



## **Information on the RDA Process BRP WW 04**

### **1. What is the purpose of this determination?**

This determination identifies whether a project site is located within Chapter 91 jurisdiction and/or whether a project or activity requires a Waterways license or other authorization under 310 CMR 9.00, the regulations which implement MGL Chapter 91, the Public Waterfront Act. Chapter 91 authorization generally must be obtained for the placement of structures and fill, changes in use of existing licensed structures and fill, and dredging in current and certain former state waterways, as required under 310 CMR 9.02-9.05.

### **2. Who must apply?**

There is no requirement to file this application. However, if your project (existing or proposed) requires a Waterways license or other authorization, but you fail to obtain one, you may be subject to penalties and/or removal of the project. This determination is intended to answer with certainty whether a Waterways license or other authorization is required, which can be recorded against the chain of title for the property subject to the determination.

### **3. What information do I need to apply?**

- A clear explanation of the determination being requested (e.g. is the property within c.91 jurisdiction?; is a project in a specific location on a property within c.91 jurisdiction?; is a specific scope of work an activity that is subject to c.91?; I have evidence for consideration of review of the presumptive historic high water line, etc.).
- A detailed description of the proposed project, if any.
- Identify all existing and proposed fill and structures and uses thereof.
- Complete licensing history for the property and all existing fill and structures (the Registry of Deeds websites and the Massachusetts Acts and Resolves website <https://www.mass.gov/service-details/massachusetts-acts-and-resolves> are useful tools for identifying licensing history).
- Provide a plan showing: 1. an appropriately-scaled site location map; 2. references to any previous licenses, permits, or other authorizations for existing structures, fill, or dredging at the site, including the license number(s) and the date the license was recorded at the Registry of Deeds or Land Court, and a delineation of the area subject to the license; 3. appropriately-scaled principal dimensions and elevations of proposed and existing fill, structures, or dredging in waterways; 4. any historic dredging, filling, or impoundment at the site; and 5. a delineation of the present high and low water marks, and the historic high and low water marks; 6. A scaled depiction of any proposed project
- In the case of a review of the presumptive line, professional data (e.g. survey or similar) and evidence to support a claim.
- Notification List of all persons identified in 310 CMR 9.13(1)(a) – each one is required to be mailed a copy of the complete application and all supporting information.

### **4. How can I avoid the most common mistakes make in applying for this determination?**

- Clearly identify the request.
- Include all information listed in the plans section.
- Ensure mailing is complete in accordance with the list at 310 CMR 9.13(1)(a).  
<https://www.mass.gov/doc/310-cmr-900-waterways-regulations/download>



## **BRP WW 04 Request for Determination of Applicability**

Massachusetts Public Waterfront Act (M.G.L. Chapter 91)

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### **5. What is the application fee?**

The application fee is \$100.00

### **6. How long is this determination in effect?**

There is no period of time specified for the validity of a Determination of Applicability. Under 310 CMR 9.06, the Determination can effectively expire if circumstances affecting the site location, activity occurring on the site change, if the Waterways regulations themselves change, or upon a request for a new Determination of Applicability that includes additional information. Otherwise, the Determination could remain valid indefinitely.

### **7. What other requirements should be considered during project planning and prior to filing an application for a Chapter 91 license?**

Projects within Chapter 91 jurisdiction are often subject to the Wetlands Protection Act and typically require filing of a Notice of Intent and issuance of an Order of Condition or a Negative Determination of Applicability. For more information, contact the Conservation Commission for the municipality where the project site is located.

Projects may require MEPA review. Please carefully examine 301 CMR 11.00, the MEPA Regulations, to determine if your project exceeds the MEPA review thresholds. For more information, contact the MEPA Unit of the Executive Office of Energy and Environmental Affairs at [mepa@mass.gov](mailto:mepa@mass.gov) or 617-626-1000.

If a project is subject to MEPA review, the Chapter 91 license application process generally cannot begin until the MEPA process has been completed.

### **8. Where can I get a copy of the timelines?**

The timelines are available on the MassDEP Website: <https://www.mass.gov/lists/massdep-fees-timelines>

### **9. What are the regulations that apply to this determination? Where can I get copies?**

These regulations include, but are not limited to:

- Waterways regulations, 310 CMR 9.00.
- Timely Actions and Fee Provisions 310 CMR 4.00
- Administrative Penalties Regulations 310 CMR 5.00

These may be purchased at:

State House Bookstore  
Bookstore Room 116  
Boston, MA 02133

State House West  
21 Elm Street  
Springfield, MA 01103

They may also be available at the MassDEP website: <https://www.mass.gov/dep>