

301 CMR 12.00 AREAS OF CRITICAL ENVIRONMENTAL CONCERN

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12.01: Authority

301 CMR 12.00 is promulgated by the Secretary of the Executive Office of Environmental Affairs pursuant to M.G.L. c. 21A, s. 2(7), which charges the Secretary and the EOEA agencies with developing policies regarding the acquisition, protection, and use of "areas of critical environmental concern to the Commonwealth", and St. 1974, c. 40(e), which directs the Secretary to designate such areas.

12.02: Purpose

301 CMR 12.00 establishes procedures by which Areas of Critical Environmental Concern (ACECs) may be designated, provides for dissemination of information on areas so designated, and establishes general policies for Commonwealth actions within designated ACECs.

12.03: General Provisions

ACECs are those areas within the Commonwealth where unique clusters of natural and human resource values exist and which are worthy of a high level of concern and protection. The designation process comprises five steps: nomination, review by the Secretary, public hearings, decision by the Secretary, and publication of notice of the results in the Environmental Monitor. The purpose of the designation process is to determine if the nominated area is of regional, state, or national importance or contains significant ecological systems with critical interrelationships among a number of components. After designation, the aim is to preserve and restore these areas and all EOEA agencies are directed to take actions with this in mind.

12.04: Definitions and Abbreviations

As used in these regulations, the following terms shall have the following meanings:

Action: a project undertaken directly by an agency, the granting of a permit by an agency, or the granting of financial assistance by an agency.

Area of Critical Environmental Concern: an area designated by the Secretary pursuant to these regulations (301 CMR 12.00).

Agency: any board, body, commission, corps, council, department, division, office, or administrative unit of the Commonwealth, however labeled, and any authority of any political subdivision which is specifically created as an authority under special or general law. In cases of doubt as to whether a body

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is an "agency" for purposes of these regulations, an opinion of the Secretary should be sought under M.G.L. c. 30A, s. 8.

Environmental Monitor: semi-monthly publication of actions and projects published by the Secretary pursuant to M.G.L. c. 30, ss. 62-62H and 301 CMR 11. 19.

EOEA Agency: any agency, as defined above, created by, falling under, or falling within the Executive Office of Environmental Affairs.

Executive Office of Environmental Affairs: the agency created by M.G.L. c. 21A.

Financial Assistance: any direct or indirect financial aid provided by any agency, which shall include but not be limited to mortgage assistance, special taxing arrangements, grants, loans, loan guarantees, debt or equity assistance, and the allocation of state or federal funds.

Permit: a permit determination, order, or other action, including the issuance of a lease, deed, license, permit, certificate, variance, approval, or other entitlement to use, granted to any person, firm, or corporation, including trusts, voluntary associations, or other forms of business organization by an agency for or by reason of a project. "Permit" does not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade, profession, or operation.

Project: work, activity, or use directly undertaken by an agency or, if undertaken by a person, which seeks financial assistance from an agency or requires a permit by an agency. "Project" does not include a grant in aid for medical services or personal support, such as welfare or unemployment funds, to an individual or a third party on behalf of an individual.

Secretary: the Secretary of the Executive Office of Environmental Affairs.

(2) Abbreviations: The following abbreviations for agency names and other terms are used in these regulations:

ACEC Area of Critical Environmental Concern
EOEA Executive Office of Environmental Affairs
USGS United States Geological Survey

12.05: Nomination for Designation

1) Areas may be nominated for designation as ACECs by:

- (a) any 10 citizens of the Commonwealth;
- (b) the Board of Selectmen, City Council, Mayor, Planning Board, or Conservation Commission of any city or town which would be affected by the designation;
- (c) any state agency or regional planning agency;
- (d) the Governor or any member of the General Court.

(2) Nominations shall be made by letter to the Secretary and must be accompanied by summary information regarding the resources of the proposed area, a suggested boundary for the area, and a general description of the benefits that would be achieved by designation. The nominated areas shall be delineated on the applicable map of the USGS 7 1/2 minute series or equivalent. If the features of the area are not clearly shown on such a map, additional maps, diagrams, or sketches at a larger scale must be included.

12.06: Eligible Areas

To be eligible for nomination, an area shall contain features from four or more of the following groups:

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- (1) Fishery Habitat - anadromous/catadromous fish runs, fish spawning areas, fish nursery areas, or shellfish beds.
- (2) Coastal Features - barrier beach system, beach, rocky intertidal shore, or dune.
- (3) Estuarine Wetlands - embayment, estuary, salt pond, salt marsh, or beach.
- (4) Inland Wetlands - freshwater wetlands, marsh, flat, wet meadow, or swamp.
- 5) Inland Surface Waters - lake, pond, river, stream, creek, or ox bow.
- (6) Water Supply Areas - surface water reservoir, reservoir watershed, groundwater aquifer, or aquifer recharge area.
- (7) Natural Hazard Areas - floodplain, erosion area, or unstable geologic area.
- (8) Agricultural Area - land of agricultural productivity, forestry land, or aquaculture site.
- (9) Historic/Archaeological Resources- buildings, site, or district of historical, archaeological, or paleontological significance.
- (10) Habitat Resources - habitat for threatened or endangered plant or animal species, habitat for species of special concern, or other significant wildlife habitat.
- (11) Special Use Areas - undeveloped or natural areas, public recreational areas, or significant scenic site.

12.07: Review of Nominations

Upon receipt of the nomination the Secretary shall make an initial review of the proposed area and the reasons for its nomination. The Secretary may request such additional information from the nominating party as he deems necessary. The Secretary shall, within 45 days of receiving the nomination or such additional information as he may request under this section, whichever is later, inform the nominating party in writing either that he is accepting the nomination for designation and will proceed with a full review, or that he is declining to review the area for designation. If he declines, a summary of reasons shall be given.

12.08: Public Notice and Public Hearing

Before designating an area, the Secretary shall hold a public hearing. The hearing must be held within 25 miles of the area nominated or at the nearest location where a suitable facility exists. Public notice of the hearing shall be published by the Secretary not less than 30 days before such hearing in the Environmental Monitor. Notice shall also be published in a newspaper of general circulation in the vicinity of the nominated area and in appropriate trade, industry, informational, or professional publications. Such notice shall be mailed to the appropriate Boards of Selectmen, Town Managers, City Council, or Mayors; Planning Boards; Conservation Commission; and at the Secretary's discretion, to interested citizens or organizations. Such notice shall include a citation of the authority under which the designation would occur, a summary of the reasons proposed for such a designation, the time and place of the hearing, and the method by which members of the public may make their views known. A map of the area to be designated may be included.

12.09: Criteria for Designation

The Secretary shall consider the following factors in making the finding required by 301 CMR 12.10. These factors need not be weighed equally, nor

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must all these factors be present for an area to be designated. While the more factors an area contains the more likely its designation, the strong presence of even a single factor may be sufficient for designation:

- (1) Threat to the Public Health through Inappropriate Use: Future development of the area may threaten the public health, safety, or welfare because of the potential for pollution of the water supply, pollutants introduced indirectly through the food chain, landform alterations which adversely affect land stability or natural protection, existing natural hazards, or other direct or indirect effects which vary with the potential uses;
- (2) Quality of the Natural Characteristics: The area possesses outstanding natural characteristics such as: high or unaltered land and water quality; undeveloped or unaltered land and water; outstanding trees or other vegetation; recreational opportunities;
- (3) Productivity: The area is rich in nutrients serving as a food source for or hosting a high diversity of finfish, shellfish, waterfowl, wildlife, or other biota;
- (4) Uniqueness of Area: The area is unique or unusual from a regional, state, or national perspective. Uniqueness will apply to endangered plant and animal species; geologic features; archaeological/historic/cultural features; or other resources of educational value;
- (5) Irreversibility of Impact: The area has resources or characteristics which are potentially exhaustible or so fragile that alterations may have irreversible consequences. Irreversibility of impact will be assessed based on such factors as: the dependence of natural systems on groundwater; the tolerance of animals and habitats to pollutants; the degree of interdependence of ecosystems; and the sensitivity of species to changes in salinity;
- (6) Imminence of Threat to the Resource: The area is subject to imminent threat such as: current proposals for major private development projects; plans for major new public infrastructure developments such as sewers, water systems, roads; or regional growth trends;
- (7) Magnitude of Impact: The potential adverse impacts from changes to the area would be highly significant;
- (8) Economic Benefits: The area has intrinsic values which are important to a region's economic stability. Such values include: recreation, tourism, fisheries development, and water supply;
- (9) Supporting Factors: The area has other factors which favor preservation or restoration. Such factors may include: strong public consensus on the intrinsic value of the area; legislative identification of the value of the resource; public awareness of the importance of the area; the lack of coordinated local control because the area is contained within more than one municipality; ownership of some or all of the resource by the local, state, or federal government; or the existence of supplementing management programs in the area.

12.10: Secretarial Finding

The Secretary shall make a final decision as to whether or not to designate a nominated area within 60 days of the public hearing held pursuant to 301 CMR 12.08. The Secretary shall designate an ACEC only after finding that, on the basis of the information presented by the nominating party and at the public hearing and after a review of the factors listed in 301 CMR 12.09(1)-(9), the area is of critical environmental concern to the Commonwealth.

12.11: Notice and Effective Date of Designation

- (1) The Secretary shall publish notice of the decision under 301 CMR 12.10 in the Environmental Monitor. The written findings shall be available for public inspection at the office of the Secretary. The effective date of any designation shall be the date of publication of the notice in the Environmental Monitor unless the Secretary shall otherwise provide.
- (2) A designation shall not apply to any project if, at the time the Secretary receives a nomination:
 - (a) all necessary permits have been applied for; or
 - (b) an agency has commenced construction of a project.

12.12: Effects of Designation

Designation of an area as an ACEC shall have the following effects:

- (1) All EOEAs shall take action, administer programs, and revise regulations in order to:
 - (a) acquire useful scientific data on the ACEC,
 - (b) preserve, restore, or enhance the resources of the ACEC, and
 - (c) ensure that activities in or impacting on the area are carried out so as to minimize adverse effects on:
 1. marine and aquatic productivity,
 2. surface and groundwater quality,
 3. habitat values,
 4. storm damage prevention or flood control,
 5. historic and archeological resources,
 6. scenic and recreational resources, and
 7. other natural resource values of the area.
- (2) All EOEAs shall subject the projects of federal, state, and local agencies and private parties to the closest scrutiny to assure that the above standards are met for any action subject to their jurisdiction.

12.13: Review of Designation

- (1) The Secretary shall review periodically the designations of ACECs to evaluate the success of agency actions in the designated areas and whether the designation should be amended or repealed.
- (2) At any time after an ACEC has been designated for one year, the Secretary or any of the nominating parties listed in 301 CMR 12.05 may seek to amend or repeal the designation. Such a petition shall be treated as a nomination under 301 CMR 12.07 through 12.11.
- (3) At any time after one year from the time the Secretary has declined to designate an area, any person eligible under 301 CMR 12.05 may petition the Secretary to reevaluate that decision. Such requests shall be treated as a nomination.
- (4) Any designation made under predecessor ACEC regulations shall stand, unless amended or repealed in accordance with 301 CMR 12.13.

12.14: Description and Maps of ACECs

Descriptions and maps of all designated Areas of Critical Environmental Concern shall be available from the office of the Secretary.

12.15: Waiver

The Secretary may waive any provision or requirement in these regulations not specifically required by law when in the Secretary's judgment strict compliance with such provision or requirement would result in an undue hardship and would not serve to further the intent of M.G.L. c. 21A, s. 2(7).

12.16: Severability

If any provision of these regulations (301 CMR 12.00 through 12.16) or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these regulations not specifically held invalid, and to this end the provisions of these regulations thereof are declared to be severable.

REGULATORY AUTHORITY

301 CMR 12.00: M.G.L. c. 21A, s. 2(7); St. 1974, c. 806, s. 40(e)