



# Department of Environmental Protection

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## “Ask the Office of the Permit Ombudsman” Issue Summary: Dredging Abutter Notification

*MassDEP’s Office of Permit and Regulatory Ombudsman serves as a Point of Contact for raising issues about permitting or questions about how law, policy, and regulations are being applied across the agency. This summary provides information about an issue raised to the Office and should not be considered legal or consulting advice. Project proponents should consult the regulations and appropriate MassDEP Regional Office on how this information may apply to their specific projects.*

**Issue:** Identification of Official Abutters for Notification of Long, Linear Dredging Projects

**Inquiry:** MassDEP was contacted by an applicant preparing a public notice to Abutters for an over 1,000-foot-long, linear coastal dredging project, as part of the Waterways licensing process. The applicant had identified Abutter notification guidelines applying to projects in both the Waterways regulations and the Wetlands regulations. The Waterways regulations address notification for dredging projects in Chapter 91 jurisdictional areas, which this project was within, however the Wetlands regulations address notification for Abutters of projects “conducted solely within land under water bodies or waterways” and also address Abutter notification for “a Linear-shaped Project greater than 1,000 feet in length”, 310 CMR 10.05(4)(a). The specific reference to long, linear projects in the Wetlands regulations (and its noted absence in Waterways regulations), along with the regulatory classification of Massachusetts coastal waterways as a subcategory of the Areas Subject to Protection under the Wetlands Regulations (310 CMR 10.02(1)), made it unclear to the applicant which set of regulations applied to this project. The applicant therefore contacted MassDEP to seek guidance.

### Regulatory Background:

As the applicant who contacted MassDEP indicated, the Wetlands regulations include a provision specifically governing Abutter notification for “Linear-shaped Projects” of over 1,000 feet in length.<sup>1</sup> This

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<sup>1</sup> The Wetland regulations Linear-shaped Projects specify that notification should go to the subset of Abutters (as defined in 310 CMR 10.04) whose property boundaries *also* fall within 1,000 feet of the Project Site (according to 310 CMR 10.05(4)(a)). “Project Site” is defined as “the area within the Project Locus that comprises the limit of work for activities.” (310 CMR 10.04)

section is, however, specifically for use in identifying Abutters for pipeline, electricity, power line and public way projects, which typically take on these dimensions, see 310 CMR 10.04, “Linear-shaped Projects”. The Wetlands regulations also include a section specifically governing Abutter notification for work solely within Land under Water Bodies or Waterways. Projects such as that proposed by the applicant (coastal dredging) that will take place under water need only notify Abutters whose lot is within 100 feet of the Project Site (the area within the Project Locus that comprises the limit of work for activities) (310 CMR 10.05(4)(a)).

Because dredging occurs in “land under water bodies or waterways,” which is a resource area protected under the Wetlands Protection Regulations, any dredge permit applicant is also required to file a Notice of Intent (NOI) with the local Conservation Commission(s) to obtain an Order of Conditions (OOC) to perform the work. Concurrent with the filing of the NOI, the applicant must provide notification of the project to all Abutters in accordance with the Wetlands regulations (310 CMR 10.05). An applicant submitting an NOI for a dredge project is also subject to Waterways (310 CMR 9.00) and 401 Water Quality Certification (314 CMR 9.00) regulations and therefore must also submit separate applications for each or submit an application for a Combined License/Permit for Waterways and Water Quality Certification (BRP WW 26). As a convenience, the applicant may choose to provide joint public and Abutter notice for both the Wetlands NOI and the BRP WW 26. In this case, because the Abutter notification requirements in the Wetlands regulations are the most conservative (“conservative” here meaning that it would require notification to the most properties), those are the requirements that should govern this joint Abutter notification. If an applicant is proposing work solely under water, e.g. only dredge work, notification is pursuant to the provisions for “work solely within Land under Water Bodies or Waterways.” Abutters under this provision of the Wetlands regulations are defined as those whose lot is within 100 feet of the Project Site (310 CMR 10.04 and 10.05(4)).<sup>2</sup>

Those applicants wishing to provide *separate* notification for the BRP WW 26 form and the Wetlands NOI should identify Abutters for each notification according to the applicable set of regulations. These regulations are 310 CMR 9.02 for the BRP WW 26, and 310 CMR 10.05(4) for the Wetlands NOI and notify each set of Abutters accordingly. In this case, Abutters for the Wetlands NOI would be defined as described in the paragraph above. Abutters for the BRP WW 26 would be defined as those owners “of land which shares, along the water’s edge, a common boundary or corner with a project site, as well as the owner of land which lies within 50 feet across a water body from such site (310 CMR 9.02).”<sup>3</sup>

**Resolution:** The Office of the Ombudsman discussed the applicant’s inquiry with managers in MassDEP’s Waterways program. Dredge permit applications are currently processed only in the Boston office (for the Northeast, Central and Western regions) and in the Lakeville office (for the Southeast region) so the procedures of these two offices were reviewed. Through this review, it was confirmed that MassDEP staff were consistently applying the appropriate regulations for Abutter notification: the Wetlands regulations for joint notification for the BRP WW 26 and the Wetlands NOI and, for separate

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<sup>2</sup> The Wetlands regulations define “Project Site” as “the area within the Project Locus that comprises the limit of work for activities” (310 CMR 10.04).

<sup>3</sup> In the Waterways regulations, “Project Site” is defined as “the area... in which a project will occur and which is subject to the geographic jurisdiction of the Department, as specified in 310 CMR 9.04.” This regulation therefore specifies that Abutter notification should go to those whose property boundaries (which in waterways fall at the mean low water line and in non-tidal rivers fall at the string of the river) are shared with, or lie within 50 feet across a water body of, the project work area.

notification, the Waterways regulations for the BRP WW 26 and the Wetlands regulations for the Wetlands NOI.

The Department acknowledges that the specific reference to linear-shaped projects of over 1,000 feet in length in the Wetlands regulations could be confusing to those proposing long-linear dredge projects that fit these dimensions. Readers should note that the definition of “Linear-shaped Project” in 310 CMR 10.04 is limited to utilities and public ways. The Department will continue to monitor for additional related calls to evaluate if more guidance on this matter is warranted.