

January 30, 2020

Via Electronic Mail

Lisa Rhodes
MassDEP, Wetlands Program
One Winter Street, 5th Floor
Boston, MA 02108

RE: Comments on Proposed Changes to Massachusetts Wetland Protection Act Regulations
310 CMR 10.00

Dear Ms. Rhodes:

We, the undersigned Massachusetts organizations, are providing comments on the proposed changes to the Massachusetts Wetland Protection Act regulations (310 CMR 10.00), published on November 29, 2019.

We support updating the Wetland Protection Act regulations, and in particular, commend MassDEP in updating the National Plant List at 310 CMR 10.55(2)(c). We appreciate the stated desire to “*align the wetland regulations with current science, create consistent application of wetland regulations, remove confusion among local conservation commissions, state and federal agencies, the regulated community, and the public*”. These goals are ones that should be applied to other, future updates to the Wetlands Protection Act regulations pertaining to precipitation, land subject to coastal storm flowage, and climate change resiliency projects.

We do not support the proposed changes at 310 CMR 10.05(3)(b) and (6)(e), related to submitting Orders and Determinations using eDEP or certified mail, return receipt requested because the changes will negatively impact every municipality in Massachusetts, but will not streamline or improve the process to submit wetland filings.

- **Certified Mail, Return Receipt Requested – the only option for Determination submittals.** Although the proposed regulations changes seem to provide an option to use certified mail, return receipt requested *or* submit documents electronically through eDEP, there is really only one option – certified mail, return receipt requested. This is because eDEP currently does not have the capability to submit Form 2 (Determinations) through eDEP (<https://www.mass.gov/service-details/what-forms-are-available-in-edep-online-filing>). In addition, MassDEP does not have plans to update or modify eDEP in the upcoming year (source: conversations between Dorothy McGlincy, MACC and Lisa Rhodes, MassDEP, December 2019).
- **Financial Impacts.** The requirement for certified mail, return receipt requested will result in immediate adverse financial impacts to conservation commissions in every town and city in Massachusetts. Conservation agents in central and eastern Massachusetts estimate \$500 to \$1,000 additional postal fees each year due to this regulation, costs that are not in the current budget.

- **Staffing Impacts.** Additional effort will be required to send documents from the post office using certified mail, return receipt requested, resulting in increased work by every conservation commission. Rural towns without commission staff will be particularly hard hit by these proposed requirements
- **eDEP should be fully functioning for Wetland Protection Act submittals prior to implementing these regulation changes.** If eDEP is not fully functioning, MassDEP should consider alternative submittal methods (such as email submittals).
- **eDEP is being used by less than 40% of Massachusetts municipalities.** The Massachusetts Society of Municipal Conservation Professionals (MSMCP) recently learned that 70% of their members responding to a survey about eDEP, do not use eDEP. Lack of training, difficulty of use and inability of eDEP to communicate with town permit software were some of the cited reasons. Similarly, Massachusetts Association of Conservation Commissions (MACC) was told by MassDEP that approximately 125 Massachusetts municipalities have ever submitted Wetland filings using eDEP. The majority of municipalities do not use eDEP for wetland filings.
- **Alternative wetland filing submittals should be evaluated.** Electronic submittals using email should be considered to minimize costs to commissions, at least until eDEP is improved and training provided to conservation commissions.

We recommend MassDEP:

- improve the eDEP database and eDEP forms *prior* to requiring the use of eDEP and streamline the reporting process for wetlands filings.
- provide an option to use *email* submittals to minimize cost and workload to conservation commissions.
- determine the financial impact to Massachusetts' municipalities prior to implementing these regulation changes.

Future regulation changes will benefit from increased communication and collaboration with MassDEP, conservation commissions, MACC, MSMCP, and other stakeholders before proposing future Wetland Protection Act regulation changes.

Thank you for your time and consideration. If you have any questions, please contact MACC at dorothy.mcglincy@maccweb.org

Sincerely,

Charles River Watershed Association, Heather Miller, General Counsel & Policy Director
Massachusetts Association of Conservation Commissions, Dorothy A. McGlincy
Mass Audubon, E. Heidi Ricci, Assistant Director of Advocacy
Merrimack River Watershed Council, Christina Eckert

