

Waterways (Chapter 91) Resilience 1.0 Regulation Updates

**Public Information Session
January 17, 2024**



Agenda

- Overview: Proposed Waterways regulation updates (310 CMR 9.00)
- Questions and Answers
- Schedule



Need for Chapter 91 Resilience Regulation Updates Environmental and Economic / Fiscal Drivers

Effects of climate change including Sea Level Rise, intensifying storms, and increased precipitation are worsening impacts to natural resources and the built environment such as storm damage and coastal and inland flooding.

Credit rating agencies are weighing in:

Commonwealth Magazine, October 2022: *“The big three credit rating agencies had largely good things to say about Massachusetts this month, but one firm warned that the strong economic fundamentals and growing state reserves have a counterweight in the state’s vulnerability to coastal storms and flooding.”*

S&P, 2022: *“We consider **Massachusetts’ environmental risks moderately negative in our credit rating analysis** because of the commonwealth’s **coastal exposure**, with about two-thirds of its population ...in the combined Boston and Cape Cod area **exposing the state to significant economic disruption following a high-impact event**”*



Waterways Resilience 1.0 - Proposed Regulations to Address Key Challenges

- All license applications to consider projected Sea Level Rise
 - Replaces current standard: historical Sea Level Rise
 - Adds Water Dependent Use Projects, Simplified and Renewals
- Building considerations
 - Exclude mechanical systems from building height calculations, encourage relocation from ground floor, facilitate roof-top solar
 - Buildings in floodplain must comply with Building Code standards for elevation above base flood elevation
 - Update definitions consistent with FEMA
- Nontidal rivers and streams
 - Clarify existing exemption for nontidal rivers and streams to facilitate climate resiliency projects (e.g., dam repair/removal, culvert replacement)



Waterways Resilience 1.0 - Proposed Revisions

Update Definitions (310 CMR 9.02)

Improve consistency with FEMA and Wetland Draft Regulations

Additions:

- A Zone or AE Zone
- Land Subject to Coastal Storm Flowage
- Moderate Wave Action Area or MoWA Zone
- Primary Frontal Dune
- Special Flood Hazard Area
- Velocity Zone or V Zone

Deletion:

- Coastal High Hazard



Waterways Resilience 1.0 - Proposed Revisions

Must Consider Projected Sea Level Rise

All applications for a License, Amendment, or Renewal

- Simplified Licenses – 310 CMR 9.10
- Expiration and Renewal – 310 CMR 9.25
- Engineering and Construction Standards – 310 CMR 9.37
- Consult most current mapping for shoreline change and sea level rise at [ResilientMass](#)



Waterways Resilience 1.0 - Proposed Revisions

Licenses for Extended Terms (310 CMR 9.15)

- A license term greater 30 years only allowed if:
 - Deemed appropriate for the use and protects public benefits.
 - Engineering and construction must consider predicted sea level rise. This standard adds to the current “other relevant factors” standard.



Waterways Resilience 1.0 - Proposed Revisions

Engineering and Construction Standards (310 CMR 9.37)

- Existing reference to historic sea level rise replaced with projected sea level rise for the design life of the building or structure. Requires applicants to use resilientma.org projections, or other similarly reliable sources.
- Projects in FEMA defined floodplains must meet minimum elevation standards for the proposed lowest horizontal structural members of new buildings.



Waterways Resilience 1.0 - Proposed Revisions

Conservation of Capacity for Water-Dependent Use (height) (310 CMR 9.51)

- This proposed revision would modify the height requirements to allow licensees to move utilities from the basement to the roof.
- Facilitate rooftop solar panels.

Activities Not Requiring a License or Permit (9.05(3))

- Clarify limits for existing exemptions for certain projects which address increased precipitation/stream flow climate vulnerability and do not reduce the space available for navigation.

[e.g., culvert replacement, work associated w/dam removal, dam repair]



Waterways Resilience 1.0 Schedule

Schedule:

- Released for Public Comment: 12/22/23
- Public Info Sessions / Hearings: January 2024
- Comment Period Closes: 3/1/24
- Promulgation Expected: Spring - Summer 2024

January 17, 2024	2 Public Information Sessions (virtual, 1pm and 6pm)
January 25, 2024	2 Public Hearings (virtual, 1pm and 6pm)

For more information and to register in advance:

<https://www.mass.gov/info-details/massdep-public-hearings-comment-opportunities>



THANK YOU



Testimony may be presented orally at the public hearing. Written comments will be accepted through 5:00pm on March 1, 2024.

The Department encourages electronic submission by email to dep.waterways@mass.gov and must include “Waterways Resilience Comments” in the subject line.

In lieu of electronic submittal, paper comments may be mailed to Daniel Padien, Attn: Waterways Resilience Comments, MassDEP – BWR, 100 Cambridge Street, Suite 900, Boston, MA 02114.

