

Chapter 91

MassDEP Waterways Program

FAQ's

Contact:

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What kinds of structures require Chapter 91 authorization?

Chapter 91 authorization is required for structures in tidelands, Great Ponds (over 10 acres in natural state) and certain rivers and streams. Types of structures include: piers, wharves, floats, retaining walls, revetments, pilings, bridges, dams and some waterfront buildings (if on filled lands or over water). You may also need a new license if there has been a structural change or a change in use of a previously licensed structure.

Do temporary or seasonal docks require licenses?

If a float is bottom-anchored and seasonal, it may be authorized by the local harbormaster or other authorized municipal official through a Section 10A permit, instead of the Department. However, seasonal and permanent pile-supported piers require licenses from the Department.

Why don't some people have permits or licenses?

Approximately 20,000 licenses have been issued since 1866, but many structures remain unlicensed for a variety of reasons. Many landowners don't realize they need authorization. Some owners simply are unaware of the law; others assume that prior owners obtained proper licensing; and still others don't know that a change in structure or use requires new licensing. Unlicensed structures are considered a public nuisance under M.G.L. Chapter 91, and their owners may be subject to MassDEP enforcement for maintaining unauthorized structures.

Are there penalties for unlicensed structures or work?

Unlicensed structures may be considered a public nuisance or a hazard to public safety or may significantly interfere with navigation. Unless properly licensed, these structures can be ordered removed and may be subject to fines. Our goal, however, is to bring people into compliance with Chapter 91, and the Department encourages owners of unlicensed structures to contact MassDEP and apply for a license to avoid enforcement action.

Can an owner maintain or repair licensed structures?

Maintenance or repair of licensed structures is not only allowed by Chapter 91, it is required. Required work must be performed according to the conditions of the license, including using materials of the same dimensions and quality and in the same locations and elevations as specified in the license. Common examples of replacement work include replacing old pilings, decking or rip-rap. Additionally, replacement or maintenance work can include: re-paving of road surfaces, installation of road curbs and lighting, stabilization of road or rail beds, reconstruction of culverts or catch basins, and maintenance or repair to public transportation facilities or drainage systems necessary to preserve the facilities for their original use.

How long are license terms?

Generally, licenses are in effect for a fixed term not to exceed 30 years, and are renewable for additional 30-year terms. There are, however, certain special circumstances in which the term of a license can be longer or shorter.

What is the difference between private tidelands and Commonwealth tidelands?

Commonwealth tidelands are held in trust by the state for the public. They include all land seaward of mean low water. Private tidelands are considered the area between mean low and mean high tide. Even though they may be privately owned, private tidelands are subject to the Public Trust Doctrine, whereby the public retains the rights to fish, fowl and navigate in this so-called "intertidal zone."

How is Chapter 91 jurisdiction determined?

Determining the Historic High Water line for a specific site could be considered more of an art than a science. The Department uses a preponderance of evidence from various historical maps, plans and other sources. Generally, hydrographic maps are considered the most reliable for determining the Historic High Water line.

How does the Waterways Regulation Program determine the current mean high water mark?

The current high water mark is determined on a 19-year average of monthly high water marks, compiled by the National Oceanic and Atmospheric Administration (NOAA). Though the most current study was done in 1969, a more timely study that reflects recent sea level changes is expected soon. Once the new information is published, those new measurements will become the standard for determining mean high water mark.

How can I check my property or my immediate area for past licenses?

You may go to your county's Registry of Deeds to see if a valid Chapter 91 license exists on your property. All Chapter 91 licenses must be recorded against the deed of a property to be valid. In addition to checking at your county's Registry of Deeds, you may also schedule an appointment to review the Department's records for a particular property by contacting the Department. Appointments are available Wednesdays from 9am-3pm and can be made by contacting the

Waterways Research Area voicemail system at 617-292-5929. PLEASE NOTE: Not all Waterways licenses and plans may be photocopied. Many licenses are very old and too large to be photocopied. You should be prepared to photograph these licenses and plans or transcribe the text of these licenses by hand and/or to trace the corresponding plans by bringing your own tracing supplies.

What information do I need to conduct research on my property?

There are several items that can assist you in conducting Chapter 91 research on your property. First are potential licensee names, i.e., current or past property owners, trustee names, present and past street names, etc. It is also helpful to have a clearly labeled map indication for the site being researched. The Department's records are not indexed by street address or parcel number.

How can I find out if I am in Chapter 91 jurisdiction?

If your property is in any of the following areas, generally considered "trust lands," then it is subject to Chapter 91 jurisdiction (310 CMR 9.04):

1. All waterways, including all flowed tidelands and all submerged lands lying below the high water mark of:
 - a. Great Ponds;
 - b. The Connecticut River;
 - c. The section of the Westfield River in the Towns of West Springfield and Agawam lying between the confluence of said River with the Connecticut River and the bridge across said river at Suffield Street in Agawam;
 - d. The non-tidal portion of the Merrimack River;
 - e. Any non-tidal river or stream on which public funds have been expended for stream clearance, channel improvement, or any form of flood control or prevention work, either upstream or downstream within the river basin, except for any portion of any such river or stream which is not normally navigable during any season, by any vessel including canoe, kayak, raft, or rowboat; the Department may publish, after opportunity for public review and comment, a list of navigable rivers and streams; and
2. All filled tidelands and all filled lands lying below the natural high water mark of Great Ponds. That excludes Landlocked Tidelands, which are any filled tidelands which on Jan. 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands which are presently located:
 - a. within 250 feet of the high water mark
 - b. within any Designated Port Area. Said public way or public ways shall also be defined as landlocked tidelands, except for any portion thereof which is presently within 250 feet of the high water mark.

If it is unclear whether you are in an area of jurisdiction, you may file a formal Determination of Applicability (DOA). You may download the application form here:

[WW 04: Request for Determination of Applicability](#)

How can I get answers to questions before I apply?

The Department highly recommends that you schedule a pre-application meeting with a waterways reviewer to discuss the proposed project and receive feedback on the types of public access and other conditions that MassDEP may expect from the applicant. Please call the hotline number at 617/292-5929, and someone will get back to you as soon as possible.

What kind of timeline can I expect to get a license?

Timelines vary according to the different tracks available to applicants. You can consult the regulations on this website to see the various timelines, or you can visit MassDEP's [Permitting Assistance page](#).

What is the difference between water-dependent and nonwater-dependent uses?

A water-dependent use is one that requires direct access to the water to occur. Examples include boat landings, piers, wharves, boathouses, docks, revetments, floats and seawalls. A nonwater-dependent use does not require water for the structure or use to exist. For instance, restaurants, residences, parking lots, gas stations, hotels and commercial/retail outlets do not need to be located on the water.

Why is my application classified as "nonwater-dependent?"

If any part of a project or use site, no matter how small, is considered nonwater-dependent then the entire site is considered nonwater-dependent. For example, if a single family home located on the water has a small dock, which would generally be considered water-dependent, then the entire property is considered nonwater-dependent.

Do I need to file an Environmental Notification Form (ENF) to get a Chapter 91 license?

If your project falls under the nonwater-dependent classification, then it is likely that you will have to file an ENF. Additionally, the following activities require an ENF:

1. Dredging of 10,000 or more cubic yards of material.
2. Disposal of 10,000 or more cubic yards of dredged material, unless at a designated in-water disposal site.
3. Provided that a Chapter 91 License is required, new or existing unlicensed nonwater-dependent use of waterways or tidelands, unless the project is an overhead utility line, a structure of 1,000 or less s.f. base area accessory to a single family dwelling, a temporary use in a Designated Port Area, or an existing unlicensed structure in use prior to January 1, 1984.
4. Construction, reconstruction or expansion of existing solid fill of 1,000 or more s.f. base area of a pile-supported or bottom-anchored structure of 2,000 or more s.f. base area,

except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways.

The ENF process is explained in the Massachusetts Environmental Policy Act (MEPA) ([301 CMR 11.00](#)). For more information, please refer to <https://www.mass.gov/orgs/massachusetts-environmental-policy-act-office>.

Once a license has been issued, is the process over?

Almost. There are two remaining steps to ensure that your license remains valid:

1. To become valid, a Chapter 91 License must be recorded against the deed of a given property at the county Registry of Deeds within 60 days of issuance. In the case of registered land, the License must be recorded at the Land Registration Office within 60 days.
2. Within 60 days of completion of a project, but no later than five years from license issuance, the licensee must request a Certificate of Compliance form. A License for any project can be revoked if a request for a Certificate of Compliance is not filed.

How long do I have to build my structure once I receive my license?

Although your license may be valid between 30 and 99 years, the proposed project MUST be constructed within 5 years. It is also required that all new projects submit a Certificate of Compliance once the project is completed.

What are the other agencies that have jurisdictional authority over waterfront property?

There are a number of other agencies that regulate waterfront property use. Among these are the federal Army Corps of Engineers, Massachusetts Coastal Zone Management, and the Division of Fisheries and Wildlife. Additionally, municipal conservation commissions and other local boards should be consulted.