

# MEPA Regulatory Review Advisory Committee

## ECOLOGICAL RESTORATION PROJECTS CONCEPTS FOR DISCUSSION

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Proposed by:

Alternatives for Community and Environment

Conservation Law Foundation

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MA Association of Conservation Commissions

Mass Audubon

MA Division of Ecological Restoration – DFG

Natural Heritage and Endangered Species Program – DFG





# Goal for today

- Present a MEPA exemption for projects that qualify as ecological restoration projects under the Wetlands Protection Act (WPA) regs
- Includes Ecological Restoration Projects approved with the Restoration Orders of Conditions (ROC) and Ecological Restoration Limited Projects (ERLPs)



# MEPA Updates for Ecological Restoration Projects

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## GOALS:

Reduce cost and time of regulatory process for projects that benefit the environment and are unlikely to cause harm to the environment (and bring significant benefits)

Streamline and reduce cost of the regulatory process for projects led by cities/towns, NGOs, EJ communities

Prepare for wave of projects catalyzed by MVP, federal funding for restoration/adaptation projects

## OBJECTIVES:

Exempt restoration projects from MEPA that are unlikely to cause harm to the environment (and bring significant benefits)

Maintain 1/1/22 EJ requirements for restoration projects

Use the Wetlands Protection Act regulations Restoration Orders of Conditions (ROC) general permit and the Ecological Restoration Limited Project (ERLP) as criteria for an exemption

Overview of Ecological Restoration Notice of Intent / Restoration Orders of Conditions and Ecological Restoration Limited ROC available here: <https://www.mass.gov/guides/wetlands-information>

# 11.02 Definition

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Include or reference the definition from the Wetland Protection Act 2014 reg. update:

Ecological Restoration Project: means a project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. The term Ecological Restoration Project shall not include projects specifically intended to provide mitigation for the alteration of a Resource Area authorized by a Final Order or Variance issued pursuant to 310 CMR 10.00 or a 401 Water Quality Certification issued pursuant to 314 CMR 9.00: 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth other than projects implemented pursuant to a US Army Corps of Engineers approved in-lieu of fee program.

# Restoration Orders of Conditions (ROC)\* and Ecological Restoration Limited Projects (ERLPs)\*\*

- ROC projects include specific categories of restoration (dam removals, culverts, stream daylighting, shellfish restoration, fish passage, rare species restoration)
- Ecological Restoration Limited (ERL) projects include but are not limited to those above plus rare species habitat, in-stream habitat enhancement, eel grass restoration, vegetation planting, and others.
- The ROC and ERLP have highly prescriptive requirements addressing all potential impacts
- If a project doesn't meet the requirements, it would not be eligible and would require MEPA review.

\*310 CMR 10.14

\*\*310CMR 10.24(8) or 10.53(4)

Conceptual  
Approach:  
projects that qualify  
for a Restoration  
Orders of Conditions  
or are ERLPs and that  
do not have EJ  
implications are  
exempt from MEPA

1. Proponent prepares all project analyses as required by ROC or ERLP requirements.
2. Proponent performs EJ and Tribal notification and places notice in Environmental Monitor as currently required by MEPA protocol for ROC and ERLPs.
3. Proponent sends documentation of outreach and EJ analysis to MEPA. EJ analysis includes evaluation of future flood risk and other impacts of concern.
4. If EJ protocols appropriately followed and no EJ issues of concern, Secretary puts notice in Environmental Monitor that no MEPA review required.
5. If no MEPA review required, proponent obtains permits that are prerequisites to apply for the ROC (if applicable to the project - Chapter 253 Dam Safety; 401 Water Quality Cert) and ERLP and files NOI. If ROC denied, applicant informs MEPA and Secretary can scope for MEPA review
6. If EJ issues of concern, Secretary can scope for MEPA review



# 11.01 (2) Applicability

## (b) Review Thresholds

The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; **an Ecological Restoration Project eligible for a Restoration Order of Conditions in accordance with 310 CMR 10.14 and an Ecological Restoration Limited Project in accordance with 310 CMR 10.24(8) or 10.53(4) where the Secretary has determined that Environmental Justice requirements were met and there are no Environmental Justice issues of concern**, or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.



## For the future:

This group and others are interested in exploring changes to thresholds, programmatic review, and other provisions for high value projects not subject to the Wetlands Protection Act or may not be eligible for ROC or ERLPs.



# Discussion

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4. If EJ protocols appropriately followed and no EJ issues of concern, Secretary puts notice in Environmental Monitor that no MEPA review required.
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