

- **The 401 Water Quality Certification Regulations** (314 CMR 9.00) certify that proposed discharges of dredged or fill material, dredging, and dredged material disposal in waters will comply with the Surface Water Quality Standards (314 CMR 4.00) and other state law. For activities with large impacts (> 100 cubic yards of dredging) or discharges to Outstanding Resource Waters (ORWs) or other sensitive resources, proponents are required to submit an application to MassDEP for 401 review. The criteria for evaluation of applications are designed to avoid wetlands impacts and to minimize and mitigate any unavoidable impacts.

ACECs include water bodies and wetlands subject to classification under the Surface Water Quality Standards, many of which have been designated ORWs. Proposed activities within ORWs require a 401 review and certification from MassDEP, in addition to an Order of Conditions pursuant to the Wetlands Protection Regulations.

As a general rule discharges to certified vernal pools and to areas within 400 feet of a public water supply reservoir are prohibited without a variance, regardless of whether those resources (both classified as ORWs) are within an ACEC. Discharges to other ORWs may be permitted following an alternatives analysis and minimization and mitigation of any adverse impacts.

Confined Aquatic Disposal (CAD) or the siting of a Confined Disposal Facility (CDF) within an ACEC is prohibited [see 314 CMR 9.07(8)(a)(2)]. Use of Intermediate Facilities where they will have a permanent adverse impact on an ACEC is prohibited [see 314 CMR 9.07(4)(d)(7)]. CAD is a subaqueous constructed cell or natural depression into which dredged sediment is placed and then isolated from the surrounding environment. CDF is a facility created in open water or wetlands consisting of confinement walls or berms built up against or extending into existing land. Intermediate Facilities are sites or locations that are used, temporarily or permanently, to manage dredged material prior to its ultimate reuse or disposal (e.g., barge unloading, stockpiling or storage, dewatering, processing or treatment, truck or train loading or unloading).



HINSDALE FLATS

- **Solid Waste Facilities Site Assignment Regulations** (310 CMR 16.00) prohibit the siting of new solid waste facilities within an ACEC (see section 16.40(4)(d)). The regulations also prohibit the siting of such a facility located adjacent to an ACEC if such a siting “would fail to protect the outstanding resources of an ACEC.”

#### How do I get more information?

This regulatory summary is a brief description of state regulations and programs concerning ACECs. More detailed information is provided in the *ACEC Guide to State Regulations and Programs* available from the ACEC Program in Boston or the ACEC Program website. Contact the particular agency or program cited with further questions.

*For more detailed information regarding the ACEC Program, including ACEC maps, resource summaries, and designation documents, access the ACEC Program website at <http://www.mass.gov/eea/agencies/dcr/conservation/ecology-acec/areas-of-critical-environmental-concern-acec.html> or contact ACEC Program staff at the Bureau of Planning and Resource Protection at the Department of Conservation and Recreation.*

## MASSACHUSETTS DEPARTMENT OF CONSERVATION AND RECREATION



#### What do the ACEC regulations say?

The Areas of Critical Environmental Concern (ACEC) Regulations (301 CMR 12.00) describe the purpose and procedures for the nomination, review, and designation of ACECs by the Massachusetts Secretary of Energy and Environmental Affairs. The ACEC Regulations direct the agencies of the Executive Office of Environmental Affairs (in 2007 renamed Energy and Environmental Affairs, or EOEEA) to take actions, administer programs, and revise regulations in order to preserve, restore, or enhance the natural and cultural resources of ACECs. The regulations also call for EOEEA agencies to acquire useful scientific data about ACECs, ensure that activities in or impacting an area minimize adverse effects on the resources, and apply close scrutiny to the environmental review of projects subject to their jurisdiction.

An ACEC designation is a formal state designation of a significant ecological area directed to the actions and programs of Massachusetts environmental agencies. The designation works through the existing state environmental regulatory and review framework and does not change local regulations or zoning. The Department of Conservation and Recreation (DCR) administers the ACEC Program on behalf of the Secretary and coordinates with other state agencies and programs in the review of ACEC nominations and in the implementation of ACEC designations.

*It is important to understand that the goals of ACEC designation are not achieved exclusively through state regulations.* Besides the regulatory authorities listed below, several state agencies and programs give priority attention to ACECs through non-regulatory means such as grants and technical assistance. In addition, the purpose of ACEC designation – to protect, restore, and enhance the resources – can only be accomplished through the combined efforts of many other public and private partners. These programs and other proactive ways to achieve the goals of ACEC designation are described in other ACEC Program materials and on the ACEC website.

#### Which state regulations refer specifically to ACECs?

The principal state agencies with regulations referring to ACECs are the Massachusetts Office of Coastal Zone Management (CZM), the Massachusetts Environmental Policy Act (MEPA) Office, and the Department of Environmental Protection (MassDEP).

The following information briefly summarizes their regulations and programs. For more detailed information, request the *ACEC Guide to State Regulations and Programs* or contact the agencies directly.

- **CZM Program Regulations** (301 CMR 21.00) include state policies to protect resources and manage development in the coastal zone. Protected Areas Policy # 1 under CZM’s Program Policies (301 CMR 21.98) calls for



FOWL MEADOW AND PONKAPOAG BOG

all appropriate EOEEA agencies to preserve, restore, and enhance complexes of coastal resources of regional or statewide significance through the ACEC Program. CZM implements coastal policies in several areas including water quality, habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management. Through the federal Coastal Zone Management Act, CZM is empowered to ensure that all federal development activities, all federally licensed or permitted activities, or any federally funded activities in the Massachusetts coastal zone are consistent with state coastal policies, including those concerning ACECs.

- **MEPA Regulations** (301 CMR 11.00) require that state agencies study the environmental consequences of their actions, including permitting and financial assistance, and take all feasible measures to avoid, minimize, and

mitigate damage to the environment. Projects subject to MEPA review must involve some state agency action – that is, they are either 1) proposed by a state agency, or are proposed by private, municipal, or nonprofit parties and require 2) a state permit, 3) state financial assistance, or 4) land transfer from state agencies. MEPA review occurs before state permitting agencies act, to ensure that they know the environmental consequences of their actions. The purpose of MEPA review is to ensure that a proposed project will avoid or minimize adverse impacts to the natural and cultural resources of an ACEC.

ACECs are addressed in the MEPA regulations at 301 CMR 11.03(11). The proponent of any project (as defined by the MEPA regulations) located within an ACEC must file an Environmental Notification Form (ENF) for MEPA review, unless the project consists solely of one single family dwelling. What this means in practical terms is that projects located within ACECs subject to MEPA jurisdiction require closer scrutiny than projects located outside of ACECs. Project review thresholds (for the size or type of a project) that require a proponent to file an ENF are reduced to include all projects located within an ACEC.

Examples of 1) *projects proposed by state agencies* that require the filing of an ENF when located within an ACEC are highway improvement projects proposed by the Massachusetts Highway Department (MassHighway), or park improvement projects proposed by DCR.

Examples of 2) *state permits for projects* located within ACECs that require the filing of an ENF are a state highway access permit from MassHighway, a request for a Wetlands Protection Act Regulations Superseding Order of Conditions from MassDEP, an Individual Water Quality (401) Certificate from MassDEP, or a sewer extension permit from MassDEP.

Examples of 3) *projects receiving state financial assistance* that require the filing of an ENF when located within an ACEC are projects receiving state funds for the construction of school facilities, for chemical treatment of aquatic vegetation for lakes or ponds, or for road improvements that do not qualify as routine maintenance.

An example of a 4) *land transfer from a state agency* is the transfer of a utility easement to a public or private entity over land owned by a department, division, or agency of the Commonwealth.



WELLFLEET HARBOR

Projects that qualify as *routine maintenance projects* are not required to undergo MEPA review. These projects are defined as any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for damage to the environment, or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

- **MassDEP regulations and programs** regarding ACECs include the Waterways Regulation Program, the Wetlands Protection Program, the 401 Water Quality Certification Program, and the Solid Waste Facilities Site Assignment Regulations.

- **Waterways (Chapter 91) Regulations** (310 CMR 9.00) jurisdiction extends to activities (such as construction, dredging, and filling) in, on, over or under mean high water in both coastal and inland areas, including in tidelands, previously filled tidelands, Great Ponds, and certain rivers and streams. Through Chapter 91 the Commonwealth seeks to preserve and protect the rights of the public by ensuring that such waterways are used only for water-dependent purposes or otherwise serve a proper public purpose.

The Waterways Regulations do not allow new fill in ACEC waters and place increased limits on new structures within ACECs (see sections 9.32(1)(e) and 9.32(2)). Fill or structures may be licensed for shoreline stabilization, or certain limited actions required for replacement or improvement of existing public roadways or existing railroad track or bed. Proposed new, privately owned structures for water-dependent use below the high-water mark, such as private docks or piers, are only eligible for a license provided that such structures are consistent

with an ACEC resource management plan adopted by the municipality and approved by the Secretary of Energy and Environmental Affairs.

Improvement (new) dredging is prohibited within an ACEC except for the sole purpose of fisheries and wildlife enhancement. Maintenance dredging remains eligible for a permit. The disposal of dredged material below Mean Highwater is prohibited within an ACEC except for the purposes of beach nourishment, dune construction or stabilization with proper vegetative cover, or the enhancement of fishery or wildlife resources (see section 9.40(1)(b) regarding dredging or disposal).

- **Wetlands Protection Act Regulations** (310 CMR 10.00) require that no one shall remove, fill, dredge, or alter any of the coastal or inland (freshwater) wetlands resource areas listed in the Wetlands Protection Act without filing a Notice of Intent (NOI) to do so with the local Conservation Commission. Conservation Commissions are required to issue an Order of Conditions (OOC) designed to protect the specific interests of the Act.

For coastal resource areas within ACECs, the performance standard is raised to “no adverse effect” on the interests of the Act, except for maintenance dredging for navigational purposes of “Land Under the Ocean” (see section 10.24(5)(b)).

A higher performance standard also applies to the inland (freshwater) wetlands resource area known as “Bordering Vegetated Wetland.” As defined in the Wetlands Protection Regulations, Bordering Vegetated Wetlands (BVW) are “freshwater wetlands which border on creeks, rivers, streams, ponds and lakes.” Outside of an ACEC, there is the potential for work to be permitted which



GREAT MARSH

results in limited loss of BVW in certain cases. Within an ACEC, BVW cannot be destroyed or impaired such that potential projects are prohibited from creating the loss of any BVW (310 CMR 10.55(4)(e)1). This standard for BVW applies to all ACECs.

However, ACEC designation does not prohibit work affecting BVW if such work can be authorized under any section of the Wetlands Protection Regulations, including if the presumption of significance can be rebutted, if the proposed project is for maintenance of permitted



SCHENOB BROOK DRAINAGE BASIN

stormwater structures (310 CMR 10.55(4)(e)4), or if the proposed project can meet the specific performance standards for “limited projects” listed at 310 CMR 10.53(3). If a project in an ACEC qualifies as a limited project, alteration of BVW may be permitted under 310 CMR 10.53(3), although no limited project may have any adverse effect on specified habitat sites of rare species. For the specific “limited project” provision for the construction, reconstruction, operation, or maintenance of water-dependent projects (310 CMR 10.53(1)), the project must still meet performance standards for impacts to BVW (except the ACEC provision for no impairment, 310 CMR 10.55(4)(e)3). That is, a water-dependent limited project impacting BVW may not impact more than 5000 square feet with replication, or 500 square feet if a “finger-like” wetland. For all reviews of limited projects, Conservation Commissions’ discretion in the evaluation of projects should be based on a balancing of the magnitude of the wetland impacts proposed against the significance of the particular wetland to the interests of the Wetlands Act, the availability of alternatives, minimizing of adverse impacts, and mitigation provided (310 CMR 10.53(3))