



August 10, 2015

Dear David and Tamara,

Thank you for meeting with us recently to discuss **S.1979 An Act providing for the establishment of a comprehensive adaptation management plan** (*Senator Marc Pacheco, Representative Frank Smizik*) recently engrossed by the Senate and currently before the House Committee on Ways and Means.

Our respective organizations have successfully collaborated with your organization in the past to streamline environmental regulations and to secure funding for water infrastructure improvements in the Commonwealth. While we agree that the Commonwealth should address climate change impacts, we disagree on the policy approach. A growing coalition of planners, engineers, architects and environmental organizations support the policy approach in S.1979 as an urgently needed next step in planning for preparedness from climate change impacts to save lives, protect property and make our economy and environment stronger and more resilient.

We hope that some of your concerns over an earlier version of the legislation have been addressed by the Senate. The following is a detailed response to the points you outlined in a memorandum dated June 24, 2015:

NAIOP: Object to requirement that all commonwealth certificates, licenses, permits, authorizations, grants, financial obligations, projects, plans, actions, and approvals for any proposed projects, uses or activities in and about the Commonwealth shall be consistent, to the maximum extent practicable, with recommendations of the plan, to the extent practicable.

Response:

- Updated language in the Senate passed bill clarified the scope of the consistency provision by replacing the term “commonwealth” with “state agencies and authorities.”
- Revised section also prohibits the Plan from superseding Massachusetts General Laws
- We need to be “Climate Smart” when we build and develop. While private sector drivers, such as insurance rates, help influence decisions, these have not yet been enough to a predictable and consistent approach to ensure public safety. Unwise decisions that do not take climate change impacts into account can impact neighbors and public resources. For example, the placement of a building can increase flood risks for a neighborhood thereby

impacting beyond the footprint of a stand-alone structure. Policy can be an appropriate tool that can provide a balanced approach to complement private sector initiatives.

- This provision provides direction from the Legislature without being overly prescriptive. It allows agency experts in their respective professional disciplines to design appropriate policies that are integrated across state government.

NAIOP: Language of the bill was not specific enough and could lead to widely varying interpretations of how the legislation should be implemented with regards to new development.

Response:

- The language and content of this bill were adapted from the [5th Assessment of the International Protocol on Climate Change](#)¹, the [3rd National Climate Assessment](#)², and foremost experts on climate preparedness adaptation strategies and plans.
- The Senate amended the bill to remove ‘risk assessment’ and ‘risk management’ eliminating references concerning a requirement that the advisory commission make recommendations on where or where not to build.

NAIOP: Wants state regulations to be consistent with recommendations being made by regional planning agencies (RPAs) as required by the Plan; denies that climate change impacts are local such as flooding affect cities and towns, or that preparedness plans should be tailored for different regions (Cape Cod vs. Berkshires).

Response:

- New section requires RPAs to account for geographic differences yet provide consistent support and guidance amount regions; RPAs will provide technical planning and guidance needed to conduct vulnerability assessments.
- Each state region has a different risk profile and a different ability to manage that risk. RPAs are well positioned to provide grant funding and technical assistance and many have already produced preparedness plans or guidance.
- Local governments (often with state-level oversight and support) are charged with making the basic land-use decisions needed to protect the health, safety, and welfare of their citizens and will need support from the state agencies and RPAs.
- Currently, many municipalities and regional planning agencies have developed climate change adaptation plans and policies of their own. Having a statewide plan and policy approach will better provide for consistency and predictability.

NAIOP: Concerned that a cost-benefit analysis of is not included in the Plan.

¹ <http://www.ipcc.ch/report/ar5/syr/>

² <http://nca2014.globalchange.gov/>

Response:

- Revised bill requires assessment of agency assets including cost of potential losses; cost of protection measures vs. cost of inaction; qualitative cost-benefit discussion of flood prevention versus resilience.

NAIOP: Opposes the possibility that the advisory commission will recommend private property owners be required to make investments to prepare for severe storms, flooding and/or sea-level rise.

Response:

- We agree that flexibility should be a consideration, and that is why we included commercial real estate on the advisory committee.
- Suggest that NAIOP could be more helpful by providing specific examples of how (perhaps lessons taken from City of Boston) this legislation could address this.
- This legislation was designed to implement a planning process and while we anticipate that the building codes or requirements will be updated as climate impacts become more severe this bill was not designed to address the specific needs of property owners.

NAIOP: Concerned that the bill includes confusing timelines between the preliminary report, the interim plan and the final Plan

Response:

- The Senate passed version of the bill streamlines the timeline by eliminating the interim plan and only requiring the final Plan with a clear timeline.

NAIOP: Feels that no funding source is identified in the legislation.

Response:

- Funding sources are now identified in the legislation and include regional grants to be funded with monies from item 2000-7070 of section 2A of chapter 286 of the acts of 2014.
- Department of Energy Resources may also make available monies from amounts collected by the Department of Energy Resources Credit Trust Fund established in to section 13 of chapter 25A of the General Laws.
- Coastal Buyback program has a funding line item authorized by the legislature in the 2014 environmental bond bill.

NAIOP: Private property/trespass concerns on testing, boring, etc.

Response:

- Prior precedence for this language exists in MGL c. 1, § 8 grants permission to US geological or coast survey employees, in connection with their official duties permission to enter private land. MGL c.161A, § 44 grants state employees permission to enter private lands for the purpose of public transportation facilities, as long as written notice is given. MGL c.82 § 11A grants authorized state employees permission to enter private lands to survey for the purpose of construction of highways or other projects.

Thank you for your time and consideration. Please feel free to contact us should you have any questions at: Karen Heymann, 617-523-8448 or kheyman@massaudubon.org or Steve Long, 617-312-5932 or slong@tnc.org.

Sincerely,

Karen Heymann, Legislative Director,
Mass Audubon

Steve Long, Director of Government Relations,
The Nature Conservancy in Massachusetts