

SUMMARY OF PROPOSED REGULATIONS

310 CMR 9.00: *Waterways*

Introduction: The purpose of MassDEP’s Waterways Regulations, 310 CMR 9.00, is to protect and promote the public’s interest in filled and flowed tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the Public Trust Doctrine. MassDEP seeks to amend the regulations to ensure that licensing properly reflects the potential effects of climate change, including but not limited to, sea level rise, storm surge, and increased precipitation for existing and proposed structures along the waterfront. The proposed revisions will assist current and potential licensees by modifying certain requirements to prepare for sea level rise, while maintaining public access and other public benefits.

This proposed regulatory package offers an opportunity for MassDEP to implement updates to address several components discussed during the stakeholder processes. Certain more complex issues, such as first floor Facilities of Public Accommodation requirements in light of potential first floor flooding, will require further consideration and stakeholder discussions prior to regulatory revision and therefore are not proposed at this time.

Proposed Regulatory Revisions: Several provisions in the regulations are proposed for revision, as summarized below.

310 CMR 9.02, Definitions

This proposed revision clarifies the regulations by:

1. Removing the definition of Coastal High Hazard Area and using the term Velocity Zone (V Zone) in its place.
2. Adding the following definitions for consistency with the Wetlands Protection regulations (310 CMR 10.00): A Zone, Land Subject to Coastal Storm Flowage, Moderate Wave Action Area, Primary Frontal Dune Special Flood Hazard Area and Velocity Zone (V Zone).

310 CMR 9.05, Activities Subject to Jurisdiction

The proposed revision at 9.05(3) Activities Not Requiring a License or Permit would clarify, but not change, the criteria and geographic limits for an existing exemption to permitting for certain projects in navigable non-tidal rivers and streams when such projects do not reduce the space available for navigation, facilitating the implementation of certain measures designed to address climate vulnerability related to increased precipitation, including replacement culverts and scour protection fill and/or structures.

310 CMR 9.10, Simplified Licenses

This proposed revision would allow renewal where modifications of original plans are necessary to ensure that public rights are maintained in light of sea level rise. An application for renewal would be subject to review under all applicable provisions of 310 CMR 9.00 in effect at the time the application is submitted.

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310 CMR 9.15, License Terms for Extended Terms

This proposed revision will ensure that sea level rise is adequately taken into account when licenses are issued for more than the typical 30 years. The proposed provision allows the Department to establish an extended term (more than 30 years), provided that the term is appropriate for the use, public benefits, and engineering and construction associated with the licensed fill and structures in light of sea level rise. While the current regulations provide for “any other relevant factors” to be taken into account in allowing an extended term, the proposed revision would make sea level rise an explicit factor.

310 CMR 9.25, Expiration and Renewal

This proposed revision would add a requirement that renewal requests be supported by an analysis of the impacts of sea level rise on the fill or structures and any public access or other public benefits.

310 CMR 9.37, Engineering and Construction Standards related to sea level rise.

Currently, only nonwater-dependent projects located in flood zones must incorporate projected sea level rise during the design life of a building. MassDEP proposes to require consideration of projected sea level rise for all fill and structures, within and outside current flood zones, and for the design life of the fill, structure, or public facilities—not just buildings. MassDEP also proposes to update the mechanism to project sea level rise, which currently and inaccurately refers only to historic rates. MassDEP will require applicants to use sea level rise projections published by Resilient.mass.gov, or other similarly reliable sources.

An additional revision to this section eliminates the potential unintended loss of available building height that may otherwise occur as a result of the proposed amendments to the wetlands regulations establishing performance standards for Lands Subject to Coastal Storm Flowage (LSCSF), which establish elevation requirements for buildings in coastal areas.

310 CMR 9.38, Use Standards for Recreational Boating Facilities

This proposed revision would replace the term “grandfathered” with “exempted,” consistent with MassDEP's initiative to remove racially offensive terms from its regulations.

310 CMR 9.51, Height Requirement in Conservation of Capacity for Water-Dependent Use.

This proposed revision would modify the height requirements to allow licensees to move utilities from the basement where flooding is likely to occur to the roof. It would also allow solar panels. Moving utilities out of the flood zone is a typical first step for building owners as they prepare for sea level rise.

Coordination with Other Draft Regulations:

These revisions are being proposed in tandem with MassDEP's proposed resiliency amendments to its regulations for Wetlands Protection, 310 CMR 10.00, and 401 Water Quality Certification for Dredge and Fill, 314 CMR 9.00.