

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### LAND AND WATER MANAGEMENT

#### GREAT LAKES SUBMERGED LANDS

(By authority conferred on the department of natural resources by section 9 of Act No. 247 of the Public Acts of 1955, as amended, and section 252 of Act No. 380 of the Public Acts of 1965, as amended, being §§322.709 and 16.352 of the Michigan Compiled Laws)

#### **R 322.1001 Definitions.**

Rule 1. (1) As used in these rules:

(a) "Accretion" means land created as a result of natural depositions or placement of a lawful, permanent structure.

(b) "Act" means Act No. 247 of the Public Acts of 1955, as amended, being §322.701 et seq. of the Michigan Compiled Laws, and known as the Great Lakes submerged lands act.

(c) "Agreement" means a binding contract between the state and another person concerning the private use of patented or unpatented bottomlands, except use for "marina purposes" as defined in the act.

(d) "Applicant" means a person applying for a deed, lease, agreement, or permit to use or alter unpatented lands or an agreement or permit for use of water areas over patented lands.

(e) "Bottomland" means lands in the Great Lakes, and bays and harbors thereof, lying below and lakeward of the ordinary high water mark.

(f) "Conveyance" means a deed, lease, agreement, or certificate as referred to in the act.

(g) "Department" means the department of natural resources.

(h) "Dredging" means removal of any mineral, organic, or other material from or within the bottomland or waters of the Great Lakes by any means.

(i) "Filling" means placement of any mineral, organic, or other material on the bottomlands or into the waters of the Great Lakes.

(j) "Ordinary high water mark" means the elevations set by the act. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark shall be located where it would have been if this alteration had not occurred.

(k) "Other materials" means any man-made structure or installed device or facility extending over or placed on bottomlands below the ordinary high water mark or extending over or placed into the waters of the Great Lakes, including all of the following:

(i) Bulkheads.

(ii) Groins.

(iii) Riprap.

(iv) Jettys.

(v) Breakwaters.

(vi) Piers and pipelines.

(vii) Pilings.

(viii) Sand trap walls.

The term also means a man-made structure or installed device or facility attached to or administered by a marina. The term does not include temporary docks, boat hoists, or other devices for private use which are removed annually.

(l) "Person" means any individual, partnership, corporation, association, political subdivision, the state, the department, an instrumentality or agency of the state, a political subdivision of an

instrumentality or agency of the state, a department or other instrumentality or agency of the federal government, or other legal entity.

(m) "Public trust" means the perpetual duty of the state to secure to its people the prevention of pollution, impairment or destruction of its natural resources, and rights of navigation, fishing, hunting, and use of its lands and waters for other public purposes.

(n) "Riparian owner" means one who owns upland bordering the bottomland or water area.

(o) "Riparian rights" means all those rights accruing to ownership of riparian property, including the following, subject to the public trust:

(i) Access to the navigable waters.

(ii) Dockage to boatable waters; wharfage.

(iii) Use of water for general purposes, such as bathing and domestic use.

(iv) Title to natural accretions as determined by the department.

(p) "Submerged patented lands" means any bottomlands lying within a specific government grant area, including a private claim patent, federal patent, or state swampland patent.

(q) "Unpatented lands" means all bottomlands except submerged patented lands.

(2) The terms defined in the act have the same meanings when used in these rules.

History: 1982 AACS; 1986 AACS.

## **R 322.1002 Applications for deeds, leases, agreements, and certificates; forms; content.**

Rule 2. (1) Application forms for deeds, leases, or agreements to use or alter unpatented lands, for certificates of lakeward boundary and accretion, or for agreements for use of water areas over patented or unpatented bottomlands may be obtained from the department. The applicant shall file separately for each parcel of bottomland, unless the parcels of bottomland front a single upland ownership. If the parcels front a single upland ownership, 1 application may be submitted.

(2) An application for deeds, leases, agreements, or certificates shall not be considered administratively complete by the department until all information requested on the application form, the application fee, and any other information requested by the department have been received by the department. After receipt of an otherwise complete application, the department may request such additional information, environmental assessments, appraisals, records, or documents as are determined to be necessary to make a decision to grant or deny such a conveyance. The department shall notify the applicant in writing when the application is administratively complete.

(3) If an applicant fails to respond to any written inquiry or request from the department within 30 days, the application shall be denied without prejudice and the file shall be closed.

(4) Application fees shall be submitted to the department with the initial submittal of an application form. The fee shall be paid by check, money order, or draft made payable to: "State of Michigan."

History: 1982 AACCS.

### **R 322.1003 Marina lease application; criteria and procedures.**

Rule 3. (1) When an application is made for filled or unfilled bottomland or water area for marina purposes, the protection and enhancement of the public trust in the bottomlands and waters of the Great Lakes shall be of primary concern. The department shall consider the character and current uses of the adjacent upland. An applicant may be required to furnish supporting evidence, satisfactory to the department, that marina services in the locality are necessary and feasible.

(2) In addition to the application requirements of R 322.1002, a survey shall be provided which specifies the location of all fills, pilings, structures, and improvements, including all of the following:

- (a) The existing and planned mooring area.
- (b) Boat storage.
- (c) Turning basins.
- (d) Traffic lanes.
- (e) The location, number, and size of all boat wells, slips, and pump-out facilities.

(3) The department may require the design and survey of projects costing \$50,000.00 or more to be certified and sealed by a registered professional engineer as authorized in Act No. 299 of the Public Acts of 1980, as amended, being §339.101 et seq. of the Michigan Compiled Laws.

(4) The applicant shall file a surety bond or other assurance satisfactory to the department immediately after final approval by the state administrative board and before execution of the lease by the department. The surety bond or other assurance shall ensure that the applicant will truly and faithfully perform the covenants, conditions, and agreements specified in the lease, and shall further ensure that all pilings or other structures be removed upon cancellation or termination of the lease. The amount of the bond shall be determined by the department and shall be commensurate with the cost of restoring bottomlands to pre-lease condition. The bond shall be in effect for the period of the lease term or until all lease conditions have been fulfilled to the department's satisfaction.

(5) The department shall issue a statement releasing the lessee and the bond company upon termination of the marina lease and upon satisfactory restoration of the bottomlands.

(6) An application to construct a new marina or expand the watercraft handling capacity of an existing marina shall include documentation as to how the facility will provide watercraft sanitary holding tank pump-out services as required under section 5 of Act No. 167 of the Public Acts of 1970, as amended, being §323.335 of the Michigan Compiled Laws.

History: 1982 AACCS; 1986 AACCS.

**R 322.1004 Marina lease conditions.**

Rule 4. A lease shall provide for all of the following conditions to be maintained by both the lessee and the department:

(a) A term of not more than 50 years. A lease may provide for its renewal or extension upon satisfactory performance during the prior term.

(b) An advance annual rental fee to be determined by the department. The annual rental fee shall not be less than \$50.00. The department shall review the annual rental fee once every 5 years and adjust the annual rental fee to reflect changes in the general economic conditions. The changes shall be based on the percentage change of the United States bureau of labor statistics 'all-items' index, and other economic indicators.

(c) That the assignment or other agreement modifying the lease is not binding on the department unless approved in writing by the department. An executed copy of the assignment or agreement shall be furnished to the department for approval.

(d) That the marina construction shall be completed within a specified term, normally not more than 2 years from the date of issuance of the lease. An extension of time may be granted by the department for just cause. The lease shall be forfeited if the lessee does not complete the marina within the specified time set forth in the lease or the extension authorized by the department.

(e) That the construction and operation of the facility will not adversely impair the use of or destroy the waters or natural resources of the state.

(f) That the facility shall be maintained in an aesthetically pleasing manner.

(g) That the structures do not constitute a safety or navigation hazard and shall be maintained in good repair.

(h) That the lessee shall have sole maintenance responsibility of the facility and shall remove structures and improvements on the leased premises after nonuse or abandonment. Nonuse or abandonment shall occur when the facility is not used for commercial purposes for 2 successive seasons following completion of construction or execution of a lease.

(i) That upon nonuse or abandonment of the leased premises for marina purposes, or failure to construct or operate the marina facility in accordance with the lease conditions, the lessee shall execute and deliver to the department a release in recordable form of all his or her rights and interests in the lease premises. The release shall not relieve the lessee of the lease and surety bond requirements until all obligations have been met and the bond is duly discharged.

History: 1982 AACCS.

**R 322.1005 Agreements; department authorization; conditions.**

Rule 5. Persons shall secure an agreement from the department to use patented and unpatented bottomlands for industrial and commercial wharfage and other private waterfront development. At a minimum, the following conditions shall be in all agreements:

(a) Occupancy shall be governed by the terms of the act.

(b) Maintenance operations and improvements shall be approved by the department and shall not interfere with the public trust in adjacent waters and rights of adjacent riparian owners.

(c) At the time the agreement is terminated, all facilities and installations, including fills, shall be removed by the occupant to the satisfaction of the department.

(d) Assignment of an agreement shall not be binding on the department, unless approved in writing by the department.

History: 1982 AACCS.

**R 322.1006 Conveyance applications; approval criteria; provision for public access to Great Lakes waters required.**

Rule 6. (1) Review of an application for a deed, lease, agreement, certificate of boundary determination, or certificate of accretion shall be based on the following criteria:

(a) Whether the deed, lease, or agreement has a clear and present necessity beyond mere convenience or economy.

(b) Whether the conveyance of unfilled submerged lands is necessary to accomplish the purposes and activities stated in the act.

(c) Whether the project conforms to required sanitation laws and does not injure the material rights of adjoining riparian owners or any riparian owners of the water affected.

(d) A determination by the department that the private or public use of such lands and waters will neither substantially affect the public use thereof nor impair the public trust or interest of the state.

(2) Conveyance to local units of government shall contain a provision for public access to and along Great Lakes waters.

History: 1982 AACCS.

**R 322.1007 Conveyance of real estate rights; determination of fair, cash market value.**

Rule 7. (1) The consideration to be paid to the state for each bottomland parcel to be conveyed shall be determined by the department, but at no time shall the consideration be less than \$50.00.

(2) The consideration to be paid as fair cash market value for a deed to filled unpatented bottomlands shall be determined as follows:

(a) Fills placed before the effective date of the act or before state permit authority, except those processed in accordance with subdivision (d) of this subrule, shall be charged 30% of the filled bottomland or full market value of the unfilled bottomlands, whichever is greater, giving due consideration to riparian rights.

(b) Fills placed after proper permits were obtained shall be charged a minimum of 30% of the value of the filled bottomland or full market value of the unfilled bottomlands, whichever is greater, giving due consideration to riparian rights.

(c) Fills placed in violation of the permitting authority of the act, if conveyed, shall be charged a minimum 100% of the value of the filled bottomlands based on their highest and best use. Due consideration may be given to riparian rights.

(d) Fills which were placed before the effective date of the act, which are used for residential purposes, which are part of a recorded subdivision, which are less than 1/4 acre, and which do not adversely

affect the public trust may be charged a fee of \$500.00 as the full market value. The fee stated in this subdivision shall be adjusted every 5 years according to the bureau of labor statistics 'all-items' index and other economic indicators.

(3) The consideration to be paid as fair cash value for deeds to unpatented lands which are not filled or substantially changed from their natural character and which are to be used or are being used for flood control, shore erosion control, drainage, and sanitation control shall be 30% of the value of the filled bottomland, based on its highest and best use, giving due consideration to riparian rights.

(4) The consideration for leases to unpatented bottomland for marina purposes shall be not less than 5% of the typical gross dockage and mooring rent in the area. A lease period may be a period of up to 50 years, but rental rates shall be adjusted at least every 5 years. Adjustments shall be in all years ending in "0" or "5." The rental fee adjustment shall be directly proportional to the bureau of labor statistics 'all-items' index and other economic indicators. Typical gross dockage and mooring rent shall be based on the most efficient use of the area involved.

(5) Upon approval of any deed, lease, or other agreement, the application fee shall be credited against the consideration to be paid to the state.

History: 1982 AACS.

### **R 322.1008 Permits.**

Rule 8. (1) A riparian owner shall obtain a permit from the department before dredging, filling, or placing spoil or other materials on bottomlands; dredging, altering, or maintaining an existing upland channel; or constructing a new upland channel.

(2) A permit for upland channelling, as required in section 12 of the act, is not required for the construction of boat wells and slips which are not more than 50 feet in length, as measured inland from the ordinary high-water mark, and which facilitate private, noncommercial recreational boat use, if dredging or placement of spoil does not extend lakeward of the ordinary high-water mark.

(3) Placing spoil or other material on bottomlands does not include either of the following:

(a) Seasonal, private, noncommercial docks and boat hoists.

(b) Maintenance of a structure constructed under a permit issued pursuant to the act, if the maintenance is in place and in kind with no design or materials modification.

History: 1982 AACS.

### **R 322.1009 Permit application procedures.**

Rule 9. (1) An application for a permit shall be made on a form as prescribed and provided by the department. Application forms may be obtained from the department or from any designated field office of the department.

(2) An application for a permit shall not be considered administratively complete until all information requested on the application form, the application fee, and any other

information requested by the department have been received by the department. After receipt of an otherwise complete application, the department may request such additional information, environmental assessments, records, or documents as are determined to be necessary to make a decision to grant or deny a permit. The department shall notify the applicant in writing when the application is administratively complete.

(3) If an applicant fails to respond to any written inquiry or request from the department within 30 days, the application shall be denied without prejudice and the file shall be closed.

(4) For upland channels, a fee of not less than \$50.00, payable to: "State of Michigan," shall accompany the application.

History: 1982 AACCS.

### **R 322.1010 Notification of pending applications; determination of applications; copies.**

Rule 10. (1) Upon receiving an application for a permit or conveyance, except for applications for those projects stated in R 322.1013, the department shall submit copies for review to all of the following:

- (a) The director of public health or the local health department designated by the director.
- (b) The county, city, village, or township clerk.
- (c) The county drain or road commissioners.
- (d) The local port commission, if any.
- (e) The 2 adjacent riparian property owners.

(2) To be considered in the department's review of an application, a response to a public notice or request for a public comment meeting shall be received by the department within 20 days of the mailing of such public notice.

(3) Upon request, the department shall provide any person with a copy of a conveyance, permit, or application and supporting documents, pursuant to Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws.

History: 1982 AACCS.

### **R 322.1011 Permit issuance; conditions and requirements.**

Rule 11. (1) The department may require such permit conditions as it deems reasonable and necessary to protect the public trust and private riparian interests, including any of the following conditions:

(a) The existence of a surety bond or other acceptable guarantee before issuing a permit for projects with the potential for significant environmental impact and the ability of the applicant to complete the project satisfactorily during the period of the permit.

(b) That dredged materials be deposited in a manner which will cause the least damage to the public trust, benefit public interests, or mitigate damage done through navigation projects.

(c) That filling, dredging, and placing spoil and other materials on bottomlands shall be conducted in a manner which will cause the least damage to the public trust and least

disruption to the littoral drift and longshore processes, enhance the public trust or interests, or mitigate damages.

(d) Monitoring to assure that injury to the natural resources or to the riparian interests of adjacent property owners does not occur, including specifically monitoring the littoral drift in the project areas.

(e) That the project be in compliance with local zoning ordinances. If the facility is not in compliance and the local unit of government having proper jurisdiction notifies the department at the time of public notice objecting to the issuance of a permit, the department shall withhold permit issuance for 30 days from the date of expiration of public notice. If the local unit of government does not file an action to restrain operation of the facility in a public forum within the specified 30-day time frame, the department may issue a permit if all other criteria are met.

(f) That the work specified in the permit shall be completed within a specified term, normally not more than 1 year from the date of issuance, or as otherwise determined by the department. An extension of time may be granted by the department for just cause.

(2) Maintenance dredging permits may be granted for a period of 5 years if the area to be dredged and the disposal area remain the same.

(3) The department shall, upon request, provide advice to the applicant for the consideration and protection of the public trust and private riparian interests.

(4) A permit does not obviate the necessity of receiving approval from the United States army corps of engineers and, where applicable, other federal, state, or local units of government.

History: 1982 AACS; 1986 AACS.

### **R 322.1012 Upland channelling; requirements.**

Rule 12. (1) The department shall not issue a permit for upland channelling, unless the project conforms to all of the following provisions:

(a) The channel will not significantly impair the public trust or interest, including fish and wildlife habitat, in the adjacent land and water area.

(b) The channel and adjacent commercial or residential development will conform to the requirements for platting land, local zoning, and sanitation laws.

(c) The channel will not cause material injury to the rights of adjoining riparian owners or any riparian owners of the water affected.

(d) The channel will be maintained pursuant to the conditions of the permit by existing and future owners of the land fronting the channel.

(e) Channelling will not be in conflict with other state statutes.

(f) Channels in multi-residential or commercial developments will be of sufficient width to accommodate prospective traffic, watercraft dockage, and maintenance dredging.

(g) Channels will be constructed to a sufficient depth to minimize weed growth.

(h) Stabilization of channel banks will be required to control bank slumping and siltation.

(i) Channels for multi-residential or commercial projects will be constructed so that the channel banks are a minimum of 100 feet from each adjacent riparian property line, except where an adjacent riparian owner's approval has been obtained.

(j) All dredged materials will be handled pursuant to R 322.1011.

(2) The channel shall be a public waterway, unless it is an intake or discharge canal as determined by the department.

History: 1982 AACS.

**R 322.1013 Rescinded.**

History: 1982 AACS; 1986 AACS; 2012 AACS.

**R 322.1014 Rescinded.**

History: 1982 AACS; 2012 AACS.

**R 322.1015 Environmental assessment.**

Rule 15. In each application for a permit, lease, deed, or agreement for bottomland, existing and potential adverse environmental effects shall be determined. Approval shall not be granted unless the department has determined both of the following:

(a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible.

(b) That there is no feasible and prudent alternative to the applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare.

History: 1982 AACS.

**R 322.1016 Inspection and certification of completed projects.**

Rule 16. (1) The department may issue a certification for a project after final inspection, if the project was satisfactorily performed according to state permit.

(2) Where notice of certification is required as a permit condition, the permittee shall notify the department within 10 days of completion of the project to schedule a final inspection for certification. The department shall schedule its field inspection of a completed project when weather conditions will permit a thorough inspection.

(3) When any permit conditions are not complied with, enforcement action may be brought against the permit holder.

History: 1982 AACS.

**R 322.1017 Hearings.**

Rule 17. (1) The department may hold a public comment hearing when a proposed project appears to be controversial, where additional information is desired before action by the department, or upon request, if such request is made within the public notice period.

(2) Persons aggrieved by an action or inaction of the department may request a formal hearing on the matter, pursuant to the provisions of Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, within 60 days of the notice of the department's decision.

History: 1982 AACCS.

**R 322.1018 Rescission.**

Rule 18. R 281.901 to R 281.915 of the Michigan Administrative Code, appearing on pages 973 to 977 of the 1979 Michigan Administrative Code, are rescinded.

History: 1982 AACCS.