulations' engineering and construction standards, which are key to ensuring that new structures on tidelands can withstand current and future climate conditions. If waterfront structures are to adequately safeguard public health and safety, the regulations must hold licensees to engineering and construction standards that reflect projected sea level rise and storm intensity. These structural considerations also implicate the public's ability to access and enjoy the waterfront, as well as the waterfront's economic viability.

With those concerns in mind, there is no doubt that the current regulations are inadequate. Prior to these amendments, the Waterways Regulations did not account for climate impacts in their engineering and construction standards, but rather tied those standards to antiquated historical data. 310 CMR 9.37. Under the current regulations, sea level rise is taken into consideration only at historical levels, and only for: (1) projects within the Federal Emergency Management Agency (FEMA) 100-year floodplain (a standard widely acknowledged to underestimate current and future flood risks); (2) and non-water-dependent structures intended for human occupancy. These standards omit sea

level rise considerations for a wide swath of relevant projects that will be impacted by sea level rise as projected by the current science.

The proposed amendments therefore mark an important shift in the Waterways Regulations' ability to ensure climate-appropriate construction and engineering standards. Specifically, the proposed amendments to 310 CMR 9.37 would require project proponents to "incorporate the impacts of projected sea level rise throughout the design life of the building" into their building and construction plans. The proposed regulations would also apply this requirement to all fill and structures, rather than limiting the requirement for consideration of sea level rise to residential projects within a FEMA-designated flood zone. While these amendments are notable steps forward, there are additional amendments MassDEP should adopt to further strengthen and clarify the regulatory treatment of engineering and construction standards:

- First, the regulations should do away with the distinction between areas inside and outside flood zones. Doing so would obviate the need to define "flood zone" in the regulations, which MassDEP has historically interpreted as synonymous with the FEMA 100-year floodplain, a designation that—as noted above—underestimates current and future flood risk. CLF also notes that, as currently drafted, the amendments would allow construction in "Velocity Zones" under some circumstances, while the proposed amendments to the Wetlands Regulations would not allow new structures in these areas. MassDEP should make sure that the Wetlands and Waterways Regulations' amendments are consistent on this issue.
- Second, the regulations should define the term "sea level rise" in 310 CMR 9.02, because the effectiveness of the regulations' resilience requirements hinges on their scientific accuracy. The projected degree of sea level rise may continue to change as the trajectory of the world's transition away from fossil fuels becomes more certain. While the proposed amendments make progress in accounting for this by referring to the data at the Resilient Mass website (whose conclusions are subject to change based on the evolving science), DEP should further elaborate on and clarify its guidance about what other sources it will deem credible enough to take into account, and what factors it will consider in exercising its discretion about what data to accept. MassDEP should also confer with other state agencies on these criteria so that exercise of agency discretion remains consistent across programs.
- Third, MassDEP should add a requirement to 310 CMR 9.37 that requires applicants for non-water-dependent structures to obtain a certification from a licensed engineer stating that the project plans were prepared in accordance with "good engineering practice" and that all foreseeable climate-

related risks to the site have been disclosed. CLF suggests modeling this component after section 112.3(d) of the federal Clean Water Act and remaining consistent with MassDEP's statutory authority to "prescribe the terms for construction" of structures below the high-water mark.¹

III. Building Height

The current regulations do not define "building height" or offer guidance on the methodology for calculating building height so as to comply with the regulations' building height requirements; rather, that term has been determined by MassDEP practice (which has typically been to abide by local zoning rules for individual projects). The lack of clarity about the meaning of "building height" is problematic for proponents who might wish to relocate building systems above the ground floor or use freeboard, for example, to increase a building's flood resilience. At the same time, the regulations do currently define "base flood elevation"—but the definition is based on FEMA flood insurance data, which does not account for rising sea levels.

The state and various municipalities have tackled these definitional issues and their implications in various ways. For example, the state building code and many municipal zoning codes provide for freeboard above the base flood elevation for height calculations, often known as "design flood elevation." This can give proponents the flexibility to make their projects regulatorily compliant while addressing flood risk on the ground floor. And some municipalities measure building height only to the highest occupiable floor (excluding height added by mechanicals that proponents have relocated to the roof)—this incentivizes relocating mechanicals as a way to protect against flood damage, while encouraging the use of roofs, rather than occupiable floors, for that purpose.

The proposed amendments at 310 CMR 9.51 seek to solidify the incentive to relocate mechanicals by explicitly excluding from the building height calculation any nonstructural elements relocated to the roof of existing buildings for non-water-dependent use. CLF discourages this strategy, as it is likely unnecessary—MassDEP's informal practice has been to defer to municipal definitions of building height, and municipalities are increasingly granting leeway in defining building height in order to allow proponents to relocate mechanicals to the roof. Rather, CLF recommends the following changes:

- First, MassDEP should define "design flood elevation" or the equivalent at 310 CMR 9.02. For example, the definition might define this term as "the municipal zoning code design flood elevation or state building code freeboard allowance, whichever is greater." MassDEP should refer to useful definitions in the City of Boston's Coastal Flood Resilience Overlay District

¹ G.L. c. 91, § 14.

when crafting these provisions: (1) “Sea Level Rise—Base Flood Elevation,” or FEMA base flood elevation plus 40 inches of projected sea level rise; and (2) “Minimum Sea Level Rise—Design Flood Elevation,” or between one and two feet above the Sea Level Rise-Base Flood Elevation.²

- Second, MassDEP should add a definition of “building height” that explicitly refers to the design flood elevation or equivalent as the starting point for height calculations. For example, the “building height” definition could provide a calculation that allows substitution of design flood elevation for base flood elevation but defers the specific freeboard requirements to the state or municipality.
- Finally, should MassDEP choose to move forward with the currently proposed strategy of excluding mechanicals from the building height calculation, we encourage establishing clearer definitions and an upper limit on height for this situation in order to prevent abuse by proponents. For one, MassDEP should clarify what kind of “nonstructural elements” are eligible for this exception to the height standard. MassDEP should also consider an upper limit on this height exception. For instance, lab spaces often have large mechanical equipment that could, in some cases, add up to 30 additional feet in height to the top of a non-water-dependent structure. Finally, MassDEP should ensure that new structures are incorporating mechanicals and other non-structural elements into upper floors from the start so as not to incentivize them to maximize structural height and return to MassDEP later for an exception to the height requirement to relocate these elements. In other words, this relocation exception for non-structural elements should be limited to non-water-dependent structures currently in existence, and not those licensed after these regulatory revisions are promulgated.

IV. License Expiration and Renewal

The proposed amendments would alter the criteria governing license renewal at 310 CMR 9.10 and 9.25 by requiring that an application for renewal take into account “all applicable regulatory provisions, including without limitation 310 CMR 9.37 [regarding construction and engineering standards], and existing conditions at the time the application . . . is submitted.”³ While these changes hew closely to what CLF has previously suggested, we now encourage additional changes that would further improve these provisions. MassDEP should establish a requirement that, in order to successfully apply for license renewal, a proponent must conduct a fresh analysis of climate risks for the site

² Boston Zoning Code, Article 25A (2024).

³ 310 Mass. Code Regs. 9.10, 9.25 (proposed amendments at <https://www.mass.gov/doc/310-cmr-900-resilience-proposed-amendments-redline/download>, Dec. 22, 2023).

based on the most current sea level rise projections—even if that proponent conducted a climate risk assessment when applying for the original license.

V. Extended-Term Licenses

Because the risks climate change poses to waterfront development are so severe and ever-evolving, it is imperative that the amendments thoughtfully incorporate those risks into criteria around extended-term licenses—failing to do so would result in projects that are adequately resilient to withstand current climate-related risks but do not reflect projected dangers. In recognition of this problem, the proposed amendments would add language to 310 CMR 9.15 requiring that proponents seeking an extended license term incorporate sea level rise into their analysis justifying their request for an extended term. CLF suggests the following additional changes, which would treat requests for extended licenses with the appropriate level of caution and ensure that such requests are granted only when climate risks have been rigorously assessed:

- First, 310 CMR 9.15(1)(b)(2) should require the proponent to justify the extended-term license based on the project’s documented ability to withstand climate impacts for the license term or the life of the project, whichever is greater.
- Second, for requests for license terms of over 50 years, 310 CMR 9.15(1)(b)(2) should require proponents to provide additional, detailed documentation of its projected sea level rise analysis and strategies for addressing flood risk at the project site for the proposed license term. This analysis should include the ability of any structures, as well as public benefits and assets, to withstand projected sea level rise. It should also include an implementation plan and funding strategy for any adaptation measures the proponent plans to execute later. Finally, to the extent the proponent expects future modifications or adaptations to the structure or site to accommodate climate risks during the design life, MassDEP should require the proponent to contribute a percentage of future expected costs to an escrow fund to ensure adequate funding for adaptation measures.
- Third, MassDEP should consider developing guidance on the types of uses that may qualify for varying degrees of extended-term licenses. There are some uses that may be more appropriate to approve for extended terms given the uncertainty of climate projections that far into the future (for example, uses that would not pose as significant a threat to public health and safety if they were flooded). By developing these categories for extended-term license consideration, MassDEP could provide more consistency and clarity to the development and advocacy communities.

- Fourth, 310 CMR 9.15(1)(b) should require the licensee to submit periodic reports on the project's flood vulnerability and history, including the status of implementation or any proposed changes to flood adaptation measures.
- Finally, MassDEP should have the discretion to notify the licensee if there are any substantial changed circumstances—for example, revised sea level rise projections—that warrant an updated adaptation analysis and strategy.

In addition to the revisions outlined above, MassDEP should adopt a policy of granting any request for a license term greater than 65 years only in very rare circumstances. Current scientific sea level rise projections are often estimated with a high degree of certainty out to 50 or 60 years from now. After that point, it is likely we will see changes in the projections that track our success or failure to reduce greenhouse gas emissions. It would therefore be difficult for a proponent to demonstrate convincingly that they have been able to adequately account and prepare for projected sea level rise beyond that point. MassDEP should also include a special condition in any extended-term license that allows MassDEP to revisit the license conditions if climate effects are resulting in noncompliance (e.g., lateral pedestrian access to the water is routinely disrupted by flooding). While we believe that MassDEP has the discretionary authority to reopen a license on this basis regardless, it would be helpful to proponents and advocates alike to have a transparent rule on this point.

VI. Minor Project Modifications

As a general rule, CLF encourages cautious use of the regulatory provision for minor project modifications—allowing minor modifications too liberally can unfairly curtail review and public process around renovations that warrant an amendment or new license. However, the minor modification mechanism has the potential to positively impact climate adaptation by streamlining the implementation of certain resilience measures—in particular, moving mechanicals to upper floors. MassDEP can facilitate this use of the minor modification provision by making the following changes:

- First, 310 CMR 9.22(3) should state that moving basic HVAC systems from a lower floor to an upper floor or the roof in order to safeguard against flood damage constitutes a minor modification. (We note again that mechanicals for some specialized uses—in labs, for example—can be outsized and would have a significant enough impact on the configuration of the building that a license amendment would be more appropriate. MassDEP should determine the threshold size of mechanicals that would trigger an amendment, rather than a minor modification.)

- Second, 310 CMR 9.22(3) should state that minor modifications may be invoked for changes of use when relocating mechanicals for flood resilience purposes results in newly available space on the ground floor of an existing non-water-dependent structure on filled private tidelands⁴ but that any change in use will be subject to the applicable regulatory provisions, including 310 CMR 9.51 regarding conservation of capacity for water-dependent use.

VII. Clarity and Precision of Definitions and Standards

MassDEP should review the regulations to ensure that standards and definitions are defined with enough precision, because vague or missing definitions run the risk of inhibiting the amendments' effectiveness. For example, some key concepts lack detail—at 9.37, it is unclear how “design life” is determined; similarly, that provision does not give any information about how MassDEP will determine whether the proponent has adequately “incorporated” the impacts of projected sea level rise. Other technical terms come from different regulatory contexts and are undefined in the regulations—“wave run-up depth” and “tidal area,” for example (from the definition of “A Zone or AE Zone”). MassDEP should carefully parse the regulations so that all key terms are clearly defined and standards give rise to reasonable expectations.

VIII. Other Amendments to Consider

In addition to the provisions already under discussion, CLF recommends additional amendments that will bolster resilience standards in the Waterways Regulations.

- First, MassDEP should codify its interpretation of “existing” piles and require immediate removal of dilapidated pile fields. MassDEP has already issued an interpretation of the regulatory treatment of “existing” pile-supported structures and pile fields (in reference to a project on Lewis Wharf). At that time (in 2017), MassDEP stated that, “in order to be considered ‘existing,’ a previously authorized wharf, pier, pile field, or other filled or pile-supported structure must physically be standing in place and must still possess the capability to perform its licensed function.”⁵ That interpretation included a requirement that any extant piles remain above the “High Water Mark” at a specific site. The implication in the context of climate change is that, as higher tides caused by sea level rise submerge a licensee’s site such that their piles are no longer visible at high tide, or the wharf or dock is no longer

⁴ If on Commonwealth tidelands, an amendment or new license is more appropriate in order to ensure public process around the more substantial public rights guaranteed on Commonwealth tidelands.

⁵ MassDEP, *MassDEP Interpretation of Existing Wharf, Pier and Other Structures: 310 CMR 9.32(1)(a)4 and 9.51(3)(a)*, ENV'T'L. MONITOR (June 7, 2017).


routinely serviceable for its licensed purpose, MassDEP would no longer consider that pile field to exist under its interpretation. If climate impacts, whether in the form of sea level rise or extreme weather, damage pile structures as to render them unsafe or create a navigational hazard, the regulations should require that they be removed.

- Second, MassDEP should reconcile terms referring to shoreline stabilization and protection structures and clarify that green infrastructure alternatives are included in those definitions. The current regulations refer to the related terms “coastal or shoreline engineering structure,” “shore protection structure,” and “shoreline stabilization.” Only “coastal shoreline engineering structure,” however, is defined in 9.02 (“any breakwater, bulkhead, groin, jetty, revetment, seawall, pier, riprap or any other structure which by its design alters wave, tidal, current, ice or sediment transport processes in order to protect inland or upland structures from the effects of such processes”). Meanwhile, 310 CMR 9.12(2) does not formally define “shoreline protection structure” but states that it includes “seawalls, bulkheads, revetments, dikes, breakwaters, and any associated fill which are necessary either to protect an existing structure from natural erosion or accretion, or to protect, construct, or expand a water-dependent use.” To improve clarity, MassDEP should consider substituting the term “coastal shoreline protection measure” for “coastal or shoreline engineering structure” in order to be more inclusive of both structural and non-structural alternatives; the definition of this term should include examples of green and nature-based alternatives, such as berms, marshes, and the like.
- Third, MassDEP should consider amending its definition of the term “fill” to include—alongside the other listed exceptions—the following: “material placed in a salt marsh for the purposes of ditch remediation.” Currently, ditch remediation techniques that place salt marsh hay are considered fill, which makes the permitting process unnecessarily complicated for these advantageous nature-based projects.
- Finally, MassDEP should consider ways to streamline the permitting process for beneficial nature-based projects when those projects would help increase the resilience of tidelands and would not interfere with the rights that attend the public trust in tidelands.

We appreciate the opportunity to comment on these important amendments, which are vital if the Commonwealth is to secure the health and vitality of its waterfront in the coming decades. We look forward to further engaging with Mass DEP before the

amendments are finalized, and encourage MassDEP to begin work on Resilience 2.0 as soon as possible after the current round of amendments is adopted.

Sincerely,

A handwritten signature in brown ink that reads "Margaret L. Sullivan" followed by a horizontal line and a small flourish.

Margaret L. Sullivan
Senior Attorney
Conservation Law Foundation

Wetlands and Waterways Resilience Comments

Dave Luczkow [REDACTED]

Mon 4/29/2024 6:46 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick.kearney@mahouse.gov' <Patrick.kearney@mahouse.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I just heard about the unprecedented regulatory changes proposed by MASS Department of Environmental Protection.

As a long time, coastal resident of Scituate, MA the proposed regulations would be catastrophic if implemented as I understand them.

If enacted, the regulations would:

- Prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded, or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks, and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

Regulations are not ready, major revisions are needed including:

1. Be more inclusive of impacted communities. Hold many more public hearings and listen.
2. Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which need to be at the water’s edge.
3. Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
4. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.
5. We know how to design and adapt to storms. Revisions are required using modern design engineering and technology to adapt, not just retreat.

Thank you for your consideration to this important issue.

Best regards,

David Luczkow



Scituate MA



DEP regulation changes-comments

David Ball [REDACTED]

Mon 4/29/2024 9:49 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I just became aware of the coastal regulation changes being proposed by DEP with comments due by April 30. I don't have details on the exact changes and couldn't find them online. However, these changes need much more public input. I have not heard of any public forums being held for this topic on the South Shore. Before there is any move to implement any of these changes there must be good public input.

David Ball

12/22/23 DEP Proposed Changes



Tue 4/30/2024 10:11 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick.kearney@mahouse.gov <Patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

If this is read, tyvm and congratulations on your internship.

Over the past 140 years, sea levels have allegedly risen 21-24 centimeters per

www.earthobservatory.nasa.gov Aug 10, 2022.

Local environmental departments and insurance companies will eventually determine where to build/rebuild.

If coastal residents and businesses are to "flee" and stop building/rebuilding because of potential sea level rise, where does the new "coastal line" be redrawn.

Should residents and businesses located within known earthquake and tornado zones also flee and stop building/rebuilding ?

Perhaps we could negotiate or talk nicely with climate change, after all it's working so well with University protesters.

Sincerely,

David G Mohr Jr.

All replies are welcome.

Sent from my Verizon, Samsung Galaxy smartphone

Waterways Resilience Comments

Dionne Bennett [REDACTED]

Tue 4/30/2024 6:39 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>; DEP Wetlands (DEP) <dep.wetlands@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good Evening,

I am a coastal resident. I just heard about the proposed regulations and I have many concerns. It would be catastrophic if implemented as I understand them.

Thank you,

Dionne Bennett

[REDACTED]

Scituate, MA


Waterways Resilience Comments

Briones, Maria B. (DOT) <maria.b.briones@dot.state.ma.us>

Tue 4/30/2024 10:15 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Dolabany, Samantha L. (DOT) <Samantha.L.Dolabany@dot.state.ma.us>; Lavallee, Carrie E. (DOT) <Carrie.Lavallee@dot.state.ma.us>; Jenks, Anna E. (DOT) <Anna.E.Jenks@dot.state.ma.us>

 1 attachments (262 KB)

Comment Letter to DEP Ch91 04232024.pdf;

Good morning,

Please find attached MassDOT's public comment letter in response to the Waterways (Chapter 91) Resilience 1.0 Draft Regulations.

Maria

Maria Briones, PE *(she/her)*

MassDOT – Highway Division

Stormwater Management Unit Supervisor

maria.b.briones@dot.state.ma.us

(857)-275-7253





Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbitts-Nutt, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator



April 30, 2024

Bonnie Heiple
Commissioner
Massachusetts Department of Environmental Protection (MassDEP)
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Waterways Resilience Comments

Dear Ms. Heiple,

On December 22, 2023, MassDEP released draft revisions to the Massachusetts Waterways (Chapter 91) Regulation (310 CMR 9.00). The Massachusetts Department of Transportation (MassDOT) Highway Division reviewed the materials and prepared this letter to share our comments on the proposed revisions regarding clarity, streamlining the permitting process, and promoting resiliency.

1. Considering revisions are being proposed to the Chapter 91 implementing regulations, MassDOT recommends that MassDEP take this opportunity to clarify and define the applicability of Chapter 91 jurisdiction to small streams that are not actually recreationally navigable. Chapter 91 jurisdiction extends to Non-Tidal Rivers and Streams, except any portions that are not normally navigable during any season by any vessel. This is interpreted broadly by MassDEP, to mean any reach of stream which can float a pool tube, at any given point of the year, is considered navigable under Chapter 91. This interpretation results in lengthy Chapter 91 reviews being imposed on reaches of stream that are not actually navigable by recreational vessels. MassDOT recommends defining "vessel" to specifically mean small whitewater kayaks and larger watercraft. Furthermore, MassDOT recommends defining "not normally navigable" to set some sort of threshold, so that Chapter 91 licenses are not required on small, intermittent streams that are never used by recreational vessels.
2. MassDOT commends MassDEP on expanding the Activities Not Requiring a License or Permit to include replacement culverts meeting the Massachusetts Stream Crossing Standards. This change will streamline the project development process and permitting of culvert replacements while also protecting the interests of Chapter 91. MassDOT recommends that MassDEP take this update one step further and extend this exemption to bridges as well. As a result, communities implementing bridge projects will have incentive to design bridge replacement projects to meet the Massachusetts Stream Crossing Standards.
3. MassDEP did not propose any changes to 9.32; however, MassDEP may wish to consider a minor addition to provide consistency between regulations regarding resiliency and

the allowable uses in waterways that MassDEP can permit. MassDOT identified a new use (creating 310 CMR 9.32(2)(e)) that would be described as the following:

- Placement of fill or structures, the purpose of which is to provide protection from flooding associated with sea level rise, which is conducted by the public agency responsible for the infrastructure, or in the case of private seawalls or berms, when supported by the municipality.

The addition of this language would allow MassDEP to provide permits for resiliency projects focused on flood mitigation along tidally influenced waterways.

MassDOT's comments on 310 CMR 9.00 would support MassDEP's initiative to promote resiliency while also improving clarity and streamlining the permitting process. MassDOT welcomes the opportunity to discuss these comments further with MassDEP.

Sincerely,

A handwritten signature in cursive script, reading "Carrie Lavallee".

Carrie Lavallee, P.E.

Deputy Administrator and Chief Engineer


Waterways Resilience Comments

Bri Benvenuti <bbenvenuti@ducks.org>

Tue 4/30/2024 6:51 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Nikki Ghorpade <nghorpade@ducks.org>; Sarah Fleming <sfleming@ducks.org>

 1 attachments (179 KB)

WaterwaysResilience DucksUnlimited.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please find attached comments from Ducks Unlimited, Inc. on the proposed wetlands regulatory changes.

Thank you for this opportunity,

Bri Benvenuti

BRI BENVENUTI

Ducks Unlimited, Inc.

Regional Biologist - New England

(603) 241-2036 | bbenvenuti@ducks.org

www.ducks.org



April 26th, 2024

Massachusetts Department of Environmental Protection –
Bureau of Water Resources Program
100 Cambridge Street, Suite 900
Boston, MA 02114

TO: Bonnie Heiple, Commissioner, Massachusetts Department of Environmental Protection
Lisa Rhodes, Wetlands Program Chief, Massachusetts Department of Environmental Protection
Daniel J. Padien, Waterways Program Chief, Massachusetts Department of Environmental Protection

RE: 401 Water Quality Certification (314 CMR 9.00) Proposed Regulations

Ducks Unlimited, Inc. (DU) appreciates the commitment of the Healey Administration to protect and restore wetlands across the Commonwealth of Massachusetts. We are grateful for the opportunity to provide comments on the proposed regulatory changes to the 401 Water Quality Certification (314 CMR 9.00) regulations as it directly aligns with one of DU's top priorities - the protection and restoration of Massachusetts' coastal salt marsh wetlands. There is an urgent need to streamline permitting for salt marshes and other wetland restoration projects both within the regulatory program and for more coordinated interagency review and permitting across programs.

Ducks Unlimited is the world leader in wetlands and waterfowl conservation, and our mission to “conserve, restore, and manage wetlands and associated habitats for the continent's waterfowl, other wildlife, and people” is the cornerstone of our work. Founded in 1937, DU has conserved more than 18 million acres of wetland habitat throughout North America, including more than 40,500 acres in New England. In Massachusetts, we are currently leading or partnering on four coastal wetland restoration projects that are anticipated to restore an additional 2,500 acres in the next four years. This work simultaneously addresses climate change adaptation and fish and wildlife habitat loss.

Climate change is already impacting Massachusetts by accelerating rates of sea level rise and more intense storms. Our coastal wetlands, including salt marshes and the coastal floodplain, provide essential functions and values for resilience by protecting our communities from storm damage and flooding, preventing pollution, and providing habitat for many species of fish and wildlife. Salt marshes are among the most productive ecosystems globally, sequestering and storing more carbon per acre than most other habitats.

Many of Massachusetts' 45,000 acres of salt marshes are severely degraded by thousands of historically installed ditches and agricultural embankments that are causing subsidence, drowning marsh vegetation, and restricting natural tidal flows and sediment deposition. Reversing this damage within the next few years is vital to extend the life of these marshes. Currently, there are more than a dozen salt marsh restoration projects across thousands of acres planned by nonprofit organizations and government agencies. It is essential that permitting for these projects proceed expeditiously.

The comments below are intended to address issues in the regulatory process and clarify the proposed language to support wetland protections and environmentally beneficial projects.

Wetlands 310 CMR 10.00 Proposed Changes

1. 310 CMR 10.05 (12) – This section adds language to support scientific research projects. However, these projects are limited to no more than 1,000 sq ft, with a project duration of no longer than 1 year. While this addition could theoretically streamline the process for certain research projects, this does not address the vast majority of beneficial wetlands projects that need to occur throughout the Commonwealth. Specifically, coastal wetlands, which are most at risk to the ravages of climate change and are some of the largest scale projects in the state, would not be covered. The footprint (~0.02 acres) and time scale limitations are also impractical for research projects, as these types of studies typically require spatial and temporal replication, which would not be feasible under these rules.

2. 310 CMR 10.24(7)(B)(4) – This section addresses spoil materials created from trenches in salt marshes. Under this rule the spoil materials, as part of utility installations, are to be removed from the site, and the trenches are to be backfilled with sand or other material. This directly conflicts with normal marsh restoration techniques. During a normal salt marsh restoration, partners often excavate material and then beneficially reuse the material to support marsh elevation enhancement. The ability to beneficially reuse excavated material is critical to a successful marsh restoration and ensures the restored area will function into the future. We propose that the excavated material remain in the marsh and may be used to backfill trenches. If the material would be higher than the existing grade, the excess would be used beneficially within the marsh.
3. Sec 10:01 – For this section, we ask that you consider the inclusion of a new purpose for wetland restoration, enhancement and maintenance. Specifically, adding language to “Increase wetland restoration of lost, altered or degraded wetlands, and enhancement and maintenance of existing wetlands”. This language will help ensure that positive wetland projects are defined and can proceed efficiently to address wetland loss while also maintaining the rigorous permitting and regulatory requirements for projects that result in overall negative impacts to wetlands.

General Considerations

1. There is a need to redefine ecological restoration so that Voluntary Wetland Restoration (VWR) projects are viewed under a separate regulatory lens that focuses on a net-gain in wetland functions and services. Currently, these types of projects are viewed with the same lens as development projects that result in net-negative outcomes, and must follow the same avoidance, minimization, and mitigation parameters. As VWR projects would work in altered, degraded, and lost wetland habitats, and can document net gains in wetland functions and services, there should be a separate, streamlined process for permitting, no required mitigation, and minimal fees. Because the outcomes of wetland restoration projects are net-positive, the process to engage in them should be different than ones with net-negative outcomes.
2. There should be distinct definitions for habitat restoration, rehabilitation, enhancement, maintenance, and management that are tied to the VWR program, along with acceptable activities needed to restore wetland habitats to their former pre-disturbance conditions, or to emulate as close as feasible, their previous healthy condition.

While we believe some of the proposed changes are beneficial, there are many that can be improved on to ensure that wetland restorations throughout Massachusetts are done quickly, efficiently, and effectively. Please feel free to contact us if we can provide further information. Thank you again for the opportunity to comment and for working diligently to protection and restore wetlands throughout the Commonwealth.

Sincerely,



Sarah Fleming
Director of Conservation Programs, Atlantic Region
Ducks Unlimited



Bri Benvenuti
Regional Biologist, New England
Ducks Unlimited

Wetlands and Waterways Resilience Comments

Flyer's Boat Rentals <flyersboatrentals@gmail.com>

Mon 4/29/2024 8:21 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Dear MassDEP Waterways, Wetlands, and Other Interested Parties,

I am writing to express my concerns about the proposed amendments to the current regulations that affect water-dependent businesses like mine. My name is Noah Santos, and I am the third-generation owner of Flyer's Boat Shop and Flyer's Boat Rental Inc. in Provincetown, which was established by my grandfather in 1944. We are a vital part of the local maritime community, operating a large mooring field, the only boat shop and boat storage facility in town, and a diverse fleet of sail and power boats.

While I acknowledge the severity of climate change and the need to prepare for its impact on our shoreline, I believe that the proposed amendments are not the optimal solution and may have significant negative effects on businesses like mine.

One of my primary concerns is the Stormwater/Water Quality Certification requirement. Our property, mandated to have a public access walkway per our Chapter 91 license, faces challenges with pollution beyond our control, such as pet waste, cigarette butts, and stormwater runoff from the surrounding watershed area. It is concerning that water's edge businesses are burdened with managing stormwater runoff from a wide area and are then expected to bear the costs of monitoring, treatment, and removal to standards exceeding drinking water quality.

In addition to the water runoff regulations, I am concerned about the lack of clarity in 310 CMR 10. Specifically, the proposed regulations imply that development/re-development exceptions "may" be allowed for water-dependent businesses in the V-Zone. This ambiguity poses immediate challenges for us, as lenders will certainly hesitate to finance projects uncertain of future regulatory approval. Structural upkeep of our current buildings is essential to our business as a whole, and the need to erect additional or replacement structures in the future seems inevitable. Without some sort of exemption for all water-dependent operations, of which there are only so many in the state, we all risk being forced out of business.

I urge a reevaluation of these regulations before they are finalized. It is crucial to find a balanced approach that addresses environmental concerns while ensuring the viability of businesses reliant on waterfront locations.

Thank you for considering my perspective and the concerns of water-dependent businesses in your decision-making process.

Sincerely, Noah Santos Owner, Flyer's Boat Shop and Flyer's Boat Rental Inc.

--

Marianna Kennedy

Flyers Boat Rental Inc.

flyersboatrentals@gmail.com

(508) 487-0898 ext. 1

Wetlands and Waterways Resilience Comments

Francis Sennott [REDACTED]

Mon 4/29/2024 11:41 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick. Kearney@mahouse.gov <Patrick. Kearney@mahouse.gov>; Paul. McMurtry@mahouse.gov

<Paul. McMurtry@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I am a Westwood, MA resident with a summer home on the water in Scituate, MA. I only just heard about the proposed regulatory changes under the Wetlands Protection Act and the Massachusetts Public Waterfront Act. I understand that the proposed rules were released on December 22 of 2023 and public comments close on April 30, 2024. The short timeframe for commenting seems very unfair to communities such as Scituate where many residents and business owners make their living near or on the water. As I understand these regulations, they will limit new building, the reconstruction and redevelopment of older buildings, and put unprecedented power into the hands of local conservation committees. The regulations will make it difficult to obtain financing, sell property, and invest in current structures. The objective seems clear – to eventually close down the coastal economy. This will have a dramatic effect on many communities in the Commonwealth and most residents in these communities have no idea this is in the works. I urge you to delay approval of these regulations and to conduct many more public hearings in the waterfront communities until they have had a chance to provide informed input.

Sincerely,

Frank Sennott

Francis J. Sennott


[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Wetlands-401 and Waterways Resilience Comments

Peter Duclos <PeterD@gladding-hearn.com>

Mon 4/29/2024 1:37 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (784 KB)

MMTA Combined Comment Letter.pdf;

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Gladding-Hearn Shipbuilding, Duclos Corp. is a commercial shipbuilder located in Somerset, MA since 1955. We specialize in small-medium size aluminum and steel commercial vessels such as ferries, pilot boats, patrol boats, tugs and more recently offshore wind farm Crew Transfer Vessels (CTV's). We are members of Massachusetts Marine Trades Association(MMTA). Attached is a February 13, 2024 MMTA letter concerning the December 22, 2023 proposed regulatory changes "Resilience from Coastal and Inland Flooding". Gladding-Hearn fully supports the comments in the attached MMTA letter.

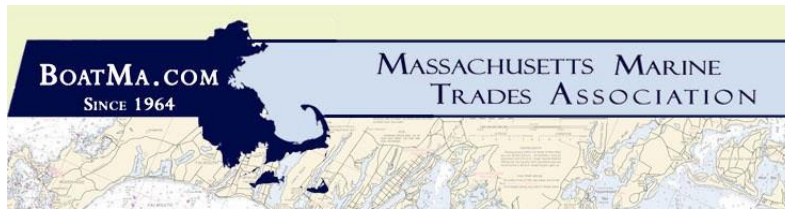
Regards,

Peter J. Duclos
President
Director of Business Development

Duclos Corporation
Gladding-Hearn Shipbuilding
PO Box 300
Somerset, MA 02726
(508) 676-8596 phone
(508) 672-1873 fax
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Office: 168 Walker St., Somerset, MA 02725
Shipping: 80 Francis St., Somerset, MA 02725

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Duclos Corporation, Gladding-Hearn Shipbuilding is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.



Industry growth through Collaboration, Communication and Education

February 13, 2024

Via Emails (copy to each): dep.wetlands@mass.gov, must include Wetlands-401 Resilience Comments in the subject line; dep.waterways@mass.gov, must include Waterways Resilience Comments in the subject line

Dear MassDEP Waterways, Wetlands and Other Interested Parties:

On behalf of the Massachusetts Marine Trades Association (MMTA), we thank you for the opportunity to comment on four different yet related proposed regulatory changes all released December 22, 2024 concerning “Resilience from Coastal and Inland Flooding.”. We note the effort to address some water dependent uses in some ways, for which we are grateful, especially to the managers and staff who tried to help us educate our members quickly in January. We also appreciate the extension of the comment period until April 30, 2024, and may submit additional comments after participating in the newly scheduled working informational meetings.

Collectively, these proposed regulations if enacted “as is” would more than likely make recreational boating facilities unfinanceable overnight, due to the uncertainty of being allowed to continue to operate in future years, even without any new buildings, docks or piers, and especially with them. The absence of reliable permit requirements would also impact insurability of existing facilities and operations.

These comments are combined because the Waterways regulations import the Wetlands regulations by requiring a Wetlands Order of Conditions before any Waterways application will be considered a ‘complete application.’ They are also combined because the Gubernatorial press release addressed all the proposed changes as a package, and we fear all may be advanced in one premature package. ¹

¹ Announced Proposals December 22, 2023 Gubernatorial Press Release: [Healey-Driscoll Administration Proposes Regulations to Strengthen Resilience from Coastal and Inland Flooding | Mass.gov](https://www.mass.gov/news/healey-driscoll-administration-proposes-regulations-to-strengthen-resilience-from-coastal-and-inland-flooding)

BOSTON — The Massachusetts Department of Environmental Protection (MassDEP) today issued draft regulations to strengthen wetlands and stormwater resilience by providing flood control and preventing storm damage to shorelines and infrastructure from the impacts of climate change. The proposed regulations will help protect areas vulnerable to sea-level rise and storm surge, promote nature-based solutions to flooding, streamline certain permitting processes, and use updated precipitation data to inform decision-making...The regulations are proposed under the Wetlands Protection Act and the Massachusetts Public Waterfront Act. MassDEP will accept comments on the draft regulations until March 1, 2024. ...“Data tells us that inland and coastal flooding are two of the biggest threats to Massachusetts. The storms we saw this summer showed us that there is no time to waste,” **said Energy and Environmental Affairs Secretary Rebecca Tepper**. “These updates strike a balance to preserve and protect development along our waterways. These changes also present Massachusetts with another opportunity to lead – we’re promoting the most cutting-edge nature-based solutions along our coastlines.” ...“We cannot continue a ‘business-as-usual’ approach if we want to build more resilient communities,” **said MassDEP Commissioner Bonnie Heiple**. “With these regulations, we’ve integrated the latest science and green infrastructure techniques to mitigate climate change impacts and protect residents, municipalities, and businesses from costly rebuilding efforts. MassDEP is grateful for the engagement of stakeholders and agencies in developing this proposal and looks forward to continued feedback on

P.O. BOX 325, FOXBORO, MA 02035

Tel: 774-404-8005 | Email: info@boatma.com | Web: boatMA.com

About MMTA and Our Perspective

Established in 1964, MMTA is the statewide, non-profit, representative body for over 1,000 marine trades businesses in the Commonwealth. Our businesses employ just under 20,000 men and women and generate over \$5 billion in direct and indirect annual economic activity for Massachusetts. MMTA's mission is to provide the framework for furthering the interests of the marine trades and the boating public through the promotion of boating, participation in legislation and workforce development programs.

The recreational boating/marine industry contributes positively and significantly to the economic strength and quality of life enjoyed in Massachusetts. The 'business of boating' provides jobs, economic opportunity, public access to our precious waterways, improves aesthetics of inland and coastal waters and supports environmental stewardship while promoting a family-friendly form of recreation and tourism. One of the Massachusetts Marine Trades Association's top priorities is to stem the exodus of recreational boating businesses from the Commonwealth and the loss of waters-edge usage for recreational boating purposes. We actualize the Public Trust Rights to navigate the waterways, and our jobs and our industry of recreational boating generates over \$5 billion in direct and indirect revenue for the Commonwealth. Boating gives families without the resources to purchase waterfront property the opportunity to exercise their public trust rights and enjoy the Massachusetts coast and harbors. While doing so, Massachusetts boaters and those transiting through our waters substantially invest in their destination ports by patronizing shops, restaurants, retailers, fuel sellers and often hotels and resorts. In fact, every \$1 spent on dockage equates to close to \$4 to the local community where those boaters are visiting. The waterfront communities are dependent upon the annual financial boost boaters bring to their local economies.

It is also our perspective that it is dangerous and serious when an element of the government proposes to ban and prohibit what people want to do for themselves and are capable of doing safely. Setting safety standards and engineering requirements and building codes is an entirely rational governmental function. Banning and prohibiting due to the preference or policy of some with government power but without adequate foundation in science is not rational and not a sustainable approach in a democracy. A small but essential portion of these proposed regulations must change or they will fall into this dangerous category. The Wetlands Protection Act already has protections for nature in the resource areas of salt marsh, coastal beach, bank, dune, etc. The Federal Emergency Management Agency already has protections and standards regarding flooding and buildings. It is not helping nature to prohibit sound, adaptive buildings; it is only harming people. It is notable that the photos used in the public information sessions are of old and flimsy structures, not built to withstand wind or water. No photos were used of the

these regulations." ...The proposed Wetlands regulations will promote resilience by creating performance standards to protect the natural buffering function of wetlands and floodplains and help prevent damage to both the natural and built environment. The standards will require elevation of new development in areas of the coastal floodplain where most storm damage occurs and minimize new development in the most vulnerable area of the coastal floodplain where waves are higher than three feet. The regulations encourage nature-based approaches to improve resilience, such as restoration of salt marshes, coastal dunes, and barrier beaches on the coast, as well as inland wetlands. Updated stormwater management standards will reduce stormwater pollution to water bodies throughout the state, helping to improve the water quality of our rivers and streams. The Waterways regulations allow modifications to licenses for identified smaller structures (primarily small docks and piers) to account for sea-level rise and maintaining public water access.

innumerable buildings around the state and the nation and the world which have been built adaptively and are both safe and protective of nature.

People have lived and worked in inhospitable environments for eons, from the arctic to the desert, adapting their structural designs ingeniously to survive and thrive (and without harming the nature around them). Prohibitions on buildings do not reflect the skills, materials and technologies available now and in the future. Please, modernize these proposed regulations to require adaptive structures, not banned buildings.

Chapter 91

1. Mass DEP states that the Engineering and Construction Standards at 310 CMR 9.37(1)(d) are proposed to be revised to take projected sea level rise into account. The proposed language introduces the phrase “adequately consider” projected sea level rise, with respect to any new licenses and the renewal of any existing licenses.

Comments: MMTA agrees that considering projected sea level rise and tidal surge is both sensible and technologically attainable, with an accredited, licensed attestation as to the accuracy of the data being used for the projections. It is our understanding MassDEP anticipates using a website of some data, and to accept any other site-specific or accredited data. Please make this so. There is so much debate over policy-driven data on climate change, rather than facts, it is important to accept that of licensed experts.

Regarding implementation, we who work in the water and at the water’s edge know it will be quite expensive to elevate and otherwise modify water and waterfront facilities in the decades and half-century to come. Please find a way to make clear in the proposed regulations that it is not necessary for all facilities to have fully actualized all projected sea level rise all at once, and write in the ability to do “rolling” capital project improvements. It would be deadly if existing water dependent users all had to replace all their facilities at once, at time of Chapter 91 license renewal, in order to obtain a renewed license. Without this flexibility to adjust to changes in sea level rise over time, there simply isn’t enough money in operating water dependent uses to finance a complete retrofit all at once.

We also seek more clarity on what “adequately consider” sea level rise actually means. Must one go through MEPA for public comment from any interested party anywhere in the state regarding what ‘adequately consider’ means? Must one always use the maximum available technology and materials or will this decision of “adequate consideration” be a more traditional reliance on the professional stamp of a licensed engineer attesting to the plan’s adequacy for projected impacts? Can one obtain a Chapter 91 license for the usual necessary period of three decades and build in the assumption of using new materials and technologies when they become available?

2. MassDEP states that the regulations propose exempting from the height restriction at 310 CMR 9.51 moving mechanicals and other elements to the top floor or roof.

Thank you, this is sensible. While the height limits do not apply to Water Dependent Uses anyway, many predominantly water dependent sites also have non-water dependent uses on site and may need this exemption.

3. MassDEP states that there is a minor technical revision to replace the term "grandfather" with the term "exempt" in the section on Private Recreational Boating Facilities at 310 CMR 9.38(2).

Many will not understand this change. Perhaps it would help to explain it in the preamble to the proposed changes. It is our understanding that the term "grandfather" is being eliminated in keeping with the appellate court case authored by Judge Jim Milkey, requiring the removal of the term "grandfather" in land use matters due to social justice reasons, because the term originated with efforts to prevent voting by people of color.

310 CMR 10.00/ Wetlands Proposed Regulatory Changes

General Comments:

1. We wish there were the usual Frequently Asked Questions to assist in understanding the proposed changes with examples. No FAQ's have been published and hundreds and hundreds of people came onto the informational calls without getting answers, mainly asking questions central to the proposed changes. All would benefit from FAQ's, meaning the proponent agencies and the regulated entities and areas. Some of these most impactful changes have been under discussion for over 10 years within MassDEP and the Office of Coastal Zone Management without external consultation with practicing non-governmental waterfront experts with actual application experience. We list some of our outstanding questions below.

2. We respectfully request the State reach vastly more people and businesses and experts and affirmatively consult with the most impacted and knowledgeable people and businesses and licensed engineers and waterfront project managers. Please, before promulgating these regulations spend time out on the water, at its edge and be there to ask, listen and learn.

3. These proposed changes are currently being labeled by the Commonwealth's representatives as "managed retreat" and "nature-based solutions" yet proposed as though they are for the purpose of climate change adaptation and resiliency. We disagree. They are neither. Retreating from nature at the water's edge is not a rational way to adapt to climate change or to accomplish climate resilience. Nature is changing in ways which preclude giving up and backing away and expecting nature to create solutions on its own for absorbing more tidal flow and dissipating more wind and tidal energy. Nature on its own will not provide solutions which protect people and businesses and public access to the waterways. Banning and prohibiting buildings will not provide solutions, it only bans and prohibits the new money needed to pay for solutions. It also irrationally invites nature to keep coming further and further inland where more and more bans and prohibitions ever

onward will be need to be imposed if this “managed retreat” approach is taken rather than standards based in building codes, engineering and technology.

The Wetlands Protection Act and Regulations are already among the most protective in the nation, with detailed, extensive protections for salt marsh, coastal bank, coastal beach, coastal dune and buffer zones to same. It is not as though nature will have no protections unless today’s MassDEP adds more bans and prohibitions, added to those of the WPA currently and those of FEMA and the Building Code. We also note that all images of damaged buildings– every single image—used by MassDEP in its public sessions in January and on its website are of old and poorly maintained structures. Not a single one is of modern engineering and design.

These proposed regulatory changes should be revised to include the use of modern technology, engineering, and design to protect people from nature as well as nature from people. It can be done, as it has been all over the world and for eons, in inhospitable climates from the arctic to the dessert to right here, such as with the permitted and even Commonwealth-prioritized construction of wind turbines in high velocity zones out in the ocean. We have the technology. Let us use it.

4. We note that MassDEP states that the performance standards for Land Subject to Coastal Storm Flowage do not apply to Water-Dependent Industrial Uses in Designated Port Areas (310 CMR10.36(4)(d)).

MMTA supports this exemption. We also seek exemption for all Water Dependent Uses, and particularly marine industrial uses such as vessel servicing, for substantive and rationality reasons. It is illogical and irrational to not apply a new performance standard just in Designated Port Areas. All Water Dependent Uses need to adapt to the sea whether or not the state 40 years ago made a DPA designation decision on criteria unrelated to the Wetlands Protection Act. The DPA’s were originally designated to achieve eligibility geographically for federal marine infrastructure grants, The DPA’s were not calibrated or linked in any way to the Wetlands Protection Act. In addition, the prohibition against having any uses other than marine industrial ones in DPA’s was a much later regulatory choice by the Commonwealth, to preserve land/water area for marine industrial uses only, again unrelated to WPA matters. Please exempt all Water Dependent Uses for the new performance standard for Land Subject to Coastal Storm Flowage. This action alone would save the disastrous impact of the current proposed regulatory changes on the business of recreational boating.

5. MassDEP tells us Public and commercial boat launching facilities, open rack elevated boat storage, navigational aids, piers, docks, wharves, and dolphins are proposed to be allowed in the V-zone and MoWA zones (310 CMR 10.36(6)(c)). The construction of new buildings in the V-zone is not allowed; reconstruction or redevelopment of buildings in the V-zone is governed by Redevelopment provisions (310 CMR 10.36(8)).

Here is where the regulatory proposals are devastating immediately upon passage for water dependent uses. The term used in the actual proposed regulation is not “allowed” it is “may” be

approved, which also means may not be approved, with no standards specified as to what does or does not result in approval. No lender will finance now on the basis of something “may” be approved later, including existing facilities in need of money to pay for climate adaptations now.

This prohibition of new buildings in the V-zone prohibits even the water dependent buildings needed to operate a marina or a boatyard, such as the vessel servicing buildings and the indoor marina facilities.

This prohibition then ties into being approved for a renewed Chapter 91 license, because the Chapter 91 license can only be issued **after the Wetlands Protection Act approval has been issued. The Chapter 91 license application even for a renewal isn’t considered “complete” without it. So, the prohibition on new buildings in the velocity zone under the wetlands regulations is profoundly problematic, devastating to water dependent uses, even with the exemption for docks and piers and racked boat storage (which is often indoors in a building so the vessels can be worked on off-season). Will even reconfigurations in the zones already approved by Chapter 91 Waterways be denied by the Conservation Commissions?**

There is also a lack of clarity on the applicability of the new proposed standards to sites which have both developed and undeveloped areas on the same site.

6. The new proposal is to prohibit reconstruction or redevelopment, unless on the exact same footprint and elevated. Many of our members work on or own property with mixed areas of previous construction and open areas used for boat storage or work zones. There is no rational purpose under the Wetlands Protection Act to limiting reconstruction to the exact same footprint. Substantively, redesign to adapt to climate change is the ostensible purpose of the regulations – it is not rational to prevent whatever new adaptation is viable rather than artificially restricting the reconstruction to the exact same footprint. And of course, there is the problem of what pays for the reconstruction if the result is exactly the same but elevated?

7. We note MassDEP says maintenance and repair of existing coastal engineering structures is allowed in the V-zone and MoWA zones (310 CMR 10.36(6)(d)).

This is good because repair and maintenance are essential, nature is not going to respect and take care of structures. People have to respect and take care of the impact of nature on existing structures. Technology and design are available and are documented to work in these zones. These proposed regulations should be changed to allow for modifications of the existing engineering structures to make them higher and use different materials to improve the structural integrity in planning for projected sea level rise. And, per the comment above, please make the language explicit that such work is allowed, without the risk of absence of approval, so long as engineering and building code and existing WPA standards have been met regarding resource areas already heavily regulated.

8. We note MassDEP says for Land Subject to Coastal Storm Flowage and all other coastal resource areas, a new limited project has been proposed for relocation or reconfiguration of water-dependent uses where necessary to avoid flooding or coastal storm damage (310 CMR 10.24(7)(c)9).

This seems to be something between an encouragement and a mandate to relocate, when many if not most property owners do not have anywhere to relocate to much less the funds. This is not really an exemption. It is an unclear and important issue overlapping with both who owns what property and what new standard would apply. Does a limited project mean if one is relocating floats, or docks to make them more secure? Buildings? In or out of velocity zones? It is unclear. Does a limited project mean if one is relocating floats, or docks to make them more secure or a building to make it more secure qualifies as a limited project which shall be approved or is it again a discretionary decision in the hands of hundreds of different volunteer Conservation Commissions?

8. MassDEP writes that [f] or Land Subject to Coastal Storm Flowage and all other coastal resource areas, the new limited project also allows the construction, reconstruction, or reconfiguration of water-dependent use projects determined to “e "functionally dependent" (see reference in the proposed provision) which applies to certain docking and port facilities. This provision was included specifically to provide consistency with FEMA and building code requirements that also have a special provision for these facilities (310 CMR 10.24(7)(c)9).

This is a very promising limited project. We look forward to more clarity with examples including for water dependent buildings as well as docks and piers. Thank you very much.

To summarize, our primary concerns are:

1. the absence of expert non-governmental voices in the drafting process, particularly technical advisors working every day in the geographic areas which are the subject of the revised regulations. **Please invite and listen to expert marine engineers and architects and contractors and water dependent businesses and users.**
2. Do not ban and prohibit. Instead require building code and technology certification from licensed engineers for adaptive, sustainable building.
3. Allow reconstruction and adaptation on altered footprints, not the exact same ones.
4. Make explicit the allowed water dependent uses and do not leave to the undefined discretion of hundreds of volunteer Conservation Commissions whether existing buildings, piers and docks and floats can be renewed, reconfigured or expanded or newly installed, no matter how adaptive and sound the proposal. We seek “water dependent facilities are allowed in LSCSF” and remain subject to the other performance standards for other resource areas.
5. Please make it express that pre-existing water dependent facilities shall receive Chapter 91 license renewals absent persuasive evidence of inadequate consideration of sea level rise and climate change. And allow for rolling investment in the capital projects needed, not making them all required at the same time as license renewal.
6. Make the exemption for marine industrial uses in Designated Port Areas an exemption for all Water Dependent Uses. This change alone would make these proposed regulatory changes not deadly to the business of providing boating of the waterways in the Commonwealth.

Questions:

- What type of submission is anticipated for a complete application under the proposed Waterways requirement to “adequately consider” sea level rise and climate change, and what data can be relied upon?
- What would be the standard to apply for a Waterways license to be granted or renewed if these proposed regulations are enacted?
- What would the standard be for Conservation Commissions to apply in debating whether docks, piers and floats “may” be approved in Land Subject to Coastal Storm Flowage?
- How would the new proposed standards for Land Subject to Coastal Storm Flowage be imposed on sites which have both developed and undeveloped areas on the same site?
- What exactly is the newly proposed limited project exception for relocating Water Dependent Uses and what is the standard of review?

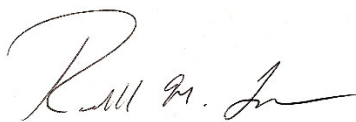
Stormwater / Water Quality Certification

We have not heard enough yet from our membership to comment on all the technical details of these two aspects of the proposed regulatory package. For now, we note two things:

1) Massachusetts is one of the two most costly places by far to attempt to permit a water dependent facility. The other is California. The primary reason is the extraordinary overlap of multiple regulatory programs and imposition of requirements not imposed anywhere else in New England or beyond.

2) Massachusetts is the only state in the nation which requires treatment of stormwater runoff to below drinking water standards. It is well beyond problematic and deep into unproductive inequity that water's edge businesses are forced to take on storm water runoff from all over the watershed area and then pay for monitoring, treatment and removal from storm water runoff to standards below drinking water quality. These regulations should not be promulgated until they stop imposing everyone's runoff concerns onto water's edge facilities.

MMTA respects the hard work of those who worked for ten years discussing and considering climate change and sea level rise. On behalf of the Massachusetts Marine Trades Association, the 20,000 marine trades workers and with respect to the over 140,000 boaters in Massachusetts, we thank you for your time and consideration of our comments. Both I and MMTA's Government Relations and Legal Representative, Jamy Buchanan Madeja from Buchanan and Associates are available to discuss this and any other matters related to the business of boating. Please feel free to contact either of us. My contact information is below and you can reach Jamy at 617-256-9491 or jmadeja@buchananassociates.com. Thank you in advance for your consideration,



Randall M. Lyons, CMM
Executive Director
Massachusetts Marine Trades Association
randall@boatma.com or 774-404-8005

UNPRECEDENTED REGULATORY CHANGES PROPOSED BY MASS DEPARTMENT OF ENVIRONMENTAL PROTECTION

Glen Giovanucci [REDACTED]

Mon 4/29/2024 1:32 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick. Kearney@mahouse.gov <Patrick. Kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I absolutely object to the proposed regulation changes regarding the Massachusetts coast. I just found out about this and these proposed regulations would be catastrophic if implemented the way I understand them. Major revisions of these regulations need to be enacted and must be reviewed/heard in more public hearings. They are too impactful to rush through and will have major, negative consequences. People with homes on the coast deserve more respect than this. The proposed regulations are outrageous and are not in the best interests of the entire coastal community.

Thanks in advance for shutting this down until it can be better examined.

Sincerely,

Glen Giovanucci

[REDACTED]

Humarock, Ma. [REDACTED]

>

Nature-based Planning new regulatory proposals

Greg McCarthy [REDACTED]

Tue 4/30/2024 2:12 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick Kearney@mahouse.gov <Patrick.kearney@mahouse.gov>

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My name is Greg McCarthy. I live at [REDACTED], Scituate. I am very much opposed to the proposed new regulatory proposals and could write for a great deal on each facet. But since I know you're receiving many emails today, please allow me to make only two comments:

- 1) If regulations essentially announce that we intend to sacrifice this land, then I believe the property taxes of those homeowners should be adjusted immediately. I currently pay [REDACTED] yr for a 1500 sq.ft. parcel of land over half of which is underwater during high tide. I'm happy to do that now, but if you completely eliminate my resale value with these laws, then what should I pay taxes for? I'd want the town to change my tax assessment to that of someone with a 1500 sq.ft plot well inland. Add up the number of houses in Scituate who should expect the same treatment.

- 2) Local Conservation Commissions are rarely filled by people with enough scientific knowledge and even less so economic knowledge. And in many cases there can be personal disagreements which can effect opinions. Please do not let local commissioners be exclusive arbiters of disputes in these matters. Certainly they should play a major part, but please make sure that state and even federal agencies have a say. Think about the pandemic, where we all saw local officials make terrible decisions which varied greatly from town to town, and were in many cases based on no scientific or economic sense whatsoever. I believe that could happen again here.

Thank you for your time to read this. in general my request is to allow technology and a good sense of economics to have the greater control of this process instead of unspecified and potentially under-informed government officials.

Sincerely,

Greg McCarthy

[REDACTED]
Scituate, MA [REDACTED]
[REDACTED]


Waterways Resilience Comments

Arianna Collins <a.collins@hoorwa.org>

Thu 4/18/2024 10:16 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Katharine Lange <katharinelange@massriversalliance.org>

 1 attachments (123 KB)

24.04.16 HooRWA Comment Letter re Wetlands Protection Act Climate Resilience 1.0 Regulations.pdf;

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Dear DEP,

Please accept the attached Waterways Resilience Comment from the Hoosic River Watershed Association (HooRWA). Thank you.

Cheers,

Arianna

--

Arianna Alexandra Collins

(she, her, hers)

Executive Director

Hoosic River Watershed Association (HooRWA)

413-458-2742

<https://hoorwa.org/>

[Like HooRWA on Facebook!](#)



April 18, 2024

Massachusetts Department of Environmental Protection
Bureau of Water Resources Wetlands Program
Attention: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Ms. Rhodes and the MassDEP Wetlands Program,

Thank you for the opportunity to comment on the draft Wetlands Protection Act regulations as part of MassDEP's "Climate Resilience 1.0" package.

The Hoosic River Watershed Association (HoorWA) is a citizens' group that looks after the River. We are dedicated to the conservation, habitat restoration and enjoyment of the Hoosic River and its watershed, through education, research and advocacy. We envision a watershed that is ecologically sound and adds to the quality of life for its residents.

The Hoosic River Watershed community and the Commonwealth of Massachusetts needs climate resilient permitting and improved regulations associated with stormwater and habitat restoration.

We are pleased to see that these regulations advance climate resilience. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change. We appreciate the years of work MassDEP has spent crafting these draft regulations, and strongly support many of the proposed provisions. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations.

Though the draft regulations are overall moving in a positive direction, they do not go far enough in achieving the stated goals of "Resilience 1.0."

As a member of the Massachusetts Rivers Alliance, HoorWA concurs with the following statements made by MRA regarding where the regulations must be refined:

1. The nature-based resilience requirement for coastal projects is non-binding. Having applicants merely "consider" these measures does not mean they will implement them. While the provision states that "the Issuing Authority may require" natural methods and materials, it is not clear under what circumstances MassDEP would do so. We ask that MassDEP make this provision more stringent by requiring applicants to analyze nature-based methods as their first option, and set a high bar of impracticability.
2. The updated data (NOAA14+) that MassDEP is proposing be tied to the Wetland Protection Act regulations is likely to become outdated soon. These draft regulations bring us to present precipitation trends; they do not yet bring us into the future. Instead,



the Commonwealth needs to use dynamic, forward-looking projections for precipitation that will protect our community for decades to come, perhaps by including "...and subsequent versions," to ensure that as the data is updated, the regulations will be too.

3. MassDEP has proposed to strike out the "Combined Application" option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications, without proposing a new procedure to fill its place. To accelerate the pace of restoration projects, Massachusetts needs a simplified permitting process. This is a missed opportunity to create that streamlined process. Such a process would also be especially beneficial to municipalities with predominantly environmental justice populations who need these projects for health and safety reasons, and are often deterred from pursuing such projects due to the high permitting costs.
4. We are concerned that the "Maximum Extent Practicable" recharge standard for all soil types in redevelopment will be too easy for applicants to skirt, resulting in insufficient recharge in many sites. MassDEP must hold recharge to a more stringent standard than MEP to truly meet the climate resilience intentions of these regulations.
5. While we are glad that basic Shared Use Path maintenance is exempted from permitting, the directives of subsection (iv) ("cut vegetation may be...and properly disposed") are too narrow to be included in regulation, since management methods are highly site-specific. Instead, these methods should be developed as a Best Management Practice or guidance document. Furthermore, we question why MassDEP would prohibit "work on any component of a Stormwater Management System," including drainage swales. This language is contradictory to exemptions already made for stormwater management projects, unhelpful at increasing flood protection, and should be deleted.

After swift promulgation of these updates, HooRWA joins MRA in strongly encouraging MassDEP to begin the "2.0" process to continue improving the Wetland Protection Act regulations. There must be no delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

Thank you for the considerable time and effort the agency has invested in creating these draft regulations thus far. We look forward to continuing to work together to protect Massachusetts' rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

Arianna Alexandra Collins
Executive Director, HooRWA

Andrew Kawczak
President, HooRWA

Wetlands and Waterways Resilience Comments

Kasandra Merlino <kas@hyannismarina.com>

Tue 4/30/2024 3:54 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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April 30th, 2024

Hyannis Marina Inc. has been providing marine services to Cape Cod and the Island for almost 50 years. Additionally, our marina has a number of full time and seasonal employees who rely on our marina for their livelihood.

Climate change is an important issue, arguably the most pressing issue facing the Commonwealth of Massachusetts. MassDEP has spent a considerable amount of time working on the proposal and we acknowledge the input of MassDEP, other Mass government offices and agencies. Thank you for the extension for comments to April 30th, 2024 yet that is still not enough time to involve people and entities directly impacted by these regulations. Coastal communities where homeowners and businesses especially marina operations need to have more voice in this matter. Private, commercial and industrial property owners have largely been left out the process.

Consideration to build with adaptive, resilient design and technology must be included in the future of the Massachusetts coast. The prohibition to build, rebuild, replace and renovate in high wind and wave areas fails to take into consideration the eventual detriment to the coastal communities where private property owners and commercial property owners might be prohibited from using many new, innovative and resilient measures to adapt to sea level rise and high wind. A nature based, managed retreat is not the only answer.

Open up discussion, look at what's happening already on the Massachusetts coast and other states for that matter. The economic health of cities and towns on the coast is significantly tied to waterfront communities with private, commercial and industrial uses.

Lastly, the exemption afforded to Designated Port Areas in the proposed regulations should be granted to all marinas, boatyards and water dependent entities.

Sincerely yours,

Dockside Marina

Massachusetts Department of Environmental Protection (Mass DEP) regulations will be very damaging to the recreational boating industry and waterfront properties for several reasons. The state regulations will hinder the recreational boating industry's ability to operate efficiently. Restrictions on new construction or modifications to existing structures could limit the industry's ability to expand or improve facilities, reducing the overall attractiveness of the area to boaters and tourists. The new regulations will also impose financial burdens, which will limit growth and investment, along with creating uncertainty for business owners. Unclear guidelines regarding compliance and enforcement could lead to delays and increased costs for businesses and property owners, potentially making boating unaffordable for many as these costs are passed along.

Failure to revise the proposed regulations will lead to a rapid collapse of the coastal economy. Without access to financing, ordinary property transactions will be hampered and there will be a lack of new investment to upgrade existing facilities. It is essential to attract private sector investments in our coastal communities to achieve real climate change adaption. It is crucial to be more inclusive of impacted communities by holding many more public hearings and actively listening to their concerns. Relying solely on each volunteer Conservation Commission's discretion to approve or deny waterfront property use, particularly for water-dependent uses, is not sufficient. Water-dependent users should have a reliable, explicit right to continue and to be newly built at the water's edge, including docks and piers on the water, which should be done using technology and safety principles, rather than relying on "nature-based" retreat strategies that have not been proven to be effective anywhere.

Prohibiting water-dependent facilities based on the geography of a high wind and wave zone is not the solution. Instead, the focus should be on requiring sound, safe engineering, and design in any wind and wave zone. We already have the knowledge and the capability to design and adapt to storms effectively, and we should be allowed to do so.

Wayne Kurker

Hyannis Marina

Wetlands-201 Resilience Comment Letter

Abigail Middleton <amiddleton@hyminvestments.com>

Tue 4/30/2024 2:28 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (642 KB)

Wetlands 401 Resilience HYM Public Comment Letter 2024.04.30.pdf;

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Good afternoon,

Please find attached a public comment letter re Wetlands-401 Resilience in response to MassDEP's release of the "Regulatory Resiliency Package 1.0".

Thank you,

Abigail

Abigail Middleton

Senior Development Manager

The HYM Investment Group, LLC

One Beacon Street, 31st Floor | Boston, MA 02108

617.248.8905 (Office) | 617.939.7854 (Cell)

amiddleton@hyminvestments.com | www.hyminvestments.com





Via Email to dep.waterways@mass.gov

April 30, 2024

MassDEP-BWR
Attn: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

RE: Wetlands-401 Resilience Comments

Dear MassDEP BWR Wetlands Program:

We are writing to comment on the recently-released MassDEP "Regulatory Resiliency Package 1.0," and the proposed changes to Massachusetts Wetlands and 401 Regulations (310 CMR 10.00 and 314 CMR 9.00) (the "Regulations"). We understand the updates are being undertaken in furtherance of efforts to achieve the Commonwealth's resiliency goals, including comprehensive updates to improve stormwater management design based on contemporary data, specifying performance standards for our coastal floodplains, and other important considerations such as streamlining wetlands restoration.

We recognize the effort that went into drafting proposed changes to the Regulations, and particularly appreciate the thoughtful way in which MassDEP has solicited, heard, and begun to incorporate stakeholder feedback. We support the effort to have appropriate resiliency measures applicable to development projects, roadways, infrastructure and other improvements within the Commonwealth, and very much appreciate the opportunity to provide comments on the proposed regulations.

Our concerns regarding the Regulations are informed by our work on the Suffolk Downs project, which is a very large multi-phase project that has completed an extensive and lengthy public review and permitting process and for which the initial phase of construction is ongoing. This process included broad engagement with a wide range of residents and other stakeholders, including from various state agencies and other governmental bodies reviewing the project from various perspectives, including the perspective of resiliency issues. This very inclusive process resulted in permits and approvals for a project with an unprecedented scope of important public benefits. To give some perspective on this issue, a number of key public benefits and mitigation measures, above and beyond the project's planned resiliency improvements, are identified on Exhibit A to this letter.

The Suffolk Downs project has received approvals from various governmental authorities, including the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EOEEA") following Massachusetts Environmental Policy Act ("MEPA") review and approvals from the Boston Planning and Development Agency ("BPDA") following

The Suffolk Downs project has received approvals from various governmental authorities, including the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EOEEA") following Massachusetts Environmental Policy Act ("MEPA") review and approvals from the Boston Planning and Development Agency ("BPDA") following Article 80 PDA and Large Project Review. These approvals require various mitigation measures intended to maximize flood protection both on and off the project site, which have been incorporated into the project's approval and permitting documents.

The draft changes to the Regulations include several provisions that create uncertainty in various respects, potentially undermining large master planned projects like Suffolk Downs. A number of specific concerns are identified below. We respectfully request that MassDEP consider incorporating changes respecting the Regulations in light of these comments.

1. **Critical Concern Regarding Applicability of Regulation Changes to Large Master Plan Projects That Have Previously Completed MEPA Review.** Regarding applicability to pipeline projects, Section 10.10 (15) of the proposed Regulations states:

"The amendments to 310 CMR 10.00 concerning Stormwater Management at 310 CMR 10.04; 10.05(6)(k)-(q); and 10.58 shall apply to Notices of Intent filed more than six months after [the effective date of these regulations] ... Any Notice of Intent submitted to the Department prior to six months after [the effective date] shall be considered under the standards and criteria in effect prior to [the effective date]."

While this language allows a 6-month delay in applicability, it is inadequate for larger scale projects, like Suffolk Downs, where MEPA review has been completed, investments made, and mitigation and planning determined in many respects, with significant prior investments into detailed design, planning and other work. Such projects, because their buildout will take years, and because they reflect significant up-front investments into infrastructure and mitigation, with permitting of project components and construction to be on a phased basis, should not be subject to newly-enacted requirements and new more stringent design requirements that undermine years of prior master planning and permitting work.

We propose an alternative approach be adopted, taking the lead from the approach planned new regulations as to Land Subject to Coastal Storm Flowage, and regulations for Riverfront Area, where changes have been made inapplicable to projects that have already undergone and completed MEPA review under prior standards. Here, updated stormwater Regulations should similarly be inapplicable to projects that have completed MEPA review prior to the effective date of the revised Regulations, including in the event of a future Notice of Project Change (NPC) under MEPA.

Without such a legacy provision, the potential ramifications for projects like Suffolk Downs could be devastating and could make it difficult or impossible for the project to be implement in accordance with the approved master plan. Indeed, strict compliance with the proposed changes to the Regulations may not even be possible based on existing site conditions, which include poor soil quality the presence of high groundwater. If the Suffolk Downs project is held to the new stormwater regulations, there will be a significant reduction in building footprints and gross floor area that puts the entire project at risk.

Green-roofs need to be 10-ft from building foundations: A clarification as to how this is measured would be helpful. E.g., does this mean an interior off-set from the building foundation?

More importantly, green roofs can moderate the heat island effect, reduce energy use, help manage stormwater, provide habitat, reduce noise pollution, and improve air quality. Therefore, the ability to maximize green roof area should not be constrained, and we recommend that this setback be eliminated.

- a. Tree-box filters are to be 10-ft from building foundations: With a typical sidewalk width and orientation of street trees this will be difficult to accommodate. We request that this off-set be reconsidered to allow for tree box filters to be employed for street trees in proximity to building foundations.

2. **Technical Comment Re Discharge Increases.** Section 0.05(6)(k), Stormwater Management Standard No. 2 dictates that the post-development peak discharge not exceed pre-development peak discharge rates "...at each point of discharge." For many post-development discharge points there is likely zero flow in the pre-development existing condition making this requirement impossible to achieve. We understand that MassDEP has provided initial feedback that this is not the intent of the Regulation; however, this remains a concerning issue that should be clarified in the regulations.
3. **Technical Comment Re Water Treatment.** Section 10.05(6)(k), Stormwater Management Standard No. 4 references requirements for water quality treatment. The Massachusetts Stormwater Management Handbook definition of "*First Flush*" notes 1.25" of treatment. This quantity is not referenced in the regulations. It would be helpful if this discrepancy were corrected in the Handbook to reflect the regulations.
4. **Technical Comment Re Precipitation Measurements.** Section 10.57(2)(a)3.a modifies the precipitation frequencies to be consistent with the National Oceanic and Atmospheric Administration (NOAA) Atlas 14. This section further states that the NOAA Atlas 14 upper confidence level values be multiplied by 0.9. NOAA Atlas 14 values already represent a 90% confidence level in the particular storm event. Increased design storms will result in larger stormwater management footprints, resulting in less developable area.

We hope the comments above are helpful and that we can continue to be part of discussions regarding the Regulations. We share MassDEP's goals, but hope that it will take into consideration the concerns and suggestions identified above. We support the intent of the draft regulatory update to advance resiliency in the Commonwealth as it applies to new projects or those that have not yet completed large-scale review process. As noted above, however, we think it is important that the new Regulations not apply to larger pipeline projects like Suffolk Downs.

We look forward to participating in continued dialogue on both these Phase 1.0 Resiliency Regulations, as well as the future 2.0 regulatory update that MassDEP is anticipating.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DJM', with a long horizontal flourish extending to the right.

Douglas J. Manz
Chief Investment Officer, Partner

EXHIBIT A
KEY SUFFOLK DOWNS PROJECT BENEFITS

The extensive public review process for Suffolk Downs has resulted in a project with many important public benefits in addition to benefits related specifically to resiliency, including:

- Producing approximately 1,430 new affordable housing units - the greatest number created by a single project in the history of Massachusetts, and adding a total of approximately 10,000 new dwelling units, helping to address our region's critical housing shortage.
- The project, built on an unused racetrack site near mass transit, will displace zero residents.
- It creates approximately 14,000 construction jobs and 25,000 new permanent jobs.
- It will fund \$1 million toward apprenticeship preparation training and child care programs through the Building Pathways program for low-income area residents seeking to work in the trade unions, with a portion of the funds to be used for child care to support a new initiative for implementation of a child care program to support working mothers, and funds an additional \$1 million for workforce training initiatives for local residents.
- It funds all costs of building and maintaining (in perpetuity) a new approximately 40-acre network of publicly accessible open space across the Boston and Revere portions of the site, including active and passive recreation areas, as well as wetland and natural areas.
- The project will contribute \$20 million to the MBTA for Blue Line and bus public transit improvements, plus \$3.15 million more to subsidize MBTA operations.
- It will fund an approximately \$41 million comprehensive package of offsite improvements to local and regional transportation infrastructure and services, and more than \$170 million for onsite roadways, sidewalks, bicycle and pedestrian paths, water, sewer and storm drainage facilities.
- The project will fund sewer and water (I/I) payments to the Boston Water and Sewer Commission and the City of Revere of approximately \$26.7 million, and construct new water transmission and wastewater bypass lines and new pump station improvements.
- The project is expected to generate significant new tax revenues, including approximately \$59.5 million in real estate tax revenues (with anticipated net revenue of approximately \$33.7 million after accounting for increased municipal services) for the City of Boston.

Waterways (Chapter 91) Public Comment

Abigail Middleton <amiddleton@hyminvestments.com>

Tue 4/30/2024 2:34 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (214 KB)

Chapter 91 HYM Public Comment 2024.04.30.pdf;

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Good afternoon,

Please find attached a public comment letter re Waterways (Chapter 91) in response to MassDEP's release of the "Regulatory Resiliency Package 1.0".

Thank you,

Abigail

Abigail Middleton

Senior Development Manager

The HYM Investment Group, LLC

One Beacon Street, 31st Floor | Boston, MA 02108

617.248.8905 (Office) | 617.939.7854 (Cell)

amiddleton@hyminvestments.com | www.hyminvestments.com





Via Email to dep.waterways@mass.gov

April 30, 2024

MassDEP - BWR Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, 9th Floor
Boston, MA 02114

RE: Waterways (Chapter 91) Resilience 1.0 Draft Regulations Comments

To Whom it May Concern:

We are writing to comment on the recently-released MassDEP "Regulatory Resiliency Package 1.0," and the proposed changes to Chapter 91 regulations (310 CMR 9.00) (the "Regulations") to account for sea level rise and future climate conditions. We understand the updates are being undertaken in furtherance of efforts to achieve the Commonwealth's resiliency goals and we recognize and applaud the efforts into drafting proposed changes to the Regulations. We particularly appreciate the thoughtful way in which MassDEP has solicited, heard, and begun to incorporate stakeholder feedback.

We participated in the Ch. 91 MassDEP Feedback Session on March 21, 2024, and appreciate being included in this stakeholder outreach effort. In addition, we have reviewed the draft regulations, and offer the following comments on the proposed revisions:

1. 310 CMR 9.10(6), Renewal and Transfers of Licenses

The proposed revisions to this section provide for renewal based on whether the structure or fill is consistent with the plans submitted as part of prior license application materials. This section should be revised to indicate that licenses may be renewed if the structure or fill conforms to the previously-approved plans, rather than plans submitted with the original application, as plans are frequently modified during the licensing process.

Additionally, existing structures/fill for which a renewal is sought should not automatically be held to new regulatory standards not in place at time of the original permitting process. An allowance to incorporate retrofitting as practicable is appropriate, but an automatic requirement to retrofit is not and could make renewal of licenses impractical or impossible in certain cases.

These comments are also relevant to the proposed revisions to Section 9.25(2).

2. 310 CMR 9.25, Expiration and Renewal

The proposed revisions to 310 CMR 9.25(2) require applications for both new licenses and licenses renewals to "...incorporate[] the impacts of projected sea level rise throughout the design life" per 310 CMR 9.37(1)(d). We understand from the March 14, 2024, office hours that MassDEP intends to evaluate whether a project adequately complies with these standards on a case-by-case basis, and that such review may focus on maintaining public access in light of sea level rise. However, as written, there is ambiguity for applicants pursuing renewal of licenses for existing structures, which may present barriers to obtaining or maintaining financing. We urge MassDEP to develop specific guidelines and standards by which they will conduct their evaluation of license renewals, and provide those standards for public review and comment prior to the promulgation of these regulations.

3. 310 CMR 9.32(2), Categorical Restrictions on Fill and Structures (allowances)

As the Commonwealth grapples with sea level rise, placement of fill or structures to protect from associated flooding may be appropriate. Therefore, we recommend incorporating a new section (e) "*Placement of fill or structures the purpose of which is to provide protection from flooding associated with projected sea level rise, which is conducted by the public agency responsible for the infrastructure, or in the case of private flood protection fill or structures, when supported by the municipality.*"

4. 310 CMR 9.51, Conservation of Capacity for Water-dependent Use

The proposed revisions to 310 CMR 9.51(3)(e) add an exclusion for height limits for "...nonstructural elements relocated on the roof of an existing building for non-water dependent use, including mechanical elements and required enclosures...." However, we note that these provisions do not allow for increased building height to accommodate resiliency and heightened finished floor elevations. We encourage MassDEP to consider also providing for increased height allowances in order to balance the Commonwealth's resiliency goals with its need for housing.

We also provide the following comments regarding the broader context of 310 CMR 9.00 for MassDEP's consideration in developing the Resiliency 2.0 regulatory update.

5. As MassDEP progresses "Resiliency 2.0" regulatory updates, we strongly urge that streamlining considerations be incorporated for natural resource/restoration projects, including those that may not be eligible for Restoration Orders of Conditions. The permitting pathway/timeline and associated effort for natural resource restoration projects, both coastal and inland, run counter to the Commonwealth's resiliency goals. A crucial component to the Commonwealth's resiliency efforts will be the maintenance and restoration/enhancement of our natural coastal systems. For example, facilitating salt marsh ditch remediation by excluding salt marsh hay placed

in ditches from being considered fill should be adopted such that Ch. 91 licensing for these efforts is not required.

Similarly, new regulatory provisions that facilitate the use of living shorelines and other nature-based solutions is imperative. Under the present regulatory regime, such projects are extremely challenging to permit.

6. Intersectional Challenges with Other Permitting Programs

It would be beneficial to the Commonwealth, the public, and stakeholders to consolidate the Chapter 91 permitting process with the MEPA process, allowing these permitting processes to happen concurrently. Current regulations require a linear process, with applicants seeking a license or permit under Chapter 91 only after going through an Environmental Notification Form, and Draft and Final Environmental Impact Reports, is time-consuming and inefficient. There should be a formal process to obtain MassDEP input earlier, perhaps by commencing the Chapter 91 licensing or permitting during the FEIR process. This would also allow members of the public participating in the MEPA review process to have better visibility into the Chapter 91 process applicable to the same project.

Furthermore, current application requirements at 310 CMR 9.11(3)(c)3. state that "*a final Order of Conditions and a Water Quality Certificate, if applicable pursuant to 310 CMR 9.33*" must be included with an application in order for it to be considered administratively complete. We respectfully request eliminating this requirement, as well as other submittal requirements that unnecessarily delay early submittals and extend the permitting process timeline.

7. Addressing Uses Not Defined by Regulations

We respectfully request that MassDEP develop guidance for uses that are not explicitly allowed by the regulations.

8. Water Dependent Use Zone

Clarity as to establishing the extent of water dependent use zones, as well as allowed/prohibited uses therein would be extremely helpful.

9. Open Space

We suggest that covered open space areas be expressly permitted to count toward open space requirements. Currently, the definition is unclear resulting in an issue of interpretation.

10. Facilities of Public Accommodation

The definition of Facility of Public Accommodation at 310 CMR 9.04 is overly restrictive and this often results in developers being unable to take advantage of unique conditions of their project site. We respectfully request that MassDEP expand the list of uses that qualify as FPAs, to allow for greater flexibility and creativity. We also recommend that MassDEP publicize instances of successful implementation of FPAs and clarify the criteria for these facilities.

11. Presumptive Jurisdiction

We understand that the "Tidelands Jurisdiction (M.G.L. c.91) Datalayers" published by the Bureau of Geographic Information (MassGIS) are used for the purpose of determining presumptive boundaries of Chapter 91 tidelands jurisdiction. While these data layers are a valuable tool for due diligence and planning, they appear to have not been updated since 2011. We respectfully request that MassDEP coordinate regularly with MassGIS to update the presumptive jurisdictional line based upon Jurisdictional Determinations and updates from Licenses.

We hope the comments above are helpful and that we can continue to be part of discussions regarding the Regulations. We look forward to participating in any future Ch. 91 Working Groups and continued dialogue on both these Phase 1.0 Resiliency Regulations, as well as the future 2.0 regulatory update that MassDEP is anticipating.

Sincerely,




Douglas J. Manz
Chief Investment Officer, Partner

310 CMR 10.00 Comment Letter

Abigail Middleton <amiddleton@hyminvestments.com>

Tue 4/30/2024 2:41 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (213 KB)

310 CMR 10.00 HYM Public Comment 2024.04.30.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please find attached a public comment letter re 310 CMR 10.00 in response to MassDEP's release of the "Regulatory Resiliency Package 1.0".

Thank you,

Abigail

Abigail Middleton

Senior Development Manager

The HYM Investment Group, LLC

One Beacon Street, 31st Floor | Boston, MA 02108

617.248.8905 (Office) | 617.939.7854 (Cell)

amiddleton@hyminvestments.com | www.hyminvestments.com





Via Email to dep.waterways@mass.gov

April 30, 2024

MassDEP-BWR
Attn: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

**RE: 310 CMR 10.00 Proposed Revisions
Land Subject to Coastal Storm Flowage**

Dear MassDEP:

We are writing to comment on the recently-released MassDEP "Regulatory Resiliency Package 1.0," and the proposed changes to Massachusetts Wetlands Regulations (310 CMR 10.00) (the "Regulations") as they relate to the regulation of Land Subject to Coastal Storm Flowage ("LSCSF"). We understand the updates are being undertaken in furtherance of efforts to achieve the Commonwealth's resiliency goals and we recognize and applaud the efforts into drafting proposed changes to the Regulations, and particularly appreciates the thoughtful way in which MassDEP has solicited, heard, and begun to incorporate stakeholder feedback.

We note that our comments regarding the Regulations are informed by our work on the Suffolk Downs project, a large, phased redevelopment project that has completed an extensive and lengthy public review and permitting process and for which initial construction is underway. This public process included broad engagement with a wide range of residents and other stakeholders, including from various state agencies and governmental bodies, resulting in permits and approvals for a project with many important public benefits, some of which are identified for reference on Exhibit A to this letter.

The Suffolk Downs project has received various approvals from governmental authorities, including the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EOEEA") following Massachusetts Environmental Policy Act ("MEPA") review, and approvals from the Boston Planning and Development Agency ("BPDA") following Article 80 PDA and Large Project Review. These approvals require various mitigation measures intended to maximize flood protection both on and off site, which have been incorporated into the project's approval and permitting documents. We note that it is our understanding that projects like the Suffolk Downs redevelopment, which have completed MEPA review, are exempt from the proposed amendments to Regulations related to LSCSF per language in proposed 310 CMR 10.10(15), and that this would apply irrespective of any future Notice(s) of Project Change under MEPA as long as the change is found to be insignificant or the significance is unrelated to LSCSF.

While the LSCSF Regulations are inapplicable to Suffolk Downs, our experience with the project informs the comments below, which we urge be considered in light of the application of the Regulations to other future large, phased projects:

1. **The Regulations Should Seek to Avoid a One-Size-Fits-All Approach, and Allow for Innovation.** We urge MassDEP to consider changes that allow the identification of performance standards to protect the functions the Act and Regulations are meant to address, while avoiding prescriptive means and methods for achieving these standards. Similarly, wholesale prohibitions should be avoided whenever possible.

As written, the Regulations can be read to preclude projects that eliminate floodplain, since eliminating floodplain would necessarily impact the capacity of a project site to serve the interests of the Act. We urge flexibility around these issues. Often, placing fill within the coastal floodplain (i.e. eliminating/reducing the extent of LSCSF) is the most appropriate path to protecting shoreline and adjacent upland areas. It is important for the regulations to recognize that LSCSF is an atypical resource area, where the interests it protects can at times be better served through other resiliency measures that may eliminate/reduce the resource area.

In fact, this is the case with the redevelopment of Suffolk Downs, where some of the planned resiliency measures (including fill and berms) are expected to reduce the extent of floodplain area, but vastly improve both the site's and neighboring area's resiliency by reducing flooding.

Other sections of the regulations that can be read as prescriptive include: 10.36(7)(a) through (g) and 310 CMR 10.36(8)(a) through (g), in each case because they provide little flexibility as to the stated standards. Similarly, subsection 10.36(8)(f) could be read to effectively limit redevelopment activities to urban settings such as downtown Boston and the Seaport, because it seems to require that a site already be largely impervious to qualify for certain treatment.

We encourage MassDEP to review the Regulations and comments from stakeholders with this in mind, focusing on protected interests (storm damage prevention and flood control), in a manner that does not preclude flexibility by requiring specific approaches to resiliency. Climate adaptation efforts designed to protect public and private property, and human health and safety, should be allowed.

2. **Focus on Prior Alteration Rather Than Development.** 310 CMR 10.36(8) states, *"Activities shall conform to the standards specified in 310 CMR 10.36(4) through (7) when a site was previously developed but is not currently developed."* For clarity as well as relevance to the functions of LSCSF, we suggest instead using the term "Previously Altered Area" (to replace all instances of "Previously Developed Area") and defining in 310 CMR 10.04 as "an area that is not in a natural, previously undisturbed state as a result of human activity including any change in grade from

naturally occurring grade or placement of structures. Previously Altered Areas for the purposes of LSCSF may contain pavement or other impervious surfaces, structures or portions of structures, or construction debris, or may have been filled or excavated. Areas historically disturbed by human activities that have reverted to such a natural state so as to be indistinguishable from undisturbed natural areas are not previously developed."

We hope the comments above are helpful and that we can continue to be part of discussions regarding the Regulations. We share MassDEP's goals, but hope that it will take into consideration the concerns and suggestions identified above.

We look forward to participating in continued dialogue on both these Phase 1.0 Resiliency Regulations, as well as the future 2.0 regulatory update that MassDEP is anticipating.

Sincerely,



Douglas J. Manz
Chief Investment Officer, Partner

EXHIBIT A
KEY SUFFOLK DOWNS PROJECT BENEFITS

The extensive public review process for Suffolk Downs has resulted in a project with many important public benefits in addition to benefits related specifically to resiliency, including:

- Producing approximately 1,430 new affordable housing units – the greatest number created by a single project in the history of Massachusetts, and adding a total of approximately 10,000 new dwelling units, helping to address our region’s critical housing shortage.
- The project, built on an unused racetrack site near mass transit, will displace zero residents.
- It creates approximately 14,000 construction jobs and 25,000 new permanent jobs.
- It will fund \$1 million toward apprenticeship preparation training and child care programs through the Building Pathways program for low-income area residents seeking to work in the trade unions, with a portion of the funds to be used for child care to support a new initiative for implementation of a child care program to support working mothers, and funds an additional \$1 million for workforce training initiatives for local residents.
- It funds all costs of building and maintaining (in perpetuity) a new approximately 40-acre network of publicly accessible open space across the Boston and Revere portions of the site, including active and passive recreation areas, as well as wetland and natural areas.
- The project will contribute \$20 million to the MBTA for Blue Line and bus public transit improvements, plus \$3.15 million more to subsidize MBTA operations.
- It will fund an approximately \$41 million comprehensive package of offsite improvements to local and regional transportation infrastructure and services, and more than \$170 million for onsite roadways, sidewalks, bicycle and pedestrian paths, water, sewer and storm drainage facilities.
- The project will fund sewer and water (I/I) payments to the Boston Water and Sewer Commission and the City of Revere of approximately \$26.7 million, and construct new water transmission and wastewater bypass lines and new pump station improvements.
- The project is expected to generate significant new tax revenues, including approximately \$59.5 million in real estate tax revenues (with anticipated net revenue of approximately \$33.7 million after accounting for increased municipal services) for the City of Boston.



ILEX Environmental, Inc.
kbarnicle@ilexenvironmental.com
508-843-7981

April 30, 2024

Massachusetts Department of Environmental Protection
Bureaus of Water Resources
100 Cambridge Street, Suite 900
Boston, MA 02114

Dep.waterways@mass.gov

Re: Waterways Resilience Comments

Dear MassDEP:

I have reviewed the proposed revisions to the Waterways Regulations (310 CMR 9.00) and have the following comments and suggestions which are specific to the revisions proposed at 310 CMR 9.37(1)(d).

310 CMR 9.37 ENGINEERING AND CONSTRUCTION STANDARDS

- (1) All fill and structures shall be designed and constructed in a manner that:**
(d) incorporates the impacts of projected sea level rise throughout the design life of the building, structure, fill, open space or publicly accessible area or facility. An applicant shall consult the Resilient.mass.gov website for the most current mapping and other available information related to shoreline change and sea level rise or other similarly reliable sources, as deemed appropriate by the Department.

The proposed regulation revisions noted above [310 CMR 9.37(1)(d)] direct Applicants to the ResilientMass website where the Massachusetts Flood Risk Model (MC-FRM) is provided to be used for analysis for predicting sea level rise. I support the state's effort to deal with climate change issues such as sea level rise. Nonetheless, the ResilientMass website provides mapping using only the MC-FRM for predicting sea level rise which is proving to be problematic (see bullets later in this letter). I recommend the wording be revised as noted below so that the regulations allow for predicting sea level rise to be analyzed based on best available science from a reputable government source and eliminate the specific requirement of using the MC-FRM.

- (d) incorporates the impacts of projected sea level rise throughout the design life of the building, structure, fill, open space or publicly accessible area or facility. Predicting sea level rise may be analyzed based on best available science from a reputable government source. An applicant may shall consult the Resilient.mass.gov website for the most current mapping and other available information related to shoreline change and sea level rise. or other similarly reliable sources, as deemed appropriate by the Department.**

There are other models available for predicting sea level rise including one by the National Oceanic Atmospheric Administration (NOAA) that is more accurate and publicly available. Based on the work of others, differences of predicted sea level rise between the NOAA model and the MC-FRM model are significant. If the two available models predict two widely different results, (such as 1.5 feet of sea level

rise compared to 6 feet of sea level rise) the type of building and site design proposed would also be widely different. Based on research to date, the MC-FRM model is extremely conservative which will likely result in projects being over designed and with increased costs. Resilience features and/or resilience projects may be abandoned altogether due to the costs associated with over design. Therefore, the model used to design a project has significant consequences that can work in opposition to providing for resilience.

Two different predicted sea level rise models, with widely varying results, will result in unnecessarily complicated permitting, analysis, costly consultant reviews, contradictory outcomes, and legal appeals. Determining a “standard of practice” will help to resolve this issue. Please note that this may take longer to determine an appropriate model than the time it will take for these proposed revisions to be publicly reviewed and formally approved and issued. Therefore, I recommend the previously noted revised wording that predicting sea level rise may be analyzed based on best available science from a reputable government source and eliminate the requirement of specifically using the MC-FRM. This will allow time for the engineering and scientific community to fully vet which model is appropriate.

Without an effective way to identify the predicted sea level rise boundaries through an acceptable model, there cannot be effective protection of tidelands and, as such, there cannot be enforcement of the regulations. To resolve this issue, there needs to be more analysis by the engineering and scientific community on the appropriate model to be used.

The following is a summary of issues regarding the MC-FRM model:

- A comparison of MC-FRM and NOAA models suggest that the MC-FRM model substantially over-predicts water levels and becomes increasingly inaccurate over time.
- The MC-FRM model provides different scenarios for sea level rise (i.e., intermediate, intermediate – high, high, and extreme) and projections for different years (i.e., 2030, 2050, 2070, etc.) Massachusetts has chosen the “high” scenario for sea level rise projections which equates to a less than 0.5% chance of occurrence. Therefore, the MC-FRM guidance from the state is already an extremely conservative model.
- A better option for projected sea level rise is using the NOAA intermediate scenario which has a 50% chance of occurrence.
- Massachusetts Department of Transportation (MassDOT) is the funding agency for the MC-FRM analysis. MassDOT released the following technical comment on a modeling report: “According to MC-FRM, the state selected “high” or 99.5% chance of non-occurrence set of sea level rise scenario as the baseline. This sea level rise scenario is shown to substantially over-predict actual water levels in 2020. Additionally, a more recent NOAA analysis of sea level rise do not support an acceleration in sea level rise.”
- In other words, the latest sea level rise projections available from MC-FRM greatly overestimate sea level rise compared to observations which are not consistent with NOAA sea level rise projections.
- MC-FRM was not produced by the state, but rather the model was developed under state funding through MassDOT. Therefore, MC-FRM is a proprietary and owned by a private consultant. A publicly available and scientifically defensible model should be the “standard of practice.”

- The MC-FRM metadata states that the model results are for “discussion and research purposes only” and “information is provided with the understanding that these data are not guaranteed to be accurate, correct or complete”. Based on this statement, it may not be appropriate to use MC-FRM in permitting and informing coastal flood protection planning and/or design efforts.

The following questions may be unintended consequences of the above-discussed regulation and are provided here to determine if the regulation revisions are appropriate or if additional guidance is necessary:

- If buildings need to be elevated a substantial amount due to predicted sea level rise, there will be projects where there is no ground floor. How will the regulations for ground floor uses including Facilities of Public Accommodation be amended to reflect this?
- Based on revisions to the Wetlands Protection Act regulations, many buildings may need to be elevated on pilings. Can this area beneath the buildings be used as open space or parking? Will the proposed use beneath a building be public or private?
- Will Pedestrian Access Networks and open space areas all need to be elevated according to predicted sea level rise? How will this impact accessibility?

I recommend that the revised regulations provide language as suggested in this letter allowing the flexibility to utilize the best available data and model available in order to perform predicted sea level analyses and not specifically require the use of the MC-FRM.

Thank you for your attention to these comments. Please do not hesitate to contact me should you have any questions.

Very truly yours,




Kathryn S. Barnicle
ILEX Environmental, Inc.
kbarnicle@ilexenvironmental.com
508-843-7981

Waterways Resilience Comments

Molly Courson <mcourson@ipswichriver.org>

Tue 4/30/2024 12:31 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (247 KB)

CH91 IRWA comments.pdf;

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Good afternoon,

Attached please find our comments on the proposed Ch. 91 Waterways amendments.

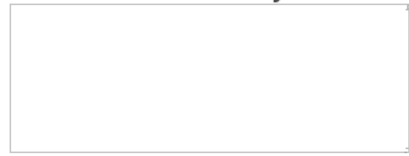
Thank you,

Molly

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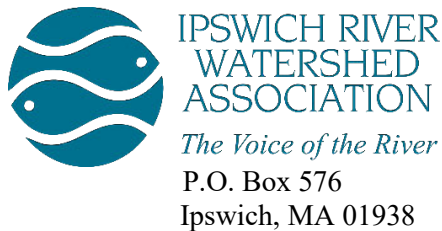
Molly Courson, AICP

Watershed Resiliency Planner



o: (978) 412 8200

c: (603) 502 7257



April 30, 2024

Massachusetts Department of Environmental Protection
Bureau of Water Resources Waterways Program
Attention: Waterways Resilience Comments
Daniel Padien, Waterways Program Chief
100 Cambridge Street, 9th Floor
Boston, MA 02114

Dear Chief Padien,

Thank you for the opportunity to comment on the draft Chapter 91 Waterways regulations as part of MassDEP's "Climate Resilience" 1.0 package.

The Ipswich River Watershed Association's (IRWA) mission is to protect and restore the Ipswich River and its watershed, now and for future generations. Founded in 1977, IRWA serves the 160,000+ people who live in our watershed, as well as more than 350,000 people and businesses who get their water from the Ipswich River, from the river's start in Burlington to its confluence with the ocean in Ipswich.

We are pleased to see that these regulations work to advance climate resilience, marking essential progress towards ecological restoration, public safety, and preparation for climate change impacts. We strongly support many of the proposed revisions, and acknowledge the years of work MassDEP has dedicated to this effort. We would like to thank MassDEP's commitment to public engagement during this process, and hope for a similar level of support for education and awareness on the final set of regulations.

We support the following provisions:

- Clarifying that culvert replacements that meet Massachusetts Stream Crossing Standards do not need to obtain a Chapter 91 permit. This exemption will help encourage culvert replacements, speed up their permitting process, and lower the cost for municipalities and practitioners. We partner with many communities in our watershed on culvert replacement projects, which provide environmental and public safety benefits including flood mitigation, increased streamflow, and fish passage. (310 CMR 9.05 (3)(g)(4))
- The new requirement for projected sea level rise data to be incorporated into new development and redevelopment for the life of those projects. Sea level rise should be factored into coastal

infrastructure plans for the longevity of the structure, as well as for human safety.
(310 CMR 9.37 (1)(d))

We have concerns about the following proposed changes and/or have recommendations for improvement:

- MassDEP has proposed to strike out the “Combined Application” option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications, without proposing anything to fill its place. To accelerate the pace of restoration projects, we need a simplified permitting process that provides combined Wetlands Protection Act and Chapter 91 *approval* for applicants pursuing environmentally beneficial projects.
(310 CMR 10.04)
- As written, the definition of “fill” includes salt marsh hay, and treats it with the same long permitting pathway as fill used in development, even though salt marsh hay is part of ecological restoration. Instead, the definition of “fill” should exclude salt marsh hay, and those projects should be exempt from getting a Chapter 91 license. Standard regulatory conditions regarding the use of salt marsh hay could alternatively be included in a restoration OOC, allowing for monitoring of its use and impact without requiring unnecessary and burdensome permitting.
(310 CMR 9.02)
- While MassDEP has proposed to use ResilientMass mapping for updated sea level rise data, there is no inclusion of forecasted precipitation data. Greater precipitation combined with sea level rise will yield a more accurate picture of flood risk, and MassDEP should include reference to an appropriate, forward-looking dataset.

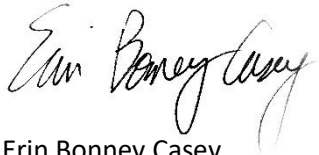
We are encouraged by the direction the “Resilience 1.0” regulations are taking, and strongly support MassDEP to begin the “2.0” process to continue improving Chapter 91 regulations without delay. Our communities are already experiencing the effects of the climate crisis, and swift action to update our regulatory approach to development is crucial to assisting them in mitigation, adaptation, and long-term resilience.

IRWA would specifically like to see special conditions given to dam removal projects under 310 CMR 9.00. Dam removal is a critical tool in the road to resiliency which provides multiple co-benefits, including restoration of natural river flow, recovery of freshwater species and habitats, and increased flood management capacity and protection during intense storms. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety. The regulations already provide for culvert replacements to be exempted from a Chapter 91 license, recognizing that those projects do not impede navigation and instead increase the resilience of the site. Removing dams that block wildlife passage, present flooding risks, or are abandoned, similarly meet those criteria. This change would complement what is already codified in the Wetlands Protection Act regulations, which provides an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited

Project. We strongly encourage MassDEP to accelerate this work by providing a streamlined permitting pathway in the Chapter 91 regulations as well.

Thank you for the time and effort the agency has invested in these draft regulations so far. We look forward to continuing to work with MassDEP to protect, enhance, and restore the Ipswich River Watershed for generations to come.

Sincerely,

A handwritten signature in black ink, reading "Erin Bonney Casey". The signature is fluid and cursive, with the first name "Erin" being the most prominent.

Erin Bonney Casey
Resiliency Program Director
Ipswich River Watershed Association
ebcasey@ipswichriver.org

Proposed regulatory changes by MA Dept of Environmental Protection

JAMES McKay [REDACTED]

Mon 4/29/2024 9:57 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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To all of those above,

We are writing with deep concern and objection to the proposed regulations by the MA Dept of Environmental Protection that would severely affect the Massachusetts coastline. We have only recently become aware of these proposals and there has been no prior public information provided, nor has any public input been sought. If implemented, as I understand them, these proposed changes could have a severe impact on home/ business owners along the whole Massachusetts coastline.

Such drastic regulations require extensive research and public discussion. They should not be hastily implemented without consideration for the entire coastal community.

James and Victoria McKay

[REDACTED]
Humarock, MA. [REDACTED]

Wetlands and Waterways Resilience regs

James Corry [REDACTED]

Tue 4/30/2024 2:10 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I've just learned about your proposed regulations to retreat from waterways in the future. As a coastal resident and waterfront property owner I am very concerned and upset. As I understand the proposed regulations, the values of my property and those of my community are at great risk. I find this unacceptable.

James Corry, Ph.D.
Marshfield Massachusetts.

Wetlands and Waterways Resilience Comments

Joe DiLorenzo [REDACTED]

Sun 4/28/2024 10:42 AM

To: Patrick O'Connor <patrick.oconnor@masenate.gov>; DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick. Kearney@mahouse.gov <Patrick. Kearney@mahouse.gov>; marie@boatdoc.com <marie@boatdoc.com>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I have summered in Humarock Beach in Scituate for the first 25 years of my life and year round for over 40 years. The proposed regulations are absurd. Conservationists would prefer there are no houses anywhere.

- Prohibit new buildings in high wind and wave areas, ***even if safely designed and elevated***
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- **Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.**
- **Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term**

The proposed changes are supposed to be "nature-based planning" to accommodate sea level rise (called "managed retreat") and prohibit adaptations based on technology and design. This is not adaptive or resilient.

You must allow Town Administrators make these decisions, not Conservationists having the right to decide without due process.

--

The main point of your email to the state should be you just heard about this, you are a coastal resident, and the proposed regulations would be catastrophic if implemented as you understand them. ALSO: Please send copies of you comments to Senator Patrick O'Connor

at: Patrick.Oconnor@MASenate.gov Representative Patrick Kearney

at: Patrick. Kearney@mahouse.gov Dave Ball From: Marie Hayward <marie@boatdoc.com>

Date: April 26, 2024 at 6:46:18 PM EDT

To: Marie Hayward <marie@boatdoc.com>

Subject: UNPRECEDENTED REGULATORY CHANGES PROPOSED BY MASS DEPARTMENT OF ENVIRONMENTAL PROTECTION

Let Mass Dep know that revisions are required using modern design engineering and technology to adapt, not just retreat!

Marie A. Hayward, President

Massachusetts Marine Trades Association Inc. **The Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years.**

If enacted, the regulations would:

- Prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings,

piers and docks can be relocated or expanded or new ones installed.

- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

Regulations are not ready, major revisions are needed including:

1. Be more inclusive of impacted communities. Hold many more public hearings and listen.
2. Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water’s edge.
3. Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
4. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.
5. We know how to design and adapt to storms. Let us do so.

April 30th is the last day to comment on the proposed Mass DEP regulations that have the potential to be very damaging to the recreational boating industry, some waterfront properties, some waterfront development. We hope you will consider filing a comment letter with Mass Dep. The quickest response route is to send one email to these two email addresses:

dep.wetlands@mass.gov; dep.waterways@mass.gov and include in the subject line Wetlands and Waterways Resilience Comments

THE MAIN POINT OF YOUR EMAIL TO THE STATE SHOULD BE YOU JUST HEARD ABOUT THIS, YOU ARE A COASTAL RESIDENT, AND THE PROPOSED REGULATIONS WOULD BE CATASTROPHIC IF IMPLEMENTED AS YOU UNDERSTAND THEM.

Joe DiLorenzo

[REDACTED]

UNPRECEDENTED REGULATORY CHANGES PROPOSED BY MASS DEPARTMENT OF ENVIRONMENTAL PROTECTION

john boujoulian [REDACTED]

Mon 4/29/2024 3:00 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick.Keane@mahouse.gov <patrick.keane@mahouse.gov>

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I absolutely object to the proposed regulation changes regarding the Massachusetts coast. I just found out about these proposed regulations that would be catastrophic if implemented, the way I understand them. Major revisions to these proposed regulations need to be enacted and must be reviewed/heard/understood with more public hearings. They are too impactful to rush through and will have major negative consequences. People with homes on the coast deserve more respect than this. The proposed regulations are outrageous and are not in the best interests of the entire coastal community.

Thanks in advance for shutting this down until it can be further examined.

Regulations are not ready, major revisions are needed including:

- 1. Be more inclusive of impacted communities. Hold many more public hearings and listen.**
- 2. Do not leave it to each volunteer Conservation Commission's discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water's edge.**
- 3. Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not "nature based" retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.**
- 4. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.**
- 5. We know how to design and adapt to storms. Let us do so.**

John and Judy Boujoulian

[REDACTED]

[REDACTED]

Humarock, MA [REDACTED]

Wetlands and Waterways Resilience Comments



Sat 4/27/2024 4:05 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick.kearney@mahouse.gov <Patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

I was just made aware of a Massachusetts proposal to implement stringent coastal restrictions. As a coastal resident, the proposed regulations would be catastrophic if implemented as you understand them. There are already many restrictions in place that provide for both environmental and property protections and the new proposed regulations would have a extreme negative economic impact.

Regards,
John Harrington
Scituate, MA

Wetlands and Waterways Resilience Comments

JOE GATELY [REDACTED]

Tue 4/30/2024 8:31 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>; patrick.kearney@mahouse.gov <patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi,

We were just advised today about the proposed DEP regulations that could be very damaging to the coastal community that I am a resident of — Marshfield and Humarock Beach, Scituate, MA.

I am asking that these proposed changes do not be approved as they could be catastrophic to our home town. Thank you for your consideration.

Joseph Gately

[REDACTED]
Marshfield, MA [REDACTED]

[REDACTED]

Wetlands and waterways

Kathleen Graney [REDACTED]

Sun 4/28/2024 11:05 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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I am a coastal resident in Marshfield. I have just become aware of the State proposed changes and rules for our coastal communities. I feel this is unfair and unnecessary. I love and appreciate the environment, we can protect it without government bureaucracy.

Kathleen Graney

[REDACTED]

Marshfield

[REDACTED]

Waterways Resilience Comments

Kyle Johnson <KJohnson@kleinfelder.com>

Tue 4/30/2024 6:19 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To whom it concerns,

Please consider below public comment related to the Waterways (Chapter 91) Resilience 1.0 Draft Regulations:

With respect to Coastal Areas at Risk from Sea Level Rise - "Limited Projects" (310 CMR 10.24(7)), the proposed performance standards for "Limited Projects" are potentially too restrictive and in some cases may be maladaptive to sea level rise impacts. For example, stipulations that allow Road Relocation or Road Elevation (and perhaps some roadway widening actions) that are well-designed and in combination with well-engineered living shorelines that allow future salt marsh advancement may be a better outcome than "no alteration to hydrology of salt marsh" outright. The intent to protect threatened salt marsh resources is understood, here, but the long term viability of these habitats will likely require future assistance beyond limiting direct-impact or adjacent activities.

A language clarification can perhaps be made here to stipulate "no *net* adverse impacts to the hydrology of salt marsh (at a larger site or HUC12 level)," rather than "no alteration to hydrology of salt marsh."

The "no alteration to hydrology of salt marsh" performance standard (i.e., protecting these resources as-is, without assisting future migration of these Resource Areas with long-term sea level rise) may not be the best long-term outcome, especially as there may be cases where threatened salt marshes may be degraded in their current state.

Limiting paired solutions also restricts the use of 'Adaptation Pathways'-based design approaches (which are increasingly common with design practitioners), or other phased "salt marsh advancement" strategies, which may have some negative impacts in the near-term, but are more forward-thinking in the long term in that they consider the tremendous uphill battle that salt marsh resources will have in keeping up with projected sea level rise without further interventions (such as thin-layer placement, runneling, living shorelines, etc.)

I recommend these standards should be revised, or at least held for now and revisited during a more robust Climate Resilience 2.0 process.

Respectfully,

Kyle Johnson, WEDG

Climate Resilience Practice Lead

Kleinfelder

Thanks,

Kyle Johnson, WEDG

Climate Resiliency Practice Lead,

Kleinfelder East Division

m: 773.614.3449



Celebrating 60 Years
...and Imagining Our Future

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Waterways Resilience Comments

Kyle Johnson <KJohnson@kleinfelder.com>

Tue 4/30/2024 6:44 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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To whom it concerns,

Please consider below public comment related to the Waterways (Chapter 91) Resilience 1.0 Draft Regulations:

In drawing the boundaries to inform performance standards for Waterways/Chapter 91 purposes, such as delineating Resource Areas based on reference tidal definitions (for example, MHW) there is a limitation in using already-outdated data for tidal datums, which are based on “accepted” data for the current tidal epoch.

The present National Tidal Datum Epoch (NTDE) used in delineation of Resource Area boundaries (when using MHW or other tidal reference datum) is based on NOAA tidal data from 1983-2001, and does not include recent, observed sea level change that has occurred since that time period. In some coastal communities, this observed sea level change is not negligible, and should be factored into determinations of applicability and (tidal) Resource Area delineations.

At a minimum - acknowledging that data analysis/review informing the next NOAA tidal epoch is already in the works (and potentially due for acceptance in 2025) - I would encourage MassDEP to incorporate flexible language, i.e., citing the “data from most recent accepted tidal epoch, per NOAA,” or utilize modeled tidal datums that incorporate projected near-term sea level rise impacts. For example, Woods Hole Group recently included actual observed sea level rise between 1999 and 2017 (centered on 2008 baseline). They also modeled tidal datums for the 2030 time horizon have been modeled using the Massachusetts Coast Flood Risk Model (MC-FRM), and are publicly available as a Level 2 output for the entire MA coastline: <https://www.woodsholegroup.com/innovation/massachusetts-coast-flood-risk-model/>

This item is also explained well in MA Office of Coastal Zone Management (CZM) and Woods Hole Group’s training on the MC-FRM model part 1: <https://www.youtube.com/watch?v=fwJIHgixA1A> (starting around 56:00 minute mark)

Respectfully,
Kyle Johnson, WEDG
Climate Resiliency Practice Lead
Kleinfelder

Kyle Johnson, WEDG
Climate Resiliency Practice Lead,
Kleinfelder East Division
m: 773.614.3449



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Wetlands and Waterways Resilience Comments

Larry Russo Sr <L.Russo@marinemax.com>

Wed 4/17/2024 5:48 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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The Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years.

If enacted, the regulations would:

- prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

Regulations not ready, major revisions are needed including:

1. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to invest in our coastal communities for real climate change adaptation.
2. Be more inclusive of impacted communities. Hold many more public hearings and listen.
3. Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water’s edge.
4. Water dependent uses need reliable, explicit right to continue and to be newly built at water’s edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.
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We know how to design and adapt to storms. Let us do so.

Larry Russo, Sr.

Senior Vice President

MarineMax Northeast

Bay Pointe Marina

Quincy, MA 021169

Mobile: (781) 389-8793

www.marinemax.com



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Wetlands and Waterways Resilience Comments

Linda M. DiLorenzo [REDACTED]

Sun 4/28/2024 8:44 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>;patrick.kearney@mahouse.gov <patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

We were just advised today about the proposed DEP regulations that could be very damaging to the coastal community that I am a resident of -- Humarock Beach, Scituate, MA.

I am asking that these proposed changes do not be approved as they could be catastrophic to our home town. Thank you for your consideration.

Linda DiLorenzo

[REDACTED]
Humarock, MA [REDACTED]

[REDACTED]

Wetland and Waterways Resilience Comments

lisa caisse [REDACTED] [REDACTED]

Mon 4/29/2024 6:09 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>; DEP Wetlands (DEP) <dep.wetlands@mass.gov>

Cc: patrick.kearney@mahouse.gov <patrick.kearney@mahouse.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I am a waterfront resident on Humarock and was horrified to hear about these proposed unprecedented regulatory changes,.

Revisions are required using modern design-engineering and technology to adapt, NOT just retreat!

How could I possibly want to leave decisions in the hands of the ConComm when they are allowing DPW to fill the marsh between 268 Central and North with overwash sand and cobble. These tons of material are suffocating the marsh and I believe it is illegal to do so. For over 50 years the overwash was returned back at the opening North of 10 Cliff Road South, whose land is owned by the Air Force to renourish the beach as nature intended. Or the town had DPW truck the overwash Southerly down to the opening South of 178 Central Ave., Humarock which stole the overwash material from where it came from. These decisions are harmful to the beach and residents and show poor judgement.

After the blizzare of 78 many waterfront residents wanted to take their homes off foundations and put them on pilings. They were told that they had to tear down their seawalls or would not receive a permit to elevate. We have learned that those seawalls were grandfathered and no one had the right to tell them they had to tear down their seawalls which is why there are many sections of Central Avenue that flood horribly because of being forced to tear down their seawall which was protecting the homeowner and the Village of Humarock.

If enacted, the regulations would:

- Prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.
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The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

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1. Be more inclusive of impacted communities. Hold many more public hearings and listen.
2. Do not leave it to each volunteer Conservation Commission’s discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water’s edge.
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wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.

4. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.

5. We know how to design and adapt to storms. Let us do so.

Waterways Resilience Comments

Amy Ball [REDACTED]

Tue 4/30/2024 4:33 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Dorothy McGlincy <dorothy.mcglinco@macceweb.org>

📎 1 attachments (477 KB)

MACC Climate Resilience 1.0 comments April 30 2024 FINAL.pdf;

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Hello MassDEP Waterways

Please see attached MACC's comments regarding the proposed changes to the Ch. 91 waterways regulations. We had a bounce back on the email sent from our MACC office, so this may be a duplicate message, but we hope that you will accept these comments. Our specific Ch. 91 comments are called out within the larger body of comments we have submitted as an organization.

Thank you.

Amy Ball

Amy Ball, President 2024-2025

Massachusetts Association of Conservation Commissions



Protecting wetlands, open space, and biological diversity through education and advocacy



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

April 30, 2024

Via Electronic Mail

MassDEP – BWR Wetlands Program
Attn: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114
dep.wetlands@mass.gov

Re: Wetlands-401 Resilience Comments

MassDEP – BWR Wetlands Program
Attn: Waterways Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114
dep.waterways@mass.gov

Re: Waterways Resilience Comments

*Comments on Proposed Wetlands Resilience 1.0 Draft Regulations, 310 CMR 10.00 and
Proposed 401 Water Quality Certification Resilience 1.0 Draft Regulations, 314 CMR 9.00
and
Comments on Proposed Waterways (Ch. 91) Resilience 1.0 Draft Regulations, 310 CMR 9.00.*

Dear MassDEP Wetlands and Waterways Staff:

Thank you for the opportunity to comment on Massachusetts Department of Environmental Protection's (MassDEP) Draft Climate Resilience 1.0 Regulations. We commend MassDEP for the incredible amount of work invested in these proposed regulatory changes. We recognize how imperative it is that Massachusetts adapts our environmental regulations to address the significant challenges we face due to the impacts of climate change and increasingly severe storms. We greatly appreciate the leadership of the Healey Administration in prioritizing actions on climate change and in recognizing the important role that wetlands play in climate resiliency.

The Massachusetts Association of Conservation Commissions (MACC) is a statewide non-profit organization that supports more than 2,500 volunteer conservation commissioners in their mission to preserve wetlands and open space. Each of the 351 cities and towns in Massachusetts has a conservation commission responsible for administering the state Wetlands Protection Act and municipal wetland bylaws and ordinances, as well as managing municipally owned conservation land. Our association protects Massachusetts' natural resources through our education and advocacy efforts, and we have been doing this work since 1961.

These comments were prepared with input from MACC's Board of Directors, a diverse team of environmental professionals, including environmental consultants, attorneys, land trust advocacy representatives, conservation commissioners, and regulators—practitioners who have implemented these wetlands and waterways regulations for years. In addition, over the course of

this public comment period, a core group of MACC's Directors met weekly with representatives from the Association of Massachusetts Wetland Scientists (AMWS), the Massachusetts Rivers Alliance (Mass Rivers), the Massachusetts Society of Municipal Conservation Professionals (MSMCP), and Mass Audubon, as well as representatives from environmental engineering firms and law firms. Our comments benefited from the expertise of these environmental professionals, and we extend special thanks to Nitsch Engineering, SWCA, Beals + Thomas, and A. Koenigsberg for their contributions to our stormwater comments.

MACC's comments pertain to the following three sets of proposed regulations under Climate Resilience 1.0:

- 310 CMR 10.00, Proposed Wetlands Protection Act Resilience 1.0 Draft Regulations (WPA)
- 314 CMR 9.00, 401 Water Quality Certification Resilience 1.0 Draft Regulations (401)
- 310 CMR 9.00, Proposed Waterways Resilience 1.0 Draft Regulations (Chap 91)

We have separated our comments on these proposed regulations by section but believe that our collective comments may be beneficial to both the MassDEP Wetlands and Waterways Programs where our comments overlap.

We also include recommendations for future improvements for wetland regulatory updates, for "Climate Resilience 2.0," and provide these at the end of this letter.

Recommendations for future improvements for wetland regulation updates, for Climate Resilience 2.0 are also included at the end of this letter. MACC looks forward to participating in the Climate Resilience 2.0 process. We encourage MassDEP to include in that process measures to further advance wetlands restoration. The ResilientMass Plan¹ includes more than a dozen action items for wetlands restoration, including permit streamlining, and the 2.0 process is also an opportunity to further align MassDEP's regulatory programs with the Biodiversity Initiative under Executive Order 618 as well as the role of carbon in wetlands in the state's Clean Energy and Climate Plan.

The Climate Resilience 2.0 process is also an opportunity to improve efficiencies in the wetland program. Particular attention should be paid to items identified in MACC's comments as well as MSMCP's comments, where procedures and standards could be improved to reduce time and complexity for common activities with minimal negative impacts, such as invasive species removal and trail maintenance.

1.0 MACC General Comments

MACC supports many of MassDEP's Climate Resilience 1.0 proposed regulations, including the following:

- establishing performance standards for Land Subject to Coastal Storm Flowage (LSCSF)
- establishing restrictions on new development in the areas with highest storm damage risk
- using future projections of sea level rise to deal with effects of climate change and intensifying storms
- updating precipitation calculations for stormwater designs
- using nature-based solutions
- moving toward more consistency with MS4 permits

¹ [ResilientMass Plan Action Tracker](#)

These are positive steps toward protecting our coastal resources and infrastructure and making Massachusetts more climate resilient. We offer our general comments followed by more detailed comments where we believe some refinements of the currently proposed language would add clarity and ease of implementation.

A. Comments on WPA Regulations

- 1.01 Resource Protection and Restoration Preferred.** We support the new Land Subject to Coastal Storm Flowage (LSCSF) section at 310 CMR 10.24 includes provisions giving preference to the protection and restoration of coastal wetlands as alternatives to coastal engineering structures and allowing alteration of LSCSF to facilitate the migration of salt marshes and dunes.
- 1.02 Updated Stormwater Standards and Aligning Stormwater Requirements with MS4 Requirements.** We support updating stormwater standards to include precipitation and coordinating with MS4 requirements, making compliance less burdensome for municipalities.
- 1.03 Enhanced Use of Guidance Documents for details that will be outdated rapidly, rather than including them in the regulations.**
- The updated data (NOAA14+) that MassDEP is proposing to be tied to the Wetland Protection Act regulations will be outdated soon. That data instead needs to address precipitation intensities of future storm events, not just rainfall amounts. Similarly, regarding the Land Subject to Coastal Storm Flowage delineations, MassDEP proposes relying on FEMA maps, rather than sea level rise. Instead, we need to use dynamic, forward-looking projections for precipitation that will protect our community for decades to come. (Stormwater Handbook Standard 2). The Waterways regulations require new structures to be designed to address sea level rise for the life of the project. Similarly, the LSCSF regulations should require that buildings and infrastructure be designed taking into account projections on sea level rise and erosion for the life of the structure.
 - Many of the LSCSF details could be included in guidance documents, rather than in the regulations.
- 1.04 Permitting and Streamlining Restoration Projects.** MACC urges MassDEP to continue to explore mechanisms for additional interagency coordination, easing permit timelines, and costs for restoration projects.
- 1.05 Aligning Infrastructure Protection with Restoration and Migration.** The proposed regulations allow elevation and relocation of existing roads and construction of berms to protect existing developed areas. The final regulations should more clearly define the planning process for such projects, to support restoration and migration of coastal wetlands to the fullest extent possible. For example, road elevation or relocation projects should avoid conflicting with interests of neighboring conservation-oriented landowners to restore more natural flows to salt marshes where the road has been acting as a barrier to that flow.
- 1.06 Combined Applications.** The regulations currently allow combined applications for Wetlands, Waterways, and 401 Water Quality permitting for Ecological Restoration Permit (ERPs). The proposed regulations eliminate those provisions. Rather than

eliminating combined review, MassDEP should seek to improve and expand combined application and permitting of restoration projects.

- 1.07 Research Projects. 310 CMR 10.05(12)** The proposed regulations include a new provision for Scientific Research Projects to allow research into the response of coastal wetlands to climate change. This provision is too narrowly crafted and should be broadened to allow experimentation with coastal and inland wetlands restoration techniques that are not currently utilized in Massachusetts. Appropriate limits on the scale and siting of such projects should be set, and successful projects should be allowed to remain in place. Additional training for conservation commissioners will be needed to interpret monitoring data during the first year of the project and in subsequent years.
- 1.08 Implementation, Complexity, and Training.** The complexity of the new regulations will make review by Conservation Commissions, which are comprised of volunteers that often do not have a wetlands or engineering background, even more challenging. Training for commissions and staff will be important for the successful roll out of these regulations. MACC will be happy to assist with the training in any way we can.
- 1.09 Regulate Based on Impacts not Type of Activity.** Wetland regulation revisions must strive to create greater consistency of thresholds, exemptions/allowances, and requirements based on existing wetland functions and values and the potential impacts (or benefits) on those wetland functions and values of proposed projects, not on the user groups conducting the activity. For instance, the new regulations offer flexibility for moving vulnerable roads that could have a large impact to the resource area but there is not the same flexibility for maintaining trails, where Resource Area impacts could be negligible.
- 1.10 Gravel Roads.** MACC has concerns that classifying gravel roads as impervious surfaces will encourage the construction of paved roads, which are more impactful to wildlife and the environment. This will also likely require construction of stormwater management systems for gravel roads, which may have unintended consequences in rural settings including removal of mature trees and other native vegetation. Low impact designs such as vegetated swales should be preferred for gravel roads, especially in rural settings.

B. Comments on Ch. 91 Regulations

- 1.11 Chapter 91. 310 CMR 9.37(1)(d).** MACC supports the new requirement for sea level rise data to be considered for new development and redevelopment. All fill and structures to be designed in a manner that *“incorporates the impacts of projected sea level rise throughout the design life of the building structure.”*
- 1.12 Chapter 91. 310 CMR 9.05(g).** We support clarifying that culvert replacements that meet Massachusetts Stream Crossing Standards are exempt from Chapter 91 permits in order to speed up restoration projects.

2.0 MACC Specific Comments – WPA (310 CMR 10.00)

MACC's specific comments pertaining to the Massachusetts Wetlands Protection Act Regulations follow the order in which they are presented under each major category within the regulations.

A. Definitions under 310 CMR 10.04

- 1.13 Alter.** The definition of **Alter** has been modified to include a “change” in water level or water table. As the requirement for infiltration is being increased to “meet predevelopment groundwater recharge and to support baseflow” as outlined in Summary of Target Recharge Volume Evaluation, we expect that this increase in recharge will increase baseflows and potentially water levels in adjacent resource areas. We recommend MassDEP retain the current definition of Alter to eliminate the contradiction of the new increase to baseflow requirements.
- 1.14 Best Management Practices (BMPs) and Stormwater Control Measures (SCM).** More concise, less confusing definitions would be helpful. Some information would be better placed within sections on performance standards. The distinction between BMP and SCM is not clear.
- 1.15 Combined Applications.** The regulations currently allow combined applications for Wetlands, Waterways, and 401 Water Quality permitting for Ecological Restoration Permits (ERPs). The proposed regulations eliminate those provisions. Rather than eliminating combined review, MassDEP should seek to improve and expand combined application and permitting of restoration projects. To accelerate the pace of restoration projects, we need a simplified permitting process. NJ DEP has an office of permit coordination that is effective at streamlining the permit process. California has the “Cutting the Green Tape program for streamlining the environmental permitting process. EPIC has compiled examples from other states, and recommendations for Funding Nature not Paperwork: [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting – Environmental Policy Innovation Center](#).
- 1.16 Highway Specific Considerations.** This gives one agency (MassDOT) special rights. Municipal Department of Public Works (DPWs) often have control of roadways of similar size and undertake projects of similar scales, and so should be afforded similar allowances. The regulations should not be based on the governing agency but should be based on the size of the roadway, the scale of the proposed project, the intended public benefits, and the potential environmental impacts.
- 1.17 Impervious Surface.** The definition of impervious area includes solar arrays as impervious. However, *MassDEP Wetlands Program Policy 17-1: Photovoltaic System Solar Array Review* mentions using the CN value of material below the arrays. What part of the solar array is considered impervious? The footprint? The land below the panel? The entire array field? MACC recommends revising the definition of solar arrays to indicate they may be considered impervious or pervious based on the surface cover below the array if stormwater will be able to flow off and drain to that surface.
- 1.18 Impervious Surface.** Artificial turf has reduced permeability, which can vary depending on the manufacturer and installer. While there is a drainage layer at the base

of the turf, there are drainage holes in the top layer allowing it to drain; infiltration and groundwater recharge are significantly reduced.

https://westernresourceadvocates.org/wp-content/uploads/2023/01/2022_WRA_Artificial_Turf_Report.pdf.

- 1.19 Impracticable and practicable** have different qualifications in their definitions. The added definition for “Impracticable” is based on physical constraints while the definition of “practicable” factors in costs, technology, proposed use, logistics, and adverse consequences. We believe this will lead to confusion. These definitions should be updated so that the criteria are consistent, such as updating the definition of “impracticable” to include all of the factors listed in the definition of “practicable.”
- 1.20 Macro-Approach.** This definition is less prone to multiple interpretations if the word “development” is removed.
- 1.21 Near** (as also related to **10.05(6)(k)7**). This new definition is vague and thus will be problematic to implement. Does it refer to volume or rate? The terms “strong likelihood” and “significant impact” can be interpreted differently by consultants and commissioners alike. This definition lends itself to inconsistent application. Does this refer to “in addition to” proposed setbacks?
- 1.22 Offsite Mitigation.** How can evaluation be done on any location outside the project locus? The way it is drafted could include a site in a different municipality or even potentially outside of the Commonwealth.
- 1.23 Watershed.** Could a clearer definition be provided? See the definition available on the USGS website.
- 1.24 General Comment on Section 10.04.** In addition to the definitions discussed above, MACC recommends that **all newly introduced terms and definitions also be cited under 310 CMR 10.04**, even when discussed under specific sections elsewhere in the regulations. For instance, just as “Bordering Vegetated Wetland is defined in 310 CMR 10.55(2),” so should be referenced all new definition and terms.

B. Procedures under 310 CMR 10.05

MACC has a number of comments about revisions to procedures, many of which focus upon the new procedures pertaining to stormwater management.

- 1.25 10.05(4)(a) Notices of Intent.** The regulations should include some flexibility and should not require such a high level of stormwater management detail for every NOI filing. The amount of information should be commensurate with the size and scale of the project.
- 1.26 10.05(4) NOI.** The difference between a long-term pollution prevention plan and an operation and maintenance plan is unclear. Are these terms defined?
- 1.27 10.05(4)(a).** Should the wording “Impracticable due to physical site constraints” be in this section and not just in the definitions?
- 1.28 10.05(6)(k).** Is this minimum setback (from receiving waters and wetlands) the same as that described in the table in 10.05(6)q?

- 1.29 **10.05(6)(k)3.** There should be requirements for the level of detail of what needs to be included in the alternatives analysis. Does it need to include a plan or just a narrative?
- 1.30 **10.05(6)(k)4.c.ii.** Is there some missing text or a numbering error?
- 1.31 **10.05(6)(l)5.** The numeral "5" is mislocated. It should precede the text "Gardens..." not follow it.
- 1.32 **10.05(6)(l) and (m). Exemptions.** Residential (single and multi-family) with 4 or fewer units don't have to meet stormwater standards. (No change to current regs). But the MS4 permits regulate everything over an acre, so these regulations are not consistent but should be as much as possible.
- 1.33 **10.05(6)(m)6.** Does this include boardwalks? Are concrete sidewalks excluded?
- 1.34 **10.05(6)(m)(6).** Requiring unpaved footpaths in natural areas to comply with the Stormwater Management Standards seems unreasonable. Trails generally rely on country drainage and so do not "fit" the intentions of the Standards. MassDEP should include unpaved footpaths in natural areas as exempt activities under the Stormwater Management Standards 10.05(6)(l).
- 1.35 **10.05(6)(o)2. Stormwater MEP.** Does this include boardwalks? Are concrete sidewalks excluded?
- 1.36 **10.05(6)(o)2. Stormwater MEP.** Language is confusing and unclear. How is this to be evaluated? How are costs to be considered?
- 1.37 **10.05(6)(q) Stormwater Minimum Setbacks from All wetland Resource Areas except ...** Could the minimum setback be rephrased to state "Setback of at least 10 feet outside of BVW and Bank"?
- 1.38 **10.05(6)(q) Stormwater Setbacks from Surface Waters.** Why is Land Under Waterbodies and Waterways included in surface waters, but Bank is not? The difference between the minimum 10-foot setback and the 50-foot setback is not clearly explained.
- 1.39 **10.05(12) Research Projects.** The proposed regulations include a new provision for Scientific Research Projects (310 CMR 10.05(12)), to allow research into the response of coastal wetlands to climate change. This provision is too narrowly crafted and should be broadened to allow experimentation with coastal and inland wetlands restoration techniques that are not currently utilized in Massachusetts. Appropriate limits on the scale and siting of such projects should be set, and successful projects should be allowed to remain in place.

C. General Provisions at 310 CMR 10.24

- 1.40 **10.24(1)(b)** We support the new requirement for nature-based projects to be incorporated into coastal projects "as an alternative to coastal engineering structures to promote resiliency along the shoreline." The **nature-based resiliency requirement** is non-binding. Having applicants merely "consider" these measures does not mean they will implement them. MassDEP could go further in requiring these measures or offering incentives for implementation of nature-based resiliency measures. "Nature-based Projects" is a very broad term. MassDEP should develop guidelines for specific types of

projects and should limit the scope and scale of projects that alter resource areas, regardless of the terminology used in describing them, unless there is a clear demonstration of a net positive benefit to the interests of the Act.

D. Land Subject to Coastal Storm Flowage (310 CMR 10.36)

- 1.41 **10.36(1) Preamble.** Other interests of the Act should be acknowledged including wildlife habitat and prevention of pollution, at least for consideration in project analysis.
- 1.42 **10.36(6). Land Subject to Coastal Storm Flowage.** We support the prohibition on new structures in velocity zone, and design requirements for development in other parts of floodplain.

3.0 Specific Comments on Stormwater

MACC supports updating the stormwater standards to include more current precipitation data and to further support Environmentally Sensitive Site Design (ESSD) and Low Impact Development. The details still need to be refined in several respects. We encourage DEP to avoid inserting too many specific requirements into the regulations and consider moving some of those details into the Stormwater Handbook. The effective date of the stormwater provisions may need to be extended in order to address all of the comments and provide sufficient time and training for conservation commissioners and proponents to prepare to apply the new provisions.

In addition to the comments provided under Section A. Definitions and Section B. Procedures above, we offer the following comments on stormwater.

- 1.43 **Precipitation values and calculations** should stay in Stormwater Handbook rather than in the regulations to allow for future changes and considerations.
- 1.44 **Regulations vs. Guidance.** MACC suggests moving much of the detailed stormwater information from the regulations to the Handbook to allow for updates.
- 1.45 **Legacy Projects.** Consideration should be given to granting “legacy status” certain projects from the new stormwater requirements, similar to the exemptions afforded for projects in Riverfront Area at 310 CMR 10.58(6)(e). Large-scale phased projects that have completed MEPA review will have designed a master plan stormwater system and advanced financing and development plans based upon anticipated square footage. Updating such master planned systems to address the new requirements could result in significant loss of development square footage and affect the viability of such projects.
- 1.46 **The Setback Table** in the regulations differs from the detailed setback table in the Stormwater Handbook. We recommend providing the setback table only in the Stormwater Handbook to allow for periodic and/or minor changes without changing regulations. This change would also increase clarity and prevent having references in multiple locations.
- 1.47 **Implementation of the Stormwater Handbook.** Considering the large volume of information within the Stormwater Handbook and Appendices, with references to calculation methods and backup documentation in additional manuals (i.e., Hydrology Handbook for Conservation Commissioners), it will be difficult for Commissions to review and implement the requirements and content of the Handbook as is currently presented.

We recommend that MassDEP allow a longer lead time than six months for implementation of the new Stormwater Handbook.

- 1.48 Update the Hydrology Handbook for Conservation Commissioners** concurrent with the release of the Stormwater Handbook to remove potentially outdated and conflicting information (i.e., TP40 rainfall). To ensure consistent implementation and interpretation, MassDEP should hold training and working sessions held for Commissions and practitioners prior to the release of both Handbooks.
- 1.49 Stormwater and Conservation Commission Jurisdiction.** Do Conservation Commissions have jurisdiction for the entire site for all stormwater management, even if the stormwater management system is not in a wetland resource area? If the upland site drains to a municipal system, and the discharge is to a wetland or jurisdictional area, how can the Conservation Commission have jurisdiction?
- 1.50 Gravel.** The definition of gravel is problematic. Gravel roads might be more impervious than non-paved roads, but many gravel roads are not impervious, just a lower permeability than some others. There should be more leeway/flexibility on this issue.
- 1.51 Small Stormwater Project Exemptions** While we agree with the need for the changes in the stormwater regulations including increased treatment and infiltration requirements, the stormwater regulations should provide limited exemptions for small projects. For example, stormwater standards do not apply to residential developments of 4 or fewer units (reference 10.05(6)(l)), but these regulations do apply to new trail projects, or commercial properties seeking to add accessible parking spaces. Considering that the trail projects, or the commercial property's addition a few handicapped accessible parking space could have considerably less impervious area and impact on stormwater than exempted residential development, and the trails and handicapped accessible parking spaces would be of a public benefit. MassDEP should consider allowing additional exemptions or maximum extent practical (MEP) projects that would allow Commissions to review and approve small projects.
- 1.52 Alternatives Analyses.** Guidance is needed for the Alternatives Analyses to provide consistency in applications and in review of applications. 10.05(6)(k) requires that projects provide "Environmentally Sensitive Site Design (ESSD) and Low Impact Development (LID) techniques or practices to attenuate pollutants unless it is Impracticable." We anticipate that the Commissions will receive a wide and varied range of "proof" that ESSD/LID are impracticable and recommend that MassDEP provide additional guidance on how practitioners will document and how Commissions will review, interpret, and implement these requirements.
- 1.53 PE stamps.** It is clear that stormwater project calculations will be stamped by a Professional Engineer (PE), but the way the proposed stormwater regulations are currently written, it appears that a PE stamp will also be required for the Stormwater Checklist. MACC suggests that if projects are minimal and include removal of impervious surfaces, then PE stamps might not be needed for projects when there are no changes in impervious surfaces and no changes in grade or topography.

A. Stormwater Handbook Comments

MACC has compiled the following comments specific to the new Stormwater Handbook.

General Comments

- 1.54 Delay of Handbook Implementation.** The Stormwater Handbook could use some additional clarifications. MACC suggests delaying implementation of the Handbook beyond the 6-month implementation period noted in the draft to allow additional input from practitioners.
- 1.55 Flexibility.** We would like to see additional flexibility for sites with numerous constraints to allow stormwater improvements where feasible.
- 1.56 Stormwater Handbook Target Audience.** It is difficult to understand for whom the Stormwater Handbook is written. MACC sees this as problematic for several reasons.
- Who will interpret the Handbook when there are lots of variables?
 - **Training.** MACC strongly encourages training for conservation commissioners and staff will be needed for consistent reviews across the Commonwealth.
- 1.57 Definitions within the Handbook.** The Stormwater Handbook needs to provide **more precise definitions** for important concepts, including 72-hour drawdown and hydraulic conductivity. These should be consistent with those in the updated regulations at 310 CMR 10.04 as discussed above.
- 1.58 Mounding Analysis.** This analysis is required in several instances, and instructions on how to implement the analysis will help for consistency. The Handbook needs to provide instructions on how to perform and evaluate a mounding analysis, including how to determine and use valid inputs.
- 1.59 MassDOT Section.** During previous stormwater advisory group meetings, it was discussed that the Stormwater Handbook would include a MassDOT section. The Handbook would benefit from a transportation section.
- 1.60 Standardization.** Some Standardization tools may help. Along with the need for flexibility with design approaches, standardization tools will help with consistent implementation of the Stormwater Handbook.

Chapter 2: The Massachusetts Stormwater Management Standards

- 1.61 Table 2-1.** The minimum infiltration rate is 0.01 inch per hour. Is this an error? One would need 100 hours to recharge at 0.01 inch per hour.
- 1.62 Standards for compliance should be performance based,** not based upon infiltration rates for a performance standard. Suggestion: remove this requirement, and have the applicants make sure the drainage system works.
- 1.63 Stormwater Standard 2. Peak Rate Attenuation** Table 2-7 (Pg 2-50)
- Several smaller SCMs, including dry wells, tree box filters, and water quality swales, are noted in Table 2-7 as “Does not have the ability to partially or fully meet the specific Standard.”

- However, all of these SCMs can be designed to provide a measure of detention, particularly on smaller sites. For example, a subdivision may have single family houses with individual dry wells and are tributary to larger treatment SCMs.
 - Although the dry wells would only provide detention during smaller rain events, they can decrease the overall size of the downstream SCM, saving on cost and size demands.
- 1.64 Stormwater Standard 3, Stormwater Recharge.** Table 2-1 Rules for Groundwater Recharge (Page 2-11). This states that recharge volumes may be infiltrated to the maximum extent practicable for various conditions, including water that has "been classified as contaminated." What are the specifications for this requirement?
- 1.65 Standard 6. Critical Areas. Handbook.** There appears to be a typo in line 8 of the Definition paragraph of Standard 6. The words "described in" are floating without context.
- 1.66 Standard 9. Operation and Maintenance Plan. Handbook.**
- It is a step in the right direction to have a post-construction inspection of all SCMs prior to the issuance of a Certificate of Compliance. However, as written on page 2-43, this inspection would be performed either by the Conservation Commissions or MassDEP. Understanding the design and signs of failure in SCMs is a technical skill that requires experience and training.
 - Can the definition of inspector be expanded to include other municipal employees (e.g., town engineer) who may have additional experience with inspecting SCMs? Or will training and documents be made available by MassDEP to provide Conservation Commissions with guidance on inspections?
- 1.67 Standard 10. Illicit Discharges to Drainage System. Handbook.** The URL for "Urban Water Resources Research Council" on page 2-45 is broken.
- 1.68 Consistency Among Use of Terms.** There are different terms in the same sentence used in similar and different ways in several parts of the Handbook. The inconsistent use of some of the terms is confusing.
- 1.69 Section 2.5. Setback Table 2-8 (page 255).** Several practitioners have expressed concerns with this table. How does one interpret this table if the project and the building are not in a resource area, and the infiltration area is not in a resource area. Is the Conservation Commission supposed to evaluate the project? There was no concurrence in MACC's practitioner's group. In addition, are these setbacks required for *all* projects? The amount of slope requirement and separation distances seem difficult to comply with, especially for some smaller parcels.
- Note 8 of Table 2-8 (pg. 255) states that "Structural Stormwater Management Systems (e.g., pipes, catch basins) and structural SCMs are therefore not allowed to be installed in groundwater."
 - This standard could potentially be onerous to design around, particularly for public entities with large drainage systems located in the public way with a variety of groundwater conditions.
 - For instance, it would be a barrier to the installation of deep sump catch basins, which are much deeper than a typical catch basin but provide a measure of water quality.
 - It could also have the side effect of driving up design costs; test pits to identify groundwater are not a typical component in the design of a typical pipe and catch basin

system. For larger systems over a wide area and a myriad of conditions, the implication is that many soil investigations, including potentially at each individual drainage structure, would need to be performed.

- Table 2-8 requires that several SCMs have a ≥ 12 -foot access perimeter. In many cases, especially smaller applications, a smaller perimeter is sufficient for maintenance access.
- Having a larger access could mean that additional site clearing is needed for space and grading. This could have an overall damaging effect of removing additional forest or undeveloped land that are beneficial for resource areas and for dealing with stormwater.

1.70 Chapter 2 (page 2-53). The Handbook indicates that SCMs other than green roofs, rooftop detention, roof gutters, and down spouts may not be installed inside or under buildings. In urban environments such as Boston that have strict infiltration requirements and limited site area, infiltration under the building or location of a storage tank within the building can be unavoidable. Additionally, stormwater reuse tanks may be located within buildings to provide reuse water for building purposes.

MACC recommends allowing for installation of SCMs inside or below buildings as allowed by the Massachusetts Plumbing Code. Furthermore, underground infiltration systems under buildings are the only way in many cases to meet City of Boston Article 32 zoning requirements on existing zero lot line buildings in Boston. The zoning article has the goal of infiltrating stormwater to raise groundwater and protect wooden piles. Allowing the installation of SCMs inside the building would support this Article.

1.71 Chapter 2 (page 2-54 and 2-55). Table 2-8 provides the vertical and horizontal setback requirements for each SCM. The setback requirements are unreasonably restrictive and will make it impracticable to provide SCMs on sites. MACC recommends that these setbacks be provided as general guidance where possible and necessitated by site-specific conditions. MassDEP could provide separate language saying SCM setbacks can be evaluated on a case-by-case basis with the Conservation Commission reviewer and requirements of the local jurisdiction.

1.72 Title 5. Will the Title 5 code need to be changed because of this Stormwater Handbook and the new regulations? Why are Title 5 soil evaluators not allowed to do work outlined in the Stormwater Handbook?

1.73 Automated Excel Spreadsheet. Where is it located? It is very hard to find. Are the links working? This spreadsheet was found but only after much searching (p. 679 – footnote 102).

Chapter 3 – Legal Framework for Stormwater Management. Stormwater Handbook.

1.74 Stormwater “Manmade” BMPs. Table 3-1 etc.: Concerns have been raised about circumstances in which "manmade" BMPs are providing ecosystem services. If the BMP is not in a buffer or wetland zone, it seems like there is no authority to subject a developer to review prior to infilling a BMP, even if it is long standing and may still be providing services to the adjacent wetland area.

- 1.75 Typo.** Page 3-14, add “TP” in the sentence "If a TMDL has been established, these regulations may address pollutants other than TSS and TP. The 2016 MS4 permit has regulations on TSS and TP, which are a required local bylaw component.

Chapter 4 - Site Planning & Design

- 1.76 Consistency of Terminology.** There is a great deal of referencing back and forth between the use of LID, SCMs, BMPs, ESSD etc. In some places (4-2) BMPs are not mentioned at all when defining SCMs and providing examples, while BMP is regularly used in Chapter 3. There should be better consistency between these acronyms as they seem to all mean just about the same thing.
- Section 4.2.4. lists to ESSD section could be much more robust --- 4.2.5. all of the additional information on LID is from the 90s, shouldn't these be updated with more recent supplemental material?

Chapter 5 – Miscellaneous Stormwater Topics

- 1.77 Chapter 5 of the Handbook** references the Transportation Separate Storm Sewer System (TS4) permit. It is our understanding that The EPA is in the process of finalizing requirements for the TS4 permit and a final version of this permit has not been released to the public at this time. Has MassDEP coordinated with the EPA to ensure that the requirements contained within the Draft Regulations are consistent with the requirements in the TS4 permit? Are the draft Regulations consistent with the requirements for the TS4 permit?
- 1.78 Shared-Use Path provisions. Handbook 5.6**
- It is helpful to have a section discussing Shared Use Paths (SUPs); however, many of the provisions, requirements and recommendations make no sense for either stormwater or resource area protection.
 - SUPs do not generate pollutants like many other development activities. The section on suggested SCM and BMP is not clear.
 - Definitions and widths of adjacent "suitable pervious area" are impractical in more areas.

Chapter 6: Documenting Compliance with the Stormwater Management Standards

- 1.79 Soil Evaluations.** Soil evaluations can be completed by Engineers in Training (EITs) but what about the soil evaluators? There is a specific statement that soil evaluators are not considered soil professionals. The definition of a competent soil professional is too narrow; other professionals should be considered soil evaluations in these types of projects.
- 1.80 Chapter 6** (page 6-72) and **Chapter 1** (page viii) each indicate that a Soil Evaluator cannot be considered a competent soil professional. Although the soil evaluator title was developed for Title V, training involved as part of becoming a soil evaluator can be used when evaluating soils for stormwater infiltration, particularly identifying estimated seasonal high groundwater elevations.

MACC recommends revising the Stormwater Handbook to include soil evaluators as competent soil professionals.

- 1.81 Chapter 6** (page 6-76). The Handbook indicates that for infiltration SCMs, at a minimum, one test location for every 5,000 SF with a minimum of three (3) test locations per infiltration practice should be included for soil testing. Two boring per test locations: one for ESHGW and one for infiltration testing. Though three test locations may make sense for large scale infiltration SCMs, many SCMs are less than 5,000 SF and may not need that many test locations. Additionally, why can't one test pit be used for both ESHGW and infiltration testing? The way this is written indicates that every infiltration SCM will require 6 test pits or borings which is beyond what should be required.

MACC recommends revising this to remove the minimum so that smaller systems are able to do one or two test pits/borings where it would be impractical or even impossible to dig six test pits.

- 1.82 Soil Testing.** Why does the Handbook limit the types of testing for soil saturated hydraulic permeameter? Other methods are often used in the field and in other states, but they are not allowed in this Handbook. What is the rationale? Can a falling head test be conducted, or other options for K evaluations, such as grain size and other tools?
- 1.83 Alternatives Analysis.** Across the state every conservation commission could interpret this language in different ways ("feasible" or "practicable" or "exhaustion" of all practicable). Should the applicant get a waiver if they cannot complete the analysis? There is a concern that without additional clarification, applicants can state the Alternatives Analysis indicates that none are feasible due to cost. Can the requirements be simplified into using a form with all of the green infrastructure options on one page, rather than multiple pages of written information?
- 1.84 Peer Reviewers.** There is a need for consistent reviews of stormwater submittals. This process would benefit from recommendations or guidance on education and experience requirements.
- 1.85 72-Hour Drainage.** Please clarify the 72-hour required drainage time for infiltration systems. It is assumed that the 72-hour drainage time for infiltration systems starts at the end of the storm, but it is not clear in the Handbook.

For example, for the purposes of a groundwater mounding analysis, the recharge rate is based on the design storm duration. In addition, the mound builds during recharge and declines after recharge stops. If the clock starts at the beginning of a 24-hour design storm, then the basin has to drain within 48 hours of the end of the storm. Therefore, the time the clock starts is critical to determining the system design and performance. If the clock starts at the beginning of the storm, the infiltration system would have to be larger to provide more area for infiltration, so this issue is not trivial. It could lead to substantial extra expense in both system design and construction cost.

MACC supports the recommendation of setting the 72-hour "clock" to begin at the end of the 24-hour storm.

- 1.86 Stormwater Handbook.** To ensure consistency by practitioners and enable review by Commissions, we recommend that MassDEP provide detailed guidelines for mounding

analyses in the Handbook including inputs values, references, and resources for obtaining input values, and documentation requirements for the Stormwater Report such as Height vs. Time graph showing that the mound height is below the infiltration system invert 72-hours post storm. Would MassDEP consider adding instructions on how to do a mounding analysis? The instructions could provide the following:

1. *Definition and purpose of a mounding analysis*
2. *Definition and explanation of inputs*
 - a. *basin dimensions*
 - b. *recharge rate*
 - c. *horizontal saturated hydraulic conductivity*
 - d. *duration of recharge*
 - e. *effective porosity (aka specific yield)*
 - f. *initial aquifer saturated thickness*
3. *Instructions on how to determine the above values and what NOT to use (such as Rawls Rates)*
4. *Require the output to be a Height vs Time graph, also known as a water table recession hydrograph, which shows that the mound height is below the infiltration system invert 72-hours post storm.*
5. *Expectation that a narrative will be provided which explains how each input was determined and provides a detailed model output.*

1.87 Infiltration basin design guidelines require installation of monitoring wells. It would be useful to have guidance on how to use the wells for the infiltration design. Potential clarifications could include:

- Monitoring well water levels will be measured at the end of each major storm and at 72 hours thereafter for the first year of operation for each detention system.
- These measurements will be reported to the Conservation Commission and the Town Engineer. If the basin still contains water at 72 hours, water levels shall be measured at 24-hour intervals until the basin or infiltration system is empty.
- These procedures will be incorporated into the Operations & Maintenance Plan for the project.
- Corrective action will be required if the basin consistently does not empty within 72 hours after two storm events. This standard shall apply during the lifetime of the system.

1.88 Infiltration Rates. The infiltration rates in the Stormwater Handbook, Recharge Rationale memorandum and EPA BATT are all different.

- Table 1 is a comparison of various recharge rates and Ksat extracted from the references listed below.
- Recharge Rate and Ksat are not the same thing. The first is a rate of infiltration, the latter is an intrinsic property of a given soil, even though both use the same units of measure, Length/Time. That being said, Recharge Rate and Ksat are used interchangeably throughout the various references listed below.
- Note that different recharge rates were used within the Recharge Rationale memorandum. The one used in Appendix B of that document is the same as the Rawls Rate used in the current Handbook. In addition, the EPA BATT also uses the Rawls Rate. The draft Stormwater Handbook uses much lower rates.

- For comparison purposes, the last two columns show Ksat values for NRCS A and C horizons from soils representative of the HSG Soil groups A through C.
- What is concerning is that calculations used to determine target recharge values are much higher than those used for Ksat in the new Stormwater Handbook. The design criteria for SCMs in the BATT assume much higher Ksat values than those used in the new Handbook as well. This inconsistency will make design of SCMs difficult since the tools use different standards for recharge.

Recommendations:

1. MassDEP should review the methodology used to determine Target Recharge and whether it can actually integrate with the much lower values used in the draft Handbook and the much higher rates in the EPA BATT for SCM design.
2. Use of the Rawls Rate (which is actually a hydraulic conductivity, not a rate), for regional infiltration modeling may be underestimating the amount of recharge. Rawls Rates may be sufficient for conservatively modeling recharge for simple infiltration analyses used in HydroCAD, but it is problematic for large regional surficial hydrology models. It may be more accurate to use the vertical hydraulic conductivities specified in NRCS soil mapping. For HSG A soils, Kv for Hinkley soils is 4 in/hr, not the 1.02 in/hr used in the model, and thus is more appropriate. Kv data obtained from the MassMapper Physical Resources > Soils > Top 20 Soils: Saturated Hydraulic Conductivities (Ksat) would be a useful spatial data source to replace Rawls Rates. DEP should evaluate the models using Kv values provided by NRCS or MassMapper data sources instead of the Rawls Rates used in their models to more accurately model runoff and recharge for the Recharge Rationale memorandum.

Table 1 – Comparison of Recharge Rate / Ksat values in references cited in the draft Stormwater Handbook								
Soil Type	Soil HSG	Recharge Rationale Recharge Rate from Text (in/hr) [1]	Recharge Rationale Recharge Rate from Appendix B (in/hr) [2]	BATT Structural BMP Infiltration Rates (in/hr)	Proposed Handbook Ksat (in/hr)	Current Handbook Recharge “Rawls” Rate (in/hr)	NRCS A Horizon Vertical Ksat (in/hr) [3]	NRCS C Horizon Vertical Ksat (in/hr) [4]
Sand	A	1.02	8.27	8.27	1.42	8.27	4.0	25.5
Loamy Sand	A		2.41	2.41		2.41		
Sandy Loam	B	0.52	1.02	1.02	0.57	1.02	1.4	14.1
Loam	B		0.52	0.52		0.52		
Silt Loam	C	0.10	0.27	0.27	0.10	0.27	1.4	0.01
Sandy Clay Loam	C		0.17	0.17		0.17		

References

- [1] Summary of Target Recharge Volume Evaluation Memorandum - See Sub-Bullet 6 on Page 2
- [2] Summary of Target Recharge Volume Evaluation Memorandum - UNIT-AREA GROUNDWATER RECHARGE ESTIMATES FOR ESTIMATING IMPERVIOUS COVER RUNOFF CAPTURE FOR INFILTRATION FOR NEW DEVELOPMENT ACTIVITIES – DRAFT 04/20/2022 Appendix B
- [3] EPA BATT (version 2.1) Add Structural BMP Infiltration Rate Selections.
- [4] NRCS A and C horizon Ksat values for Hinkley (HSG A), Agawam (HSG B), and Paxton Soils (HSG C) Soils

1.89 Chapter 6, Page 6-40.

- The text states: “*The mounding analysis must also show that the groundwater mound that forms under the recharge system will not break out above the land or water surface of a wetland (e.g., it doesn’t increase the water sheet elevation in a Bordering Vegetated Wetland, Salt Marsh, or Land Under Water within the 72-hour evaluation period).*”
- Water level increases in Resource Areas are theoretically possible due to recharge from an infiltration system, but any such changes from an infiltration system after a storm event will be transient in nature and will be overwhelmed by natural water level fluctuations caused by precipitation events or daily processes such as evapotranspiration. These temporary increases will be rapidly attenuated and have no long-term impact on Resource Areas. The flow rate through the subsurface will also be very slow, on the order of 1×10^{-5} ft/second, so it is unlikely that any discharge from groundwater to surface water will flow fast enough or discharge sufficient volume to cause any detectable impacts to a resource area, such as temporary flooding or inundation and certainly no permanent impacts.
- **Recommendation:** Remove this requirement, as an increase in sheet flow elevation due to groundwater discharge into a Resource Area, if any, will be quite small compared to surface runoff and will be quickly attenuated.

1.90 ESSD. Handbook Appendix A, page A-16-17. Non-Native Trees.

- One of the recommended trees in the appendix (page 22 of the document or a-17 of the appendix) is the Callery pear which has been listed as “Likely Invasive” in Massachusetts: https://massnrc.org/mipag/speciesreviewed_category.htm. MACC recommends that this species be removed as one of the recommended species.

1.91 Stormwater Precipitation Update- NOAA - 14+. It would be beneficial to include a note of the new EEA Climate change projections dashboard (which is part of Climate Resilient Mass). This dashboard allows one to see town-specific precipitation projections using NOAA 14+.

1.92 Stormwater Standard 6 Critical Areas. Handbook. Table 2-4b.

- In Tables 2-4b through 2-4d, the language reads “only use proprietary manufactured separators for pretreatment.”
- This wording is potentially confusing, implying that only proprietary separators can be used for pretreatment, excluding other forms like deep sump catch basins, vegetated filters, etc.
- The language in Table 2-4a, “Proprietary manufactured separators may be used only for pretreatment” presents the requirement in a clearer fashion.

1.93 Stormwater Standard #11 Total Maximum Daily Loads Table 2-6 (page 2-47)

- Table 2-6 lists the suitability of SCMs to treat TMDL pollutants, and several SCMs including bioretention area (filtration), extended dry detention basins, sand/organic filters, wet basins, and green roofs are noted as “unlikely to provide significant reduction of target pollutant.”
- However, these technologies are listed in Appendix F, Attachment 3 of the MS4 permit as approved structural controls for meeting nutrient load reductions.

- This is a confusing contradiction between the two regulatory documents that will add to the administration and design burden when considering the selection of appropriate SCMs, particularly in retrofit scenarios.

4.0 LSCSF Comments

MACC supports the adoption of performance standards for work within LSCSF. This is essential to improve resiliency for the dynamic natural systems along the coast, particularly in light of sea level rise, increasing storm intensities, and accelerating rates of coastal erosion in many locations. In particular, MACC supports the proposed prohibition on new buildings in the highest risk area, the Velocity Zone. Where our comments also overlap with those for the Ch. 91 Waterways regulations, the text is underlined.

1.94 **Current vs. Future Conditions.**

- The proposed LSCSF regulations rely on FEMA maps. These are not updated frequently enough, and do not take ongoing sea level rise and erosion rates into consideration. The Chapter 91 regulatory revisions require structures to be designed for future SLR conditions. MassDEP should modify the LSCSF regulations to include consideration of future conditions and use the same SLR projection as proposed in the Chapter 91 Regulations.
- The regulations will allow construction of **berms** to protect existing developed areas. While this is generally preferable to armoring, these projects need to be part of **district or neighborhood level** plans developed with public input. This is the approach proposed tie-in the ResilientCoasts strategy initiative. Any berms or other resiliency measures to protect particular properties need to be planned and permitted in consideration of the Interaction of adjoining landowner interests. For example, if a conservation-oriented landowner wants to facilitate marsh/dune migration but others want to build a berm, the final design for local resiliency measures needs to avoid conflicts between these competing public interests.
- The regulations would allow relocation of roads and railroads into other resource areas if no alternative is available (new limited project). Restoration of the former road or railroad bed to salt marsh or other resource area that would naturally occur in that location is required. This provision needs to be refined to address situations where the existing road or railroad bed is acting as a protective berm for existing developed areas. It should also allow for increased tidal flows into adjoining undeveloped areas where that is beneficial for salt marsh restoration or resource migration.

1.95 **Salt Marsh Restoration.**

- MACC is supportive of the efforts that MassDEP has been engaging in with other agencies and external experts to develop guidance for salt marsh restoration projects. We recommend that a **new Ecological Restoration Permit provision** be added to the regulations, based on the guidance, instead of currently proposed language directing these projects to the Limited Project Ecological Restoration process.
- Salt marsh hay to heal ditches – Use the provision in waterways regulations 310 CMR 9.05(3)(m) that allows removal of an unauthorized structure with simple approval from MassDEP, it does not require a Chapter 91 License.

- Also consider **clarifying the definition of fill**, recognizing that use of native plant material to heal a previously excavated, unlicensed ditch is not fill.

1.96 Coastal Resiliency with Nature Based Solutions.

- Scientific Research Projects. This provision should be revised and broadened to allow testing of nature-based solutions techniques, not just deployment of research data gathering devices.

5.0 Recommendations for Regulatory Reform Package 2.0

MACC appreciates the opportunity to provide input for the upcoming 2.0 reform package, and we look forward to participating actively in that process. To the extent any of our comments above are not able to be addressed in the 1.0 final regulations, we request that they be considered through the 2.0 process.

2.01 Stakeholder Engagement (2.0). MACC recommends that MassDEP Continue Stakeholder engagement with “Office Hours” on a quarterly basis. The MassDEP Office Hour Meetings held in March and April 2024 were very successful in sharing questions and concerns about proposed wetlands regulations. MassDEP should immediately engage day-to-day practitioners in the “Resilience 2.0” planning process. Regulatory changes should incorporate close coordination with conservation commissions, conservation staff, and professional non-profit staff, the people responsible for day-to-day interpretation and consistent implementation of these regulations.

2.02 Collaborate on Training Programs for Conservation Commissioners, Agents, and Wetland Practitioners (2.0)

- Continue the successful Wetlands Circuit Rider Program.
- Coordinate training programs given by MassDEP’s Circuit Riders to each region should be made available to Conservation Commissioners and Commission staff in all regions. Currently, regional circuit riders provide valuable training to conservation commissions in each region. This training is not provided across all of the regions.
- MACC, MSMCP, AMWS, and MassDEP should collaborate on educational training programs for wetland practitioners and conservation commissioners. This collaboration will provide consistency of regulatory interpretations and implementation of wetland programs.
- MACC welcomes input by MassDEP on MACC’s Fundamentals program training for conservation commissioners to provide a collaborative approach for continuous improvements.

2.03 Consistent regulatory interpretations are needed across MassDEP regions.

- MACC strongly urges MassDEP to institute consistent interpretation of wetlands regulations and guidance across the four MassDEP regions.
- Currently, wetlands regulatory interpretations are not always consistent across Massachusetts (for example, the 10% redevelopment in Riverfront Areas).

2.04 Project reviews, audits, and enforcement actions should be prioritized by MassDEP Wetlands staff in order to focus on projects with large impacts and complex projects and to improve consistency of policy implementation across MassDEP regions.

- MassDEP should provide proactive guidance and feedback to assist the day-to-day practitioners with creating strong, consistent, and unlikely-to-be-appealed decisions.

2.05 Additions to Minor Activities (2.0)

- MassDEP should expand activities included under Minor Activities.
- Removal of hazard (high-risk) trees should be allowed as a minor activity (or other action) to allow removal of a tree or trees, similar to the Agricultural exemption, with agreement by conservation agent, commissioners, or arborists.
- Allow invasive species management as a minor activity.

2.06 Additional streamlining is needed for restoration projects, both coastal and inland (2.0)

- Allow use of salt marsh hay for salt marsh restoration; do not include salt marsh hay as “fill.”
- Create new provisions allowing living shorelines and other nature-based solutions that are extremely difficult to permit under current regulations.

2.07 Greater Protection for Vulnerable Wetlands. In light of the Sackett Decision eliminating federal jurisdiction under the Clean Water Act, **establish additional protections for smaller isolated wetlands, vernal pools and vernal pool habitat (2.0).**

2.08 Greater Protection for Streams. In light of the Sackett Decision, establish additional protections for Intermittent Streams and Headwater Streams (2.0).

2.09 Buffer Zone Protections should be enhanced for limiting new construction, or no build zone requirements. (2.0). There is room for expansion of the provisions in 310 CMR 10.53(1), including considerations for a no-disturb zone.

2.10 Riverfront Area. MACC strongly recommends that MassDEP provide additional guidance documents or Program Policy to assist Commissions and the regulated public in understanding and interpreting the riverfront area. Based upon the nature of the questions received, it is apparent to MACC that this is one of the most difficult sections of the regulations to understand and implement.

2.11 Allow for flexibility for Trail Maintenance and Invasive Species Management Projects (2.0).

2.12 Provide Guidance on RR Rights of Way and Herbicide usage, RDA submittals or NOI forms (2.0).

2.13 Artificial Turf Guidance. MACC recommends MassDEP develop guidance for use of Artificial Turf related to potential impacts to wetlands; surface and groundwater quality; microplastic, PFAs, metals, and phthalates contamination; habitat impacts; and heat impacts, in all wetlands resource areas, and especially in areas of Outstanding Resource Waters (ORWs) and cold water fisheries.

A. MassDEP WPA Forms (2.0)

MACC recommends updating and simplifying the MassDEP WPA Forms for ease of use and to include additional information to help conservation commissions, municipalities, commission

staff, and applicants. We urge MassDEP to meet with MACC and MSMCP concerning improvements to the forms, including, but not limited to the suggestions below:

- Application forms should mirror permit application forms.
- Application forms and permit forms should reflect the regulations.
- Forms should list the date, project, site, and owner/applicant information on the first page.
- Forms should rely on “appendices” for site or project specific information (such as coastal resource areas, rare species, and stormwater).
- There should be forms that are tailored for purely inland municipalities.
- The language of the forms should be simplified and easier to understand by the public.

2.14 NOI Form (WPA Form 3) (2.0).

- The NOI form should be more succinct.
- Much of the NOI form is not relevant to a majority of projects.
- The use of appendices would greatly simplify the application for many applicants. Consideration should be given to having coastal and freshwater applications be separate parts of the form.
- The NOI form (under C.7.) should add categories of projects to which the stormwater standards do not apply (i.e., not “industrial, commercial, institutional, office, residential and transportation projects”).

2.15 OOC Form (WPA Form 5) (2.0).

- The OOC form should be able to be modified to allow for routine additions such as longer lists of approved plans, the Commission’s findings, and the Commission’s site-specific conditions.
- The OOC should be more succinct and tailored so that the information is pertinent to the project.

2.16 Determination of Applicability (WPA Form 2) (2.0). Conservation Commissions need to have more latitude to issue negative determinations of applicability or general permits for small-scale or low-impact projects (such as the hand-pulling of aquatic invasives).

2.17 ORAD (WPA Form 4B) (2.0)

- The ORAD form should be revised to correct the following inconsistencies:
 - The Recording Block on Page 1 and the Recording Information on Page 7 should be removed. MassDEP Circuit Riders have confirmed that ORADs do not need to be recorded yet the form, which was last revised on April 22, 2020, states that the form must be recorded.
 - ORADs are simply confirming a wetland boundary for 3 years. When applicants record this document, it can create a cloud on a title in part because there is no equivalent of a certificate of compliance to “close it out.”
- The ORAD form should be revised to reiterate an important regulatory requirement. DEP should add a regulatory note on ORADs which states “If requesting an Extension, the Applicant must submit written confirmation by a professional with relevant expertise that the resource area delineations remain accurate, per 310 CMR 10.05(6)(d).” Most Commissions and conservation professionals are unaware of this language since it is difficult to find in the regulations.

- 2.18 Wetland Fees** do not cover the administrative costs for processing, reviewing, issuing, and mailing wetland permits. We ask MassDEP to consider increasing application fees to help struggling Conservation Departments that rely on the Wetland Protection Fund for auxiliary services.
- 2.19 On-line Database.** Provide an on-line, searchable database of wetlands projects to allow for coordinated project review and climate resilience planning.
- A program similar to the consolidated online permit system implemented by Virginia and Rhode Island could help streamline wetland permitting.
 - An on-line wetlands database system could promote carbon tracking of no-net loss of carbon in wetlands.

Thank you for your time and consideration of these comments. We look forward to a continued collaborative effort with MassDEP in the protection of our Commonwealth's wetland resources.

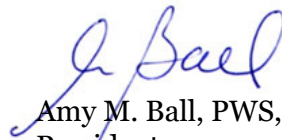
Sincerely,

Massachusetts Association of Conservation Commissions



Dorothy A. McGlinchy, LSP
Executive Director

dorothy.mcglincy@maccweb.org



Amy M. Ball, PWS, CWS
President


aball@horsleywitten.com

Waterways Resilience Comments

marge morneau [REDACTED]

Mon 4/29/2024 8:30 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (529 KB)

M.Morneau Public Comment 4 26 2024.pdf;

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Public Comment Attached.

Marge Morneau
[REDACTED]

April 26, 2024

Daniel Padien
Attn: Waterways Resilience Comments
MassDEP-BWR
100 Cambridge Street, Suite 900
Boston, MA 02114
dep.waterways@mass.gov
Subject line: Waterways Resilience Comments

Public Comment to proposed regulatory amendments to:
MassDEP Wetland Regulations,
MassDEP 401 Water Quality Certification Regulations, and
MassDEP Waterways Regulations

Currently the Massachusetts Coastal Zone Management Program requires Water Transportation (Sector Q) & Ship and Boat Building and Repair Yards (Sector R) to monitor for copper. This requirement is in Part 9 – Conditions Applicable to States... of US EPA NPDES MSGP for Stormwater Discharges Associated with Industrial Activity.

Stormwater discharge is to be tested for total recoverable copper and the benchmark for discharge to saltwater is 4.8 ug/L (parts per billion) and the benchmark to freshwater is 5.19 ug/L. Only a few laboratories in Massachusetts are able to perform this test below the benchmark. These laboratories will report the analytical result for copper as ND (not detected) should the result be below the RL (reportable limit) of 10 ug/L and the DL (Detection Limit) is 3 ug/L, so in order to receive the analytical result below the reportable limit, each time a special request is made to the laboratory to provide the MDL (method detection limit). Requiring the laboratory to provide an analytical result below the reportable limit is not common.

Both the NAICS and SIC include Marinas in Sector Q, often marinas provide drinking water to their clientele, any drinking water to the ground will exceed the copper benchmark. I have included wording from 310 CMR 22.00: DRINKING WATER below.

“310 CMR 22.06 B (Medium-sized water system):
Control of Lead and Copper in Drinking Water.
(1)(c) Lead and Copper Action Levels:

2. The copper action level is exceeded if the concentration of copper in more than 10% of tap water samples collected during any monitoring period conducted in accordance with 310 CMR 22.06B(7) is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L)."

Notice that 1.3 mg/L converts to 1300 ug/L. Each time drinking water is spilled to the ground the drinking water most likely will exceed the copper benchmarks.

Should the lawn need watering, the water will exceed the copper benchmarks.

Copper is found in rain water.

The benchmarks for copper are unrealistic.

Two of my clients asked if I would include their comments, one is from a ship building and repair facility and the other is from a marina. Their comments are found in the following pages.

Sincerely,

A handwritten signature in cursive script, appearing to read "Margaret Morneau", followed by a horizontal line.

Margaret Morneau
Project Coordinator

Comment from ship building and repair facility:

Copper

Benchmark for Total Recoverable Copper is 0.0048mg/L (4.8 ug/L) for Saltwater.

We do not have any process water discharge at our facility. Our discharge is limited only to storm water. We have met benchmark requirements in both the 2015 and 2021 MSGP except for copper. The copper benchmark of 0.0048mg/L is not achievable. We have regularly exceeded this benchmark despite all efforts to find and correct the source.

Eighty-one percent of industry copper sample results exceeded the benchmark by more than 8 times during the 2015 MSGP regardless of strict housekeeping measures and expensive advanced control measures. The saltwater benchmark requirement is unachievable. The US EPA action level for copper in drinking water is 1.3mg/L based on EPA's Human Health Criteria.

In the recent past our town's drinking water taken by the water department at 30 sites shows 90% of the samples to have a copper level less than or equal to 0.495 mg/L. This is well below the EPA Action Limit of 1.3 mg/L (EPA Human Health Criteria) for drinking water. Comparing this to the stormwater benchmark, the drinking water samples averaged 103 times the benchmark. Pouring drinking water on the ground in fact will exceed the benchmark. (It must be noted that the EPA Action Limit of 1.3 mg/L copper in drinking water is 270 times greater than the stormwater benchmark of 0.0048mg/L.).

Why has a benchmark for copper been proposed at a level more stringent than drinking water standards?

Comment from marina.

Portions of the proposed regulations below. Questions and comment follow.

- Requiring COM and NTNC systems to inventory (identify) and make public the locations of lead service lines (LSLs) and to develop a LSL replacement plan by October 16, 2024 (note that the requirements take effect on the first day of implementation).
- In addition to the system-wide 90th percentile action level of 15 parts per billion (ppb), the LCRR also establishes a 90th percentile system-wide trigger level of 10 ppb of lead to assist systems to plan to further address lead in drinking water.

Questions:

At what rate are the additional testing protocols going to be implemented?

How are small businesses supposed to manage their levels if they have been and continue to be in compliance with them.

How come Massachusetts is the only state besides California to regulate a program and impose requirements that are not required anywhere else in New England or beyond?

Comment:

Stormwater Management, the only state requiring marinas to test stormwater to 4.8 ug/L (saltwater) and 5.19 ug/L (freshwater). These benchmarks are well below drinking water standards.

Waterways Resilience Comments

Anne Giblin [REDACTED]

Tue 4/23/2024 10:23 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (88 KB)

Comments to DEP from Giblin.docx;

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Dear DEP,

I am happy to comment on the Proposed 2023 Revisions to the Wetlands Protection Act regulations. I am a coastal ecologist with over 40 years of experience working in marshes and estuaries. I currently direct a major project in the area of Plum Island funded by the National Science Foundation. I have attached my comments but I would be happy to discuss this more if you wish and could give you many more specific examples of why 1 year for scientific studies will not be sufficient. Thank you.

Anne Giblin

The Ecosystems Center

Marine Biological Laboratory

7 MBL St.

Woods Hole, MA, 02543

phone (508) 289-7488

[https://www.mbl.edu/research/faculty-and-whitman-scientists/Anne Giblin](https://www.mbl.edu/research/faculty-and-whitman-scientists/Anne%20Giblin)

Dear MassDEP,

I am pleased to see that by proposing 310 CMR 10.05(12), MassDEP is considering regulation changes that will explicitly recognize the importance of scientific research. However, I would like to comment on the proposed changes.

Section 4 for states “the project shall be limited in duration to no longer than one year”. I think this is far too short a time. We know that there are large interannual changes in precipitation, storms, sea level, and sea level amplitude. We also know the responses of many marsh grasses to a disturbance, or nutrient addition, often take more than a year to show up. The data collected in a single year will often be insufficient to make any conclusions on how the marsh is responding to the experiment.

Currently, there are many crucial observations and experiments being carried out on marshes that have been carried out for decades. As just one example, sediment accretion is commonly measured using a “Sediment Elevation Table”. This consists of a deeply set pipe in the marsh with a removable arm. Measurements are made once or twice a year to calculate accretion rates, but it commonly takes 5-10 years to get a reliable rate. In addition to the small pipe most investigators install small supports around the pipe for the investigator to put a ladder across for them to stand on to make the measurements without walking on the area being measured. These are not removed every year and in fact putting them in and out would compromise the measurement area. I could give many other examples, but the critical point is one year is not long enough for most research projects and for monitoring. Instead, it makes sense for the Conservation Commission to request an annual report with pictures (or do a site inspection if warranted). This seems sufficient for the Commission to decide whether or not to continue the permit. Requiring everything to be removed every year and a renewal of the permit will compromise both the site and the science.

Sincerely,

Anne Giblin

Anne Giblin
Lead PI of the Plum Island Ecosystems Long-Term Ecological Research site
Director, The Ecosystems Center

Waterways Resilience Comments

David Smith <david.smith@gza.com>

Wed 4/3/2024 8:19 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

📎 1 attachments (16 KB)

CH91 COMMENTS.docx;

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Proposed regulation change questions/comments attached.

Regards

David A. Smith

Senior Project Manager | Marine & Waterfront Engineering

GZA | 144 Elm Street | Amesbury, Massachusetts 01913

O: 781.278.4806 | C: 978.835.5532 | david.smith@gza.com | www.gza.com

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For information about GZA GeoEnvironmental, Inc. and its services, please visit our website at www.gza.com.

DEP CHAPTER 91 REGULATION CHANGE COMMENTS:

- For new municipal licenses that typically have unlimited terms, will sea level rise/climate change need to be 'considered'? Please clarify in the regulations.
- For existing license amendments or minor project modification requests, will sea level rise/climate change need to be 'considered'? Please clarify in the regulations.
- What does the term "adequately considered" mean? Consultants need to inform clients of the fee for services before performing the work:
 - For example, can "adequately considered" indicate, '*...due to landside elevation constraints, the structure will be designed and engineered to accommodate uplift forces and impacts due to flooding...*'. Or would "adequately considered" indicate a formal alternative analysis, formal in-depth environmental condition studies, and/or significant coordination and review time spent with DEP staff reviewers, with likely input from other regulatory agencies, such as CZM? This scenario would require a significant level of effort. Can "adequately considered" be better defined?
- Will sea level rise projection be considered a 'jurisdictional' limit when the elevation is applied to fill/structures that needs to be licensed, that otherwise today would not be required? Please clarify in the regulations.
- A 30-year license is typically the 'standard' license duration now for water-dependent structures such as docks, piers, and bulkheads, that are not owned by government entities. Given the fact longevity of timber structures are estimated to be in the range of 30-40 years and steel/concrete are estimated to be in the range of around 40-50 years, depending on various environmental conditions, is it safe to say that a greater than 50-year sea level rise projection scenario would limit the term of the license to 30 years, regardless? Please clarify in the regulations.
- For a new license application associated with a pier, perpendicular to the shoreline, generally public rights and access can be provided along the shoreline if you can maintain 5-foot clear height underneath the structure at mean high water. Questions:
 - If the license is for a 30-year term, do we proportionally calculate the sea level rise projection for year $(2023+30=)$ 2053, to determine the 'new' mean high water level based on sea level rise? As an example, let's say the sea level rise projection increase will be 2.45 feet. Does now the separation distance requirement become 5 feet + 2.45 feet = 7.45 feet, based on today's application? If 7.45 feet can't be provided due to landside constraints, will public access/rights need to be incorporated on land? Or can there be other access provisions? Please clarify in the regulations.
- It was stated to refer to ResilientMass website for information regarding sea level rise projections. The projections listed in Table 3-5, are Sea Level Rise Projections Relative to the 2008 Present Day Tidal Epoch. The values listed in Table 3-5 are between the NOAA published values of NOAA2017 Int-High and NOAA2017 High, which are conservatively high.
 - Can other sea level rise projections be used such as NOAA, or other reliable sources? Please clarify.
 - Can the sea level rise projection scenario be variably selected based on the importance of the structure/risk tolerance, as NOAA recommends? Please clarify.

Waterways Resilience Comments"

Martha Totman [REDACTED]

Mon 4/29/2024 5:44 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Subject: I am a long term coastal resident of Scituate

I am writing to the state via my representatives to notify you that I just received word about these new proposed regulations that would be catastrophic if implemented as we understand them. April 30 is not in my opinion timely notification. My representative informed me of your email address for comments. We as residents and taxpayers need communication with the powers that be to get a sense of what these proposals will mean to current residents. Local officials need to establish meetings that delineate how the new proposals would effect current coastal properties. I have been a coastal resident for 42 years and strongly wish to be informed of all pending changes that may occur to our current residential status.

Respectfully submitted

Martha and Russell Totman

[REDACTED]
Scituate, Ma [REDACTED]

-
-
-
-

Re: Proposed regulatory changes by MA Dept. of Environmental Protection

Mary [REDACTED]

Tue 4/30/2024 7:21 AM

To: Nancy Doyle [REDACTED]

Cc: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick. Kearney@mahouse.gov <Patrick. Kearney@mahouse.gov>

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Thanks Nancy!

Sent from my iPhone

> On Apr 29, 2024, at 6:26 PM, Nancy Doyle [REDACTED] wrote:

>

> A few days ago we suddenly became aware of proposed regulations drastically affecting the Massachusetts coastline.

>

> No prior public information has been provided, to the best of our knowledge, nor has public input been sought.

>

> Such drastic regulations require extensive research and public discussion. They should not be hastily implemented without consideration for the entire coastal community.

>

> Nancy & Richard Doyle

> [REDACTED]

> Humarock MA [REDACTED]

>

>

>

Waterways Resilience Comments

Heidi Ricci <hricci@massaudubon.org>

Tue 4/30/2024 2:15 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Katharine Lange <katharinelange@massriversalliance.org>; Tenmilefriends@gmail.com <Tenmilefriends@gmail.com>;
delaney@coastalstudies.org <delaney@coastalstudies.org>; samantha@nsrwa.org <samantha@nsrwa.org>;
ereardon@hvatoday.org <ereardon@hvatoday.org>; Kate McPherson <kmcpherson@savebay.org>; hrockwell@bcleanwater.org
<hrockwell@bcleanwater.org>; David Melly <dmelly@environmentalleague.org>; Ali Hiple <AHiple@clf.org>;
ted.beauvais@thebrwa.org <ted.beauvais@thebrwa.org>; Cynthia Dittbrenner <cdittbrenner@thetrustees.org>;
zsmith@crwa.org <zsmith@crwa.org>; crc@thecharles.org <crc@thecharles.org>; Jen@friendsofthebluehills.org
<Jen@friendsofthebluehills.org>; pmacds@aol.com <pmacds@aol.com>; Danica Belknap <dbelknap@srpedd.org>;
lketchel@svtweb.org <lketchel@svtweb.org>; a.collins@hoorwa.org <a.collins@hoorwa.org>; director@savethetaunton.org
<director@savethetaunton.org>

 1 attachments (188 KB)

Restoration wetlands 401 waterways comments final.pdf;

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Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of Mass Audubon and the organizations cc'd here, we submit the following comments on the proposed changes to the Wetlands, 401 Water Quality Certification, and Waterways regulations. These comments focus on the need to streamline permitting for wetlands restoration projects, to accelerate progress and meet the scale and urgency of the challenges the Commonwealth faces.

Thank you for considering these comments.

Regards,

Heidi

E. Heidi Ricci (she/her(s))

Director of Policy and Advocacy

Mass Audubon

208 S. Great Road, Lincoln, MA 01773

hricci@massaudubon.org | 781-259-2172 or 781-622-8911 (cell)

massaudubon.org

April 30, 2024

Massachusetts Department of Environmental
Protection (MassDEP) – Bureau of Water
Resources (BWR) Wetlands Program
100 Cambridge Street, Suite 900
Boston, MA 02114

Via Email: dep.wetlands@mass.gov
Re: **Wetlands-401 Resilience Comments**

MassDEP - BWR Waterways Program
100 Cambridge Street, 9th Floor
Boston, MA 02114

Via Email: dep.waterways@mass.gov
Re: **Waterways Resilience Comments**

Accelerating the Pace and Scope of Wetlands Restoration

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of the undersigned organizations, we submit the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments focus on the need to streamline permitting for wetlands restoration projects, to accelerate progress and meet the scale and urgency of the challenges the Commonwealth faces.

We appreciate the leadership of the Healey Administration in prioritizing action on climate change¹ and biodiversity², and in recognizing the important roles that wetlands and other lands play in addressing both of these important issues. MassDEP's proposed regulatory updates in the current "Climate Resilience 1.0" package advance progress by reducing the risk associated with development in the coastal floodplain and updating stormwater management standards statewide. We are grateful for these revisions, and many of us are providing additional detailed comments recommending further refinements for those regulations.

Our organizations support the protection and restoration of wetlands. We look forward to offering our expertise to assist MassDEP in the upcoming "2.0" process.

Other states have achieved significant efficiencies in wetlands restoration permitting, and we encourage you to consider these models³, in collaboration with other agencies, including the Department of Fish and Game (DFG) through the state's Biodiversity Initiative.

¹ [Executive Order 604: Establishing the Office Of Climate Innovation and Resilience Within the Office Of the Governor](#)

² [Executive Order 618: Biodiversity Conservation in Massachusetts](#)

³ [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#), February 1, 2024.

The Need to Accelerate Wetlands Restoration

Wetlands provide many important functions including water quality protection, flood damage prevention, and essential habitat for fish and wildlife. Healthy coastal wetlands sequester up to ten times the amount of carbon per year compared to forests⁴. And our diverse coastal and inland wetlands provide habitat for more than 200 species of greatest conservation need in Massachusetts⁵.

Massachusetts has long been a leader in environmental protection. It was the first state in the nation to adopt a wetlands protection law. It also is a leader in restoring wetlands, and MassWildlife's Division of Ecological Restoration (DER) is widely acclaimed for the support it provides to myriad restoration projects. Still, the scope of the need far exceeds the current pace of progress on restoration. Massachusetts has lost 41% of its salt marshes⁶ and nearly a third of its freshwater wetlands⁷. Thousands of acres of salt marsh are at increased risk of loss due to historic ditching and agricultural embankments that are accelerating the rate of marsh subsidence, dieback, and erosion. Inland rivers and wetlands are fragmented by 3,000 dams, most of which are functionally obsolete, along with 25,000 culverts, many blocking passage of fish and wildlife and posing risks of washouts of roads and railroads in the more intense storms we are already experiencing. Cranberry bogs that are no longer economically viable offer tremendous opportunities to restore systems that have been filled, diked, and channelized. Invasive species choke our diverse wetlands and replace native species that are essential for biodiversity. Rivers and streams have been channelized, buried in culverts, and impacted by runoff and loss of naturally vegetated buffers. We need to greatly accelerate the rate of restoration to address these challenges.

Climate Resilience 1.0 Comments

The currently proposed regulatory changes make important progress toward reducing the risks to development and infrastructure from climate impacts including sea level rise and increasing storm intensities. We offer the following suggestions for further improvements in the final regulations.

Resource Protection and Restoration Preferred: The new Land Subject to Coastal Storm Flowage (LSCSF) at 310 CMR 10.24 includes provisions giving preference to the protection and restoration of coastal wetlands as alternatives to coastal engineering structures, and allowing alteration of LSCSF to facilitate the migration of salt marshes and dunes. We support these provisions.

Aligning Infrastructure Protection with Restoration and Migration: The proposed regulations allow elevation and relocation of existing roads and construction of berms to protect existing developed areas. The final regulations should more clearly define the planning process for such projects, to support restoration and migration of coastal wetlands to the fullest extent possible. For example, road elevation or relocation projects should avoid conflicting with interests of neighboring conservation-oriented

⁴ McLeod, E. et al. 2011. A blueprint for blue carbon: toward an improved understanding of the role of vegetated coastal habitats in sequestering CO₂. *Frontiers in Ecology and the Environment*. 9(10), pp. 552-560

⁵ [State Wildlife Action Plan \(SWAP\)](#)

⁶ Bromberg, K. D., & Bertness, M. D. (2005). Reconstructing New England Salt Marsh Losses Using Historical Maps. *Estuaries*, 28(6), 823–832. <http://www.jstor.org/stable/3526949>

⁷ Dahl, T.E., [1990, Wetlands-Losses in the United States, 1780's to 1980's](#): Washington, D.C., U.S. Fish and Wildlife Service Report to Congress.

landowners to restore more natural flows to salt marshes where the road has been acting as a barrier to that flow.

Ecological Restoration Permit (ERP): The ERP provisions in the regulations provide for a somewhat streamlined process for permitting certain categories of wetlands restoration. Projects meeting specified requirements receive permits with pre-specified conditions, and are generally exempt from review under the Massachusetts Environmental Policy Act (MEPA). We recommend that MassDEP expand the applicability of the ERP process to include salt marshes, using the guidance that is under development through the Interagency Coastal Wetlands Climate Resilience Workgroup⁸.

Combined Applications: The regulations currently allow combined applications for Wetlands, Waterways, and 401 Water Quality permitting for ERPs. The proposed regulations eliminate those provisions. Rather than eliminating combined review, MassDEP should seek to improve and expand combined application and permitting of restoration projects.

Research Projects: The proposed regulations include a new provision for Scientific Research Projects (310 CMR 10.05(12)), to allow research into the response of coastal wetlands to climate change. This provision is too narrowly crafted and should be broadened to allow experimentation with coastal and inland wetlands restoration techniques that are not currently utilized in Massachusetts. Appropriate limits on the scale and siting of such projects should be set, and successful projects should be allowed to remain in place.

Climate Resilience 2.0 Regulations

We appreciate the fact that MassDEP recognizes that additional regulatory reforms are needed to achieve the Commonwealth's climate resiliency goals. We recommend that the above recommendations for 1.0 be addressed in 2.0 to the extent MassDEP is unable to fully include them in the final 1.0 regulations. We also request that the 2.0 process address the following items.

Expand ERP: The ERP process should be expanded to include additional categories of restoration such as invasive species removal and cranberry bog restoration. Detailed guidance should be developed with input from external experts and practitioners. The ERP provision should also allow other additional types of restoration projects to be included when MassDEP approves associated guidance, without the need for regulatory updates. The system should be designed to be more flexible and to expand restoration streamlining as the state of the science and practice evolves.

Permit Streamlining – Aim for Single Application Coordinated Review: We also request that the 2.0 process include additional permit programs and agencies, with a goal of integrating and streamlining permitting for wetlands restoration projects across all applicable state environmental laws and regulations. **The goal should be a single permit application, managed by a single agency that coordinates across all other agencies and with the project proponent, resulting in a single combined permit issued quickly, preferably within 90 days of submission of a complete application.**

⁸ [Interagency Coastal Wetlands Climate Resilience Workgroup](#)

Full streamlining will likely require statutory as well as regulatory changes. We encourage MassDEP to work with agencies to achieve as much progress toward that goal as possible in the 2.0 process while identifying any additional reforms and funding needed to achieve full streamlining in the next iterative process beyond 2.0.

We look forward to participating in the 2.0 process and encourage MassDEP to engage with external experts and restoration practitioners including nonprofit organizations; wetlands consultants and scientists; federal, state and local conservation agencies; and others. This effort should be conducted in coordination with the Department of Fish and Game's Biodiversity initiative pursuant to Executive Order 618 and should tap into the ecological management and restoration expertise of the Division of Ecological Restoration and MassWildlife.

Thank you for considering these comments. For more information, please contact Heidi Ricci at Mass Audubon, hricci@massaudubon.org.

Regards,

E. Heidi Ricci
Director of Policy & Advocacy
Mass Audubon

Katharine Lange
Policy Director
Massachusetts Rivers Alliance

Heather Rockwell
Director of Operations
Barnstable Clean Water Coalition

Theodore Beauvais
President and Policy Director
Blackstone River Watershed Association

Richard Delaney
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Laura Jasinski
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Charles River Conservancy

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Erik Reardon
Berkshire Watershed Director
Housatonic Valley Association

Pine duBois
Executive Director
Jones River Watershed Association

Dorothy McGlincy
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Peter Schilling
Environmental Coordinator, Cape Cod Chapter
Trout Unlimited

Cynthia Dittbrenner
VP Conservation and Resilience
The Trustees of Reservations


Comments on proposed changes to Wetlands, 401 Water Quality Certification, and Waterways regulations

Christina Wiseman <cwiseman@massaudubon.org>

Tue 4/30/2024 1:08 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Heidi Ricci <hricci@massaudubon.org>; agottlieb@apcc.org <agottlieb@apcc.org>; Annett@savebuzzardsbay.org <Annett@savebuzzardsbay.org>; ahiple@clf.org <ahiple@clf.org>; pine@jonesriver.org <pine@jonesriver.org>; Dorothy McGlincy <dorothy.mcglinchy@macweb.org>; abowden@tnc.org <abowden@tnc.org>; Ian Cooke <cooke@neponset.org>; s2ary39@gmail.com <s2ary39@gmail.com>; Cynthia Dittbrenner <cdittbrenner@thetrustees.org>

 2 attachments (330 KB)

Salt Marsh Restoration wetlands 401 waterways comments.pdf; Pending and Planned Salt Marsh Restoration Projects.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien,

On behalf of Mass Audubon and the partner organizations cc'd here, we submit the attached comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments are focused on salt marsh restoration and related topics that are subject to all of these regulations.

Thank you for considering these comments.

Sincerely,

Christina Wiseman (she/her)

Operations & Special Projects Manager

Mass Audubon

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April 30, 2024

Massachusetts Department of Environmental
Protection (MassDEP – Bureau of Water
Resources (BWR) Wetlands Program
100 Cambridge Street, Suite 900
Boston, MA 02114

MassDEP - BWR Waterways Program
100 Cambridge Street, 9th Floor
Boston, MA 02114

Via Email: dep.wetlands@mass.gov

Via Email: dep.waterways@mass.gov

Re: Wetlands-401 Resilience Comments

Re: Waterways Resilience Comments

Accelerating Progress on Salt Marsh Restoration

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of the undersigned organizations, we submit the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments are focused on salt marsh restoration and related topics that are subject to all of these regulations. There is an urgent need to streamline permitting for salt marsh and other wetlands restoration projects both within each regulatory program and for more coordinated interagency review and permitting across programs.

We are grateful to MassDEP for proposing updates to these regulations as a “Climate Resilience 1.0” package, and for inviting comments for additional changes to be suggested for an upcoming “2.0” set of regulatory revisions. We also appreciate the work MassDEP has undertaken on developing guidance on use of the techniques of ditch remediation, runneling, and marsh habitat islands to restore salt marshes.

We are particularly grateful that DEP has provided opportunities for several external salt marsh restoration experts to provide input on the guidance with the Interagency Coastal Wetlands Climate Resilience Workgroup.¹

Coastal Wetlands - Urgent Need to Accelerate Restoration

Climate change is already impacting Massachusetts, including through accelerating rates of sea level rise and more intense storms. Our coastal wetlands including salt marshes and the coastal floodplain provide many essential functions and values, protecting our communities from storm damage and flooding, preventing pollution, and providing habitat for many species of fish and wildlife. Salt marshes are among the most productive ecosystems globally, sequestering and storing more carbon per acre than other habitats.

Many of Massachusetts' 45,000 acres of salt marshes are severely degraded by thousands of historically installed ditches and agricultural embankments that are causing subsidence, drowning marsh vegetation, and restricting natural tidal flows and sediment deposition. Reversing this damage within the next few years is vitally important to extend the life of these marshes. Currently there are more than a dozen salt marsh restoration projects across thousands of acres planned by nonprofit organizations and government agencies (attached). It is essential that permitting for these projects proceed expeditiously.

The following comments provide recommendations for:

1. Immediate steps MassDEP can take to improve permitting for salt marsh restoration through improved interpretation of existing regulations, coordination on permit processing, and in finalizing the proposed regulations;
2. Further regulatory refinements in the next round of regulatory review (aka "2.0"); and
3. More broadly by establishing a fully integrated and streamlined permitting pathway for ecological restoration projects.

While the draft guidance addresses Wetlands and 401 Water Quality regulatory requirements, salt marsh restoration projects typically require many other permits and reviews (Massachusetts Environmental Policy Act (MEPA), Waterways, CZM Federal Consistency, Massachusetts Endangered Species Act (MESA), and others), with a timeline spanning up to two years or longer. By streamlining and coordinating restoration permitting as several other states have done, the Commonwealth can achieve its goals on both climate and biodiversity, while creating efficiencies, saving time and money for agencies and restoration practitioners.²

Immediate Action – Waterways Regulations and Ditch Remediation

Healing selectively identified ditches that are disrupting natural marsh hydrology can be accomplished in many instances by using hay harvested within the marsh to capture sediment and allow for growth of

¹ <https://www.mass.gov/info-details/interagency-coastal-wetlands-climate-resilience-workgroup>

² [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#), February 1, 2024.

marsh vegetation. The DEP Waterways program has interpreted this work as involving placement of fill below the mean high water line and requiring a Chapter 91 license. This permitting process is complex and lengthy. An existing provision in the Waterways regulations can and should be applied to allow these projects to proceed without the need for a Waterways permit or license:

310 CMR 9.05(3) Activities Not Requiring a License or Permit. Notwithstanding the provisions of 310 CMR 9.05(1) through (2), no license or permit is required for: ... (m): demolition or removal of any unauthorized structures or fill in order to facilitate water dependent use provided prior written approval is obtained from the Department, which, at the discretion of the Department may include prior public notice and comment

These historic ditches were, in almost all instances, never previously permitted or licensed. Restoration is a water-dependent use. Therefore this provision applies, and we request that MassDEP utilize it.

Climate Resilience 1.0 Regulations

The proposed regulations mention salt marsh restoration and migration projects. We support the proposal to allow modifications to Land Subject to Coastal Storm Flowage to facilitate migration of salt marshes and dunes (310 CMR 10.36(9)).

This same draft provision states that salt marsh restoration projects should utilize the Ecological Restoration Limited Project provision (310 CMR 10.24(8)). Since the guidance the Interagency Workgroup is developing is close to completion,³ we request that in the final regulations MassDEP instead allow these projects to proceed through the Ecological Restoration Project (ERP) provisions (310 CMR 10.11-10.14), relying on the guidance for the application requirements and conditions for these projects. We also recommend that the guidance be referenced within the regulations and that it be a living document that can be modified and updated as additional experience and refinement of methods continues to be developed.

The draft regulations also include new provisions for the elevation of low-lying roads and the relocation of roads and railroads, with restoration of salt marsh or other resources that would naturally occur in the former road/RR bed locations (310 CMR 10.24(7)(c)1. and 10.24(7)(c)9.). The proposed LSCSF provisions allow the installation of berms in the coastal floodplain to protect existing developed areas (310 CMR 10.36(8)(g)). While we are generally supportive of these concepts, the provisions should be refined to provide a planning process with input from adjoining landowners and conditions ensuring that these projects do not result in unintentional negative impacts to adjoining salt marshes or other coastal wetland resources. These provisions should not prohibit the restoration of tidal flows where the relocated or elevated road or other infrastructure previously restricted natural flows to a salt marsh.

³ The recent input on the draft guidance from external experts and practitioners has been a productive process. We hope that the most recent round of comments as well as input from other agencies including MassWildlife and DER will help MassDEP produce a final draft that can be issued for public comment and then adopted. For future updates or development of guidance on other types of restoration, we encourage MassDEP to also solicit input from external experts.

Climate Resilience 2.0 Regulations

We appreciate the fact that MassDEP recognizes that additional regulatory reforms are needed to achieve the Commonwealth's climate resiliency goals. We request that the above recommendations be addressed in Resilience 2.0 in the event MassDEP is unable to fully include them in the current regulatory revisions. We also request that the 2.0 process include additional permit programs and agencies, with a goal of integrating and streamlining permitting for wetlands restoration projects across all applicable state environmental laws and regulations. The ultimate goal should be a single permit application, managed by a single agency that coordinates across all other agencies and with the project proponent, resulting in a single combined permit issued quickly, preferably within 90 days of submission of a complete application.

We encourage MassDEP to work with agencies to achieve as much progress toward that goal as possible in the 2.0 process while identifying further reforms and funding needs to achieve full streamlining in the next iterative process beyond 2.0.

We look forward to participating in the 2.0 process and encourage MassDEP to engage with external experts and restoration practitioners including nonprofit organizations; wetlands consultants and scientists; federal, state and local conservation agencies; and others. This effort should be conducted in coordination with the Department of Fish and Game's Biodiversity initiative pursuant to Executive Order 618⁴ and should tap into the deep ecological management and restoration expertise of the Division of Ecological Restoration, MassWildlife, and other state agencies.

Thank you for considering these comments.

Regards,

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⁴ <https://www.mass.gov/executive-orders/no-618-biodiversity-conservation-in-massachusetts>

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Project Name	Lead Org	Location	Acreage	Permit status (approved, pending, upcoming)	Grant(s) - List Funder if Awarded, or Pending, Upcoming	Partners	Comments/notes Draft information not for public dissemination. List is not a complete inventory of all planned projects.
Permitting process and costs concerns common to many of these projects (see spreadsheet on permitting for details): - 6-12 different permits, 18 months or more, multiple forms of info submission required, difficult coordinating across permits - Costly monitoring - lack of statewide monitoring system with consistent methods to track trends and compare restored marshes to those not restored - Regulatory system designed for development not restoration - metrics are "impacts" of restoration work, should look at designed benefits and measure outcome in relation to that. - Coastal Restrictions on deeds not allowing restoration; cumbersome to amend - Ch. 91 Waterways treating healing ditches with salt marsh hay as "fill" requiring a license rather than a simple permit. Could be interpreted more flexibly. - Time required for permitting does not align well with time periods for completing grants							
Chase Garden Creek Salt Marsh	APCC	Yarmouth/Dennis	1500	Planning and design	Grant(s) awarded	Towns of Yarmouth, Dennis, Foundation and many more	Early planning stage. Foundation funding over 5 years to assess marsh, complete monitoring and plans. Funding awarded for project start in 2023. We anticipate this as a ditch remediation, runneling project that we would begin design work on perhaps in 2025/2026. We would build upon this our learning working with Mass Audubon on the nearby Barnstable Great Marsh project. Hoping to see these other projects pave the way for our design and permitting effort starting in a few years time.
Weir Creek at Lower County Road	APCC	Dennis, Bass River	120	Planning and design	Grant(s) awarded	Town of Dennis, NRCS, CCCD, mosquito control program and others	Planning for tidal restoration but discussion includes potential further upstream restoration of the marsh pending further data collection, modeling and ongoing discussion and progress with ditch remediation and runneling. Cape Cod Mosquito Control is part of larger project team so could be engaged in this work if the restoration could feasibly incorporate or need further marsh surface restoration and modification upstream. Feasibility studies underway now 2023 with SNEP and NFWF grants. Culvert permit ready design to be complete 2024. Request out to NOAA to fund permitting, final design and construction - doesn't call out this alternative restoration technique but again we are still early planning and looking at value and opportunity for marsh platform restoration with all our tidal restoration projects of large scale now at this stage this is just most immediate/ongoing project. Could be moving to permitting late 2024 or likely 2025 if we included channel modification or work in the marsh proper
Allens Pond	Mass Audubon	Dartmouth, MA		Permits approved	Grant(s) awarded	Save the Bay, USFWS, Bristol County Mosquito Control, NOAA, Dartmouth Natural Resource trust, Wareham Land Trust, DU	Saltmarsh surface tidal hydrology restoration, tidal restriction and barrier removal and restoration of upland/saltmarsh boundary completed on over 60 acres funded through a 2000 SNEP grant. Received additional SNEP grant beginning in Jan 2024 to continue this work on an additional 100 acres of saltmarsh and low lying uplands across Allens Pond. Most of the planned work on the second phase of this project is permitted but we will need some additional permits to expand the saltmarsh surface tidal hydrology restoration.
Barnstable Great Marsh Wildlife Sanctuary	Mass Audubon	Barnstable, MA	76	Planning and design	Grant(s) awarded	DFG ILF Program, NOAA, APCC, CCMCP	Project funded by ILF Program. Design complete. Permitting likely to start early 2024.
Barnstable Great Marsh	Mass Audubon	Barnstable, MA	430	Planning and design		USFWS, NOAA, APCC, CCMCP, Town of Barnstable	Design funded by USFWS + complete.
Rough Meadows Wildlife Sanctuary	Mass Audubon	Rowley, MA	229	Planning and design	Proposal(s) pending	DFG, ILF Program, Greenbelt, Mass Wildlife	USACE approved project for funding from ILF Program. Project was designed in coordination with MassWildlife Ecosystem Recovery Project. ILF & Mass Audubon contacted DEP for feedback in April of 2023 and again in October. Wetland Restriction Order is complicating the process for identifying a permitting pathway, so DFG & Mass Audubon haven't contracted funds for permitting and construction yet.
Winsegansett Marsh	Bristol County Mosquito Control	Fairhaven, MA	30	Planning and design	Upcoming proposal(s)	Save the Bay, BBC, Town of Fairhaven	Ditch maintenance and runnels to better drain the marsh system
Great Marsh Ecosystem Recovery Project	MassWildlife	Ipswich, Newbury, Rowley	3,000	Permitting upcoming	Grant(s) awarded	The Trustees, USFWS, Ducks Unlimited	National Coastal Resiliency Fund grant to complete final design and permitting for 3,000 acres of ditch remediation, runneling, and nesting islands. Project includes removal of Hay Street and Stage Island tidal obstructions. To be completed in 3 years. Start permitting fall 2024 or later.
Great Marsh Phase III	Trustees	Ipswich and Essex	1100	Planning and design	Grant(s) awarded	Masswildlife, Greenbelt	Project funded and designed. Working on permitting as of 12/2023. Anticipate starting permitting in early 2024
Broad Cove	Dighton/Save The Bay	Dighton, MA	29	Planning and design		Bristol County Mosquito Control Project, Town of Dighton	Planning stages of a 2nd phase of marsh platform tidal hydrology restoration project impacted by legacy agricultural features and mosquito ditching. Restoration activities would include maintaining select ditches, installing runnels, using excavated peat to create marsh islands and to fill in depressions that create mosquito breeding habitat and mulching Phragmites. Potential for marsh migration facilitation by addressing Phragmites and agricultural features that impound fresh and brackish water in the migration corridor. First phase conducted by partners in 2017.

Building Beach and Saltmarsh Resilience to Protect Island Communities (MA)	Trustees	Edgartown, MA	250	Planning and design	Grant(s) awarded	Martha's Vineyard Commission and MV Land Bank	Project includes assessing all salt marsh within the Cape Poge Bay and Pocha Pond ecosystem and drafting a plan for restoration. The assessment will include identification where ditch remediation, runneling and nesting island creation will be beneficial.
Herring River Berm Removal & Sediment Redistribution	Ducks Unlimited	Wellfleet, MA	1-2 acres of TLP	Planning and design	Grant(s) awarded	Cape Cod National Seashore/NPS	This is a subset of the Herring River Restoration project that is removing the berms along the river and reusing the material within the salt marsh area. This project is currently being designed and we have had initial conversations with regulators via the larger project.
Great Marsh 1450 project	USFWS	Ipswich, Rowley, and Newbury	1450	Permits applied	Grant(s) awarded	Ducks Unlimited, Audubon	NFWF Coastal Resiliency Grant, DU as awardee. Parker River National Wildlife Refuge, work to be conducted in seven units on Plum Island and west of Plum Island Sound. 3 units to be done in-house (including a ditch remediation team hired for project with Mass Audubon). 4 units to be contracted out. Single-channel hydrology restoration. Permit submitted July 2023. Awaiting final approval for WQC... all other reviews and approvals complete. Also includes pepperweed control and Phragmites control.
Sage Lot Pond's Doghead marsh	Waquoit Bay NERR	Mashpee, MA	17	Permits approved		Woodwell Climate Research Ctr, Northeastern Univ, Cape Cod Mosquito Control Project, Save the Bay	Runnels and ditch maintenance 12/6/23 in partnership with Cape Cod Mosquito Control Project and under guidance of Wenley Ferguson, Save the Bay. Runnels will be checked and edited as needed to maintain drainage functions.
Sage Lot Pond, Jehu Pond	Waquoit Bay NERR	Mashpee, MA	~100	Planning and design	Grant(s) awarded	Woodwell Climate Research Ctr, MIT Sea Grant, Okeanolog, Interfluve, Cit Protection Waquoit Bay, Mashpee NWR, Friends of Mashpee NWR, Mashpee Wampanoag, MA CZM, Cape Cod Mosquito Control Project	NFWF Coastal Resiliency Grant, Woodwell as awardee.
Sage Lot Pond's Doghead marsh to Flat Pond	Waquoit Bay NERR	Mashpee, MA	~60	Planning and design	Proposal(s) pending	MIT Sea Grant, Interfluve, Cit Protection Waquoit Bay, Mashpee NWR, Friends of Mashpee NWR, Mashpee Wampanoag, MA CZM, Cape Cod Mosquito Control Project	Proposal to replace undersized culvert to restore tidal hydrology to Flat Pond (east of Doghead marsh), currently Flat Pond is brackish.
Mattapoisett Neck Road	Mattapoisett Land Trust	Mattapoisett, MA	~60	Planning and design	Grant(s) awarded	Buzzards Bay Coalition, Town of Mattapoisett, MA CZM grant to MLT	Proposed culvert replacement at Matt. Neck Road to improve drainage of salt marsh. Potential for runnels and other improvements.
Jack's Marsh	Buzzards Bay Coalition	Wareham, MA	~11	Planning and design	Grant(s) awarded	Wildlands Trust, Town of Wareham	Proposed culvert replacement at Town road; restoration of salt marsh and freshwater wetlands proposed.
Puritan Bogs	Buzzards Bay Coalition	Bourne, MA	~16	Planning and design	Proposal(s) pending	Town of Bourne, NRCS	Proposed removal of dike at retired head of tide cranberry bog; restoration of salt marsh and freshwater wetlands proposed.


Waterways Resilience Comments

Christina Wiseman <cwiseman@massaudubon.org>

Tue 4/30/2024 2:17 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Heidi Ricci <hricci@massaudubon.org>

 1 attachments (233 KB)

Wetlands and water quality comments mosquito control.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien,

On behalf of Mass Audubon and the undersigned members of the “Massquito Coalition,” we submit the following comments on the proposed changes to the Wetlands, 401 Water Quality Certification, and Waterways regulations. These comments focus on ecologically-based mosquito control and the role of wetlands restoration and Low Impact Development.

Thank you for considering these comments.

Sincerely,

Christina Wiseman (she/her)

Operations & Special Projects Manager

Mass Audubon

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massaudubon.org



April 30, 2024

Massachusetts Department of Environmental Protection (MassDEP)
100 Cambridge Street, Suite 900
Boston, MA 02114

Attn: Bureau of Water Resources (BWR) Wetlands Program

Via Email: dep.wetlands@mass.gov

Re: **Wetlands-401 Resilience Comments**

Attn: BWR Waterways Program

Via Email: dep.waterways@mass.gov

Re: **Waterways Resilience Comments**

Mosquito Control – Wetlands Restoration and Low Impact Development (LID)

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

The undersigned members of the “Massquito Coalition¹” submit the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. Our organizations support ecologically-based mosquito control that focuses on natural methods of managing mosquitoes while avoiding the use of toxic pesticides to the maximum extent possible. We support proposed changes to the stormwater management standards. We recommend that the next round of regulatory revisions (aka Climate Resilience 2.0) include streamlining of wetlands restoration projects including cooperative involvement of Mosquito Control Districts (MCDs).

¹ nofamass.org/home/policy/massquito/

Healthy, diverse wetlands support a variety of aquatic life, including mosquito predators such as fish, predatory beetles, and dragonflies (both larval and adult). In contrast, stagnant ditches, poorly maintained stormwater systems, and degraded wetlands are more likely to breed large numbers of mosquitoes while not supporting fish and other mosquito predators. MCDs can partner with wetlands restoration projects to improve water quality and habitat connectivity for fish and other beneficial aquatic organisms. The report of the Mosquito Control for the Twenty-First Century Task Force recognized the potential to expand these partnerships, and recommended increased cooperation and collaborations between MCDs, DER, and wetlands restoration projects.² MCDs are exempt from the Wetlands Protection Act but not 401 Water Quality Certification or Waterways permitting. We recommend that MassDEP explore opportunities to further enhance cooperation between MCDs and wetlands restoration projects in the 2.0 process.

The regulatory updates also include updates to the stormwater management standards, including requirements for the use of nature-based designs using Environmentally Sensitive Design (ESSD) and Low Impact Development (LID) stormwater techniques wherever possible. LID designs do not create mosquito breeding habitat, unlike conventional stormwater systems with features like catch basins and wet detention basins that can hold pools of stagnant water, particularly if not rigorously maintained. The Stormwater Handbook includes Section 5.4 on Mosquito Control and Stormwater Management Practices. This includes information about how ESSD can help avoid creation of mosquito breeding habitat, and recommendations for management of structural control measures that can create mosquito habitat if not properly managed and maintained. We recommend that the final Handbook more clearly describe the benefits of LID designs in avoiding creation of mosquito habitat, and connect that more directly with the new requirements to utilize ESSD and LID unless that is infeasible at a particular site.

We look forward to providing further information on the benefits of ecologically-based mosquito management in the Climate Resilience 2.0 process.

Regards,

E. Heidi Ricci, Director of Policy and Advocacy, Mass Audubon

Jay Feldman, Executive Director, Beyond Pesticides

Pine duBois, Executive Director, Jones River Watershed Association

Michele Colopy, Executive Director, LEAD for Pollinators, Inc.

Dorothy McGlincy, Executive Director, Massachusetts Association of Conservation Commissions

Mary Duane, President Massachusetts Beekeepers Association

Renée Scott, Coordinator, NOFA/Mass Pollinator Network

Clint Richmond, Conservation Chair, Sierra Club of Massachusetts

² mass.gov/orgs/mosquito-control-for-the-twenty-first-century-task-force


Waterways Resilience Comments

Christina Wiseman <cwiseman@massaudubon.org>

Tue 4/30/2024 1:42 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Heidi Ricci <hricci@massaudubon.org>; agottlieb@apcc.org <agottlieb@apcc.org>; Annett@savebuzzardsbay.org <Annett@savebuzzardsbay.org>; ahiple@clf.org <ahiple@clf.org>; pine@jonesriver.org <pine@jonesriver.org>; Dorothy McGlincy <dorothy.mcglincoy@macweb.org>; abowden@tnc.org <abowden@tnc.org>; lan Cooke <cooke@neponset.org>; s2ary39@gmail.com <s2ary39@gmail.com>; Cynthia Dittbrenner <cdittbrenner@thetrustees.org>

 2 attachments (330 KB)

Salt Marsh Restoration wetlands 401 waterways comments.pdf; Pending and Planned Salt Marsh Restoration Projects.pdf;

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(Re-submitting with exact subject line)

From: Christina Wiseman <cwiseman@massaudubon.org>

Sent: Tuesday, April 30, 2024 1:05 PM

To: dep.wetlands@mass.gov <dep.wetlands@mass.gov>; dep.waterways@mass.gov <dep.waterways@mass.gov>

Cc: Heidi Ricci <hricci@massaudubon.org>; agottlieb@apcc.org <agottlieb@apcc.org>; Annett@savebuzzardsbay.org <Annett@savebuzzardsbay.org>; ahiple@clf.org <ahiple@clf.org>; pine@jonesriver.org <pine@jonesriver.org>; dorothy.mcglincoy@macweb.org <dorothy.mcglincoy@macweb.org>; abowden@tnc.org <abowden@tnc.org>; cooke@neponset.org <cooke@neponset.org>; s2ary39@gmail.com <s2ary39@gmail.com>; Cynthia Dittbrenner <cdittbrenner@thetrustees.org>

Subject: Comments on proposed changes to Wetlands, 401 Water Quality Certification, and Waterways regulations

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien,

On behalf of Mass Audubon and the partner organizations cc'd here, we submit the attached comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments are focused on salt marsh restoration and related topics that are subject to all of these regulations.

Thank you for considering these comments.

Sincerely,

Christina Wiseman (she/her)

Operations & Special Projects Manager

Mass Audubon

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April 30, 2024

Massachusetts Department of Environmental
Protection (MassDEP – Bureau of Water
Resources (BWR) Wetlands Program
100 Cambridge Street, Suite 900
Boston, MA 02114

MassDEP - BWR Waterways Program
100 Cambridge Street, 9th Floor
Boston, MA 02114

Via Email: dep.wetlands@mass.gov

Via Email: dep.waterways@mass.gov

Re: **Wetlands-401 Resilience Comments**

Re: **Waterways Resilience Comments**

Accelerating Progress on Salt Marsh Restoration

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of the undersigned organizations, we submit the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments are focused on salt marsh restoration and related topics that are subject to all of these regulations. There is an urgent need to streamline permitting for salt marsh and other wetlands restoration projects both within each regulatory program and for more coordinated interagency review and permitting across programs.

We are grateful to MassDEP for proposing updates to these regulations as a “Climate Resilience 1.0” package, and for inviting comments for additional changes to be suggested for an upcoming “2.0” set of regulatory revisions. We also appreciate the work MassDEP has undertaken on developing guidance on use of the techniques of ditch remediation, runneling, and marsh habitat islands to restore salt marshes.

We are particularly grateful that DEP has provided opportunities for several external salt marsh restoration experts to provide input on the guidance with the Interagency Coastal Wetlands Climate Resilience Workgroup.¹

Coastal Wetlands - Urgent Need to Accelerate Restoration

Climate change is already impacting Massachusetts, including through accelerating rates of sea level rise and more intense storms. Our coastal wetlands including salt marshes and the coastal floodplain provide many essential functions and values, protecting our communities from storm damage and flooding, preventing pollution, and providing habitat for many species of fish and wildlife. Salt marshes are among the most productive ecosystems globally, sequestering and storing more carbon per acre than other habitats.

Many of Massachusetts' 45,000 acres of salt marshes are severely degraded by thousands of historically installed ditches and agricultural embankments that are causing subsidence, drowning marsh vegetation, and restricting natural tidal flows and sediment deposition. Reversing this damage within the next few years is vitally important to extend the life of these marshes. Currently there are more than a dozen salt marsh restoration projects across thousands of acres planned by nonprofit organizations and government agencies (attached). It is essential that permitting for these projects proceed expeditiously.

The following comments provide recommendations for:

1. Immediate steps MassDEP can take to improve permitting for salt marsh restoration through improved interpretation of existing regulations, coordination on permit processing, and in finalizing the proposed regulations;
2. Further regulatory refinements in the next round of regulatory review (aka "2.0"); and
3. More broadly by establishing a fully integrated and streamlined permitting pathway for ecological restoration projects.

While the draft guidance addresses Wetlands and 401 Water Quality regulatory requirements, salt marsh restoration projects typically require many other permits and reviews (Massachusetts Environmental Policy Act (MEPA), Waterways, CZM Federal Consistency, Massachusetts Endangered Species Act (MESA), and others), with a timeline spanning up to two years or longer. By streamlining and coordinating restoration permitting as several other states have done, the Commonwealth can achieve its goals on both climate and biodiversity, while creating efficiencies, saving time and money for agencies and restoration practitioners.²

Immediate Action – Waterways Regulations and Ditch Remediation

Healing selectively identified ditches that are disrupting natural marsh hydrology can be accomplished in many instances by using hay harvested within the marsh to capture sediment and allow for growth of

¹ <https://www.mass.gov/info-details/interagency-coastal-wetlands-climate-resilience-workgroup>

² [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#), February 1, 2024.

marsh vegetation. The DEP Waterways program has interpreted this work as involving placement of fill below the mean high water line and requiring a Chapter 91 license. This permitting process is complex and lengthy. An existing provision in the Waterways regulations can and should be applied to allow these projects to proceed without the need for a Waterways permit or license:

310 CMR 9.05(3) Activities Not Requiring a License or Permit. Notwithstanding the provisions of 310 CMR 9.05(1) through (2), no license or permit is required for: ... (m): demolition or removal of any unauthorized structures or fill in order to facilitate water dependent use provided prior written approval is obtained from the Department, which, at the discretion of the Department may include prior public notice and comment

These historic ditches were, in almost all instances, never previously permitted or licensed. Restoration is a water-dependent use. Therefore this provision applies, and we request that MassDEP utilize it.

Climate Resilience 1.0 Regulations

The proposed regulations mention salt marsh restoration and migration projects. We support the proposal to allow modifications to Land Subject to Coastal Storm Flowage to facilitate migration of salt marshes and dunes (310 CMR 10.36(9)).

This same draft provision states that salt marsh restoration projects should utilize the Ecological Restoration Limited Project provision (310 CMR 10.24(8)). Since the guidance the Interagency Workgroup is developing is close to completion,³ we request that in the final regulations MassDEP instead allow these projects to proceed through the Ecological Restoration Project (ERP) provisions (310 CMR 10.11-10.14), relying on the guidance for the application requirements and conditions for these projects. We also recommend that the guidance be referenced within the regulations and that it be a living document that can be modified and updated as additional experience and refinement of methods continues to be developed.

The draft regulations also include new provisions for the elevation of low-lying roads and the relocation of roads and railroads, with restoration of salt marsh or other resources that would naturally occur in the former road/RR bed locations (310 CMR 10.24(7)(c)1. and 10.24(7)(c)9.). The proposed LSCSF provisions allow the installation of berms in the coastal floodplain to protect existing developed areas (310 CMR 10.36(8)(g)). While we are generally supportive of these concepts, the provisions should be refined to provide a planning process with input from adjoining landowners and conditions ensuring that these projects do not result in unintentional negative impacts to adjoining salt marshes or other coastal wetland resources. These provisions should not prohibit the restoration of tidal flows where the relocated or elevated road or other infrastructure previously restricted natural flows to a salt marsh.

³ The recent input on the draft guidance from external experts and practitioners has been a productive process. We hope that the most recent round of comments as well as input from other agencies including MassWildlife and DER will help MassDEP produce a final draft that can be issued for public comment and then adopted. For future updates or development of guidance on other types of restoration, we encourage MassDEP to also solicit input from external experts.

Climate Resilience 2.0 Regulations

We appreciate the fact that MassDEP recognizes that additional regulatory reforms are needed to achieve the Commonwealth's climate resiliency goals. We request that the above recommendations be addressed in Resilience 2.0 in the event MassDEP is unable to fully include them in the current regulatory revisions. We also request that the 2.0 process include additional permit programs and agencies, with a goal of integrating and streamlining permitting for wetlands restoration projects across all applicable state environmental laws and regulations. The ultimate goal should be a single permit application, managed by a single agency that coordinates across all other agencies and with the project proponent, resulting in a single combined permit issued quickly, preferably within 90 days of submission of a complete application.

We encourage MassDEP to work with agencies to achieve as much progress toward that goal as possible in the 2.0 process while identifying further reforms and funding needs to achieve full streamlining in the next iterative process beyond 2.0.

We look forward to participating in the 2.0 process and encourage MassDEP to engage with external experts and restoration practitioners including nonprofit organizations; wetlands consultants and scientists; federal, state and local conservation agencies; and others. This effort should be conducted in coordination with the Department of Fish and Game's Biodiversity initiative pursuant to Executive Order 618⁴ and should tap into the deep ecological management and restoration expertise of the Division of Ecological Restoration, MassWildlife, and other state agencies.

Thank you for considering these comments.

Regards,

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⁴ <https://www.mass.gov/executive-orders/no-618-biodiversity-conservation-in-massachusetts>

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Project Name	Lead Org	Location	Acreage	Permit status (approved, pending, upcoming)	Grant(s) - List Funder if Awarded, or Pending, Upcoming	Partners	Comments/notes Draft information not for public dissemination. List is not a complete inventory of all planned projects.
Permitting process and costs concerns common to many of these projects (see spreadsheet on permitting for details): - 6-12 different permits, 18 months or more, multiple forms of info submission required, difficult coordinating across permits - Costly monitoring - lack of statewide monitoring system with consistent methods to track trends and compare restored marshes to those not restored - Regulatory system designed for development not restoration - metrics are "impacts" of restoration work, should look at designed benefits and measure outcome in relation to that. - Coastal Restrictions on deeds not allowing restoration; cumbersome to amend - Ch. 91 Waterways treating healing ditches with salt marsh hay as "fill" requiring a license rather than a simple permit. Could be interpreted more flexibly. - Time required for permitting does not align well with time periods for completing grants							
Chase Garden Creek Salt Marsh	APCC	Yarmouth/Dennis	1500	Planning and design	Grant(s) awarded	Towns of Yarmouth, Dennis, Foundation and many more	Early planning stage. Foundation funding over 5 years to assess marsh, complete monitoring and plans. Funding awarded for project start in 2023. We anticipate this as a ditch remediation, runneling project that we would begin design work on perhaps in 2025/2026. We would build upon this our learning working with Mass Audubon on the nearby Barnstable Great Marsh project. Hoping to see these other projects pave the way for our design and permitting effort starting in a few years time.
Weir Creek at Lower County Road	APCC	Dennis, Bass River	120	Planning and design	Grant(s) awarded	Town of Dennis, NRCS, CCCD, mosquito control program and others	Planning for tidal restoration but discussion includes potential further upstream restoration of the marsh pending further data collection, modeling and ongoing discussion and progress with ditch remediation and runneling. Cape Cod Mosquito Control is part of larger project team so could be engaged in this work if the restoration could feasibly incorporate or need further marsh surface restoration and modification upstream. Feasibility studies underway now 2023 with SNEP and NFWF grants. Culvert permit ready design to be complete 2024. Request out to NOAA to fund permitting, final design and construction - doesn't call out this alternative restoration technique but again we are still early planning and looking at value and opportunity for marsh platform restoration with all our tidal restoration projects of large scale now at this stage this is just most immediate/ongoing project. Could be moving to permitting late 2024 or likely 2025 if we included channel modification or work in the marsh proper
Allens Pond	Mass Audubon	Dartmouth, MA		Permits approved	Grant(s) awarded	Save the Bay, USFWS, Bristol County Mosquito Control, NOAA, Dartmouth Natural Resource trust, Wareham Land Trust, DU	Saltmarsh surface tidal hydrology restoration, tidal restriction and barrier removal and restoration of upland/saltmarsh boundary completed on over 60 acres funded through a 2000 SNEP grant. Received additional SNEP grant beginning in Jan 2024 to continue this work on an additional 100 acres of saltmarsh and low lying uplands across Allens Pond. Most of the planned work on the second phase of this project is permitted but we will need some additional permits to expand the saltmarsh surface tidal hydrology restoration.
Barnstable Great Marsh Wildlife Sanctuary	Mass Audubon	Barnstable, MA	76	Planning and design	Grant(s) awarded	DFG ILF Program, NOAA, APCC, CCMCP	Project funded by ILF Program. Design complete. Permitting likely to start early 2024.
Barnstable Great Marsh	Mass Audubon	Barnstable, MA	430	Planning and design		USFWS, NOAA, APCC, CCMCP, Town of Barnstable	Design funded by USFWS + complete.
Rough Meadows Wildlife Sanctuary	Mass Audubon	Rowley, MA	229	Planning and design	Proposal(s) pending	DFG, ILF Program, Greenbelt, Mass Wildlife	USACE approved project for funding from ILF Program. Project was designed in coordination with MassWildlife Ecosystem Recovery Project. ILF & Mass Audubon contacted DEP for feedback in April of 2023 and again in October. Wetland Restriction Order is complicating the process for identifying a permitting pathway, so DFG & Mass Audubon haven't contracted funds for permitting and construction yet.
Winsegansett Marsh	Bristol County Mosquito Control	Fairhaven, MA	30	Planning and design	Upcoming proposal(s)	Save the Bay, BBC, Town of Fairhaven	Ditch maintenance and runnels to better drain the marsh system
Great Marsh Ecosystem Recovery Project	MassWildlife	Ipswich, Newbury, Rowley	3,000	Permitting upcoming	Grant(s) awarded	The Trustees, USFWS, Ducks Unlimited	National Coastal Resiliency Fund grant to complete final design and permitting for 3,000 acres of ditch remediation, runneling, and nesting islands. Project includes removal of Hay Street and Stage Island tidal obstructions. To be completed in 3 years. Start permitting fall 2024 or later.
Great Marsh Phase III	Trustees	Ipswich and Essex	1100	Planning and design	Grant(s) awarded	Masswildlife, Greenbelt	Project funded and designed. Working on permitting as of 12/2023. Anticipate starting permitting in early 2024
Broad Cove	Dighton/Save The Bay	Dighton, MA	29	Planning and design		Bristol County Mosquito Control Project, Town of Dighton	Planning stages of a 2nd phase of marsh platform tidal hydrology restoration project impacted by legacy agricultural features and mosquito ditching. Restoration activities would include maintaining select ditches, installing runnels, using excavated peat to create marsh islands and to fill in depressions that create mosquito breeding habitat and mulching Phragmites. Potential for marsh migration facilitation by addressing Phragmites and agricultural features that impound fresh and brackish water in the migration corridor. First phase conducted by partners in 2017.

Building Beach and Saltmarsh Resilience to Protect Island Communities (MA)	Trustees	Edgartown, MA	250	Planning and design	Grant(s) awarded	Martha's Vineyard Commission and MV Land Bank	Project includes assessing all salt marsh within the Cape Poge Bay and Pocha Pond ecosystem and drafting a plan for restoration. The assessment will include identification where ditch remediation, runneling and nesting island creation will be beneficial.
Herring River Berm Removal & Sediment Redistribution	Ducks Unlimited	Wellfleet, MA	1-2 acres of TLP	Planning and design	Grant(s) awarded	Cape Cod National Seashore/NPS	This is a subset of the Herring River Restoration project that is removing the berms along the river and reusing the material within the salt marsh area. This project is currently being designed and we have had initial conversations with regulators via the larger project.
Great Marsh 1450 project	USFWS	Ipswich, Rowley, and Newbury	1450	Permits applied	Grant(s) awarded	Ducks Unlimited, Audubon	NFWF Coastal Resiliency Grant, DU as awardee. Parker River National Wildlife Refuge, work to be conducted in seven units on Plum Island and west of Plum Island Sound. 3 units to be done in-house (including a ditch remediation team hired for project with Mass Audubon). 4 units to be contracted out. Single-channel hydrology restoration. Permit submitted July 2023. Awaiting final approval for WQC... all other reviews and approvals complete. Also includes pepperweed control and Phragmites control.
Sage Lot Pond's Doghead marsh	Waquoit Bay NERR	Mashpee, MA	17	Permits approved		Woodwell Climate Research Ctr, Northeastern Univ, Cape Cod Mosquito Control Project, Save the Bay	Runnels and ditch maintenance 12/6/23 in partnership with Cape Cod Mosquito Control Project and under guidance of Wenley Ferguson, Save the Bay. Runnels will be checked and edited as needed to maintain drainage functions.
Sage Lot Pond, Jehu Pond	Waquoit Bay NERR	Mashpee, MA	~100	Planning and design	Grant(s) awarded	Woodwell Climate Research Ctr, MIT Sea Grant, Okeanolog, Interfluve, Cit Protection Waquoit Bay, Mashpee NWR, Friends of Mashpee NWR, Mashpee Wampanoag, MA CZM, Cape Cod Mosquito Control Project	NFWF Coastal Resiliency Grant, Woodwell as awardee.
Sage Lot Pond's Doghead marsh to Flat Pond	Waquoit Bay NERR	Mashpee, MA	~60	Planning and design	Proposal(s) pending	MIT Sea Grant, Interfluve, Cit Protection Waquoit Bay, Mashpee NWR, Friends of Mashpee NWR, Mashpee Wampanoag, MA CZM, Cape Cod Mosquito Control Project	Proposal to replace undersized culvert to restore tidal hydrology to Flat Pond (east of Doghead marsh), currently Flat Pond is brackish.
Mattapoisett Neck Road	Mattapoisett Land Trust	Mattapoisett, MA	~60	Planning and design	Grant(s) awarded	Buzzards Bay Coalition, Town of Mattapoisett, MA CZM grant to MLT	Proposed culvert replacement at Matt. Neck Road to improve drainage of salt marsh. Potential for runnels and other improvements.
Jack's Marsh	Buzzards Bay Coalition	Wareham, MA	~11	Planning and design	Grant(s) awarded	Wildlands Trust, Town of Wareham	Proposed culvert replacement at Town road; restoration of salt marsh and freshwater wetlands proposed.
Puritan Bogs	Buzzards Bay Coalition	Bourne, MA	~16	Planning and design	Proposal(s) pending	Town of Bourne, NRCS	Proposed removal of dike at retired head of tide cranberry bog; restoration of salt marsh and freshwater wetlands proposed.

Waterways Resilience Comment

Heidi Ricci <hricci@massaudubon.org>

Tue 4/30/2024 5:00 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 2 attachments (1 MB)

Climate Resilience 1.0 Mass Audubon final.pdf; FINAL CLF + Mass Audubon NBS Research Memo 2024.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of Mass Audubon, I submit the attached comments on the proposed changes to the Wetlands, 401 Water Quality Certification, and Waterways regulations. These are also being submitted concurrently to the Wetlands Program, as many of the comments cut across all three programs (and beyond), notably support for **integrating and streamlining permitting for wetlands restoration projects across these and other state regulatory programs**. Please note that Mass Audubon is also signatory to three other comment letters submitted on these regulations: 1. salt marsh restoration streamlining; 2. wetlands restoration streamlining, and 3. ecologically-based mosquito control.

Mass Audubon appreciates the time and effort that MassDEP has put into this regulatory update, as well as the extensive opportunities that were offered for input from external experts and interested parties. We look forward to participating in the "Climate Resilience 2.0" process.

-

Regards,

Heidi

E. Heidi Ricci (she/her(s))

Director of Policy and Advocacy

Mass Audubon

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April 30, 2024

Massachusetts Department of Environmental Protection (MassDEP)
100 Cambridge Street, Suite 900
Boston, MA 02114

Attn: Bureau of Water Resources (BWR) Wetlands Program
Via Email: dep.wetlands@mass.gov
Re: Wetlands-401 Resilience Comments

Attn: BWR Waterways Program
Via Email: dep.waterways@mass.gov
Re: Waterways Resilience Comment

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

Mass Audubon offers the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments have been combined into one letter including cross-cutting comments, notably support for **integrating and streamlining permitting for wetlands restoration projects across these and other state regulatory programs.**

Mass Audubon appreciates the time and effort that MassDEP has put into this regulatory update, as well as the extensive opportunities that were offered for input from external experts and interested parties. We look forward to participating in the “Climate Resilience 2.0” process.

Summary Comments

Mass Audubon supports the overall focus of the regulatory changes on increasing climate resilience by:

- Restricting new development in the coastal floodplain;
- Incorporating sea level rise into permitting under the Waterways regulations;
- Updating stormwater precipitation calculations and management standards; and
- Supporting the use of nature-based solutions for climate resilience.

There is an urgent need to accelerate and streamline permitting for beneficial restoration projects across multiple permit programs. We offer specific recommendations for immediate actions and a process for transitioning to a combined, speedy and efficient review process for restoration projects.

We have concerns regarding some specific provisions and offer suggestions for items to be clarified in the final regulations or held for further refinement in the 2.0 process including:

- Provisions allowing elevation or relocation of coastal roads and other transportation infrastructure need to be refined and connected with district-based planning under the ResilientCoasts Initiative; and
- There should be a shift in emphasis away from adding details and complexity to the Wetlands regulations for specific types of activities and instead focusing more on overall project impacts or benefits. Details on means and methods for various types of activities should be located in guidance and policy documents unless essential to include in regulations.

Process and Timeline for Finalizing the Regulations

We are aware that MassDEP has received many comments on these regulations, with some parties requesting a delay in the entire package. **Given the urgent need to better regulate development in the coastal floodplain and to update stormwater management, we urge MassDEP to proceed with the main provisions on those topics.** To the extent details need to be worked out, we would prefer to see those details moved into guidance documents including the Stormwater Handbook. A short additional delay (e.g. a few months) in the effective date of the updated Stormwater Standards may be warranted to allow conservation commissions and project designers to come up to speed, but the issuance of the regulations should not be delayed indefinitely.

Background and Importance for State Priorities

Mass Audubon greatly appreciates MassDEP's efforts on this "Climate Resilience 1.0" package and its commitment to undertaking additional regulatory updates in an upcoming "2.0" process. Improving protection of coastal and inland wetlands and waterways is essential to support the Commonwealth's goals on climate and biodiversity, including the ResilientMass Plan¹, Clean Energy and Climate Plan (CEPC)², Executive Orders 618 and 569 on Biodiversity³ and Climate⁴, and other related plans and initiatives. We strongly support the Healey Administration's whole-of-government approach to these important issues.

Coastal and inland wetlands, waterways, buffer zones, and riparian and shoreline areas provide vitally important natural services that protect public interests including prevention of flooding and storm damage; protection of habitat for fish, shellfish, and wildlife; water supply protection; and prevention of pollution. Waterways and tidelands also protect public access rights. In addition to these interests recognized in state laws, these resources provide other important services and values including recreational opportunities, shade and cooling of air and water, and contributions to overall quality of life and property values. Wetlands sequester and store carbon at rates higher than terrestrial systems, providing important contributions to the CECP goal for eliminating carbon pollution in Massachusetts by 2050. Protection and restoration of these resources is also of increasing urgency to provide resiliency to

¹ resilient.mass.gov/

² mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2050

³ mass.gov/executive-orders/no-618-biodiversity-conservation-in-massachusetts

⁴ mass.gov/executive-orders/no-569-establishing-an-integrated-climate-change-strategy-for-the-commonwealth

climate impacts including increasing storm intensities and more frequent droughts along with sea level rise and accelerating coastal erosion.

The challenges the state and region face in aligning wetlands, water quality, and waterways programs with initiatives on climate mitigation and resiliency, biodiversity, and Environmental Justice (EJ) offer opportunities to chart a more sustainable future for people and nature. The Commission on Clean Energy Infrastructure Siting and Permitting⁵ recognized the need for bold new approaches to streamline and accelerate permitting for energy projects that are essential to achieving the state's goals for reducing carbon pollution while also protecting important natural and working lands and community interests. A similar, fresh approach to streamlining permitting for wetlands ecological restoration projects is also needed to meet the scale and scope of the need and create efficiencies for both restoration practitioners and regulatory agencies, as has been done in several other states⁶.

We are grateful for the opportunities MassDEP is providing for input from Mass Audubon and other experts and stakeholders. We particularly appreciate MassDEP's inclusion of Mass Audubon's ecological restoration staff and other external experts in the development of guidance for permitting salt marsh restoration projects through the Coastal Wetlands Climate Resilience Interagency Workgroup⁷. Mass Audubon was also a member of the Land Subject to Coastal Storm Flowage (LSCSF) Advisory Group⁸ and the Stormwater Management Updates Advisory Committee⁹ that provided input into these proposed regulatory revisions. The LSCSF and Stormwater Advisory Groups last met more than four years ago. These regulations are long overdue, and we urge MassDEP to finalize them with refinements as described below. Mass Audubon's science and policy staff are committed to supporting and advising the state as it works through the 2.0 process and beyond.

Simplify and Focus on Protection and Restoration

The Wetlands regulations are exceedingly long and complex, and the proposed revisions would make them more so. The existing and proposed regulations carve out special "Limited Project" exceptions for specific categories of activities, allowing these projects to exceed the otherwise applicable limits on the amount of wetland resource areas that can be altered or destroyed. We recognize the need to retain many of the longstanding Limited Projects that implement statutory exemptions for maintenance and improvement of public infrastructure, farming and forestry, and other activities with broad public interests. It is not necessary, however, to further expand these exceptions based on other new, specific types of projects such as the new Limited Project 10.24(7)(c)8. and 10.53(3)(u) for Shared Use Paths on abandoned railroad beds and minor project exemption at 10.02(2)(b)2.(r) for maintenance of those paths, especially without addressing the many other types of trail construction and maintenance projects. **We recommend that MassDEP instead focus on protecting and restoring wetland resources in regulatory performance standards, while describing appropriate means and methods for specific types of activities through guidance documents and policies.**

⁵ mass.gov/info-details/commission-on-energy-infrastructure-siting-and-permitting

⁶ [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#)

⁷ mass.gov/info-details/interagency-coastal-wetlands-climate-resilience-workgroup

⁸ mass.gov/info-details/land-subject-to-coastal-storm-flowage-advisory-group

⁹ mass.gov/info-details/massachusetts-stormwater-management-updates-advisory-committee

The complexity and level of detail in the regulations also makes it increasingly difficult for the 351 volunteer conservation commissions across the state to administer the law and for project proponents to navigate the process. The regulations create paradoxical situations where activities that involve extensive impacts (e.g. infrastructure improvement projects) have provisions tailored to facilitating approval with only broad-brush conditions, while small, beneficial activities like hand pulling of invasive species or repairing erosion on an existing footpath are required to follow the same permitting processes as development projects. The level of detail in the regulations also makes updates difficult to implement in a timely fashion as new information becomes available and best practices evolve. **The proposed stormwater regulatory updates include lengthy technical details that would be better placed within the Stormwater Handbook.**

For Ecological Restoration Projects (ERP), the regulations should provide for additional categories of such projects (e.g. salt marsh restoration, cranberry bog restoration, and invasive species removal) to be allowed based on approval by MassDEP of guidelines for new categories rather than requiring use of the Ecological Restoration Limited Project provisions.

There is an urgent need for additional interagency coordination and easing of the permit timelines and costs for restoration, to accelerate progress and meet the scale and scope of this important work. We offer suggestions in this regard and are committed to working with MassDEP and other agencies to achieve the necessary streamlining while retaining strong protections for wetlands.

Specific Comments

Coastal and Inland Ecological Restoration

Healthy wetlands are essential for climate mitigation and resilience, biodiversity, water supply and quality, and many other public interests. Massachusetts has a long history of leadership on environmental protection generally and wetlands protection specifically. It is also a leader in recognizing and taking action to reverse historic and ongoing loss, fragmentation, and degradation of wetlands and water resources. MassWildlife's Division of Ecological Restoration (DER) is widely acclaimed for its work, and the state offers grants for restoration projects through several programs including the Municipal Vulnerability Preparedness (MVP) Program. Yet the challenges are of such a great scale and urgency that a bold new approach to streamline and accelerate restoration is needed.

Massachusetts has lost 41% of its salt marshes¹⁰ and nearly a third of its freshwater wetlands.¹¹ Thousands of acres of salt marsh are at increased risk of loss due to historic ditching and agricultural embankments that are accelerating the rate of marsh subsidence, dieback, and erosion. Inland rivers and wetlands are fragmented by 3,000 dams, most of which are functionally obsolete, along with 25,000 culverts, many blocking passage of fish and wildlife and posing risks of washouts of roads and railroads in the more intense storms we are already experiencing. Cranberry bogs that are no longer

¹⁰ Bromberg, K. D., & Bertness, M. D. (2005). Reconstructing New England Salt Marsh Losses Using Historical Maps. *Estuaries*, 28(6), 823–832. <http://www.jstor.org/stable/3526949>

¹¹ Dahl, T.E., [1990, Wetlands-Losses in the United States, 1780's to 1980's](#): Washington, D.C., U.S. Fish and Wildlife Service Report to Congress.

economically viable offer tremendous opportunities to restore systems that have been filled, diked, and channelized. Invasive species choke our diverse wetlands, replacing native species and often contributing to soil degradation and erosion. Rivers and streams have been channelized, buried in culverts, and impacted by runoff and loss of naturally vegetated buffers. We need to greatly accelerate the rate of restoration to address these challenges.

Mass Audubon conducted a survey with the Conservation Law Foundation (CLF), on barriers to permitting and implementing wetlands restoration and nature-based solutions projects (report attached). This included 139 survey responses from local, state, and federal agencies; nonprofits, wetlands consultants, and others involved in such projects, along with ten in-depth interviews and additional background research. **The most frequently identified challenge was “confusing and difficult permitting pathways.”**

Permitting for restoration should not be approached the same way as permitting for development projects that damage or destroy wetlands. Currently, restoration projects must navigate a half dozen or more permitting systems, each with its own regulatory requirements and application forms.¹² There is no clearly defined mechanism for restoration proponents to receive guidance or coordinate across permitting agencies to ensure that they have addressed all applicable requirements, conditions, and monitoring requirements¹³. The Massachusetts Environmental Policy Act (MEPA) process provides a mechanism for agencies to comment on projects, and could be utilized as a mechanism for proponents to obtain interagency consultation. Yet the MEPA process itself is costly and time consuming. Preparation of an Environmental Impact Report can cost tens or even hundreds of thousands of dollars. **We recommend that the Executive Office of Energy and Environmental Affairs (EEA) work with the MEPA office, MassDEP, DER, other agencies, and external experts to identify ways to improve the efficiency of restoration permitting.**

Standardizing guidance for specific types of restoration is an approach that offers significant potential. Massachusetts has applied this approach to some extent, through the ERP permit provisions at 310 CMR 11 through 13. This process provides guaranteed approval, with pre-specified conditions, for certain categories of projects including dam removal, stream crossing upgrades, stream daylighting, tidal restoration, rare species habitat restoration, and fish passage. However, this process does not address other types of restoration that need to be scaled up including salt marsh platform restoration (ditch remediation, runneling and marsh habitat islands), invasive species removal, cranberry bog restoration, and restoration of rivers and riparian areas. These other types of restoration must file under the Ecological Restoration Limited Project (ERLP) pursuant to 310 CMR 10.24(8) or 10.53(4). The ERLP

¹² An additional non-permitting barrier for restoration arises for projects on land protected under the DEP Wetlands Restriction programs (G.L. c. 130, section 105 for coastal wetlands; G.L. c. 131, section 40A for inland wetlands). Statutory changes seem to be necessary, as ecological restoration projects on these parcels are currently prohibited, and it appears DEP cannot create regulatory exemptions, even for fully permitted projects.

¹³ One notable exception is the Massachusetts Endangered Species Act (MESA) review process through the Natural Heritage and Endangered Species Program (NHESP). The MESA regulations at 321 CMR 10.00 provide for pre-application consultation. The NHESP works with project proponents (for both restoration and development) to identify design refinements and conditions to avoid adverse impacts to state-listed rare species. The Wetlands and MESA regulations also provide a coordinated review process for rare species habitat impacts in wetlands, with Wetlands Notices of Intent filed simultaneously with the NHESP and the local conservation commission. NHESP then provides comments, identifying any conditions needed in the Wetlands permit and clarity as to whether or not additional review is required under MESA. These are beneficial processes that should be incorporated into permitting for restoration projects more generally.

provision does not provide certainty regarding approval and applicable conditions, nor does it streamline MEPA review as is the case with the ERP process. Neither the ERP nor the ERLP process addresses coordination with all the other permits needed for these projects.

The regulations currently include provisions for Combined Application for ERP projects, under all three of the regulatory programs that are the subject of this current regulatory review process. The proposed revisions will delete the Combined Application review procedures.

We recommend that EEA undertake a wetlands restoration permit streamlining initiative to combine and simplify permitting for restoration projects across MassDEP and other agencies (e.g. NHESP, Department of Conservation and Recreation Office of Dam Safety, Department of Fish and Game Division of Marine Fisheries, and others). This initiative should tap into the considerable expertise and experience of DER in restoration projects. Other states have streamlined restoration permitting, with a single application submitted to one agency that reviews the project based on standard guidelines and coordinating input from other agencies. **The Environmental Policy Innovation Center (EPIC) has compiled examples in their *Funding Nature, Not Paperwork* report,¹⁴ and has a searchable database on restoration streamlining programs nationwide.¹⁵**

The need for restoration streamlining is longstanding, and the time for action is now. In 2007, EEA convened an Aquatic Habitat Restoration Task Force. The task force recommended formation of an interagency committee within EEA and a comprehensive review of the regulatory system to identify opportunities to reduce the time and costs of permitting while maintaining resource protections.¹⁶ The 2023 ResilientMass Plan identifies more than a dozen priority actions for restoration, including a high priority action to “Develop updated wetlands restoration guidance and regulations to improve climate resilience.”¹⁷ Mass Audubon and other restoration practitioners stand ready to assist the state in implementing restoration streamlining reforms. There are tremendous opportunities not only to advance the state’s biodiversity, climate, and EJ goals but also to create efficiencies, save money and address agency capacity challenges.

The ultimate goal should be a single, online application, with a coordinated review process managed by a single agency. Permits for categories of projects meeting approved guidelines should be issued quickly, preferably within 3 months following submission of a complete application.

Interim Steps to Improve Restoration Permitting

Recognizing that comprehensive restoration streamlining will take some time to accomplish, we also recommend immediate interim steps to improve efficiency under current regulatory programs.

Salt Marsh Platform Restoration:

Most of the 45,000 acres of salt marshes along the Massachusetts coast are suffering from ongoing impacts from a history of ditching and draining for agriculture and mosquito control. These alterations

¹⁴ [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#), Feb. 2024.

¹⁵ policyinnovation.org/restoration/database

¹⁶ mass.gov/info-details/aquatic-habitat-restoration-task-force-report-and-recommendations

¹⁷ resilient.mass.gov/actiontracker

to natural hydrology and beneficial sediment regimes result in many detrimental effects including subsidence and accelerated erosion. Accelerating rates of sea level rise increasingly threaten the ability of salt marshes to survive. The Office of Coastal Zone Management (CZM) has developed models of sea level rise impacts on salt marshes¹⁸. CZM has also identified locations where roads and other barriers are restricting tidal flow, which also negatively impacts salt marshes, and the ERP regulations include provisions for restoring tidal flows. CZM has also identified areas where marshes can migrate, although these areas are limited due to extensive existing development and topography along the coast.

While tidal flow restoration is important, if the ditches and embankments on a marsh platform are not remediated, the marsh will continue to deteriorate. Losses may even be accelerated with the increased tidal flows, if these other alterations are not repaired. Even in areas where there is no tidal restriction, the ditches and embankments are increasing marsh degradation and losses. Scientists and restoration practitioners have developed low impact techniques to restore natural hydrology through a combination of ditch remediation (using salt marsh hay to heal selective ditches), runneling (shallow channels, strategically placed), and marsh islands (small patches slightly elevated using material excavated from the runnels). The marsh “islands” are small features, a few feet in diameter, that rapidly revegetate and provide nesting habitat for the Saltmarsh Sparrow. Massachusetts supports 10% of the global population of this threatened species¹⁹. Restoring thousands of acres of salt marshes with these techniques is essential, and this work needs to get underway within the next few years, before the rate of SLR increases even more rapidly with the upswing phase of the 19-year Metonic Cycle.

The Southeast New England Program of the Environmental Protection Agency, in coordination with other federal and state agencies and salt marsh restoration practitioners including Mass Audubon, organized a full day conference on *Navigating Salt Marsh Restoration in Massachusetts: Challenges, Strategies, and Opportunities*, held on September 19, 2023. The agenda was structured around understanding the existing regulatory structure, with opportunities for participants to identify suggestions for next steps. This conference and the resulting materials explored the complex web of permitting these projects must navigate, and the need for further collaborations to increase the pace of progress and develop clear guidance.²⁰

We appreciate MassDEP forming a Coastal Wetlands Climate Resilience Interagency Workgroup to develop guidance for use of these techniques for salt marsh restoration under the Wetlands and 401 Water Quality regulations. The inclusion of Mass Audubon’s ecological restoration staff and other external experts in the refinement of this guidance has been a productive process in recent months. We recommend that MassDEP include nonprofit, academic, consultant, and federal agency representatives in wetlands restoration streamlining planning and development of guidance for other restoration techniques as well.

1.0 Salt Marsh Restoration Streamlining:

As the salt marsh restoration guidance document is nearly final, we recommend that MassDEP adopt it as the basis for use of the Ecological Restoration Permit (ERP) pathway under the regulations. The proposed regulations at 310 CMR 10.36(9) allow alterations to LSCSF to facilitate migration of salt marshes and dunes. We support that, but request deletion of the last sentence in that paragraph,

¹⁸ mass.gov/info-details/sea-level-affecting-marshes-model-slammm

¹⁹ acjv.org/saltmarsh-sparrow/overview/

²⁰ epa.gov/snep/navigating-salt-marsh-restoration-massachusetts-challenges-strategies-and-opportunities

“Work in Salt Marsh or Coastal Dune may be proposed under 310 CMR 10.24(8): Ecological Restoration Limited Project.”

We also request deletion of this same sentence at the end of 310 CMR 10.36(8)(g) (Redevelopment in LSCSF). There are other kinds of work in these resource areas that can be permitted under various other regulatory provisions, so the sentence is confusing and misleading.

Instead, **we recommend that language be added to the ERP provision allowing additional categories of restoration to utilize the ERP procedure provided MassDEP has adopted guidance for that category.**

This would enable MassDEP to expand use of the ERP for other categories such as cranberry bog restoration or invasive species removal following completion and approval of guidance, rather than waiting for future regulatory revisions.

Waterways Licenses – Do Not Require for Ditch Remediation:

MassDEP has been requiring Chapter 91 Waterways licenses for ditch remediation, under an interpretation that placement of hay in a ditch constitutes “fill” and is an alteration of an existing structure.

Placing hay in historically installed ditches as part of a salt marsh restoration project should not require a license. DEP has the discretion to allow this work now, under existing regulations:

310 CMR 9.05(3) Activities Not Requiring a License or Permit. Notwithstanding the provisions of 310 CMR 9.05(1) through (2), no license or permit is required for: ... (m): demolition or removal of any unauthorized structures or fill in order to facilitate water dependent use provided prior written approval is obtained from the Department, which, at the discretion of the Department may include prior public notice and comment.

This provision applies for the following reasons:

- Ditches that are being remediated were typically never permitted or licensed;
- Restoration is a water-dependent use; and
- Requiring a license for this work is counterproductive to salt marsh protection, adding costs and delays that will allow the marsh to continue to deteriorate. Therefore, it does not serve the purpose of the Waterways Act.

We recommend that MassDEP issue an opinion letter or policy that confirms the interpretation that this regulatory provision applies and therefore ditch remediation using salt marsh hay and obtaining all other required permits is not subject to permitting or licensing requirements under 310 CMR 9.00.

Other Priority Categories for Restoration Permit Streamlining:

There are several other categories of restoration needed across large areas of the Commonwealth including:

- Invasive species
- Cranberry Bogs and other Agricultural Lands historically ditched, drained, or filled
- Rivers and Riparian Areas

We recommend that MassDEP prioritize the development of guidance for these categories of projects. The ERP regulations should include a provision allowing additional types of restoration to qualify, based on guidance approved by MassDEP. We also encourage MassDEP to work with DER and external experts to develop guidance, and to adapt guidelines and standards developed in other states that are relevant here.

For invasive species, consider expanding the Minor Projects exemptions. For example, consider allowing hand pulling and cutting with hand tools. MassDEP could use its discretionary authority to determine that if the scope and scale of this work is limited with defined parameters and associated guidance, it is not deemed an “alteration” under the Wetlands regulations because nonnative invasive species are not wetland vegetation that the Act intended to protect. MassDEP could also develop a guidance document for more extensive types of invasive plant removal and then allow those projects to proceed under the ERP process.

For cranberry bogs, we recommend working with DER, Mass Audubon and other entities that have already successfully restored cranberry bogs²¹, to develop guidance that then allows use of the ERP process.

Restoration of rivers and riparian areas is another category deserving close attention and development of guidance. The Franklin Regional Council of Governments (FRCOG) is currently developing design templates and guidance documents for certain types of riparian stabilization and floodplain reconnection using nature-based designs. Guidance is also needed on other types of riparian restoration such as daylighting streams that have been buried in culverts or restoring riverfront areas on abandoned industrial sites and vacant urban lots. Guidance for dam removals also need to be updated. The Waterways regulations should be revised to allow installation of instream features such as riffles and root wads.

Monitoring

Guidance is needed on appropriate methods for follow-up monitoring for restoration projects. This should be based on a cost-benefit approach, calibrated to the value of the information gathered. Intensive monitoring is not needed for projects where there is imminent risk of loss to the system, or the natural system has already been so severely degraded that it is not fulfilling significant public interests.

Follow up monitoring should be designed to document that the intended benefits were achieved and identify any unintended negative effects that need follow-up work. The final salt marsh restoration guidance and guidance developed for other categories of restoration should have reasonable and practical monitoring requirements. It should not cost more to monitor than to undertake the planning, design, permitting, and implementation of the restoration project. To the extent that the state is interested in intensive monitoring for research purposes, that work generally should be funded separately from monitoring required to secure permits for beneficial restoration.

²¹ massaudubon.org/places-to-explore/wildlife-sanctuaries/tidmarsh/sanctuary-history

Wetlands Restoration Streamlining Initiative

Beyond the incremental improvements in wetlands restoration permitting that can be achieved within the existing regulatory framework, **we recommend that the state undertake a more comprehensive review. The following summarizes a rough sequence such a program could follow:**

1. Establish an Interagency Wetlands Restoration Streamlining initiative, coordinated by EEA. Include external experts, other stakeholders, and federal and local agencies.
2. Improve coordination and processes across existing permits.
 - a. Establish clear expectations that agencies will provide meaningful, pre and post application consultations to help projects move through the permit process.
 - b. Instruct agencies to communicate with each other and restoration proponents to resolve any conflicting provisions or pinch points a restoration project encounters.
 - c. Utilize expertise in DER to identify ways to smooth the process and for development of guidance documents for specific types of restoration.
3. Expand use of the ERP process, relying on approved guidance documents for application requirements, project review, and conditions.
4. Identify and implement measures to consolidate applications across programs, e.g. through creation of online combined applications. Obtain funding for the IT system necessary to create a consolidated permit.
5. Identify and implement additional procedural, regulatory, and statutory reforms as needed to complete full streamlining.
6. Ultimately, implement streamlined single-stop restoration permitting.

Nature-based Climate Solutions

The proposed coastal provisions at 310 CMR 10.24(1)(b) establish a preference for the use of nature-based designs to protect existing developed coastal areas from the impacts of sea level rise and coastal storms. This should be more than a preference - it should be a requirement unless demonstrated infeasible, similar to the ESSD and LID mandate for stormwater management.

We support prioritizing coastal wetlands restoration and migration, retention and planting of trees and other native vegetation, and the use of “soft” features like vegetated berms and swales over engineered flood control structures like concrete walls. At the same time, MassDEP needs to recognize that there are a wide range of techniques within the broad category of “nature-based solutions,” In both coastal and inland settings. These practices should be encouraged but still regulated carefully, with appropriate guidance. **As noted in the attached survey report from Mass Audubon and CLF, wetlands restoration is distinct from the use of nature-based solutions, and the two types of activities should be regulated differently. True restoration is aimed at restoring a naturally functioning ecosystem, whereas nature-based solutions reduce but do not eliminate the impacts of development.**

LSCSF and Coastal Resiliency

The proposed regulations would, for the first time, create performance standards for work in the coastal floodplain, known as LSCSF. The updates to the Waterways regulations strengthen standards for new

and redevelopment to address future sea level rise. We support the overall approach to the coastal regulations while offering recommendations for refinement.

Support

- Prohibition on new structures in the Velocity Zone, and design requirements for development in other parts of floodplain to ensure that the functionality of the LSCSF to protect the interests of the Wetlands Protection Act remains intact.
- Allowing alteration of coastal floodplain to facilitate salt marsh and dune migration.
- Retention of all existing performance standards for other resource areas such as dune or coastal bank where those resources overlap with LSCSF.
- Waterways requirements for structures to be designed for future sea level rise.

Requested changes for LSCSF – current 1.0 - Provisions needing modification/clarification

- Presumptions of significance (10.36(1) Preamble): The proposed regulations state that LSCSF is likely to be significant to storm damage prevention and flood control. Other interests of the Act should be acknowledged as potentially present depending on site conditions, including wildlife habitat and prevention of pollution. Naturally vegetated, undeveloped coastal floodplain provides important habitat for migratory birds and other species.
- Allowing elevation of roads where necessary to continue essential access, with mitigation for salt marsh impacts. This provision needs to be integrated with a local/district level public planning process. These projects should be allowed to facilitate marsh and dune migration where that is appropriate while protecting existing developed areas from increased flows or velocities. Similar district level planning is also needed for flood protection berms.
- The provision for Scientific Research projects should be clarified and expanded to allow experimentation with nature-based solution designs that are not currently permissible.

Current vs. Future Conditions:

The LSCSF proposed regulations (310 CMR 10.36) rely on the FEMA maps. This does not take sea level rise and erosion rates into consideration. The Waterways regulatory revisions require structures to be designed for future sea level rise conditions. **DEP should consider modifying the proposed LSCSF provisions to better consider future conditions.**

Coastal Resiliency with Nature-based Solutions:

Scientific research projects 310 CMR 10.05(12). – As drafted, this provision is narrow, focusing on deploying scientific research equipment and conducting research. While such projects do need to be allowed, as written it appears impractical for most types of actual research, which often requires multiple years of data to develop meaningful analysis. This provision should be broadened to allow testing of nature-based techniques (e.g. living shoreline designs that are not currently permissible). Experimental nature-based projects that have positive results without significant negative impacts should be allowed to remain in place. The current draft for scientific research requires removal.

Coastal Berms: 310 CMR 10.36(8)(g) The proposed regulations allow construction of berms to protect existing developed areas. This is preferable to armoring. However, such projects need to be part of a

district or neighborhood level plans developed with public input, as is envisioned for the ResilientCoasts Strategy. There needs to be a process for considering and addressing the interactions across adjoining landowner interests. For example, if a conservation-oriented landowner wants to facilitate marsh or dune migration but other property owners want to build a berm to protect against water flowing from the ocean, a process is needed to sort these competing interests out and develop an optimized local plan.

Relocation of roads and railroads: 10.24(7)(c)9. A new Limited Project provision would allow relocation of coastal transportation infrastructure into resource areas other than salt marsh if no alternative (new limited project). This provision requires restoration of the former road or railroad bed to salt marsh or other resource area appropriate to the site, which we support.. However, this provision also needs to address situations where the existing road or railroad bed is acting as a protective berm for existing developed areas. As drafted it prohibits an increase in tidal flows. Increases should be allowed where the road bed has been acting as a tidal restriction in locations where restored flows would be beneficial to salt marsh restoration or migration, provided this would not impact developed areas. A district or neighborhood level planning process is also needed for these projects.

Stormwater Management Updates

MassDEP is proposing a major update to the stormwater management standards and Stormwater Handbook. Mass Audubon strongly supports the key features of this update including:

- Emphasis on nature-based designs using Environmentally Sensitive Design (ESSD) and Low Impact Development (LID) stormwater techniques.
- Increased alignment with the EPA General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (MS4 Permit).
- Replacing outdated precipitation calculation data with the more recent NOAA 14+ data.
- Addition of a new Standard #11 to meet Total Maximum Daily Load (TMDL) requirements in watersheds with impaired water quality.

The updates to the stormwater management standards (310 CMR 10.05(6)(k)-(q) require the use of ESSD and LID unless demonstrated impracticable for the site and project. Impracticable for these purposes is defined as “impossible in practice to do or carry out based solely on physical constraints.” ESSD and LID have many benefits, including retention of natural vegetation and soils, minimization of impervious surfaces, cost-effective treatment to maintain water quality and recharge, and maintenance of natural runoff characteristics to the extent possible. LID features utilize plants and soils to filter, slow, and infiltrate stormwater. An added benefit is that properly designed and maintained LID systems will not create mosquito breeding habitat. In contrast, conventional stormwater systems with structures like catch basins and wet detention basins can hold pools of stagnant water, particularly if not properly maintained. Roads with vertical curbing and catch basins also entrap and kill amphibians. **For all of these reasons we strongly support requirements for use of LID designs wherever possible.**²²

The methods that have been used for calculating stormwater intensities are extremely outdated, based on data from the 1960s and earlier. Storm intensities are increasing with climate change. We support

²² The SNEP Network has many educational resources on LID including Mass Audubon’s bylaw review tool and the New England Stormwater Retrofit Manual. See www.snepnetwork.org.

the update to the NOAA 2014 Atlas using the “plus” approach of the 90th percentile numbers. As newer data continues to become available, and to provide resilience for the design life of projects as storm intensities continue to increase, **flexibility should be retained for conservation commissions to impose newer or more stringent requirements.**

1.0 Recommendations for Stormwater Management

Solar Arrays: The proposed regulations include solar arrays in the definition of Impervious Surfaces, as is appropriate. The Stormwater Handbook includes Section 5.5 on solar array review, and references the MassDEP *Wetlands Program Policy 17-1: Photovoltaic System Solar Array Review*²³, and provides for ESSD credit if certain design parameters are met. The Policy was never subjected to public review and needs to be refined along with the ESSD provisions. The Policy, Handbook section, and ESSD guidelines are not entirely consistent.

As drafted, the guidelines seem to assume that the array is being constructed on a greenfield site with land clearing and grading involved. Solar arrays can also be deployed on areas that have already been developed or otherwise altered. If an array is being constructed on a parking lot or rooftop, there is no increase in impervious surface or pollutant loading. If it is constructed on an existing turfed grass area, stormwater considerations should take that into account along with other characteristics such as the size of the array and slope. The Policy states that peak rate attenuation should be calculated based on the land cover type underneath the array, but this negates the acknowledgement that the arrays are impervious surfaces that concentrate runoff at each drip edge. This effect may be negligible for a small array constructed on an existing, nearly level lawn area or quite significant for a large array on a newly cleared slope (despite attempts to stabilize the soil with seeding). The guidelines also call for seeding with turf grass, but there are situations where other land cover may be more appropriate, e.g. a meadow for pollinator habitat.

We recommend that these provisions be revised to better account for the range of situations and associated degree of impact on stormwater associated with solar arrays. Arrays on already developed lands and small arrays on existing turfed areas should not require stormwater management in most instances.

Gravel Roads: The proposed Wetlands regulations would categorize most gravel roads as impervious surfaces. While we recognize that this is often functionally accurate, we are concerned regarding unintended consequences of requiring rural municipalities and utility companies with service access ways for transmission and other Rights-of-Way (ROW) to install stormwater management systems along these roadways. Given that the stormwater standards will now rely on LID designs as the preferred approach, it may be possible to resolve this by including in the Handbook provisions designed to address these roads. **Simple techniques like roadside swales should be generally preferred over more heavily engineered structures.** The regulations should recognize that utility ROWs receive minimal traffic and traverse broad swaths of undeveloped lands including protected conservation lands owned by federal, state, and local governments, private land trusts, and private lands with Conservation Restrictions.

²³ mass.gov/info-details/massdep-wetlands-program-policy-17-1-photovoltaic-system-solar-array-review

Stormwater management features in such settings should not be overly intrusive, and should be protective of wildlife including amphibians, turtles, and other small animals that can become trapped in constructed stormwater features.

We recognize that MassDEP is receiving many technical comments on the proposed updates to the stormwater management standards and Handbook. We recommend that the main changes to the standards (updated precipitation calculation methods, addition of Standard #11 for TMDLs, and the required use of ESSD and LID) be adopted in final regulations as soon as possible. Consider moving details such as methodologies and the crosswalk table into the Handbook. The effective date of the new stormwater provisions may need to be extended to provide time to address all comments, finalize the Handbook, and conduct training for conservation commissions and consultants. **By simplifying the level of detail in the regulations, MassDEP can finalize the regulations sooner rather than later, while providing more flexibility for further refinements of the Handbook over time.**

Trails

The proposed new limited project for Shared Use Paths is too narrowly focused only on public multi-use trails on former railroad beds. There are many other trails, often narrow footpaths, on public lands as well as nonprofit land trust lands, open to public use. **MassDEP should develop, in consultation with entities that build and maintain trails, guidelines for both maintenance of existing trails and construction of new trails.**

For existing trails traversing wetlands, where impacts are occurring due to trampling and the trail cannot be readily rerouted across adjoining upland, MassDEP should allow some forms of trail stabilization as remediation, without the need for complex permitting. For example, placement of puncheons, low wood structures that allow water to flow underneath while halting ongoing trampling impacts should be allowed. This is different than new trail construction where alternatives to wetland crossings should be considered and unavoidable crossings may require elevated boardwalks or other features that allow wetland vegetation to continue to grow underneath.

Mosquito Control – Wetlands Restoration and Low Impact Development (LID)

Healthy, diverse wetlands support a variety of aquatic life, including mosquito predators such as fish, predatory beetles, and dragonflies (both larval and adult). In contrast, stagnant ditches, poorly maintained stormwater systems, and degraded wetlands are more likely to breed large numbers of mosquitoes while not supporting fish and other mosquito predators. Mosquito Control Districts (MCDs) can partner with wetlands restoration projects and assist with work such as runneling in salt marshes, restoration of cranberry bogs that are no longer in production, or replacement of culverts that are blocking stream flows and fish passage. The report of the Mosquito Control for the Twenty-First Century Task Force recognized the potential to expand these partnerships, and recommended increased cooperation and collaborations between MCDs, DER, and wetlands restoration projects²⁴. MCDs are

²⁴ mass.gov/orgs/mosquito-control-for-the-twenty-first-century-task-force

exempt from the Wetlands Protection Act but not 401 Water Quality Certification or Waterways permitting or various other laws such as the Massachusetts Endangered Species Act (MESA).

As noted above, we also support the stormwater regulatory updates requiring the use of ESSD and LID stormwater management techniques wherever possible. LID designs do not create mosquito breeding habitat, unlike conventional stormwater systems with features like catch basins and wet detention basins that can hold pools of stagnant water particularly if not properly maintained. The Stormwater Handbook includes a section (5.4) on mosquito control and Stormwater Management Practices. This includes information about how ESSD can help avoid creation of mosquito breeding habitat, and recommendations for management of structural control measures that can create mosquito habitat if not properly managed and maintained. We recommend that the final Handbook more clearly describe the benefits of LID designs in avoiding creation of mosquito habitat, and connect that more directly with the new requirements to utilize ESSD and LID unless that is infeasible at a particular site.

2.0 Mosquito Control Recommendations: We recommend that MassDEP explore opportunities to further enhance cooperation between MCDs and wetlands restoration projects in the 2.0 process. We also recommend educational outreach and development of cooperative informational partnerships on the use and benefits of ESSD and LID for and with MCDs, Departments of Public Works, Planning Boards, Boards of Health, other local officials, and local and regional environmental nonprofit organizations.

Future Climate Resilience 2.0

Mass Audubon appreciates MassDEP's commitment to undertaking another regulatory review process to further improve climate resiliency. We look forward to participating in that process. As noted above, we have identified the following priorities for the 2.0 regulatory review (and beyond):

- Comprehensive review of streamlining for restoration projects, both coastal and inland. As noted above, this should be coordinated by EEA and include multiple agencies including MassDEP. The goal should be a single application, coordinated interagency review process, with a combined permit issued relatively quickly (e.g., within 3 months of complete application). See above comments for interim steps including expansion of the ERP process with guidance on additional categories of restoration and improved interagency coordination processes with restoration proponents.
- New provisions are needed to allow living shorelines and other nature-based solutions that are hard or impossible to permit now. This applies to both coastal and inland settings.
- The 2.0 process should also explore more broadly opportunities to align programs across agencies to improve resiliency and advance the use of LID in all forms of development.

Support for Input from Experts

Mass Audubon has conferred extensively with other organizations involved in protection and restoration of wetlands and waterways in developing these comments, including the Massachusetts Association of Conservation Commissions (MACC), Massachusetts Society of Municipal Conservation Professionals (MSMCP), Association of Massachusetts Wetland Scientists (AMWS), and the Massachusetts Rivers Alliance. Those organizations are submitting comments that include more specific comments on the

stormwater management standards and guidelines and other provisions. We generally support those other comments.

Over the past two plus years, we've been meeting with salt marsh restoration experts and practitioners. In 2023, Mass Audubon conducted a survey on wetlands restoration and nature-based solutions (NBS) with the Conservation Law Foundation, and the report from that survey is attached with these comments.

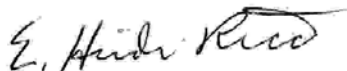
Mass Audubon is also co-signer to three comment letters on streamlining permitting for Salt Marsh Restoration and Ecological Wetlands Restoration more generally, and on ecologically-based mosquito control using wetlands restoration and LID.

We encourage MassDEP to continue to strengthen its collaborations with other state agencies including MassWildlife and the Division of Ecological Restoration (DER), federal agencies (e.g. USFWS, NOAA, EPA), municipalities, nonprofit organizations, academic and other experts, and stakeholders in the 2.0 process and beyond.

Conclusion

In conclusion, Mass Audubon commends MassDEP for the climate resiliency regulatory reforms proposed in the 1.0 package. We recommend that MassDEP refine and simplify these updates while moving extensive details into guidance documents. We look forward to participating in the 2.0 process.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Heidi Ricci". The signature is fluid and cursive, with a prominent flourish at the end.

E. Heidi Ricci
Director of Policy and Advocacy



Conservation
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Mass Audubon

Barriers to Wetlands Restoration and Nature-based Solutions Projects in Massachusetts

Research Memo: Survey and Interview Findings

February 2024

Introduction

Massachusetts is a leader in coastal and inland wetlands restoration¹ and the application of nature-based solutions (NBS)² projects. However, practitioners have increasingly recognized that permitting and regulatory systems designed to minimize impacts of development on natural resources can be counterproductive to supporting critical projects that benefit the environment and communities. This issue is made all the more urgent due to sea level rise, increasing storm intensities, and other rapidly increasing impacts of the climate crisis. NBS projects are critically needed to help adapt to these climate impacts, and action is needed now to revitalize remaining salt marshes, wetlands, and other natural resources before they are irreversibly lost. NBS projects also serve as a favorable alternative to hard-engineered structures (like sea walls) that further degrade and harm our natural resource areas.

To better understand these challenges and possible solutions, CLF and Mass Audubon conducted research on regulatory and other barriers to these projects in Massachusetts. Our objective was to identify real and perceived barriers to permitting and constructing wetlands restoration and NBS projects to understand what statutory, regulatory, or policy changes are needed to streamline and accelerate this beneficial work. Between May and August 2023 we collected information in an online survey that received 139 responses, conducted ten practitioner interviews, and gathered additional background research.

This document details our findings from this research effort. It includes each question as it was asked in the survey and a summary of the survey responses, and is supplemented with additional information gathered during the interviews. It is important to note that for many questions in the survey, respondents could select multiple answers, so numbers in the charts will often not add up to the total

¹ We refer to a definition of wetlands restoration that is derived from the state Wetlands Protection Act regulations at 310 CMR 10.05: *Wetlands Ecological Restoration Project means a project whose primary purpose is to restore or otherwise improve the natural capacity of a Wetland Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. The term Wetlands Ecological Restoration Project shall not include projects specifically intended to provide mitigation for the alteration of a Resource Area authorized by other state permits other than projects implemented pursuant to a US Army Corps of Engineers approved in-lien fee program.* This is a process-based definition that focuses on restoring previously destroyed or impaired systems so that they can provide functions with little to no ongoing human intervention.

² A working definition of nature-based solutions that we used throughout this research process is: *Nature-based solutions are strategies that rely on ecological processes to achieve climate resilience objectives. They restore, protect, and/or manage natural systems and/or mimic natural processes to address hazards like flooding, erosion, drought, and heat islands in ways that are cost-effective, low maintenance, and multi-beneficial for public health, safety, and well-being.* NBS may include wetlands restoration as well as additional, broader types of projects, including constructed features. We did not provide a definition of NBS in the survey, but did ask respondents if they had one (page 7).



number of respondents. We also include a section summarizing research into how other states have approached these permitting questions. At a high level, our research identified the following challenges:

Regulatory challenges:

- Overall, applying the same requirements to restoration and NBS as to development is counterproductive.
- The definition and interpretation of “fill” and how it is treated under the Wetlands Protection Act (and to a lesser extent Chapter 91) can be either prohibitive or unclear.
- The list of project types that are eligible for the Ecological Restoration Project Order of Conditions is too narrow and should be expanded.
- The Area of Critical Environmental Concern (ACEC) designation often restricts or complicates permitting of projects that would have positive effects.

Other permitting challenges:

- Inconsistency in agency interpretation and application of regulations can lead to confusion and added time and cost in the permitting process.
- Some restoration and NBS projects include innovative techniques that regulators are less familiar with and may be hesitant to permit.
- Grant timelines are often misaligned with permitting timelines, making it difficult to fund this work.
- Multiple permits required for the same restoration work increases time, cost, and complexity for both applicants and regulatory agencies.

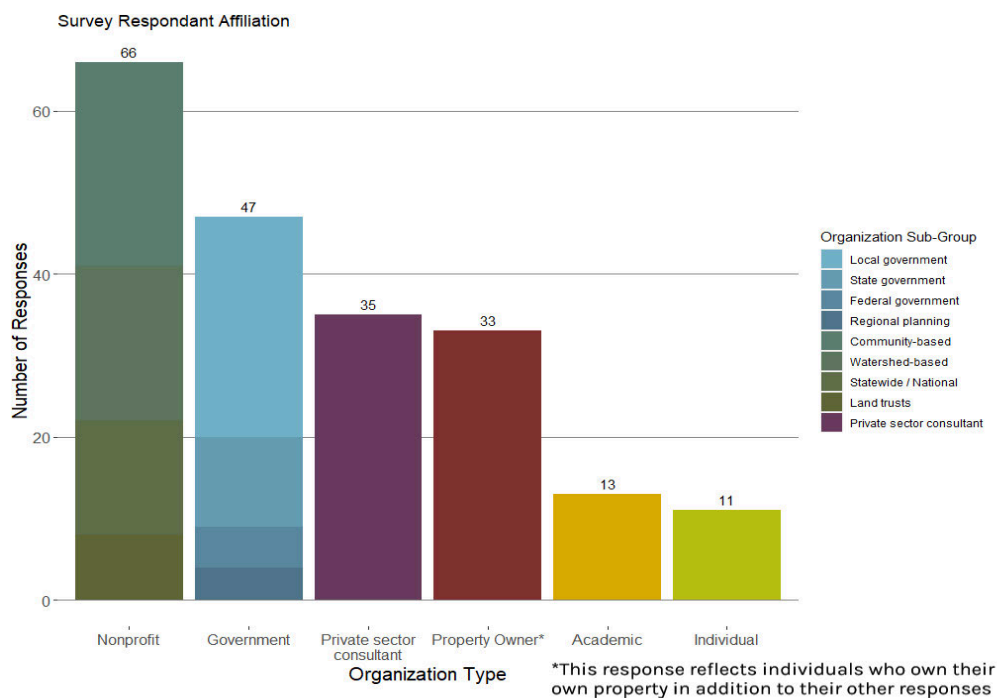
Research Findings

What type of stakeholder do you identify as?

The survey had 139 responses in total, representing 112 individual organizations or agencies.³ Respondents could select multiple stakeholder types, and many did (Figure 1). We also asked for specific affiliation (i.e. name of organization). We further interviewed 10 stakeholders who represented NGOs, conservation commissions, state and federal agencies, and the private sector.

³ Some respondents were unaffiliated.

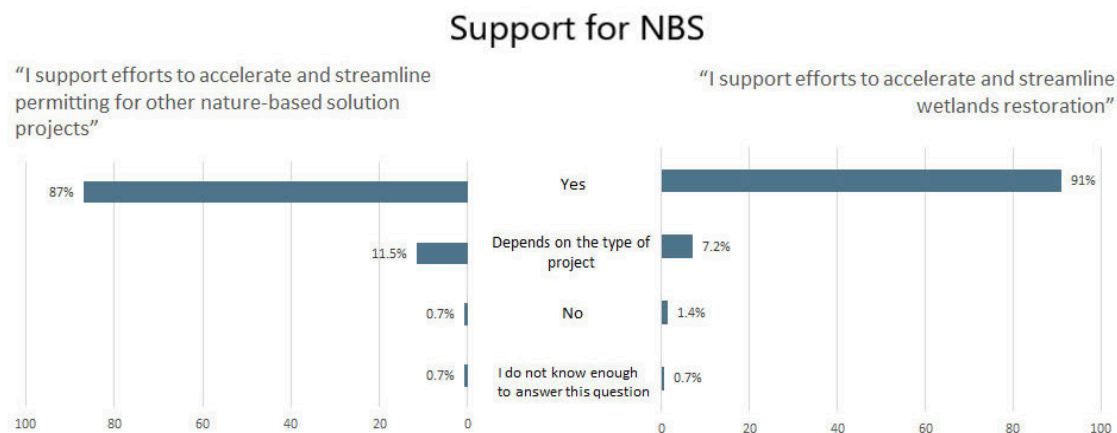
Figure 1.



I support efforts to accelerate and streamline permitting for wetlands restoration/other types of nature-based solutions.

The responses to this question clearly illustrate that NBS and restoration work is widely conducted and supported throughout the state (Figure 2). The NBS version of the question had slightly more variation in responses, which likely reflects the lack of clear understanding about what constitutes NBS work. See page 8 for further discussion of defining NBS.

Figure 2.





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What kind of nature-based solution projects do you work on or support?

Survey respondents were asked what type of projects they work on or generally support, and could select multiple answers. It is useful to group projects by type as shown in Figures 3-6 below. Wetlands restoration, both coastal/salt marsh and inland, ranked highly as common answers. Vegetation management, particularly invasive plant removal, was the most common response overall. The responses also included projects that are not common right now due to regulatory restrictions but that nonetheless ranked highly and therefore seem to reflect a need and desire for this kind of work. For example, despite being the second most common type of coastal restoration project identified, living shorelines can be difficult to permit because of the complexity of using fill under the Wetlands Protection Act, Section 401 and 404 permits.

Figure 3.

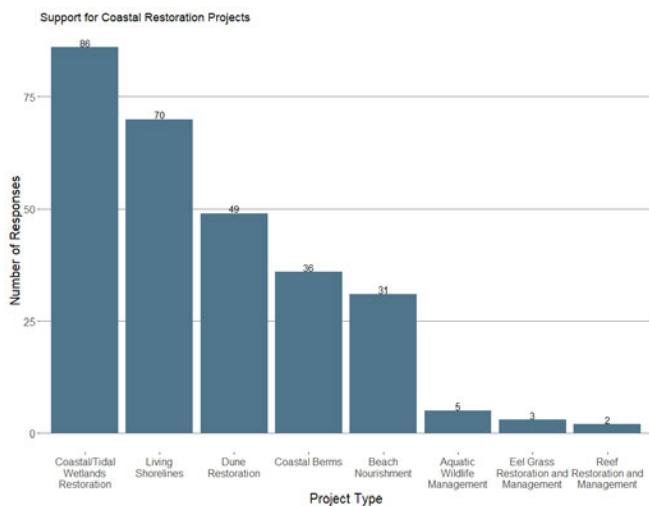


Figure 4.

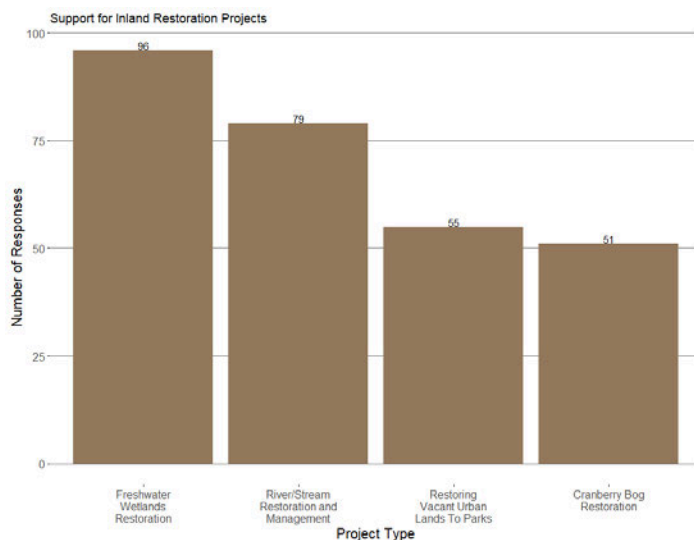
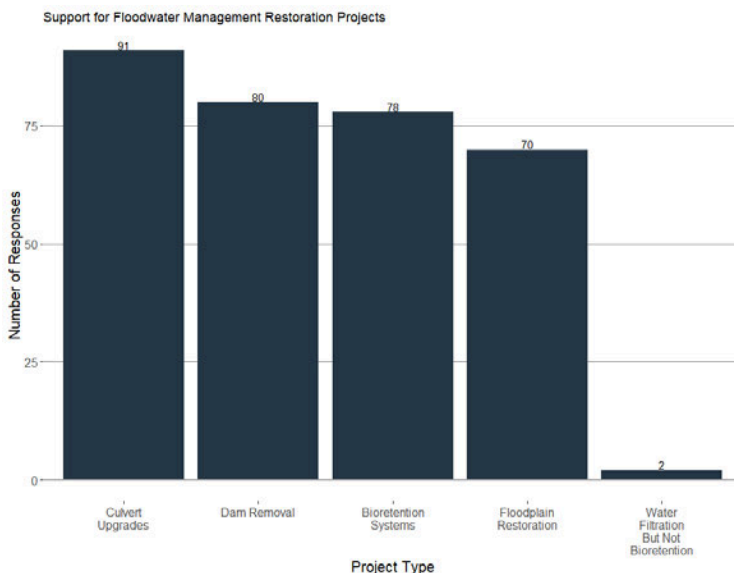
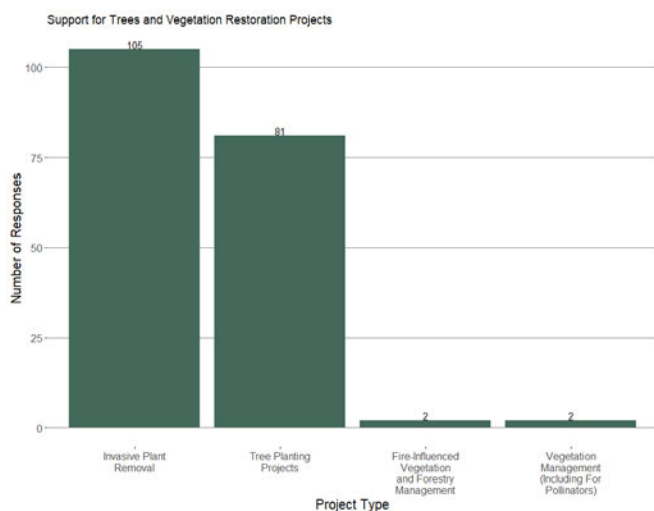


Figure 5.

Figure 6.





Interview respondents further discussed the following project types and techniques:

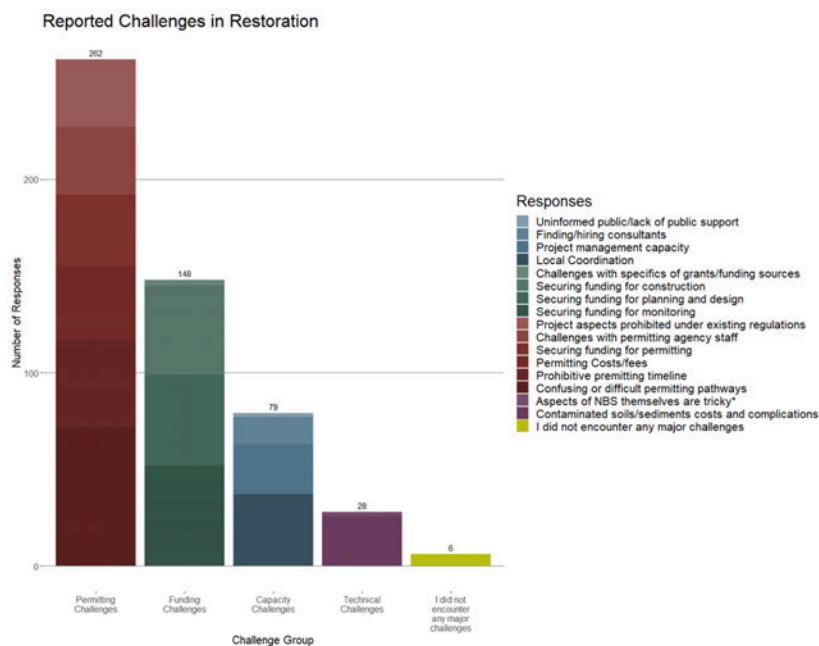
- Salt marsh restoration
- Dam removal
- Vegetation management
- Erosion control (at freshwater ponds)
- Cranberry bogs
- Calcareous fens
- Living levies
- Floodplain restoration
- Runneling, micro-runneling
- Ditch remediation
- Micro-topography
- Chop-and-drop
- Thin layer placement/deposition
- Herbicides

In the interviews, we also asked what kind of NBS projects respondents saw as top priorities or the most important kinds of projects to advance quickly or scale up. Most of the interviewees (6 out of 10) specifically identified salt marsh restoration as a type of project that is most important to advance, given the Metonic cycle and the short window of opportunity to repair damage and head off further destruction. Dam removal and cranberry bogs were other common project types cited by interviewees, and many interviewees expressed a need to focus on inland NBS and restoration projects as well as coastal. Another common response given by interviewees was the need to scale up newer or less common techniques that are innovative and cost-effective. Some examples specifically referenced by interviewees include “chop-and-drop” for river restoration – allowing trees to fall into rivers to direct the flow of water and help build up sediment – and runneling and ditch remediation for salt marsh restoration.

If you have experience working on one or more nature-based solution projects, what were the challenges you encountered? Check all that apply.

In the survey, more than half of the respondents identified “confusing or difficult permitting pathways” as a challenge; this was the most common answer and was also reflected in the following open-ended question where we asked respondents what their single biggest challenge was.

Over a third of respondents identified securing funding for various project stages as a challenge. This too was highlighted in the response to the open-ended question, as exemplified in one response which read *“Possibly the biggest challenge is funding - especially if it needs to be secured from multiple sources which may have their own timelines and restrictions (eg. cannot use*





mitigation funds, requires X% match, what format that match can be).”

Other themes that appeared in the responses to this question are around coordinating between agencies, challenges at the local level (i.e. resource and capacity challenges, challenges working with conservation commissions), and needing to educate both the general public and regulators.

The interviews corroborated these survey findings. We asked respondents to walk us through the permitting process for specific projects, which highlighted challenges related to the length of time and funding for projects. Based on our interview findings, it can take two or more years just to receive all necessary permits for a project, and there is significant variation in how long it can take even similar projects to move through the permitting process. It is rarely clear when starting a project just how long it will take, and this can lead to significant funding challenges since these projects are often funded by grants that must be spent down by a certain time.

Many interviewees also discussed challenges related to lack of coordination and consistency on the part of agencies. For example, multiple respondents referenced having a project successfully move through permitting in one part of the state, but having a similar project denied by the DEP office in another region of the state due to different interpretation of the regulations (most often the Wetlands Protection Act and Chapter 91). For example:

- *“I know that there is variability within the state among the different regions and how things are approached and that can be a significant factor, so there’s not always consensus between the various DEP regions on approaches. Even among the section chiefs in the northeast and southeast regions...they don’t always apply the same standards the same way.”*
- *“Chapter 91 is the same way, where Western region DEP interprets navigable waters very differently.”*
- *“I’ve also noticed that in terms of...understanding the goals of restoration and wanting to make restoration projects go forward, it seems like the on the ground staff like the circuit riders in the regions of DEP, are very different in terms of how they approach that than the top folks at DEP are.”*
- *“Each DEP District is a little bit different and the real difficulty that we’re finding...is each Conservation Commission is different.”*

Interview respondents also highlighted the fact that some NBS and restoration techniques (i.e. ditch remediation) may be innovative, less well-established approaches, and that these are often difficult to permit, due to regulators being unfamiliar with the work.

What is the single biggest challenge you face in working on nature-based solutions projects?

In an effort to hone in on the most pressing challenges, the survey asked respondents in an open-ended question about the single biggest challenge they face in working on NBS and restoration projects. Most answers discussed permitting, funding, and regulations; the words “permitting” or “permit” were used 28 times, “regulations” or “regulatory” 17 times, and words like “funding,” “fund,” and “cost” were also used 17 times.



There was also an evident theme around a lack of education and awareness of NBS, and how this related to challenges. Some answers to the “single biggest challenge” question that highlighted this theme include:

- “...public perception regarding restoration (negative views of seeing landscapes change, even if the change is an ecological improvement)”
- “Permitting authorities don't know much about NBS, and are more likely to say no to something they haven't seen (i.e., some reviewers treat NBS, Green Infrastructure, and restorative projects as if they are development to be mitigated). Seems like the “luck of the draw” with respect to who is reviewing and what pre-knowledge they have of nature-based solutions.”
- “Not enough technical expertise in nonprofits and small towns who are most often the groups able to drive decision making”

If you have experience working on or supporting one or more nature-based solution projects, which of the following regulatory structures have posed a barrier? If you indicated that any specific regulatory structure above posed a barrier to your project, please provide us with more information about the challenges you encountered.

In the survey, the Wetlands Protection Act was identified as the regulatory framework that poses the most challenges to proponents. Chapter 91 was the second most commonly identified, closely followed by local bylaws/ordinances. MEPA and federal regulations were also identified as challenges.

Table 1. Regulatory frameworks ranked by which respondents found most challenging.

Type	Count	Percent
Wetlands Protection Act	56	50.0%
Chapter 91/tidelands	37	33.0%
Local bylaws/ordinances	36	32.1%
Massachusetts Environmental Policy Act (MEPA)	32	28.6%
Federal laws/regulations (including Army Corp permits)	32	28.6%
Areas of Critical Environmental Concern (ACEC)	22	19.6%
Massachusetts Endangered Species Act	17	15.2%
Historic preservation requirements	17	15.2%
Designated Port Area (DPA) regulations	5	4.5%
401 Water Quality Certification	4	3.6%
Article 97	2	1.8%
Pesticides	1	0.9%
NHESP (Natural Heritage and Endangered Species Program)	1	0.9%

We asked a different version of this question in the interviews (“Can you talk about what kind of projects, in your experience, are tricky/onerous to permit?”) to hone in on more specific challenges. Among interviewees, the most common responses were salt marsh projects, work in ACECs, and dam removals. Respondents said that any project involving a salt marsh or within an ACEC was likely to be challenging to permit because of Wetlands Protection Act restrictions on activity in these areas. Dam



removals were also mentioned, because of the complexity and number of permits involved, particularly if contaminated sediment is present. Further challenges identified in the interviews are discussed below, organized by regulatory framework.

401 Water Quality Certification

- The 401 Water Quality Certification was identified by a few people as a process that was particularly unclear. There was confusion as to what information needed to be submitted, and also inconsistency and changes in agency interpretation due to staff turnover (“There’s been a changeover in staff recently [and] we’ve really encountered some challenges recently in the 401 process that we thought were put to bed.”)

Areas of Critical Environmental Concern (ACECs)

- Multiple interviewees described challenges with working on projects in ACECs. The challenge seems to primarily be with the Wetlands Protection Act regulations on activities within ACECs, rather than with the ACEC regulations (301 CMR 12), and proponents found that nearly all activity in ACECs is effectively prohibited, even when the purpose is restoration or protection of the resource.

Chapter 91

- A major barrier identified relating to Chapter 91 was how fill is defined and treated. “Fill” is defined in Chapter 91 as “any unconsolidated material that is confined or expected to remain in place in a waterway, except for: material placed by natural processes not caused by the owner or a predecessor in interest; material placed on a beach for beach nourishment purposes; and dredged material placed below the low water mark for purposes of subaqueous disposal.” This has been interpreted by DEP, for example, to include even placing salt marsh hay, from the same marsh, into historically dug ditches that were never permitted nor licensed, in order to promote natural healing of the marsh.
- One interviewee said that DEP interpretation of Chapter 91 regulations can vary significantly by region. One specific example given was related to the Chapter 91 definition of “navigable” regarding an exception from Chapter 91 jurisdiction, which excludes “any portion of any such river or stream which is not normally navigable during any season, by any vessel including canoe, kayak, raft, or rowboat.”

Wetlands Protection Act

- The definition of fill under the WPA is very broad, it simply reads “Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.” A number of interviewees identified the WPA’s treatment of fill as a challenge, as it imposes overly onerous permitting requirements on a lot of restoration techniques, such as ditch remediation and microtopography.
- There are only six types of projects that are eligible for a Restoration Order of Conditions under the Ecological Restoration Project criteria. These are dam removal, freshwater stream crossing repair and replacement projects, stream daylighting, tidal restoration, rare species habitat restoration, and restoring fish passageways. A common theme throughout the interviews was that many of the project types that practitioners are working on, and feel are important to



advance quickly or scale up, are not on this list. Specific examples of projects that should be added are salt marsh restoration, river restoration, and cranberry bog restoration.

- As stated above, WPA restrictions on activities relating to ACECs were identified as a current challenge.

We also asked interviewees *“If you could design a wetlands restoration permitting system with a blank slate, what would you suggest that would provide efficiency without reducing environmental protection? Would your suggestions differ if it was a different type of nature-based solution, like a living shoreline?”* In general, there was a common thread among responses that the current regulatory frameworks do need at least some targeted revisions in order to best support restoration and nature-based solutions work. By and large, however, broader frustrations seemed to be with inconsistent agency interpretation of the regulations; lack of availability of clear and consistent early consultation and guidance; and confusion and difficulty with navigating the permitting process. For example, some interviewees emphasized the need for partnership and improved communication and engagement with regulatory agencies, while others suggested adaptations to existing frameworks such as MEPA. Some selected quotes include:

- *“It would be a single unified application ... where a decision is issued in three months, or else it's presumptive approval. I think I would use MEPA for the process and just expand it instead of being a permit coordination, they could be the permitting system you already have.”*
- *“Quite frankly, it's not just simply tweaking how the regulatory world operates and the applicants work, but more literally a true partnership.”*
- *“We need a new model that says we're gonna work together to solve the problem, pool our land pool, our resources, our knowledge.”*
- *“The permitting system, the regulatory system needs to allow innovation to proceed, but not just give it a blank check.”*

Some key elements that were mentioned were: better adherence to turnaround times; having a review system that was flexible and could accommodate new techniques and project types (“plans should be mostly based on goals and objectives, not strict engineering/design plans”); and having reviewers who were well-versed and experienced in the topics at hand (“having people that are ... a little bit more immersed in this world and have an understanding of what needs to happen”).

Does your organization have a definition for "nature-based solution" projects and if so what is it?

Very few of the survey respondents provided definitions, and nearly all said their agency or organization does not have a formal or official definition. Some listed project examples but didn't provide a full definition. Those who did provide some form of definition typically had very broad answers, and some acknowledged that their own definitions often changed.

This is a particular challenge for this work moving forward. A working definition that Mass Audubon and CLF have been using is: *“Nature-based solutions are strategies that rely on ecological processes to achieve climate resilience objectives. They restore, protect, and/or manage natural systems and/or mimic natural processes to address hazards like flooding, erosion, drought, and heat islands in ways*



that are cost-effective, low maintenance, and multi-beneficial for public health, safety, and well-being.”⁴ A specific and encompassing definition of nature-based solutions is needed so that regulatory frameworks like the Wetlands Protection Act and others can be sufficiently protective of the environment while efficiently supporting the expansion of beneficial NBS and restoration work. The existing regulatory definition of wetlands Ecological Restoration projects, focused on restoring damaged or destroyed wetlands for natural functionality, remains valid.

Best practices from other states

In addition to the survey and interviews, we also conducted research into how other states are approaching permitting for NBS and restoration projects. There is an effort underway at the moment to examine this very question at a national level, which is being led by the Environmental Policy Innovation Center (EPIC). EPIC identified five main pathways through which states have been addressing this question: 1) through executive order or state legislation, 2) through categorical exclusion or streamlined permits that allow one analysis to cover all subsequent activities of a project, 3) a programmatic biological option which “streamlines permits for multiple similar actions for a region or for a particular species,” 4) the use of nationwide or regional permits such as Army Corps of Engineer general permits being used to streamline permitting for applicable projects under Section 404 of the Clean Water Act, and 5) creating a dedicated or rapid response permit review team.⁵ This approach to “Funding Nature not Paperwork” offers many benefits both on the ground and for efficiencies for both regulators and restoration practitioners.

Conclusion

Our findings from this research fit into a few main themes. In the short term, improved coordination is needed to resolve inconsistencies in agency interpretation and application of regulations, provide certainty and clarity, prioritize the use of NBS over hard engineering structures, and reduce time and cost in the permitting process. Agencies should work together and with external experts to streamline the permit application process and eliminate redundancies. In the longer term, agencies should create new or expanded regulatory pathways to best manage NBS and restoration work. This could include support (with appropriate oversight) for new, innovative techniques and the use of general permits for certain eligible NBS projects.

⁴ There is an existing definition of “nature-based solutions” in MGL Chapter 21N which is “*strategies that conserve, create, restore and employ natural resources to enhance climate adaptation, resilience and mitigation to mimic natural processes or work in tandem with man-made engineering approaches to address natural hazards like flooding, erosion, drought and heat islands and to maintain healthy natural cycles to sequester and maintain carbon and other greenhouse gases.*” A key difference is that this definition includes engineered structures, whereas we would prefer to focus permit streamlining on techniques that function using natural systems of soils and plants. We do acknowledge that some require engineering for initial design, e.g. coastal vegetated berms or nearshore sills to protect living shorelines from waves.

⁵ Environmental Policy Innovation Center, “Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting,” available at: <https://www.policyinnovation.org/publications/funding-nature-not-paperwork-policy-and-programmatic-pathways-to-speed-restoration-permitting>



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Throughout this research process, we heard repeatedly from stakeholders that improving the regulatory landscape for NBS and restoration projects, and better supporting this important work, was extremely important to them. The number of survey responses and level of engagement we encountered throughout this work indicates a consensus around just how critical this work is. It is also a matter of urgency given the increasing severity of climate impacts and the brief window of opportunity that exists to protect existing natural resources and strengthen the resiliency of the Commonwealth.

A bold new approach is needed to achieve efficiencies and scale up the work to meet the scope of the needs.⁶ This is essential both to fulfill the goals of the ResilientMass Plan and the Executive Order 168 on Biodiversity, and to best prepare the Commonwealth for the impacts of climate change. Incremental improvements could be made in specific programs and specific regulatory provisions through improved consultation opportunities, guidance documents, and regulatory refinements. We recommend that the Commonwealth consider the implications of the findings of this survey and the results being achieved in other states, and consider a high level, comprehensive approach to streamlining wetlands restoration and NBS, coordinated through the Executive Office of Energy and Environmental Affairs.

For more information contact: Heidi Ricci, Mass Audubon hricci@massaudubon.org; Deanna Moran, Conservation Law Foundation dmoran@clf.org.

⁶ 16,000 acres of salt marsh needing restoration; 3,000 dams - many obsolete and in poor repair; 25,000 culverts - with a high percentage not adequate for current storm flows and blocking fish passage; thousands of acres of cranberry bogs no longer in production; 1,500 miles of coastline and thousands of river miles needing natural resiliency features.

Wetlands-401 Resilience Comments

Randall Lyons <randall@boatma.com>

Mon 2/19/2024 9:36 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>
Cc: Jamy Madeja Buchanan <jmadeja@buchananassociates.com>; Marie Hayward <marie@boatdoc.com>

 1 attachments (804 KB)

MMTA Combined Comment Letter.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern,

The Massachusetts Marine Trades Association (MMTA) is pleased to provide the attached comment letter concerning the recently proposed revisions to the Wetlands regulations and corresponding revisions to the 401WQC regulations.

Within the comment letter we have addressed our significant concerns with these new proposed regulations. Some of our immediate follow up questions are as follows:

- *What type of submission is anticipated for a complete application under the proposed Waterways requirement to “adequately consider” sea level rise and climate change, and what data can be relied upon?*
- *What would be the standard to apply for a Waterways license to be granted or renewed if these proposed regulations are enacted?*
- *What would the standard be for Conservation Commissions to apply in debating whether docks, piers and floats “may” be approved in Land Subject to Coastal Storm Flowage?*
- *How would the new proposed standards for Land Subject to Coastal Storm Flowage be imposed on sites which have both developed and undeveloped areas on the same site?*
- *What exactly is the newly proposed limited project exception for relocating Water Dependent Uses and what is the standard of review*

*We have submitted these questions in advance of the upcoming 3 virtual office hour sessions being held over the next couple months.

Copied on this email

- MMTA President Marie Hayward from New England Marine Documentation
- Jamy B. Madeja; Esq. from Buchanan & Associates representing the MMTA

Blind copied on this email

- MMTA Boating Caucus members including approximately 60 representatives from both the House and Senate

Thank you in advance for your consideration related to the attached comment letter and our concerns related to the proposed regulation changes.

Randall M. Lyons, CMM

Executive Director

Massachusetts Marine Trades Association

(774) 404-8005

Main Association page: www.boatma.com

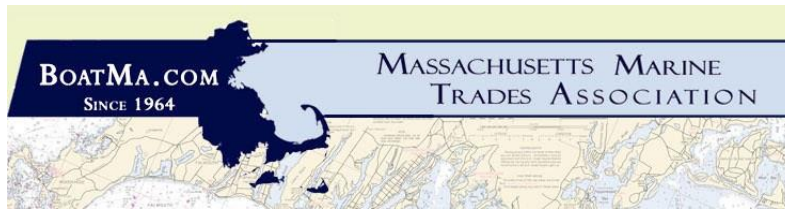
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MASSACHUSETTS
MARINE TRADES
ASSOCIATION



Industry growth through Collaboration, Communication & Education



Industry growth through Collaboration, Communication and Education

February 13, 2024

Via Emails (copy to each): dep.wetlands@mass.gov, must include Wetlands-401 Resilience Comments in the subject line; dep.waterways@mass.gov, must include Waterways Resilience Comments in the subject line

Dear MassDEP Waterways, Wetlands and Other Interested Parties:

On behalf of the Massachusetts Marine Trades Association (MMTA), we thank you for the opportunity to comment on four different yet related proposed regulatory changes all released December 22, 2024 concerning “Resilience from Coastal and Inland Flooding.”. We note the effort to address some water dependent uses in some ways, for which we are grateful, especially to the managers and staff who tried to help us educate our members quickly in January. We also appreciate the extension of the comment period until April 30, 2024, and may submit additional comments after participating in the newly scheduled working informational meetings.

Collectively, these proposed regulations if enacted “as is” would more than likely make recreational boating facilities unfinanceable overnight, due to the uncertainty of being allowed to continue to operate in future years, even without any new buildings, docks or piers, and especially with them. The absence of reliable permit requirements would also impact insurability of existing facilities and operations.

These comments are combined because the Waterways regulations import the Wetlands regulations by requiring a Wetlands Order of Conditions before any Waterways application will be considered a ‘complete application.’ They are also combined because the Gubernatorial press release addressed all the proposed changes as a package, and we fear all may be advanced in one premature package.¹

¹ Announced Proposals December 22, 2023 Gubernatorial Press Release: [Healey-Driscoll Administration Proposes Regulations to Strengthen Resilience from Coastal and Inland Flooding | Mass.gov](https://www.mass.gov/news/healey-driscoll-administration-proposes-regulations-to-strengthen-resilience-from-coastal-and-inland-flooding)

BOSTON — The Massachusetts Department of Environmental Protection (MassDEP) today issued draft regulations to strengthen wetlands and stormwater resilience by providing flood control and preventing storm damage to shorelines and infrastructure from the impacts of climate change. The proposed regulations will help protect areas vulnerable to sea-level rise and storm surge, promote nature-based solutions to flooding, streamline certain permitting processes, and use updated precipitation data to inform decision-making...The regulations are proposed under the Wetlands Protection Act and the Massachusetts Public Waterfront Act. MassDEP will accept comments on the draft regulations until March 1, 2024. ...“Data tells us that inland and coastal flooding are two of the biggest threats to Massachusetts. The storms we saw this summer showed us that there is no time to waste,” **said Energy and Environmental Affairs Secretary Rebecca Tepper**. “These updates strike a balance to preserve and protect development along our waterways. These changes also present Massachusetts with another opportunity to lead – we’re promoting the most cutting-edge nature-based solutions along our coastlines.” ...“We cannot continue a ‘business-as-usual’ approach if we want to build more resilient communities,” **said MassDEP Commissioner Bonnie Heiple**. “With these regulations, we’ve integrated the latest science and green infrastructure techniques to mitigate climate change impacts and protect residents, municipalities, and businesses from costly rebuilding efforts. MassDEP is grateful for the engagement of stakeholders and agencies in developing this proposal and looks forward to continued feedback on

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About MMTA and Our Perspective

Established in 1964, MMTA is the statewide, non-profit, representative body for over 1,000 marine trades businesses in the Commonwealth. Our businesses employ just under 20,000 men and women and generate over \$5 billion in direct and indirect annual economic activity for Massachusetts. MMTA's mission is to provide the framework for furthering the interests of the marine trades and the boating public through the promotion of boating, participation in legislation and workforce development programs.

The recreational boating/marine industry contributes positively and significantly to the economic strength and quality of life enjoyed in Massachusetts. The 'business of boating' provides jobs, economic opportunity, public access to our precious waterways, improves aesthetics of inland and coastal waters and supports environmental stewardship while promoting a family-friendly form of recreation and tourism. One of the Massachusetts Marine Trades Association's top priorities is to stem the exodus of recreational boating businesses from the Commonwealth and the loss of waters-edge usage for recreational boating purposes. We actualize the Public Trust Rights to navigate the waterways, and our jobs and our industry of recreational boating generates over \$5 billion in direct and indirect revenue for the Commonwealth. Boating gives families without the resources to purchase waterfront property the opportunity to exercise their public trust rights and enjoy the Massachusetts coast and harbors. While doing so, Massachusetts boaters and those transiting through our waters substantially invest in their destination ports by patronizing shops, restaurants, retailers, fuel sellers and often hotels and resorts. In fact, every \$1 spent on dockage equates to close to \$4 to the local community where those boaters are visiting. The waterfront communities are dependent upon the annual financial boost boaters bring to their local economies.

It is also our perspective that it is dangerous and serious when an element of the government proposes to ban and prohibit what people want to do for themselves and are capable of doing safely. Setting safety standards and engineering requirements and building codes is an entirely rational governmental function. Banning and prohibiting due to the preference or policy of some with government power but without adequate foundation in science is not rational and not a sustainable approach in a democracy. A small but essential portion of these proposed regulations must change or they will fall into this dangerous category. The Wetlands Protection Act already has protections for nature in the resource areas of salt marsh, coastal beach, bank, dune, etc. The Federal Emergency Management Agency already has protections and standards regarding flooding and buildings. It is not helping nature to prohibit sound, adaptive buildings; it is only harming people. It is notable that the photos used in the public information sessions are of old and flimsy structures, not built to withstand wind or water. No photos were used of the

these regulations." ...The proposed Wetlands regulations will promote resilience by creating performance standards to protect the natural buffering function of wetlands and floodplains and help prevent damage to both the natural and built environment. The standards will require elevation of new development in areas of the coastal floodplain where most storm damage occurs and minimize new development in the most vulnerable area of the coastal floodplain where waves are higher than three feet. The regulations encourage nature-based approaches to improve resilience, such as restoration of salt marshes, coastal dunes, and barrier beaches on the coast, as well as inland wetlands. Updated stormwater management standards will reduce stormwater pollution to water bodies throughout the state, helping to improve the water quality of our rivers and streams. The Waterways regulations allow modifications to licenses for identified smaller structures (primarily small docks and piers) to account for sea-level rise and maintaining public water access.

innumerable buildings around the state and the nation and the world which have been built adaptively and are both safe and protective of nature.

People have lived and worked in inhospitable environments for eons, from the arctic to the desert, adapting their structural designs ingeniously to survive and thrive (and without harming the nature around them). Prohibitions on buildings do not reflect the skills, materials and technologies available now and in the future. Please, modernize these proposed regulations to require adaptive structures, not banned buildings.

Chapter 91

1. Mass DEP states that the Engineering and Construction Standards at 310 CMR 9.37(1)(d) are proposed to be revised to take projected sea level rise into account. The proposed language introduces the phrase “adequately consider” projected sea level rise, with respect to any new licenses and the renewal of any existing licenses.

Comments: MMTA agrees that considering projected sea level rise and tidal surge is both sensible and technologically attainable, with an accredited, licensed attestation as to the accuracy of the data being used for the projections. It is our understanding MassDEP anticipates using a website of some data, and to accept any other site-specific or accredited data. Please make this so. There is so much debate over policy-driven data on climate change, rather than facts, it is important to accept that of licensed experts.

Regarding implementation, we who work in the water and at the water’s edge know it will be quite expensive to elevate and otherwise modify water and waterfront facilities in the decades and half-century to come. Please find a way to make clear in the proposed regulations that it is not necessary for all facilities to have fully actualized all projected sea level rise all at once, and write in the ability to do “rolling” capital project improvements. It would be deadly if existing water dependent users all had to replace all their facilities at once, at time of Chapter 91 license renewal, in order to obtain a renewed license. Without this flexibility to adjust to changes in sea level rise over time, there simply isn’t enough money in operating water dependent uses to finance a complete retrofit all at once.

We also seek more clarity on what “adequately consider” sea level rise actually means. Must one go through MEPA for public comment from any interested party anywhere in the state regarding what ‘adequately consider’ means? Must one always use the maximum available technology and materials or will this decision of “adequate consideration” be a more traditional reliance on the professional stamp of a licensed engineer attesting to the plan’s adequacy for projected impacts? Can one obtain a Chapter 91 license for the usual necessary period of three decades and build in the assumption of using new materials and technologies when they become available?

2. MassDEP states that the regulations propose exempting from the height restriction at 310 CMR 9.51 moving mechanicals and other elements to the top floor or roof.

Thank you, this is sensible. While the height limits do not apply to Water Dependent Uses anyway, many predominantly water dependent sites also have non-water dependent uses on site and may need this exemption.

3. MassDEP states that there is a minor technical revision to replace the term "grandfather" with the term "exempt" in the section on Private Recreational Boating Facilities at 310 CMR 9.38(2).

Many will not understand this change. Perhaps it would help to explain it in the preamble to the proposed changes. It is our understanding that the term "grandfather" is being eliminated in keeping with the appellate court case authored by Judge Jim Milkey, requiring the removal of the term "grandfather" in land use matters due to social justice reasons, because the term originated with efforts to prevent voting by people of color.

310 CMR 10.00/ Wetlands Proposed Regulatory Changes

General Comments:

1. We wish there were the usual Frequently Asked Questions to assist in understanding the proposed changes with examples. No FAQ's have been published and hundreds and hundreds of people came onto the informational calls without getting answers, mainly asking questions central to the proposed changes. All would benefit from FAQ's, meaning the proponent agencies and the regulated entities and areas. Some of these most impactful changes have been under discussion for over 10 years within MassDEP and the Office of Coastal Zone Management without external consultation with practicing non-governmental waterfront experts with actual application experience. We list some of our outstanding questions below.

2. We respectfully request the State reach vastly more people and businesses and experts and affirmatively consult with the most impacted and knowledgeable people and businesses and licensed engineers and waterfront project managers. Please, before promulgating these regulations spend time out on the water, at its edge and be there to ask, listen and learn.

3. These proposed changes are currently being labeled by the Commonwealth's representatives as "managed retreat" and "nature-based solutions" yet proposed as though they are for the purpose of climate change adaptation and resiliency. We disagree. They are neither. Retreating from nature at the water's edge is not a rational way to adapt to climate change or to accomplish climate resilience. Nature is changing in ways which preclude giving up and backing away and expecting nature to create solutions on its own for absorbing more tidal flow and dissipating more wind and tidal energy. Nature on its own will not provide solutions which protect people and businesses and public access to the waterways. Banning and prohibiting buildings will not provide solutions, it only bans and prohibits the new money needed to pay for solutions. It also irrationally invites nature to keep coming further and further inland where more and more bans and prohibitions ever

onward will be need to be imposed if this “managed retreat” approach is taken rather than standards based in building codes, engineering and technology.

The Wetlands Protection Act and Regulations are already among the most protective in the nation, with detailed, extensive protections for salt marsh, coastal bank, coastal beach, coastal dune and buffer zones to same. It is not as though nature will have no protections unless today’s MassDEP adds more bans and prohibitions, added to those of the WPA currently and those of FEMA and the Building Code. We also note that all images of damaged buildings– every single image—used by MassDEP in its public sessions in January and on its website are of old and poorly maintained structures. Not a single one is of modern engineering and design.

These proposed regulatory changes should be revised to include the use of modern technology, engineering, and design to protect people from nature as well as nature from people. It can be done, as it has been all over the world and for eons, in inhospitable climates from the arctic to the dessert to right here, such as with the permitted and even Commonwealth-prioritized construction of wind turbines in high velocity zones out in the ocean. We have the technology. Let us use it.

4. We note that MassDEP states that the performance standards for Land Subject to Coastal Storm Flowage do not apply to Water-Dependent Industrial Uses in Designated Port Areas (310 CMR10.36(4)(d)).

MMTA supports this exemption. We also seek exemption for all Water Dependent Uses, and particularly marine industrial uses such as vessel servicing, for substantive and rationality reasons. It is illogical and irrational to not apply a new performance standard just in Designated Port Areas. All Water Dependent Uses need to adapt to the sea whether or not the state 40 years ago made a DPA designation decision on criteria unrelated to the Wetlands Protection Act. The DPA’s were originally designated to achieve eligibility geographically for federal marine infrastructure grants, The DPA’s were not calibrated or linked in any way to the Wetlands Protection Act. In addition, the prohibition against having any uses other than marine industrial ones in DPA’s was a much later regulatory choice by the Commonwealth, to preserve land/water area for marine industrial uses only, again unrelated to WPA matters. Please exempt all Water Dependent Uses for the new performance standard for Land Subject to Coastal Storm Flowage. This action alone would save the disastrous impact of the current proposed regulatory changes on the business of recreational boating.

5. MassDEP tells us Public and commercial boat launching facilities, open rack elevated boat storage, navigational aids, piers, docks, wharves, and dolphins are proposed to be allowed in the V-zone and MoWA zones (310 CMR 10.36(6)(c)). The construction of new buildings in the V-zone is not allowed; reconstruction or redevelopment of buildings in the V-zone is governed by Redevelopment provisions (310 CMR 10.36(8)).

Here is where the regulatory proposals are devastating immediately upon passage for water dependent uses. The term used in the actual proposed regulation is not “allowed” it is “may” be

approved, which also means may not be approved, with no standards specified as to what does or does not result in approval. No lender will finance now on the basis of something “may” be approved later, including existing facilities in need of money to pay for climate adaptations now.

This prohibition of new buildings in the V-zone prohibits even the water dependent buildings needed to operate a marina or a boatyard, such as the vessel servicing buildings and the indoor marina facilities.

This prohibition then ties into being approved for a renewed Chapter 91 license, because the Chapter 91 license can only be issued **after the Wetlands Protection Act approval has been issued. The Chapter 91 license application even for a renewal isn’t considered “complete” without it. So, the prohibition on new buildings in the velocity zone under the wetlands regulations is profoundly problematic, devastating to water dependent uses, even with the exemption for docks and piers and racked boat storage (which is often indoors in a building so the vessels can be worked on off-season). Will even reconfigurations in the zones already approved by Chapter 91 Waterways be denied by the Conservation Commissions?**

There is also a lack of clarity on the applicability of the new proposed standards to sites which have both developed and undeveloped areas on the same site.

6. The new proposal is to prohibit reconstruction or redevelopment, unless on the exact same footprint and elevated. Many of our members work on or own property with mixed areas of previous construction and open areas used for boat storage or work zones. There is no rational purpose under the Wetlands Protection Act to limiting reconstruction to the exact same footprint. Substantively, redesign to adapt to climate change is the ostensible purpose of the regulations – it is not rational to prevent whatever new adaptation is viable rather than artificially restricting the reconstruction to the exact same footprint. And of course, there is the problem of what pays for the reconstruction if the result is exactly the same but elevated?

7. We note MassDEP says maintenance and repair of existing coastal engineering structures is allowed in the V-zone and MoWA zones (310 CMR 10.36(6)(d)).

This is good because repair and maintenance are essential, nature is not going to respect and take care of structures. People have to respect and take care of the impact of nature on existing structures. Technology and design are available and are documented to work in these zones. These proposed regulations should be changed to allow for modifications of the existing engineering structures to make them higher and use different materials to improve the structural integrity in planning for projected sea level rise. And, per the comment above, please make the language explicit that such work is allowed, without the risk of absence of approval, so long as engineering and building code and existing WPA standards have been met regarding resource areas already heavily regulated.

8. We note MassDEP says for Land Subject to Coastal Storm Flowage and all other coastal resource areas, a new limited project has been proposed for relocation or reconfiguration of water-dependent uses where necessary to avoid flooding or coastal storm damage (310 CMR 10.24(7)(c)9).

This seems to be something between an encouragement and a mandate to relocate, when many if not most property owners do not have anywhere to relocate to much less the funds. This is not really an exemption. It is an unclear and important issue overlapping with both who owns what property and what new standard would apply. Does a limited project mean if one is relocating floats, or docks to make them more secure? Buildings? In or out of velocity zones? It is unclear. Does a limited project mean if one is relocating floats, or docks to make them more secure or a building to make it more secure qualifies as a limited project which shall be approved or is it again a discretionary decision in the hands of hundreds of different volunteer Conservation Commissions?

8. MassDEP writes that [f] or Land Subject to Coastal Storm Flowage and all other coastal resource areas, the new limited project also allows the construction, reconstruction, or reconfiguration of water-dependent use projects determined to “e "functionally dependent" (see reference in the proposed provision) which applies to certain docking and port facilities. This provision was included specifically to provide consistency with FEMA and building code requirements that also have a special provision for these facilities (310 CMR 10.24(7)(c)9).

This is a very promising limited project. We look forward to more clarity with examples including for water dependent buildings as well as docks and piers. Thank you very much.

To summarize, our primary concerns are:

1. the absence of expert non-governmental voices in the drafting process, particularly technical advisors working every day in the geographic areas which are the subject of the revised regulations. **Please invite and listen to expert marine engineers and architects and contractors and water dependent businesses and users.**
2. Do not ban and prohibit. Instead require building code and technology certification from licensed engineers for adaptive, sustainable building.
3. Allow reconstruction and adaptation on altered footprints, not the exact same ones.
4. Make explicit the allowed water dependent uses and do not leave to the undefined discretion of hundreds of volunteer Conservation Commissions whether existing buildings, piers and docks and floats can be renewed, reconfigured or expanded or newly installed, no matter how adaptive and sound the proposal. We seek “water dependent facilities are allowed in LSCSF” and remain subject to the other performance standards for other resource areas.
5. Please make it express that pre-existing water dependent facilities shall receive Chapter 91 license renewals absent persuasive evidence of inadequate consideration of sea level rise and climate change. And allow for rolling investment in the capital projects needed, not making them all required at the same time as license renewal.
6. Make the exemption for marine industrial uses in Designated Port Areas an exemption for all Water Dependent Uses. This change alone would make these proposed regulatory changes not deadly to the business of providing boating of the waterways in the Commonwealth.

Questions:

- What type of submission is anticipated for a complete application under the proposed Waterways requirement to “adequately consider” sea level rise and climate change, and what data can be relied upon?
- What would be the standard to apply for a Waterways license to be granted or renewed if these proposed regulations are enacted?
- What would the standard be for Conservation Commissions to apply in debating whether docks, piers and floats “may” be approved in Land Subject to Coastal Storm Flowage?
- How would the new proposed standards for Land Subject to Coastal Storm Flowage be imposed on sites which have both developed and undeveloped areas on the same site?
- What exactly is the newly proposed limited project exception for relocating Water Dependent Uses and what is the standard of review?

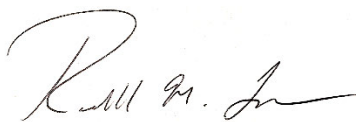
Stormwater / Water Quality Certification

We have not heard enough yet from our membership to comment on all the technical details of these two aspects of the proposed regulatory package. For now, we note two things:

1) Massachusetts is one of the two most costly places by far to attempt to permit a water dependent facility. The other is California. The primary reason is the extraordinary overlap of multiple regulatory programs and imposition of requirements not imposed anywhere else in New England or beyond.

2) Massachusetts is the only state in the nation which requires treatment of stormwater runoff to below drinking water standards. It is well beyond problematic and deep into unproductive inequity that water's edge businesses are forced to take on storm water runoff from all over the watershed area and then pay for monitoring, treatment and removal from storm water runoff to standards below drinking water quality. These regulations should not be promulgated until they stop imposing everyone's runoff concerns onto water's edge facilities.

MMTA respects the hard work of those who worked for ten years discussing and considering climate change and sea level rise. On behalf of the Massachusetts Marine Trades Association, the 20,000 marine trades workers and with respect to the over 140,000 boaters in Massachusetts, we thank you for your time and consideration of our comments. Both I and MMTA's Government Relations and Legal Representative, Jamy Buchanan Madeja from Buchanan and Associates are available to discuss this and any other matters related to the business of boating. Please feel free to contact either of us. My contact information is below and you can reach Jamy at 617-256-9491 or jmadeja@buchananassociates.com. Thank you in advance for your consideration,




Randall M. Lyons, CMM
Executive Director
Massachusetts Marine Trades Association
randall@boatma.com or 774-404-8005

Waterways Resilience Comments

Katharine Lange <katharinelange@massriversalliance.org>

Fri 4/26/2024 2:51 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (230 KB)

Mass Rivers Comment Letter Chapter 91 Climate Resilience 1.0 Regulations.pdf;

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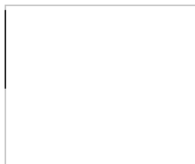
On behalf of the Massachusetts Rivers Alliance, please accept the attached comments regarding 310 CMR 9.00.

Thank you for the opportunity to comment.

Sincerely,
Katharine Lange

Katharine Lange

Policy Director
Massachusetts Rivers Alliance
860-373-8855





MASSACHUSETTS Rivers Alliance

11 Curtis Avenue, Somerville, MA 02144
617-714-4272 • massriversalliance.org

April 26, 2024

Massachusetts Department of Environmental Protection
Bureau of Water Resources Waterways Program
Attention: Waterways Resilience Comments
100 Cambridge Street, 9th Floor
Boston, MA 02114

Dear Waterways Program Chief Padien,

Thank you for the opportunity to comment on the draft Chapter 91 Waterways regulations as part of MassDEP's "Climate Resilience" 1.0 package.

The Massachusetts Rivers Alliance is a statewide organization with 86 member groups dedicated to protecting and restoring the rivers and streams of the Commonwealth.

We are pleased to see that these regulations advance climate resilience. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change. We appreciate the years of work MassDEP has spent crafting these draft regulations, and strongly support many of the proposed provisions. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations.

We support the following provisions, and recommend that MassDEP promulgate them swiftly:

- Clarifying that culvert replacements that meet Massachusetts Stream Crossing Standards do not need to obtain a Chapter 91 permit.¹ This exemption will help encourage culvert replacements, speed up their permitting process, and lower the cost for municipalities and practitioners.
- The new requirement for projected sea level rise data to be incorporated into new development and redevelopment for the life of those projects.² Sea level rise should be

¹ 310 CMR 9.05 (3)(g)(4)

² 310 CMR 9.37 (1)(d)

factored into coastal infrastructure plans for the longevity of the structure, as well as for human safety.

Where the regulations must be refined:

- MassDEP has proposed to strike out the “Combined Application” option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications,³ without proposing anything to fill its place. To accelerate the pace of restoration projects, we need a simplified permitting process that provides combined Wetlands Protection Act and Chapter 91 *approval* for applicants pursuing environmentally beneficial projects.
- As written, the the definition of “fill” includes salt marsh hay,⁴ and treat it with the same long permitting pathway as fill used in development, even though salt marsh hay is part of ecological restoration. Instead, the definition of “fill” should exclude salt marsh hay, and those projects should be exempt from getting a Chapter 91 license.
- While MassDEP has proposed to use Resilient Mass mapping for updated sea level rise data, there is no inclusion of forecasted precipitation data. Greater precipitation combined with sea level rise will yield a more accurate picture of flood risk, and MassDEP should include reference to an appropriate, forward-looking dataset.

Though the draft regulations are, overall, moving the state in a positive direction, they do not go far enough in achieving the stated goals of “Resilience 1.0.” **After swift promulgation of these regulations, we strongly encourage MassDEP to begin the “2.0” process to continue improving Chapter 91 regulations.** There must be no delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

Specifically, Mass Rivers would like to see special conditions given to dam removal projects under 310 CMR 9.00. The regulations already provide for culvert replacements to be exempted from a Chapter 91 license, recognizing that those projects do not impede navigation and instead increase the resilience of the site. MassDEP’s public summary of the proposed changes state that these projects are exempt “when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation.”⁵ Removing dams that block wildlife passage, present flooding risks, or are abandoned, similarly meet those criteria. The Wetlands Protection Act regulations provide an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited Project;⁶ Chapter 91 should do the same by exempting them from obtaining a permit. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety. Removing many of these dams is essential to protecting our communities from the more intense storms that climate change is bringing to the Commonwealth. MassDEP should do its part in accelerating that work by providing a streamlined permitting pathway.

³ 310 CMR 10.04

⁴ 310 CMR 9.02

⁵ [Summary of Proposed Regulations](#) 310 CMR 9.00: Waterways. Massachusetts Department of Environmental Protection. December 22 2023. Page 1.

⁶ 310 CMR 10.00 (8)

Thank you for the considerable time and effort the agency has invested in creating these draft regulations so far. We look forward to continuing to work together to protect Massachusetts' rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

A handwritten signature in black ink, appearing to read 'KAL', with a stylized flourish extending from the end.

Katharine Lange
Policy Director
Massachusetts Rivers Alliance

katharinelange@massriversalliance.org

Waterways & Wetlands-401 Resilience Comments - Massachusetts Municipal Association

Josie Ahlberg <jahlberg@mma.org>

Tue 4/30/2024 5:59 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Adrienne Nunez <anunez@mma.org>; Dave Koffman <dkoffman@mma.org>

 1 attachments (156 KB)

MMA Testimony Wetlands and Waterways Regulations MassDEP.docx.pdf;

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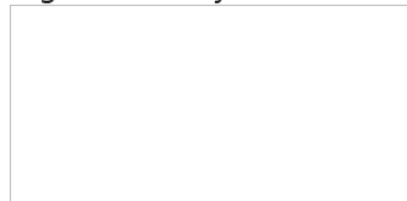
Please find attached the Massachusetts Municipal Association's letter of comment on the proposed Waterways and Wetlands Regulations. Thank you very much for your time and attention reviewing these comments and for your teams' efforts throughout the review process.

We deeply appreciate having the opportunity to submit comments, and would be happy to answer any questions you may have at any time.

Thank you again!

Josie Ahlberg (she/her)

Legislative Analyst



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April 30, 2024

Massachusetts Department of Environmental Protection (MassDEP)
Waterways and Wetlands Teams
100 Cambridge Street, Suite 900
Boston, MA 02114

310 CMR 9.00: The Massachusetts Waterways Regulation
310 CMR 10.00: Wetlands Protection Act Regulations
314 CMR 9: 401 Water Quality Certification

Delivered Electronically

Dear Massachusetts Department of Environmental Protection Waterways and Wetlands teams,

On behalf of all 351 cities and towns across the Commonwealth, the Massachusetts Municipal Association wishes to express our appreciation to the Department and provide input on the proposed changes to Waterways and Wetlands regulations, specifically, *310 CMR 9.00: The Massachusetts Waterways Regulation, 310 CMR 10.00: Wetlands Protection Act Regulations, and 314 CMR 9: 401 Water Quality Certification*. As a member of the Stormwater Advisory Committee, we recognize the considerable effort by MassDEP to update these regulations.

We also appreciate the extensive efforts of the Legislature and Administration to help the Commonwealth navigate and adapt to the implications of climate change. Included in these efforts is the ResilientMass Plan that works in coordination with the proposed Wetlands and Waterways regulations to help ensure that from the Cape to the Berkshires, our communities are resilient and ready for the impacts of climate change.

We strongly believe that basing these regulations on updated science is incredibly timely. The use of this up-to-date science (through NOAA Atlas 14 precipitation data and NOAA 14 PLUS projections) will further guide stakeholder efforts across the state as we face more frequent and severe storms as a result of the changing climate. We appreciate the efforts made to streamline and reconcile state policy with national requirements for MS4 standards, including extensive revision and reformatting of the Stormwater Handbook. Further, we are grateful that MassDEP has clarified confusion regarding stormwater implications of solar panels. As we move through the energy transition and solar siting ramps up, this clarification is incredibly helpful.

As you know, municipalities are key partners in state initiatives and critical environmental stewards. Local officials are actively working to ensure their cities and towns are resilient, negative environmental impacts are minimized, and the wellbeing of the community is supported. However, with Proposition 2 ½ restricting municipal revenue generation and additional fiscal challenges, the ability for municipalities to comply with stringent environmental regulations is very worrisome.

We are highly concerned that several of the proposals included in the draft regulations will create significant challenges for municipal compliance while local officials also wrestle with urgent priorities in areas of housing, economic development, and public safety. In many instances, the proposed regulations appear in direct conflict with other statewide goals.

For example, we are sensitive to the conflict created with traffic safety efforts to improve roadways while also reducing fatalities and injuries. Initiatives like Complete Streets, which may require roadway widening to safely expand accessibility for vulnerable road users, could be in direct conflict with the goal of reducing impervious roadway surfaces and development restrictions outlined in the proposed regulations. When faced with such contradictions and the increased costs associated with meeting all standards, municipalities will be left with no choice but to avoid infrastructure improvements and stifle our progress towards accessibility and resilience. We urge the Department to re-evaluate how these proposed regulations affect other state initiatives and programs.

Regarding various housing development efforts across the state, the proposed regulations stand to increase construction costs in both coastal and inland regions. Development costs will rise in communities that will now be subject to more stringent stormwater standards. We anticipate similar implications for economic development projects and a variety of municipal infrastructure projects, and no source of funding has been identified to help offset these cost increases for cities and towns. It is essential that these downstream implications are considered.

We strongly encourage your teams to revise the proposed regulations to clearly differentiate between public entities and private, for-profit entities. We also encourage you to expand flexibility to meet goals to the maximum extent possible. Municipalities require this in order to meaningfully achieve our common goals to protect the environment while fortifying our communities in the face of climate change.

Further, in order to support a successful implementation of these regulations, we strongly recommend extending the timeline. Our members and advocacy partners are still absorbing the details of the proposed regulations, thus additional time is needed to review and revise. We recommend adding an additional comment period to the revision process by providing a second draft of the proposed recommendations for review by the public. In addition, municipal officials will need considerable technical support to implement these regulations in the future. In order to accommodate this, we urge you to extend the start date for these regulations to at least one year after the final promulgation date.

Finally, we encourage you to develop a robust communication and technical assistance program to support our municipalities in implementing these regulations. We recognize that these regulations may continue to change as we continue to respond to the impact of climate change. However, it is essential that municipalities are supported to understand what is required and are engaged regularly in the case where standards change in the future. We offer our partnership in this effort to engage with our local officials in the Commonwealth.

My team and I are available to answer any questions you may have and further discuss the details and implications of the proposed regulations. Please do not hesitate to contact me or MMA Legislative Analysts Josie Ahlberg and Adrienne Núñez at jahlberg@mma.org and anunez@mma.org, at any time.

Many thanks to each of you for your work on these important regulations and for your partnership with municipalities in helping to ensure our natural and built environments are healthy and resilient as we face the uncertainties of climate change.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Chapdelaine". The signature is fluid and cursive, with the first name "Adam" and last name "Chapdelaine" clearly distinguishable.

Adam Chapdelaine
Executive Director & CEO


Waterways Resilience Comments

Busch, Chris <CBusch@massport.com>

Mon 4/29/2024 4:37 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Padien, Daniel (DEP) <Daniel.Padien@mass.gov>; Soleau, Tyler (EEA) <Tyler.Soleau@mass.gov>; Burdi, Luciana <lburdi@massport.com>; Barrera, Joel <JBarrera@massport.com>; Morris, Joseph <JMMorris@massport.com>; Washburn, Bradford <BWashburn@massport.com>; Hargens, Andrew <AHargens@massport.com>

 1 attachments (473 KB)

Ch. 91 Waterways Reg Revisions Massport Comment Letter 4.30.24.pdf;

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Please find attached the Massachusetts Port Authority's comment letter on MassDEP's Proposed Waterways (Chapter 91) Resilience 1.0 Draft Regulations. Please let us know if there are any questions.

Thanks,

Chris

Chris Busch, AICP

Senior Environmental Planner
Strategic and Business Planning
617-568-3524 (office)
781-823-9698 (cell)
cbusch@massport.com



Massport

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

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Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-1000
www.massport.com

April 30, 2024

Daniel Padien, Waterways Chief
MassDEP-BWR Waterways Program
100 Cambridge Street Suite 900
Boston, MA 02114
Attn: Waterways Resilience Comments

Subject: M.G.L. Chapter 91 Waterways Resilience 1.0 Draft Regulations

Dear Chief Padien:

On behalf of the Massachusetts Port Authority (Massport), thank you for the opportunity to provide comments on the proposed regulatory revisions to the Massachusetts Public Waterfront Act, M.G.L. Chapter 91 ("Chapter 91") Waterways Regulations (310 CMR 9.00) ("Chapter 91 Regulations").

The Massachusetts Department of Environmental Protection (MassDEP) is revising the Chapter 91 Regulations to have the licensing process thereunder better address the potential effects of climate change, including sea level rise, storm surge and increased precipitation, on natural resources and the built environment. As MassDEP's Waterways Program licenses structures and uses in the Commonwealth of Massachusetts coastal zone and inland waterways, the proposed regulatory revisions are intended to better prepare for climate change by having license applicants incorporate resiliency into their project design and mitigate impacts from coastal and inland flooding and storm damage, while preserving and protecting the rights of the public by maintaining support of water dependent uses, public access to the waterfront, and other public benefits. The proposed regulatory revisions include, but are not limited to, modifications to definitions related to flood hazards and coastal resource areas to ensure consistency with the Commonwealth's Wetlands Protection Act; establishment of requirements for license applicants to address sea level rise with new licenses for all fill and structures, and requests for renewals and extended term licenses; and, modification of height standards to allow license applicants to relocate utilities from low lying areas vulnerable to flooding to the building rooftops, and install structures such as solar panels.

Massport is a major landowner along Boston's waterfront, including but not limited to, Logan International Airport and Boston Harbor Shipyard and Marina in East Boston, Conley Container Terminal and Flynn Cruiseport in South Boston, and the Autoport in Charlestown. Massport is also the long-term ground tenant of the Massport Marine Terminal in the Raymond L Flynn Marine Park. Massport has recognized the

vulnerability of these waterfront properties and assets and has developed its own policies and guidelines to ensure that the buildings and infrastructure that we construct, and those of our tenants, are designed to withstand sea level rise and the impact of increased inland and coastal storm events. Massport supports MassDEP's efforts to revise the Chapter 91 Regulations to better reflect impacts of climate change and offers the following comments and requests regarding the proposed regulatory revisions.

310 CMR 9.37, Engineering and Construction Standards

The proposed regulatory revisions require the incorporation of projected sea level rise throughout the design life of a project and directs license applicants to consult [Resilient.mass.gov](https://resilient.mass.gov) for information on mapping and sea level rise, or a similar source that MassDEP has deemed appropriate. In response to projected levels of sea level rise and the likelihood of more frequent and intense coastal storms, in 2014 Massport developed a Floodproofing Design Guide (as amended from time to time, the "Design Guide"). The Design Guide establishes design flood elevations for new and redevelopment projects, flood proofing strategies and performance standards for all capital planning and real estate development processes located on Massport's properties. For over a decade, the Design Guide has been used to ensure the resiliency of such projects on Massport properties by employing best practices for flood proofing and establishing conservative design flood elevations based upon the Boston Harbor Flood Risk Model and the addition of freeboard height as a margin of safety. Massport requests that MassDEP should provide greater clarity in the proposed regulatory revisions on how it will determine appropriate flood mapping and flood design guidance other than the state's on-line resource to ensure the consistent application of flood mitigation design standards on Massport properties for which a Chapter 91 license may be required.

310 CNR 9.15, License Terms; 310 CMR 9.25 Expiration and Renewal

Under the proposed regulatory revisions, MassDEP will require that sea level rise be a consideration for any new licenses, requests for extended terms, and license renewals. The Chapter 91 Regulations provides for amendments (310 CMR 9.24) to existing licenses. Massport requests that MassDEP clarify if a project that has been licensed prior to the promulgation of the proposed regulatory revisions, and an application is made to modify (as opposed to extending or renewing a license) the existing Chapter 91 license, will be subject to an evaluation of that project's capacity to address sea level rise and be required to make related modifications as part of the review of an application for an amended license.

310 CMR 9.51 Conservation of Capacity for Water-dependent Use

Chapter 91 limitations on building heights are proposed to be revised to allow for the relocation of nonstructural elements such as mechanical systems and utilities from areas vulnerable to flooding to the rooftop of an existing non-water dependent use building. Applicants filing for a new or amended Chapter 91 license to relocate these systems to the building roof should be made aware of critical airspace height limits around Logan International Airport that must remain clear of structures to ensure aviation safety. License applicants are expected to work with Massport early in the design phase and to ensure that the

April 30, 2024

building and all associated structures, equipment, fixtures and systems, such as solar panels, parapet walls, lighting, signs, antennae and construction cranes do not exceed the critical airspace limit.

Future Regulatory Updates

Massport understands that the currently proposed regulatory revisions are an initial phase of climate resiliency based updates with the potential for additional regulatory revisions to better advance resilience to climate change through the Chapter 91 licensing process. Through the current proposed revisions, MassDEP has shown responsiveness to the needs of local planning and best practices for the promotion of resilience of coastal projects. Recent resiliency planning for Boston Harbor has promoted comprehensive, district-scale coastal resilient strategies to protect coastal communities and important state transportation infrastructure through the elevation of the shoreline with fill. The proposed regulatory revisions to MassDEP's Wetlands Protection Act regulations are addressing this through allowances for fill in flood zones for elevated sea walls and berms in urban harbor environments where space is limited. Massport believes that MassDEP should also recognize these space constraints where building(s), the public right-of-way, and infrastructure are present along the shoreline, and provide for the same placement of fill in flowed tidelands for coastal resiliency projects as part of the next phase of resiliency regulatory updates to the Chapter 91 Regulations. Massport requests that MassDEP should consider allowances for provisions under 310 CMR 9.32, Categorical Restrictions of Fill, for such resiliency projects, which may be required to provide the level and scale of coastal protection needed to prevent flood damage to commercial, residential, and public infrastructure along Boston Harbor.

Thank you for your consideration to our comments and requests. Please do not hesitate to contact me at (617) 568-3705 or at jbarrera@massport.com if you wish to discuss any of the foregoing.

Sincerely,

Massachusetts Port Authority



Joel Andres Barrera
Director, Strategic and Business Planning
Massachusetts Port Authority

cc: L. Burdi, A. Hargens, J. Morris, B. Washburn, C. Busch/Massport; T. Soleau/CZM

UNPRECEDENTED REGULATORY CHANGES PROPOSED BY MASS DEPARTMENT OF ENVIRONMENTAL PROTECTION

Michael Graffeo [REDACTED]

Mon 4/29/2024 3:00 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick. Kearney@mahouse.gov <Patrick. Kearney@mahouse.gov>

Cc: Mary [REDACTED]

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

We object to the proposed regulation changes regarding the Massachusetts coast. I just found out about this and these proposed regulations would be catastrophic if implemented the way I understand them. Major revisions of these regulations need to be enacted and must be reviewed/heard in more public hearings. They are too impactful to rush through and will have major, negative consequences. People with homes on the coast deserve more respect than this. The proposed regulations are outrageous and are not in the best interests of the entire coastal community.

Thanks in advance for shutting this down until it can be better examined

Sincerely,

Michael & Mary Graffeo

[REDACTED]
Humarock, Ma. [REDACTED]

Sent from my iPhone

Wetlands and Waterways Resilience Comments

mel@millwaymarina.com <mel@millwaymarina.com>

Mon 4/29/2024 10:09 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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To whom it may concern:

The proposed changes to the Mass DEP regulations would create a huge negative impact on our local Cape Cod marine economy. Millway Marina, our small 50+ years old waterfront business, provides access and services to the local recreational boating community as well as the Coast Guard and local police as needed. Maintaining our facility in a safe and environmentally sensitive manner is critical to the success of our business. It only makes sense to encourage all marine businesses to utilize the latest technologies and tested design principles when upgrades become necessary. The proposed regulations' negative, one dimensional approach to maintenance and development does not even come close to addressing the needs of waterfront properties. What is needed is a more thoughtful, nuanced regulatory approach that would support rather than constrain local marine business, promote smart adaptive technology and sustain this vital sector of the Massachusetts economy.

Melissa Marchand

mel@millwaymarina.com




Waterways Resilience Comments

Rizzi, Colleen <Colleen.Rizzi@mwra.com>

Tue 4/30/2024 2:52 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Laskey, Fred <Fred.Laskey@mwra.com>; Coppes, Dave (EEA-EXT) <Dave.Coppes@mwra.com>; Romero, Matthew <Matthew.Romero@mwraadvisoryboard.com>

 1 attachments (611 KB)

2024 C91 MWRA Comment Letter.pdf;

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Good afternoon,

Please find attached MWRA's comments on the Draft Regulations at 310 C.M.R. 9.00: Waterways ("Chapter 91"). If clarification is needed on any of these comments, MWRA would be happy to provide additional detail or respond to any questions.

Thank you,

Colleen Rizzi, P.E.

Director, Environmental and Regulatory Affairs

MWRA

2 Griffin Way

Chelsea, MA 02150

617-570-5412 (office)

857-331-2574 (cell)



MASSACHUSETTS WATER RESOURCES AUTHORITY

Chelsea Facility
2 Griffin Way
Chelsea, Massachusetts 02150

Telephone: (617) 242-6000
Facsimile: (617) 305-5990

Frederick A. Laskey
Executive Director

April 30, 2024

Daniel Padien
MassDEP - BWR Waterways Program
ATTN: *Waterways Resilience Comments*
100 Cambridge Street, 9th Floor
Boston, MA 02114
Via email: dep.waterways@mass.gov

RE: MWRA Comments on Draft Regulations at 310 C.M.R. 9.00: Waterways ("Chapter 91")

Dear Mr. Padien,

The Massachusetts Water Resources Authority ("MWRA") appreciates the opportunity to comment on draft regulations at 310 C.M.R. 9.00: Waterways ("Chapter 91").

MWRA is a public authority that provides drinking water and sewage services to municipalities and industrial users in the greater Boston area. Serving over three million customers in more than sixty communities in the Commonwealth, MWRA is responsible for maintaining and improving a significant amount of infrastructure to ensure public health and safety. A considerable amount of MWRA's infrastructure exists in areas regulated under 310 C.M.R. 9.00.

MWRA supports MassDEP's objectives to ensure that Chapter 91 licensing properly reflects the potential effects of climate change, including but not limited to, sea level rise, storm surge, and increased precipitation for existing and proposed structures along the waterfront. MWRA closely follows the evolving science of climate change to understand potential impacts to MWRA facilities and operations. For several years, MWRA's practice has been to design and implement projects with climate change adaptation in mind. For example, the Deer Island Treatment Plant, which represents MWRA's single largest infrastructure investment, is extremely flood resistant due to its 1986 design that considered sea level rise before it became a mainstay issue. In fact, Deer Island was designed to withstand a 100-year storm event plus nearly two feet of sea level rise, a wave run-up of 14 feet on its east side, and two feet on its west side. During design, plant process tanks were raised almost two feet, and the outfall diameter was increased to accommodate sea level rise without reducing plant capacity. In addition, Deer Island is surrounded by a seawall that reflects incoming wave energy back to the ocean.

MWRA has taken a pragmatic approach to climate change adaptation, and efforts have largely focused on the evaluation and implementation of measures to allow its facilities to withstand a significant storm event that could occur in Eastern Massachusetts. Beginning in 2016, MWRA assessed all of its 30 coastal and near coastal facilities for vulnerability to a conservative benchmark: a 100-year flood elevation as set by the Federal Emergency Management Agency

(FEMA) plus an additional 2.5 feet to account for projected sea level rise. At the time, this benchmark represented a reasonable estimation in evaluating the potential threat of sea level rise and storm surge on coastal facilities, allowing MWRA to move forward while more detailed modeling of sea level rise was underway.

Since these evaluations, MWRA has protected nearly all its vulnerable facilities with the overall goal to limiting damage, recovering fully, and resuming activity as quickly and efficiently as possible. Flood protection measures include the installation of deployable flood barriers at entrances, construction of protective walls around critical equipment, raised electrical infrastructure, and sandbags. Fortunately, the benchmark used to protect these facilities is in line with the latest climate change projections – the Massachusetts Coastal Flood Risk Model forecasts 2.5 of sea level rise by 2050 – so MWRA is well prepared. In addition to protecting existing facilities, the most up to date climate change projections has been and will continue to be incorporated in the design and construction of new and rehabilitated facilities to ensure they are hardened against severe flooding.

MWRA offers the following comments on the proposed Chapter 91 regulations:

- The term “sound” in the context of 310 C.M.R. 9.10(6) and 310 C.M.R. 9.25(2) should be formally defined or clarified within the regulation.
- 310 C.M.R. 9.15(1)(a) through (b) include maximum terms of licenses ranging from 30 to 99 years. MWRA requests confirmation that MWRA infrastructure is protected from license expiration under the terms laid out in 310 C.M.R. 9.15(1)(c) with regard to public service projects.
- MWRA requests clarification of how MassDEP will determine the lifespan of a structure within Chapter 91 jurisdiction and what data will be relied upon to make that determination, as this is a large deciding factor on whether or not future licenses will be issued and existing licenses will be extended (CMR 9.37(1)(d)).

MWRA commends the stated goals of revising the Chapter 91 regulations to address climate change vulnerability due to sea level rise and shoreline change, and include Federal Emergency Management Agency (“FEMA”) terminology and flood zones consistent with recent updates to 314 C.M.R. 9.00 and 310 C.M.R. 10.00. Please contact Colleen Rizzi (colleen.rizzi@mwra.com) with any questions.

Sincerely,



David W. Coppes, P.E.
Chief Operating Officer

CC: Fred Laskey, Executive Director
Matthew Romero, MWRA Advisory Board Executive Director

Wetlands-401 Resilience Comments

Andrew Hrycyna <Andrew.Hrycyna@mysticriver.org>

Tue 4/30/2024 4:54 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (105 KB)

Wetlands 401 Resilience Comments MyRWA 2024 04 30.pdf;

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April 30, 2024

Massachusetts Department of Environmental Protection Attn: Lisa Rhodes

100 Cambridge Street, Suite 900

Boston, Massachusetts 02114

Via email: dep.wetlands@mass.gov with attachment

Re: Wetlands-401 Resilience Comments

Dear Ms. Rhodes:

The Mystic River Watershed Association (MyRWA) appreciates this opportunity to comment on the Proposed Stormwater Updates to the Massachusetts Wetlands and 401 Regulations (310 CMR 10.00 and 314 CMR 9.00).

The Mystic River Watershed Association is a 501(c)(3) nonprofit organization founded in 1972. The organization's mission is to protect and restore clean water and related natural resources in the watershed's twenty-two communities and to promote responsible stewardship of our natural resources through educational initiatives. MyRWA accomplishes its mission by forging links with citizens' groups, universities, businesses and government agencies. These alliances enable MyRWA to accomplish work throughout the watershed, documenting current conditions and advocating for resource management and protection.

We recognize the progress you have made over current regulations. As Mass DEP staff said during public meetings on these proposed regulations, they need to be considered the "1.0" version of regulatory updates, due to the pressing and accelerating challenges of extreme precipitation, sea level rise, and coastal storms. We strongly encourage you to finalize these regulations as quickly as possible, and immediately start on the 2.0 version.

Our comments on specific proposed Standards in the Stormwater Handbook are below. Separate comments on the Coastal Resilience regulations are being submitted by the Resilient Mystic Collaborative.

Standard 2: Peak discharge rates (runoff)

We advocate using the proposed NOAA14 100-year storm size upper confidence interval WITHOUT the 90% multiplication factor. This volume better anticipates extreme storms in 2050 and 2070, which

is important for projects and infrastructure with long lifetimes, which are common in our urbanized watershed.

In addition, the regulations should enable the adoption of future NOAA Atlas Point Precipitation Frequency Estimates, e.g. NOAA15, without the need to amend the regulations.

More broadly, updated data (NOAA14+) that MassDEP is proposing be tied to the Wetland Protection Act regulations is likely to become outdated soon. These draft regulations bring us to present precipitation trends; they do not yet bring us into the future. We urge DEP to adopt projected rainfall data based on high quality downscaled climate models rather than empirical data in the 2.0 regulations.

Standard 3: Groundwater recharge

We urge DEP to use the proposed 1 inch standard rather than the 0.8 inch standard. This higher standard is important to increase resiliency to more frequent, larger storms. Proposed Dynamic and Continuous Simulation methods should be included in the 2.0 regulations.

Standards 4 & 7: Pollutant removal

We endorse the proposed standards that align with MS4 permits, including no off-site mitigation allowed in New Developments. We urge DEP to remove the exception for projects of ≤ 4 units/lots that discharge to a critical area. These projects should meet standard 4 and not remain "maximum extent practicable." Critical areas are very important to protect, so removing this exception from the standard will increase the protection.

We are concerned in general that the "Maximum Extent Practicable" recharge standard for all soil types in redevelopment will be too easy for applicants to skirt, resulting in insufficient recharge in many sites. MassDEP must hold recharge to a more stringent standard than MEP to truly meet the climate resilience intentions of these regulations.

Standard 11: Compliance with TMDLs

We endorse inclusion of Alternative TMDLs in standard. Compliance with the Alternative TMDL is very important for the Mystic River Watershed and would like to see this be included in the final regulations.

Again, thank you for your work and for your commitment to Massachusetts and our natural and human communities. We look forward to working with you as we all seek to meet the challenge of surviving and thriving in a rapidly changing climate.

Sincerely,

Andrew Hrycyna
Watershed scientist

--

Andrew Hrycyna | he/him

Watershed Scientist

[Mystic River Watershed Association](#)

23 Maple Street, Arlington, MA 02476

[Lands of Massachusetts, Nipmuc and Pawtucket tribes](#)

Mobile: 857-928-9964 (preferred) | Office: (617) 865-6580

[Twitter](#) | [Facebook](#) | [Instagram](#)





April 30, 2024

Massachusetts Department of Environmental Protection

Attn: Lisa Rhodes

100 Cambridge Street, Suite 900

Boston, Massachusetts 02114

Via email: dep.wetlands@mass.gov

Re: Wetlands-401 Resilience Comments

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More broadly, updated data (NOAA14+) that MassDEP is proposing be tied to the Wetland Protection Act regulations is likely to become outdated soon. These draft regulations bring us to present precipitation trends; they do not yet bring us into the future. We urge DEP to adopt projected rainfall data based on high quality downscaled climate models rather than empirical data in the 2.0 regulations.

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Standard 11: Compliance with TMDLs

We endorse inclusion of Alternative TMDLs in standard. Compliance with the Alternative TMDL is very important for the Mystic River Watershed and would like to see this be included in the final regulations.

Again, thank you for your work and for your commitment to Massachusetts and our natural and human communities. We look forward to working with you as we all seek to meet the challenge of surviving and thriving in a rapidly changing climate.

Sincerely,



Andrew Hrycyna, Watershed Scientist
Mystic River Watershed Association


Proposed Chapter 91 Waterways Regulations - NAIOP Comments

Tamara Small <small@naiopma.org>

Tue 4/30/2024 4:20 PM

To: Padien, Daniel (DEP) <Daniel.Padien@mass.gov>

Cc: Heiple, Bonnie (DEP) <Bonnie.Heiple@mass.gov>; Ferrarese, Brian (DEP) <Brian.Ferrarese@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Anastasia Daou <daou@naiopma.org>

 2 attachments (526 KB)

310 CMR 9.00 Resilience Proposed Amendments NAIOP (2024).pdf; FINAL NAIOP Cover Letter Chapter 91 Regulations (April 30 2024).pdf;

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Dear Director Padien,

Attached, please find a cover letter from NAIOP Massachusetts, The Commercial Real Estate Development Association, overviewing our comments on the proposed changes to 310 CMR 9.00; and a redline of the proposed regulations, with comments and suggested revisions.

NAIOP's comments represent our members' collective decades of expertise and engagement with the Chapter 91 program. Given that NAIOP, in addition to many of its members, have been engaged with the implementation of Chapter 91 and multiple advisory groups related to the program over the years.

NAIOP urges MassDEP to engage in a thorough review of all comments received on these regulations and review all comments submitted as a result of the 2022 meeting of the advisory committee before advancing a new draft for public comment. This will ensure that the enormous amount of time and effort that went into public review from multiple organizations and individuals over many years is properly responded to and considered.

Please feel free to reach out to me if you have any questions or would like NAIOP to convene our members for a working session to discuss our comments thoroughly ahead of promulgation.

Best,
Tamara

Tamara Small (she/her/hers)
CEO | **NAIOP Massachusetts**
The Commercial Real Estate Development Association
144 Gould Street, Suite 140 | Needham, MA 02494
(781) 453-6900 x5 | small@naiopma.org

Not yet a NAIOP member? [Join today](#)

Connect with [NAIOP Massachusetts](#): [Twitter](#) | [LinkedIn](#) | [YouTube](#)



April 30, 2024

Daniel Padien, Waterways Program Chief
Massachusetts Department of Environmental Protection (MassDEP)
100 Cambridge Street
Boston, MA 02114

Re: Massachusetts Department of Environmental Protection's Proposed Changes to the Waterways Regulations, 310 CMR 9.00 *et seq.*

Dear Chief Padien:

NAIOP Massachusetts, The Commercial Real Estate Development Association, is pleased to provide the attached comments on the Massachusetts Department of Environmental Protection's (the "Department") proposed changes to 310 CMR 9.00 related to the Waterways Program. NAIOP also greatly appreciates the Department's 60-day extension of the public comment period to ensure that a thorough, thoughtful public review of these regulations could occur.

Our members have decades of experience working throughout the Commonwealth on projects subject to Chapter 91 licensing. They are committed to working with public and private stakeholders to design, permit and build projects in a way that protects the environment, fosters public access, and provides significant public benefits. In fact, several of our members have served as subject matter experts in the Department's Chapter 91 Climate Change Advisory Groups in 2013 and 2022.

NAIOP respectfully submits the comments below with the hope that our recommendations can be considered and addressed to ensure a clear, predictable and timely implementation of the Waterways Program.

I. Comments Related to the Proposed Regulatory Amendments

NAIOP has worked with its membership to prepare line-by-line comments on the Proposed Regulatory Amendments and has attached a full set of comments to this letter. The major highlights are summarized below:

- i. NAIOP believes that due to the complexity of the issues and the varied types of licenses, the proposed changes to the rules relating to extended license terms in 9.15 need additional work. Rather than addressing license renewal changes through a resiliency update, NAIOP recommends that the Department review the issue of the license renewal process with a broad-based advisory group to ensure all perspectives are considered.

- ii. NAIOP believes that expressly allowing activities associated with shoreline protection should be a priority - and that, given many of these activities (including fill) would be required to comply with the Wetlands Protection Act regulations, further review and approval of these activities by the Waterways Program should not result in hurdles to creative shoreline protection measures.
- iii. Sea Level Rise – NAIOP agrees that projects should address projected future sea level rise over the term of the license. However, wording of this regulatory change is important given that there is no universally accepted scenario of future sea level rise and projects may achieve compliance through current design *and* future adaptation. **NAIOP strongly believes any amendments to this language should not create a new and independent standard. Instead, NAIOP recommends the regulations require applicants to illustrate how they address sea level rise in the design, recognizing that design flood elevations vary depending on use and location.** Finally, NAIOP also hopes that amended language ensures that sites can be further adapted for higher levels of sea level rise in the future – rather than requiring the totality of mitigation at the outset.
- iv. Further, regarding section 9.33, **NAIOP believes that we should not incorporate the State Building Code as a standard due to the difficulty of proving compliance with the Code without a full set of construction plans – which project proponents do not have at the time of licensing.** Additionally, the State Code has various means of applying for and granting waivers and exceptions – which project proponents do not qualify for until full construction plans are provided. While it is possible to receive a waiver from the Building Code, there is no guarantee that these waivers will be accepted, creating further uncertainty for the regulated community.
- v. Despite the slide presented during the discussion, it is important to note that MassDEP currently defers to local zoning interpretations of building height. **While NAIOP believes that it is reasonable to clarify that MassDEP heights are to be measured from design flood elevation rather than from grade, we also believe that with respect to the top of structure, this should be left to local zoning rules.**
- vi. Regarding **Minor Project Modifications**, NAIOP suggests that this section be expanded and used more often to include small renovations and adaptations for code compliance, such as elevating buildings, dry floodproofing and ADA compliance without having to go through a licensing process that is lengthy and time consuming for MassDEP and the proponents.
- vii. NAIOP encourages the Waterways Program to work with the MassDEP Wetlands and MassDEP Water Quality teams to not only allow, but encourage and support living shoreline solutions and shoreline protection and flood control projects in urban waterfronts.

II. General Comments Relating to Waterways Program Implementation

NAIOP members have worked with the Waterways Program since its inception more than thirty-five years ago. NAIOP has commented on regulatory changes, Municipal Harbor Plans (MHP), Facilities of Public Accommodation and myriad other aspects of the office to ensure the integrity of the Commonwealth's coastline while meeting community needs and building critical economic development and climate resilience projects. The success of these projects depends on a predictable and timely process.

For the past several years, NAIOP has raised concerns regarding the time it now takes to process a license application. Projects, for many reasons, cannot afford a lengthy, drawn-out review process. **NAIOP urges the Waterways Program to commit to a timely, predictable administrative review of license applications and other reviews.** NAIOP is supportive of expanded funding for program administration and other solutions that will address the concerns of our members and ensure an effectively implemented program.

III. Concerns Relating to the Future of the Municipal Harbor Plan Regulatory Process

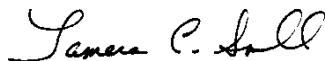
While NAIOP understands that this potential regulatory process is separate from the MHP regulatory process, **NAIOP would like to once again request that MassDEP identify a path forward for approving future municipal harbor plans, amendments, renewals, and clarifications in a timely fashion.** As MassDEP is an engaged and active participant in the municipal harbor planning process, NAIOP believes MassDEP can approve future municipal harbor plans, amendments, and clarifications, as they are defined in the Municipal Harbor Planning Regulations, without the need to go through a regulatory amendment process each time. As there are several communities currently working on MHPs, MassDEP should provide a process that allows those communities to take advantage of the many months of work that have already been invested in the harbor planning process.

NAIOP urges MassDEP to engage in a thorough review of all comments received on these regulations and review all comments submitted as a result of the 2022 meeting of the advisory committee before advancing a new draft for public comment. This will ensure that the enormous amount of time and effort that went into public review from multiple organizations and individuals over many years is properly responded to and considered.

NAIOP Massachusetts represents the interests of companies involved with the development, ownership, management, and financing of commercial properties. NAIOP has over 1,800 members who are involved with office, lab, research & development, industrial, mixed use, multifamily, retail and institutional space.

Please contact me if you have any questions.

Sincerely,



Tamara C. Small
Chief Executive Officer
NAIOP Massachusetts, The Commercial Real Estate Development Association

Enclosed: Redline Comments on Proposed Ch. 91 Regulatory Revisions

cc: Bonnie Heiple, Commissioner, Massachusetts Department of Environmental Protection

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NOTE TO REVIEWERS:

MassDEP IS SETTING FORTH IN THIS DOCUMENT PROPOSED AMENDMENTS TO THE CURRENT REGULATION AT 310 CMR 9.00 IN REDLINE AND STRIKEOUT FORMAT.

REDLINES SHOW ADDITIONS TO THE CURRENT REGULATORY TEXT AND STRIKEOUTS SHOW PROPOSED DELETIONS.

SINCE THE REGULATION IS VERY LONG, MassDEP IS PUBLISHING ONLY THOSE PORTIONS OF THE REGULATION FOR WHICH THE AGENCY IS PROPOSING TO MAKE AMENDMENTS.

MassDEP HAS INCLUDED TEXT JUST PRIOR TO (and in some cases text just after) NEW INSERTED TEXT TO MAKE IT CLEAR WHERE THE NEW TEXT IS PROPOSED TO BE INSERTED INTO THE CURRENT REGULATIONS.

REVIEWERS CAN FIND THE FULL UNOFFICIAL TEXT OF 310 CMR 9.00 IN ITS CURRENT FORM ON MassDEP'S WEBSITE (SEE BELOW) AND THE OFFICIAL VERSION CAN BE PURCHASED THROUGH THE STATE HOUSE LIBRARY.]

<https://www.mass.gov/doc/310-cmr-900-waterways-regulations/download>

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NO CHANGES ARE PROPOSED IN SECTIONS 9.01. THIS SECTION IS OMITTED FROM THIS DOCUMENT AS NOTED ABOVE.

THE FOLLOWING ARE THE ONLY PROPOSED AMENDMENTS TO SECTION 9.02.

9.02: Definitions

...

Area of Critical Environmental Concern (ACEC) means an area which has been so designated by the Secretary pursuant to 301 CMR 12.00: *Areas of Critical Environmental Concern*.

~~A Zone or AE Zone in tidal areas means an area subject to inundation by a 1% annual chance flood with wave heights and/or wave run-up depths less than 3 feet. The "E" in AE indicates that a predicted elevation of water has been determined by reference to the currently effective or preliminary Flood Insurance Rate Map (after the FEMA appeal period has passed) prepared by FEMA (except for any portion of a preliminary map that is the subject of an appeal to FEMA), including any letter of map revision obtained by the Applicant from FEMA.~~

...

~~Coastal Dune means any natural hill, mound, or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.~~

~~Coastal High Hazard Area means an area subject to high velocity waters, as defined in accordance with FEMA regulations and as designated on a Flood Insurance Rate Map, as issued and as may be revised or amended hereafter by FEMA.~~

...

Innovative Technology means technology that has not been commercially deployed or is in limited deployment in Massachusetts, and includes, but is not limited to, energy technology that obtains energy from the ocean, waterway, or conditions associated with the ocean or waterway, other forms of renewable energy technology.

~~Land Subject to Coastal Storm Flowage means land subject to any inundation caused by coastal storms up to and including that caused by the 100 year storm, surge of record or storm of record, whichever is greater.~~

Commented [A2]: Delete the term A Zone or AE Zone as it is not used anywhere in the body of the regulations, only in other definitions which are also not used in the body of the regulations

Commented [A3]: Delete Coastal Dune definition as this term does not appear anywhere in the body of the regulations

Commented [A4]: Delete Land Subject to Coastal Storm Flowage as this term does not appear anywhere in the body of the regulations.

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...

MOU means a Memorandum of Understanding between the Department and another public agency. The draft text of any such document or other written interagency agreement shall be published in the Environmental Monitor for public review and comment, and the final text shall be published therein upon adoption and made available by the Department upon request.

~~Moderate Wave Action Area or MoWA Zone means the area of Land Subject to Coastal Storm Flowage where base flood wave heights are equal to or greater than 1.5 feet but less than 3 feet.~~

Commented [A5]: Delete Moderate Wave Action Area as this term is not used anywhere in the regulations.

...

Present means contemporaneous with the review of an application, request for determination of applicability, or other action by the Department.

~~Primary Frontal Dune means a continuous or nearly continuous mound or ridge of sediment with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during coastal storms. The Primary Frontal Dune is the dune closest to the beach. The inland limit of the Primary Frontal Dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.~~

Commented [A6]: Delete Primary Frontal Dune as this term is not used anywhere in the body of the regulations, only in other definitions which are also not used in the body of the regulation

...

Shellfish means the following species: Bay Scallop (*Argopecten irradians*); Blue Mussel (*Mytilus edulis*); Ocean Quahog (*Arctica islandica*); Oyster (*Crassostrea virginica*); Quahog (*Mercenaria mercenaria*); Razor Clam (*Ensis directus*); Sea Clam (*Spicula solidissima*); Sea Scallop (*Placopecten magallanicus*); and Soft Clam (*Mya arenaria*).

...

~~Special Flood Hazard Area means the area of land in the flood plain that is subject to a 1-percent chance of flooding in any given year as determined by the best available information, including, but not limited to, the currently effective or preliminary FEMA Flood Insurance Study or Rate Map (except for any portion of a preliminary map that is the subject of an appeal to FEMA) for Land Subject to Coastal Storm Flowage, the Velocity Zone, and the Flood Insurance Study for Bordering Land Subject to Flooding as defined in 310 CMR 10.57. [Something is amiss here. Why do we need a definition of Special Flood Hazard area since it is not referenced anywhere in the regulations other than in the definitions section. LSCSF and Velocity zone are adequately defined without the need to this definition.]~~

Commented [A7]: Because this is a vague concept and subject to uncertainty in implementation, NAIOP recommends deleting the term Special Flood Hazard Area.

...

Upper Floor Accessory Services means utility and access facilities which must be located on the ground floor of any building to serve any facility of private tenancy located on any other floors, provided that such accessory services do not occupy more than 25% of the building footprint. Examples of such services include utility shafts, elevators, stairways, and

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entryways.

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Velocity Zone or V-Zone means an area within the Special Flood Hazard Area that is subject to high velocity wave action from storms or seismic sources. The Velocity Zone boundaries are determined by reference to the currently effective or preliminary Flood Insurance Rate Map prepared by FEMA, including Letters of Map Revision issued by FEMA, whichever is more recent (except for any portion of a preliminary map that is the subject of an appeal to FEMA), or at a minimum to the inland limit of the Primary Frontal Dune, whichever is farther landward. [This seems to expand the Velocity zone further landward and would apply V zone construction standards to frontal dunes.]

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED IN SECTIONS 9.03 – 9.04. THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED ABOVE.]

9.05 : Activities Subject to Jurisdiction

...

(3) Activities Not Requiring a License or Permit. Notwithstanding the provisions of 310 CMR 9.05(1) through (2), no license or permit is required for:

...

(g) placement in a non-tidal river or stream subject to jurisdiction under 310 CMR 9.04(1)(e) of fill or structures for which a final Order of Conditions has been issued under M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*, and which does not reduce the space available for navigation; such fill or structures are limited to:

1. overhead wires, conduits, or cables to be attached to an existing bridge, without substantial alteration thereof, or constructed and maintained in accordance with the National Electrical Safety Code;
2. fish ladders, fishways, and other devices which allow or assist fish to pass by a dam or other obstruction in the waterway;
3. pipelines, cables, conduits, sewers, and aqueducts entirely embedded in the soil beneath such river or stream; and
4. bulkheads, revetments, headwalls, storm drainage outfalls, replacement culverts meeting the Massachusetts Stream Crossing Standards as defined at 310 CMR 10.04, scour protection measures and similar fill or structures which do not extend into such river or stream, except as may be necessary for bank or channel stabilization, including any necessary dredging and backfilling associated with their installation, not to exceed existing grade;

Commented [A8]: As written, NAIOP believes this expands the Velocity zone further landward. NAIOP believes that the FEMA FIRMs should be the standard for applicability for Chapter 91 purposes, and therefore has suggested edits.

Commented [A9]: While NAIOP understands that this is separate from DEP's current proposed revisions, NAIOP believes that clarity is needed to be able to identify which non-tidal waterways are subject to jurisdiction.

Defined as: "any non-tidal river or stream on which public funds have been expended for stream clearance, channel improvement, or any form of flood control or prevention work, either upstream or downstream within the river basin, except for any portion of any such river or stream which is not normally navigable during any season, by any vessel including canoe, kayak, raft, or rowboat; the Department may publish, after opportunity for public review and comment, a list of navigable streams and rivers;"

It isn't feasible to determine where public funds have been expended. DEP staff have previously indicated to assume that all non-tidal waterways are jurisdictional, and has noted jurisdiction over ag canals for example.

Commented [A10]: If fill or structures as may be necessary for bank or channel stabilization is allowed, this work will likely need to exceed existing grade.

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[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED IN SECTIONS 9.06 – 9.09. THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED ABOVE.]

9.10: Simplified Procedures for Small Structures Accessory to Residences

(1) Projects Eligible for Simplified Procedures. Notwithstanding other procedural provisions of 310 CMR 9.00 to the contrary, the procedural standards of 310 CMR 9.10 shall apply to the licensing of certain small-scale structures by the Department. An application for a license under 310 CMR 9.10 may be submitted only for a project consisting entirely of a dock, pier, seawall, bulkhead, or other small-scale structure that is accessory to a residential use or serves as a noncommercial community docking facility, provided that:

- (a) for proposed structures, or for structures built or substantially altered after January 1, 1984:
 - 1. any structure is water-dependent and pile-supported (*e.g.*, by wooden or metal posts) or bottom-anchored, without any fill;
 - 2. any structures total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters;
 - 3. any structure is not a marina (*i.e.*, does not serve ten or more vessels);
 - 4. if within an ACEC, such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary, said structures are consistent with said plan; and
 - 5. if within an ACEC, any structure built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, is consistent with a resource management plan adopted by the municipality and approved by the Secretary; and
- (b) for structures or fill constructed prior to January 1, 1984 and not substantially altered since that date:
 - 1. any structure or fill may be water-dependent or nonwater-dependent;
 - 2. any structures and fill total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters; and
 - 3. the structure is not a marina (*i.e.*, does not serve ten or more vessels).

The above thresholds are established for determination of eligibility only; structures licensed under 310 CMR 9.10 shall be the minimum size necessary to achieve the intended water-related purposes. Projects meeting the provisions of 310 CMR 9.10(1), which previously obtained a license, amnesty license or interim approval, may apply for renewal under 310 CMR 9.07, 9.10, or 9.25.

(c) projects eligible for general license certification under 310 CMR 9.29 shall comply with the certification procedures of 310 CMR 9.29 to obtain an affirmed certification under 310 CMR 9.29, instead of a simplified license pursuant to 310 CMR 9.10.

(2) Standards. The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands, Great Ponds and other waterways for lawful purposes. The project shall

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preserve public rights of access on private tidelands that are associated with fishing, fowling, and navigation, and public rights to use Commonwealth tidelands, Great Ponds, and other waterways for any lawful use. The provisions of 310 CMR 9.33 through 9.38 apply to projects authorized under 310 CMR 9.10 except that, notwithstanding the provisions of 310 CMR 9.37(1)(a), fill and structures need not be certified by a Registered Professional Engineer except as specified in 310 CMR 9.10(3). For eligible nonwater-dependent structures or fill, the Department will generally presume that a proper public purpose is served through the provision of on-foot passage to ensure lateral public access along the shore for any lawful purpose.

(3) Applications Under Simplified Procedures. For purpose of authorizing eligible projects under simplified procedures the following provisions apply:

(a) Application and Plans. An applicant for a license shall submit a written application on forms provided by the Department, signed by the applicant and the landowner if other than the applicant. The application shall be prepared in accordance with all applicable instructions contained in the Department's application package. When plans have been submitted with a Notice of Intent or referenced in an Order of Conditions under the Wetlands Protection Act, M.G.L. c. 131, § 40, a copy of those plans shall accompany the application. Under the Wetlands Protection Act, Conservation Commissions and the Department generally require plans for new structures to be certified by a Registered Professional Engineer or Registered Land Surveyor where there are questions relating to structural integrity (*e.g.*, where a structure is located in a velocity zone or floodway) or to the location of important wetland resource areas (*e.g.*, salt marsh or eelgrass), as well as in other circumstances at the discretion of the issuing authority; see instructions for filing a Notice of Intent pursuant to 310 CMR 10.00: *Wetlands Protection*.

If plans certified by an engineer or surveyor are not required under M.G.L. c. 131, § 40, the Wetlands Protection Act pursuant to 310 CMR 10.00: *Wetlands Protection*, certification for projects meeting the eligibility requirements of 310 CMR 9.10(1) will generally not be required. However, based on comments submitted during the public comment period or other relevant information, the Department may require plans to be certified by a Registered Professional Engineer or Registered Land Surveyor for a structure when it finds that the preparation of plans by a professional is necessary to ensure:

1. an adequate review of public access;
2. the preservation of public navigational rights;
3. structural integrity;
4. the accuracy of stated distances from property boundaries; or
5. that the plan is sufficiently clear and accurate to allow a licensing decision which otherwise could result in significant interference with public rights or environmental interests in tidelands, Great Ponds, and other waterways. The Department will provide a statement of reasons to support this finding.

When plans have not been prepared under M.G.L. c. 131, § 40, the Wetlands Protection Act, a plot plan or other scaled plan with structures to be licensed measured accurately from lot lines or other structures shall be prepared in accordance with application instructions.

(b) Applications for Projects within Great Ponds. The Department shall publish an inventory of Great Ponds which shall be available upon written request. Prior to the addition of any pond to the inventory, the Department will hold a public hearing in the vicinity of the pond. After a pond is added to the inventory, the Department will provide an opportunity for owners of existing structures that require licenses to come into compliance with M.G.L. c. 91 regulatory requirements by submission of an application within six months from the date of

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the addition of the pond to the inventory. The Department will take no enforcement action against the owners of a structure on a Great Pond not listed on the inventory unless and until the Great Pond has been added to the inventory and the opportunity for compliance has been afforded.

(c) Coordination with the Conservation Commission. At least 45 days prior to issuance of a license, the Department and the applicant shall coordinate with the Conservation Commission as follows:

1. The Department will not require Conservation Commission approval for existing structures built before enactment of M.G.L. c. 131, § 40, the Wetlands Protection Act (1963 for coastal wetlands and 1965 for inland wetlands) and not substantially altered subsequently. Applicants should consult their local Conservation Commission regarding application of M.G.L. c. 131, § 40, the Wetlands Protection Act to maintenance or alteration of existing structures.

2. For structures built between 1963 or 1965 (as applicable) and December 31, 1983, and not substantially altered after the latter date, the applicant shall provide notice of the application to the Conservation Commission. The Department shall proceed with licensing unless the Conservation Commission informs the Department that it has provided written notice to the applicant prior to the close of the public comment period to promote compliance with or to enforce M.G.L. c. 131, § 40, the Wetlands Protection Act.

3. For structures proposed, built, or substantially altered on or after January 1, 1984, applicants shall provide an Order of Conditions, a negative or conditional negative Determination of Applicability, or a Certificate of Compliance. The Department may waive this requirement based upon evidence of a written request for action by an applicant to a Conservation Commission, and subsequent failure of the Conservation Commission to respond.

(d) The applicant shall submit the notice of the application included in the application package to the Board of Selectmen or Mayor, the planning board, zoning authority and the Conservation Commission of the town or city where the work will be performed. The Department shall presume compliance with applicable state and local requirements unless it receives information to the contrary during the public comment period. Unless the Department receives a contrary determination from the proper zoning authority, signed by the Clerk of the affected municipality, compliance with applicable zoning ordinances and bylaws pursuant to 310 CMR 9.34(1) shall be deemed certified 45 days after notice to that zoning authority and clerk. Proposed structures must also conform to plans for waterways developed by agencies or commissions with legal authority, such as municipal harbor plans developed pursuant to 310 CMR 9.38(4)(b), or lake, regional commission, or other formal areawide policies or plans developed pursuant to 310 CMR 9.38(2)(b).

(e) Public Notice and Notice to Abutters. The applicant shall publish in a newspaper of general circulation in the area where the project is located a public notice including the applicant's name and address, the project location, a description of the project, a statement that written comments will be accepted within 30 days of the Notification Date stated therein, the address where comments may be sent, and a statement that a municipality, ten citizen group or any aggrieved person who has submitted written comments within the public comment period may appeal the Department's decision and that failure to submit written comments within the public comment period will result in the waiver of any right to an adjudicatory hearing. A copy of the notice shall also be sent by the applicant to the landowner if not the applicant, to any person having a record easement interest in the property where the structure is or may be located, and to all abutters to the property where

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the structure is or may be located, by certified mail, return receipt requested. Joint notice under 310 CMR 10.05(4): *Notices of Interest*, 310 CMR 9.10 and 314 CMR 9.05(3): *Public Notices of an Application* may be published and sent to persons entitled to notification, provided it contains the requisite information and meets the requisite standards pursuant to each statute.

(f) Fees. For structures totaling more than 300 square feet pursuant to 310 CMR 9.10(1)(a), applicants for simplified licenses shall pay an application fee, or the renewal fee, in accordance with the provisions of 310 CMR 4.10(8)(f) and (l) respectively. All other applicants for licenses under simplified procedures shall pay the application fee, or the renewal fee in accordance with the provisions of 310 CMR 4.10(8)(f) and (l) respectively. No tidewater displacement fees shall be assessed. Any person granted a license from the Department in, on or over any land the title to which is in the Commonwealth shall compensate the Commonwealth for the rights granted in such lands through payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. No occupation fee shall be assessed by the Department for structures within the enhanced portion of Great Ponds. An occupation fee shall be assessed for the portion of any structure that the Department determines, after opportunity for public comment, extends below the natural high water mark into the historic portion of the Great Pond. Enhanced Great Ponds are those which contain a surface area greater than their historic natural state, resulting from alteration by damming or other human activity.

(4) Decision on Applications. The Department shall issue a license, draft license, or written determination to deny a license within 90 days of a complete application, commencing no earlier than the close of the public comment period.

(5) Terms and Recordation for Licenses from the Department. The license term shall be 15 years unless the Department determines that a shorter term is necessary to protect the public interest. In accordance with M.G.L. c. 91, § 18, the license, with the plan as an exhibit, shall be recorded at the Registry of Deeds within the chain of title of the affected property within 60 days of the date of issuance. Failure to record the license and accompanying plan within 60 days will render the license void in accordance with M.G.L. c. 91, § 18.

(6) Renewal and Transfer of Licenses from the Department. A license ~~issued~~for renewal may be ~~renewed~~ provided the structure or fill remains sound and conforms to plans submitted with the original application, taking into account all applicable regulatory provisions, including without limitation 310 CMR 9.37, and existing conditions at the time the application for a renewal is submitted. At the time an application for renewal is submitted, the applicant shall send a notice of application for renewal included in the application package to the mayor or board of selectmen, planning board, and conservation commission of the city or town where the project site is located. The Department may require additional public notice based on comments received about the structure or other relevant information. If such additional public notice for renewal is required, the public comment period is 30 days. Applicants for renewal shall pay a renewal fee (*see* 310 CMR 4.10(8)(1)). Any person applying for a renewal under 310 CMR 9.10, including renewals of interim approvals or licenses originally granted under the Amnesty Program, shall compensate the Commonwealth for the rights granted in such lands through payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. Unless otherwise provided in the license, a valid license shall run with the land and shall automatically be transferred upon a change of ownership of the affected property within the chain of title of which the license has been recorded. All rights, privileges, obligations, and responsibilities specified in the license shall be transferred to the new landowner upon recording of the changed ownership.

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(7) Appeals. The appeal provisions in 310 CMR 9.17 apply to projects licensed under 310 CMR 9.10.

9.11 Application Requirements

...

9.11(3)

(c) The Department shall determine an application to be complete only if the following information has been submitted:

1. a set of final plans which are prepared in accordance with the format standards required for recording of licenses in the appropriate Registry of Deeds or Land Court for the district in which the licensed activity is to be performed; and which are certified by a Registered Professional Engineer or Land Surveyor, as deemed appropriate by the Department containing, at a minimum, the following:
 - a. an appropriately-scaled location map of the project site, and of any area where dredged material disposal will occur;
 - b. appropriately-scaled principal dimensions and elevations of proposed and existing fill and structures and, if dredging is involved, the principal dimensions of all relevant footprints, contours and slopes;
 - c. a delineation of the present high and low water marks, as relevant;
 - d. a delineation of the historic high and low water marks, as relevant and in a manner acceptable to the Department in accordance with the definitions thereof at 310 CMR 9.02;
 - e. references to any previous licenses or other authorizations for existing fill, structures, or dredging at the project site, and a delineation thereof as well as a delineation of any historic dredging, filling, or impoundment;
 - f. indication of any base flood elevation of the statistical 100-year storm event, ~~of~~ and any Velocity Zone of any coastal high hazard area, which is located on the project site; and
 - g. indication of the location of any on-site or nearby state harbor lines, federal pier and bulkhead lines, federal channel lines, and public landings or other easements for public access to the water.

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.12 – 9.14.
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

310 CMR 9.12(2)(a)(11) needs to be modified as shown below:

11. shore protection structures, including grey infrastructure such as seawalls, bulkheads, revetments, dikes, breakwaters, and any associated fill as well as green infrastructure such as vegetation, edging and sills which are necessary either to protect an existing structure from natural erosion or accretion, to protect previously developed

Commented [A11]: NAIOP believes that this additional language is needed to clearly state that resiliency measures and flood barriers for existing developed areas are included within the definition of Shore protection structures.

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areas from 310 GMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION
flood damage caused by sea level rise, or to protect, construct, or expand a
water dependent use;

9.15: Terms

- (1) Term of License
 - (a) All licenses issued by the Department shall contain a condition stating the term for which license is in effect, if any. All licenses shall be in effect for a fixed term not to exceed 30 years, unless otherwise deemed appropriate by the Department in accordance with 310

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CMR 9.15(1)(b) through (d).

(b) Notwithstanding 310 CMR 9.15(1)(a), the Department may issue a license that establishes an extended fixed term, in accordance with the following provisions:

1. said term shall not exceed 65 years for any project or portion thereof which, upon completion, will be located on flowed tidelands or other waterways, and shall not exceed 99 years for any project or portion thereof which will be located on filled tidelands or Great Ponds; in the event the project site includes both flowed and filled tidelands, the Department may upon request of the applicant establish a single weighted average term for the entire project, or for a portion thereof as deemed appropriate by the Department, based on the relative amounts of the surface area of the flowed and filled tidelands associated therewith;
 2. the applicant shall provide justification that an extended term is warranted given the expected life of the structure, typical financing requirements, consistency with a municipal harbor plan, if any, appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location, and any other relevant factors, including but not limited to projected sea level rise;
 3. for projects on Commonwealth tidelands or Great Ponds, the Department shall conduct a public hearing and issue written findings concerning the extended term, in accordance with the provisions of 310 CMR 9.13(3) and 9.14;
 4. for projects on Commonwealth tidelands or Great Ponds held by the Commonwealth, the licensee shall pay an occupation fee based on an appraisal, in accordance with the provisions of 310 CMR 9.16(3)(b) through (c); and
 5. the Department shall require the licensee to submit periodic license compliance inspection reports as a condition of the license for nonwater-dependent use projects, and for other projects as deemed appropriate by the Department.
- (c) The Department shall issue a license for an unlimited term for any project whose entire control, development, and operation is undertaken by a public agency for the provision of services directly to the public (or to another public agency for such provision to the public) by the public agency, its contractor or agent, unless an unlimited term is not deemed appropriate by the Department.
- (d) Notwithstanding the terms of license specified in 310 CMR 9.15(1)(b) and (c):
1. in Designated Port Areas, the term of license for any nonwater-dependent use in a marine industrial park shall not exceed 65 years; the term of license for any supporting DPA use shall not exceed 30 years; and the term of license for any temporary use shall not exceed ten years; and
 2. outside of Designated Port Areas, the term of license for any stationary vessel for uses as described in 310 CMR 9.32(1)(a)6. Shall not exceed 30 years.
- (e) The term of a license may be renewed in accordance with the provisions of 310 CMR 9.25(2).

(2) Term of Permit. Any permit shall be valid for a fixed term not to exceed five years; provided, however, that maintenance dredging may be performed for up to ten years after the permit has been issued, if such terms are so stated in the permit.

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.16 – 9.21.
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

9.22: Maintenance, Repair, and Minor Project Modifications

(1) Maintenance and Repair of Fill and Structures. During the term for which the license is in effect, the licensee shall maintain and repair all authorized fill and structures in good working order for the uses authorized in the license, and in accordance with the conditions specified therein. No application for license or license amendment shall be required for such activity. Maintenance and repair include, among other things, the following activities:

- (a) replacement of old pilings, decking, or rip-rap, all with material of the same dimensions and quality and in the same locations and elevations as that authorized in the license;
- (b) repaving of road surfaces, installation of road curbs and lighting, replacement of railroad track, stabilization of road or rail beds, reconstruction of culverts and catch basins, and other maintenance or repair of existing public transportation facilities and associated drainage systems, as necessary to preserve or restore the serviceability of such facilities for the original use, provided that maintenance and repair shall not include the substantial enlargement of such facilities, such as roadway widening, adding shoulders, or upgrading substandard intersections;
- (c) restoration to the original license specifications of licensed fill or structures that have been damaged by catastrophic events, provided that no change in use occurs and that:
 - 1. such restoration is completed within two years of the damage-causing event;
 - 2. in the case of flood-related damage, the cost of such restoration does not exceed 50% of the cost of total replacement according to the original license specifications;
 - 3. the licensee provides the Department with written notice of the restoration at least ten days prior to commencement of such work; in the case of flood-related damage, said notice shall include written estimates of restoration and replacement costs; and
 - 4. the licensee provides the Department with written notice that the repair work has been completed in accordance with the license specifications, as certified by a Registered Professional Engineer, within 60 days of such completion; and
- (d) demolition and removal of unused structures that are obsolete or otherwise no longer suitable for the uses authorized in the license, provided that written approval by the Department is obtained prior to the commencement of such work.

(2) Maintenance Dredging. Maintenance dredging may occur for five years from the date of issuance of the license or permit or for such other term, not exceeding ten years, specified therein, provided that the written notice required pursuant to the Wetlands Protection Act (M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*) has been filed with the Conservation Commission and a copy has been sent to the Department.

(3) Minor Project Modifications. The licensee may undertake minor modifications to a licensed project, or a project exempt from licensing pursuant to 310 CMR 9.05(3)(b) through (h), without filing an application for license or license amendment. Such modifications are limited to:

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- (a) structural alterations which are confined to the existing footprint of the fill or structures being altered and which represent an insignificant deviation from the original specifications of the license, in terms of size, configuration, materials, or other relevant design or fabrication parameters;
- (b) changes of use which maintain or enhance public benefits provided by the project and which represent an insignificant deviation from the original use statement of the license, in terms of function, character, duration, patronage, or other relevant parameters; or
- (c) replacement of subsurface utilities, or installation of additional utility lines in an existing right of way within previously authorized filled tidelands connecting to existing structures, provided the work will not restrict or impair access to water-dependent uses.

No such modifications shall be undertaken until the licensee has submitted written notice to the Department describing the proposed work in sufficient detail, with reference to any relevant license plans, for the Department to determine compliance with the above conditions. If the Department does not object within 30 days, the licensee may proceed with the described work without further approval by the Department.

(4) Nothing in 310 CMR 9.22(1) through (3) provisions shall be construed to exempt the work in question from obtaining other applicable approvals, including but not limited to an order of conditions under M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*.

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.23 – 9.24.
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

9.25: Expiration and Renewal

- (1) Expiration.
 - (a) Any license, permit, or legislative authorization shall expire as to all work licensed, permitted, or authorized which is not completed within five years of the date thereof, or such other period of time specified therein; provided, however, that for good cause shown the Department may extend, without public hearing or notice, the construction period of the license, permit, or legislative authorization for one or more one year periods upon written request of the licensee or permittee.
 - (b) All licenses or permits shall expire upon reaching the term, if any, stated in the license or permit or any extension thereof.
 - (c) Any license shall expire if the fill or structures are abandoned and not used for the purpose for which they were licensed for a period of five consecutive years or more.

(2) Renewal of Licenses and Permits. A ~~license or permit for~~ renewal may be ~~issued~~ granted for a term of years not to exceed that authorized in the original license or permit, in accordance with 310 CMR 9.15, upon written application by the licensee or permittee and in accordance with the procedures for amendments set forth at 310 CMR 9.24. ~~A license or permit for renewal may be issued provided the structure or fill remains sound and conforms to the existing license or permit plans submitted~~

Commented [A12]: It is unclear to NAIOP why this change is being proposed. NAIOP urges DEP to maintain the current language.

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~~with the original application, taking into account, and all applicable regulatory provisions, including without limitation 310 CMR 9.37, and existing conditions at the time the application for a renewal is submitted.~~

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.26 – 9.32.
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

310 CMR 9.32(2) additional language needed to address resilient infrastructure

Add new section (e)

(e) Placement of fill or structures the purpose of which is to provide protection from flooding associated with sea level rise.

9.33 : Environmental Protection Standards

- (l) All projects must comply with applicable environmental regulatory programs of the Commonwealth, including but not limited to:
- (a) Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H and 301 CMR 11.00: *MEPA Regulations*.
 - (b) Wetlands Protection Act, M.G.L. c. 131, § 40, and 310 CMR 10.00: *Wetlands Protection*.
 - (c) Wetlands Restriction Acts, M.G.L. c. 130, § 105 and c. 131, § 40A, and 310 CMR 12.00: *Adopting Coastal Wetlands Orders* and 310 CMR 13.00: *Adopting Inland Wetlands Orders*. All projects shall comply with wetland restriction orders recorded pursuant to these statutes.
 - (d) Areas of Critical Environmental Concern, M.G.L. c. 21A, § 2(7) and St. 1974, c. 806, § 40(E), and 301 CMR 12.00: *Areas of Critical Environmental Concern*.
 - (e) Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and 314 CMR 3.00: *Surface Water Discharge Permit Program*, 314 CMR 5.00: *Ground Water Discharge Permit Program*, 314 CMR 7.00: *Sewer System Extension and Connection Permit Program*, 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth*, and 310 CMR 15.00: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*.
 - (f) Ocean Sanctuaries Act, M.G.L. c. 132A, §§ 13 through 16 and 18, and 302 CMR 5.00: *Ocean Sanctuaries*. No license or permit shall be issued for any structure or fill that is expressly prohibited in M.G.L. c. 132A, §§ 1 through 16.
 - (g) Marine Fisheries Laws, M.G.L. c. 130, and 322 CMR 1.00: *Enforcement of Rules and Regulations*.
 - (h) Scenic Rivers Act, M.G.L. c. 21, § 17B, and 302 CMR 3.00: *Scenic and Recreational Rivers Orders*.
 - (i) Massachusetts Historical Commission Act, M.G.L. c. 9, §§ 26 through 27C, as amended by St. 1982, c. 152 and St. 1988, c. 254, and 950 CMR 71.00: *Protection of Properties*

Commented [A13]: NAIOP believes that the "and all applicable regulatory provisions" language is ambiguous as to whether the existing structure needs to be retrofitted to meet current standards in 9.37. 9.37 is entitled "Engineering and Construction Standards" and is specifically intended to apply to new structures. Existing structures should not be required to comply with standards for new construction.

Commented [A14]: NAIOP hopes that DEP can provide clarification as to what the language about existing conditions was meant to address.

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Included in the State Register of Historic Places. For projects for which a Project Notification Form must be submitted pursuant to 950 CMR 71.07: *Review of Projects* the applicant shall file said form with the Massachusetts Historical Commission.

(j) Mineral Resources Act, M.G.L. c. 21, §§ 54 through 58.

(k) Massachusetts Drinking Water Act, M.G.L. c. 111, §§ 159 through 174A, and 310 CMR

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22.00: ~~Land Application of Sludge and Septage~~ Drinking Water.

(l) Underwater Archeological Resources Act, M.G.L. c. 91 and c. 6, §§ 179 and 180, and 312 CMR 2.00: *Massachusetts Underwater Archaeological Resources*.

(m) Hazardous Waste Management Act, M.G.L. c. 21C and 310 CMR 30.000: *Hazardous Waste*.

(n) Solid Waste Disposal Act, M.G.L. c. 16, §§ 18 through 24, and 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities*.

(o) Air Pollution Act, M.G.L. c. 111, §§ 142A through I and 310 CMR 7.00: *Air Pollution Control*.

(p) State Highway Curb Cuts, M.G.L. c. 81, § 21.

(q) Energy Restructuring Act, M.G.L. c. 164, §§ 69G through S, and 980 CMR 1.00 through 12.00.

(r) Regional land use control statutes, including the Martha's Vineyard Commission Act, St. 1974, c. 637, c. 831, and the Cape Cod Commission Act, St. 1989, c. 716.

(2) Where a state or regional agency has authority to issue regulatory approval, issuance of such approval shall be conclusive as to compliance with the regulatory program in question.

(3) With respect to M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*, if the Department has issued a final order of conditions the project shall be presumed to comply with the statute and the final order shall be deemed to be incorporated in the terms of the license or permit, with no additional wetland conditions imposed. If an order of conditions has been issued by the conservation commission and the Department has not taken jurisdiction, the Department shall presume the project complies with state wetland standards, except upon a clear showing of substantial non-compliance with such standards. In that event, the Department shall impose such additional conditions in the license or permit as will make the project substantially comply with state wetlands standards.

(4) Where a state agency has statutory responsibility but no authority to issue regulatory approval, the Department shall act in accordance with any MOU with said agency governing incorporation of its standards and requirements into waterways licenses and permits. In the absence of an MOU, the Department shall presume that the project complies with the statutes and regulations in question, unless the responsible state agency informs the Department otherwise. In that event, the Department shall consult with the responsible state agency and may adopt any formal recommendations received therefrom, provided such recommendations do not conflict with 310 CMR 9.00 or the purposes of M.G.L. c. 91.

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[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.34 – 9.36.
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

9.37: Engineering and Construction Standards

- (1) All fill and structures shall be designed and constructed in a manner that:
 - (a) is structurally sound, as certified by a Registered Professional Engineer;
 - (b) complies with applicable state requirements for construction in flood plains, in accordance with the State Building Code, 780 CMR and as hereafter may be amended, and will not pose an unreasonable threat to navigation, public health or safety, or adjacent buildings or structures, if damaged or destroyed in a storm; ~~and~~
 - (c) does not unreasonably restrict the ability to dredge any channels; ~~and~~
 - (d) ~~incorporates the impacts of projected sea level rise throughout for the design life of the building, structure, fill, open space or publicly accessible area or facility. An applicant shall consult the Resilient.mass.gov website for the most current mapping and other available information related to shoreline change and sea level rise or other similarly reliable sources, as deemed appropriate by the Department for information regarding shoreline change and sea level rise.~~
- (2) In the case of a project within a flood zone, the project shall comply with the following requirements:
 - (a) In ~~coastal high hazard areas as defined in 310 CMR 9.02a Velocity Zone (V-Zone),~~ new or expanded buildings for residential use shall not be located seaward of the high water mark.
 - (b) New buildings for nonwater-dependent use intended for human occupancy shall be designed and constructed to:
 1. ~~withstand the wind and wave forces associated with the statistical 100-year frequency storm event; and~~
 2. ~~comply with the provisions of 310 CMR 9.37(1)(d); incorporate projected sea level rise during the design life of the buildings; at a minimum, such projections shall be based on historical and projected rates of increase in sea level in New England coastal areas.~~
- (3) Projects with coastal or shoreline engineering structures shall comply with the following:
 - (a) any seawall, bulkhead, or revetment shall be located landward of the high water mark unless it must lie below the high water mark to permit proper tieback placement, to obtain a stable slope on bank areas, or to be compatible with abutting seawalls, bulkheads, or revetments in terms of design, size, function, and materials, or unless it is associated with new fill permitted according to the provisions of 310 CMR 9.32 ~~or its purpose is to provide protection from flooding associated with sea level rise and it is conducted by the public agency responsible for the infrastructure, or in the case of private seawalls or berms, when supported by the municipality.~~
 - (b) any breakwater or similar structure designed to dissipate or otherwise reduce wave energy or to interfere with current flow shall not:
 1. cause or contribute to water stagnancy;
 2. reduce the ability of adjacent water bodies to flush adequately; or

Commented [A15]: NAIOP respectfully notes that "facility" is not a defined term and that other parts of this section cover facilities.

Commented [A16]: NAIOP is concerned that referencing a web site that is not constant is problematic from a regulatory standpoint as the standard for approval is subject to change.

Commented [A17]: NAIOP believes this language is unnecessary as it already applies to new buildings above in (1)(d).

Commented [A18]: NAIOP suggests this edit to match the proposed WPA language at 310 CMR 10.36(8)(g).

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3. cause or contribute to sedimentation problems in adjacent or nearby navigation

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channels, anchorages, or wetland resource areas, or cause increased erosion to inland or coastal beaches, banks, or other wetland resource areas;

(c) in evaluating coastal or shoreline engineering structures, the Department shall require non-structural alternatives where feasible practicable and effective;

(d) the Department shall evaluate coastal or shoreline engineering structures for compatibility with abutting coastal or shoreline engineering structures in terms of design, size, function, and materials;

(e) if the Department finds significant adverse effects on the project site or adjacent or downcoast and downstream areas after construction of any coastal or shoreline engineering structure, the Department may, after an opportunity for a hearing, require modification of said structure the cost of which may not exceed 25% of the replacement cost of said structure, or may require the removal of said structure; 310 CMR 9.37(3)€ shall be specifically stated in the license.

(4) Pipelines and conduits and their valves and protrusions shall be buried so that they will not present a hazard to navigation; will be adequately protected from scouring; will not be uncovered by sediment transport; and will not present a hazard or obstruction to fishing gear. Bottom contours shall be restored after burial. Pipelines carrying hazardous substances (*e.g.*, oil) shall also be protected from anchor dragging and fish trawls. When the burial of pipelines, conduits, valves, and protrusions is not feasible, equivalent protection shall be provided by shrouding or other means.

Commented [A19]: NAIOP urges DEP to change "feasible" (capable of being done, effected, or accomplished) to "practicable" (capable of being done, effected, or put into practice, with the available means) "and effective."

9.38: Use Standards for Recreational Boating Facilities

(1) Public Recreational Boating Facilities. Any project that includes a public recreational boating facility, any portion of which is located on Commonwealth tidelands or Great Ponds, shall include measures to ensure patronage of such facility by the general public. In applying this standard the Department shall act in accordance with the following provisions:

(a) all vacant berths shall be assigned in a fair and equitable manner to the public patrons of said facility, by means of a waiting list or other comparably unbiased method; nothing in this provision shall be construed to prevent berthing assignments based on vessel characteristics, or the offer of first refusal rights to existing patrons of the facility who wish to relocate to a vacant berth;

(b) any contract or other agreement for exclusive use of berths at said facility shall have a maximum term of one year, and may be renewable upon each expiration for an additional period of up to one year;

(c) reasonable arrangements shall be made to accommodate transient boaters, including, at a minimum, a procedure for making any berth available for transient use during periods of vacancy in excess of 24 hours;

(d) all exterior pedestrian facilities on the project site shall be open to the general public, except where access restrictions are necessary in order to avoid significant interference with the operation of the facility or to maintain security at slips, ramps, floats, and other docking facilities; any such access restrictions shall be stated in the license.

(2) Private Recreational Boating Facilities.

(a) Any project that includes a private recreational boating facility, any portion of which is located on Commonwealth tidelands or Great Ponds, shall include measures to avoid undue privatization in the patronage of said facility. In applying this standard, the Department shall act in accordance with the following provisions:

1. no berth in a marina shall be assigned pursuant to any contract or other agreement that makes use of the berth contingent upon ownership or occupancy of a residence or

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other nonwater-dependent facility of private tenancy;

2. no berth in a marina shall be assigned pursuant to a contract or other agreement for exclusive use with a maximum term that exceeds one year, unless:

a. for existing marinas, the lease agreement, master lease agreement or notice thereof for such berths was recorded at the Registry of Deeds prior to July 6, 1990 in which event all berths subject to such agreement shall be exempt from the provisions of 310 CMR 9.38(2)(b); or

b. for new marinas or berths in an existing marina not ~~exempted-grandfathered~~ pursuant to 310 CMR 9.38(2)(a), the following conditions are met:

i. said marina is located on tidelands outside of Designated Port Area;

ii. the Department expressly authorizes the assignment of long-term exclusive use of such berths in the license, and the license includes a condition requiring written notification to any assignee that said license does not convey ownership of Commonwealth tidelands;

iii. the number of berths authorized in the license does not exceed 50% of the total berths in said marina; and

iv. said marina provides water-related public benefits commensurate with the degree of privatization, as deemed appropriate by the Department.

(b) No project shall include a private recreational boating facility with fewer than ten berths on Commonwealth tidelands or Great Ponds, if the Department receives written certification from the municipal official or planning board of the municipality in which the project is located that such facility does not conform to a formal, areawide policy or plan which establishes municipal priorities among competing uses of the waterway, unless the Department determines that such certification:

1. is arbitrary, capricious, or an abuse of discretion; or
2. conflicts with an overriding state, regional, or federal interest.

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED TO SECTIONS 9.39 – 9.40.

THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED ABOVE.

310 CMR 9.00 DOES NOT INCLUDE SECTIONS NUMBERED 9.41 – 9.50]

9.51: Conservation of Capacity for Water-dependent Use

A nonwater-dependent use project that includes fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. In applying this standard, the Department shall take into account any relevant information concerning the utility or adaptability of the site for present or future water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall adhere to the greatest reasonable extent to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2. At a minimum, the Department shall act in accordance with the following provisions.

(1) If the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and

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those of any water-dependent facility which reasonably can be expected to locate on or near the project site. Characteristics of the respective facilities that may give rise to such user conflict include, but are not limited to:

- (a) presence of noise and odors;
- (b) type of equipment and accessory services;
- (c) hours of operation and spatial patterns of activity;
- (d) traffic flows and parking needs;
- (e) size and composition of user groups;
- (f) privacy and security requirements;
- (g) requirements for public infrastructure.

(2) If the project includes new structures or spaces for nonwater-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site. Aspects of built form that may give rise to design incompatibility include, but are not limited to:

- (a) the total surface coverage by buildings and other permanent structures, insofar as it may affect the amount of open space where flexibility to serve water-dependent purposes will be retained;
- (b) the layout and configuration of buildings and other permanent structures, insofar as they may affect existing and potential public views of the water, marine-related features along the waterfront, and other objects of scenic, historic or cultural importance to the waterfront, especially along sight lines emanating in any direction from public ways and other areas of concentrated public activity;
- (c) the scale of buildings and other permanent structures, insofar as it may affect wind, shadow, and other conditions of the ground level environment that may affect users of water-dependent facilities; and
- (d) the landscape design of exterior open spaces, insofar as it may affect the attainment of effective pedestrian and vehicular circulation within and to areas of water-dependent activity.

(3) The Department shall find that the standard is not met if the project does not comply with the following minimum conditions which, in the absence of a municipal harbor plan which promotes the policy objectives stated herein with comparable or greater effectiveness, are necessary to prevent undue detriments to the capacity of tidelands to accommodate water-dependent use:

- (a) new pile-supported structures for nonwater-dependent use shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the on-site replacement requirement if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative replacement requirements which ensure that no net loss of open water will occur for nonwater-dependent purposes, in order to maintain or improve the overall capacity of the state's waterways to accommodate public use in the exercise of water-related rights, as appropriate for the harbor in question;
- (b) Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private

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Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. The Department may allow any portion of the equivalent area of a Facility of Public Accommodation to be relocated within the building footprint, or in other buildings owned, controlled or proposed for development by the applicant within the Development Site if the Department determines the alternative location would more effectively promote public use and enjoyment of the project site. As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above use limitations if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative limitations and other requirements which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question;

(c) new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:

1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and
2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and
3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.

As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standards if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(d) at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site; in the event this requirement cannot be met by a project involving only the renovation or reuse of existing buildings, ground level open space shall be provided to the maximum reasonable extent; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standard if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative site coverage ratios and other requirements which ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(e) new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in

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height if located over the water or within 100 feet landward of the high water mark; height shall be measured from existing grade or two feet above the Base Flood Elevation (BFE) as defined in the applicable State Building Code for the first floor FEMA Flood Insurance Rate Map, whichever is higher; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive such height limits if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative height limits and other requirements which ensure that, in general, such buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water- dependent activity and public access associated therewith, as appropriate for the harbor in question; ~~nonstructural elements non-occupiable space constructed~~ relocated on the roof of an existing building for non-water dependent use, including mechanical elements and required enclosures, may be excluded from the building height requirement measurement for purposes of licensing;

Commented [A20]: This change will address the much more important issue of raising the base from which building heights are measured to account for flood resistant design. While it may not fully account for all future SLR it is consistent with City of Boston Article 25A definition. Building height may still be measured to top of structure as defined in local zoning.

(4) the requirements of 310 CMR 9.51(1) through (3), shall also apply in the event a nonwater-dependent use project is located on a Great Pond;

(5) the requirements of 310 CMR 9.51(3), shall not apply to projects on filled tidelands in Designated Port Areas involving temporary uses, supporting DPA uses that are industrial, and marine industrial parks.

Commented [A21]: NAIOP believes that this should apply to all buildings, not just existing buildings

[NOTE TO REVIEWERS:

NO CHANGES ARE PROPOSED IN SECTIONS 9.52 – 9.56 (END).
THESE SECTIONS ARE OMITTED FROM THIS DOCUMENT AS NOTED
ABOVE.]

Proposed regulatory changes by MA Dept. of Environmental Protection

Nancy Doyle [REDACTED]

Mon 4/29/2024 6:26 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick. Kearney@mahouse.gov <Patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

A few days ago we suddenly became aware of proposed regulations drastically affecting the Massachusetts coastline.

No prior public information has been provided, to the best of our knowledge, nor has public input been sought.

Such drastic regulations require extensive research and public discussion. They should not be hastily implemented without consideration for the entire coastal community.

Nancy & Richard Doyle

[REDACTED]


Humarock MA [REDACTED]

Waterways Resilience 1.0 public comment letter

Angela Catalano (CONTRACTOR) <angela.catalano@TNC.ORG>

Tue 4/30/2024 1:37 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (200 KB)

DEP Waterways Resilience 1.0 TNC comment letter.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

Thank you for the opportunity to submit comments on the Waterways Resilience 1.0 regulations. Please see the attached public comment letter, submitted on behalf of Alison Bowden, Director of Conservation Science and Strategy at The Nature Conservancy in Massachusetts.

Best regards,
Angela

Angela Catalano (she/her)
Coastal Sustainability Fellow
The Nature Conservancy in Massachusetts

Massachusetts Department of Environmental Protection
Bureau of Water Resources Waterways Program
100 Cambridge Street, Suite 900
Boston, MA 02114
Email: dep.waterways@mass.gov

April 30, 2024

Re: Waterways Resilience 1.0 Comments

Please accept this letter on behalf of The Nature Conservancy (TNC) in response to proposed amendments to 310 CMR 10.00 Wetlands Protection Act (WPA) and Section 401 Water Quality Certifications, and 310 CMR 9.00 Waterways (Chapter 91).

We extend our gratitude to the Massachusetts Department of Environmental Protection (MassDEP) for preparing Resilience 1.0 amendments that encourage sound regulatory updates to increase Massachusetts' resiliency in our changing climate. These first steps are necessary to protect the safety of our coastal communities and vibrant ecosystems as well as plan for an uncertain climatic future.

The Nature Conservancy is a global conservation organization working toward a world where people and nature thrive. Our ambitious [2030 goals](#) address the greatest threats to the planet in the climate and biodiversity loss crises. In Massachusetts (and beyond), TNC is committed to working with communities to find durable solutions, and we are appreciative of the Healey/Driscoll Administration's groundbreaking leadership in addressing climate change and biodiversity loss.

We have reviewed Resilience 1.0 regulations and respectfully provide the following comments:

Consistency with federal coastal risk regulations

By updating language to 310 CMR 10.36 to align the Land Subject to Coastal Storm Flowage (LSCSF) metrics based on the Federal Emergency Management Agency's (FEMA) Flood Zones, the Commonwealth will be keeping new development out of areas that face damaging floods and sea level rise. The consistency with language used in FEMA's National Flood Insurance Program supports clarity in defining which areas face the highest risk of flooding, as well as the potential cost to insure properties. We applaud the decision to restrict new development in the highest risk areas.

Prioritizing nature-based solutions for shoreline protection

Provisions under 310 CMR 10.24 prioritize ecological protection and restoration of coastal wetlands within our built environment. These provisions are necessary to advance coastal wetlands restoration projects, as well as to encourage coastal engineering projects to consider nature-based solutions to work on LSCSF.

Upon review of the proposed updates in Climate Resilience Regulations 1.0, we respectfully offer the following recommendations for Resilience 2.0:

Streamlining license and permit application process

We view Resilience 1.0 as an opportunity to improve and streamline the permitting process for removing barriers to restoration and conservations efforts in alignment with [Executive Order No. 618: Biodiversity Conservation in Massachusetts](#). This order outlines the co-benefits of biodiversity

conservation, including flood mitigation and improved water quality, which a simpler application would promote.

In addition to a simpler, streamlined application for permitting, we strongly recommend a re-evaluation of the fill definition for nature-based solutions and other ecological restoration projects. Under 310 CMR 9.05(3), we ask for a more robust definition for fill to clarify which ecological restoration projects require permitting under this regulation. For example, oyster reef restoration, a critical nature-based solution for improving coastal water quality, providing structured habitat for marine life, and stabilizing the shoreline, often requires placement of material to act as a base layer, increasing likelihood of oyster survival. Natural materials, such as clean shell and/or rock (known as cultch) and spat-on-shell (oysters set on shell or other material), are commonly used in oyster reef construction.¹ We encourage certain ecological restoration practices, including oyster reef habitat creation, that meet certain minimum standards, to be exempt from the requirements under Chapter 91, as these projects are designed to preserve and protect the rights of the public and do not interfere with the public trust.

Using best available data and incorporate climate modeling

Under 310 CMR 10.57, we encourage MassDEP to include language that references “the best available climate data” for evaluation, rather than pinpoint specific datasets, such as NOAA14+, that may require new amendments to the regulations with the release of new datasets. New datasets are released regularly, and allowing for their usage supports using the best available science for decision-making. Additionally, to evaluate sea level rise, datasets and climate modeling that include projections would be more suitable for considering future coastal resiliency.

Sea level rise projections for development

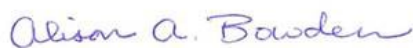
While the consistency in language with FEMA’s flood maps under 310 CMR 10.36(5-8) will make it easier to connect federal and state policies regarding development, the reliance on FEMA flood maps prioritizes historical flood data, rather than projected sea level rise. This could potentially allow for projects that could fall under a different FEMA flood zone in future mapping updates. Considering future scenarios for current and new development is a crucial element to adapting to a changing climate, particularly for coastal communities that face sea level rise and coastal erosion.

With the recent release of ResilientMass, including the ResilientCoasts Initiative, Resilience 2.0 will provide a unique opportunity to align regulatory updates with our state’s innovative plans to make our communities and coastal environments more resilient to climate change. We look forward to seeing how Resilience 2.0 will incorporate the ambitious goals and plans set forth by the Commonwealth.

TNC appreciates the two-step process to review and respond to these regulatory updates and is grateful to the agencies involved in reviewing and addressing public comments. We look forward to our continued collaboration in addressing these evolving challenges in protecting our communities and environment.

Thank you for considering these comments. If you have any questions, please do not hesitate to contact me at abowden@tnc.org.

Sincerely,



Alison Bowden
Director of Conservation Science and Strategy

¹ zu Ermgassen, P, Hancock, B., DeAngelis, B., Greene, J., Schuster, E., Spalding, M., Brumbaugh, R. 2016. Setting objectives for oyster habitat restoration using ecosystem services: A manager’s guide. The Nature Conservancy, Arlington VA. 76pp.

Proposed Wetland Waterway Regulations

Todd Walker <todd@nausetmarine.com>

Sat 4/27/2024 10:17 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (98 KB)

DEP letter April 26 2024.doc;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please see attached letter.

Thank you,

Todd Walker
President
Nauset Marine
PO Box 357
45 Route 6A
Orleans MA 02653
508-255-0777



CORPORATE OFFICE
45 ROUTE 6A, P. O. BOX 357
ORLEANS, MASSACHUSETTS 02653
PHONE 508-255-0777
FAX 508-255-0373
SALES FAX 508-255-3906

4/26/24

To: MA Department of Environmental Protection

RE: Regarding the proposed wetland waterways regulation changes.

We own and operate a marine business at the coast line in Massachusetts and we understand the need for climate change adaptation. However, we believe these proposed regulation changes need further review before becoming finalized as they could have significant adverse effects on marine businesses and waterfront properties in general. Many businesses rely on waterfront facilities for their livelihood.

It seems these regulations could prohibit re-building, maintenance, renovations and/or replacement of existing waterfront facilities, docks, and piers if these regulations are enacted. Renewal of expiring, existing operational permits and licenses could be in jeopardy which could be quite problematic for marina's trying to continue operating their facilities.

We urge you to hold more public hearings in order to gain more participant input as the idea of retreating from the coastline would eventually put many company's (such as marina's) out of businesses. The public also has a need to continued water access and they need a place to keep their boats.

Please consider the options allowed in Designated Port Area's be extended to all existing marinas, boatyards, and other water-dependent entities.

We appreciate you reviewing the points mentioned in this letter. We are concerned for all the many marine businesses in Massachusetts and their ability to continue conducting business.

Thank you,

Todd Walker
President
Nauset Marine
PO Box 357
45 Route 6A
Orleans MA 02653
508-255-0777 office
508-246-5501 cell



CORPORATE OFFICE
45 ROUTE 6A, P. O. BOX 357
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UPPER CAPE • 692 MAC ARTHUR BLVD., POCASSET MA 02559 • PHONE 508-563-1110 • FAX 508-563-1172
MARINA • 235 MAIN STREET, EAST ORLEANS MA 02643 • PHONE 508-255-3045
NAUSET MARINE AT BURR BROTHERS BOATS • 309 FRONT STREET, MARION MA 02738 • PHONE 508-748-0541
WWW.NAUSETMARINE.COM

FW: Waterways Resilience Comments

DEP Wetlands (DEP) <dep.wetlands@mass.gov>

Tue 4/30/2024 2:00 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (231 KB)

NepRWA Comment letter Ch91 2024 04 30.pdf;

From: Anna Yie <yie@neponset.org>

Sent: Tuesday, April 30, 2024 10:27 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>

Cc: Kerry Snyder <snyder@neponset.org>

Subject: Waterways Resilience Comments

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Please see attached comment letter on the proposed chapter 91 regulatory update.

Thank you,

Anna Yie (she/her)

Green Infrastructure Specialist

Neponset River Watershed Association

2173 Washington Street

Canton, MA 02021

781-575-0354 x 306



neponset river

WATERSHED ASSOCIATION

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 02114

Officers & Board

*Kyle McBurney,
President, Dover*

*Jennie Goossen,
VP, Westwood*

*Jerry Hopcroft,
Treas., Norwood*

*Heather Audet,
Sec., Norwood*

*Stephen Brayton,
Dedham*

*Cynthia
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*James Green,
Canton*

*Ardis Johnston,
Stoughton*

*Taber Keally,
Milton*

*Rebecca Kinraide,
Sharon*

*Maria Lyons,
Dorchester*

*Martha
McDonough,
Readville*

*Robert McGregor,
Sharon*

*Brendan
McLaughlin,
Milton*

*Bill Pastuszek,
Colrain*

RE: Resilience 1.0 proposal: Ch. 91 Waterways

Dear Commissioner Heiple:

The Neponset River Watershed Association is a member-supported nonprofit organization dedicated to the improvement and protection of the Neponset River and its watershed. Included in that mission is a commitment to supporting resilience efforts throughout the region. It is with this mission in mind that we submit these comments on MassDEP's proposed changes to the Chapter 91 Waterways regulations.

We appreciate the considerable effort that MassDEP staff have spent developing these draft updates to advance climate resilience in the Commonwealth. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations.

NepRWA is pleased to see and supports many of the recommended changes, including:

- Requiring the use of projected sea level rise data for the life of new development and redevelopment projects.¹ Sea level rise must be factored into coastal infrastructure plans not only to ensure the longevity of the structure, but also for public safety.
- Clarification of the exemption of culvert replacements meeting Massachusetts Stream Crossing Standards from Chapter 91 permitting.² This exemption will help encourage culvert replacements, speed up their permitting process, and lower the cost for municipalities and practitioners.

Some of the areas where Resilience 1.0 may be improved include:

MassDEP must accelerate the pace of restoration projects by simplifying the permitting process. While the "Combined Application" option for WPA,

¹ 310 CMR 9.37 (1)(d)

² 310 CMR 9.05 (3)(g)(4)

Waterways, and Section 401 Water Quality Certifications has been stricken due to inefficiencies,³ there is no proposed replacement. This is a missed opportunity to create a streamlined process to ensure that projects designed to restore natural areas and better protect our communities, directly advancing MassDEP's resilience goals, can be implemented quickly and in a sustainable way with combined WPA and Chapter 91 approval.

The definition of “fill” may pose an obstacle to restoration projects. As written, the definition of “fill” includes salt marsh hay,⁴ which is therefore required to comply with the same long permitting pathway as fill used in development. Since salt marsh hay is part of ecological restoration, it should be excluded from the definition of “fill” should exclude salt marsh hay, and those projects should be exempt from getting a Chapter 91 license.

Resilient regulations must require the holistic use of projected conditions. While MassDEP has proposed to use Resilient Mass mapping for updated sea level rise data, there is no inclusion of forecasted precipitation data. Without the full context of conditions, accurate flood risk may not be evaluated in the context of project proposals.

MassDEP should provide a streamlined permitting pathway for dam removal projects. Culvert replacement projects are already exempted from a Chapter 91 license, in recognition of the fact that those projects do not impede navigation and instead increase the resilience of the site. MassDEP's public summary of the proposed regulatory changes state that these projects are exempt “when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation.”⁵ Projects proposing to remove dams that impede wildlife passage, increase flood risks, or are abandoned, similarly meet those criteria.

The Wetlands Protection Act regulations provide an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited Project.⁶ Chapter 91 should treat these projects similarly by exempting them from permitting. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety. Removing many of these dams is essential to protecting communities from the more intense storms that climate change is causing. We urge MassDEP to reduce as many obstacles as possible to advancing this work.

In sum, MassDEP's proposals move the Commonwealth towards better incorporating climate resilient strategies as communities grow and change. However, this first step could be significantly stronger to advance the stated goals of “Resilience 1.0.” After finalizing these updates, we urge MassDEP to begin the “2.0” process immediately. We cannot afford to delay implementation of development regulations to ensure the long-term resilience of our communities.

³ 310 CMR 10.04

⁴ 310 CMR 9.02

⁵ MassDEP, [SUMMARY OF PROPOSED REGULATIONS](#) 310 CMR 9.00: WATERWAYS, at 1 (December 22 2023)

⁶ 310 CMR 10.00 (8)

Thank you for the considerable time and effort the agency has invested in creating these draft regulations so far. We look forward to continuing to work together to protect Massachusetts' rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry Snyder". The signature is fluid and cursive, with the first name "Kerry" and last name "Snyder" clearly distinguishable.

Kerry Snyder
Managing Dir. for Community Resilience

Waterways Resilience Comments

Martha Sheils <martha.sheils@maine.edu>

Tue 4/30/2024 2:24 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (1 MB)

SNEP Network Public Comment Letter MassDEP.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please accept the attached *Wetlands-401 Resilience Comments* from the Southeast New England Program Network.

I am available for questions at the contact number below.

Thank you,
Martha

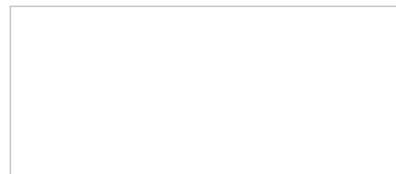
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Martha Sheils

Director | New England Environmental Finance Center

University of Southern Maine

207.841.2246 | neefc.org | snepnetwork.org





Martha Sheils
New England Environmental Finance Center
34 Bedford Street
Portland, ME 04101
martha.sheils@maine.edu
207.841.2246

April 30, 2024

Via e-mail: dep.wetlands@mass.gov
MassDEP - BWR Wetlands Program
Attn: *Wetlands-401 Resilience Comments*
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Wetlands-401 Resilience Comments; Public Comment on revisions to the Massachusetts Wetlands regulations (310 CMR 10.00) and corresponding revisions to the 401 Water Quality Certification Regulations (314 CMR 9.00), and the Massachusetts Stormwater Handbook

To whom it may concern:

Thank you for the opportunity to provide comments on the proposed 401 Water Quality Certification Regulations—resilience 1.0. I am writing to submit a formal public comment on behalf of the Southeast New England Program (SNEP) Network regarding the revisions to the Massachusetts Wetlands regulations (310 CMR 10.00) and corresponding revisions to the 401 Water Quality Certification Regulations (314 CMR 9.00), in addition to a new version of the Massachusetts Stormwater Handbook currently under consideration by the Wetlands Program of the Massachusetts Department of Environmental Protection (MassDEP).

The Southeast New England Program (SNEP) Network brings together 15 partner entities including local environmental organizations, academic institutions, regional planners, and consultants who work collaboratively to provide municipalities, Tribes and organizations in Rhode Island and Southeast Massachusetts access to free training and technical assistance to advance stormwater management and ecological restoration goals across the region. Our mission is to empower communities to achieve healthy watersheds, sustainable financing, and long-term climate resilience through management of stormwater and restoration projects. We are committed to building a strong community around existing and future water resource nexuses including stormwater controls and climate solutions that will improve quality of life for all.

The SNEP Network would like to submit the following comments suggesting modifications to the corresponding revisions to the 401 Water Quality Certification Regulations (314 CMR 9.00, in addition to a new version of the Massachusetts Stormwater Handbook.



Specific SNEP Network partners involved in reviewing the comments include: SNEP Network MA Liaison (*Dr. Kimberly Groff, Ph. D CC-P*), University of New Hampshire Stormwater Center (*Dr. James Houle, Ph.D., CPSWQ, CPESC and Mark Voorhees*) and Mass Audubon (*Heidi Ricci*).

In 2020 SNEP Network initiated a regional project to address the implementation to create guidance for the implementation of Stormwater Control Measures (SCM) in retrofit situations in the New England Stormwater Retrofit Manual. This manual was developed due to the forward thinking and commitment to water quality by the Southeast New England Program (SNEP) and Environmental Protection Agency (EPA) Region 1. The latest version of the manual may be accessed online at the following hyperlink, along with other supplementary documents: <https://snepnetwork.org/stormwater-retrofit-manual/#> and will be referred to as “SW Manual” in our comments.

The technical experience of the University of New Hampshire Stormwater Center’s research combined with VHB’s engineering design and implementation experience was supplemented by the perspectives and feedback of the manual team, Elizabeth Scott and Kimberly Groff, and Technical Advisory Committee (TAC) that included representations of EPA Region 1, MassDEP, MassDOT, RIDEM, RIDOT, CTDEEP, and VTDEC.

The SW Manual provides research-based guidance on planning, siting, and designing retrofit stormwater control measures (SCMs) to manage stormwater in existing or reconstructed development situations where regulatory requirements do not dictate prescribed specifications. It also presents an approach for crediting pollutant and runoff volume reductions associated with these measures. For the purposes of the SW Manual, a retrofit is defined as the addition of stormwater controls on a currently developed site. Retrofits may include controls incorporated into planned construction work or controls implemented as a stand-alone stormwater improvement project. Retrofit SCMs are designed to minimize the impacts of existing development at sites that either lack stormwater controls or have insufficient controls in place.

Situations where retrofits are encouraged, and with which this manual will assist, include:

- Implementing stormwater controls as part of maintenance and planned construction ≈ Demonstrating stormwater treatment to the maximum extent practicable (MEP) ≈ Implementing stormwater controls to meet total maximum daily load (TMDL) targets
- Identifying and prioritizing stormwater management interventions to protect or improve a local water resource
- Enhancing existing structural SCMs for improved performance controls (e.g., increased pollutant load and runoff volume reductions)
- Understanding cost/benefit for various control measures and options.

The SW Manual does NOT replace existing federal, state, or local requirements for stormwater management. It should be used as a resource for supplemental guidance in making smart site design choices to mitigate stormwater impacts from existing developed areas. Our recommendation is that while the SW manual is referenced in the draft regulations, that it be more clearly established in retrofit situations whenever guidance is given. Our comments were

developed based on our Network Partners and VHB's review of the draft Massachusetts Wetlands regulations (310 CMR 10.00). We acknowledge that the draft Wetland Resilience regulatory package under review mentions the 2022 SNEP SW Manual, however, it is suggested that more cross referencing to the 2022 SW Manual, along with any future updates to the document, be included in retrofit scenarios to encourage opportunities for pollution control and runoff reduction that fall outside MassDEP's regulatory framework. The following specific comments identify those cross-reference opportunities. Please note that any references, referred to in our comments, are contained in the 2022 SW Manual.

Stormwater Standards

Standard 3: Recharge Lack of Flexibility with Standard 4: Pollutant Removal

For new development projects, Standard 3 of the Stormwater Management Standards (310 CMR 10.05(6)(k)3.) requires a water quality volume of at least 1-inch of runoff depth multiplied by the total Project Site impervious area to be infiltrated. For redevelopment projects, this standard must be met within the Project Site to the maximum extent practicable (MEP). The Standard allows for compliance via continuous simulation modeling but does not specify the calculation method.

We support allowing for more flexibility in supporting the maximum a site can practically provide. EPA's performance curves include runoff reduction values (similar to the pollutant reduction) and could be used to show recharge on an annual average basis which would target the goals of this standard while providing both flexibility and addressing site-specific constraints.

We are supportive on advancing retention and recharge standards and encourage MassDEP to do so consistent with the latest scientific research.

Standard 4: Pollutant Removal – Inconsistencies with Regional Practices

Standard 4 of the Stormwater Management Standards (310 CMR 10.05(6)(k)4.) establishes requirements for removal of pollutants including total suspended solids (TSS) and total phosphorus (TP). For new development projects, required pollutant removal efficiencies are 90% and 60% for TSS and TP, respectively, and are based on the total post-construction pollutant load generated from impervious areas within the Project Site. The requirement continues to include an optional 1-inch water quality volume requirement. Where applicable, MassDEP are allowing designers to optimally size SCMs based on the EPA-Pollutant Removal Curve (PRCs) rather than the previous flat requirement of 0.5 or 1-inch. However, the water quality volume approach is still optional and, in certain circumstances, required. We support fully adopting the EPA-PRCs as the method for compliance with the water quality requirements of the standards for consistency with regional practices and to avoid confusion.

Table 2-2 (see below) within the MassDEP Stormwater Handbook provides a SCM crosswalk, detailing either EPA-PRC applicability or MassDEP approved pollutant removal efficiencies.

Table 2-2: SCM Convention Crosswalk and TSS/TP Removal Credits

Table 2-2. SCM Convention Crosswalk and TSS / TP Removal Credits (Table TSS / TP)

MassDEP SCM	Applicable EPA Performance Removal Curve	Does SCM Require Pretreatment? ¹	Pollutant Removal Credit	
			TSS	TP
Non-Structural				
Street Cleaning	-	No	3% to 16% ²	2% to 7% ²
ESSD Credits				
Credit 1: General ESSD	-	No	90%	60%
Credit 2: Solar ESSD	-	No	90%	60%
Credit 3: Roof Runoff to QPA	Disconnection	No	90% ³	60% ³
Credit 4: Road Runoff to QPA	Disconnection	No	90% ³	60% ³
Credit 5: Tree Canopy	-	No	EIC Reduction ⁴	EIC Reduction ⁴
Credit 6: Reduce Impervious Area	-	No	TIA Reduction ⁵	TIA Reduction ⁵
Credit 7: Buffer Zone Improvement	Disconnection	No	90% ⁶	60% ⁶
Structural Pretreatment				
Deep Sump Catch Basin	-	No	25%	No Treatment
Oil/Grit Separator	-	No	25%	No Treatment
Proprietary Separator	-	No	≥ 44% ⁷	No Treatment (minimum) ⁷
Sediment Forebay	-	No	25%	No Treatment
Vegetated Filter Strip (≥ 25-ft length)	-	No	25%	No Treatment
Vegetated Filter Strip (≥ 50-ft length)	-	No	45%	No Treatment
Pea Gravel Diaphragm	-	No	45% ⁸	No Treatment
Grass / Gravel Combination	-	No	45% ⁸	No Treatment
Structural Treatment				
Bioretention Area (Exfiltrating) ⁹	Infiltration Basin	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Bioretention Area (Filtering) ⁹	Biofiltration	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Constructed Stormwater Wetland	Gravel Wetland	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Extended Dry Detention Basin	Dry Pond	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Gravel Wetland	Gravel Wetland	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Proprietary Media Filter	-	Yes	≥ 60% ¹⁰	≥ 30% ¹⁰
Sand/Organic Filter	Sand Filter	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Tree Box Filter (Exfiltrating) ⁹	Infiltration Trench	No	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Tree Box Filter (Filtering) ⁹	Biofiltration	No	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Wet Basin	Wet Pond	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Roof Dripline Filter (Filtering) ⁹	Biofiltration	Varies ¹¹	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Roof Dripline Filter (Exfiltrating) ⁹	Infiltration Trench	Varies ¹¹	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Structural Conveyance				
Drainage Channel	-	No	No Treatment	No Treatment
Grass Channel (Biofilter Swale)	Grass Swale	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Water Quality Swale (Dry/Wet)	-	Yes	70%	No Treatment
Structural Infiltration				
Dry well	Infiltration Trench	Varies ¹¹	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Infiltration Basin	Infiltration Basin	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Infiltration Trench	Infiltration Trench	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Leaching Catch Basin	Infiltration Basin	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Porous pavement	Porous Pavement	Yes ¹²	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Subsurface Infiltrator	Infiltration Basin	Yes	Use Applicable EPA-PRC	Use Applicable EPA-PRC
Structural Other				
Dry Detention Basin	-	No	No Treatment	No Treatment
Green Roof	-	No	EIC Reduction ¹³	EIC Reduction ¹³
Rain Barrels & Cisterns	-	No	EIC Reduction ¹³	EIC Reduction ¹³
Pollutant Removal Credit Key:				
• Purple = Use applicable EPA Performance Removal Curve (EPA-PRC) to calculate pollutant removals.				
• Blue = Use MassDEP removal credits indicated in table to calculate pollutant removals.				
• White = No pollutant removal credit.				

Within Table 2-2, the following mistakes should be addressed:

- The coloring and wording in the pollutant removal credit columns for Grass Channel is contradictory; the color should be purple to correspond to the applicability of the Grass Swale EPA-PRC.
- The wording and coloring of Environmentally Sensitive Site Design (ESSD) Credit 3 and 4, suggesting the use of the EPA-PRCs, is contradictory to Appendix A, requiring the use of Table Qualifying Pervious Area (QPA) 2 and 3 which are not consistent with EPA's crediting. See section below under ESSD/LID Credits for more details on QPA recommendations.
- There are two instances within Table 2-2 where EPA-PRCs are listed that are inconsistent to how cross walks for other regional programs, as documented within the SW Retrofit Manual, aligned the curves:
 - Leaching Catch Basin should use the Infiltration Trench EPA-PRC
 - Water Quality Swale should use the Grass Swale EPA-PRC

The following bullets detail inconsistencies between the EPA crediting as documented within the SW Retrofit Manual and the MassDEP Stormwater Handbook.

- Rain Barrels and Cisterns: currently the Handbook requires sizing for the full 1-inch of storage in order to be awarded with the reduction in roof impervious cover. Rain Barrels and Cisterns should use the Impervious Area Disconnection through Storage EPA-PRC, which pro-rates impervious area reduction based on runoff capture.
- Vegetated Filter Strips: the Handbook maintains the static pollutant removal efficiencies of 25% and 45% for 25-ft and 50-ft filter strips, respectively, even though this measure is essentially Impervious Area Disconnection, which has an EPA-PRC curve. There is an opportunity for MassDEP to align with EPA on Impervious Area Disconnection practices and crediting approaches. See comments on QPAs later in this memorandum.

Calculating Pollutant Removal with Weighted Averages

In the MassDEP Stormwater Handbook Section 2.3.4, there is an explanation of how to apply Standard 4's pollutant removal requirements for different outfall conditions (see below):

Evaluate Standard 4 TSS and TP removal credit to determine compliance as follows:

- At the point of discharge (e.g., end of pipe) when only one treatment train is used.
- Where there is more than one outfall or treatment train within a single sub-catchment draining to the same Resource Area, the pollutant removal standard is demonstrated to be met either at each design point, or by using a weighted average, weighted by area draining to each outfall
- When multiple treatment trains from different sub-catchments drain to one wetland, the pollutant removal standard is met at each hypothetical design point, using a weighted average, weighted by sub-catchment size.
- When multiple treatment trains from different sub-catchments drain to multiple wetlands, the pollutant removal standard is met at one hypothetical design point per each wetland, using weighted average, weighted by sub-catchment size.

For each of the conditions detailed above, a weighted average by sub-catchment area is used to calculate average pollutant removal.

We suggest instead applying a weighted average based on pollutant load (mass) calculated using the export rates (Pollutant Load Export Rates (PLERs); Appendix D of the SW Retrofit Manual). This allows for a more targeted approach in treating land-uses within the Project Site, and off-site when needed, that exhibit more severe pollutant generation.

Refer to the section below under Standard 7: Redevelopment, for discussion regarding off-site mitigation.

Proprietary Devices

When discussing the use of proprietary filters or other devices, MassDEP references the “Technology Acceptance Reciprocity Partnership (TARP) Protocol for Stormwater Best Management Practices Demonstrations, August 2001, updated July 2003, published on MassDEP’s website” (pg 2-13). This reference no longer exists and has been superseded by at least two significant modifications since, including the elimination of field testing and reliance entirely on laboratory testing. The current NJDEP TARP laboratory testing protocols for Hydrodynamic Sedimentation MTDs (January 1, 2021) and Filtration MTDs (January 14, 2022) were both revised to strengthen the 2013 protocols and capture lessons learned from protocol implementation. We suggest that MassDEP use these updated references in new guidance.

Standards 5 and 6: Requiring 1-inch of treatment

Standards 5 and 6: Land-uses with Higher Potential Pollutant Loads (LUHPPLs) and Discharges to Critical Areas require a water quality volume of 1-inch and pre-treatment prior to infiltration practices with at least 44% TSS removal. This requirement eliminates the use of the EPA curves to demonstrate the pollutant reduction which is intended for these standards. We suggest that the curves be fully adopted and be used to demonstrate compliance with these standards.

We commend the inclusion of the EPA curves as the tool for pollutant reduction accounting within the new regulations. However, if they are not used consistently to demonstrate that treatment, then the opportunities to be consistent across region and consistent within Stormwater Standards is lost. The curves have been proven to represent expected pollutant reductions and therefore should be used to demonstrate that goal.

Standard 7: Redevelopment Off-site Mitigation Approach

Standard 7 of the Stormwater Management Standards (310 CMR 10.05(6)(k)7.) details requirements for Redevelopment Projects as defined in 310 CMR 10.04, providing certain relief for Standards 2, 3, and 4. Specifically, a Redevelopment Project must meet Standards 2 and 4 only to the maximum extent practicable, and the pollutant removal requirements for Standard 4 are reduced to 80% and 50% for TSS and TP, respectively.

Offsite Mitigation is a proven compliance approach for Redevelopment Projects where SCMs are implemented at a location that is not within the Project Site. Please clarify the requirements for off-site mitigation to achieve compliance with Standard 3, the pollutant removal requirements of Standard 7, and potentially Standard 11 TMDLs.

In Section 6.2.7 of the Handbook, the methodology for calculating Offsite Mitigation uses an area-weighted average, which effectively means that the impervious offsite area must at least equal the untreated onsite impervious area, regardless of the relative land-use, and therefore pollutant loading, of each area. For example, by weighting solely based on impervious area, 1-acre of highway within the Project Site with a very high PLER could be mitigated for offsite by 1-acre of residential area with a comparatively low PLER.

It is suggested that an option be provided for the permittee to perform the off-site compensatory mitigation calculations based on load (using EPA's PLER) rather than impervious area, such that the designer has more flexibility in siting and sizing offsite SCMs based on land-use. This approach will incentivize the permittee to look for "hot spots" and target higher loading areas when siting offsite mitigation.

Standard 11: TMDLs: Allowable SCMs

Standard 11 of the Stormwater Management Standards (310 CMR 10.05(6)(k)11.) is a new standard that establishes additional treatment requirements and SCM restrictions to suit the specific TMDL requirements of the waterbodies/waterways to which the project discharges. The Handbook includes Table 2-6: Suitability of SCMs to treat TMDL pollutants (see below), which restricts the use of certain SCMs depending on the TMDL pollutant of concern.

Table 2-6. Suitability of SCMs to treat TMDL pollutants¹

SCM	Pollutant of Concern ^{2,3,4}				
	TSS	TN	TP	FIB	Metals
Non-Structural SCMs					
Street Cleaning	N	N	N	N	N
ESSD Credits					
Credit 1: General ESSD	Y	Y	Y	Y	Y
Credit 2: Solar ESSD	Y	Y	Y	Y	Y
Credit 3: Roof Runoff to QPA	Y	Y	Y	Y	Y
Credit 4: Road Runoff to QPA	Y	Y	Y	Y	Y
Credit 5: Tree Canopy	Y	Y	Y	Y	Y
Credit 6: Reduce Impervious Area	Y	Y	Y	Y	Y
Credit 7: Buffer Zone Improvement	Y	Y	Y	Y	Y
Structural Treatment SCMs					
Bioretention Area (Exfiltrating) ⁵	Y	Y ⁵	Y	Y	Y
Bioretention Area (Filtering) ⁶	Y	N	N	Y	Y
Constructed Stormwater Wetland	Y	Y	Y	Y	Y
Extended Dry Detention Basin	N	N	N	Y	Y
Gravel Wetland	Y	Y	Y	Y	Y
Proprietary Media Filter ⁷	V	V	V	V	V
Sand/Organic Filter	Y	N	N	Y	Y
Tree Box filter (Exfiltrating) ⁸	Y	Y	Y	Y	Y
Tree Box filter (Filtering) ⁸	Y	N	N	Y	Y
Wet Basin	Y	N	N	N	Y
Roof Dripline Filter (Filtering) ⁹	Y	N	N	Y	Y
Roof Dripline Filter (Exfiltrating) ⁹	Y	Y	Y	Y	Y
Structural Conveyance SCMs					
Drainage Channel	N	N	N	N	N
Grass Channel	Y	N	N	N	N
Water Quality Swale	Y	N	N	N	N
Structural Infiltration SCMs					
Dry well	Y	Y	Y	Y	Y
Infiltration Basin	Y	Y	Y	Y	Y
Infiltration Trench	Y	Y	Y	Y	Y
Leaching Catch Basin	Y	Y	Y	Y	Y
Porous Pavement	Y	Y	Y	Y	Y
Subsurface Infiltrator	Y	Y	Y	Y	Y
Other Structural SCMs					
Dry Detention Basin	N	N	N	N	N
Green Roof	N	N	N	N	N
Rain Barrels & Cisterns	N	N	N	N	N
Key: <ul style="list-style-type: none"> Y = Likely to provide significant reduction of target pollutant. V = Varies (see Note) N = Unlikely to provide significant reduction of target pollutant. 					

Compliance with Table 2-6, specifically with regards to SCMs that have an approved EPA-PRC, prohibits the use of such performance curves, which would define a removal efficiency for each TMDL pollutant based on treated runoff depth. This is inconsistent with the Massachusetts MS4 in addition to regional practices. This will restrict the flexibility for designers when siting SCMs to opportunistically treat runoff; SCMs that would otherwise have provided *some* TMDL pollutant removal would now be prohibited. The most severe example of this restriction is for projects where infiltration is not feasible; the list of SCMs for a non-urban project is reduced to just a Gravel Wetland and a Constructed Stormwater Wetland. It is suggested that instead of the binary “Y/N” within Table 2-6, that an approach mirroring Table 2-2 is adopted where applicable; designers would be guided to “Use Applicable EPA-PRC” to determine pollutant removal efficiency for applicable SCMs.

Table 2-6 also prohibits the use of Street Cleaning as a non-structural SCM for TMDL projects. This is contrary to the language within Standard 11, which states:

“Source Control Measures shall be identified in the long-term pollution prevention plan required by 310 CMR 10.05(6)(k)4. to eliminate or reduce [TMDL pollutants]”

It is suggested that Street Cleaning be included as an applicable SCM for TMDL projects, with pollutant removal efficiencies as described in Table 2-2. TSS are often the carrier of other pollutants such as TN, TP and metals, so could be considered a surrogate for such pollutant removal. Recent regional research (Clean Sweep) has recommended pollutant reduction estimates for street sweeping practices.

ESSD/LID Credits

Within the MassDEP Stormwater Handbook, Environmentally Sensitive Site Design (ESSD) and Low Impact Development (LID) techniques are prioritized above all other structural SCMs for stormwater treatment. Seven ESSD/LID Credits are detailed in Appendix A of the Handbook.

Written Alternatives Analysis vs. Opportunistic SCM Siting

For both new development and redevelopment projects, MassDEP states that structural SCMs should only be proposed once it has been justified through a written alternatives analysis that all ESSD/LID Credits are impracticable.

In both Table 4-1 and Appendix A, most structural SCMs are recognized as ESSD/LID which introduces confusion. Those few structural SCMs that are not considered ESSD/LID, and so would require a full written alternatives analysis before implementation include:

- Extended Dry Detention Basin
- Sand and Organic Filter
- Wet Basins
- Leaching Catch Basins
- Subsurface Infiltrators

Opportunistic siting of these SCMs through planned construction projects (eg. roadway work) would not be possible prior to a full written alternatives analysis justifying why other recognized ESSD/LID techniques could not be implemented. Encouraging ESSD practices is commended, however, it is suggested that the process be simplified and that the documentation required for permittees to implement site design practices and small-scale controls (regardless of what they are called) be streamlined.

ESSD Credit 1: Environmentally Sensitive Site Design

This ESSD credit is for overall minimization of impervious area on site development to less than 15% impervious (among other criteria). While we commend this credit and the benefits it provides, there appears to be an inconsistency with the Massachusetts MS4 permit; in that both the required

bylaws and the impaired water / TMDL requirements account for the load of all impervious surfaces and then the treatment of those loads by various measures. Therefore, a site may receive this credit and not provide treatment for compliance with MassDEP Wetland Regulations but still need to provide treatment to meet the stormwater by-law or to meet municipal impaired waters targets.

ESSD Credit 3 and 4: Qualifying Pervious Areas

Qualifying Pervious Areas (QPAs) are defined in 310 CMR 10.04 for the purposes of the Stormwater Management Standards as:

“fully stabilized natural or vegetated areas where stormwater discharge is directed via sheet flow and not as a point source discharge”

Credit Approach

Per the Draft MassDEP Stormwater Handbook, ESSD Credit 3: Roof Runoff to a Qualifying Pervious Area (QPA) and Credit 4: Road Runoff to a QPA conditionally provide 1-inch recharge and 90%/60% pollutant removal for the contributing impervious area. To be awarded recharge and pollutant removal credits for these two ESSD/LID techniques, QPAs must meet minimum requirements regarding impervious/pervious area ratios and underlying infiltration rate (See Table QPA 2 and QPA 3 below pertaining to ESSD Credit 3 and 4, respectively).

Tables QPA 2 and QPA 3 provide the illusion of incremental recharge and pollutant removal accreditation, however in practice the credit is only applicable for QPAs with impervious/pervious area ratios with more pervious to impervious area and hydrologic soil groups (HSG) of A, B or C. This negates the use of the Impervious Area Disconnection EPA-PRC, in which pollutant removal and impervious area reduction are incrementally awarded depending on impervious/pervious area ratio. HSG D is also permitted for the EPA-PRCs.

We suggest removing Tables QPA 2 and QPA 3, and instead referring the Impervious Area Disconnection EPA-PRC for pollutant removal and impervious area reduction credits to allow for more use of this measure and flexibility in sites where it is implemented.

Table QPA 2. Recharge and pollutant removal credits for directing rooftop runoff to a QPA

Impervious Area to Pervious Area Ratio	HSG A	HSG B	HSG C
8:1	NC	NC	NC
6:1	NC	NC	NC
4:1	NC	NC	NC
2:1	NC	NC	NC
1:1	✓	✓	NC
1:2	✓	✓	✓
1:4	✓	✓	✓
1:10	✓	✓	✓
1:30	✓	✓	✓
1:50	✓	✓	✓

Table Key:

- **Check Mark (✓)** = Credit is provided for 1-inch recharge, 90% TSS removal, and 60% TP removal.
- **NC** = No credit is provided for recharge or pollutant removal.
- Assumes that all minimum required criteria are met.

Table QPA 3. Recharge and pollutant removal credits for directing rooftop runoff to a QPA

Impervious Area to Pervious Area Ratio	HSG A	HSG B	HSG C
8:1	NC	NC	NC
6:1	NC	NC	NC
4:1	NC	NC	NC
2:1	NC	NC	NC
1:1	✓	✓	NC
1:2	✓	✓	✓
1:4	✓	✓	✓
1:10	✓	✓	✓
1:30	✓	✓	✓
1:50	✓	✓	✓

Table Key:

- **Check Mark (✓)** = Credit is provided for 1-inch recharge, 90% TSS removal, and 60% TP removal.
- **NC** = No credit is provided for recharge or pollutant removal.
- Assumes that all minimum required criteria are met.

Restrictions in the Design Requirements for QPAs

General requirements and design considerations for QPAs are provided in Appendix A of the Handbook. Of the requirements, the following list outlines those that are inconsistent with EPA and regional applications of this practice and restrict the use of this practice:

- Receiving QPA must be comprised of HSG A, B or C
 - EPA's crediting curves include credit for HSG D soils
- The flow path to the QPA shall be no more than 75ft long and the contributing impervious area drainage to any one discharge cannot exceed 1,000ft²
 - No size restrictions
- The average contributing overland slope to and across the QPA must be less than or equal to 5%
 - No slope restrictions provided sheet flow is maintained

We suggest making this measure more flexible and consistent with regional applications including the Massachusetts MS4 permit to encourage its use.

ESSD Credit 6: Reduce Impervious Area at Redevelopment Sites

This ESSD credit is for reduction of total impervious area (TIA) at Redevelopment sites. The qualifying criteria include a requirement that the total impervious area of the site must be reduced by at least 15% from existing conditions and the resulting total impervious area must be less than 75% of the base lot area.

We commend the crediting of this measure which reduces the source and root cause of runoff alteration and pollutants. Although, we suggest that prescriptive criteria about the areas, that do not seem tied to actual water quality and runoff improvement, be eliminated to encourage more widespread use of this approach. Regional practices including the Massachusetts MS4 permit allow for credit of impervious area reduction without additional criteria.

Retrofit Projects

As part of the updates to 310 CMR 10.00 and the Stormwater Handbook, Retrofit Projects have been uniquely categorized within Stormwater Management Standard 7: Redevelopment. 310 CMR 10.05(6)(k)7.e. states:

“Retrofit Projects shall comply with [SW Management Standards 1, 5, 6, 8, 9, and 10]. Retrofit Projects shall not have to comply with [SW Management Standards 2, 3, 4, and 11], except they must improve existing conditions for at least peak discharge rate, recharge, or water quality treatment.”

310 CMR 10.04 defines Retrofit Projects, for the purposes of the Stormwater Management Standards, as:

“projects that make site-specific changes designed solely to improve water quality, reduce peak discharge rates, increase recharge, or reduce or eliminate combined sewer overflows (CSO). Retrofit Projects are not new development or maintenance.”

The clear distinction of Retrofit Projects from other kinds of redevelopment will be very useful in streamlining the permitting process for such projects. However, some concerns with the current definition and language are outlined below.

Consistency with Definition and Scope

Section 5.1 of the MassDEP SW Handbook describes Retrofit Projects in more detail. However, Retrofit Projects are discussed largely in the context of site-specific changes to existing SCMs. This is not necessarily the case; Retrofitted SCMs on developed sites with no prior treatment will become more common, especially as the Residual Designation Authority (RDA) provision within the Federal Clean Water Act being applied to select watersheds in Massachusetts. It is anticipated that The RDAs will require stormwater discharge permits of more and more municipal and industrial stormwater discharges, as municipalities implement their MS4 nutrient controls plans.

For this reason, it is suggested that the language regarding the definition and scope of Retrofit Projects within the Handbook be revised to allow for projects that have the sole purpose of stormwater improvement regardless of the presence of existing SCMs.

Compliance with Standards

As detailed above, Standard 7 now includes language which exempts Retrofit Projects from complying with Standards 2, 3, 4, and 11. However, Retrofit Projects will still be required to comply



with Standards 5 and 6: Land-uses with Higher Potential Pollutant Loads (LUHPPLs) and Discharges to Critical Areas.

Both Standards 5 and 6 re-establish a minimum requirement for water quality volume of 1-inch and pre-treatment prior to infiltration practices with at least 44% TSS removal. Projects near to Critical Areas also require the full pollutant removal requirements of 90% TSS and 60% TP.

Projects with LUHPPL or discharges near Critical Areas should be provided with the most flexibility to support stormwater Retrofit Projects, due to the higher pollutant loads and more sensitive resources. It is suggested that the requirement of compliance with Standards 5 and 6 for Retrofit Projects or requesting those standards to be met to the maximum extent practicable to allow for this flexibility be removed. Otherwise, these critical retrofit projects will be avoided because they cannot meet the permit required to implement them.

In conclusion, I urge the Wetlands Program to carefully consider the concerns and suggestions outlined in this letter during the decision-making process.

Thank you for considering the SNEP Network's comments. Should you require any further information or clarification, please do not hesitate to contact me at martha.sheils@maine.edu.

Sincerely,


Martha Sheils, Director
New England Environmental Finance Center
SNEP Network

Wetlands-401 and Waterways Resilience Comments

Samantha Woods <samantha@nsrwa.org>

Tue 4/30/2024 4:23 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (133 KB)

4.30.24 DEP Comments Letter NSRWA.pdf;

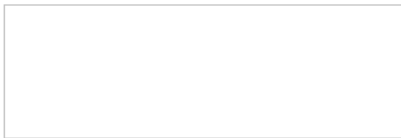
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Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien,

Please find attached the NSRWA comments regarding the above referenced subject header. Thank you for the opportunity to share our thoughts on these important proposed regulatory changes.

Sincerely,
Samantha Woods
Samantha Woods
Executive Director
781.659.8168 x 101

Partners in Protecting Our Waters





April 30, 2024

Massachusetts Department of Environmental Protection (MassDEP)
Bureau of Water Resources Wetlands Program & Waterways Program
100 Cambridge St, Suite 900
Boston, MA 02114

Subject: Wetlands-401 and Waterways Resilience Comments

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien,

The North and South Rivers Watershed Association (NSRWA) would like to offer comments and recommendations regarding the environmental impacts of the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. We are a 54 year old nonprofit based on the South Shore of Massachusetts. Our membership consists of approximately 1,500 households on the South Shore and our watershed spans across 12 towns. The NSRWA's comments are focused on the need to streamline permitting for wetlands restoration projects, to improve data used to inform decision-making.

We commend MassDEP for the years of work that has been put in to prepare these draft regulations, and for helping to make Massachusetts more resilient to climate change. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change.

However, these draft regulations do not go far enough in achieving the goals of "Resilience 1.0," and after swift promulgation of most of these regulations, we strongly encourage MassDEP to begin the "Resilience 2.0" process to strengthen some of the provisions found in 1.0.

Streamline Permitting for Wetlands Restoration

Massachusetts has long been a leader in environmental protection. It was the first state to adopt a wetlands protection law and it is a leader in restoring wetlands. In order to continue this leadership, the new regulations must address the following:

1. Strengthen the proposed inclusion of nature-based projects by requiring applicants to demonstrate that nature-based solutions were considered as part of the alternative analyses.
2. As written, the regulations define salt marsh hay as "fill," and treat it with the same long permitting pathway as fill used in development, even though hay is part of ecological restoration. Instead, the definition of "fill" should exclude salt marsh hay, and those projects should be exempt from getting a

The North & South Rivers Watershed Association Inc.
P.O. Box 43, Norwell, Massachusetts 02061
(781) 659-8168 Fax (781) 659-7915
www.nsrwa.org



Chapter 91 license.

3. Streamline permitting for restoration projects must be included in forthcoming “Resilience 2.0” package, and must require interagency coordination so these projects (dam removals, salt marsh restoration, culvert upgrades) can happen as quickly as possible to achieve our goals around carbon sequestration, water quality, and biodiversity goals. There must be a (simpler) replacement for the Combined Application/Combined Permit process between Chapter 91 and the Wetlands Protection Act.
4. NSRWA would like to see special conditions given to dam removal projects under 310 CMR 9.00. The proposed regulations already provide for culvert replacements to be exempted from a Chapter 91 license, recognizing that those projects do not impede navigation and instead increase the resilience of the site. MassDEP’s public summary of the proposed changes state that these projects are exempt “when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation.”
5. The Wetlands Protection Act regulations provide an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited Project; Chapter 91 should do the same by exempting them from obtaining a permit. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety.

Improve Data Used to Inform Decision-Making

We are fierce advocates for the use of science and data to inform decision-making and we applaud the proposed requirement for sea level rise data to be considered for new development and redevelopment. This is an important step but we do have a few concerns:

1. The updated data (NOAA14+) that MassDEP is proposing be tied to the Wetland Protection Act regulations will be outdated soon. That data needs to instead address precipitation intensities of future storm events in order to provide true climate resilience.
2. MassDEP’s proposal will rely on FEMA maps to delineate Land Subject to Coastal Storm Flowage, rather than sea level rise, which would provide dynamic, forward-looking projections for precipitation that will protect our community for decades to come.
3. Nothing in the draft regulations points to forecasting precipitation.

Stormwater Handbook

1. Standard 3 Incentivize developers to go beyond minimum under the Maximum Extent Practicable standard for redevelopment.



Thank you for your consideration of these comments. We are grateful for the considerable amount of time and resources MassDEP has invested to create these draft regulations. We look forward to continuing to work together to protect Massachusetts' rivers, ecosystems, and communities from the impacts of climate change.

Very truly yours,

A handwritten signature in black ink, which appears to read 'Samantha Woods', is positioned below the closing of the letter.

Samantha Woods
Executive Director

OARS comments on the draft Wetlands Protection Act regulations as part of MassDEP's "Climate Resilience 1.0" package.

Matt Brown <mbrown@oars3rivers.org>

Mon 4/29/2024 9:22 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>; DEP Wetlands (DEP) <dep.wetlands@mass.gov>

 1 attachments (258 KB)

OARS WPA Comment Letter 4.29.2024.pdf;

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Hello,

Please see the attached letter from OARS.

Thanks,

Matt



Matt Brown

Executive Director

(w) 978 369 3956

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FOR THE SUDBURY ASSABET & CONCORD RIVERS

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April 29, 2024

Massachusetts Department of Environmental Protection
Bureau of Water Resources Wetlands Program
Attention: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

Submitted via: dep.wetlands@mass.gov, dep.waterways@mass.gov

Dear Ms. Rhodes and the MassDEP Wetlands Program,

Thank you for the opportunity to comment on the draft Wetlands Protection Act regulations as part of MassDEP's "Climate Resilience 1.0" package.

OARS is a non-profit organization whose mission is to protect, improve, and preserve the Sudbury, Assabet, and Concord rivers and watershed for all people and wildlife. OARS has a long and successful history of advocating for legislation and regulations that improve the quality of our rivers. OARS also has extensive experience in mapping and managing invasive water chestnut in our surface waters and has authored the widely-used "Water Chestnut Management Guidance & Five-Year Management Plan for the Sudbury, Assabet, and Concord River Watershed" (2017, Update in 2024). OARS also plans and manages dam removal projects and is the facilitator of the SuAsCo Climate Resiliency Coalition.

We are pleased to see that these regulations advance climate resilience. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change. We appreciate the years of work MassDEP has spent crafting these draft regulations, and OARS strongly supports many of the proposed provisions. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations. We have reviewed and support the comments submitted by the Mass Rivers Alliance.

Specifically, OARS supports the following and recommends their promulgation:

- Exempting culvert replacements that conform to the Stream Crossing Standards and dam removal projects from a Chapter 91 license, recognizing that these projects do not impede navigation and instead increase the resilience of the site.
- Including "artificial turf" under the definition of Impervious Surface. The chemicals found in artificial turf have been found to degraded public health and water quality.
- The increased 1-inch recharge requirement for all new soil types in new development under Standard 3, especially using the static sizing method.
- Expanding Low Impact Design/Environmentally Sensitive Site Design credits.
- Exempting basic Shared Use Path maintenance from WPA permitting requirements.

- Aligning the Wetland Protection Act's conditions to coordinate with the Municipal Small Sewer System permit, making compliance less burdensome for municipalities.

Where the regulations need to be refined:

- The updated WPA does not do enough to simplify and ease the permitting for ecological restoration projects, particularly dam removals. The high cost of permitting dam removals creates long delays and high costs, resulting in fewer projects and inefficient use of public funds. A simplified permitting process is needed, as is the prioritization of dam removal over fishways. Removal has significantly more benefits for resiliency and ecological restoration than other strategies.
- The updated WPA does nothing to ease permitting for invasive aquatic plant management. Aquatic invasive plants have a huge and ever-increasing negative impact on wetland values and public enjoyment of our ponds, lakes, streams, and rivers, exacerbated by climate change. Aquatic invasive plant removal has significantly more benefits for resiliency and ecological restoration and protection of the wetland interests (particularly protection of fisheries and protection of wildlife habitat), than potential for damage from "alteration" of resource areas (e.g., land under water). Much of the effort to manage them is from volunteers or non-profits, neither of which have the funds or staff time to apply under the WPA for their small-scale (yet highly effective and minimally disruptive) management efforts. The high cost of permitting aquatic invasive plant management, such as water chestnut, discourages volunteer efforts and results in expansion of damage to the wetland resource areas and interests. A simplified permitting process and better guidance, for example to use RDAs to facilitate well-designed small-scale management efforts, rather than discourage them, is urgently needed. For example, a new "minor activity" category that applies to removal of aquatic invasive plants could be added. A limited project provision that specifically allows small-, medium-, and large-scale invasive species removal projects with distinct regulatory review standards should be considered. Such limited projects should have procedures and fees for small projects that are not burdensome to volunteers, conservation groups, or municipal efforts.
- The updated data (NOAA14+) that MassDEP is proposing to be utilized in the Wetland Protection Act regulations will be outdated soon. FEMA delineations and maps are also quickly out of date. Precipitation data should be dynamic and should use forward-looking projections for precipitation that will protect our community for decades to come.
- Under the proposed WPA updates, alternative analysis must include nature-based solutions. Suggested language to require rather than suggest: "applicant shall utilize" and have applicant demonstrate NBS installations in their alternative analyses.
- In the WPA/SW Handbook, redevelopment must improve existing site conditions. Runoff volume for redevelopment and new development should be reduced at a scale needed for the site (*well over 1 inch for all soil types*) to infiltrate and retain stormwater onsite as much as possible.
- Within the WPA, the no-build area in Buffer Zone should be strengthened and expanded.

Though the draft regulations are overall moving in a positive direction, they do not go far enough in achieving the stated goals of “Resilience 1.0.” **After swift promulgation of these updates, we strongly encourage MassDEP to begin the “Resilience 2.0” process to continue improving the Wetland Protection Act regulations as suggested above.** We cannot afford a delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

Thank you for the considerable time and effort the agency has invested in creating these draft regulations thus far. We look forward to continuing to work together to protect Massachusetts’ rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

A handwritten signature in dark ink, reading "Matthew Brown" with a long, sweeping horizontal line extending to the right.

Matthew Brown

Executive Director

Wetlands and Waterways Resilience Comments

Ann Lagasse <alagasse@oceanhavens.com>

Tue 4/30/2024 9:07 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (576 KB)

OceanHavens.jpeg;

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Thank you.

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April 30, 2024

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
Attn: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on the proposed amendments to 310 CMR 10.00: Wetlands Protection Act published in December 2023

Dear Commissioner Heiple:

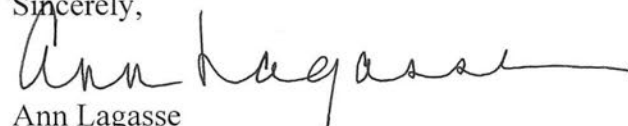
I am writing to you as the owner of Ocean Havens, LLC. We own and operate six marinas in Boston and Provincetown and operate the East Boston Shipyard and Marina under a long term lease from Massport. Our business operations are all water dependent and our operations in East Boston include a significant component of water dependent industrial uses located within and outside of the Designated Port Area ("DPA"). Virtually all of our operations are located within Land Subject to Coastal Storm Flowage and much of them with V-Zones. By necessity, we are located in and adjacent to tidal waters and our marine operations and accessory uses require proximity to deep water. We have significant business plans to rehabilitate and add onto existing buildings and construct new buildings for these marine operations and accessory uses to meet the needs of our tenants.

We are writing to you today to express our deep concern about the proposed Land Subject To Coastal Storm Flowage performance standards. While we appreciate your efforts to reduce the impact of these regulations on water dependent industrial uses, the current exemption only applies within the DPAs and does not apply to water dependent uses generally. Therefore, these proposed rules would adversely affect our existing and planned operations.

We specifically request that the exemption in 310 CMR 10.36(4)(d) be broadened to include all water dependent uses and accessory uses thereto as defined in Chapter 91 regulations at 310 CMR 9.12(2)(a)-(b) and 9.12(3), and to expand the geographic area to include the entire coastline, not just Designated Port Areas.

I appreciate your commitment to the use of the coastline for water dependent uses in the service of the public interest and hope that you will not create further hurdles to the effective and efficient operation of our marine facilities.

Sincerely,



Ann Lagasse

Patti Parker <Patti@parkersboatyard.com>

To: Waterways, DEP (DEP)

Wed 4/24/2024 1:57 PM

To Whom It May Concern:

The Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years. If enacted, the regulations would:

- prohibit new buildings in high wind and wave areas, even if safely designed and elevated
- Prohibit coastal reconstruction or redevelopment, unless on the exact same footprint and elevated
- Leave decisions to the discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

As a waterfront business owner and property owner, I feel these revisions were designed without any input from the people and businesses they affect. Furthermore, the revisions will have a devastating negative impact on the economy of coastal communities, causing businesses to close down and homeowners to leave when they cannot meet these stringent unrealistic demands.

Regulations not ready, major revisions are needed including:

1. *Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to invest in our coastal communities for real climate change adaptation.*
2. *Be more inclusive of impacted communities. Hold many more public hearings and listen.*
3. *Do not leave it to each volunteer Conservation Commission's discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water's edge.*
4. *Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.*

5. *Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.*
6. *We know how to design and adapt to storms. Let us do so.*

As a waterfront business owner and property owner, I feel these revisions were designed without any input from the people and businesses they affect. Furthermore, the revisions will have a devastating negative impact on the economy of coastal communities, causing businesses to close down and homeowners to leave when they cannot meet these stringent unrealistic demands. Please work with the businesses, homeowners and technicians who design waterfront structures to create reasonable regulatory changes.

Bruce and Patti Parker

--

Parker's Boat Yard, Inc.

68 Red Brook Harbor Road

P.O. Box 38

Cataumet, MA 02534

508.563.9366

www.parkersboatyard.com


Waterways Resilience Comments/ Wetlands-401 Resilience Comments

O'Connor, Patrick (SEN) <Patrick.O'Connor@masenate.gov>

Tue 4/30/2024 3:05 PM

To:Waterways, DEP (DEP) <dep.waterways@mass.gov>;DEP Wetlands (DEP) <dep.wetlands@mass.gov>

Cc:Skehill, Thomas (SEN) <Thomas.Skehill@masenate.gov>

 1 attachments (283 KB)

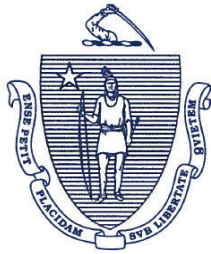
DEP Waterways Wetlands Proposed Regs Comments.pdf;

Good afternoon,

I am sending the attached comments related to the proposed revisions to the Waterways & Wetlands-401 Resilience regulations. Please let me know if you have any questions.

Best,

Patrick O'Connor
State Senator



The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR PATRICK M. O'CONNOR
First Plymouth and Norfolk District

STATE HOUSE, ROOM 419
BOSTON, MA 02133-1053
TEL. 617-722-1646
FAX. 617-722-1028

PATRICK.OCONNOR@MASENATE.GOV
WWW.MASENATE.GOV

April 30, 2024

MassDEP - BWR

Attn: *Waterways Resilience Comments/Wetlands-401 Resilience Comments*
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent Via Electronic Mail

Dear MassDEP Waterways, Wetlands and Other Interested Parties:

I am reaching out today to discuss the proposed revisions to the Massachusetts Wetlands Protection Act and its coastal regulation amendments. While I commend the Administration's efforts to address climate change and enhance coastal resilience, I have reservations about certain aspects of the proposed regulations regarding coastal reconstruction or redevelopment.

A primary concern from constituents involves the allowance for new construction, including structures on open piles, within prohibited velocity zones. Additionally, the proposed regulations may restrict reconstruction or redevelopment if it exceeds the size of the original building, thereby preventing any increase in the overall building footprint on the site.

Based on my assessment of the current flood zone mapping, it appears that a significant portion of the district I represent stands to be adversely affected by these changes. The inability to rebuild or redevelop poses a threat to the property investments of many constituents.

Additionally, the proposed approach of managed retreat, outlined in these regulations, could lead to substantial losses in property tax revenue for municipalities, as well as render many properties undevelopable.

It's important that we find a practical solution that bridges the gap between existing regulations and the proposed revisions outlined in 310 CMR 10.00: Wetlands Protection Act Regulations and 310 CMR 9.00: Waterways Regulations. One suggestion would be to provide more flexibility in reconstruction guided by Federal Emergency Management Agency (FEMA) recommendations.

A significant number of residents on the South Shore have expressed their concerns about these issues and are submitting written comments during the open comment period. I respectfully request an extension of this period to ensure that the agency receives input from these residents and other residents that are just now finding out about the proposed changes.

Before finalizing these regulations, I also respectfully request that they not be enacted without adequate public awareness among both residents and municipalities, especially those along the coastline. Conducting in-person, locally hosted public information sessions and hearings to provide a platform for residents and municipalities to voice their concerns and suggestions would go a long way in addressing issues related to the proposed changes.

Should you require any further clarification or have questions, please feel free to reach out to me directly.

My Very Best,



Patrick M. O'Connor

State Senator

First Plymouth & Norfolk District

New proposed Mass DEP regulations

Verizon Notification [REDACTED]

Sun 4/28/2024 11:50 AM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Patrick O'Connor <patrick.oconnor@masenate.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

As Scituate coastal property owners we find it outrageous that we did not find out about the new proposed coastal regulatory changes until April 27, 2024, only 4 days before the comment deadline of April 30, 2024. As we understand, the new regulations were proposed on Dec. 22, 2023. Why did it take four months for us to hear about these new regulations? There should have been many public hearings on these proposals.

These new regulations are preposterous and would be catastrophic to coastal communities if implemented as we understand them.

The Mass Dep needs to revise these new regulations using modern design engineering and technology to adapt , not just retreat.

Peter and Anne Wolczik

[REDACTED]
Scituate, MA [REDACTED]



CORPORATE OFFICE
45 ROUTE 6A, P. O. BOX 357
ORLEANS, MASSACHUSETTS 02653
PHONE 508-255-0777
FAX 508-255-0373
SALES FAX 508-255-3906

4/26/24

To: MA Department of Environmental Protection

RE: Regarding the proposed wetland waterways regulation changes.

We own and operate a marine business at the coast line in Massachusetts and we understand the need for climate change adaptation. However, we believe these proposed regulation changes need further review before becoming finalized as they could have significant adverse effects on marine businesses and waterfront properties in general. Many businesses rely on waterfront facilities for their livelihood.

It seems these regulations could prohibit re-building, maintenance, renovations and/or replacement of existing waterfront facilities, docks, and piers if these regulations are enacted. Renewal of expiring, existing operational permits and licenses could be in jeopardy which could be quite problematic for marina's trying to continue operating their facilities.

We urge you to hold more public hearings in order to gain more participant input as the idea of retreating from the coastline would eventually put many company's (such as marina's) out of businesses. The public also has a need to continued water access and they need a place to keep their boats.

Please consider the options allowed in Designated Port Area's be extended to all existing marinas, boatyards, and other water-dependent entities.

We appreciate you reviewing the points mentioned in this letter. We are concerned for all the many marine businesses in Massachusetts and their ability to continue conducting business.

Thank you,

Todd Walker
President
Nauset Marine
PO Box 357
45 Route 6A
Orleans MA 02653
508-255-0777 office
508-246-5501 cell



CORPORATE OFFICE

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MARINA • 235 MAIN STREET, EAST ORLEANS MA 02643 • PHONE 508-255-3045

NAUSET MARINE AT BURR BROTHERS BOATS • 309 FRONT STREET, MARION MA 02738 • PHONE 508-748-0541

WWW.NAUSETMARINE.COM

Wetlands and Waterways Resilience Comments

R Boyle [REDACTED]

Tue 4/30/2024 2:54 PM

To:dept.wetlands@mass.gov <dept.wetlands@mass.gov>;Waterways, DEP (DEP) <dep.waterways@mass.gov>

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CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I just heard about this, and I am a coastal resident. The proposed regulations would be catastrophic if implemented as I understand them.

Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not "nature based" retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.

Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.

We know how to design and adapt to storms. Let us do so.

Waterways Resilience Comments and Wetlands-401 Resilience Comments from Save the Harbor/Save the Bay

Aliya Zwyer <zwyer@savetheharbor.org>

Tue 4/30/2024 3:28 PM

To:Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc:Chris Mancini <mancini@savetheharbor.org>

 1 attachments (260 KB)

Final Wetlands and Waterways Regulations DEP Comment Letter.pdf;

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Attached is the comment letter from Save the Harbor/Save the Bay for the Waterways (Chapter 91) Resilience 1.0 Draft Regulations and Proposed Wetlands Resilience 1.0 Draft Regulations.

Please let me know if there are any issues with the attachment!

Best,
Aliya

Aliya Zwyer (she/her)

Public Policy Coordinator

Save the Harbor/Save the Bay

zwyer@savetheharbor.org | 718-825-8136

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Making Waves Since 1986

www.savetheharbor.org

212 Northern Avenue - Suite 304 West - Boston, MA 02210
Telephone: 617-451-2860

April 30, 2024

MassDEP - BWR Wetlands Program
Commissioner Bonnie Heiple
Attn: Waterways Resilience Comments and Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Commissioner Heiple,

I am writing to you today as Save the Harbor/Save the Bay's Executive Director with comments on the Department of Environmental Protection's Waterways (Chapter 91) Resilience 1.0 Draft Regulations and Proposed Wetlands Resilience 1.0 Draft Regulations.

We'd like to again commend DEP for working closely with many community stakeholders during the public comment period for these proposed regulations, and for the extended comment period deadline and inclusion of public office hours and informational meetings. It is evident that DEP has listened to initial concerns that have arisen and are actively working to continually improve their public engagement processes.

We ask that DEP continues this open communication, especially with regards to water-dependent entities including our partners in marinas and boatyards around the Harbor. The reliability of DEP to make predictable decisions is important to foster a strong relationship with their stakeholders.

We are excited for the new regulations being proposed to address flood risk in Massachusetts, which should include the consideration of sea-level rise for engineering and construction standards. This is more important than ever as we work to ensure new projects along the waterfront can withstand increased flood risk regardless of their location in a flood zone.

We also note that the new Coastal Flood Plains standards are innovative in addressing flood concerns. We would ask that DEP provide more clarification on how the standards will impact marine use and waterfront businesses that are vital to promoting stewardship and access to Boston Harbor including its public beaches and islands.

Save the Harbor/Save the Bay works with local groups including marine and waterfront businesses, advocacy groups, and community groups. The consensus among our partners and stakeholders is that the presently proposed regulations remain ambiguous and require additional detail to maintain flexibility and applicability to diverse sites with diverse needs as the case may be. We kindly ask that the ambiguity present in licensing is addressed by DEP as the success of our waterfront and access to it is dependent on local businesses and stewardship of waterways. We suggest DEP reach out to individual entities including marinas and boatyards and community sailings centers to continue the conversation and solicit input.

Finally, we would encourage DEP to craft the regulations to be such that conservation commissions will not have to each write their own rules. DEP can provide clearer guidance and frameworks for local conservation commissions to develop best practices.

At Save the Harbor, we are supportive of nature-based solutions wherever possible, but we feel it is important not to discount technological and engineering adaptations *when appropriate*. As we know, this will not be a 'one-size fits all' approach, and we need our regulations to remain flexible and open to all possibilities that will benefit our residents and businesses.

We are excited to continue to hear more about these licenses as Resilience 2.0 Draft Regulations come out.

Sincerely,

A handwritten signature in black ink that reads "Chris Mancini". The signature is written in a cursive, flowing style.

Chris Mancini
Executive Director
Save the Harbor/Save the Bay

Wetlands-401 Resilience Comments

Tue 4/30/2024 4:50 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>; Patrick O'Connor <patrick.oconnor@masenate.gov>; Patrick Kearney@mahouse.gov <Patrick.kearney@mahouse.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear MassDEP, Senator O'Connor, and Senator Kearney,

Thank you for welcoming comments on the proposed revisions to the Wetlands Regulations. We are co-founders of a local environmental group, the **Scituate Salt Marsh Stewardship Initiative** that got its start in September 2022. The purpose of our group is to clean up and restore the coastal ecosystem in the Sand Hills neighborhood, most notably the Sand Hills Salt Marsh, but also the 1600 other acres of salt marsh in Scituate, MA. There is no Scituate town body dedicated to specifically protecting our salt marshes, including the Conservation Commission. That's why we formed our group.

We of the **Scituate Salt Marsh Stewardship Initiative** heartily support the new regulations that MassDEP is proposing. Strengthening and clarifying the procedures to be followed by local conservation commissions in issuing permits for work in areas protected under the Wetlands Protection Act would better ensure that new construction destructive of wetlands, such as that which has already occurred and is currently being proposed in our community, does not continue without ample review and consideration of adverse environmental impacts. And we urge you to go further in insisting that Massachusetts towns stop allowing building in fragile landscapes like wetlands, floodplains, and coastal dunes.

Trying to protect our Sand Hills Salt Marsh has been an uphill battle. For example, we are currently challenging the application of a local builder who wants to erect a 50-foot structure at 164 Turner Road, Scituate, right in the Sand Hills Salt Marsh. The builder concurrently serves as the chair of the Scituate Conservation Commission, complicating our citizen efforts to petition our local officials to protect the marsh. The Zoning Board of Appeals has yet to issue any waivers or special permits to the builder. But we have little faith in the Board's impartiality despite our lawyer's legal arguments and local residents' testimonials during a public ZBA hearing on March 28, 2024.

Since the March 28 hearing, we have continued our efforts to stop this development by collecting over 500 signatures from Scituate residents, most from the Sand Hills neighborhood, imploring town officials to halt the building project at 164 Turner. We hope town officials will seriously consider the views of these 500 citizens who signed petitions and stop this development in our marsh. But so far, our town has shown no interest in curbing development, including in a fragile wetland.

The final decision of our Zoning Board of Appeals for 164 Turner will be May 16, 7 pm, at Scituate Town Hall. If any of you would have the opportunity to show your support for our efforts to preserve a salt marsh, and further the work of the MassDEP, please consider sending someone to attend the meeting. We would be so very grateful.

As I said above, this email is in full support of the new MassDEP regulations. And if you find you can go further in your regulations to stop building altogether in federally protected wetlands, we would applaud you and consider it a great day for the environment.

Thank you so much for the work you do. If you have any questions or want further information, please do not hesitate to contact us.

Sincerely,
Joanne Wyckoff and Della Shepherd
Scituate Salt Marsh Stewardship Initiative (SSMSI)

Joanne Wyckoff

Scituate, MA

Della Shepherd

Scituate, MA

Wetlands and Waterways Resilience Comments

Scott Freeman [REDACTED]

Mon 4/29/2024 3:47 PM

To: DEP Wetlands (DEP) <dep.wetlands@mass.gov>; Waterways, DEP (DEP) <dep.waterways@mass.gov>

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Dear MassDEP

I submit the below comments relative to the proposed Massachusetts Wetlands and Waterways regulations changes, from December 22, 2023. I am a 40-year career environmental engineering professional, now retired, and have held PE licenses in Massachusetts and several other states, and I have worked on projects around inland and coastal wetlands and waterways for much of my career.

- The proposed regulations appear to have been released in haste, in premature reaction to the public momentum and concern regarding climate change impacts. This is an important subject that must be carefully considered when making major changes that may impact coastal property ownership, business, economic interests, and recreational or other uses. I assume the minimum public notice or comment requirements were met as required, but this type of change requires more careful consideration than just the minimum approach. More interaction with community leaders, and businesses relying on the coastal resources, at a minimum, would be appropriate.

- To substantially restrict or prohibit design of structures nearly completely within the high velocity wave or wind zones simply ignores the progress made in coastal engineering design over the past decade that has resulted in some robust and environmentally sound design approaches to building or modifications in these areas. The coastal engineering practice has developed numerous new design approaches and risk management methods, in part based on damage assessments following hurricane events and other storm events. Work continues on these design approaches. While there is no "one size fits all" solution, there are competent engineers who can carefully consider each situation, using historic data and reasonable estimates of future conditions. Not having a "one size fits all" approach does not justify going to the extreme of a major prohibition of structures in these zones.

- Whatever changes are proposed, Massachusetts needs to assure that the persons reviewing future permit applications or similar requests are competent in the field of coastal engineering design. Local conservation commissions typically lack this type of experience/expertise, and putting them in any sort of major review/approval role for work in these coastal areas does not make sense and may actually work against the goals of environmental protection. We may miss opportunities to mitigate currently undesirable situations by simply rejecting any newly proposed designs or modifications. When in doubt, the local Con Comm will likely disapprove.

- Massachusetts needs to more carefully consider design standards and regulations that have evolved in other states, particularly some of the Southern states, where there are even more issues regarding development or construction of structures in coastal areas. There is more experience in those locations from failure analysis due to severe storm events, and they have miles of coastline, both protected and developed.

Please consider my comments in the further actions on these very important regulations.

Respectfully Submitted,

Scott R. Freeman

ReplyForward

Wetlands and Waterways Resilience Comments

Scott Zeien <scottzeien@kyc.us>

Wed 4/17/2024 1:16 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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The Commonwealth of Massachusetts on December 22, 2023 proposed the most unprecedented regulatory changes in 40 years. If enacted, the regulations would:

- prohibit new buildings in high wind and wave areas, even if safely designed and elevated
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- Leave decisions to discretion of local Conservation Commissions whether even existing buildings, piers and docks can be relocated or expanded or new ones installed.
- Make uncertain Chapter 91 relicensing for even existing buildings, docks and piers upon expiration of current term

The proposed changes are supposed to be “nature-based planning” to accommodate sea level rise (called “managed retreat”) and prohibit adaptations based on technology and design. This is not adaptive or resilient.

Regulations are not ready as proposed! Major revisions are needed including:

1. *Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to invest in our coastal communities for real climate change adaptation.*
2. *Be more inclusive of impacted communities. Hold many more public hearings and listen.*
3. *Do not leave it to each volunteer Conservation Commission's discretion to refuse waterfront property use especially for water dependent uses which by definition need to be at the water's edge.*
4. *Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.*
5. *Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.*
6. *We know how to design and adapt to storms. Let us do so.*

Thank you,

Scott Zeien

One Shipyard Lane
P.O. Box 408
Cataumet, MA 02534
(508) 563-7136 X114

scottzeien@kyc.us

Wetlands and Waterways Resilience Comments

Sheila Giancola <sheila@cataumetboats.com>

Wed 4/17/2024 1:39 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear DEP Waterways,

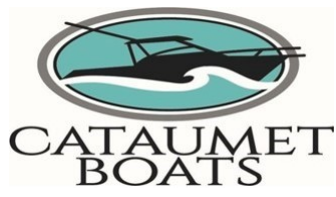
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- 4. Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safety, not “nature based” retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone – do require sound, safe engineering and design in any wind and wave zone.*
- 5. Failure to make changes to proposed regulations will cause the coastal economy to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.*
- 6. We know how to design and adapt to storms. Let us do so.*

Sheila Giancola

Grady White's #1 Sales Dealer & #2 Service Dealer in the World for 2022



Cataumet Boats Inc
P.O. Box 147
Cataumet, MA 02534
T 508.563.7102
www.cataumetboats.com

Wetlands and Waterways Resilience Comments

Martyn Taubert <shipshopsinfo@gmail.com>

Mon 4/29/2024 2:42 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please consider all public input especially from Marinas and shoreline homeowners affected by the proposed new regulations.

Along with this family since 1958 and previous generations have been operating Ship Shops Boatyard and living on the shore of the Bass River in one form or another since 1927. There are homes on the banks of this waterway existing since the late 1700's and still standing.

I have personally been watching the rise or lack of noticeable rise for close to 50 years now in which in that time have not felt as though the elevation of structures necessary. Also, in that time since 1927 there have been numerous hurricanes, Northeasters, no name storms and even a tornado which we and the homes have all survived with some homes over 100 years without additional government regulation on building construction, heights etc.

We can not just run back from shore from the weather. We prepare for storms and always come out ok on the other side.

Our business employs 15 people and offers marine service to the commercial, pleasure and government agencies like the Town of Yarmouth DNR Safe boats, local patrol boats, pump out boats, work barges for channel maintenance, mooring services and fire boats including providing fuel service to both pleasure and commercial.

The burden and expense of more regulation could easily make it difficult if not impossible to remain profitable, affecting the next generation's ability to enjoy what nature has provided us and to keep providing vital services. In that case we could be forced to convert the property to residential and the entire boating community in this area would be at a loss for all marine services we provide to residents, general public and commercial fish operations which are vital to our coastal community. Again, our business and the shoreline community has endured harsh weather for many many years and we feel as though we can continue without additional regulation.

Thank you for your time and consideration of our livelihood and services provided to the community/

Martyn Taubert

Ship Shops Inc

S. Yarmouth, Ma. 02664

Wetlands and Waterways Resilience comment

Susan Lindberg [REDACTED]

Mon 4/29/2024 1:36 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

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To Whom it May Concern.

Just yesterday I was made aware of the proposed regulations to coastal properties.

I have had a property on a barrier beach in Humarock at [REDACTED] for 32 years.

I have had a few minor problems with wave action but not nearly what you would expect. If these regulations are passed, it would be catastrophic and impossible to make any kind of improvements to our house. We should be able to utilize modern engineering design to adapt to our environment. We do not need additional restrictive regulations.

Thank you,

Regards

Susan T.Lindberg

Wetlands and Waterways Resilience Comments

Tamara Wolczik [REDACTED]

Tue 4/30/2024 7:04 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear MASS DEP,

On April 27, 2024, it came to my attention that the Mass Department of Environmental Protection proposed regulatory changes on December 23, 2023. As a coastal resident, why was I not notified of catastrophic changes that will potentially have cataclysmal impact on my family, neighbors, and town. How can they justify RUINING the lives of so many nevermind without any notification?!

As coastal residents, we do our due diligence in research and outreach to support, maintain, and make future plans to ensure that we keep our homes AND environment protected. Suddenly these decisions may go to inexperienced unknowledgeable volunteers of a Conservation Commission?

These regulations are far from ready and require significant revisions, including:

1. Inclusiveness of impacted communities. Hold public hearings and actually listen
2. Do not leave it to each volunteer Conservation Commission's discretion to refuse waterfront property use, especially for water dependent uses by which definition, need to be at the water's edge.
3. Water dependent uses need reliable, explicit right to continue and to be newly built at water's edge and docks and piers in water, using technology and design safely, not "nature based" retreat unproven to succeed anywhere. Do not prohibit water dependent facilities based on geography of a high wind and wave zone - do require sound safe engineering and design in any wind and wave zone.
4. Failure to make changes to proposed regulations will cause the coastal community to collapse fast. No financing, no ordinary property transactions, no new money to invest in upgrading and adapting existing facilities. We need all of these! We need private sector money to pay for real climate change adaptation.
5. We know how to design and adapt to storms. Let us do so!

Sincerely,
Tammy Wheeler
Scituate, MA


Waterways Resilience Comments

Timothy Famulare <tfamulare@provincetown-ma.gov>

Tue 4/30/2024 11:32 AM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Alex Morse <amorse@provincetown-ma.gov>; Melyssa Millett <mmillett@provincetown-ma.gov>

 1 attachments (65 KB)

Waterways Letter.pdf;

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Please see attached comment letter from the Town of Provincetown.

Timothy J. Famulare | Community Development Director

Town of Provincetown

260 Commercial Street, Provincetown, MA 02657

508.487.7000 x554 | tfamulare@provincetown-ma.gov

Town Hall Hours: 8am to 5pm Monday through Thursday, 8am to Noon Friday

[Sign up for alerts and news from the Department of Community Development.](#)

Alex B. Morse
Town Manager
Town of Provincetown



Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657
Facsimile (508) 487-9560
Telephone (508) 487-7002

Email: dep.waterways@mass.gov

Subject: Waterways Resilience Comments

Dear MA DEP Waterways and Other Interested Parties:

On behalf of the Town of Provincetown, we are writing to provide feedback on the proposed regulation changes by the Massachusetts Department of Environmental Protection (MA DEP) to 310 CMR 9.00.

1. MA DEP states that the Engineering and Construction Standards at 310 CMR 9.37(1)(d) are proposed to be revised to take projected sea level rise into account. The proposed language introduces the phrase "adequately consider" projected sea level rise, with respect to any new licenses and the renewal of any existing licenses.

Please find a way to make clear in the proposed regulations that it is not necessary for all facilities to have fully actualized all projected sea level rise all at once and write in the ability to do "rolling" capital project improvements. It would be economically devastating if existing water dependent users all had to replace all their facilities at once, at the time of Chapter 91 license renewal, in order to obtain a renewed license. Without this flexibility to adjust to changes in sea level rise over time, there simply isn't enough money in operating water dependent uses to finance a complete retrofit all at once.

We also seek more clarity on what "adequately consider" sea level rise actually means. Must one go through MEPA for public comment from any interested party anywhere in the state regarding what 'adequately consider' means?

2. MA DEP states that the regulations propose exempting from the height restriction at 310 CMR 9.51 moving mechanicals and other elements to the top floor or roof.

We are in favor of this, as it will allow for more resilient utilities for properties on our waterfront.

3. Please consider allowing municipalities to use the State-approved municipal harbor planning process under the Municipal Harbor Planning Regulations, 310 CMR 23.00. This would allow municipalities to identify their own community objectives, standards and policies for guiding building in the coastal environment.

Thank you for your consideration.

Sincerely,

Alex Morse
Town Manager

Waterways Resilience Comments

Conservation <conservation@wnewbury.org>

Wed 2/7/2024 1:22 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

 1 attachments (86 KB)

Public Comment Extension Request - Proposed Climate Resilience Reg Change Package 1.0.pdf;

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Hello,

Attached please find a formal request to extend the comment period on DEP's proposed regulatory updates of 310 CMR 9.00: Waterways Regulation.

Thank you,

Michelle Greene
Conservation Agent
Town of West Newbury
381 Main Street
West Newbury, MA 01985
Office: (978) 363-1100 x126
Mobile: (978) 891-0238
conservation@wnewbury.org

Stick Season isn't just a catchy song, it's also the time of year when bald eagles can be seen carrying materials, including sticks, to build their nests. Mating pairs of bald eagles work together to build nests and from December through February the male collects nesting materials for the female and she constructs the nest. Observations of eagles carrying sticks can help Mass Fish and Wildlife identify bald eagle nest locations. If you see a bald eagle carrying a stick, email mass.wildlife@mass.gov with details of when and where your observation took place. To learn more about bald eagles in Massachusetts [click here](#).



**TOWN OF WEST NEWBURY
CONSERVATION COMMISSION**
381 Main Street, West Newbury, Mass. 01985
978-363-1100 x126 | conservation@wnewbury.org

February 7, 2024

Commissioner Bonnie Heiple
Massachusetts Department of Environmental Protection (DEP)
100 Cambridge St., Suite 900
Boston, MA 02114

**RE: Public Comment Extension Request - Proposed Climate Resilience Reg Change
Package 1.0**

Dear Commissioner Heiple:

I appreciate the opportunity to provide comments in response to DEP's proposed regulatory updates of 310 CMR 10.00: Wetlands Protection Act and the Massachusetts Stormwater Handbook, 310 CMR 9.00: Waterways Regulation, and 314 CMR 9.00: 401 Water Quality Certification. Many of the proposed changes seem appropriate for addressing the pressing environmental circumstances we face, but not all are readily interpretable or readily implementable.

Given the tremendous extent and technical detail of the proposed changes (the Stormwater Handbook alone is 860 pages of new technical text), I, and likely many conservation professionals, conservation commissions, consultants, and others that will be responsible for interpreting and applying the revised regulations, need more time to review the draft proposals and formulate meaningful feedback. A 70-day comment period following the release of the three regulations and an entirely new Stormwater Management Handbook during the Christmas/New Year holidays is not sufficient time for busy professionals, volunteer commission members many of whom have other fulltime obligations, and consultants who have a responsibility to ensure their projects continue to move along to properly review such a volume of information, digest the consequences, and provide meaningful comments and suggestions to DEP for necessary improvements so that together the regulations help us achieve our common goals of wetland protection and restoration.

I am formally requesting that the public comment period for all the above cited draft documents be extended 60 days to April 30, 2024, and that DEP create working group sessions with representation of conservation organizations, conservation professionals, and environmental consultants and engineers to help DEP understand, address, reconcile, and incorporate the comments received.

Signed:

Michelle Greene
Conservation Agent, Town of West Newbury

Waterways Resilience Comments

Zeus Smith <zsmith@crwa.org>

Wed 2/7/2024 1:04 PM

To: Waterways, DEP (DEP) <dep.waterways@mass.gov>

Cc: Julie Wood <jwood@crwa.org>; Max Rome <mrome@crwa.org>

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Hello,

Charles River Watershed Association ("CRWA") would like to express our appreciation for MassDEP's exemplary work in crafting and promulgating proposed updates to 310 CMR 9.00: Waterways Regulation. We are reviewing these proposed updates. **However, as we stated during our testimony at the hearings on these regulations, we respectfully join the chorus of other partner organizations, conservation professionals, and municipal employees in formally requesting that the public comment period for these proposed updates be extended 60 days to April 30, 2024.**

As one of the country's oldest watershed organizations, CRWA protects, preserves, and enhances the Charles River and its watershed through science, advocacy, and the law. Our initiatives over the last five decades have dramatically improved the quality of water in the watershed, fundamentally changed approaches to water resource management, and protected the Charles River as a public resource for current and future generations. CRWA has been reviewing these proposed updates from the moment they were announced. Many of the proposed updates appear to be steps in the right direction.

However, as many others have noted, a 70-day comment period during the holiday season simply is not enough time to provide the sort of granular review that regulatory updates of this sort deserve. Furthermore, many of CRWA's members have let us know they are interested in reviewing and commenting but would like CRWA's guidance before they draft their letters and conduct their own review. CRWA and partner organizations need more time to review, comment, and provide guidance to our members. Moreover, this comment period is certainly not enough time for our members - many of whom may be directly affected by these updates, but are nonetheless comparatively inexperienced in reading through these types of regulations - to make time to review these important updates for themselves. CRWA and our members are committed to helping MassDEP craft the best set of regulations possible. To enable us to do so, **please extend the comment periods for these regulations to April 30, 2024.**

Thank you again for these updates. We look forward to submitting our substantive comments.

Respectfully,

--

Zeus Smith, Esq. | he/him

Associate Attorney

Charles River Watershed Association

Lands of the Massachusett, Nipmuc, and Wampanoag tribes

41 West St. Floor 8 | Boston, MA 02111

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