



Massachusetts Association of Conservation Commissions

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

Sent via email to martin.suuberg@state.ma.us

December 21, 2015

Commissioner Martin Suuberg
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Re: Executive Order 562 regulations review: dam repairs and wetlands protection

Dear Commissioner Suuberg:

This letter follows the December 9, 2015, meeting of DEP E.O. 562 Advisory Group, where the slides you presented noted that DEP is considering amending the wetlands protection regulations in response to a May 28, 2015, letter from GZA asking that "DEP consider relaxing the wetland replication requirements and MEPA threshold triggers for dam safety repair/improvement - related projects."

MACC has taken a close look at the wetlands issue raised by GZA. We believe it would be unwarranted for DEP to change the Wetlands Protection Act Regulations (hereinafter, "regulations") to relax the wetlands replication requirements for dam safety repair or improvement projects. The regulations appropriately balance the need for dam maintenance, repair, and improvement for public health and safety with the protection of wetlands and the environmental services they provide. The changes suggested by GZA are unneeded and would be counterproductive to natural resources protection.

It is notable that GZA does not describe any circumstance in which a dam repair or improvement safety project was jeopardized by current regulations. The regulations authorize an emergency certification to be issued so that emergency-related work can be done when necessary for the protection of public health and safety. 310 CMR 10.06(1)-(7). The regulations also authorize the DEP Commissioner to issue a Severe Weather Emergency Declaration so that emergency-related work can be done when necessary for the protection of public health and safety. 310 CMR 10.06(8). Both of those provisions can be used for emergency dam repairs when the public health and safety requires.

The regulations also provide limited project status for the maintenance, repair, and improvement of dams and appurtenant works to such dams which existed on April 1, 1983. 310 CMR 10.53(3)(i). Thus, there is no impediment to non-emergency work on dams. That section of the regulations specifically authorizes consideration of the extent to which mitigation measures, including replication or restoration of wetlands, are provided to contribute to the protection of interests identified by the Wetlands Protection Act. The regulations also provide limited project status for lake drawdowns required by the Department of Conservation and Recreation Office of Dam Safety as part of a dam repair project. 310 CMR 10.53(3)(m). That section of the regulations authorizes restoration of water levels to those that existed before the drawdown and dam repair without having to file a new notice of intent.

GZA explains that some wetlands requiring restoration or replacement due to a dam repair project may have developed as a result of the dam's existence. Even when that is the case, it is unquestionable that historically dams have altered and destroyed many wetlands, resulting in a net loss of wetland acres and functions, upstream and downstream of the dam, even where other wetlands developed after the dam's construction. Those more recent wetlands, some in existence for more than one hundred years, perform important wetland functions that the dam likely destroyed elsewhere. Such wetlands, regardless of their origin, provide value that is recognized and protected by the Wetlands Protection Act. We know of no overriding necessity or legal authority that would allow wetlands, and the ecological functions they provide, to be lost for a dam repair project.

GZA also mentions costs. Our understanding is that such costs are consistent with those required for other projects. While restoring or avoiding alteration of a wetland can be a project expense, the legislature, in enacting the Wetlands Protection Act, determined that such short-term costs serve the public interest and are necessary to avoid the longer-term and greater costs of losing wetland acres and the functions they provide to the ecosystem and the residents of Massachusetts. The unintended consequences of allowing more wetland acres to be lost -- with a resulting decrease in wetland functions -- should be of great concern.

In conclusion, dam maintenance, repair, and improvement projects should not "trump wetland protection" or the requirements of the Wetlands Protection Act. Current regulations allow for emergency repair of dams and provide special limited project status for other dam repair, maintenance, and improvement projects so that those projects may proceed expeditiously. There has been no showing of necessity to override current protections. As a matter of public policy, and for the protection of our natural resources, dam repair projects should meet the same environmental standards as other projects and do not warrant a special exemption from wetlands restoration and replacement requirements.

For those reasons, we also strongly disagree with GZA's suggestion to reduce the protections afforded to wetlands by allowing more wetland alterations to proceed without environmental review in MEPA. A sorry legacy of our country's past are the more than 100 million acres of wetlands destroyed in the forty-eight contiguous United States, often with government approval or encouragement, before the increased awareness that wetlands are valuable areas performing important ecological functions that require protection. Massachusetts should not start moving environmental protection backward to the days of limited understanding of ecological processes, when wetlands were considered impediments rather than resources.

We appreciate the opportunity to provide this input.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene B. Benson". The signature is fluid and cursive, with a large initial "E" and "B".

Eugene B. Benson
Executive Director
email: eugene.benson@maccweb.org

copy: MACC Advocacy Committee