

Waterways Practitioner Working Group

Meeting 1 – September 19, 2024

Summary of Feedback from Practitioners

1. Application Template

- a. Suggestion to include this as an appendix to the ENF
- b. Suggestion to include WDUZ calculation in the Waterways application

2. Extended Term Licenses

- a. A couple practitioners said sometimes they appear on paper to meet the standards required to get an extended term, but then DEP asks for more. One practitioner said it sometimes felt like a “one-way ratchet,” where DEP will ask for more even if the initial proposal for an ETL is robust.
- b. Resiliency standards need to be clear and rational. Practitioners are unclear what counts as resilient. For example, how frequently does a site need to flood to no longer count as open space? Once a year, once a month, etc. Practitioners want to know what the trigger point is.
- c. One practitioner questioned whether ResilientMass should be a reference point for project applicants. He worried it was not durable / could be scrapped by a new administration.
- d. Daniel discussed an example of a project that developed a three-phase resiliency plan: monitoring, planning, execution.

3. Facilities of Public Accommodation

- a. Applicants struggle to establish the specific uses for FPAs at the time of licensing, which in many cases is years before a space is leased. Plus, applicants cannot predict how long a restaurant or retailer might last.
- b. Practitioners want more insight into how DEP views a “high-value” or “less than minimal” FPA. For example, whether a restaurant open to the public is as good as a different type of FPA seems like a “value judgment”.
- c. Examples of successful, appropriate, high-value FPAs would be helpful to include in the guidance document.
 - i. Also, examples of where conflicts arise would be helpful.

- d. There was a discussion about implementing a “pay or perform” model for FPAs, where developers could pay into a fund in lieu of providing an FPA or providing less of an FPA.
 - i. Akin to Boston’s inclusionary development policy.

4. Water-Dependent Use Zone

- a. Regarding calculation of the WDUZ, one practitioner said it would be helpful to get confirmation that DEP agrees with the calculation as early as possible.
 - i. There was a suggestion to include a section for the initial calculation on the application template/checklist that DEP is developing.
- b. Regarding what is allowable in the WDUZ, practitioners asked for examples of the common conflicts DEP sees.
- c. What about things like light fixtures, transformers, artwork?
- d. We discussed the importance of discussing plans for the WDUZ in pre-application meetings

5. Covered Open Space

- a. There was discussion around clarifying what is covered open space; possible updating the current “open to the sky” interpretation.
- b. A practitioner suggested looking at recent Article 97 case law in which the term “structure” was defined in a way that could be relevant to Ch. 91 covered open space discussion.
- c. We discussed below-grade structures related to calculating open space.

6. Other Topics Noted at End of Meeting – To Consider Discussing at a Future Meeting

- a. License renewal process
- b. Minor modification process
- c. Restoration projects