



Massachusetts Association of Conservation Commissions

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

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Ms. Ruth Ladd, Chief
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Via Email: ruth.m.ladd@usace.army.mil

Subject: Comments on the Proposed Revision of the New England District Compensatory Mitigation Guidance Document

Dear Ms. Ladd:

The Massachusetts Association of Conservation Commissions (MACC) is a nonprofit organization dedicated to educating and supporting the 351 Conservation Commissions and promoting protection of wetlands and other natural resources across the Commonwealth of Massachusetts. We appreciate the opportunity to comment on the proposed revisions to the New England District Compensatory Mitigation Guidance (the Guidance). As explained in the Corps' public notice dated March 3, 2015, the New England District is revising and expanding the Guidance for several reasons, including incorporating new national guidance and directives, improved methodologies, and updated technical information.

The focus of our comments is on the parts of the Guidance that are particularly relevant to the Commonwealth of Massachusetts and what effects, if any, the proposed revisions might have in relation to the Massachusetts Wetlands Protection Act (WPA) and its implementing regulations. As the Corps is aware, many activities that are proposed to be conducted in waters of the U.S. are also subject to review and approval by conservation commissions under the WPA and local Wetland Bylaws and Ordinances. There is an inherent underlying link between local, state and federal wetlands regulatory programs when it comes to protecting wetlands in the Commonwealth and the functions and values they provide.

In addition, as the organization dedicated to educating and supporting the 351 conservation commissions across the Commonwealth responsible for first-line administration of the Massachusetts WPA (and any local by-law), one of our principal concerns is awareness of potential inconsistencies between the requirements and policies at the federal level and those at the state and local levels.

General Guidance

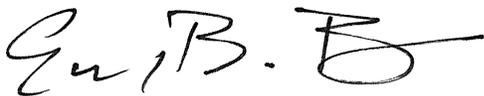
In general, we commend the Corps for the proposed revisions. The Guidance is better organized than prior versions and easier to navigate. By incorporating modules for wetlands, streams, vernal pools, submerged aquatic vegetation, and other aquatic resources, the Corps has made the Guidance comprehensive. We also appreciate that the Guidance includes current scientific and methodological advances for the technical aspects of restoring, creating, and enhancing each of the aquatic resource types covered in the modules.

General Compensatory Mitigation Requirements

As the Corps has heard previously, the federal preference for using mitigation banks and in-lieu fee (ILF) programs over permittee-responsible compensation projects creates at least a potential conflict with the requirements of the WPA for wetland replication in-kind and at the location of the permitted impact. With no active mitigation banks currently situated in the Commonwealth, that is not an issue. However, ILF programs do indeed present a challenge with the WPA replication (creation) requirements for alterations to Bordering Vegetated Wetlands (BVW), potentially resulting in the need for separate mitigation packages to address state and federal requirements. More specifically, the WPA regulations require, in part, that the BVW replacement area be located within the same general area of the water body or reach of the waterway as the lost area (310 CMR 10.55). Accordingly, whenever possible, and as allowed in Section 2.b., General Compensatory Mitigation Concepts, of the Guidance, we encourage the Corps to require at least a portion of compensatory mitigation activities to occur at the location of the permitted impacts so as to be generally consistent with Massachusetts WPA regulations. Moreover, we urge the Corps to continue its on-going discussions with the MA DEP and other state agencies to reduce and eventually eliminate this problem and work towards one comprehensive mitigation approach that properly addresses both state and federal requirements.

We appreciate the opportunity to submit these comments.

Sincerely,



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cc: MACC Board of Directors
Lealdon Langley, MA DEP