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The Honorable Rebecca L. Rausch, Senate Chair
The Honorable Christine P. Barber, House Chair
Joint Committee on Environment and Natural Resources
Room 215 & Room 167
State House
Boston, MA 02133

RE: An Act to Build Resilience for Massachusetts Communities (S.2542)

Dear Chair Rausch, Chair Barber and Members of the Joint Committee on Environment and Natural Resources:

The Association to Preserve Cape Cod (APCC) submits this written testimony regarding An Act to Build Resilience for Massachusetts Communities (S.2542), also known as the Mass Ready Act.

Founded in 1968, APCC is the Cape Cod region's leading nonprofit environmental advocacy and education organization, working for the adoption of laws, policies and programs that protect, preserve and restore the Cape's natural resources. APCC focuses our efforts on the protection of groundwater, surface water, and wetland resources, preservation of open space, the promotion of responsible, planned growth and the achievement of an environmental ethic.

APCC strongly supports the Mass Ready Act's inclusion of funding for critically important environmental programs and initiatives that will help protect and restore the Commonwealth's natural resources and also help build our resiliency in the face of a changing climate. In particular, APCC enthusiastically supports the following:

APCC supports the provisions of Section 2E (0640-1008) of the Mass Ready Act that further capitalize the Clean Water State Revolving Fund. State Revolving Fund (SRF) funding capacity shortages revealed in the recent Intended Use Plan issued by MassDEP have the potential to stop dead in its tracks all progress being made on Cape Cod's wastewater management efforts.

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APCC is concerned with the reality that the SRF is oversubscribed and that additional funding is needed to ensure it remains a reliable source of project financing. Given the significant commitment Massachusetts has made in advancing clean water, not just on Cape Cod but statewide, supplementing the SRF with bond funds is the option most consistent with the objectives of the clean water agenda APCC and many others have worked on together.

Given that the Massachusetts SRF program leverages capital funds on the bond market at a ratio of up to 3:1, this level of bond funding will increase annual funding capacity by close to \$250 million annually. This infusion of capacity will go a long way toward allowing Cape Cod towns to proceed as required by the state's watershed permits while also supporting clean water works needed throughout the Commonwealth. Limited access to SRF has a greater impact on Cape towns than anywhere else in the state because it also limits the ability of towns to access the 25 percent principal forgiveness on SRF loans provided by the Cape Cod and Islands Water Protection Fund (CCIWPF). SRF capacity constraints effectively render the CCIWPF off limits to the towns and shifts costs back to local property tax payers heavily burdened by the cost of reversing years of water quality degradation.

The Cape Cod wastewater management projects are big because the problems we are solving are big. SRF funding constraints that limit how much a town project can be financed is the functional equivalent of offering no state financing assistance at all. This imposition of increased costs on tax levy financing will increase local taxpayer costs at a time when we are all working to make Cape Cod more affordable to year-round residents. A failure to increase the capacity of the SRF, especially in light of looming federal cutbacks nationally, runs directly counter to the many other thoughtful and beneficial policy initiatives that have proven successful for Cape Cod communities confronting nutrient pollution of our waters. For these reasons, APCC strongly supports the SRF funding provisions in Section 2E (0640-1008) of the Mass Ready Act.

APCC supports applicant eligibility expansion for the MVP Program in Section 2C (2000-7088).

APCC supports the proposed language to expand the list of eligible applicants for the Municipal Vulnerability Preparedness Program to include nonprofit organizations. This revision, along with continued funding for the program, will support the completion of more planning and implementation projects across the Commonwealth, including on Cape Cod, with the added capacity from nonprofit community partners.

APCC also urges the Joint Committee on Environment and Natural Resources to consider the following recommendations for the outside section of the bill:

Substitute An Act Accelerating Wetlands Restoration (H.1052/S.557) for the existing Wetlands Protection Act permitting provisions in the Mass Ready Act. APCC is gratified to see language in the Mass Ready Act related to the Wetlands Protection Act that is intended to streamline the

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permitting process for ecological restoration projects. The Massachusetts environmental community has long recognized the great need to streamline the permitting process for beneficial projects that would restore healthy ecological functions to coastal and inland wetlands. On this point, environmental organizations with expertise in wetland restoration issues, representatives from state environmental agencies, members of the State Legislature and other stakeholders have engaged in extensive study and discussion of methods to ease the regulatory and financial burden for these desirable ecological restoration projects. This effort has resulted in the drafting and filing of An Act Accelerating Wetlands Restoration (H.1052/S.557), which provides a comprehensive and informed approach to streamlining the wetland restoration permitting process. We believe H.1052/S.557 offers the most effective and balanced approach to wetlands restoration permitting, and we therefore strongly urge the committee to replace the existing language in the Mass Ready Act with the language found in H.1052/S.557.

Significantly revise or eliminate streamlined priority housing permit language. APCC acknowledges and supports the great need for more Massachusetts housing located in appropriately designated locations. However, we are deeply concerned about the housing language in the Mass Ready Act that is intended to streamline “priority housing” production in locations within Wetlands Protection Act jurisdiction, which would impact wetland buffers and wetland resources. There is a very clear distinction between streamlining the permitting process for wetland restoration projects that provide desirable ecological benefits to wetland resources versus streamlining the permitting process for development projects in resource areas where those projects could adversely impact the environment. There is a very valid reason why state and local regulations have historically made it difficult for development to be permitted in areas within Wetlands Protection Act jurisdiction: Development should not go in these environmentally sensitive areas.

The Commonwealth’s ongoing growth policy should be one that avoids putting development in wetland buffers and floodplains. The emphasis for satisfying the state’s housing needs should be to direct growth away from these and other environmentally sensitive areas and instead direct housing to locations with existing infrastructure and community services that are more appropriate for redevelopment and development opportunities. Expedited permitting should be pursued within these more appropriate locations.

The priority housing language in the Mass Ready Act is also problematic because it encourages the development of housing in harm’s way. In the effort to increase the Commonwealth’s affordable and attainable housing stock, it should not be Massachusetts policy to house anyone, least of all our more vulnerable lower income populations, in marginal locations, including locations that are prone to flooding. Directing housing to areas that are most impacted by increasing flooding due to climate change—which this bill is intended to fight—will increase public costs associated with adaptation and property loss from future climate change already baked into the system.



APCC is also concerned that the definition for “priority housing” isn’t included in the Mass Ready Act and will be determined by state agencies without the opportunity for the public to participate in the process. In addition, the streamlined permitting for priority housing would eliminate a public hearing process and MEPA review, preventing any opportunity for members of the public to weigh in and provide comments. Appeals on priority housing projects would go to Superior Court, which adds a burdensome cost constraint for many people (although MassDEP would have the authority to take it up directly through an administrative appeal). The process proposed in the Mass Ready Act would leave communities with little or no input in consequential decisions on potentially large priority housing developments, even in areas within local conservation commission jurisdiction.

For the reasons stated above, APCC respectfully urges the committee to carefully consider the ramifications of the current priority housing language in the Mass Ready Act and to significantly revise or eliminate the streamlined housing permit language as it relates to the Wetlands Protection Act.

Support streamlined culvert replacement provisions in Section 74, with certain revisions. Of the thousands of culverts that exist across Massachusetts, many are unfortunately in poor condition. Failing or undersized culverts block fish passages, degrade the ecological function of wetlands, and contribute to flooding. APCC supports streamlined permitting to remove or replace culverts, but we oppose the language in the Mass Ready Act that exempts such projects from local wetlands bylaws. There is no evidence that local wetlands bylaws are an impediment to culvert replacement projects, and an exemption of this nature is inconsistent with Home Rule.

Include language found in An Act Relative to Maintaining Adequate Water Supplies Through Effective Drought Management (S.586/H.1003). The language of S.586/H.1003 would be a valuable addition to the Mass Ready Act by giving the Commonwealth the means to prepare our state for the challenges of a climate future that will include longer, more frequent, and more severe droughts. S.586/H.1003 provides much-needed improvements to Massachusetts’ drought management policies by giving the Commonwealth the authority it currently lacks to help ensure the ongoing sustainability of our highly valued water resources, including our drinking water supplies, ponds, streams and other wetlands.

Include language found in An Act Restricting the Use of Rodenticides in the Environment (H.965/S.644). The continued use of commercial-grade rat poisons in Massachusetts, known as second-generation anticoagulant rodenticides (SGARs), has allowed these persistent poisons to move freely through the food chain, harming and killing beneficial natural predators—including those on the Massachusetts Endangered Species Lists—as well as pets. Yet despite their widespread use, research shows that SGARs are less effective than other methods in controlling rodents. The provisions of H.965/S.644 would phase out the use of SGARs and would be an appropriate addition to the Mass Ready Act.

Include language that provides more local regulatory control of fertilizer use in certain regions.

The Commonwealth and Cape Cod communities have invested hundreds of millions of dollars reducing the nitrogen impacts of septic systems on marine waters. The application of fertilizers on residential and commercial properties adds nitrogen to the groundwater and to stormwater runoff, which undercuts the nitrogen controls implemented at the municipal level. Studies undertaken by the University of Massachusetts, upon which MassDEP based nitrogen loading allocations, have demonstrated that fertilizers are the second leading source of nitrogen enrichment of Cape waters. Despite the obvious negative impacts of fertilizer on water quality and the imposition of additional sewerage expenses, the region is preempted from regulating fertilizers by the Commonwealth. This current policy makes no sense. APCC recommends the Joint Committee on Environment and Natural Resources include language in the Mass Ready Act that would authorize a regional land use control entity in areas covered by a current regionwide water quality management plan, pursuant to Section 208 of the federal Clean Water Act, to regulate fertilizers in order to enable compliance with its 208 plan. Specifically, we suggest that the Cape Cod Commission be enabled to develop fertilizer controls, to be implemented at the municipal level on Cape Cod, in order to lower sewerage costs while improving water quality. APCC would welcome the opportunity to work with the committee staff to develop appropriate language.

APCC thanks the chairs and members of the committee for their consideration of this important bill.

Sincerely,



Andrew Gottlieb
Executive Director

cc: Senator Julian Cyr
Senator Dylan Fernandes
Representative Hadley Luddy
Representative Christopher Flanagan
Representative Kip Diggs
Representative David Vieira
Representative Thomas Moakley
Representative Steven Xiarhos