



Andrew Gottlieb
Executive Director

January 29, 2026

BOARD OF DIRECTORS

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President

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
100 Cambridge St.
Boston MA, 02108

Meredith Harris
Vice President

RE: Easterly Draft Groundwater Discharge Permit

Taryn Wilson
Treasurer

Dear Commissioner Heiple:

Jack Looney
Clerk

The Association to Preserve Cape Cod (APCC) has reviewed the Draft Individual Groundwater Discharge Permit Application No. 25-WP79-0137-APP submitted by Falmouth Southerly, LLC for the Easterly project in Falmouth, MA. We recognize that the period to submit comments closed on December 26, 2025, but we have serious concerns regarding the draft permit and wish to go on record with those concerns. We ask that the Department use its discretion to include our comments in the process of making a final determination on the permit.

Robert Ciolek

Thomas A. Cohn

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Jamie Demas

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Founded in 1968, APCC is the Cape region's leading nonprofit environmental advocacy and education organization, working for the adoption of laws, policies and programs that protect, preserve and restore Cape Cod'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.

Steven Koppel

Rick O'Connor

Patrick Otton

Kris Ramsay

Dottie Smith

"The Easterly" is a Chapter 40B multi-family housing project comprised of 300-units of rental apartments totaling 463 bedrooms located on a 29-acre lot with frontage on Sandwich Street in Falmouth. The project will include leaching fields and an on-site wastewater treatment plant which will release 49,950 gallons per day of treated wastewater. The wastewater disposal site is within the watershed of Great Pond, a nitrogen impaired estuary.

Becca Solomont

Marcie Truesdale

Section 303(d) of the federal Clean Water Act requires each state to maintain an "Integrated List of Waters" which identifies "waterbodies that are not expected to meet surface water quality." The Great Pond Estuary in Falmouth has been on the 303(d) list since 2002. It has had a DEP-issued TMDL (total maximum daily load, the maximum amount of a pollutant a water can receive and still maintain a water quality

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standard) for nitrogen since 2006. Meeting the TMDL will require Falmouth to reduce the nitrogen load to Great Pond by 12,154 kilograms per year.

New projects located in the watersheds of waters on this list must not increase pollution loads. The nitrogen reduction targets in the UMass Dartmouth School for Marine Science and Technology (SMAST) Technical Reports, on which all the Cape's nitrogen TMDLs are based, are predicated on new development not increasing nitrogen loading. New development in highly impaired watersheds like Great Pond must offset existing pollution to ensure no net increase in pollution to the listed water. By DEP's own regulations, the Easterly project requires a groundwater discharge permit and any new nitrogen discharge allowed by the permit must be fully offset. The draft permit fails this fundamental test and cannot be finalized without an enforceable offset in place. The draft permit will result in further deterioration of Great Pond and, as such, would constitute a violation of the state's Surface Water Quality Standards (SWQS) and would effectively violate the concept behind the anti-degradation provisions of the SWQS. While the Department has historically not applied this test to groundwater discharge permits, APCC believes that the hydrologic connection between groundwater and surface waters is so intertwined that there is little practical distinction between limits for groundwater and surface water discharges.

In June 2023, Falmouth Wastewater Superintendent Amy Lowell submitted a memorandum to the town manager and other town departments responding to the project proponent's original project application to the Zoning Board of Appeals. The memo described a number of challenges for offsetting the new nitrogen discharges generated by the Easterly project, including that the nearest municipal sewer line is 1.4 miles away at Route 28 and Sandwich Road; the town's discharge capacity at its wastewater treatment plant is severely limited; and the Sandwich Road property is not within a sewer service area described in the town's wastewater plan.

Noting that the developer said the Easterly treatment system would be able to consistently produce an effluent containing 6 mg/L or even 3 mg/L of total nitrogen, the June 2023 memo also stated that those levels should be made a project and permit requirement. However, in May 2025, Wastewater Superintendent Lowell submitted a brief memo to the DEP stating, "The town will, in its Watershed Plan for Great Pond, include a plan for removing the nitrogen load added to the watershed by the Easterly project." Apparently in the interim the town had accepted a \$750,000 "project settlement" to cover the cost of offsetting the new discharge. There is no public accounting of which we are aware that defines what this supposed offset will entail, nor does the permit provide for any discrete and enforceable offset requirement. The result of this failure, regardless of the Town's intention to offset, means that the draft permit fails to comply with DEP's own regulations and that failure is a fatal flaw in the draft.

Even if one were to set aside the vagueness of the offset, the draft groundwater discharge permit allows a discharge of 10 milligrams of nitrogen per liter and a load limit of 346 kilograms of new nitrogen to Great Pond, orders of magnitude higher than the theoretical offset proposed by Falmouth was scaled to address. This permit clearly conflicts with the DEP-issued TMDL for the Great Pond Estuary, which Falmouth is already exceeding by 12,154 kilograms per year. Given the context described above—

significant existing need to reduce discharge, distance to municipal sewer, limited town discharge capacity, etc.—it seems unlikely that the \$750,000 project settlement will come close to offsetting the 346 kilograms of nitrogen allowed by the permit. This rubric, in addition to failing to comply with DEP’s own standards, effectively shifts the costs of mitigation of this private for profit project to the taxpayers of Falmouth. Not only will the Falmouth taxpayers subsidize the profits of Easterly’s developers, the practical outcome of forcing increased costs on the remediation of Great Pond will be to further delay already unacceptably lengthy remediation timelines for other East Falmouth estuaries like Waquoit Bay. This is poor public policy that conflicts with other DEP efforts to speed remediation of the estuarine environment.

Based on the circumstances present at the Easterly and in the Great Pond Estuary, APCC believes that the Discharge Permit granted by DEP to Falmouth Southerly for the Easterly project directly contradicts DEP’s own rules. Not only should this draft not be finalized, but it should also be withdrawn and reissued for public comment only when it can be demonstrated to comply with DEP’s own rules and any nitrogen offsets and their associated financial implications are public, well understood and enforceable.

Sincerely,



Andrew Gottlieb
Executive Director

Cc: Gary Moran, Deputy Commissioner
Gerard Martin, SERO Regional Director
Brian Harrington, SERO
Drew Osei, SERO
Lealdon Langley, Director of the Division of Watershed Management
Kathy Baskin, Assistant Commissioner
Amy Lowell, Falmouth