



Massachusetts Association of Conservation Commissions

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

By email to: dep.talks@state.ma.us

February 24, 2014

Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Regulatory Comment Box
One Winter Street, Fifth Floor, Boston, MA 02108

Re: Proposed Changes to Wetlands Regulations (310 CMR 10.00) to adopt an Emergency Declaration provision as authorized by Acts of 2012, c.238, § 50.

Dear Department of Environmental Protection:

The Massachusetts Association of Conservation Commissions (MACC) appreciates the opportunity to comment on DEP's proposed amendments to the Wetlands Regulations at 310 CMR 10.04 and 10.06. Those proposed amendments would define a Severe Weather Emergency Declaration and adopt regulations to implement Acts of 2012, c.238, § 50, which amended G.L. c.131, § 40, to include severe weather emergency declarations.

MACC, a membership-based non-profit corporation, is the professional association of Massachusetts conservation commissions. We represent more than 2,100 conservation commissioners throughout Massachusetts who are responsible for protecting the natural resources of their communities under the Conservation Act (G.L. c.40, § 8c) and for administering and enforcing the Wetlands Protection Act (G.L. c.131, § 40) and municipal wetlands laws and regulations. We protect wetlands, open space, and biological diversity across Massachusetts by supporting conservation commissions through education and advocacy. We advocate for strong science-based laws, regulations, and policies that function well and that can be implemented locally. We have been doing that work since 1961.

Overall, we think the proposed regulations are fairly consistent with Acts of 2012, c.238, § 50. We are concerned, however, that declarations issued under the regulations might inadequately protect the interests identified in the Wetlands Protection Act. Declarations issued in haste during emergency conditions might not be as thoroughly considered and reviewed as those issued with more time for reflection. Work done under a Severe Weather Declaration might be done quickly without adequate consideration of options. Consequently, work done under a Declaration needs specific directives and the regulations should be more specific about the resource protection and restoration requirements of such work. In particular, we recommend that the regulations be amended to specifically state that, in addition to the requirements set forth in a Declaration:

The work undertaken pursuant to a Declaration, and the methods used to carry out that work:

- a) shall be strictly limited to what is absolutely necessary to protect the public health and safety, including that removal of vegetation in wetlands and buffer zones, and alterations of grades and elevations, be strictly limited to what is necessary to abate the emergency threat to public health and safety;
- b) shall strictly limit the operation of heavy equipment in wetlands to what is absolutely necessary to protect public health and safety due to the emergency;

- c) shall not include any permanent filling in an inland wetland, coastal wetland, swamp, or marsh;
- d) shall use removable structures, e.g., swamp or timber mats, where access requires temporary filling in an inland wetland, coastal wetland, swamp, or marsh;
- e) shall not include dredging a creek, stream, or river without prior Department and conservation commission authorization; and,
- f) shall include reasonable restoration after the emergency to pre-storm conditions to the extent feasible, including reasonable restoration of stream banks to pre-storm grades and other resource areas to pre-storm contours.

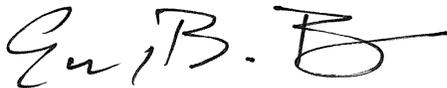
We also recommend that the regulations specify that:

- a) notice of the work to be done pursuant to a Declaration be given to DEP and the local conservation commission before the work begins if feasible to do so, or within 24 hours after beginning the work if prior notice is infeasible; and,
- b) reports on the work undertaken pursuant to a Declaration be required at least weekly to DEP and the local conservation commission, and more frequently if required by the Declaration.

We believe such regulatory provisions are critical to protecting public health and safety while at the same time assuring no unnecessary damage to our natural resources. The regulations must set the baseline for the requirements of work to be done pursuant to a Severe Weather Emergency Declaration. Having the requirements in the regulations also helps assure that the baseline requirements are known in advance of any emergency. We think not including those requirements in the regulations will lead to unnecessary confusion, potential resources damages, and could result in later administrative or court action and additional costs of restoration.

Thank you for the opportunity comment. Please feel free to contact me to follow up.

Sincerely,



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