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Massachusetts Department of Environmental Protection  
Bureau of Water Resources Waterways Program  
Attention: Waterways Resilience Comments  
100 Cambridge Street, 9th Floor  
Boston, MA 02114

April 26, 2024

Dear Waterways Program Chief Padien,

Thank you for the opportunity to comment on the draft Chapter 91 Waterways regulations as part of MassDEP's "Climate Resilience" 1.0 package.

At the Charles River Conservancy, we strive to make the Charles River and its parks a well-maintained network of natural urban places that invite and engage all in their use and stewardship.

One major initiative of the Charles River Conservancy is the installation of floating wetlands, which explores an ecological intervention to reduce harmful algal blooms in the Charles River. We were fully aware that the current permitting framework is designed to be arduous in order to prevent intrusion and harm to water bodies. An unfortunate consequence is that nature-based solutions that are intended to provide net benefits are also more challenging to execute within the same framework. The floating wetland project was no exception, making the permitting phase a significant part of the overall effort. We therefore strongly support a simplified, streamlined permitting process to accelerate the pace of restoration projects.

We are pleased to see that these regulations advance climate resilience. These are necessary steps towards ecological restoration, public safety, and preparing our communities for the impacts of climate change. We appreciate the years of work MassDEP has spent crafting these draft regulations, and strongly support many of the proposed provisions. We also appreciate MassDEP's responsiveness to the public during the rollout of Climate Resilience 1.0, and hope that there will be a similar level of support given to educating conservation commissions and other practitioners on the final set of regulations.

**We support the following provisions, and recommend that MassDEP promulgate them swiftly:**

- Clarifying that culvert replacements that meet Massachusetts Stream Crossing Standards do not need to obtain a Chapter 91 permit.<sup>1</sup> This exemption will help encourage culvert replacements, speed up their permitting process, and lower the cost for municipalities and practitioners.
- The new requirement for projected sea level rise data to be incorporated into new development and redevelopment for the life of those projects.<sup>2</sup> Sea level rise should be factored into coastal infrastructure plans for the longevity of the structure, as well as for human safety.

**Where the regulations must be refined:**

- MassDEP has proposed to strike out the “Combined Application” option for the Wetlands Protection Act, Waterways, and Section 401 Water Quality Certifications,<sup>3</sup> without proposing anything to fill its place. To accelerate the pace of restoration projects, we need a simplified permitting process that provides combined Wetlands Protection Act and Chapter 91 *approval* for applicants pursuing environmentally beneficial projects.
- As written, the definition of “fill” includes salt marsh hay,<sup>4</sup> and treat it with the same long permitting pathway as fill used in development, even though salt marsh hay is part of ecological restoration. Instead, the definition of “fill” should exclude salt marsh hay, and those projects should be exempt from getting a Chapter 91 license.
- While MassDEP has proposed to use Resilient Mass mapping for updated sea level rise data, there is no inclusion of forecasted precipitation data. Greater precipitation combined with sea level rise will yield a more accurate picture of flood risk, and MassDEP should include reference to an appropriate, forward-looking dataset.

Though the draft regulations are, overall, moving the state in a positive direction, they do not go far enough in achieving the stated goals of “Resilience 1.0.” **After swift promulgation of these regulations, we strongly encourage MassDEP to begin the “2.0” process to continue improving Chapter 91 regulations.** There must be no delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

Specifically, Charles River Conservancy would like to see special conditions given to dam removal projects under 310 CMR 9.00. The regulations already provide for culvert replacements to be exempted from a Chapter 91 license, recognizing that those projects do not impede navigation and instead increase the resilience of the site. MassDEP’s public summary of the proposed changes state that these projects are exempt “when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation.”<sup>5</sup> Removing dams that block wildlife passage, present flooding risks, or are abandoned, similarly meet those criteria. The Wetlands Protection Act regulations provide an expedited permitting process for dam removals, categorizing them as an Ecological Restoration Limited Project;<sup>6</sup> Chapter 91

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<sup>1</sup> 310 CMR 9.05 (3)(g)(4)

<sup>2</sup> 310 CMR 9.37 (1)(d)

<sup>3</sup> 310 CMR 10.04

<sup>4</sup> 310 CMR 9.02

<sup>5</sup> [Summary of Proposed Regulations](#) 310 CMR 9.00: Waterways. Massachusetts Department of Environmental Protection. December 22 2023. Page 1.

<sup>6</sup> 310 CMR 10.00 (8)

should do the same by exempting them from obtaining a permit. There are 3,000 dams across the Commonwealth, 300 of which are considered “high hazard” by the Office of Dam Safety. Removing many of these dams is essential to protecting our communities from the more intense storms that climate change is bringing to the Commonwealth. MassDEP should do its part in accelerating that work by providing a streamlined permitting pathway.

Thank you for the considerable time and effort the agency has invested in creating these draft regulations so far. We look forward to continuing to work together to protect Massachusetts’ rivers, ecosystems, and communities from the impacts of climate change.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Jasinski". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Jasinski".

Laura Jasinski  
Executive Director, Charles River Conservancy  
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