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April 30th, 2024
Via email: dep.wetlands@mass.gov

MassDEP - BWR Wetlands Program
Attn: Wetlands-401 Resilience Comments
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Proposed Regulatory Changes

Dear Ms. Rhodes and MassDEP Wetlands Team:

Thank you for the opportunity to comment on the proposed changes to 310CMR 10.00. Boston Harbor Now's mission is to ensure that Boston Harbor, the Waterfront, and the Islands are accessible and inclusive and that these assets are properly adapted to the risks of climate change. We do this in order to realize our vision of a vibrant, welcoming, and resilient Boston Harbor, Waterfront, and Islands for the benefit of everyone. We are encouraged by the Massachusetts Department of Environmental Protection's (MassDEP) willingness to update the implementing regulations (310 CMR 10.00) for the Wetlands Protection Act, to reduce storm and flood damage, minimize the risk to public health and safety, and protect the natural function of the floodplain. We hope these changes help to prepare communities for coastal flooding while providing enough flexibility to deliver thoughtfully designed and innovative flood resilience measures.

Boston Harbor Now has long advocated for a resilient, equitable, and accessible waterfront. As part of our mission to prepare Boston Harbor for sea-level rise and storm surge caused by intensifying climate change, we have advocated for flood measures that help contribute to district-scale flood protection and improve ecosystem services and waterfront activation.

As advocates of Boston Harbor and champions of thoughtfully designed and innovative flood resilience measures that contribute to district-wide flood protection, we hope these new updates will allow for the continuation and expansion of waterfront access and flood protection.

General Provisions – 10.24

Per the proposed regulations, new buildings, even those on piles, are no longer permitted in the velocity zone (V-Zone) due to the adverse impact structures have on Land Subject to Coastal Storm Flowage (LSCSF). As noted by the Department, "Open Piles necessary to support buildings and other structures are likely to cause scour from the turbulence of asymmetrical waves and swash" and "human activities associated with buildings typically result in loss of vegetation" resulting in "areas [that] cannot naturally recover as readily as undisturbed flood zones, frequently resulting in storm surge waves breaking



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further landward.” We concur and believe that most new structures and buildings should not be built in the V-Zone. In addition to undermining LSCSF, we believe that permitting most new development in the V-Zone would set them up for failure, exposing them to extreme wave action during coastal storms.

However, there are some instances in which development must occur along the water and occasionally be built within a V-Zone. By virtue of their purpose, water-dependent uses must be located in areas along the waterfront, where we expect to see the most wave action. As advocates of the working port who recognize the valuable role they play in Boston’s economy, we appreciate that MassDEP will allow water-dependent uses to continue in the V-Zone. However, we are concerned by the narrow scope of listed uses deemed water-dependent. The new regulations state that water-dependent uses “includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.” The listed acceptable uses do not match those identified as being water-dependent as per the Massachusetts Public Waterfront Act (Chapter 91), which defines water-dependent as:

“...those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site.”

We would like to see the definition of ‘water-dependent’ in 310 CMR 10:00 align with 310 CMR 9:00 allowing water dependent uses we hope to see along the harbor. Should the opportunity arise, we would support the building of renewable energy infrastructure that cannot reasonably be located inland. Other examples include fish processing facilities such as those water-dependent uses found in South Boston; facilities that promote water recreation and enjoyment of the water; and flood, and shore protection infrastructure that contributes to coastal resilience. These types of uses are forbidden in the proposed Wetlands Protection Act regulation revisions. We suggest that the proposed regulations be revised to allow these uses, as well as others outlined in 310 CMR 9:00 in the V-Zone.

Land Subject to Coastal Storm Flowage (Redevelopment Within Previously Developed Land Subject to Coastal Storm Flowage.) – 10.36(8)

Boston Harbor Now is actively trying to promote the development of district-wide flood infrastructure. As proposed, the regulations would make it more challenging or impossible to build flood protection into the site. We suggest MassDEP revise the regulations to allow and even encourage thoughtful flood infrastructure creation. We are specifically concerned that the regulations that restrict the placement of fill for flood control purposes to the MiWA Zone are overly



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prohibitive, potentially preventing flood infrastructure from being built seaward of the MiWA Zone. The creation of flood infrastructure should be allowed in any of the zones so long as they are capable of providing thoughtful flood protection that protects the site from flooding while maintaining a connection to the waterfront and minimizing harm to other properties and natural systems. We believe the creation of thoughtfully designed, district-wide flood protection should be prioritized, and worry that restricting its location could result in less effective protection.

Procedures (Scientific Research Projects) – 10.05(12)

Boston Harbor Now and our partners at the Stone Living Lab are strong advocates of Nature-Based Approaches (NBAs) that mimic natural landforms, which provide protection while restoring ecosystems and providing co-benefits to coastal communities as alternatives and complements to gray infrastructure. Although they provide a myriad of benefits, major gaps exist in innovating, permitting, and financing successful nature-based approaches. Through our efforts with the Stone Living Lab to conduct nature-based demonstration projects in the intertidal zone, we've found that the existing rules either do not allow them or make these projects extraordinarily time-consuming and prohibitively expensive.

We appreciate MassDEP acknowledging the value of demonstration projects so that we can inform future resiliency strategies and implement nature-based approaches around the Commonwealth. However, we are concerned the proposed regulations, even though an improvement, will prohibit research and demonstration projects given the proposed size limitations. The proposed regulations do not adequately address the need to streamline and allow research and demonstration projects of the size needed for coastal resilience and saltmarsh restoration projects - specifically NBAs. The proposed regulations restrict the size and duration of demonstration projects to ensure they will have a "negligible or no adverse effect on the Resource Area's ability to protect the interests identified in M.G.L. c. 131, § 40." The proposed restrictions functionally stymie research projects due to their severe constraints.

Research projects like the ones planned by the Stone Living Lab on the Boston Harbor Islands and along the shoreline require far more time and space than outlined in the proposed regulations. The draft regulations should be revised to enlarge the scale of research and demonstration projects and extend the timeframe for testing and evaluation.

In conclusion, we believe that regulatory flexibility and pathways are needed to advance flood resilience best practices. Boston Harbor Now is concerned that water-dependent uses, critical flood infrastructure and research and demonstration projects need greater flexibility and incentives to ensure that research and demonstration projects can proceed immediately.



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As MassDEP revises the proposed regulations, we suggest the department move swiftly to allow and encourage resilience projects. The existing regulatory framework which was established decades before the impacts of sea level rise and climate were known, must be adapted to the immediate challenges thereby actively encouraging nature-based approaches to the impact of climate change.

We appreciate the opportunity to comment on the proposed regulatory revisions and look forward to continuing to work with MassDEP, local and federal officials to ensure that appropriate research and demonstration projects for resilience can move forward expeditiously.

We would be happy to speak with the Department to address any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine F. Abbott".

Katherine F. Abbott
President and CEO
Boston Harbor Now