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E.O. 562 Input
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MassDEP
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Via: U.S. Mail and email to DEP.Talks@state.ma.us

Reference: Public Comments: Executive Order 562

To Whom It May Concern:

Beals and Thomas, Inc. (B+T) appreciates the opportunity to offer comments on MassDEP's regulatory recommendations issued under Executive Order 562 (E.O. 562). Our comments are based on information received during the Listening Session held at MassDEP's Central Regional Office on September 29, 2015.

Waterways - 310 CMR 9.00

We understand that MassDEP proposes to increase the flexibility of the Facilities of Public Accommodation (FPA) requirements under the Chapter 91 regulations at 310 CMR 9.00 by creating Facilities of Limited Accommodation (FLA), as well as allowing for relocation of FPA and FLA within a building where only a portion of the building is within Chapter 91 jurisdiction. We strongly support any flexibility in the FPA requirements, and note that the purpose of the criteria should be to provide meaningful public benefit and improve the economic viability of waterfront projects. We recommend that MassDEP also evaluate incorporation of additional flexibility, such as payment to an "in-lieu fee" or "mitigation bank" type program.

Wetlands Protection - 310 CMR 10.00

The current requirements of the Wetlands Protection Act (WPA) regulations present challenges for the conversion of existing rail lines to public trails, and we request that MassDEP increase the flexibility of the WPA regulations for these projects, particularly given their public benefits and relatively insignificant potential environmental impacts.

One particularly challenging issue is presented when former drainage and spark arrester channels along the sides of abandoned railroad tracks develop wetland characteristics. Under the current regulations, these areas are often considered bordering vegetated wetlands (BVW) and/or streams with regulated Bank. Given the proximity of these features to the edges of the railroad, and the path widths necessary to create multi-use trails, it often becomes difficult or even impossible to meet performance standards associated with the BVW and Bank resource areas.

Other challenges include managing stormwater, given the rail trails' long linear and narrow nature, particularly when bordered by the previously described former drainage channels and spark arrester ditches, which may not be utilized for stormwater management if characterized as wetlands/streams.

Even when former drainage and spark arrester channels are not present, but the former railroad lies within Riverfront Area or buffer zone, permitting can be unnecessarily onerous in the context of the often insignificant impacts associated with conversion to a rail trail. In these instances, we ask that MassDEP consider adding a minor activity exemption for conversion of former railroads to rail trails.

In summary with regard to rail trail projects, we respectfully request that MassDEP consider incorporating provisions:

- Addressing circumstances under which former drainage and spark arrester channels should not be considered resource areas
- Providing allowances, such as a limited project status and exemptions, to facilitate rail trail projects

In addition to rail trail projects, trail and boardwalk projects are often unduly constrained by the WPA regulations. Specifically, construction of footbridges and observation decks is considered a limited project under 310 CMR 10.53(3)(j), provided the bridge permits adequate light to maintain vegetation. This requirement necessitates an increase in the height of the bridge, or an increase in the gap between slats. Public projects typically must comply with the Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB) requirements, which conflict with these design elements. Raising the height of the bridge above 30 inches requires the addition of handrails, which results in a significant increase in cost, and the gap between slats must be less than ½ inch. We respectfully request that MassDEP reconsider this standard, and revise the regulations accordingly or issue a policy statement, in order to promote the significant health and recreation public benefits achieved by public trail projects, including those that incorporate footbridges and observation decks and consequently foster the public's enjoyment, appreciation, and understanding of wetland resource areas.

Solar Facility Stormwater Modeling

We understand that wetlands reviewers within MassDEP are requesting that applicants model solar panels as disconnected impervious area for the purposes of stormwater management. While we acknowledge that this is not a regulation under the purview of E.O. 562, we are concerned that this approach does not comport with the Massachusetts Stormwater Handbook, and note that it has been inconsistently applied. If a formal policy is being developed with specific regard to stormwater management for solar facilities, we request that MassDEP solicit input from stakeholders, including design firms, whose technical expertise will result in a stronger and sounder approach. Furthermore, we request that B+T be considered for participation in any associated working group. One of our principals, John Bensley, is a member of MassDEP's Stormwater Advisory Committee.

We thank you for considering our input, and look forward to reviewing the draft regulations.

Very truly yours,

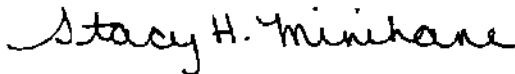
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