

Waterways Program Guidance Document: Water-Dependent Use Zones

Guidance Applicability: Waterways Program Staff; Chapter 91 License Applicants and Current Licensees

Date: []

Purpose: the purpose of this guidance is to set forth the Department’s approach to determining the extent of the water-dependent use zone at a project site and to evaluating acceptable uses within the water-dependent use zone.

Introduction to Chapter 91

The Public Waterfront Act, [M.G.L. Chapter 91](#), and its implementing regulations [310 CMR 9.00](#) (collectively referred to as “Chapter 91”), require a waterways license or permit for any activity located in, under, or over flowed tidelands, filled tidelands, Great Ponds, and certain non-tidal rivers and streams located throughout the Commonwealth – unless such activity or activities are exempt from license and permit requirements under 310 CMR 9.05(3).

Chapter 91 licenses and permits are necessary to protect and promote the Public Trust Rights and inherent public interest in these water bodies by ensuring that proposed projects and activities: do not unreasonably interfere with navigation and the rights of the public or adjacent waterfront property owners and protect water-dependent uses and serve a proper public purpose.

Background on Water-Dependent Uses and Water-Dependent Use Zones

The Chapter 91 Waterways Regulations are designed to protect and encourage water-dependent uses on the waterfront. In general, water-dependent uses are those that require direct access to or location in tidal or inland waters, such as piers, wharves, marinas, boathouses, shoreline protection, jetties, revetments, and facilities for fishing, swimming, diving, and other water-based recreational activities. A more detailed list of water-dependent uses may be found at 310 CMR 9.12(2). By contrast, nonwater-dependent uses are those which may be located on waterfront property, but do not rely on their close proximity to the water. Examples of such uses include retail and commercial outlets, hotels, offices, restaurants, gas stations and residences.

A water-dependent use zone is the area running landward of and parallel to the high-water mark, within which certain activities and uses are prohibited in order to protect water-dependent uses in Chapter 91 jurisdiction. The seaward boundary of the water-dependent use zone is the project shoreline (i.e., the high water mark). The landward boundary is a line parallel to the project shoreline, at a distance from the seaward boundary determined pursuant to 310 CMR 9.51(3)(c).

Determining the Width of a Water-Dependent Use Zone

The width of the water-dependent use zone is determined in accordance with 310 CMR 9.51(3)(c) based on the type of tideland (filled or flowed) and the location and size of the property. The following table summarizes the requirements of 310 CMR 9.51(3)(c) for determining the width of the water-dependent use zone:

Location	The width is the lesser of:
Filled Tidelands (Not along edges of piers or wharves)	100 feet or 25% of the weighted average distance from project shoreline to rear property line.
At the END of piers/wharves	100 feet or 25% of the distance to base of pier/wharf, but no less than 25 feet
Along the SIDES of piers/wharves	50 feet or 15% of the distance to opposite edge of pier/wharf, but no less than 10 feet
In a Municipal Harbor Plan Planning Area	The width may be modified by an Approved MHP (See 310 CMR 9.57)

Allowable Uses in Water-Dependent Use Zones

Nonwater-dependent use projects that include fill or structures on tidelands may not unreasonably diminish the capacity of such tidelands to accommodate water-dependent uses. The analysis of a proposed nonwater-dependent use in the water-dependent use zone is case specific; the Department is required to consider any relevant information concerning the utility or adaptability of the site for *present or future* water-dependent purposes. 310 CMR 9.51.

Certain uses are prohibited in the water-dependent use zone: new or expanded buildings for nonwater-dependent use and parking facilities at or above grade. However, other than those strict prohibitions, nonwater-dependent uses may be allowed in the water-dependent use zone as long as the capacity to accommodate water-dependent uses is not unreasonably diminished.

For example, outdoor dining may be permitted in a water-dependent use zone, but seating and tables for the outdoor dining could not cover the entirety of the water-dependent use zone as doing so would unreasonably diminish the present capacity of the site for water-dependent uses.