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Massachusetts Department of Environmental Protection  
Bureau of Water Resources Wetlands Program  
Attention: Wetlands-401 Resilience Comments  
100 Cambridge Street, Suite 900  
Boston, MA 02114

April 26, 2024

Dear Ms. Rhodes and the MassDEP Wetlands Program,

Thank you for the opportunity to comment on the draft Wetlands Protection Act 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 crucial pillar of our work is envisioning a swimmable Charles River, which we proudly showcase in our public (and permitted) annual river swim "City Splash" off the Esplanade. Increased precipitation due to climate change leads to CSOs that discharge untreated sewage and stormwater into the Charles River, causing unsafe, unreliable conditions for swimming. We have had to cancel our annual river swim in multiple recent years—including last year's—due to bacterial conditions caused by excess rainwater.

Another 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.

In sum, the Charles River community and the Commonwealth of Massachusetts need climate resilient permitting and improved regulations associated with stormwater and habitat restoration.

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.

Though the draft regulations are overall moving in a positive direction, they do not go far enough in achieving the stated goals of "Resilience 1.0."

As a member of the Massachusetts Rivers Alliance, the Charles River Conservancy concurs with the following statements made by MRA regarding where the **regulations must be refined**:

- The nature-based resilience requirement for coastal projects is non-binding.<sup>1</sup> Having applicants merely "consider" these measures does not mean they will implement them. While the provision states that "the Issuing Authority may require" natural methods and materials, it is not clear under what circumstances MassDEP would do so. We ask that MassDEP make this provision more stringent by requiring applicants to analyze nature-based methods as their first option, and set a high bar of impracticability.
- The updated data (NOAA14+) that MassDEP is proposing be tied to the Wetland Protection Act regulations<sup>2</sup> is likely to become outdated soon. These draft regulations bring us to present precipitation trends; they do not yet bring us into the future. Instead, the Commonwealth needs to use dynamic, forward-looking projections and subsequent versions for precipitation that will protect our community for decades to come.
- 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 a new procedure to fill its place. To accelerate the pace of restoration projects, Massachusetts needs a simplified permitting process. This is a missed opportunity to create that streamlined process. Such a process would also be especially beneficial to municipalities with predominantly environmental justice populations who need these projects for health and safety reasons, and are often deterred from pursuing such projects due to the high permitting costs.
- We are concerned that the "Maximum Extent Practicable" recharge standard for all soil types in redevelopment<sup>4</sup> will be too easy for applicants to skirt, resulting in insufficient recharge in many sites. MassDEP must hold recharge to a more stringent standard than MEP to truly meet the climate resilience intentions of these regulations.
- While we are glad that basic Shared Use Path maintenance is exempted from permitting, the directives of subsection (iv) ("cut vegetation may be...and properly disposed") are too narrow to be included in regulation, since management methods are highly site-specific. Instead, these

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<sup>1</sup> 310 CMR 10.24 (1)(b)

<sup>2</sup> Stormwater Handbook Standard 2

<sup>3</sup> 310 CMR 10.04

<sup>4</sup> Stormwater Handbook Standard 3


methods should be developed as a Best Management Practice or guidance document. Furthermore, we question why MassDEP would prohibit “work on any component of a Stormwater Management System,” including drainage swales.<sup>5</sup> This language is contradictory to exemptions already made for stormwater management projects, unhelpful at increasing flood protection, and should be deleted.

- We are glad to see adaptive Resource Area conversion allowed for climate resilience. However, the proposed regulation could prove difficult for project managers to interpret, as the allowance for restoration projects is inhibited by language further down in the provision. Section 10.24 (b) starts with: “the Issuing Authority may require the restoration, enhancement, or creation of wetland Resource Areas through natural methods and materials.” Further down, 10.24 (b) also reads: “the project will not cause an increase in flood velocity, volume, or elevation on other properties.”<sup>6</sup> Many of the wetland restoration projects suggested in this provision would increase the volume, velocity, and sometimes elevation of water on other properties (though, importantly, without adversely impacting neighboring infrastructure). Replacing an undersized pipe culvert with an open bottom culvert that meets Stream Crossing Standards allows more water to pass underneath; the same is true for dam removals, and some salt marsh restoration projects. We understand and support MassDEP’s intent of this regulation, to protect neighboring properties from flooding during storms, but the current language nearly precludes the coastal restoration projects it is supposed to encourage. We recommend that MassDEP refine this language to clarify the agency’s allowance, and encouragement, of coastal restoration projects that improve resilience during storms.
- We are concerned with the provision allowing the relocation of roads and railroads as Limited Projects.<sup>7</sup> Of course the siting of our coastal roads and railroads needs to be seriously reexamined in light of sea level rise, but done so in context with all other coastal infrastructure and ecosystems. The Healey administration’s ResilientCoasts Initiative has just begun to do this, studying each coastal neighborhood’s assets and risks. Relocating roads and railroads will need to take into account impacts on ecosystem function and habitat at the new sites. For these reasons, we recommend removing Limited Project status for relocating roads and railroads until a greater, coastwide strategy and decision-making process are established.

**After swift promulgation of these updates, we strongly encourage MassDEP to begin the “2.0” process to continue improving the Wetland Protection Act regulations.** There must be no delay in ramping up our regulatory approach to development to match the challenge of the climate crisis before us.

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

Sincerely,



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<sup>5</sup> 310 CMR 10.02 (2)(b)(f)(v)

<sup>6</sup> 310 CMR 10.24 (1)(b)

<sup>7</sup> 310 CMR 10.24 (7)(c)(9)

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