

April 30, 2024

Massachusetts Department of Environmental
Protection (MassDEP) – Bureau of Water
Resources (BWR) Wetlands Program
100 Cambridge Street, Suite 900
Boston, MA 02114

Via Email: dep.wetlands@mass.gov
Re: **Wetlands-401 Resilience Comments**

MassDEP - BWR Waterways Program
100 Cambridge Street, 9th Floor
Boston, MA 02114

Via Email: dep.waterways@mass.gov
Re: **Waterways Resilience Comments**

Accelerating the Pace and Scope of Wetlands Restoration

Dear Commissioner Heiple, Wetlands Program Chief Rhodes, and Waterways Program Chief Padien:

On behalf of the undersigned organizations, we submit the following comments on the proposed changes to the Wetlands (310 CMR 10.00), 401 Water Quality Certification (314 CMR 9.00), and Waterways (310 CMR 9.00 aka Chapter 91 or Tidelands) regulations. These comments focus on the need to streamline permitting for wetlands restoration projects, to accelerate progress and meet the scale and urgency of the challenges the Commonwealth faces.

We appreciate the leadership of the Healey Administration in prioritizing action on climate change¹ and biodiversity², and in recognizing the important roles that wetlands and other lands play in addressing both of these important issues. MassDEP’s proposed regulatory updates in the current “Climate Resilience 1.0” package advance progress by reducing the risk associated with development in the coastal floodplain and updating stormwater management standards statewide. We are grateful for these revisions, and many of us are providing additional detailed comments recommending further refinements for those regulations.

Our organizations support the protection and restoration of wetlands. We look forward to offering our expertise to assist MassDEP in the upcoming “2.0” process.

Other states have achieved significant efficiencies in wetlands restoration permitting, and we encourage you to consider these models³, in collaboration with other agencies, including the Department of Fish and Game (DFG) through the state’s Biodiversity Initiative.

¹ [Executive Order 604: Establishing the Office Of Climate Innovation and Resilience Within the Office Of the Governor](#)

² [Executive Order 618: Biodiversity Conservation in Massachusetts](#)

³ [Funding Nature Not Paperwork - Policy and Programmatic Pathways to Speed Restoration Permitting — Environmental Policy Innovation Center](#), February 1, 2024.

The Need to Accelerate Wetlands Restoration

Wetlands provide many important functions including water quality protection, flood damage prevention, and essential habitat for fish and wildlife. Healthy coastal wetlands sequester up to ten times the amount of carbon per year compared to forests⁴. And our diverse coastal and inland wetlands provide habitat for more than 200 species of greatest conservation need in Massachusetts⁵.

Massachusetts has long been a leader in environmental protection. It was the first state in the nation to adopt a wetlands protection law. It also is a leader in restoring wetlands, and MassWildlife's Division of Ecological Restoration (DER) is widely acclaimed for the support it provides to myriad restoration projects. Still, the scope of the need far exceeds the current pace of progress on restoration. Massachusetts has lost 41% of its salt marshes⁶ and nearly a third of its freshwater wetlands⁷. Thousands of acres of salt marsh are at increased risk of loss due to historic ditching and agricultural embankments that are accelerating the rate of marsh subsidence, dieback, and erosion. Inland rivers and wetlands are fragmented by 3,000 dams, most of which are functionally obsolete, along with 25,000 culverts, many blocking passage of fish and wildlife and posing risks of washouts of roads and railroads in the more intense storms we are already experiencing. Cranberry bogs that are no longer economically viable offer tremendous opportunities to restore systems that have been filled, diked, and channelized. Invasive species choke our diverse wetlands and replace native species that are essential for biodiversity. Rivers and streams have been channelized, buried in culverts, and impacted by runoff and loss of naturally vegetated buffers. We need to greatly accelerate the rate of restoration to address these challenges.

Climate Resilience 1.0 Comments

The currently proposed regulatory changes make important progress toward reducing the risks to development and infrastructure from climate impacts including sea level rise and increasing storm intensities. We offer the following suggestions for further improvements in the final regulations.

Resource Protection and Restoration Preferred: The new Land Subject to Coastal Storm Flowage (LSCSF) at 310 CMR 10.24 includes provisions giving preference to the protection and restoration of coastal wetlands as alternatives to coastal engineering structures, and allowing alteration of LSCSF to facilitate the migration of salt marshes and dunes. We support these provisions.

Aligning Infrastructure Protection with Restoration and Migration: The proposed regulations allow elevation and relocation of existing roads and construction of berms to protect existing developed areas. The final regulations should more clearly define the planning process for such projects, to support restoration and migration of coastal wetlands to the fullest extent possible. For example, road elevation or relocation projects should avoid conflicting with interests of neighboring conservation-oriented

⁴ McLeod, E. et al. 2011. A blueprint for blue carbon: toward an improved understanding of the role of vegetated coastal habitats in sequestering CO₂. *Frontiers in Ecology and the Environment*. 9(10), pp. 552-560

⁵ [State Wildlife Action Plan \(SWAP\)](#)

⁶ Bromberg, K. D., & Bertness, M. D. (2005). Reconstructing New England Salt Marsh Losses Using Historical Maps. *Estuaries*, 28(6), 823–832. <http://www.jstor.org/stable/3526949>

⁷ Dahl, T.E., [1990, Wetlands-Losses in the United States, 1780's to 1980's](#): Washington, D.C., U.S. Fish and Wildlife Service Report to Congress.

landowners to restore more natural flows to salt marshes where the road has been acting as a barrier to that flow.

Ecological Restoration Permit (ERP): The ERP provisions in the regulations provide for a somewhat streamlined process for permitting certain categories of wetlands restoration. Projects meeting specified requirements receive permits with pre-specified conditions, and are generally exempt from review under the Massachusetts Environmental Policy Act (MEPA). We recommend that MassDEP expand the applicability of the ERP process to include salt marshes, using the guidance that is under development through the Interagency Coastal Wetlands Climate Resilience Workgroup⁸.

Combined Applications: The regulations currently allow combined applications for Wetlands, Waterways, and 401 Water Quality permitting for ERPs. The proposed regulations eliminate those provisions. Rather than eliminating combined review, MassDEP should seek to improve and expand combined application and permitting of restoration projects.

Research Projects: The proposed regulations include a new provision for Scientific Research Projects (310 CMR 10.05(12)), to allow research into the response of coastal wetlands to climate change. This provision is too narrowly crafted and should be broadened to allow experimentation with coastal and inland wetlands restoration techniques that are not currently utilized in Massachusetts. Appropriate limits on the scale and siting of such projects should be set, and successful projects should be allowed to remain in place.

Climate Resilience 2.0 Regulations

We appreciate the fact that MassDEP recognizes that additional regulatory reforms are needed to achieve the Commonwealth's climate resiliency goals. We recommend that the above recommendations for 1.0 be addressed in 2.0 to the extent MassDEP is unable to fully include them in the final 1.0 regulations. We also request that the 2.0 process address the following items.

Expand ERP: The ERP process should be expanded to include additional categories of restoration such as invasive species removal and cranberry bog restoration. Detailed guidance should be developed with input from external experts and practitioners. The ERP provision should also allow other additional types of restoration projects to be included when MassDEP approves associated guidance, without the need for regulatory updates. The system should be designed to be more flexible and to expand restoration streamlining as the state of the science and practice evolves.

Permit Streamlining – Aim for Single Application Coordinated Review: We also request that the 2.0 process include additional permit programs and agencies, with a goal of integrating and streamlining permitting for wetlands restoration projects across all applicable state environmental laws and regulations. **The goal should be a single permit application, managed by a single agency that coordinates across all other agencies and with the project proponent, resulting in a single combined permit issued quickly, preferably within 90 days of submission of a complete application.**

⁸ [Interagency Coastal Wetlands Climate Resilience Workgroup](#)

Full streamlining will likely require statutory as well as regulatory changes. We encourage MassDEP to work with agencies to achieve as much progress toward that goal as possible in the 2.0 process while identifying any additional reforms and funding needed to achieve full streamlining in the next iterative process beyond 2.0.

We look forward to participating in the 2.0 process and encourage MassDEP to engage with external experts and restoration practitioners including nonprofit organizations; wetlands consultants and scientists; federal, state and local conservation agencies; and others. This effort should be conducted in coordination with the Department of Fish and Game's Biodiversity initiative pursuant to Executive Order 618 and should tap into the ecological management and restoration expertise of the Division of Ecological Restoration and MassWildlife.

Thank you for considering these comments. For more information, please contact Heidi Ricci at Mass Audubon, hricci@massaudubon.org.

Regards,

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