

# Dredging Permit Process

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Dredging is an often discussed but less-frequently utilized management measure for inland lakes and ponds. The dredging process usually involves varying levels of data collection, design, planning, and permitting. The permitting and approval process will vary depending upon the characteristics of the site, the scope of work, and dredging method proposed.

This article focuses specifically on the basics of the typical local, state, and federal permitting processes. The information below provides only a general outline, which touches upon various aspects of the permitting required for dredging projects. For further information regarding agency jurisdiction, thresholds, application requirements, or timelines, contact the regulatory agencies noted below or a consultant that specializes in dredging projects.

## Local Permits / Approvals:

*Conservation Commission*

In accordance with the Massachusetts Wetlands Protection Act (310 CMR 10.00) and any applicable local wetland bylaw, all lake and pond dredging projects are required to file a Notice of Intent application and obtain an Order of Conditions from the local Conservation Commission. The application should justify the need for dredging to improve the natural capacity of the resource area, explain how the work will meet applicable performance standards if possible, and also protect the interests of the Act and any local bylaw. As part of the permitting process, the notification of abutters, a public notice, and public hearings will be required.

## State Permits / Approvals:

*Massachusetts Environmental Policy Act (MEPA)*

Most dredging projects involve impacts that exceed thresholds and trigger MEPA review in accordance with 301 CMR 11.00. Projects that will alter more than 5,000 square feet of wetlands or involve more than 10,000 cubic yards of dredging will require the preparation and submission of an Environmental Notification Form (ENF) and may be subject to further MEPA review. For very large dredging projects involving over 10 acres of wetland alteration, preparation of an Environmental Impact Report may be required. Notification of ENF's and EIR's are published in the Environmental Monitor twice monthly. MEPA will consider public comments that are submitted during the designated timeframe. The Secretary of the Executive Office of Energy and Environmental Affairs will issue a Certificate upon the completion of the MEPA review. The Certificate will indicate whether the project can proceed to further state permitting as outlined in the following sections.

Massachusetts Department of Environmental Protection (MADEP)

A Section 401 Water Quality Certificate from MADEP will be required for any project involving dredging over 100 cubic yards. Submission of an application with dredging plans and sediment testing results is required. A primary focus of this permit process is often the sediment testing results and reported pollutant concentrations.

For dredging projects that are proposed on a listed Great Pond, a Chapter 91 permit from DEP Waterways will be required in accordance with 310 CMR 9.00. In addition to submitting an application and dredging plans, a public notice is also required. DEP Waterways will consider public comments received during the specified comment period before issuing a decision on the permit.

Natural Heritage and Endangered Species Program (NHESP)

If the project site is mapped in the Massachusetts Natural Heritage Atlas, 13th Edition, as Priority Habitat for rare species, the project must be reviewed in accordance with the Massachusetts Endangered Species Act (321 CMR 10.00). The project can be submitted for MESA review by NHESP as part of the Notice of Intent application. NHESP will determine if precautionary measures can be implemented as part of the project to avoid a "take" of rare species. If a "take" cannot be avoided, then it will be necessary to file for and obtain a Conservation and Management Permit from NHESP.

## Federal Permits / Approvals:

*U.S. Army Corps of Engineers*

Dredging projects that result in the discharge of dredged or fill material to a lake or pond will require a Department of the Army General or Individual Permit in accordance with Section 404 of the Clean Water Act. The project scale and proposed dredging method will determine which permit is required. The Corps will consider both the primary fill/discharge impacts as well as secondary impacts such as water level drawdown that may be required. Projects may qualify for a Category 2 permit if total impacts are between 5,000 sq. ft. and 43,560 sq. ft. For projects with impacts totaling more than 1 acre, an Individual Permit will likely be required. These permits require the submission of an application, plans meeting Corps specifications, and sediment testing results. The Category 2 permit process is typically faster and less involved than the Individual Permit process.

National Pollutant Discharge Elimination System (NPDES)

Depending upon the proposed method of sediment dewatering and extent of ground disturbance associated with the sediment disposal area, a NPDES permit from the US EPA may be required. In addition to preparation of the appropriate forms, it may also be necessary to prepare a Stormwater Pollution Prevention Plan (SWPPP).

## Timelines / Considerations:

Given the number of permits outlined above, it should be little surprise that significant time is required to complete permitting for most dredging projects. Projects may take from several months to well over a year to fully permit depending on the specific circumstances involved. Additional local, state, and federal permits beyond those noted above may also be required and can add to the complexity of the process.

Given the extent of various Agency and public involvement in the permitting process it is imperative to build as much support in favor of the project as possible. Despite the time, effort, and cost associated with dredging, projects are successfully permitted every year throughout Massachusetts.