

14 “Great ponds”, any pond not actively being used as a source of
15 water supply by any town, water supply, or fire district or public
16 institution, and containing more than 10 acres in its natural state,
17 as calculated based on the surface area of lands lying below the
18 natural high water mark for which the title to land below the nat-
19 ural low water mark is held by the Commonwealth in trust for the
20 public good, subject to any rights which the applicant demon-
21 strates have been granted by the Commonwealth; provided, how-
22 ever, that any pond larger than 10 acres shall be presumed to be a
23 great pond, unless the applicant presents topographic, historic, or
24 any information demonstrating that the original size of the pond
25 was less than 10 acres, prior to any alteration by damming, or
26 other human activity.

27 “Landlocked tidelands”, filled tidelands, which on January 1,
28 1984 were entirely separated by a public way or interconnected
29 public ways from any flowed tidelands, except for that portion of
30 such filled tidelands which are presently located: (a) within 250
31 feet of the high water mark of flowed tidelands; or (b) within any
32 designated port area under the Massachusetts coastal zone man-
33 agement program. A public way or ways shall also be defined as
34 landlocked tidelands, except for any portion thereof which is
35 presently within 250 feet of the high water mark of flowed tide-
36 lands.

37 “Office”, the office of tidelands and great ponds.

38 “Person”, a natural person, corporation, association, partnership
39 or other legal entity.

40 “Public benefit”, shall include, but not be limited to: public
41 access; open space; recreational activities and other uses related to
42 Chapter 91 licenses and permits; mitigation or compensation for
43 the use of tidelands; the purpose and effect of development; the
44 impact on the abutters and the surrounding community; leases,
45 easements or transfers; enhancement to the property, benefits of
46 previously secured city or town permits, including but not limited
47 to, community activities on the development; environmental pro-
48 tection and preservation; housing; commerce; economic develop-
49 ment; the public health, safety and general welfare.

50 “Substantial change in use”, a use for a continuous period of at
51 least 1 year of 10 per cent or more of the surface area of the

52 authorized or licensed premises or structures for a purpose unre-
53 lated to the authorized or licensed use or activity.

54 “Substantial structural alteration”, a change in the dimensions
55 of a principal building or structure which increases by more than
56 10 per cent the height or ground coverage of the building or struc-
57 ture specified in the authorization or license, or an increase by
58 more than 10 per cent of the surface area of the fill specified in
59 the authorization or license.

60 “Tidelands”, present and former submerged lands and tidal flats
61 lying between the present or historic high water mark, whichever
62 is farther landward, and the seaward limit of state jurisdiction.
63 Tidelands include both flowed and filled tidelands, as defined in
64 310 CMR 9.02.

65 Section 2. (a) There shall be within the executive office of
66 administration and finance, but not subject to the control of said
67 executive office, an office of tidelands and great ponds which
68 shall be under the supervision and control of a director. The
69 director shall be appointed by the governor and shall be a person
70 of skill and experience in the acquisition, disposition or adminis-
71 tration of public or private assets having a net value in excess of
72 \$1,000,000. The director shall be the executive and administrative
73 head of the office and shall be responsible for administering and
74 enforcing the provisions of law relative to the office and to each
75 administrative unit thereof. The director shall serve at the pleasure
76 of the governor, shall receive such salary as may be determined by
77 law, and shall devote his full time to the duties of his office. In the
78 case of an absence or vacancy in the office of the director, or in
79 the case of disability as determined by the governor, the governor
80 may designate an acting director to serve as director until the
81 vacancy is filled or the absence or disability ceases. The acting
82 director shall have all the powers and duties of the director and
83 shall have similar qualifications as the director.

84 (b) The director may appoint such persons as he shall deem
85 necessary to perform the functions of the office, provided that
86 Section 9A of Chapter 30 and Chapter 31 shall not apply to any
87 person holding any such appointment. Every person so appointed
88 to any position in the office shall have experience and skill in the
89 field of such position. So far as practicable in the judgment of the
90 director, appointments to such positions in the office shall be

91 made by promoting or transferring employees of the Common-
92 wealth serving in positions which are classified under Chapter 31,
93 and such appointments shall at all times reflect the professional
94 needs of the administrative unit affected. If an employee serving
95 in a position which is classified under said Chapter 31 or in which
96 an employee has tenure by reason of said Section 9A of said
97 Chapter 30 shall be appointed to a position within the office
98 which is not subject to said Chapter 31, the employee shall upon
99 termination of his service in such position be restored to the posi-
100 tion which he held immediately prior to such appointment; pro-
101 vided, however, that his service in such position shall be
102 determined by the civil service commission in accordance with the
103 standards applied by said commission in administering said
104 Chapter 31. Such restoration shall be made without impairment of
105 his civil service status or tenure under said Section 9A of said
106 Chapter 30 and without loss of seniority, retirement or other rights
107 to which uninterrupted service in such prior position would have
108 entitled him. During the period of such appointment, each person
109 so appointed from a position in the classified civil service shall be
110 eligible to take any competitive promotional examination for
111 which he would otherwise have been eligible.

112 Section 3. The office of tidelands and great ponds shall have
113 the following duties and responsibilities:—

114 (1) identifying, locating, appraising and valuing tidelands, great
115 ponds and natural resources contained within them, including
116 energy resources;

117 (2) identifying, inventorying and valuing existing leases and
118 licenses of tidelands, great ponds and resources contained within
119 them;

120 (3) designating tidelands and great ponds for permanent preser-
121 vation and protection;

122 (4) developing policies for the sale, lease and licensing of tide-
123 lands, great ponds and their resources;

124 (5) assessing, collecting, administering, valuing and accounting
125 lease and licensing fees for tidelands and great ponds;

126 (6) applying said fees and payments to defer administration
127 expenses of the office and defraying related local expenses; and

128 (7) reviewing the application and proposal of the developer to
129 determine the public benefit.

130 In the performance of these duties, the office shall cooperate
131 with other state and federal agencies to coordinate all necessary
132 information to assist in making his public benefit determination.

133 Section 4. An applicant shall submit to the director a request,
134 together with a fee, for a public benefit determination. The public
135 benefit determination shall follow concurrently the timelines
136 established for a Chapter 91 licensing or exemption as set forth in
137 310 CMR 9.11 (2)4.

138 The director shall administer a public benefit determination for
139 any new construction or substantial structural alteration or sub-
140 stantial change in use on any tidelands, landlocked tidelands or
141 great ponds land. In such determination, the director shall con-
142 sider the nature and scope of the public benefit as well as the prac-
143 tical impact on the applicant's development.

144 Any determination of the director shall not supersede the rules
145 and regulations of the department of environmental protection or
146 any other requirements under Chapter 91.

147 The director shall consider the location, size, use of the devel-
148 opment and impact on the surrounding area in relation to the
149 public benefit; provided, however, that the public benefit provided
150 by the applicant shall not be punitive or unduly burdensome on
151 the applicant or his development.

152 The director shall also establish regulations relative to
153 exempting the development of certain parcels of land that are
154 determined to be of de minimus impact from the public benefit
155 determination.

156 The department of environmental protection shall incorporate
157 the director's determination of public benefit in the official record.

158 Section 5. The office shall charge and collect fees as deter-
159 mined annually by the commissioner of administration under the
160 provision of Section 3B of Chapter 7. The director shall designate
161 one employee to receive all fees collected under this section who
162 shall give bond to the state treasurer in the sum of \$10,000.00.

1 SECTION 2. Section 61 of Chapter 30 of the General Laws as
2 appearing in the 2006 Official Edition, is hereby amended by
3 inserting after the word "grounds", in line 16, the following
4 words:— , reduction of groundwater levels, impairment of water
5 quality, increases in flooding or storm water flows,.

1 SECTION 3. Section 1 of Chapter 91 of the General Laws, as
2 so appearing, is hereby amended by inserting after the definition
3 of “Department” the following definition:—

4 “Landlocked tidelands”, filled tidelands, which on January 1,
5 1984 were entirely separated by a public way or interconnected
6 public ways from any flowed tidelands, except for that portion of
7 such filled tidelands which are presently located: (a) within 250
8 feet of the high water mark of flowed tidelands; or (b) within any
9 designated port area under the Massachusetts coastal zone man-
10 agement program. A public way or ways shall also be defined as
11 landlocked tidelands, except for any portion thereof which is
12 presently within 250 feet of the high water mark of flowed tide-
13 lands.

1 SECTION 4. Section 18 of said Chapter 91, as so appearing, is
2 hereby amended by inserting after the fifth paragraph the
3 following 2 paragraphs:—

4 No license shall be required under this chapter for fill on land-
5 locked tidelands, or for uses or structures within landlocked tide-
6 lands. Regulations of and any determinations of applicability
7 issued by the department of environmental protection exempting
8 landlocked tidelands from licensing before the effective date of
9 this act are hereby validated and confirmed as if this act had been
10 in effect when such regulations and determinations of applica-
11 bility were issued. Any fill, use or structure developed pursuant to
12 such regulations shall not be subject to challenge on the ground
13 that the department of environmental protection lacked the
14 authority to issue such regulations.

15 The developer of any new use or structure or modification of an
16 existing use or structure within tidelands and landlocked tidelands
17 that is otherwise required to file an environmental notification
18 form pursuant to Section 62A of Chapter 30 and files an environ-
19 mental notification form after the effective date of this act, shall
20 comply with the requirements of this paragraph. The environ-
21 mental notification form, and an environmental impact report
22 required pursuant to Section 62B of said Chapter 30, if applicable,
23 shall include a discussion of the project’s impact on the public’s
24 right to access, use and enjoy tidelands as protected by this
25 chapter, and identify measures to avoid, minimize, or mitigate any

26 adverse impact on such rights set forth herein. The environmental
27 notification form and an environmental impact report shall also
28 include a discussion of the project's impact on groundwater levels,
29 if the project is located in an area where low groundwater levels
30 have been identified by a municipality or by a state or federal
31 agency as a threat to building foundations, and identify measures
32 to avoid, minimize, or mitigate any adverse impact on ground-
33 water levels. Any measures identified by the secretary of the exec-
34 utive office of energy and environmental affairs pursuant to this
35 section shall be set forth in a certificate on the environmental noti-
36 fication form or a certificate on the environmental impact report,
37 if applicable. Within 30 days after the issuance of a certificate
38 under this paragraph, the proponent shall file with the department
39 of environmental protection a completed form notifying the
40 department that work will be conducted within landlocked tide-
41 lands, and shall attach the Massachusetts Environmental Policy
42 Act certificate to the form. The developer shall comply with all
43 obligations set forth in the certificate pursuant to this section, and
44 the department shall have the authority to enforce such conditions
45 consistent with this chapter.

1 SECTION 5. Said Section 18 of said Chapter 91, as so
2 appearing, is hereby further amended by inserting after the word
3 "tidelands", in line 52, the following: words:— , except for land-
4 locked tidelands.

1 SECTION 6. Said Section 18 of said Chapter 91, as so
2 appearing, is hereby further amended by inserting after the word
3 "tidelands", in line 53, the following words:— , except for land-
4 locked tidelands.

1 SECTION 7. Notwithstanding any general or special law to the
2 contrary, the director of the office of tidelands and great ponds, in
3 cooperation with other state and federal agencies, shall prepare a
4 preliminary map of tidelands, landlocked tidelands and great
5 ponds. The department of environmental protection and the
6 department of fish and game and other applicable state agencies
7 shall provide information to the director of the office of tidelands
8 and great ponds in the preparation of the preliminary map. The

9 preliminary map shall depict, where feasible: (1) the boundaries of
10 properties lying within and abutting tidelands and great ponds and
11 (2) which tidelands are private tidelands and which are Common-
12 wealth tidelands, as defined by 310 CMR 9.02.

13 The director of the office of tidelands and great ponds shall file
14 a report with the clerks of the senate and house of representatives
15 who shall forward the same to the joint committee on environ-
16 ment, natural resources and agriculture on or before March 3,
17 2008. The report shall include the preliminary map of tidelands
18 and great ponds and shall detail the necessary resources and time-
19 frame needed to produce a final certified map that shall be filed
20 with all applicable registries of deeds.

1 SECTION 8. Notwithstanding any general or special law to the
2 contrary, in all determinations of applicability under 310 C.M.R.
3 9.00 et seq. made by the department after the effective date of this
4 act, a public way that is an elevated public way, bridge or over-
5 pass shall not be construed to separate filled tidelands from
6 flowed tidelands.

1 SECTION 9. Notwithstanding Chapter 28B or any other
2 general or special law to the contrary, the director shall administer
3 a public benefit determination for any development on filled tide-
4 lands including landlocked tidelands that consists of one million
5 gross square feet or more of buildings or structures and that has
6 been given a certificate by the secretary of environmental affairs
7 but is not fully constructed on the effective date of this act. In
8 determining whether any such development consists of one mil-
9 lion gross square feet or more, the entirety of the planned or per-
10 mitted development and not separate phases or segments thereof
11 shall be considered for this purpose. For this purpose, the devel-
12 opment may not be phased or segmented to evade this require-
13 ment. The director shall conduct a public hearing for any public
14 benefit determination under this section.

1 SECTION 10. The first paragraph of Section 4 shall apply to all
2 fill, uses and structures existing before, on, or after the effective
3 date of this act.

1 SECTION 11. Any person who has filed an environmental noti-
2 fication form after the effective date of this act shall be deemed an
3 applicant as defined in Section 1 of Chapter 28B of the General
4 Laws.