

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

302 CMR 3.00: SCENIC AND RECREATIONAL RIVERS ORDERS

Section

- 3.01: Introduction
- 3.02: Definitions
- 3.03: Advisory Committees
- 3.04: Classification of Rivers and Streams
- 3.05: Preliminary Informational Meetings
- 3.06: Public Hearing
- 3.07: Scenic River Corridor Boundary Delineation Procedures
- 3.08: Adoption of Orders
- 3.09: Recording of Orders
- 3.10: Notice of Order
- 3.11: Recording in the Public Restriction Tract Index
- 3.12: Posting of Rivers and Streams
- 3.13: Amending or Modifying Orders
- 3.14: Repealing of Orders
- 3.15: Correcting Orders
- 3.16: Monitoring Procedures
- 3.17: Departmental Review of Orders
- 3.18: Judicial Review of Orders
- 3.19: Public Meetings
- 3.20: Effect on Other Orders
- 3.21: Severability

3.01: Introduction

The purpose of 302 CMR 3.00 is to:

- (a) define and explain the language of M.G.L. c. 21A, § 11C; and
- (b) establish the procedures under which the Department of Conservation and Recreation will exercise its responsibilities under M.G.L. c. 21A, § 11C.

It is the intent of the Department that these definitions and procedures are to be used to preserve and promote the public safety, health and welfare, protect public and private property, wildlife, fresh water fisheries, and irreplaceable wild, scenic and recreational river resources. It is further intended that these goals shall be accomplished by the adoption of Orders imposing restrictions on the scenic and recreational rivers and streams of the Commonwealth through the regulation, restriction or prohibition of certain specified activities and uses within these affected areas, while allowing other specified activities and uses within these areas, subject to the requirements of M.G.L. c. 131, § 40 where applicable.

It is also the intent of the Department that, where scenic and recreational rivers occur within the boundary of the Massachusetts coastal zone as defined in the Commonwealth's Coastal Zone Management Program (CZM Program), 302 CMR 3.00 be consistent with and form a part of the CZM Program as it has been promulgated and defined in 301 CMR 20.00: *Coastal Zone Management Program* issued pursuant to M.G.L. c. 21A and through the Coastal Program Policies of the CZM Program.

The interpretation and application of 302 CMR 3.00 to scenic and recreational rivers within the boundary of the coastal zone shall be consistent with the policies of the CZM Programs to the maximum extent permissible under M.G.L. c. 21A, § 11C except when to do so would require an act impermissible at law, or where the Secretary of Energy and Environmental Affairs, pursuant to the conflict resolution procedures of M.G.L. c. 21A, § 4 and associated regulations, has resolved any conflict and has determined that the CZM policies should or should not apply.

3.02: Definitions

Act. M.G.L. c. 21A, § 11C.

Altering. Causing a direct or indirect change within any river corridor including, but not limited to, one or more of the following actions:

- (a) changing pre-existing drainage characteristics, sedimentation patterns, flow patterns, flood storage retention areas and, where applicable, flushing characteristics and salinity distribution;

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

3.02: continued

- (b) draining or otherwise disturbing surface or groundwater levels;
- (c) degrading water or air quality;
- (d) changing the natural characteristics of the receiving water including, but not limited to, temperature and biochemical oxygen demand (BOD);
- (e) causing any diversion of, or placing any obstruction to water, flow or navigation;
- (f) driving pilings or erecting buildings or structures of any kind;
- (g) grading, landscaping, or any activities or uses which change slope or topography;
- (h) removing ground cover, vegetation or topsoil so as to increase erosion or sedimentation;
- (i) destroying plant life, including the cutting of trees;
- (j) causing adverse effects to freshwater fish or wildlife or to their habitat;
- (k) impairing natural visual quality;
- (l) discharging, releasing, or causing to be released, any contaminating materials, including sediments, from any source into the river corridor, either by overland flow or through a new or existing pipe or other conduit;
- (m) lowering, polluting, or otherwise changing the level, quantity, or quality of ground water by performing any work within the river corridor.

Amendment. Any change in the allowed or prohibited activities or uses contained in any Order adopted under M.G.L. c. 21A, § 11C; any addition to or deletion of, including any change in the definition of, a river corridor as further defined in any Order; any addition to land within the river corridor; or any addition to any list of assessed owners adopted as part of the Order. An amendment shall not include a correction as defined in 302 CMR 3.02: Correction.

Assessed Owner. The person or persons to whom land within the river corridor was assessed in the last preceding annual tax levy.

Classification. The classification of rivers and streams within the river corridor.

Commissioner. The Commissioner of the Department of Conservation and Recreation.

Correction. Any minor change in the location of the river corridor boundary on a plan, the substitution or deletion of any name or names from the list of assessed owners adopted as part of any Order, or any typographical, grammatical or other correction which does not change the sense or meaning of any Order.

Department. The Department of Conservation and Recreation.

Dredging. The removal of materials including, but not limited to, rock, bottom sediment, debris, loam, peat, soil, sand, refuse, plant or animal matter, in any excavating, grading, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any land within the river corridor. Dredging shall include improvement dredging, maintenance dredging, backfilling or other dredging and subsequent refilling.

Feet. Horizontal feet.

Filling. The placing of any material that raises, either temporarily or permanently, the existing elevation of any land within the river corridor.

Improvement Dredging. Any dredging in an area which has not previously been dredged or which extends the original dredged width, depth, length, or otherwise alters the original boundaries of a previously dredged area.

Modification. Any amendment as defined in 302 CMR 3.02.

Natural Bank:

- (a) In wetland areas, it means the landward edge of the salt or freshwater marsh, as defined in M.G.L. c. 131, § 40.

3.02: continued

(b) In tidal rivers or streams, it means the landward edge of the mean annual high tide. Where emergent wetland vegetation is present, this boundary shall be identified as the landward edge of specific vegetative species which require periodic flushing and input of salt water to survive.

(c) Where there is a natural or man-made structure containing the river or stream, it means the aquatic side of the structure which contains the river or stream at the mean annual high tide.

(d) Where there are beaches, rocky shores or mud banks, the natural bank shall be the point at which the water's edge meets the land during the mean annual high tide.

(e) In freshwater rivers, it means the landward edge of the mean annual high water which usually occurs in the early spring.

(f) Where emergent wetland vegetation is present, this boundary shall be identified as the aquatic edge of the freshwater marsh or wetland as defined in M.G.L. c. 131, § 40.

Order. Any instrument issued by the Commissioner and approved by the Stewardship Council that imposes restrictions in any river corridor in accordance with M.G.L. c. 21A, § 11C.

Person. Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof, any administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.

Person Having an Interest. Any assessed owner or any holder of record of an easement, covenant, restriction or any other holder of any such property interest known to the Commissioner.

Plan. A line and symbol photogrammetric map or an orthophoto map which meets National Map Accuracy Standards, upon which the river corridor is delineated.

Polluting. Means, but is not limited to, the discharge, release or flow of any product, by-product, material or waste resulting from sewage, sewage processing, or from any agricultural, industrial, commercial, or other man-made process, any man-made thermal discharge, run-off, leachate, or any other substance in any form, which is or can be drained, discharged, infiltrated, or otherwise introduced into any river corridor.

Removing. Taking away any type of material that alters the elevation of any land within the river corridor.

Repeal. Rescinding of any Order, including the plan or plans and list of assessed owners incorporated with the Order.

Restriction. Any provision in any Order limiting activities or uses in any river corridor. A restriction shall be unlimited in time unless repealed by the Department.

River. A watercourse having a permanent source, well-defined course, and an outlet and which has continuous flow during portions of the year.

River Corridor. Any river or stream and land up to 300 horizontal feet from the natural bank of the river or stream, which has been included in an Order.

Scenic River. A scenic or recreational river or stream proposed for inclusion in, or included within, the river corridor.

Stewardship Council. The body created by M.G.L. c. 21, § 2.

Stream. A river as defined in 302 CMR 3.02.

3.03: Advisory Committees

Before proposing a scenic river under M.G.L. c. 21A, § 11C, the Commissioner may appoint an advisory committee of concerned persons. The purpose of the advisory committee shall be to review and comment on the proposed order, management plan or other information as the Department may submit, and to assist in explaining the scenic river program to affected persons and to the general public.

3.04: Classification of Rivers and Streams

The Commissioner, with the approval of the Stewardship Council, may classify the waters of the rivers and streams of the Commonwealth for scenic and recreational purposes.

3.05: Preliminary Informational Meetings

The Commissioner shall, at least seven days prior to the public hearing described in 302 CMR 3.06, hold a preliminary informational meeting in the cities, towns or watershed regions in which the proposed river corridor is to be located.

(1) Notice of the Preliminary Informational Meeting. The Department shall give notice of the meeting by mailing a copy of the notice to the following persons at their last known address at least seven days prior to the date of the preliminary informational meeting:

- (a) any assessed owner;
- (b) any person other than an assessed owner having an interest in land within the river corridor and whose name appears on an assessor's map;
- (c) any other person having a recorded interest in land within the river corridor whose name and/or address is known to the Commissioner;
- (d) any person having an unrecorded interest in land within the river corridor whose name and/or address is known to the Commissioner;
- (e) Regional Planning Commissions, Boards of Selectmen or Mayors, Conservation Commissions and Planning Boards of the city or town in which the river corridor is to be located;
- (f) appropriate agencies of the Commonwealth;
- (g) if the river corridor is to be located within the boundary of the Massachusetts coastal zone, notice shall also be given to the Office of Coastal Zone Management.

(2) Content of Preliminary Informational Meeting Notice. Notice given under 302 CMR 3.05 shall include, but not be limited to, the following information and materials:

- (a) a description of the Department's statutory authority to adopt Orders, a copy of M.G.L. c. 21A, § 11C, and a copy of the proposed Order;
- (b) a copy of a map indicating the general location of the proposed scenic river corridor;
- (c) the time, place and location of the preliminary informational meeting.

The Commissioner may combine the notice provided for in 302 CMR 3.05(2) with the notice of the public hearing provided for in 302 CMR 3.05.

(3) Conduct of the Preliminary Informational Meeting. A representative of the Department shall be present at the preliminary informational meeting to answer questions concerning the program, including the mapping and identification procedures used in determining the boundary of the river corridor, to answer questions concerning the public hearing and proposed Order, to explain how the proposed Order applies to land within the river corridor, and to distribute materials upon request.

3.06: Public Hearing

Prior to adopting any Order under M.G.L. c. 21A, § 11C, and subsequent to the preliminary informational meeting, the Commissioner shall hold a public hearing in a city or town in which the scenic river corridor is to be located.

(1) Notice of the Public Hearing. The Department shall give notice at least 21 days prior to the date of the public hearing by:

3.06: continued

- (a) sending a copy of the notice by certified mail to those persons included in 302 CMR 3.05(1)(a) through 3.05(1)(d), and to any person who has acquired, subsequent to the last annual tax levy, a fee simple interest in any land within the river corridor, and whose name has been entered in the records of the assessor's office and is available to the Department at least 60 days prior to the date of the public hearing;
- (b) sending a copy of the notice by regular mail to those persons included in 302 CMR 3.05(1)(e) through 3.05(1)(g), and to the State Reclamation Board, the Department of Public Works and the Department of Environmental Protection;
- (c) filing notice with the Secretary of the Commonwealth;
- (d) sending a copy of the notice to those persons or groups who have filed a written request to receive notice of public hearings held pursuant to M.G.L. c. 21A, 11C, and by sending a copy of the notice to any other persons or groups at the discretion of the Commissioner;
- (e) publishing notice in a newspaper or newspapers of general circulation in the cities or towns in which the river corridor is to be located, and, where appropriate, in such trade, industry or professional publications as the Commissioner may select;
- (f) posting notice in the city or town hall of each city or town located within the proposed river corridor, or in any other location as determined by the Commissioner.

(2) Content of Public Hearing Notice. Notice other than notice published in newspaper given under 302 CMR 3.06 shall include, but not be limited to, the following information and materials:

- (a) a description of the Department's statutory authority to adopt Orders, a copy of M.G.L. c. 21A, § 11C, and a copy of the proposed Order;
- (b) a copy of a map indicating the general location of the proposed river corridor;
- (c) notice that the Department's river corridor boundary delineation procedures, as defined in 302 CMR 3.07, may be requested by persons having an interest in lands located within the river corridor;
- (d) the time, place and location of the public hearing;
- (e) the name of the Commissioner or his or her agent or agents designated to receive inquiries and requests prior to the public hearing;
- (f) notice that any person may submit written comments concerning the proposed Order to the Department, and/or request to speak at the hearing.

Notice published in newspaper or posted in city or town halls pursuant to 302 CMR 3.06 shall include items 302 CMR 3.06(2)(c), 3.06(2)(d) and 3.06(2)(f) and may also contain a list of parcels on which the river corridor is to be located, for which no assessed owner is known.

(3) Conduct of the Public Hearing. The Commissioner or his or her agent designated as Presiding Officer shall conduct the public hearing. Copies of all information and materials required to be available at the preliminary informational meeting held pursuant to 302 CMR 3.05 and required by 302 CMR 3.06 shall be available for inspection and/or distribution at the public hearing.

The Presiding Officer shall convene the public hearing. He or she shall first state the statutory authority under which the program operates and shall explain the purpose of the program, the effect of the proposed Order, and the Department's mapping, designating and recording procedures. The Presiding Officer shall inform persons having an interest in lands within the river corridor of their right to request an on-site inspection and other procedures pursuant to 302 CMR 3.07 and shall explain the procedures set out in 302 CMR 3.07.

The Presiding Officer shall specify the order of participation. Representatives of the Department shall speak first, followed by elected officials. Persons or groups representing agencies of the Commonwealth, federal agencies, or local government and who have requested permission to speak shall proceed next, followed by those persons who have submitted requests to comment pursuant to 302 CMR 3.06(1), and whose names have been listed by the Presiding Officer on the hearing agenda. Other persons who wish to speak may then proceed at the discretion of the Presiding Officer. The Presiding Officer shall have the right to limit the length of time of each presentation.

The Presiding Officer may entertain questions from the audience. The Presiding Officer shall have the authority to adjourn the public hearing and to continue the hearing to another date.

A record of the public hearing shall be compiled by having the proceedings either recorded by a stenographer or on tape.

3.07: Scenic River Corridor Boundary Delineation Procedures

Any person having an interest in land located within the proposed river corridor (referred to in 302 CMR 3.07 as the "requesting person") shall have the right to request the boundary delineation procedures set forth below. Such a request may be made at any time subsequent to the Department's giving notice pursuant to 302 CMR 3.05 or 3.06 but not later than 14 days after the close of the public hearing record, unless good cause for the delay in making such a request can be shown to the Department.

(1) On-site Inspections. The Department shall make available, for the purpose of requesting on-site inspections pursuant to 302 CMR 3.07, request forms. These forms shall be available at any preliminary informational meeting and/or any public hearing held pursuant to 302 CMR 3.00, and at the Scenic Rivers Program Section of the Department's offices, as posted on the Department's website, during normal business hours.

Request forms shall be sent to the Department by delivering a copy of the completed form to the Department at the address posted on the Department's website. No form shall be deemed to be received unless properly completed, and improperly completed forms shall be returned.

The requesting person shall also contact the Department to arrange a time, date and meeting place for the on-site inspection. The location of the inspection shall be at the place or places specified on the request form.

The Department's representative shall meet with the requesting person at the agreed time, date and place.

The Department's representative shall indicate the location of the river corridor boundary on the site. The Department may, through its representative, conduct the on-site inspection without the requesting person, if the Department, prior thereto, has secured permission to do so from the requesting person.

The Department may answer any questions posed by the requesting person concerning the designation of his or her land as an area to be included within the proposed river corridor.

(2) Boundary Delineation of the Scenic River Corridor on Assessors Maps. The Department, if requested, shall delineate the river corridor boundary in relation to the requesting person's land on a copy of the applicable portion of the assessor's map or maps.

(3) Boundary Delineation on Plot Plan. The Department, if requested, shall indicate the location of the boundary or boundaries of the river corridor on an individual plot plan prepared and submitted by the requesting person to the Department.

3.08: Adoption of Orders

The Commissioner shall adopt Orders, including Amending, Modifying and Repealing Orders with the approval of the Stewardship Council.

No Order shall be adopted until the close of the public hearing record.

3.09: Recording of Orders

The Commissioner, upon the adoption of any Order, including the adoption of any Amending, Modifying or Repealing Order, shall record a copy of the Order, together with the plan and the list of the assessed owners of such lands, in the registry of deeds or, if such lands are registered, in the registry district of the land court, of each county in which the river corridor is located. The list of assessed owners shall include a reference to the book and page number in the registry where the deed for the affected parcel is recorded.

3.10: Notice of Order

The Commissioner, following completion of the recording procedures pursuant to 302 CMR 3.09 shall send by certified mail a copy of the Order and plan to each person having an interest in land within the river corridor who was given notice under 302 CMR 3.05 and to the clerk and board of assessors of each city or town in which the river corridor is located.

3.11: Recording in the Public Restriction Tract Index

If any county or district having lands affected by an Order has established a Public Restriction Tract Index pursuant to M.G.L. c. 184, § 33, the Commissioner shall request that the Order, or any Amending Modifying or Repealing Order, be indexed in the Public Restriction Tract Index for that county or district and that reference be made to the Order, list and plan. The Order shall be indexed pursuant to the statutory procedures established under M.G.L. c. 184, § 33, as most recently amended, and pursuant to the rules established by the Register of Deeds for the county or district.

3.12: Posting of Rivers and Streams

The Department shall, upon the adoption of any Order restricting and classifying rivers and streams, post signs within the river corridor along the banks of those rivers and streams whose waters have been restricted and classified under M.G.L. c. 21A, § 11C. The sign shall indicate that the river or stream has been restricted and classified pursuant to the authority granted by the M.G.L. c. 21A, § 11C.

3.13: Amending or Modifying Orders

Prior to adopting any Amending or Modifying Order under M.G.L. c. 21A, § 11C, the Commissioner shall first give notice as required by, and hold a public hearing pursuant to 302 CMR 3.06. The Commissioner shall also conduct any boundary delineation procedures as required by 302 CMR 3.07.

Any Amending or Modifying Order shall be adopted and recorded in the manner required by 302 CMR 3.08 and 3.09, and a copy of the Amending or Modifying Order and plan sent by certified mail to those assessed owners affected by the Amending or Modifying Order.

3.14: Repealing of Orders

Prior to adopting any Repealing Order under M.G.L. c. 21A, § 11C, the Commissioner shall first give notice as required by, and shall hold a public hearing pursuant to, 302 CMR 3.06.

Any Repealing Order shall be adopted and recorded in the manner required by 302 CMR 3.08 and 3.09 and a copy of the Repealing Order and plan shall be sent by certified mail to those persons whose names appear on the list of assessed owners recorded with the Order being repealed.

3.15: Correcting Orders

Any assessed owner or person having an interest in land within the river corridor and who has reason to believe that the river corridor boundary line has been incorrectly delineated in relation to his or her property on the plan which has been included with an Order, may request the Department to have the location of his or her boundary line redrawn on a corrected plan.

Upon receipt of the request, a representative of the Department shall, within 15 days, arrange to conduct an on-site field inspection. If the Department finds that the boundary line is incorrectly delineated, the Commissioner shall record, pursuant to the procedures provided in 302 CMR 3.09, and send to the person requesting the correction, a corrected plan with the new boundary delineated thereon.

The Commissioner may also correct any typographical, grammatical or other errors contained in any Order, which do not change the sense of the Order, by recording a copy of the corrected Order pursuant to the procedures provided in 302 CMR 3.09 and by sending a copy of the corrected Order to the assessed owner or person having an interest in land within the river corridor affected by the Order.

3.16: Monitoring Procedures

The Commissioner shall periodically examine the rivers or streams affected by Orders.

In addition, any person who has an interest in land affected by an Order may request the Department of Conservation and Recreation to conduct a review. Upon receipt of the request, the Department shall conduct an on-site inspection.

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

3.16: continued

If the Commissioner determines, following examination, that significant change has occurred in any such river or stream, the Department shall adopt an Amending, Modifying or Repealing Order, or shall correct the Order, pursuant to the procedures provided in 302 CMR 3.00.

3.17: Departmental Review of Orders

Any Conservation Commission, Mayor or Board of Selectmen may petition the Department to conduct a review to determine if an Order has been violated. Upon receipt of such a petition, the Department shall conduct an on-site inspection of the area and shall take such corrective measures as are warranted.

3.18: Judicial Review Orders

Any person having an interest in land affected by any such Order, may, within 90 days after receiving notice thereof, petition the Superior Court to determine whether such Order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the Order constitutes the equivalent of a taking without compensation.

If the court finds the Order to be an unreasonable exercise of the police power, and enters a finding that such Order shall not apply to the land of the petitioner, the Commissioner shall cause a copy of such finding to be recorded in the proper registry of deeds or, if the land is registered, in the registry district of the land court.

The Department may, after a finding has been entered that such Order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the Commonwealth by eminent domain under the provisions of M.G.L. c. 79 and hold the same for the purposes set forth in 302 CMR 3.18.

3.19: Public Meetings

The Commissioner may, from time to time, hold public meetings in any municipality in which rivers and streams are located, for the purpose of describing or explaining the status of the Scenic Rivers' Program or any other aspect of the Program.

3.20: Effect on Other Orders

All Orders adopted under M.G.L. c. 21A, § 11C, prior to the effective date of 302 CMR 3.00, shall remain in full force and effect.

3.21: Severability

If any provision of 302 CMR 3.00 is held to be invalid, such invalidity shall not affect any provision of 302 CMR 3.00 not specifically held to be invalid.

REGULATORY AUTHORITY

302 CMR 3.00: M.G.L. c. 21A §§ 2 and 11C.

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