

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. ~~2013-02774-B~~

2013-2774B

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
SHIPYARD QUARTERS MARINA, L.L.C.;)
LDA PIER 9, L.L.C.; and MARTIN OLINER,)
INDIVIDUALLY,)
)
Defendants.)

MICHAEL JOSEPH
 CLENK/RADISTINAIE
 2014 SEP 23 AM 11:04

**ASSENTED-TO MOTION OF THE
COMMONWEALTH FOR ENTRY OF CONSENT JUDGMENT**

Plaintiff, the Commonwealth of Massachusetts, with the assent of Defendants, Shipyard Quarters Marina, L.L.C. (Shipyard Quarters), LDA Pier 9, L.L.C. (LDA Pier 9), and Martin Oliner, individually (Oliner), and the agreement of the interested party, Charlestown Marina LLC, requests that this Court enter Final Judgment in the form of the Consent Judgment submitted with this Motion, which Final Judgment will (1) resolve the Commonwealth's claims against Defendants for alleged violations of the Massachusetts Waterways Act, G.L. c. 91, § 23, and the Massachusetts Consumer Protection Act, G.L. c. 93A, § 4, at the Shipyard Quarters Marina in Charlestown, and (2) secure both substantial immediate and long-term relief to protect public safety and further the public's interest in the access to, and use of, the Charlestown waterfront. In support of this Motion, the Commonwealth states as follows:

1. On August 1, 2013, the Commonwealth filed a Complaint alleging that Defendants violated the Waterways Act, G.L. c. 91, § 23, its regulations, and the Waterways licenses issued

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9-29-14
SS*

*notice sent
9-29-14*

*This motion will be heard at 2pm
M 9/29/14. EM delivery 9/23/14*

by the Massachusetts Department of Environmental Protection (Department) under that Act, by (a) failing to maintain the Shipyard Quarters Marina in good working order (Count I), and (b) making unauthorized substantial alterations and changes in use to the principal building on one of the two Piers in the Marina (Pier 6) (Count II). Dkt. No. 1. On September 9, 2013, the Commonwealth filed its First Amended Complaint alleging that, in addition to the two claims in the original Complaint, Shipyard Quarters and Oliner violated the Consumer Protection Act, G.L. c. 93A, §§ 1-11, and its regulations, by, *inter alia*, advertising and leasing slips at the Marina to boaters without disclosing known structural defects with the Marina to potential lessees (Count III). Dkt. No. 36. On the Commonwealth's motion for preliminary relief, this Court later ordered Defendants to close the docking facilities at both the Pier 6 and Pier 8 sections of the Marina, and to pay restitution to boat owners in an amount equal to the remaining terms of their leases to use those facilities and the associated parking. The affected boat owners have received the restitution due to them. In addition, Defendants have, as also ordered by the Court, made substantial repairs to the publicly accessible areas of the Marina, including the pedestrian walkway, known as the Harborwalk, and Pier 8.

2. On November 8, 2013, the Commonwealth filed a motion asking the Court to order the immediate removal of the closed docking facilities to eliminate the potential threat the docking facilities posed to public safety and safe navigation in Boston Harbor. Dkt. No. 47. Defendants opposed that motion, and the Court (Giles, J.), after hearing argument, scheduled the motion for an evidentiary hearing, allowed Defendants' request to conduct depositions of the parties' engineering experts, and encouraged strongly the Commonwealth to attempt to bridge its differences with Defendants and work towards a negotiated settlement of the case. Following those depositions, the parties reached an agreement on the terms of a stipulated order requiring

the implementation of a “tie-down” system to secure the docks in the event that they began to break apart. Dkt. No. 54. On a parallel track, the Parties moved towards the completion of briefing on Defendants’ motions to dismiss the claims in the Commonwealth’s First Amended Complaint, and also continued discussions aimed at a global resolution of those claims, which would, among other things, require the timely construction of a new, state-of-the-art marina.

3. The Commonwealth and Defendants, together with the prospective purchaser of the Marina, Charlestown Marina LLC, have since reached an agreement to resolve the claims alleged in the Commonwealth’s First Amended Complaint and to secure relief intended to protect public safety and further the public’s interest in the access to, and use of, the Charlestown waterfront. That agreement is embodied in the attached Consent Judgment, which, if entered, will:

(a) require Shipyard Quarters and LDA Pier 9 to pay to the Commonwealth a civil penalty for the claims alleged in the Commonwealth’s First Amended Complaint of four hundred and fifty thousand dollars (\$450,000.00). Consent Judgment ¶ 12. Of that amount, two hundred and fifty thousand (\$250,000.00) must be paid within twenty-one (21) days of the entry of the Consent Judgment. *Id.* ¶ 12(a). The remaining amount, two hundred thousand dollars (\$200,000.00), will be suspended and later waived in fifty thousand dollar (\$50,000.00) amounts if certain milestones set forth in the Consent Judgment are met. *Id.* ¶ 12(b).

(b) require Shipyard Quarters to remove the docking facilities at the Pier 6 and Pier 8 sections of the Marina by October 31, 2014. Consent Judgment ¶¶ 19-20. In light of the potential additional demands associated with the removal of the associated pilings and the more limited potential hazard they create, the Consent Judgment provides

additional time, if necessary, for the removal of the pilings as long as they are marked in accordance with requirements of the U.S Coast Guard to notify vessels of the navigation hazard. *Id.* ¶ 19. Notably, however, the Department has already been asked for approval to proceed with this work as early as September 23, 2014 and informed that all of the work, including the removal of the pilings, will be complete by October 31, 2014.

(c) require Shipyard Quarters to, after receiving approval from the Department, reconstruct the docking facilities at the Pier 8 section of the Marina. Consent Judgment ¶ 24. In addition, the Consent Judgment requires Shipyard Quarters to ensure that at least fifty (50) of the new slips are ready for use by vessels by May 1, 2016—the beginning of the 2016 boating season—and that all of the remaining approved slips are ready for use by vessels by May 1, 2017—the beginning of the 2017 boating season. *Id.* ¶ 24(e).

(d) require Shipyard Quarters to submit a complete application for a Waterways license for approval of the structures and uses on Pier 6 and for approval of new docking facilities on either side of that Pier. Consent Judgment ¶ 28. In addition, the Consent Judgment sets forth several specific requirements intended to enhance the public's use and enjoyment of Pier 6, including the construction of a dedicated pedestrian walkway around the full perimeter of the Pier and additional public amenities such as benches and bike racks. *Id.* ¶ 28(b)(2) & (5). The Consent Judgment then specifies that the work on the surface of the Pier must be completed within one (1) year of the Department's issuance of a new Waterways license and that the installation of the new docking facilities must be completed within two (2) years of the Department's issuance of the new license. *Id.* ¶ 28(e).

(e) require Shipyard Quarters, because of the importance of securing the repair and reconstruction of the Marina to the overall resolution of this case and the water related public interests it seeks to promote, to pay a stipulated penalty of two hundred and fifty thousand (\$250,000) if, among other things, the new docking facilities at the Pier 6 and Pier 8 sections of the Marina are not constructed within the timeframes set forth in the Consent Judgment. Consent Judgment ¶ 49.

(f) require Shipyard Quarters to reduce the amount of parking on the surfaces of Pier 6 and Pier 8 and, except for up to five (5) short term drop-off/pick-up spaces reserved for Marina users on each of the Piers, to dedicate the remaining parking spaces for public parking (instead of private parking, which has been the case historically on both Piers). Consent Judgment ¶ 25 (Pier 8 Parking), 28(b)(3) (Pier 6 Parking).

(g) require Shipyard Quarters to hire a Massachusetts registered professional engineer to inspect the structural integrity of both the Pier 6 and Pier 8 sections of the Marina at five (5) year intervals and to then resolve any structural or maintenance issues within a specified timeframe in an effort to ensure the ongoing maintenance of the Marina in the future. Consent Judgment ¶¶ 27 (Pier 8 section), 28(b)(7) (Pier 6 section). Also in furtherance of that purpose, the Consent Judgment requires the submission to the Department for approval an Operation and Maintenance Plan that must include, among other items, a description of the process for conducting daily, monthly, and annual maintenance of the Marina. *Id.* ¶ 36.

(h) require Shipyard Quarters to agree that the Department may include certain terms of the Consent Judgment in the new Waterways license for the Pier 6 section of the Marina and, if Shipyard Quarters decides to apply for a new or amended Waterways

license for the Pier 8 section of the Marina, in any new or amended license for that section as well, and then allows, with one notable exception, the terms of the new or amended Waterways licenses to supersede the terms of the Consent Judgment and become the enforceable document(s). Consent Judgment ¶ 76. The notable exception is Paragraph 46, which states clearly that Defendants and their successors shall apply for and obtain approval from the Department prior to making any change in use or structural alteration to any portion of the Marina and prohibits them and their successors from arguing that the Navy Yard Act, St. 1978, ch. 556, exempts the Marina from the Waterways Act or its regulations. *Id.* ¶¶ 6, 46, 76.

4. Significantly, with the exception of the payment of the civil penalty within twenty-one (21) days of the entry of the Consent Judgment, the work required by the Consent Judgment will be performed by a new, responsible owner of the Marina. During settlement discussions, Oliner informed the Commonwealth that he intends to transfer complete ownership, management, and operation of the Marina, including title to all of the parcels that comprise the Marina, to Charlestown Marina LLC, at, or shortly after, the entry of the attached Consent Judgment, Consent Judgment at p.2, and that he will not own, operate, or manage the Marina after the closing date. *Id.* at p.2 & ¶ 63. The prospective new owner—Charlestown Marina—is managed by a respected Massachusetts-based developer with experience managing large marinas, including one located in Boston Harbor. While Oliner’s entities (Shipyard Quarters and LDA Pier 9) will remain responsible for the payment of the \$250,000.00 civil penalty, Charlestown Marina has agreed to assume, and be bound by, all of the obligations, rights, and benefits created by the Consent Judgment as of the date of closing, including the ones set forth in Paragraph 3 above, and to the Court’s jurisdiction over it for purposes of resolving any potential

disputes between the Commonwealth and Charlestown Marina after the closing date. *Id.* ¶ 9.

Importantly, Charlestown Marina has also represented, and the Attorney General has confirmed, that it has the financial and technical ability to assume the obligations and liabilities of the Consent Judgment that the Judgment will make applicable to the company on, and after, the closing date. *See id.* at p.2. In short, the potential new owner, who has ties to the community and experience managing marinas in the Commonwealth, will usher in a new, fresh start for the Marina and provide the public with the benefits the Waterways Act seeks to protect and promote. *See* G.L. c. 91, §§ 2, 10, 14, 18.

5. The Consent Judgment is fair, reasonable, and in the public interest. *See United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 2001); *see also* Mass. R. Civ. P. 58(a)(1) (“upon written agreement for judgment for a sum certain or denying relief, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter judgment.”).¹ First, the

¹ The Commonwealth is mindful, of course, that this is the standard that federal courts utilize to determine whether they should enter consent decrees between the United States and parties who are alleged to have violated federal environmental laws, but, in the absence of clear guidance from Massachusetts appellate courts, the Commonwealth accepts this standard for purposes of the review and entry of this Consent Judgment. The little Massachusetts precedent that touches on the issue suggests, however, that Massachusetts courts should, perhaps, be even more deferential to the terms of a settlement agreement embodied in a consent judgment, which has attributes of both a contract between the parties and a judgment of the court. *See Thibbitts v. Crowley*, 405 Mass. 222, 225 n.5, 226-27 (1989) (holding that absent an agreement of the parties or the litigation of newly-emergent issues, it was error for the trial court to modify a consent judgment); *see also City of Medford v. Corbett*, 302 Mass. 573, 574 (1939) (“[T]he assumed authority of attorneys of record to agree upon the amount of a judgment entered, or other disposition of the suit, must be recognized by the court . . .”). And that deference is especially justified in a case where the Attorney General has negotiated the terms of the consent judgment on behalf of the Commonwealth and an agency with special expertise in the subject matter. *See Zora v. State Ethics Comm’n*, 415 Mass. 640, 652 (1993) (when an agency is granted prosecutorial discretion, courts will not interfere with the exercise of that discretion in the absence of extraordinary circumstances); *see also Baglioni v. Chief of Police of Salem*, 421 Mass. 229, 233 (1995) (the “people’s elected advocate”—here the Attorney General—“is entrusted with the task of allocating limited resources to maximize public protection.”); *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 689 (1961) (“sound policy would strongly lead us

terms of the Consent Judgment were negotiated at arm's length and in good faith by experienced counsel, advocating for their respective clients' interests, including, as regards the Commonwealth, the public's interest. Second, the terms of the Consent Judgment are tailored to redress the alleged violations of the Waterways Act, G.L. c. 91, § 23, and its regulations, 310 C.M.R. § 9.22(1). In particular, the Consent Judgment requires the expeditious removal of the deteriorating docking facilities at the Pier 6 and Pier 8 sections of the Marina and the completion of any additional necessary short- and long-term repairs of any other deteriorating Marina structures. The Consent Judgment also requires the payment of a significant civil penalty and thus will serve to deter both the Defendants and other marina owners from committing similar alleged violations in the future. Third, the terms of the Consent Judgment will advance the objectives of the Waterways Act and its regulations by, as noted above, securing the relief necessary to redress the alleged violations. In addition, the Consent Judgment also requires the construction of new, state-of-the-art docking facilities—work that the Act and its regulations themselves do not clearly demand, but that will be of tremendous benefit to the public and the revitalization of the Charlestown waterfront. At the same time, the Consent Judgment will save the resources of the Court, the settling parties, and the taxpayers because the settlement agreement will preclude the necessity of further complex and prolonged litigation. Indeed, there is a strong public policy in the settlement of disputes without litigation, *United States v. Comunidades Unidas Contra La Contaminacion*, 204 F.3d 275, 280 (1st Cir. 2000), a policy that has “particular force where, as here, a government actor committed to the protection of the public interest has [engaged in the construction of the] proposed settlement,” *Cannons Eng'g*

to decline . . . to assess the wisdom of the Government's judgment in negotiating and accepting the 1960 consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting”).

Corp., 899 F.2d at 84; *see also supra* note 1, and that actor is “specially trained and oriented in the field,” as the Department is here. *See Comunidades Unidas Contra La Contaminacion*, 204 F.3d at 280; *see also supra* note 1.

* * *

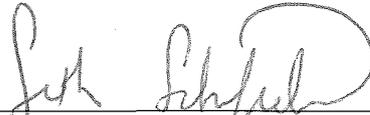
For the reasons stated above, and based on the agreement of the Commonwealth, Shipyard Quarters, LDA Pier 9, Oliner, and Charlestown Marina LLC, the Commonwealth respectfully requests that the Court sign the Consent Judgment at page 59, and enter it as a Final Judgment.

Respectfully submitted on this 23rd day of September, 2014,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

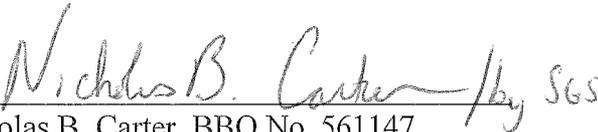


Seth Schofield, BBO No. 661210
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 963-2436
seth.schofield@state.ma.us

ASSENTED-TO as to the entry of the Consent Judgment on this 23rd day of September, 2014:

SHIPYARD QUARTERS MARINA, L.L.C.;
LDA PIER 9, L.L.C.; and MARTIN OLINER,
Individually,

By their attorney,



Nicholas B. Carter, BBO No. 561147
Todd and Weld, LLP
One Federal Street, 27th Floor
Boston, MA 02110-2012
(617) 624-4727
ncarter@toddweld.com

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT
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Defendants.)

CONSENT JUDGMENT

notice given in hand
 9-29-14
 SS
 Notice Sent
 9-29-14
 GAHJR
 HN
 NBC
 DHT
 ABK
 RTC
 ASF

JUDGMENT ENTERED ON DOCKET 9-29- 2014
 PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P.58(a)
 AND NOTICE SEND TO PARTIES PURSUANT TO THE PRO-
 VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

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APPENDIX:

- A. Parcel Map of Charlestown Navy Yard, dated March 22, 1978 (excerpted from I Nat'l Park Service, U.S. Dep't of Interior, Charlestown Navy Yard Historic Resources Study 204 (2010));
- B. Securing Line Layout Pier 6, Shipyard Quarters Marina, Bourne Consulting Engineering (Dec. 20, 2013),
Securing Line Layout Pier 8, Shipyard Quarters Marina, Bourne Consulting Engineering (Dec. 20, 2013), and
Wave Attenuator Pier 8, Shipyard Quarters Marina, Bourne Consulting Engineering (July 15, 2014);
- C. Mass. Dep't of Environmental Protection, Conditional Approval of Inspection Report and Repairs at Shipyard Quarters Marina (Charlestown) Boston, *Commonwealth v., Shipyard Quarters Marina, LLC et al.*, Suffolk Superior Court C.A. No. 2013-02774 (Nov. 25, 2013);
- D. Bourne Consulting Engineering, Shipyard Quarters Marina, Marina Inspection - Weekly Report (June 10, 2014);
- E. Image of Shipyard Quarters Marina - Pier 8 - Displaying Parallel Parking Prohibition;
- F. Signage Specifications of the MassDEP Waterways Regulation Program, Requirements (Sept. 25, 2009);
- G. Bourne Consulting Engineering, Shipyard Quarters Marina and Harborwalk, Facility Inspection - Repairs (Sept. 23, 2013, revised Oct. 10, 2013);
- H. Pier 6 Existing Conditions Plan (Sept. 9, 2014); and

I. Pier 6 Cross Section Sketches (Sept. 14, 2014).

INTRODUCTION

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (the Commonwealth), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the Department), filed a Complaint in this action on August 1, 2013, alleging that the Defendants, Shipyard Quarters Marina, L.L.C. (Shipyard Quarters), LDA Pier 9, L.L.C. (LDA Pier 9), and the sole manager of both of those entities, Martin Oliner (Oliner) (collectively, the Defendants), violated the Massachusetts Waterways Act, G.L. c. 91, §§ 1-63 (Act or Chapter 91), and its regulations, and the licenses issued pursuant to that Act at the Shipyard Quarters Marina, which is located in the former Charlestown Navy Yard, and which violations are described more fully in the Complaint (Dkt. No. 1);

WHEREAS, the Commonwealth filed its First Amended Complaint in this action on September 9, 2013, alleging, in addition to the claims in the original Complaint, that Defendants Shipyard Quarters and Oliner violated the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 1-11 (“Chapter 93A” or “the Consumer Protection Act”), and its regulations, by, among other things, advertising and leasing slips at the Marina to boaters without disclosing the known structural defects with Marina to potential and existing lessees.

WHEREAS, the docking facilities at the Pier 6 and Pier 8 sections of the Marina were closed on October 31, 2013.

WHEREAS, the Commonwealth’s First Amended Complaint seeks an assessment of civil penalties for the alleged violations and permanent injunctive relief, which allegations Shipyard Quarters, LDA Pier 9, and Oliner deny;

WHEREAS, Shipyard Quarters and Oliner intend to transfer complete ownership, management, and operation of the Marina, including title to all of the parcels that comprise the Marina, to Charlestown Marina LLC, a Massachusetts Domestic Limited Liability Company.

WHEREAS, except as to those paragraphs referenced expressly in the parenthetical in Paragraph 9 of the Consent Judgment, Charlestown Marina LLC has agreed to be added to the Consent Judgment as a Defendant but only for the purposes of assuming the obligations, rights, and benefits of, and to be bound by the terms and conditions of, the Consent Judgment from and after the effective date of the complete transfer of ownership, management, and operation of the Marina to Charlestown Marina LLC as evidenced by the deeds conveying title to all of the parcels that comprise the Marina (the "Closing Date"), which is anticipated to occur on or around September 22, 2014.

WHEREAS, Charlestown Marina LLC has represented that it has the financial and technical ability to assume the obligations and liabilities of the Consent Judgment that Paragraph 9 of the Consent Judgment will make applicable to it from and after the Closing Date.

WHEREAS, Martin Oliner has represented that he will not have any future direct or indirect involvement with the redevelopment, repair, operation, and/or management of the Marina after the Closing Date.

WHEREAS, the Commonwealth has agreed to relieve Shipyard Quarters, LDA Pier 9, and Oliner of their duties and obligations under the Consent Judgment after the Closing Date and upon the complete and timely payment of the civil penalty due under Paragraph 12(a) (that being \$250,000.00).

WHEREAS, the Commonwealth and the Defendants (collectively, the Parties) have reached an agreement to resolve the Commonwealth's claims against Shipyard Quarters, LDA

Pier 9, and Oliner, including an agreement on the amount of a civil penalty in regard to the allegations contained in the First Amended Complaint and a schedule for the approval/licensure, repair, and replacement of the existing Marina;

WHEREAS, the Commonwealth and the Defendants consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm's length; that implementation of this Consent Judgment will avoid further prolonged and complicated litigation between the Parties, and that this Consent Judgment is consistent with the goals of the Massachusetts Waterways Act and Chapter 93A, and is otherwise in the public interest;

NOW, THEREFORE, based on the Joint Motion of the Parties for Entry of this Consent Judgment, and before taking any testimony and without the admission of any liability for the claims alleged in the First Amended Complaint or the adjudication of any issue of fact or law, except as provided in Section II (Jurisdiction and Venue), it is **ADJUDGED, ORDERED, AND DECREED**, as follows:

I. DEFINITIONS

1. Unless otherwise expressly provided in this Consent Judgment, terms used in this Judgment that are defined by the Massachusetts Waterways Act, G.L. c. 91, §§ 1-63, and the Waterways Regulations, 310 C.M.R. §§ 9.01-9.55, shall have the meaning assigned to them in the Act and the Regulations.

2. Whenever the following terms are used in this Consent Judgment, the definition specified hereafter shall apply:

- (a) "Attorney General" shall mean the Massachusetts Office of the Attorney General.
- (b) "Boating Season" shall mean, as used in relation to the Marina, the period beginning on May 1 of each year and ending on the last day of October each year.
- (c) "Boston Conservation Commission" shall mean the commission of the City of Boston that administers the Wetlands Protection Act, G.L. c. 131, § 40, on behalf of the City.
- (d) "Charlestown Marina" shall mean Defendant Charlestown Marina LLC, a Domestic Limited Liability Company organized under the laws of the Commonwealth on August 5, 2014.
- (e) "Closing Date" shall mean the date that the complete ownership, management, and operation of the Marina is transferred to Charlestown Marina as evidenced by the deeds conveying title to all of the parcels that comprise the Marina, which is anticipated to occur on or around September 22, 2014.
- (f) "Commonwealth" shall mean the Commonwealth of Massachusetts.
- (g) "Day" shall mean a calendar day. A "business day" shall mean a day other than a Saturday, Sunday, or a State or Federal holiday.
- (h) "Defendants" shall mean Defendants Shipyard Quarters, LDA Pier 9, and Oliner. For purposes of this Consent Judgment only, from and after the Closing Date, the term shall also include Charlestown Marina due solely to its acquisition of the Marina and its agreement to assume the obligations, rights, and benefits of, and to be bound by the terms and conditions of, the Consent Judgment from and after the Closing Date.

- (i) "Department" shall mean the Massachusetts Department of Environmental Protection.
- (j) "Consent Judgment" shall mean this Consent Judgment and any attachments to it.
- (k) "E-mail," "Electronic mail," and "electronic copy" shall mean a written communication that is transmitted by e-mail or as an attachment to an e-mail using one or more of the e-mail addresses noted in Section XIII (Notices).
- (l) "Harborwalk" shall mean the public pedestrian walkway that runs parallel to the Boston Harbor shoreline within the geographic areas identified as parcels 2C, 3D, 3G, 3J on the plans attached as Appendix A, and extends onto and/or around the perimeter of the geographic areas identified as parcels 2B (Pier 6) and 3C (Pier 8) on the plans attached as Appendix A, all of which are owned or controlled by the Defendants or entities within the Defendants' control, including the Shipyard Quarters Trust.
- (m) "ISD" shall mean the City of Boston's Inspectional Services Department.
- (n) "LDA Pier 9" shall mean Defendant LDA Pier 9, L.L.C., a Domestic Limited Liability Company organized under the laws of the Commonwealth, which is the licensee for Chapter 91 License No. 10873 pertaining to the Pier 8 section of the Shipyard Quarters Marina.
- (o) "Oliner" shall mean Defendant Martin Oliner who is the sole Manager of Shipyard Quarters and LDA Pier 9.
- (p) "Parties" shall mean the Plaintiff Commonwealth and Defendants Shipyard Quarters, LDA Pier 9, Oliner, and, from and after the Closing Date, Charlestown

Marina, and any successor in interest to Shipyard Quarters, LDA Pier 9, Oliner, and/or Charlestown Marina.

(q) "Pier 6 section of the Marina" shall mean Pier 6, all structures located on and around Pier 6, including the building on the Pier and the docking facilities on either side of the Pier, any sections of the Harborwalk and other pedestrian walkways on and adjacent to Pier 6 and running to Pier 8, which are located in the former Charlestown Navy Yard and within the geographic areas identified as parcels 1B1, 2B, 2B1, 2C, and 3D on the plan attached as Appendix A and which are all owned or controlled by the Defendants or entities within the Defendants' control, including the Shipyard Quarters Trust.

(r) "Pier 8 section of the Marina" shall mean Pier 8, all structures located on and around Pier 8, including the docking facilities around the Pier, any sections of the Harborwalk and other pedestrian walkways on and adjacent to Pier 8 and running to Pier 6, which are located in the former Charlestown Navy Yard and within the geographic areas identified as parcels 3B1, 3C, 3C1, 3G, 3J on the plan attached as Appendix A and which are all owned or controlled by the Defendants or entities within the Defendants' control, including the Shipyard Quarters Trust.

(s) "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

(t) "Shipyard Quarters" shall mean Defendant Shipyard Quarters Marina, L.L.C., a Domestic Limited Liability Company organized under the laws of the Commonwealth, which currently owns and operates the Shipyard Quarters Marina.

(u) “Shipyard Quarters Marina” or “Marina” shall mean Pier 6, Pier 8, all structures located on and around both Piers, including the building on Pier 6 and the docking facilities around both Piers, the sections of the Harborwalk and other pedestrian walkways on and adjacent to Pier 6 and Pier 8 and running between the two Piers, and any other fixtures, which are located in the former Charlestown Navy Yard and within the geographic areas identified as parcels 1B1, 2B, 2B1, 2C, 3B1, 3C, 3C1, 3D, 3G, and 3J on the plan attached as Appendix A and which are all owned or controlled by the Defendants or entities within the Defendants control, including the Shipyard Quarters Trust.

(v) “Shipyard Quarters Trust” shall mean the trust established by the declaration of trust recorded in the Suffolk County Registry of Deeds on March 25, 1982 at Page 510 of Book 9928 (as amended).

(w) “Time of Year Restriction” shall mean the period between February 15th and June 30th of any year during which no in-water, silt or noise-producing work or work that will obstruct the waterway may be conducted to avoid potential impacts to winter flounder (*Pseudopleuronectes americanus*) spawning, larval settlement, and juvenile development as well as anadromous fisheries foraging and migration, unless otherwise allowed by the Massachusetts Division of Marine Fisheries (DMF) following the submission of a written request to DMF.

II. JURISDICTION AND VENUE

3. The Superior Court has jurisdiction over the subject matter of this action and over the parties to it pursuant to G.L. c. 91, §§ 23, 57, G.L. c. 93A, § 4, and G.L. c. 214, §§ 1, 3. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5 and G.L. c. 93A, § 4.

4. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

III. PARTIES BOUND

5. This Consent Judgment shall constitute a binding agreement between the Parties, and the Defendants consent to its entry as a final judgment by the Court and waive all rights of appeal upon its entry on the docket. If the Superior Court declines to enter this Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of any Party within fourteen (14) days of the Court's decision. If, on the other hand, the Superior Court determines that substantive modifications to this Consent Judgment are necessary prior to the Court's entry of it, the Parties shall enter into good faith negotiations to discuss the modifications, and this Consent Judgment shall be void unless the Commonwealth and the Defendants (including Charlestown Marina) agree otherwise in writing within fourteen (14) days of the Court's decision.

6. The provisions of this Consent Judgment shall apply to and bind the Defendants, and any person or entity acting by, for, or through the Defendants, including (i) Shipyard Quarters' and LDA Pier 9's managers, directors, officers, and supervisors, (ii) the Defendants' employees, agents, servants, attorneys-in-fact, successors, and assigns, and (iii) those persons in active concert or participation with the Defendants who receive notice of this Consent Judgment.

7. The Defendants shall provide a true copy of this Consent Judgment to all of their managers, directors, officers, and supervisors, employees, and agents whose duties might include compliance with any provision of this Consent Judgment. The Defendants shall also provide a copy of this Consent Judgment to any general contractor retained to perform work required under

this Consent Judgment and shall condition any such contract on the contractor's performance of the work in compliance with the terms of this Consent Judgment.

8. At least thirty (30) days prior to any change or transfer of ownership, management, or operation of the Marina, or any portion of the Marina, Defendants shall provide a copy of this Consent Judgment to the proposed owner, new manager, or operator (collectively the "transferee") and shall simultaneously provide written notice of the prospective change or transfer in ownership, management, or operation of the Marina, or any portion thereof, together with a copy of the proposed written change or transfer agreement, to the Attorney General by first class and electronic mail in accordance with Section XIII (Notices) of this Consent Judgment. No change or transfer in ownership, management, or operation of Shipyard Quarters Marina, or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Defendants or their managers, officers, directors, agents, successors, assigns, heirs, and/or servants of any obligation under this Consent Judgment, unless:

- (a) the transferee agrees, in writing, to undertake the obligations required by Section V (Injunctive Relief) and to be added as a Defendant or substituted for the Defendants as a Party under the Consent Judgment and thus assume the obligations, rights, and benefits of, and be bound by, its terms,
- (b) the Commonwealth determines that the transferee has the financial and technical ability to assume the Consent Judgment's obligations;
- (c) the Commonwealth agrees to consent, in writing, to relieve the Defendants of their obligations under the Consent Judgment; and
- (d) the transferee becomes a party to this Consent Judgment pursuant to Section XV (Modification).

Any attempt to change or transfer ownership, management, or operation of the Marina or any portion of the Marina without complying with this Paragraph shall constitute a violation of this Consent Judgment. Notwithstanding the foregoing, the Parties acknowledge and agree that, as to Charlestown Marina, the requirements of this Paragraph 8 have been met and that the closing on any mortgage secured by the Marina to loan funds to Charlestown Marina shall not itself be subject to the terms of this Paragraph. Any lender that holds a mortgage on the Marina, other than Oliner, Shipyard Quarters, LDA Pier 9, or any other entity controlled by Oliner (a "Mortgagee"), to secure a loan to Charlestown Marina shall not have any obligations under this Consent Judgment solely on account of holding or being granted a mortgage interest secured by the Marina; provided that such Mortgagee shall have the right to enforce its rights and remedies provided under its mortgage documents against Charlestown Marina without having to comply with the provisions of this Paragraph 8, including the entry by Mortgagee on the Marina to conduct a foreclosure sale or other legal purpose. If a Mortgagee forecloses on a mortgage secured by the Marina, then, except as set forth in the remainder of this Paragraph, the act of foreclosing shall not trigger the requirements of this Paragraph. Upon such foreclosure, the other parties to this Consent Judgment shall not be released from their obligations hereunder except in accordance with the provisions of Section 8(a)-(d) above, provided that the Mortgagee may also be added as a Party and Defendant, as those terms are defined in this Consent Judgment, in accordance with the terms of Section 8(a)-(d) above as of the date the foreclosure is final and Mortgagee shall have no liability for any prior actions, omissions, breaches, performance or compliance of any Defendant with this Consent Judgment. From and after the date said foreclosure is final, all of the terms of this Consent Judgment then remaining unfulfilled (except the ones set forth in Paragraphs 11, 12(a), 12(b), 14, 47, 49, 50, 51, 53, 54 and 63), including all

of the obligations, rights, and benefits created by those terms shall apply to, bind, and be enforceable against, the Mortgagee as if the Mortgagee were also defined as a Party and Defendant from and after the date of foreclosure; provided that a Mortgagee shall only be bound for performance obligations under this Consent Judgment to the extent Mortgagee has rights to utilize the permits, licenses and approvals issued with respect to any work to be undertaken hereunder. If such Mortgagee does not have rights or is not a permitted grantee as to any permit, license or approval required to perform work under this Consent Judgment, Mortgagee's time for performance hereunder shall be extended for such period of time necessary for Mortgagee to become a proper party grantee of all required permits, licenses and approvals. Notwithstanding the provisions herein, any claims against Mortgagee hereunder shall only be satisfied out of the interests of Mortgagee in the Marina (including any revenues or profits therefrom), and a Mortgagee shall only constitute a Party and Defendant hereunder for such time as it owns or has taken possession of the Marina pursuant to its mortgage. Upon the sale, transfer or further assignment by a Mortgagee of its interest in the Marina (which shall be permitted hereunder provided that such further owner or transferee assumes the obligations of a Defendant under this Consent Judgment), said Mortgagee shall have no further liability or obligations under this Consent Judgment.

9. Upon the effective date of the complete transfer of the ownership, management, and operation of the Marina, including title to all of the parcels that comprise the Marina (i.e., the Closing Date), to Charlestown Marina, whether it occurs before or after the entry of this Consent Judgment, all of the terms of this Consent Judgment (except the ones set forth in Paragraphs 12(a), 14, 47, and 63), including all of the obligations, rights, and benefits created by those terms shall apply to, bind, and be enforceable solely against, Charlestown Marina from and after the

Closing Date. And, in addition to the acknowledgment set forth in Section XVI (Authority of Signatory), by signing this Consent Judgment, Charlestown Marina expressly acknowledges its agreement with Paragraphs 10 and 11 and to the Court's jurisdiction over the company for purposes of this Consent Judgment and any action to enforce it and otherwise waives any defense based on a claimed lack of jurisdiction.

10. The Defendants shall not violate this Consent Judgment and the Defendants shall not allow their managers, officers, directors, agents, supervisors, servants, attorneys-in-fact, employees, successors, assigns, or contractors to violate this Consent Judgment. In any action to enforce this Consent Judgment, the Defendants shall not raise as a defense the failure by any of their managers, officers, directors, agents, supervisors, servants, attorneys-in-fact employees, successors, assigns, or contractors to take any actions necessary to comply with the provisions of this Consent Judgment.

11. In addition to any relief specifically provided in this Consent Judgment, the Defendants understand and agree that violations of this Consent Judgment may be punishable by contempt.

IV. PAYMENT OF CIVIL PENALTIES

12. Shipyard Quarters and LDA Pier 9 shall pay to the Commonwealth a civil penalty pursuant to the Massachusetts Waterways Act, G.L. c. 91, § 23, and the Consumer Protection Act, G.L. c. 93A, § 4, of four hundred and fifty thousand dollars (\$450,000.00), in the following manner:

(a) Within twenty-one (21) days of the entry of this Consent Judgment, Shipyard Quarters and LDA Pier 9 shall pay to the Commonwealth a sum of two hundred and fifty thousand dollars (\$250,000.00).

(b) The balance of the civil penalty, being two hundred thousand dollars (\$200,000.00), shall be suspended (Suspended Penalty). The Commonwealth shall waive (i) fifty thousand dollars (\$50,000.00) of the Suspended Penalty if Shipyard Quarters fully and timely complies with Section V.B. (Removal of Docking Facilities), (ii) fifty thousand dollars (\$50,000.00) of the Suspended Penalty if Shipyard Quarters fully and timely complies with Section V.D.1. (Pier 8 Section of the Marina Chapter 91 Reconfiguration), (iii) fifty thousand dollars (\$50,000.00) of the Suspended Penalty if Shipyard Quarters fully and timely complies with Section V.D.2. (Pier 6 Section of the Marina Chapter 91 Licensure), (iv) and the remaining fifty thousand dollars (\$50,000.00) of the Suspended Penalty if Shipyard Quarters fully and timely complies with Section V.F. (Completion of Long-Term Repairs). If the Commonwealth believes that Shipyard Quarters has not fully and timely complied with all of the terms of one or more of the Sections of this Consent Judgment identified in the previous sentence, then it shall notify Shipyard Quarters in writing of that determination, and of the amount due, and Shipyard Quarters shall pay that portion of the Suspended Penalty that has become due to the Commonwealth within thirty (30) days of the written determination, unless Shipyard Quarters requests reconsideration of the Commonwealth's determination pursuant to Section X (Dispute Resolution). If Shipyard Quarters requests reconsideration pursuant to Section X (Dispute Resolution) and the Commonwealth's determination ultimately becomes final or is otherwise upheld in whole or in part, Shipyard Quarters shall pay the portion of the Suspended Penalty that is due to the Commonwealth within fifteen (15) days after the Commonwealth's determination is final or the court's decision is entered on the docket.

(c) Notwithstanding any other provision of this Section IV, the Commonwealth may, in its unreviewable discretion, waive any portion of the suspended penalty that becomes due pursuant to this Consent Judgment.

13. Shipyard Quarters and LDA Pier 9 shall make the above-described civil penalty payment(s) by certified check payable to the Commonwealth of Massachusetts and sent to the Attorney General's Office in accordance with Section XIII (Notices). Each check shall include on its face the following information: *Commonwealth v. Shipyard Quarters Marina, LLC, et al.* Suffolk Super. Ct. C.A. No. 2014-02774-B.

14. In the event that Shipyard Quarters or LDA Pier 9 or both fail to make any payment due under this Consent Judgment, then Oliner shall make full payment of the outstanding amount, including any interest or costs due as determined by Section VIII (Interest and Collections), within seven (7) days of the date the Commonwealth sends a written demand for payment by first class and electronic mail to Oliner in accordance with Section XIII (Notices).

V. INJUNCTIVE RELIEF

A. Professional Engineer, Marina Use, Inspection Requirements

15. Retention of Professional Engineer: Shipyard Quarters shall utilize a Massachusetts Registered Professional Engineer (Professional Engineer) with experience in the design, construction, and repair of marine structures, including piers and docks, for the purpose of taking all steps necessary to comply with the terms in Section V (Injunctive Relief). If at any point after the entry of this Consent Judgment, Shipyard Quarters retains a Professional Engineer other than Ronald Bourne of Bourne Consulting Engineering, then Shipyard Quarters shall provide written notification to the Department by electronic mail, with an electronic copy to the Attorney General, of the name of the new Professional Engineer and the firm by which he or she is

employed, along with a description of the engineer's qualifications and experience, within five (5) days of retaining the new engineer;

16. Marina Use: Upon entry of this Consent Judgment, Shipyard Quarters shall use its best efforts to prevent members of the public and vessels from using and/or otherwise accessing the existing docking facilities at the Pier 6 and Pier 8 sections of the Marina. Best efforts include the installation of signage, barriers, or fences and/or additional monitoring to prevent such access until the existing docking facilities are removed completely from the water. The terms of this Paragraph shall expire upon the complete removal of the existing docking facilities from the water.

17. Ongoing Interim Inspections: Upon entry of this Consent Judgment and continuing until the docking facilities at the Pier 6 and Pier 8 sections of the Marina, including the docks and any pilings, lines, or chains used to secure those docks, are completely removed from the water, Shipyard Quarters shall:

(a) direct the Professional Engineer or his or her designee (who may not be an employee of any of the Defendants) to (i) conduct weekly visual inspections of the Marina, including, in particular, the pilings at the Pier 8 section of the Marina, every Monday or Tuesday for signs of further damage or imminent collapse or failure of any part of the Marina or other new threats to public safety, and (ii) prepare a written inspection report stating that the inspection was completed, summarizing the conditions at the time of the inspection (including tidal height), and describing what actions, if any, the Professional Engineer identified as being necessary to address any issues identified during the inspection, including when those actions were taken or will be taken;

(b) send the Professional Engineer's written inspection report to the Department by electronic mail, with an electronic copy to the Attorney General, by 3:00 p.m. on Friday of the week in which the inspection was conducted;

(c) implement any actions the Professional Engineer deems necessary to address any issues identified during a weekly inspection, including more frequent inspections by the Professional Engineer; and

(d) If after the Commonwealth reviews a written inspection report prepared by the Professional Engineer pursuant to this Paragraph 17 the Department determines that Shipyard Quarters must take additional actions to ensure public safety, then the Commonwealth shall confer with Shipyard Quarters in an effort to reach an agreement on the scope of the additional actions and the timing for their implementation. If the Commonwealth and Shipyard Quarters are unable to reach an agreement, then the Department shall send a written notice to Shipyard Quarters in accordance with Section XIII (Notices) that describes the additional actions and the time frame in which Shipyard Quarters must implement them, and Shipyard Quarters shall comply with the terms of the notice unless it requests reconsideration of terms of the notice pursuant to Section X (Dispute Resolution). If the Department's notice or a modified version thereof becomes final, Shipyard Quarters shall comply with the terms of the notice or modified version of the notice in accordance with the terms of the notice or a modified version of the notice.

18. Daily Inspections: Upon entry of this Consent Judgment, Shipyard Quarters shall:

(a) inspect the docking facilities at the Pier 6 and Pier 8 sections of the Marina at least once a day until the docking facilities are completely removed to ensure that they

remain stable and that the measures detailed in the December 2013 plans (Appendix B), as modified by the July 15, 2014 plan (Appendix B), remain in place as specified in that plan and any subsequent direction of the Professional Engineer;

(b) inspect the Harborwalk every Monday or Tuesday until the decking is replaced pursuant to Paragraph 33 and, if the inspection reveals any broken board(s) or other hazard(s), immediately mark the hazard in a manner that alerts the public and replace the broken board(s) and/or eliminate the hazard(s) within fourteen (14) days of identifying the issue;

(c) maintain a daily written log of the inspections required under this Paragraph, including the date and time of the inspection, the name of the inspector, a description of any issues identified during the inspections, and how and when the issue will be resolved. Shipyard Quarters shall keep the written log at the dockmaster's building on Pier 8 at the Marina, and provide copies of the written log to the Commonwealth on request; and

(d) if an inspection of either the docking facilities or the Harborwalk or both reveals a condition that may pose a threat to public safety or safe navigation in Boston Harbor, then Shipyard Quarters shall notify the Department by telephone and by electronic mail, with an electronic copy to the Attorney General, as soon as possible, but not later than twenty-four (24) hours after the time the issue was identified. The notification made by Shipyard Quarters under this Paragraph shall describe the hazard and how and when Shipyard Quarters will remedy the hazard. If the Department's approval is required to perform the necessary remedial work, then the Department will

act diligently to approve a complete request submitted to the Department by Shipyard Quarters.

B. Removal of Docking Facilities

19. Within fourteen (14) days of the entry of this Consent Judgment, Shipyard Quarters shall submit a request to the Department by electronic mail, with an electronic copy to the Attorney General, for approval pursuant to this Paragraph and 310 C.M.R. § 9.22(1)(d) to remove from the water all of the docking facilities and associated anchors, anchor chains, lines, and pilings at the Pier 6 and Pier 8 sections of the Marina (the “dock removal work”), which approval shall not be unreasonably withheld by the Department following receipt of a complete request that complies with the requirements of this Paragraph. The dock removal work shall include the removal of all pilings associated with the docking facilities that are still standing by either pulling the pilings from the harbor’s floor or cutting them at the mud-line, the utilization of all reasonable measures to recover any pilings or other failed parts of the Marina that have sunk to the harbor’s floor, and all steps necessary to comply with the requirements set forth in the last sentence of this Paragraph if any of the pilings associated with the docks at the Pier 8 section of the Marina will remain in place for any period after the associated docks are removed. The request shall describe the scope, method(s) of performance, and estimated schedule for performance of the dock removal work. On or before the time the request is submitted to the Department, Shipyard Quarters must also request any other necessary approvals to perform the dock removal work, including approval from the Boston Conservation Commission and ISD, if necessary. Shipyard Quarters shall make clear in any request(s) for approval to perform the dock removal work that it will remove the docks from the water, comply with the U.S. Coast Guard requirements regarding navigation hazards described at the end of this Paragraph, utilize all

reasonable measures to recover all sunken pilings, and either pull or cut at the mud line any pilings associated with the docking facilities. The U.S. Coast Guard Sector Boston has determined that pilings associated with the docking facilities at the Pier 8 section of the Marina that remain after the docks are removed will constitute a hazard to navigation pursuant to 33 C.F.R. § 64.31 due to their proximity to the Boston Main Ship Channel. Accordingly, Shipyard Quarters shall notify the U.S. Coast Guard Sector Boston prior to the removal of the docks at the Pier 8 section of the Marina for specific instructions regarding further reporting and marking obligations and thereafter comply with those instructions and the requirements of 33 C.F.R. § 62.32 (black and white buoys) and 33 C.F.R. § 64.11 (marking, lights, and reporting), unless instructed otherwise in writing by the U.S. Coast Guard Sector Boston.

20. Between the date the Department issues an approval for the dock removal work pursuant to Paragraph 19 and 310 C.M.R. § 9.22(1)(d) and October 31, 2014, which date shall be extended day-for-day if the Department takes more than ten days to approve the request after its receipt of a complete request for approval by Shipyard Quarters pursuant to this Section V.B., Shipyard Quarters shall completely remove from the water the docks that comprise the docking facilities at the Pier 6 and Pier 8 sections of the Marina. Within one-hundred and twenty (120) days of the date the Department issues an approval for the dock removal work pursuant to Paragraph 19 and 310 C.M.R. § 9.22(1)(d), Shipyard Quarters shall complete the remainder of the dock removal work. If the docks at the Pier 8 section of the Marina are removed before the associated pilings, whether or not they are broken and/or appear above or below the low tide line, then Shipyard Quarters shall comply with the requirements set forth in the last sentence of Paragraph 19 to alert vessels navigating in the area of the hazard to navigation until the pilings

are fully removed from the water by either cutting them at the mud-line or pulling them from harbor's floor.

21. On or before the removal work start date, Shipyard Quarters shall provide written notice by electronic mail to the Department, with an electronic copy to the Attorney General, stating the identity (including the contact information) of the marine contractor retained to complete the dock removal work. Within fourteen (14) days of the completion of the dock removal work, Shipyard Quarters shall send written notice by first class and electronic mail to the Department, with an electronic copy to the Attorney General, signed by the marine contractor and/or the Professional Engineer certifying: (a) the date on which the dock removal work was completed; (b) that the dock removal work was performed in accordance with this Section V.B. and Shipyard Quarters' request to perform the dock removal work approved by the Department; and (c) an explicit statement that all of the sunken pilings and other failed parts were recovered and that all of the other pilings were either pulled from the Harbor floor or cut at the mud-line. The certification made pursuant to this Paragraph shall include photographs documenting the removal work and compliance with the requirements in the last sentence of Paragraph 19 concerning hazards to navigation. If Shipyard Quarters was not able to recover all of the pilings and other failed parts (sunken or otherwise), then the certification shall specify the number of pilings and other failed parts that it was unable to recover, the last known location of the pilings and other failed parts; and the reason why those pilings and other failed parts were not recovered, including an explanation as to what measures were used to locate and recover the pilings and other failed parts.

C. Completion of Immediate Repairs

22. Within thirty (30) days of the entry of this Consent Judgment, Shipyard Quarters shall:

(a) complete any unfinished immediate repair work approved by the Department's November 25, 2013 Conditional Approval (Appendix C) and any other unfinished immediate repair work called for by Bourne Consulting in its June 10, 2014 Weekly Inspection Report (Appendix D);

(b) submit to the Department by first class mail and e-mail, with an electronic copy to the Attorney General, a report entitled the Immediate Repair Plan Completion Report, in narrative and plan form, prepared by the Professional Engineer that: (i) states whether all of the immediate repair work approved by the Department's Conditional Approval and otherwise called for by Bourne Consulting has been completed and, if not, the reason why it was not completed; (ii) describes all of the immediate repair work, along with photographs portraying the work and any plans submitted to ISD, if any; and (iii) certifies, pursuant to 310 C.M.R. § 9.37(1)(a), that the repairs are sufficient to restore the structural soundness of Pier 8 and the Harborwalk, including all portions of the areas described in the two Bourne Consulting letters dated November 5, 2013 (Appendix D) or, if the Professional Engineer cannot make that certification, then a description of what steps Shipyard Quarters must take before the Professional Engineer can make that certification.

23. If Shipyard Quarters' Professional Engineer cannot make the certification required by Paragraph 22(b)(iii), then Shipyard Quarters must take all steps necessary to enable the Professional Engineer to make that certification within thirty (30) days of the date Shipyard

Quarters submits the Immediate Repair Plan Completion Report. Within five (5) Business Days of the completion of the additional work, Shipyard Quarters shall submit to the Department by first class mail and e-mail, with an electronic copy to the Attorney General, a report entitled the Supplement to Immediate Repair Plan Completion Report that (i) describes the additional repair work, along with photographs portraying the work and any plans submitted to ISD, if any; and (ii) certifies, pursuant to 310 C.M.R. § 9.37(1)(a), that the repairs described in the Immediate Repair Work and the Supplement to the Immediate Repair Plan Completion Report are sufficient to restore the structural soundness of Pier 8 and the Harborwalk, including all portions of the areas described in the two Bourne Consulting letters dated November 5, 2013 (Appendix D) and any other areas addressed by Shipyard Quarters to comply with this Paragraph or Paragraph 22.

D. Approval Process for Reconstruction and Chapter 91 Licensure of the Marina

1. Pier 8 Section of the Marina Chapter 91 Reconfiguration

24. Chapter 91 Reconfiguration Approval Process:

(a) *Request for Approval:* Within sixty (60) days of the entry of this Consent Judgment, Shipyard Quarters shall submit a written request and the associated plans to the Department by first class mail and e-mail, with paper and electronic copies to the Attorney General, for approval, pursuant to 310 C.M.R. § 9.39(1)(b), to reconfigure the docking facilities approved by Waterways License No. 2170 within the reconfiguration zone authorized by Waterways License No. 10873, which license (No. 10873) shall expire by its terms and St. 2010, c. 240, sec. 174, as amended by St. 2012, c. 238, secs. 74-75, on March 13, 2015 if the work licensed by License No. 10873 is not completed before that date unless that date is otherwise extended by the Department pursuant to 310 C.M.R. § 9.25(1)(a). Upon receipt of a complete request to reconfigure the docking facilities that complies with this Paragraph and 310 C.M.R. § 9.39(1)(b), approval by

the Department of the complete request shall not be unreasonably withheld. In addition to the information required by 310 C.M.R. § 9.39(1)(b), Shipyard Quarters shall include in its request: (a) a description of the materials that Shipyard Quarters will use to construct the reconfigured docking facilities; (b) the design capacity of the docking facilities in terms of the intended lifespan, load capacity, and storm design capacity; (c) a certification, pursuant to 310 C.M.R. 9.39(1)(a)1., that the reconfigured dock facilities will be structurally sound; (d) an explanation as to how Shipyard Quarters will comply with 310 C.M.R. 9.39(1)(a)2. (safe and unobstructed navigational ingress and egress to the reconfigured docking facilities), 310 C.M.R. 9.39(1)(a)3.b. (sewage pumpout facilities), 310 C.M.R. 9.39(1)(a)4. (utility services), and 310 C.M.R. § 9.39(1)(a)5. (lighting); (e) a description of the method(s) for installing the reconfigured docking facilities; (f) a set of plans showing both the layout and cross-sectional details that complies with the requirements in 310 C.M.R. § 9.11(3)(c)1., including depicting the width of all fairways and distances between the docking facilities and parcel boundaries; and (g) the anticipated timeline for construction. If Shipyard Quarters does not know the exact materials that it will use to construct the reconfigured docking facilities at the time it submits its request under this Paragraph, then Shipyard Quarters shall submit that information to the Department by first class and electronic mail, with an electronic copy to Attorney General, for approval as soon as Shipyard Quarters possess that information but no later than thirty (30) days prior to the anticipated construction start date. Unless Shipyard Quarters can establish vis-à-vis a written letter from the relevant abutter that it has legal authority or permission to encroach on the abutter's parcel (including parcels numbered 0203517700 and

0203516001 on the City of Boston's assessor's Geographic Information System (GIS) (available at <http://www.cityofboston.gov/assessing/search/>) for the term remaining on Waterways License No. 2170, then the reconfigured docking facilities shall satisfy the setback requirement set forth in 310 C.M.R. 9.36(2).

(b) *Other Regulatory Approvals:* At least thirty (30) days prior to the construction start date, Shipyard Quarters shall send written notice to the Department by first class and electronic mail, with an electronic copy to the Attorney General, that it has obtained all necessary regulatory approvals for the work approved under this Section V.D.1., including approval under the Wetlands Protection Act, any necessary construction permits from ISD, and a 401 Water Quality Certification from the Department, if one is necessary, together with copies of the written regulatory approvals.

(c) *Work Start Notice:* At least three (3) Business Days prior to the construction start date, Shipyard Quarters shall send written notice to the Department by electronic mail, with an electronic copy to the Attorney General, notifying the Department when work will begin and the name and contact information for the contractor that will perform the work.

(d) *Construction Inspections:* During the performance of all work approved pursuant to this Section V.D.1., Shipyard Quarters shall direct its Professional Engineer to inspect all on-going work, as often as recommended by the Professional Engineer but no less than once every two weeks, to ensure compliance with the plans approved pursuant to this Section V.D.1. If Shipyard Quarters' Professional Engineer identifies any issues during his or her inspection, then Shipyard Quarters shall send a written report of the issue and the recommended solution to the issue to the Department by

electronic mail, with an electronic copy to the Attorney General, within two (2) days of the identification. Shipyard Quarters shall maintain a written log documenting the date and time of the inspection and the name of the inspector. The requirements of this Paragraph 24(d) shall expire as of the Closing Date.

(e) *Reconfiguration Work Completion:* By May 1, 2016, Shipyard Quarters shall complete the installation of at least fifty (50) vessel slips in accordance with the plans and specifications approved by the Department and in a condition that permits Shipyard Quarters to lease the slips to vessels for vessel use during the 2016 Boating Season. Shipyard Quarters shall make good faith efforts to lease the slips installed by the May 1, 2016 deadline, which shall not be less than fifty (50) slips, for the 2016 Boating Season. By May 1, 2017, Shipyard Quarters shall complete the installation of all of the remaining slips approved by the Department pursuant to this Section V.D.1. in accordance with the plans and specifications approved by the Department and in a condition that permits Shipyard Quarters to lease the slips for vessel use during the 2017 Boating Season. Shipyard Quarters shall make good faith efforts to lease the slips installed by the May 1, 2017 deadline, which shall not be less than all of the remaining slips approved by the Department, for the 2017 Boating Season.

(f) *Certificate of Compliance and Structural Certification:* Within sixty (60) days of the completion of the work approved in this Section V.D.1., Shipyard Quarters shall submit a written request in accordance with 310 C.M.R. § 9.19 to the Department using Bureau of Resource Protection-Waterways Form 05 (*available at <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-ww-05.html>*) by first class and electronic mail, with an electronic copy to the Attorney General,

requesting that the Department issue a certificate of compliance for the work approved pursuant to this Section V.D.1., which certificate of compliance shall not be unreasonably withheld by the Department upon receipt of a complete request.

25. Pier 8 Parking: Upon entry of this Consent Judgment, Shipyard Quarters shall:

(a) eliminate the parallel parking spaces identified on the plan attached at Appendix E, unless those spaces are otherwise approved by the Department in a new waterways license or an amendment to Waterways License No. 2170; and (b) manage the parking spaces that remain and are authorized by Waterways License No. 2170 as a parking facility open to the transient public, except that Shipyard Quarters may delineate up to five (5) of those remaining parking spaces for use as short term parking for drop-off/pick up by Marina users, provided however that Shipyard Quarters may restrict vehicular access to Pier 8 during the performance of any reconfiguration work approved by the Department pursuant to Section V.D.1. The five (5) short term parking spaces and the public parking spaces shall be clearly identified and numbered on the plan(s) submitted pursuant to Paragraph 26. Within sixty (60) days of the entry of this Consent Judgment, Shipyard Quarters shall clearly identify the five (5) short term parking spaces and the public parking spaces with appropriate signage and install and thereafter maintain one or more signs notifying the public that the parking on Pier 8 is public parking for waterfront users. If Shipyard Quarters would like the Department's guidance regarding the signage, then Shipyard Quarters shall provide the Department with a schematic of the proposed signage at least thirty (30) days before the expiration of the sixty (60) day deadline set forth in the previous sentence. Within ninety (90) days of the entry of the Consent Judgment, Shipyard Quarters shall send written notice, together with photographic documentation, to the Department by first class and electronic mail, with an electronic copy to the Attorney General, stating that it has complied with

the terms of this Paragraph. Unless otherwise approved by the Department in a new waterways license or an amendment to Waterways License No. 2170, the requirements of this Paragraph shall apply for the remaining term of Waterways License No. 2170.

26. Pier 8 Section of the Marina Plans: Within one hundred and eighty (180) days of the entry of this Consent Judgment, Shipyard Quarters shall submit to the Department by first class and electronic mail, with paper and electronic copies to the Attorney General, plans that accurately delineate all aspects of the Pier 8 section of the Marina as they exist at the time this Consent Judgment is entered and as required and/or approved to exist (i.e., the reconfigured docking facilities approved under this Section V.D.1.) by the terms of this Consent Judgment, including: (a) the surfaces of the Pier (including the parking layout); (b) the location of all structures, including the dockmaster's building on Pier 8 and the building that houses the sanitary facilities at the foot of Pier 8; (c) the location of the Harborwalk and any other walkways in the Pier 8 section of the Marina, (d) the location of all sanitary facilities (including the number of toilet fixtures), sewage pumpout facilities, and refuse collection receptacles; (e) the location of all public amenities, including Harborwalk signs, benches, and other structures on the Pier or the Harborwalk; (f) the location of all parking spaces (with each space numbered) and the short term parking spaces for drop-off/pick-up for users of the Pier 8 section of the Marina as allowed by Paragraph 25, (g) the reconfigured docking facilities approved under this Section V.D.1., and (h) the individual parcel boundaries, parcel identification numbers, and the name of the person or entity that owns the parcel for each of those parcels that make up the Pier 8 section of the Marina; provided, however, if Shipyard Quarters applies for a new Waterways License to cover the Pier 8 section of the Marina or for an amendment to Waterways License No. 2170 within such one hundred eighty (180) day period, then such period shall be tolled until such new or

amended Waterways License is issued or the application is denied and if such new or amended Waterways License is issued, the requirement to submit plans pursuant to this Paragraph 26 shall be of no further force or effect. If required, the plans to be submitted pursuant to this Paragraph 26 shall conform to the most current version of Appendix A (License Plan Application) of the Chapter 91 Waterways License Application (Form: Chapter 91 License), which is available at <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-ww-010314151617.html>.

The Department shall have sixty (60) days to review and comment on the plans submitted pursuant to this Paragraph 26. After the expiration of that sixty (60) period, Shipyard Quarters shall record both the Department's reconfiguration approval under this Section and, if applicable, the Pier 8 section Marina plans required by this Paragraph 26 so long as the plans accurately delineate all aspects of the Pier 8 section of the Marina as they exist at the time this Consent Judgment is entered and as required and/or approved to exist (i.e., the reconfigured docking facilities approved under this Section V.D.1.) by the terms of this Consent Judgment in accordance with 310 C.M.R. §§ 9.19(1) and (2), and, once recorded, the plans shall be deemed to be the license plans for Waterways License No. 2170.

27. Ongoing Inspection Obligation at Pier 8 Section of the Marina: Shipyard Quarters shall hire a Massachusetts registered professional engineer with experience in the design, construction, maintenance, and repair of marine structures, including piers, pilings, and docks, and qualified to certify structural integrity, to inspect the structural integrity of the Pier 8 section of the Marina, identify any maintenance issues, and prepare a written report describing the inspection, any maintenance issues, and a recommended course of action to address the maintenance issues once every five (5) years, with the first inspection to occur on or before the five (5) year anniversary of the date the Department issues the reconfiguration approval under

this Section V.D.1. Within ninety days (90) of each five (5) year anniversary, Shipyard Quarters shall submit an inspection report to the Department. If the registered professional engineer identifies any structural or maintenance issues, then Shipyard Quarters shall resolve the identified issue within sixty (60) days of the inspection, except that if Shipyard Quarters must first obtain any regulatory approvals to conduct the work, including, for example, a Final Wetlands Protection Act Order of Conditions, then Shipyard Quarters must submit an application for the relevant regulatory approval within forty-five (45) days of the date of the inspection and complete all of the necessary work within ninety (90) days of obtaining the relevant regulatory approval or within ninety (90) days of the end of any period in which a Time of Year Restriction prevents Shipyard Quarters from starting the work. Shipyard Quarters shall preserve at least one legible copy of each inspection report prepared pursuant to this Paragraph and documentation (including photographs) that any work necessitated by an inspection report was completed at the Marina for at least six (6) years from the date of the particular inspection report, and shall provide copies of that documentation to the Department or the Attorney General upon request. The requirements of this Paragraph shall be superseded if they are incorporated into a new waterways license for the Pier 8 section of the Marina or an amendment to Waterways License No. 2170. Notwithstanding any other available enforcement options, until the requirements of this Paragraph are incorporated into a new waterways license for the Pier 8 section of the Marina or an amendment to Waterways License No. 2170, the Department may enforce the requirements of this Paragraph as if they were set forth in Waterways License No. 2170

2. *Pier 6 Section of the Marina Chapter 91 Licensure*

28. Pier 6 Section of the Marina Licensing Process:

(a) *Chapter 91 Licensing Process:* Within one hundred and twenty (120) days of the entry of this Consent Judgment, Shipyard Quarters shall: (i) submit a complete

application for a Chapter 91 license pursuant to 310 C.M.R. § 9.11 to the Department by first class and electronic mail, with paper and electronic copies to the Attorney General, for approval of all structures and uses on Pier 6, including the principal building and a redefined public parking area on Pier 6 (nonwater-dependent uses), and a new dock system on either side of Pier 6 (a water-dependent use); (ii) submit complete applications for all other necessary regulatory approvals, including a Wetlands Protection Act Final Order of Conditions and a 401 Water Quality Certification, if one is necessary; and (iii) diligently pursue the issuance of the Chapter 91 License and any other necessary regulatory approvals. Upon receipt of a complete application, the Department will process the application pursuant to the requirements and procedures set forth in the Waterways regulations, and may include any reasonable conditions in the new Waterways License that the Department deems reasonably necessary to ensure compliance with the Act and Waterways regulations. Except as to any changes to the interior space of the principal building on Pier 6 (as delineated on the plan attached as Appendix H and which serves currently as the location of the restaurant known as Pier 6) that may be required to comply with Paragraph 37 (Sanitary Facilities), the principal building and the tower on Pier 6 are approvable as the structures currently exist (except as to any further modifications (e.g., an additional level of steel sheeting) to the tower to prevent individuals from climbing the tower). In regard to the current uses of the principal building, the tower, and public surface parking, as will be modified by the requirements of Paragraph 28(b)(2) and (3), those uses are approvable under the Waterways Regulations (310 C.M.R. § 9.32(1)(a)4.). In addition, Shipyard Quarters may continue to use and operate the principal building on Pier 6 as a restaurant, and use

the surface parking as public parking until the Department issues a new Waterways License pursuant to this Section and the Waterways regulations.

(b) *Specific Requirements for the Chapter 91 License Application:* In addition to the standards and requirements set forth in the Waterways regulations, Shipyard Quarters' application for a new Chapter 91 License pursuant to this Section shall comply with the following conditions:

(1) the license plans shall delineate the water-dependent use zone in accordance with 310 C.M.R. § 9.51(3)(c), and that delineated area shall be used for water-dependent uses, including pedestrian access as depicted on the plan attached at Appendix I;

(2) the license plans shall designate a formal pedestrian walkway with a width of up to twelve (12) feet (i.e., the Harborwalk) that extends, unimpeded around the full perimeter of Pier 6, except: (i) where restricted by the existing historic bollards, the gangway platforms for access to the docking facilities, and the utility chase that sits on the Pier's surface, (ii) at the end of the Pier where the size of the walkway and public space shall be governed by 310 C.M.R. § 9.51(3)(c)2.;

(iii) the width of the new section of the pedestrian walkway that will run, on the southerly facing side of the Pier, from the principal building (i.e., the current location of the restaurant known as Pier 6) to the landward end of the Pier shall be at least eight (8) feet except where restricted by the existing historic bollards and gangway platforms for access to the docking facilities, if any; (iv) the width of the section of the pedestrian walkway that will run, on the southerly facing side of the Pier, from the landward corner of the principal building to the end of the seaward

awning covered dining area shown on the plan attached as Appendix H shall be at least seven (7) feet and ten (10) inches wide as depicted on the plan attached at Appendix I except where restricted by the existing historic bollards and gangway platforms for access to the docking facilities, if any; and (v) the area north of the principal building where there may be a partially shared pedestrian/drive /fire lane as depicted on the plan attached at Appendix I.

(3) Shipyard may use the remaining interior space on the Pier (i.e., inside of the boundaries of the Harborwalk on the edges of the Pier and the water-dependent use zone at the seaward end of the Pier) for parking open to the public (which may include restaurant patrons, marina users, and other transient members of the public), except that Shipyard Quarters may delineate up to five (5) of the parking spaces for use as short term parking for drop-off/pick up spaces for Marina users. As part of the work approved in a new Waterways License, Shipyard Quarters shall install and thereafter maintain one or more signs notifying the public that the parking on Pier 6 is public parking for waterfront users.

(4) the license plans submitted along with the application under Paragraph this Section shall clearly delineate the location of the public parking spaces and up to five (5) drop-off/pick-up parking spaces for marina users per Paragraph 28(b)(3) on the Pier and assign each space a number;

(5) in accordance with 310 C.M.R. § 9.53(2)(b), the application and license plans shall specify additional pedestrian amenities on and around Pier 6, which may include signage, benches, lighting, trash receptacles, bike racks, planters, and/or binoculars;

(6) the license application and accompanying plans must make clear that the restroom facilities at the Marina and in the building on Pier 6 that is currently operated as a restaurant shall be open to non-patron use; and

(7) agree to the inclusion of an ongoing inspection obligation in the new Waterways License issued under this Section that will require Shipyard Quarters to hire a Massachusetts registered professional engineer with experience in the design, construction, maintenance, and repair of marine structures, including piers, pilings, and docks, and qualified to certify structural integrity, to inspect the structural integrity of the Pier 6 section of the Marina, identify any maintenance issues, and prepare a written report describing the inspection, any maintenance issues, and a recommended course of action to address the maintenance issues once every five (5) years, with the first inspection to occur on or before the five (5) year anniversary of the date the Department issues a new Waterways License under this Section. Within ninety days (90) of each five (5) year anniversary, Shipyard Quarters shall submit an inspection report to the Department. If the registered professional engineer identifies any structural or maintenance issues, then Shipyard Quarters shall resolve the identified issue within sixty (60) days of the inspection, except that if Shipyard Quarters must first obtain any regulatory approvals to conduct the work, including, for example, a Final Wetlands Protection Act Order of Conditions, then Shipyard Quarters must submit an application for the relevant regulatory approval within forty-five (45) days of the date of the inspection and complete all of the necessary work within ninety (90) days of obtaining the relevant regulatory approval or within ninety (90) days of

the end of any period in which a Time of Year Restriction prevents Shipyard Quarters from starting the work. Shipyard Quarters shall preserve at least one legible copy of each inspection report prepared pursuant to this Paragraph and documentation (including photographs) that any work necessitated by an inspection report was completed at the Marina for at least six (6) years from the date of the particular inspection report, and shall provide copies of that documentation to the Department or the Attorney General upon request.

(8) As required by the Emergency Certifications issued by the Department pursuant to 310 C.M.R. § 9.20 on June 20, 2014 and June 26, 2014, Shipyard Quarters shall include in its request for a new Waterways License under this Section V.D.2., including the accompanying plans, all measures Shipyard Quarters implemented to prevent from climbing the tower on Pier 6 and from climbing around the gated entrances to the Marina's docking facilities.

(9) Within 60 days of the date of the Department issues a new Waterways License under this Section V.D.2., Shipyard Quarters shall, pursuant to 310 C.M.R. § 9.18, record in the Suffolk County Registry of Deeds the new Waterways License and the accompanying plans.

(c) *Work Start Notice:* At least three (3) Business Days prior to the construction start date for the work approved in a new Waterways License issued in accordance with this Section, Shipyard Quarters shall send written notice to the Department by electronic mail, with an electronic copy to the Attorney General, notifying the Department when work will begin and the name(s) and contact information for the contractor(s) that will perform the work.

(d) *Construction Inspections:* During the performance of all work approved in a new Waterways License issued in accordance with this Section, Shipyard Quarters shall direct its Professional Engineer to inspect all on-going work, as often as recommended by the Professional Engineer but no less than once every two weeks, to ensure compliance with terms of the new Waterways License. If Shipyard Quarters' Professional Engineer identifies any issues during his or her inspection, then Shipyard Quarters shall send a written report of the issue and the recommended solution to the issue to the Department by electronic mail, with an electronic copy to the Attorney General, within two (2) days of the identification. Shipyard Quarters shall maintain a written log documenting the date and time of the inspection and the name of the inspector. The requirements of this Paragraph 28(d) shall expire as of the Closing Date.

(e) *Work Completion:* Within one (1) year of the date the Department issues a new Waterways License under this Section, Shipyard Quarters shall complete all of the work authorized by the new License other than the construction of the new docking facilities at and around Pier 6 (i.e., the Pier surface work). Within two (2) years of the date the Department issues a new Waterways License under this Section, Shipyard Quarters shall complete the construction of the new docking facilities authorized by the new License, the goal being to open the new docking facilities by the 2017 boating season.

(f) *Certificate of Compliance and Structural Certification:* Within sixty (60) days of the completion of the work approved by the new Waterways License, Shipyard Quarters shall submit a written request in accordance with 310 C.M.R. § 9.19 to the Department using Bureau of Resource Protection-Waterways Form 05 (*available at <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-ww-05.html>*) by first

class and electronic mail, with an electronic copy to the Attorney General, requesting that the Department issue a certificate of compliance or a partial certificate of compliance for the work approved by the new Waterways License, which certificate of compliance or partial certificate of compliance shall not be unreasonably withheld by the Department upon receipt of a complete request.

29. Pier 6 Section of the Marina Plans: The plans that accompany the application for a new Waterways License submitted pursuant to Section V.D.2. shall delineate all aspects of the Pier 6 section of the Marina, including: (a) the surfaces of the Pier (including the parking layout); (b) the location of all structures, including the principal building on Pier 6; (c) the location of the Harborwalk and any other walkways in the Pier 6 section of the Marina, (d) the location of all sanitary facilities (including the number of toilet fixtures), sewage pumpout facilities, and refuse collection receptacles; (e) the location of all public amenities, including Harborwalk signs, benches, and other structures on the Pier or the Harborwalk in the Pier 6 section of the Marina; (f) the location of all parking spaces (with each space numbered) and the short term parking spaces for drop-off/pick-up for users of the Pier 6 section of the Marina as allowed by Paragraph 28(b)(3), and (g) the individual parcel boundaries, parcel identification numbers, and the name of the person or entity that owns the parcel for each of those parcels that make up the Pier 6 section of the Marina. The plans shall conform to the most current version of Appendix A (License Plan Application) of the Chapter 91 Waterways License Application (Form: Chapter 91 License), which is available at <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-ww-010314151617.html>.

E. Additional Requirements

30. Within thirty (30) days of the entry of this Consent Judgment, Shipyard Quarters shall record this Consent Judgment at the Registry of Deeds within the chain of title of each deed for each parcel that makes up the Marina. Shipyard Quarters shall also ensure that the Consent Judgment is noted in Registry's Grantor Index under the name of the owner of the land for each parcel that makes up the Marina. Within thirty (30) days of such recording, Shipyard Quarters shall provide written notice of said recording, including the identity of the Registry of Deeds in which the Consent Judgment is recorded, the date of recording, and the instrument or document number, to the Department by first class and electronic mail, with paper and an electronic copy to the Attorney General.

31. The Professional Engineer must sign and stamp all written reports and plans that the Engineer submits to the Department pursuant to Section V (Injunctive Relief).

32. Gazebo and Bench Repairs: Within seventy-five (75) days of the entry of the Consent Judgment, Shipyard Quarters shall replace or repair and repaint the metal gazebo-like structure located on the Harborwalk at the landward end of Pier 8 and remove and replace or repair and repaint all benches in the Marina, except that the benches on Pier 6 may be replaced or repaired and repainted by the deadline set forth in the first sentence of Paragraph 28(e).

33. Harborwalk Decking: Shipyard Quarters shall, in accordance with its maintenance obligations under the Act and the Waterways regulations, replace all of the decking that has not already been adequately replaced since January 1, 2013 on the sections of the Harborwalk on and adjacent to Pier 8 (including the section to the North that runs in front of the structure sometimes referred to as the "bathhouse") and the section of the Harborwalk that runs between Pier 8 and Pier 7 (but excluding from the latter the bridge constructed of timbers (instead of decking) that

begins at the landward end of Pier 7 and is identified as the "Wood Bridge" on page 3 of Plan Book 11062 of the Suffolk County Registry of Deeds) (all of which work is referred to as the "Pier 8 Decking Replacement Work") after receipt of any necessary permits from the City of Boston, including one or more permits from ISD, and in accordance with the following schedule and terms: (1) by April 1, 2015, Shipyard Quarters shall replace all of the decking that has not already been adequately replaced since January 1, 2013 on the backwards L shaped section of the Harborwalk that starts at the southerly facing, landward edge of Pier 8 and runs in a southerly direction towards Pier 7 to the beginning of the Wood Bridge; and (2) by July 15, 2015, Shipyard Quarters shall replace the remainder of the decking that has not already been adequately replaced since January 1, 2013 on the sections of the Harborwalk that are located on and adjacent to Pier 8 and to the North in front of the bathhouse. In addition, by the deadline set forth in the first sentence of Paragraph 28(e), Shipyard Quarters shall, in accordance with its maintenance obligations under the Act and the Waterways regulations, replace all of the decking that has not already been replaced since January 2013 on Pier 6 (the "Pier 6 Decking Replacement Work."). By August 1, 2015, Shipyard Quarters shall submit a written certification, along with photographic documentation, to the Department by electronic mail, with an electronic copy to the Attorney General, stating that Shipyard Quarters has completed the Pier 8 Decking Replacement Work in compliance with this Paragraph and describing the scope of the replacement work. As to the Pier 6 Decking Replacement Work, Shipyard Quarters shall make this certification as part of its request for a certificate of compliance or partial certificate of compliance pursuant to Paragraph 28(f). This Paragraph does not provide any additional or new rights or benefits to third parties, including the Parris Landing Condominium Trust, and is not

intended to affect any contractual right that Shipyard Quarters may have with any third party, including the Parris Landing Condominium Trust.

34. Harborwalk Signage: Within forty-five (45) days of the issuance of a new waterways license by the Department under Section V.D.2. and the Waterways regulations, Shipyard Quarters shall install and thereafter maintain signage at all entryways onto the Harborwalk, including at the southerly end of the Harborwalk on parcel 2C on Appendix A, at the northerly end of the Harborwalk on parcel 3J on Appendix A, at the entryways to Pier 6 and Pier 8, and at other appropriate locations at the Marina, including those already required by Waterways License No. 10873. Shipyard Quarters shall ensure that all new and existing signage (including signage previously identified on the plans accompanying License No. 10873) is identified clearly on the plans submitted pursuant to Paragraph 26. The signage Shipyard Quarters must install and maintain pursuant to this Paragraph shall comply with the Department's signage specifications, which are available at <http://www.mass.gov/eea/agencies/massdep/water/regulations/signage-specifications-of-waterways-regulation-program.html>, and attached to this Consent Judgment as Appendix F, and otherwise be consistent with the existing Harborwalk signage.

35. Ongoing Maintenance Obligation: Shipyard Quarters shall maintain the structural integrity of all elements of the Marina and otherwise maintain the Marina in good working order.

36. Operation and Maintenance Plan: Within sixty (60) days of the Department's issuance of the new Waterways License under Section V.D.2., Shipyard Quarters shall direct a qualified consultant(s) to submit an Operation and Maintenance Plan for the Marina to the Department for review and approval, with a copy to the Attorney General. Shipyard Quarters may prepare an Operation and Maintenance Plan that complies with this Paragraph for each

section of the Marina (i.e., the Pier 6 and Pier 8 sections of the Marina) if it deems separate Operation and Maintenance Plans for each section of the Marina preferable to a single Operation and Maintenance Plan for the Marina. The Operation and Maintenance Plan shall, at a minimum, include sections on the following subjects: (a) a description of the Marina, including, among other things, the number of slips associated with each Pier, sewage pumpout locations, the number of parking spaces, and the number of restrooms, etc., and diagrams depicting the Marina, (b) a description of the process for assigning vacant slips at the Marina and for accommodating transient users, (c) a description of the process for conducting daily, monthly, and annual maintenance of the Marina, including the identification and removal of floating debris, refuse, and other trash in and around the Marina, (d) a description of the process and need to hire a Massachusetts Registered Professional Engineer to conduct a complete inspection of the Marina at least once every five (5) years and to immediately make any necessary repairs to the Marina, (e) a description of the location at the Marina of all regulatory approvals, including Chapter 91 Licenses for the Marina, and any inspection reports, which shall be available on request, (f) a management plan that complies with the standards set forth in 310 C.M.R. § 9.35(5) (Management of Areas Accessible to the Public) and § 9.53(2)(d) , including a plan for accommodating public access during any private events held in compliance with the Management Plan on the Pier 6 or Pier 8 sections of the Marina, and (g) any other subjects that pertain to the use and maintenance of the Marina.

37. Sanitary Facilities: Shipyard Quarters shall ensure that the Marina is designed to comply with the design standards for marinas set forth in 310 C.M.R. § 9.39, including the provision of an adequate number of restrooms and refuse receptacles. If the number of sanitary facilities and refuse receptacles does not currently comply with 310 C.M.R. § 9.39, then

Shipyard Quarters shall request approval from the Department to add the required number of sanitary facilities and refuse receptacles to comply with this provision in its Chapter 91 license application for Pier 6 under Section V.D.2. or, as to the Pier 8 section of the Marina, in a request for an amendment to Waterways License No. 2170 or in a written notice of a Minor Project Modification pursuant to 310 C.M.R. § 9.22 (if applicable). Prior to re-opening the docking facilities at the Pier 6 and Pier 8 sections of the Marina, Shipyard Quarters shall submit a written certification for the sanitary facilities at each section of the Marina and supporting documentation to the Department by electronic mail, with electronic copies to the Attorney General, that certify (a) that the sanitary facilities are in good working order and (b) that the sanitary facilities comply with all applicable Massachusetts and local codes.

38. Unimpeded Public Access: In accordance with 310 C.M.R. § 9.35(5)(c), Shipyard Quarters shall remove (and otherwise not construct) any gates, fences, or other structures on any area open to public access that may impede or discourage the free flow of pedestrian movement. In particular, as part of its application for licensure of the Pier 6 section of the Marina pursuant to Section V.D.2., Shipyard Quarters shall propose to relocate the dumpster and its fenced enclosure, which are currently located on the southerly facing edge at the landward end of Pier 6 to a new location outside of the confines of the Harborwalk and that otherwise complies with this Paragraph.

39. Utilities: Shipyard Quarters shall ensure that all utility services at the Marina are constructed and maintained in good working order and in compliance with all applicable local and Massachusetts requirements.

F. Completion of Long-Term Repairs

40. Unless Shipyard Quarters submits to the Department, with a copy to the Attorney General, a written report from its Professional Engineer describing why any portion of the work otherwise required by this Paragraph is no longer necessary, within five (5) years of the entry of this Consent Judgment, Shipyard Quarters shall complete all of the work and repairs (other than the immediate repairs required by Section V.C.) identified by Bourne Consulting in its September 23, 2013 letter, as revised on October 10, 2013 (Appendix G) and any other work or repairs identified by Shipyard Quarters' Professional Engineer between the entry of this Consent Judgment and the five (5) year anniversary of this Consent Judgment as non-immediate work (the "long-term repairs"), provided, however, that Shipyard Quarters shall repair the support for the dock access platform on the northerly facing side of Pier 6 (as identified on Bourne Consulting drawing 33930-01-06, dated October 7, 2013 and prepared for Shipyard Quarters) before Shipyard Quarters may open and operate any new docking facilities that are accessed from that platform.

41. Within sixty (60) days of the completion of all of the work required by Paragraph 40, Shipyard Quarters shall submit to the Department by first class mail and e-mail, with an electronic copy to the Attorney General, a report entitled the Long-Term Repair Completion Report, in narrative and plan form, prepared by the Professional Engineer that: (i) states whether all of the work required by Paragraph 40 has been completed and, if not, the reason why it was not completed; (ii) describes all of the repair work, along with photographs portraying the work and any plans submitted to ISD, if any; and (iii) certifies, pursuant to 310 C.M.R. 9.37(1)(a), that, excepting any new docking facilities at the Marina, the Marina's structures (e.g., Pier 6, Pier 8, and the Harborwalk) are structurally sound or, if the Professional Engineer cannot make that

certification, then a description of what steps Shipyard Quarters must take before the Professional Engineer can make that certification.

42. If Shipyard Quarters' Professional Engineer cannot make the certification required by Paragraph 41, then Shipyard Quarters must take all steps necessary to enable the Professional Engineer to make that certification within ninety (90) days of the date Shipyard Quarters submits the Long-Term Repair Completion Report. Within five (5) Business Days of the completion of the additional work, Shipyard Quarters shall submit to the Department by first class mail and e-mail, with an electronic copy to the Attorney General, a report entitled the Supplement to the Long-Term Repair Completion Report that (i) describes the additional repair work, along with photographs portraying the work and any plans submitted to ISD, if any; and (ii) certifies, pursuant to 310 C.M.R. 9.37(1)(a), that, excepting any new docking facilities at the Marina, the Marina's structures (e.g., Pier 6, Pier 8, and the Harborwalk) are structurally sound.

G. Certification of Reports

43. Certification: The reports and/or certifications required by Paragraphs 21, 22(b), 23, 24(f), 28(f), 33, 37, 41, 42 of this Consent Judgment shall contain the following certification made by a person defined in Paragraph 44:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete (but not as to the veracity of the Professional Engineer's professional engineering determinations, conclusions, and structural soundness certifications). I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

44. Shipyard Quarters shall ensure that each certified statement is signed by a responsible corporate officer, such as a president, vice-president, secretary, treasurer, or manager who is responsible for environmental policy-making, decision-making, and compliance with environmental laws and regulations at the Marina and has the authority to make management decisions that govern the operation of the Marina and directing and authorize actions to ensure the Marina is in compliance with environmental laws and regulations.

45. Any information provided by the Defendants or their agents or contractors pursuant to this Consent Judgment may be used by the Commonwealth in any proceeding to enforce the provisions of this Consent Judgment.

H. Future Chapter 91 Licensing

46. After the entry of this Consent Judgment, Defendants shall apply for and obtain approval from the Department (e.g., a Chapter 91 license or Chapter 91 license amendment) in accordance with the Act and the Waterways regulations prior to making any change in use or structural alteration of a portion of the Marina. Defendants shall not argue in any proceeding that the terms of the Navy Yard Act, St. 1978, ch. 556, exempt the Marina from the requirements of the Waterways Act or the Waterways regulations or otherwise effected an extinguishment of the public trust rights in the geographic area encompassed by the Marina.

I. Other

47. Except as provided in Paragraph 63, in the event that Shipyard Quarters fails to timely and fully comply with any of the terms set forth in Section V. (Injunctive Relief), then Oliner shall be responsible for taking all actions necessary to comply with those terms, including paying for them, within a reasonable timeframe, as determined by the Commonwealth, from the

date the Commonwealth sends a written demand for compliance by first class mail and electronic mail to Oliner in accordance with Section XIII (Notices).

VI. SITE ACCESS

48. The Department shall have the right to enter the Marina at all reasonable times, without securing any judicial or administrative warrants or other process, for the purposes of conducting any activity related to the enforcement of the terms of this Consent Judgment, or for inspections and monitoring compliance with any applicable laws or regulations. The Defendants expressly consent to such entry by the Department. During any inspection, Department personnel may take videos or photographs of anything at the Marina; may obtain copies of any record or other documentary evidence regarding the Marina or operations at the Marina that is kept at the Marina or at any other location under the control of the Defendants; and may take samples of any waste, water, or other materials at the Marina. Any information, documents, samples, visual or recorded evidence, or materials or tangible evidence gathered by the Department during any inspection pursuant to this Paragraph may be used by the Commonwealth in an action to enforce this Consent Judgment or in any other administrative, civil, or criminal enforcement action against the Defendants or their successors.

VII. PAYMENT OF STIPULATED PENALTIES

49. Failure to Construct New Marina: If Shipyard Quarters fails to obtain Certificates of Compliance for the work authorized in the reconfiguration approval issued by the Department pursuant to Section V.D.1. and a new Waterways License issued by the Department pursuant to Section V.D.2. within thirty-two (32) months of the date Shipyard Quarters obtains a new Waterways License under Section V.D.2., then Shipyard Quarters shall pay to the Commonwealth a stipulated civil penalty of two hundred and fifty thousand dollars

(\$250,000.00), unless, and only in the event that Charlestown Marina acquires the Marina, before that time the Charlestown Marina obtains partial Certificates of Compliance and demonstrates to the satisfaction of the Commonwealth that there is no current market for additional slips or that it has an inability to pay for, or otherwise obtain additional financing to pay for, the completion of the work required to comply with this Paragraph. If Charlestown Marina intends to claim that it has an inability to pay or otherwise to obtain additional financing, then, prior to the deadline set forth in this Paragraph, it shall request that the Attorney General send the company the Attorney General's Environmental Protection Division's standard inability to pay form and thereafter submit the completed form, along with any supporting documents, to the Commonwealth. If the Charlestown Marina timely obtains partial Certificates of Compliance and demonstrates to the satisfaction of the Commonwealth that it has an inability to pay for, or otherwise obtain additional financing for, the completion of the work required to comply with this Paragraph, then the deadline set forth in this Paragraph shall be extended by one (1) year increments for a total period of three (3) years. Prior to the conclusion of each one (1) year increment, Charlestown Marina shall notify the Commonwealth in writing of its current financial status, including its efforts to obtain additional financing, and provide Commonwealth with any additional information or documentation necessary to supplement the information Charlestown Marina provided in association with initial inability to pay process. If, after the three (3) year period, Charlestown Marina demonstrates to the satisfaction of the Commonwealth there is no current market for additional slips or that Charlestown Marina continues to be unable to pay for, or otherwise obtain additional financing to pay for, the completion of the work required to comply with this Paragraph, and, at such time, Charlestown Marina is otherwise in compliance with all applicable provisions of this Consent Judgment (other than its obligations to complete

the work pursuant to Paragraph 24(a)-(f) (regarding the construction of reconfigured docking facilities at the Pier 8 section of the Marina) and Paragraph 28(a)-(f) (regarding the construction of new docking facilities and modifications to the Pier's surface at the Pier 6 section of the Marina), then Charlestown Marina shall be released from its obligation: (i) to construct any portion of the docking facilities at either the Pier 6 or Pier 8 sections of the Marina that have been approved in accordance with Paragraph 24(a)-(f) (Pier 8 section of the Marina) or Paragraph 28(a)-(f) (regarding the Pier 6 section of the Marina) but remain un-built as of the date of the Commonwealth's determination under this Paragraph ; and (ii) to pay a stipulated penalty under this Paragraph 49.

50. Non-Compliance with Injunctive Requirements:

In addition to the payments due under Section IV (Payment of Civil Penalties), Shipyard Quarters shall pay stipulated civil penalties to the Commonwealth for each violation of Paragraphs 33 (Harborwalk Decking) and 36 (Operation and Maintenance Plan) of Section V (Injunctive Relief), with each day such violation occurs or continues constituting an additional violation, as follows:

Period of Noncompliance	Penalty Per Day
1st through 30th day	\$250.00
31st through 90th day	\$500.00
Each day after the 90th day	\$1,000.00

51. All penalties due under this Section shall be paid by Shipyard Quarters and/or LDA Pier 9 within twenty-one (21) days of their receipt of a written demand from the Commonwealth, by means of a certified check payable to the "Commonwealth of Massachusetts" sent to the Attorney General's Office in accordance with Section XIII (Notices). Each check shall include on its face the following information: *Commonwealth v. Shipyard Quarters Marina, LLC et al.* – Stipulated Civil Penalties.

52. If Shipyard Quarters and/or LDA Pier 9 disagree that the act or omission to act on which the Commonwealth's written demand is based constitutes a violation of the terms of this Consent Judgment, then Shipyard Quarters and/or LDA Pier 9 may request reconsideration of the Commonwealth's written demand pursuant to the terms of Section X (Dispute Resolution). If Shipyard Quarters and/or LDA Pier 9 seek timely review of an adverse determination after reconsideration under Section X (Dispute Resolution) in this Court and the Court affirms the Commonwealth's position in whole or in part, then Shipyard Quarters and/or LDA Pier 9 shall, within thirty (30) days of the Court's decision, pay each stipulated civil penalty due from the date each violation occurred until the date compliance is achieved, together with the interest and costs provided for in Section VIII (Interest and Collections). If, however, Shipyard Quarters and/or LDA Pier 9 appeal the Superior Court's decision and the appellate court affirms the lower court's decision, in whole or in part, Shipyard Quarters and/or LDA Pier 9 shall, within fifteen (15) days of the final appellate court's decision, pay each stipulated civil penalty due from the date each violation occurred until the date compliance is achieved, together with the interest and costs provided for in Section VIII (Interest and Collections).

53. If Shipyard Quarters and/or LDA Pier 9 fail to pay stipulated penalties when due, the Commonwealth may institute proceedings to collect the penalties, as well as interest and expenses pursuant to Section VIII (Interest and Collections).

54. If the Commonwealth collects stipulated penalties pursuant to this Section, then neither the Commonwealth nor the Department may also seek administrative or civil penalties for the same violations in a separate administrative or civil action. If the Commonwealth elects not to collect stipulated civil penalties pursuant to this Section, then the Commonwealth and/or the Department may seek any available alternative administrative or civil penalties for any

violations of any requirements in Section V (Injunctive Relief). This paragraph shall not bar the Commonwealth from otherwise enforcing the terms of this Consent Judgment, including the initiation of an action for contempt for any noncompliance with this Consent Judgment. Nor shall the payment of stipulated civil penalties alter the obligations of Shipyard Quarters and/or LDA Pier 9 to complete performance as required by this Consent Judgment.

55. Notwithstanding any other provision of this Section, the Commonwealth may, in its unreviewable discretion, reduce or waive any stipulated civil penalties, interest, or costs that have accrued pursuant to this Consent Judgment.

VIII. INTEREST AND COLLECTIONS

56. If any payment required pursuant to this Consent Judgment is late or not made, the Defendants shall pay interest on any overdue amount for the period of such nonpayment at the rate of twelve percent (12%) pursuant to G.L. c. 231, § 6B, computed monthly, and shall pay all expenses associated with collection by the Commonwealth of the unpaid amounts and interest for any period of nonpayment after the payment obligation becomes due, including reasonable attorneys' fees.

IX. FORCE MAJEURE

57. Shipyard Quarters shall perform the actions required by Section V (Injunctive Relief) within the time limits established in that Section, unless performance is prevented or delayed solely by events that constitute a force majeure event. A force majeure event is an event that arises from causes entirely beyond Shipyard Quarters' control that will delay or prevent the performance of any action required by Section V (Injunctive Relief) despite Shipyard Quarters' due diligence. A force majeure event does not include, among other things, unanticipated or increased costs of performance, changed economic circumstances, or a financial inability to

perform. Except as excused by the Commonwealth pursuant to this Section, delay on the part of Shipyard Quarters' contractors, subcontractors, or consultants shall be attributable to Shipyard Quarters. The Commonwealth will not seek to collect the Suspended Penalty (or any part thereof) or Stipulated Penalties for an approved period of delay.

58. Any request to extend a deadline set forth in Section V (Injunctive Relief), including a deadline in a plan submitted to the Commonwealth by Shipyard Quarters pursuant to that Section, shall be made in writing to the Commonwealth, with a copy to the Department, prior to the expiration of the deadline. In its written request to the Commonwealth, Shipyard Quarters shall describe (a) what action has been affected, (b) the anticipated length of delay, (c) the cause of the delay, and (d) the steps or measures it will take to prevent or minimize the delay. Upon receipt of a timely request for an extension under this Section, the Commonwealth may, in its discretion, grant additional time if it is persuaded that the delay in performance is the result of a force majeure event. If the Commonwealth does not agree that a force majeure event has occurred or does not agree to the length of the extension of time sought by Shipyard Quarters and that disagreement cannot be resolved by informal negotiation, then the Commonwealth will notify Shipyard Quarters' in writing of the Commonwealth's position, which shall be binding unless the Shipyard Quarters invokes the Dispute Resolution procedures set forth in Section X (Dispute Resolution), except that Shipyard Quarters' must invoke those procedures within fourteen (14) days after receipt of the Commonwealth's written notice. In any proceedings under Section X (Dispute Resolution), Shipyard Quarters shall bear the burden of demonstrating, by a preponderance of the evidence, that (a) Shipyard Quarters provided the written request required above, (b) the delay in performance is the result of circumstances entirely beyond Shipyard Quarters' control, and (c) Shipyard Quarters could not have prevented or avoided the delay by

the reasonable exercise of due care, foresight, or due diligence. Shipyard Quarters' failure to comply with the notice requirements of this Paragraph shall constitute waiver of its right to request an extension of time with regard to any delay, and a waiver of any right to relief from the deadlines in Section V (Injunctive Relief) or any plan submitted to the Department pursuant to that Section.

X. DISPUTE RESOLUTION

59. Unless otherwise provided in this Consent Judgment, the Dispute Resolution procedures in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment. These Dispute Resolution procedures, however, shall not apply to actions by the Commonwealth or the Department to enforce obligations of the Defendants that have not been disputed in accordance with this Section, any challenge to the Department's decision on Shipyard Quarters' request for reconfiguration approval pursuant to Paragraph 24, or any challenge to the Department's decision on Shipyard Quarters' application for a license pursuant to Section V.D.2., which shall be resolved pursuant to any applicable laws and regulations that govern adjudicatory proceedings before the Department (except that Shipyard Quarters may not challenge in such a proceeding any term or issue that is set forth or resolved in this Consent Judgment). In the event that the Defendants utilize the procedures in this Section for a dispute arising under Section VII (Payment of Stipulated Penalties) or any other Section that identifies the Commonwealth instead of the Department, then all references to the Department in this Section shall refer to the Commonwealth.

60. If the Defendants disagree with a written determination of the Department that is within the scope of this Section, then the Defendants may, within thirty (30) days of the date of the Department's determination, request reconsideration of the determination by submitting to

the Department by first class and electronic mail, with paper and electronic copies to the Attorney General, any information or material it believes demonstrates that the Department's determination was erroneous. Unless otherwise provided in this Consent Judgment, the Defendants' failure to submit a request for reconsideration within the period specified in this Paragraph shall constitute a waiver of the Defendants' ability to seek reconsideration and, in that case, the Department's determination shall be final and unreviewable. If, after consideration of a timely request for reconsideration, the Department decides to affirm, in whole or in part, the agency's original determination, then the Department shall notify the Defendants of the agency's determination on reconsideration.

61. The Department's determination on reconsideration shall be final unless the Defendants seek judicial review of the dispute by filing with the Court and serving on the Commonwealth, in accordance with Section XIII (Notices), a motion in this case requesting judicial resolution of the dispute within fourteen (14) days of receipt of the Department's determination. In an action for judicial review under this Section, the Defendants shall bear the burden of demonstrating that the Department's determination on reconsideration was arbitrary and capricious or otherwise not in accordance with law. The Defendants' motion and supporting memorandum shall not raise any new issues or be based on new facts or information that the Defendants did not present previously to the Department during the dispute resolution process described in this Section.

XI. EFFECT OF CONSENT JUDGMENT

62. Upon compliance with the requirements of this Consent Judgment, (a) this Consent Judgment shall resolve Charlestown Marina's liability for the specific legal claims alleged in the First Amended Complaint that arose prior to the entry of this Consent Judgment, and (b) the

Commonwealth shall release Charlestown Marina for liability for the specific legal claims alleged in the First Amended Complaint that arose prior to the entry of this Consent Judgment. Notwithstanding anything to the contrary contained in this Paragraph 62, the First Amended Complaint does not currently name Charlestown Marina as a Defendant and thus does not allege any specific legal claims against it as of the Closing Date. On the condition that Charlestown Marina complies with the terms of this Consent Judgment, the Commonwealth covenants not to sue or take administrative action against Charlestown Marina pursuant to G.L. c. 91, § 23 for the ongoing violations of the Waterways Act and its regulations at the Marina, as alleged in the First Amended Complaint, that compliance with this Consent Judgment will remedy.

63. Notwithstanding any provision herein to the contrary, upon payment of the civil penalty due pursuant to Paragraph 12(a) (that being \$250,000.00) and after the Closing Date, (a) this Consent Judgment shall resolve Shipyard Quarters', LDA Pier 9's, and Oliner's liability for the specific legal claims alleged against them in the First Amended Complaint that arose prior to the entry of this Consent Judgment, and (b) the Commonwealth shall release Shipyard Quarters, LDA Pier 9, and Oliner (i) for their liability for the specific legal claims alleged against them in the First Amended Complaint that arose prior to the entry of this Consent Judgment, and (ii) from their obligations under this Consent Judgment. Notwithstanding the foregoing, this Paragraph shall not be effective if Shipyard Quarters, LDA Pier 9, and/or Oliner have any ownership, management, or control over the Marina, including the parcels that comprise the Marina, after the transfer of the Marina to Charlestown Marina. If Charlestown Marina makes any deferred payments and/or mortgage payments to Shipyard Quarters, LDA Pier 9, or Oliner, then the mere acceptance of those payments alone by Shipyard Quarters, LDA Pier 9, and/or

Oliner shall not constitute ownership, management, or control over the Marina under this Paragraph.

64. Nothing in this Consent Judgment, or any permit or approval issued by the Department relative to the Marina: (a) shall bar any action by the Commonwealth on any legal claim not specifically pleaded in the First Amended Complaint or for any violations not revealed to the Commonwealth; (b) shall be deemed to excuse compliance by the Defendants or any of the persons or entities otherwise bound by this Consent Judgment with any law or regulation; or (c) shall preclude a separate or ancillary action by the Commonwealth to enforce the terms of this Consent Judgment, any permit or other approval issued by the Department relative to the Marina. The Commonwealth expressly reserves all claims for injunctive relief for violations of all of the statutes and regulations referred to in this Consent Judgment, whether related to the specific legal claims resolved by this Consent Judgment or otherwise.

65. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Judgment.

XII. MISCELLANEOUS

66. The Defendants understand and agree that, pursuant to 11 U.S.C. § 523(a)(7), the civil penalty and any other costs or sums that the Defendants may be required to pay under this Consent Judgment are not subject to discharge in any bankruptcy.

67. The Defendants waive entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

68. The titles in this Consent Judgment have no independent legal significance and are used merely for the convenience of the Parties.

69. Massachusetts law shall govern the interpretation and enforcement of this Consent Judgment.

70. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next Business Day.

XIII. NOTICES

71. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Judgment shall be made in writing by first class mail to the following addresses:

For the Commonwealth and the Attorney General's Office:

Seth Schofield
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
seth.schofield@state.ma.us

For the Department:

Jennifer Davis, Senior Counsel
Office of General Counsel
Mass. Dep't of Environmental Protection
One Winter Street
Boston, MA 02108
jennifer.davis@state.ma.us

For the Shipyard Quarters, LDA Pier 9, and Oliner:

Martin Oliner
FDR Station
P.O. Box 1150
New York, NY 10150
moliner22@gmail.com

With a Copy to:

Nicholas B. Carter, Esq.
Todd and Weld, LLP
One Federal Street, 27th Floor
Boston, MA 02110-2012
(617) 624-4727
ncarter@toddweld.com

For Charlestown Marina:

Charles A. Lagasse Jr.
Charlestown Marina LLC
10 State Street, Suite 234
Newburyport, MA 01950
chucklagasse@gmail.com

With a Copy to:

Louis A. Monti, Esq.
Sullivan & Worcester LLP
One Post Office Square
Boston, MA 02109
lmonti@sandw.com

or, to such other place or to the attention of such other individual as a Party may from time to time designate by written notice to the other Party to this Consent Judgment.

XIV. INTEGRATION

72. Except as expressly set forth in this Consent Judgment, this Consent Judgment sets forth all of the obligations of the Parties and represents the complete and exclusive statement of the Parties with respect to the terms of the settlement agreement embodied by this Consent Judgment; any other representations, communications or agreements by or between the Parties shall have no force and effect.

XV. MODIFICATION

73. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court. The Department's decision to extend a deadline in this Consent Judgment shall not constitute a material change for purposes of this Paragraph.

74. Any disputes concerning modification of this Judgment shall be resolved pursuant to Section X (Dispute Resolution) of this Consent Judgment, provided, however, that instead of the burden of proof provided in Section X (Dispute Resolution), the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Rule 60(b) of the Massachusetts Rules of Civil Procedure.

XVI. AUTHORITY OF SIGNATORY

75. The person or persons signing this Consent Judgment on behalf of each Defendant acknowledges: (a) that he or she has personally read and understands each of the numbered Paragraphs of this Consent Judgment, including any Appendices attached to it; (b) that, to the

extent necessary, Shipyard Quarters' and LDA Pier 9's managers, directors, officers, and shareholders have consented to Shipyard Quarters and LDA Pier 9 entering into this Consent Judgment and to its entry as a Final Judgment; and (c) that he or she is authorized to sign and bind each of the Defendants to the terms of this Consent Judgment.

XVII. EFFECTIVE DATE

76. This Consent Judgment shall be effective when the Court enters the Consent Judgment on the docket, provided, however, that the terms of the new Waterways License issued under Section V.D.2. of this Consent Judgment shall, except as to the terms of Paragraphs 25, 26, 27, 31 (as to the Pier 8 section of the Marina only), 33 (as to the Pier 8 section of the Marina only), 34 (as to the Pier 8 section of the Marina only), 36 (as to the Pier 8 section of the Marina only), 37 (as to the Pier 8 section of the Marina only), 38 (as to the Pier 8 section of the Marina only), 39 (as to the Pier 8 section of the Marina only), 40-42, 43-45, 46, supersede the terms of this Consent Judgment sixty (60) days after Shipyard Quarters obtains Certificates of Compliance in accordance with Paragraphs 24(f) and 28(f) and submits a satisfactory report in accordance with the terms of Section V.F., whichever is later, as long as Shipyard Quarters: (1) has paid the civil penalty and any stipulated penalties required by this Consent Judgment; (2) agrees that the Department may incorporate terms from Paragraphs 28(b)(7), 34 (as to the Pier 6 section of the Marina only), 35, 36 (as to the Pier 6 section of the Marina only), 37 (as to the Pier 6 section of Marina only), 38 (as to the Pier 6 section of Marina only), and 39 (as to the Pier 6 section of Marina only) of this Consent Judgment into the new Waterways License issued under Section V.D.2.; and (3) is otherwise in compliance with the terms of this Consent Judgment. If Shipyard Quarters applies for and receives a new waterways license for the Pier 8 section of the Marina or a license amendment to License No. 2170, then, except as to Paragraphs

40-42, 43-45, 46, the new license for the Pier 8 section of the Marina or a license amendment to License No. 2170 shall supersede the terms of this Consent Judgment that apply to the Pier 8 section of the Marina sixty (60) days after Shipyard Quarters obtains a Certificate of Compliance for the work approved in the new license or amendment to License No. 2170, as long as Shipyard Quarters: (1) has paid the civil penalty and any stipulated penalties required by this Consent Judgment; (2) agrees that the Department may incorporate terms from Paragraphs 25, 27, 34 (as to the Pier 8 section of the Marina only), 35, 36 (as to the Pier 8 section of the Marina only), 37 (as to the Pier 8 section of the Marina only), 38 (as to the Pier 8 section of the Marina only), and 39 (as to the Pier 8 section of the Marina only) of this Consent Judgment into the new license or amendment to License No. 2170; (3) asks the Department to incorporate the structures approved by Waterways License No. 10873 (if that License has not expired) into the new license or amendment to License No. 2170; and (4) is otherwise in compliance with the terms of this Consent Judgment. Upon compliance with the terms of Paragraphs 40-42 and on the condition that the terms of this Consent Judgment have been superseded, as set forth above in this Paragraph 76, this Consent Judgment (other than Paragraph 46) shall terminate and be of no further force or effect.

XVIII. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction over this case for purposes of resolving disputes that arise under this Consent Judgment, entering orders modifying this Consent Judgment, or effectuating or enforcing compliance with the terms of this Consent Judgment and any approvals, licenses, permits, approvals, or directives issued by the Department pursuant to the terms of this Consent Judgment.

XIX. FINAL JUDGMENT

78. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

I HEREBY ATTEST AND CERTIFY ON

9/29/14, THAT THE FOREGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE, AND IN MY LEGAL CUSTODY.

**MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT**

BY:

Margaret M. Sella
Assistant Clerk

By the Court:

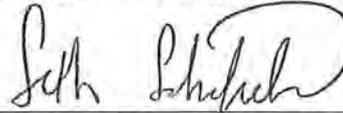
Elm Dalry
JUSTICE, SUPERIOR COURT

9/29/14
Date

The Undersigned Party enters into this Consent Judgment in the matter of *Commonwealth*
v. Shipyard Quarters Marina, LLC et al. (Suffolk Superior Court).

FOR THE COMMONWEALTH OF
MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

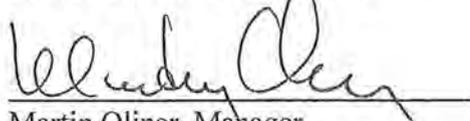


Seth Schofield, BBO No. 661210
Nancy E. Harper, BBO No. 547071
Assistant Attorneys General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2436
seth.schofield@state.ma.us

Dated: September ~~23~~, 2014

The Undersigned Party enters into this Consent Judgment in the matter of *Commonwealth v. Shipyard Quarters Marina, LLC et al.* (Suffolk Superior Court).

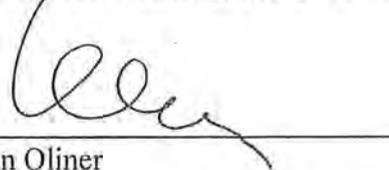
FOR SHIPYARD QUARTERS MARINA,
LLC, and LDA PIER 9, L.L.C.



Martin Oliner, Manager
FDR Station
P.O. Box 1150
New York, NY 10150
moliner22@gmail.com

Dated: September 23, 2014

FOR MARTIN OLINER, INDIVIDUALLY

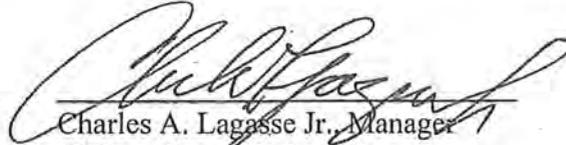


Martin Oliner
FDR Station
P.O. Box 1150
New York, NY 10150
moliner22@gmail.com

Dated: September 23, 2014

The Undersigned Party enters into this Consent Judgment in the matter of *Commonwealth v. Shipyard Quarters Marina, LLC et al.* (Suffolk Superior Court).

FOR CHARLESTOWN MARINA LLC



Charles A. Lagasse Jr., Manager
10 State Street, Suite 234
Newburyport, MA 01950
chucklagasse@gmail.com

Dated: September 23, 2014

Appendix A

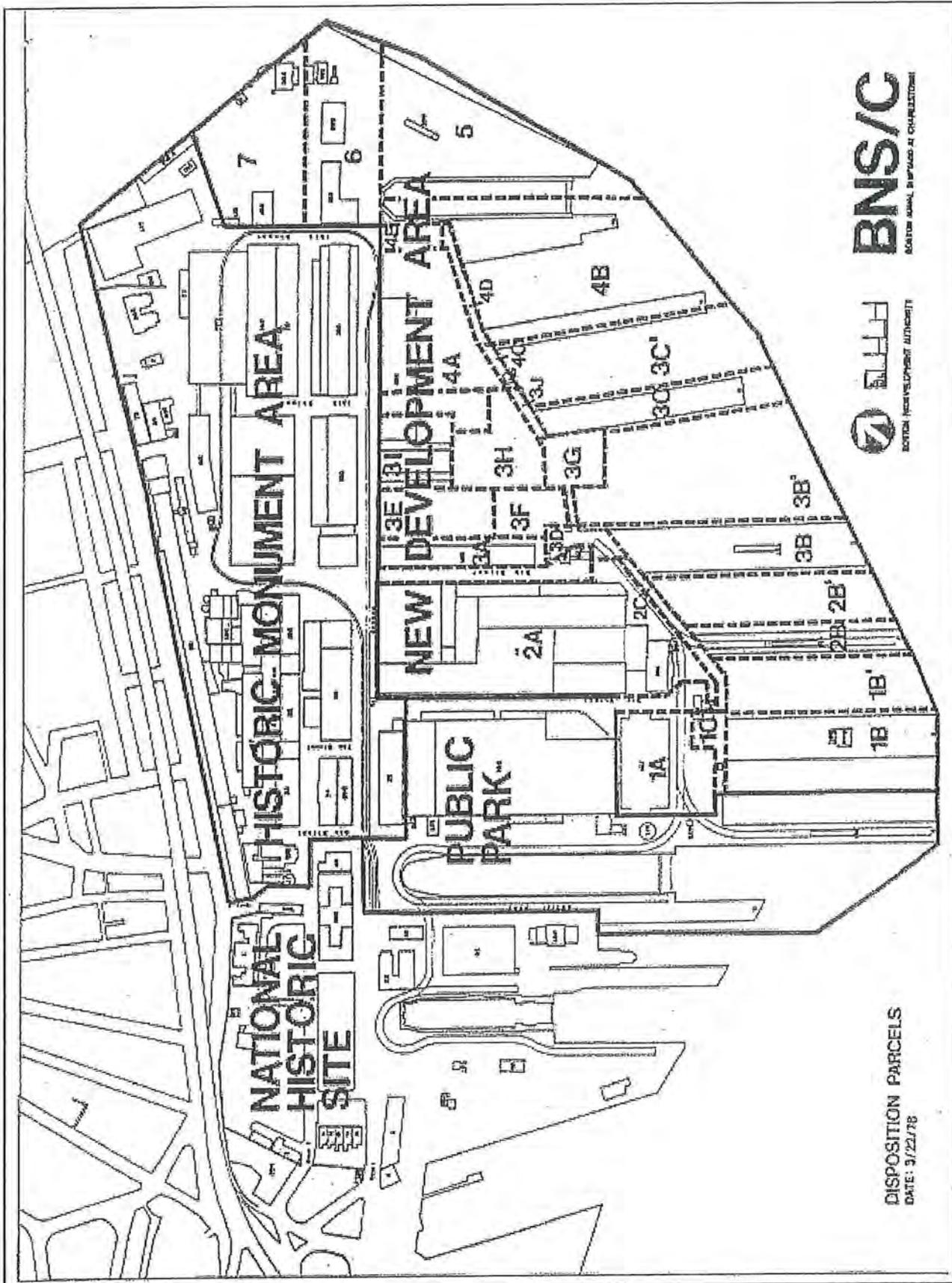


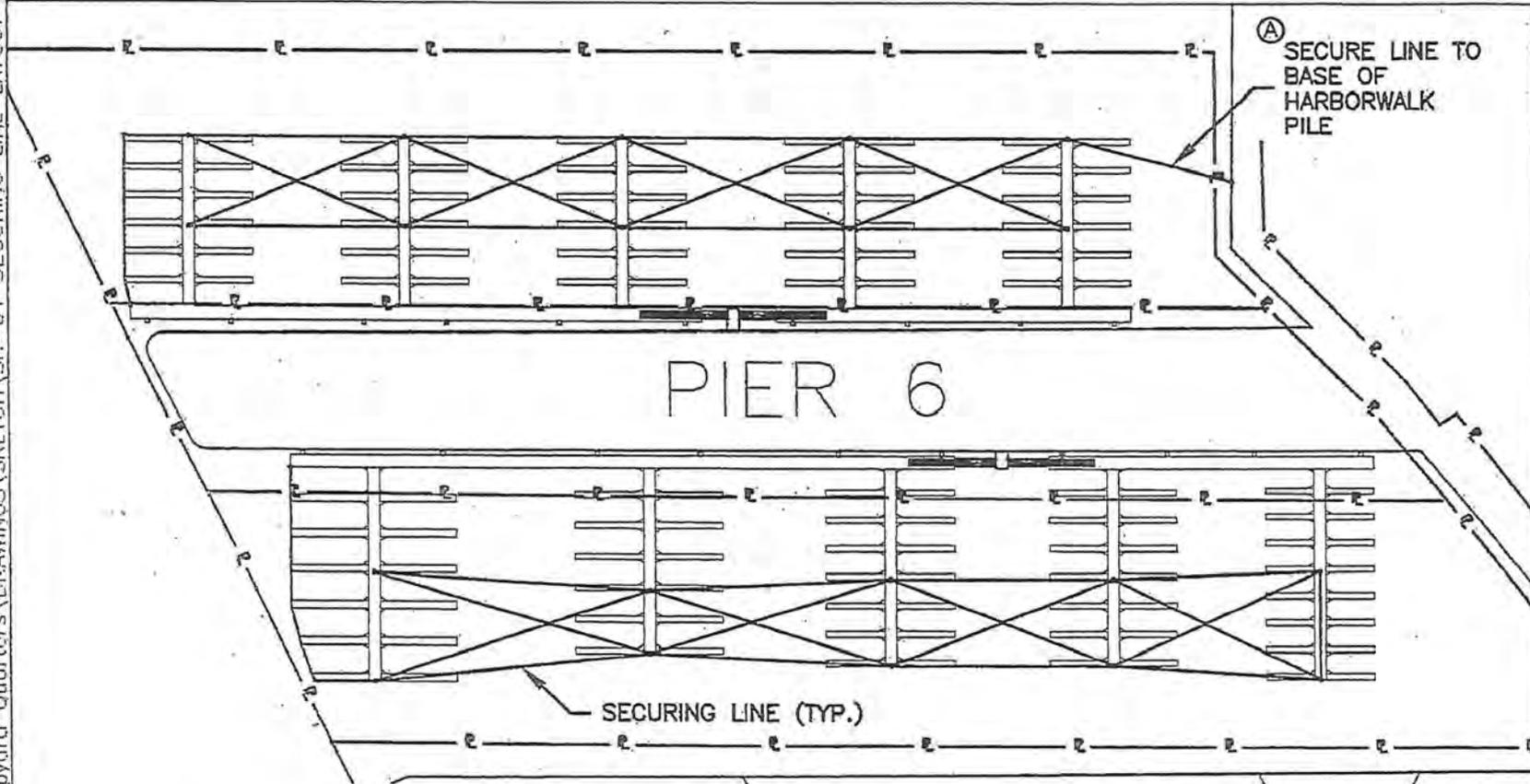
Figure 2-37 – Charlestown Navy Yard Disposition Parcels

Disposition Parcels, Mar. 22, 1978. This plan by the BRA shows the division of the Charlestown Navy Yard into four sections for disposition by the Navy, along with the subdivision of the New Development Area into individual parcels.

NPS TIC 457/D6040A

Appendix B

File: X:\33911-33930 Shipyard Quarters\DRAWINGS\SKETCH\SK-01 SECURING LINE LAYOUT



PIER 6

SECURING LINE (TYP.)

A SECURE LINE TO BASE OF HARBORWALK PILE

SECURING LINE LAYOUT

PIER 6

SHIPYARD QUARTERS
BOSTON, MA
DECEMBER 2013

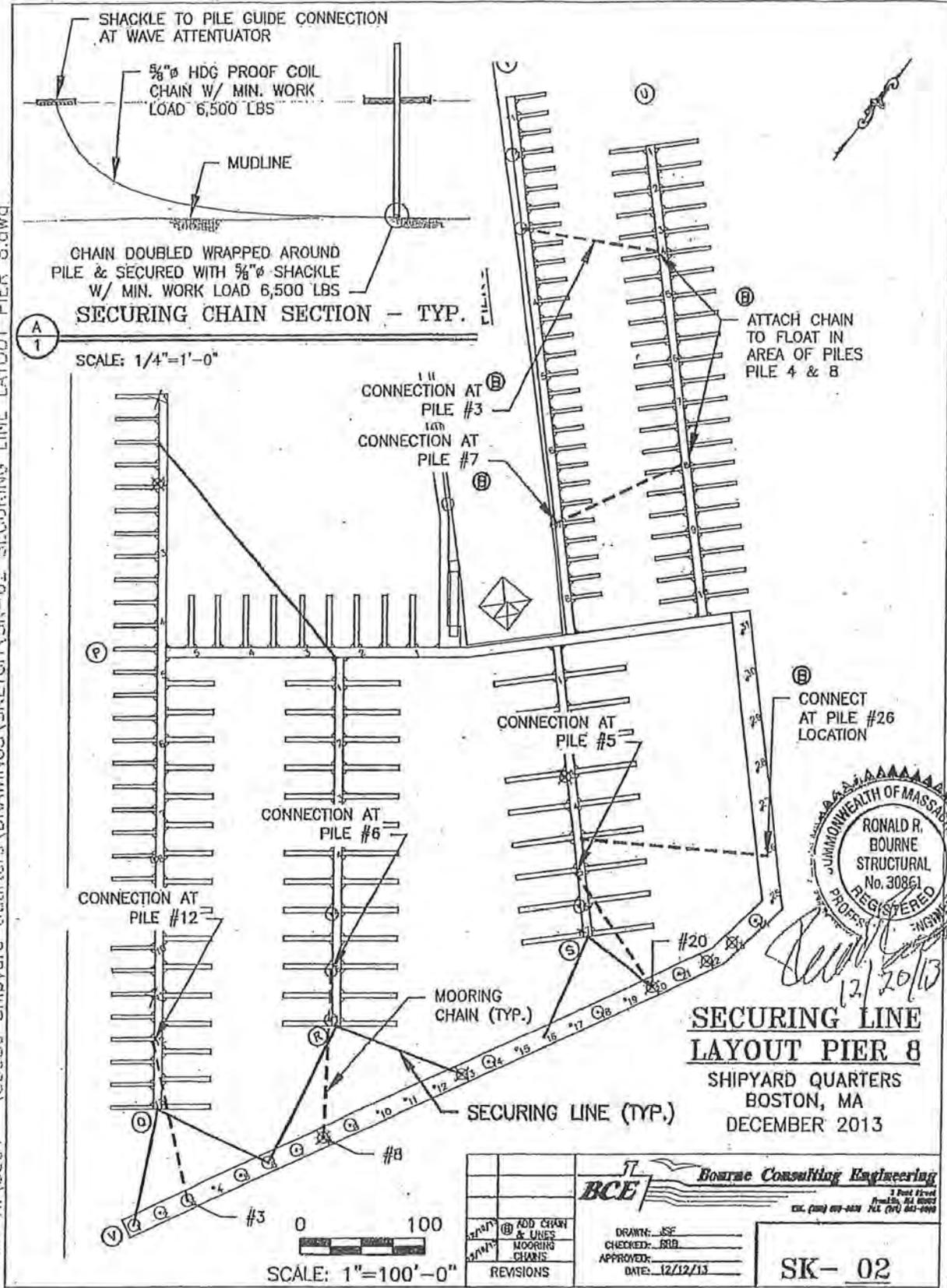


0 80

 SCALE: 1"=80'-0"

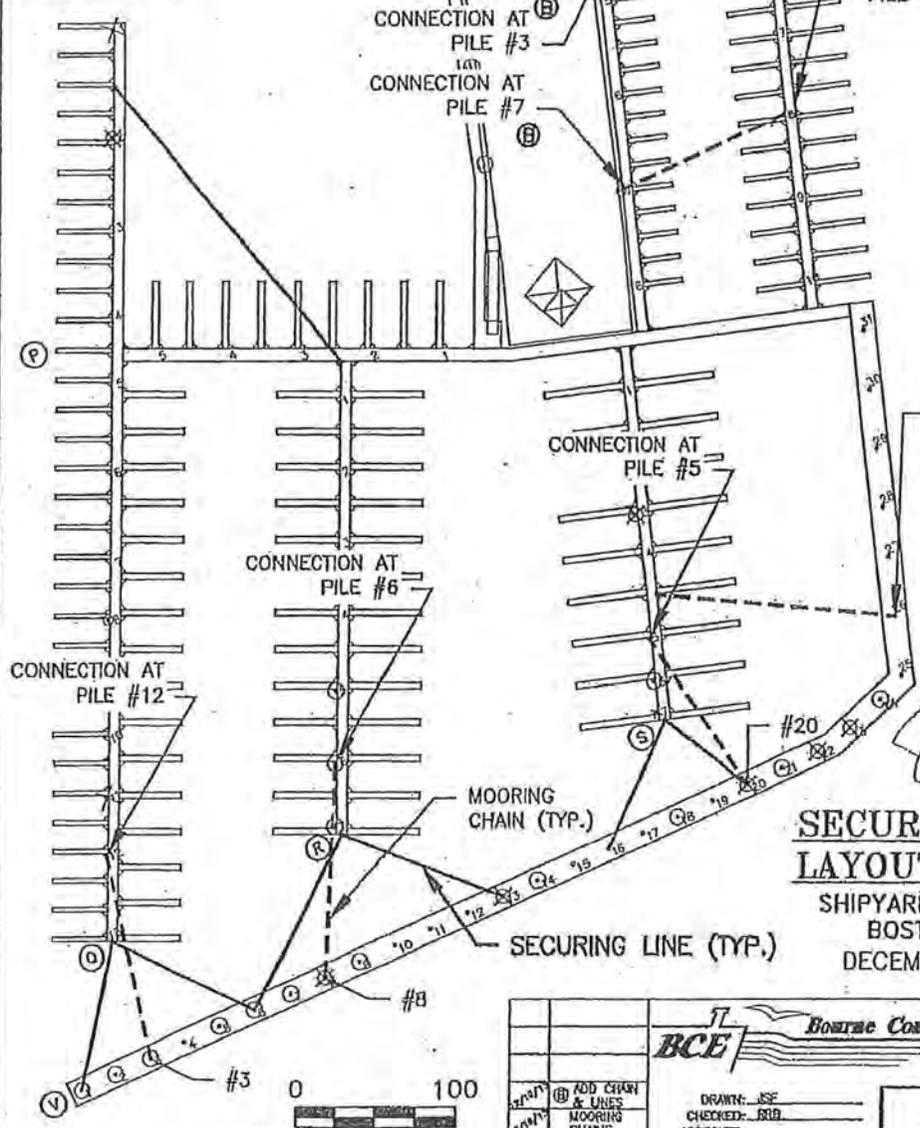
REVISIONS @ LINE ADDED		Bourne Consulting Engineering <small>1200 State Street Boston, MA 02118 TEL: (617) 552-6000 FAX: (617) 552-6001</small>
	DRAWN: JSE CHECKED: RCG APPROVED: _____ DATE: 12/12/13	SK-01
	DATE: 12/12/13	
	DATE: 12/12/13	

File: X:\33917-35930 Shipyard Quarters\DRAWINGS\SKETCH\SK-02 SECURING LINE LAYOUT PIER 8.dwg



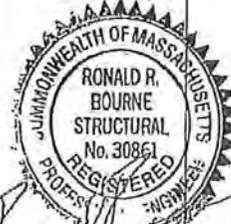
A
1

SCALE: 1/4"=1'-0"



ATTACH CHAIN TO FLOAT IN AREA OF PILES PILE 4 & 8

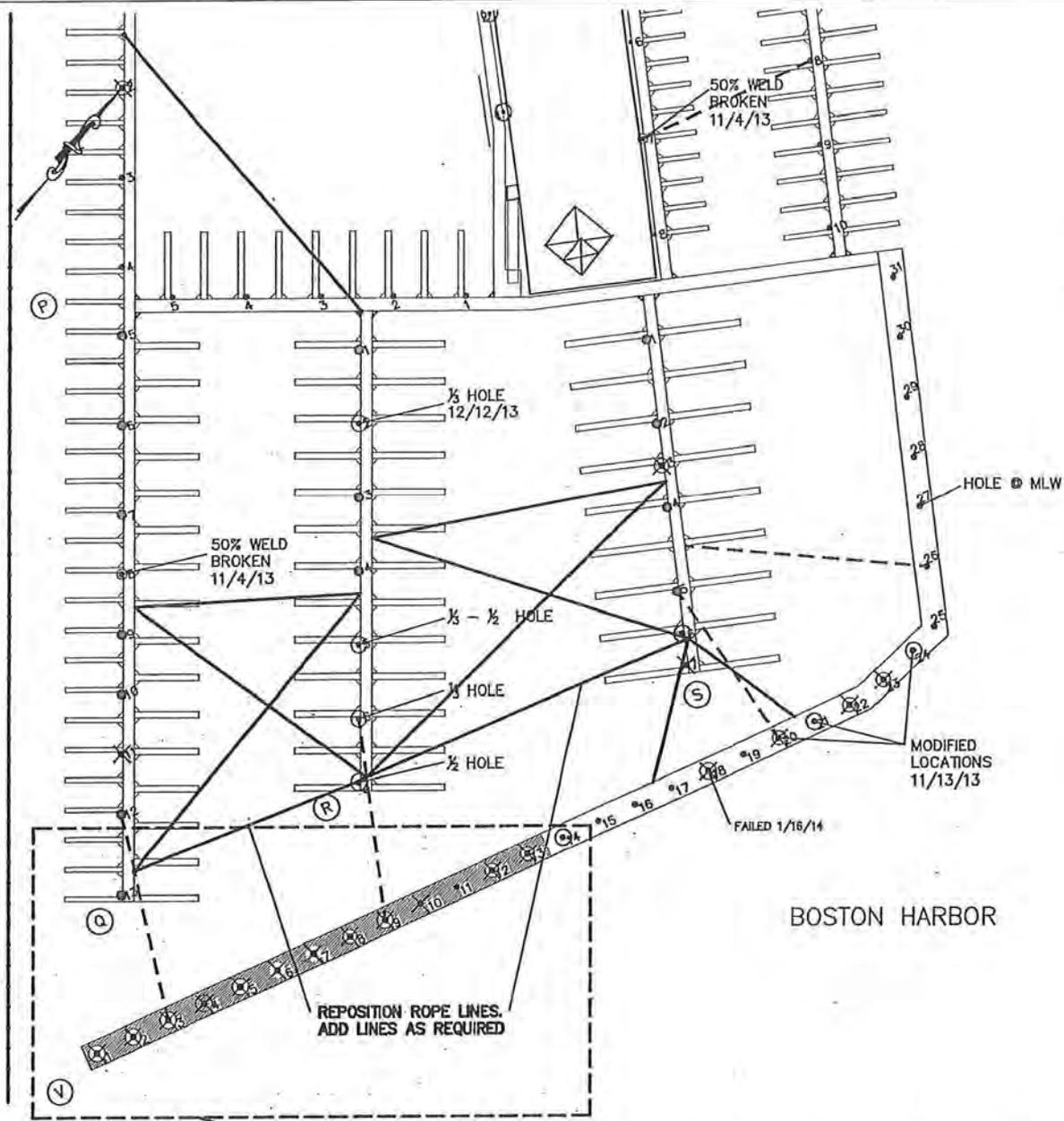
CONNECT AT PILE #26 LOCATION



SECURING LINE LAYOUT PIER 8
SHIPYARD QUARTERS
BOSTON, MA
DECEMBER 2013

REVISIONS ① ADD CHAIN & LINES MOORING CHAINS	DRAWN: JSE CHECKED: JSD APPROVED: _____ DATE: 12/12/13	BCE Bourne Consulting Engineering 3 Paul Street Franklin, MA 01903 TEL: (508) 861-1000 FAX: (508) 861-1009
	SK-02	

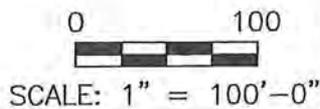
File: X:\33511-33530 Shipyard Quarters\DRAWINGS\Weekly Inspection Plans\Wave Attenuator--partial removal 071414.dwg



1. REMOVE & DISPOSE WAVE ATTENUATOR TO PILE 14
2. REMOVE REMAINING PILES & STUBS TO MUDLINE (PILES 1 TO 13)
3. CONTRACTOR SHALL MAKE EVERY ATTEMPT TO RETREIVE BROKEN PORTIONS OF PILES FROM MUDLINE

WAVE ATTENUATOR PIER 8

SHIPYARD QUARTERS
CHARLESTOWN, MA
JULY 15, 2014



Bourne Consulting Engineering

3 Boat Street
Franklin, MA 01830
TEL (508) 633-0000 FAX (508) 633-0000

EXHIBIT 1

Appendix C



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

November 25, 2013

Martin Oliner
Shipyard Quarters Marina, LLC
LDA Pier 9, LLC
C/o George A. Hall, Jr., Esq.
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

RE: Conditional Approval of Inspection Report and Repairs at Shipyard Quarters Marina
(Charlestown) Boston, *Commonwealth v. Shipyard Quarters Marina, LLC* et al.
Suffolk Superior Court C.A. No. 2013-02774

Dear Mr. Oliner,

On August 28, 2013, the Massachusetts Department of Environmental Protection Waterways Regulation Program (MassDEP) received an Inspection Report concerning the Shipyard Quarters Marina, which was prepared by Bourne Consulting Engineering (BCE). MassDEP did not approve that Report, as it is authorized to do by the Superior Court's August 22, 2013 Preliminary Injunction, because, among other things, the Report did not include the Immediate Repair Plan required by the Court's Order. After repeated requests, on November 5, 2013, the defendants in the above referenced matter submitted to MassDEP the November 5, 2013 Bourne Consulting Engineering (BCE) *Immediate Repairs – Time to Completion* and *Immediate Repairs – Scope of Repairs* memoranda (Immediate Repair Memoranda) and a plan attached to the memoranda entitled *Immediate Repair Areas*.

MassDEP has reviewed the Immediate Repair Memoranda and the accompanying plan and BCE's August 27, 2013 Inspection Report together with BCE's revised *Facility Inspection Repairs* memorandum, which was submitted to the Boston Conservation Commission on October 10, 2013. The work described in the Immediate Repair Memoranda is limited to Pier 8 and the section of the Harborwalk that runs between Pier 8 and Pier 7. While MassDEP continues to have questions about the scope and extent of the necessary repairs and does not agree with all of the statements and opinions made in the Inspection Report, in light of the serious threat to public safety, MassDEP approves the Inspection Report and the work described

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-639-7622 or 1-617-574-6868
MassDEP Website: www.mass.gov/dep

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in the Immediate Repair Memoranda; subject to the following conditions that are necessary to protect public safety:

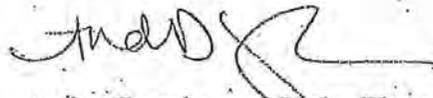
1. Given the acknowledged lack of certainty regarding the scope and extent of the necessary repairs, a Massachusetts registered professional engineer with experience in marine construction must be onsite to oversee all of the work performed. If that engineer is not employed by BCE, then the Department shall be notified in writing prior to the commencement of any work as to who will be that engineer.
2. The professional engineer shall be given the power to authorize all work necessary to restore the structural integrity of and around the areas described in the Immediate Repair Memoranda in the event that the construction contractor or professional engineer identifies additional areas in need of repair during the completion of the work described in the Immediate Repair Memoranda and required by this Conditional Approval.
3. Repairs that BCE identified in the October 10, 2013 *Facility Inspection Repairs* memorandum as in need of immediate repair but not included in the Immediate Repair Memoranda shall be completed in this work effort and addressed in the as-built report required by condition 4. Those repairs include: (a) the removal and replacement of the three piles BCE identified as missing or in critical condition on Pier 8; (b) the replacement of at least three beams on the north side of Pier 8 "near 3rd most outshore mooring pile"; (c) the replacement of all boards on the Harborwalk that are considered a tripping hazard and not yet repaired; and (d) the repairs necessary to restore the lateral capacity of the timber structure (e.g., failed steel brackets). If the latter deficiency is not the same as the one identified on page 4 of 10 of the August 27, 2013 Inspection Report (e.g., loss of physical connection between posts and platform), then the deficiency noted in the Inspection Report must also be corrected. The platform on the north side of Pier 6 can either be repaired or roped off since access to the floats is now prohibited.
4. A report, in narrative and plan form, prepared by the professional engineer, shall be provided to MassDEP detailing the extent of the work performed in each area and certifying that the completed repairs are sufficient to restore the structural integrity of Pier 8 and the Harborwalk, including all portions of Areas 1 – 3 located on the *Immediate Repair Areas* plan referenced above [310 CMR 9.37(1)(a)]. The report shall be submitted to MassDEP (and the Boston Conservation Commission) within 2 weeks of completion of the field work along with copies of any construction plans submitted and approved by the Boston Inspectional Services Department.

Pursuant to the Preliminary Injunction, the defendants in the above referenced matter must complete the immediate repair work within 21 days of this letter. In reviewing the Immediate Repair Memoranda, however, MassDEP noticed that BCE estimates that the completion of the work in Area 1 will take longer than 21 days to complete. MassDEP is amenable to a reasonable extension of this deadline for this specific work. If the defendants wish to discuss a potential extension of this deadline as to this work, then they should have their attorneys contact the Attorney General's Office by Wednesday, December 4, 2013 to facilitate a discussion regarding a potential extension. Please be advised that this Departmental action does not relieve or exempt

you of the requirement to obtain all other applicable local, state and federal authorizations necessary to perform said activities.

During its review, MassDEP noted a number of additional issues identified in the October 10, 2013 *Facility Inspection Repairs* memorandum and the Inspection Report that BCE did not consider in need of "immediate repair." Instead, BCE described these repairs as ones that should be completed in the "near future" or within the next five years. In addition, in the August 27, 2013 Inspection Report, BCE identified "severe localized corrosion" of the pilings that support Pier 6 and that "pile repairs should be implemented in the near future to maintain existing capacity." The latter issue is of particular concern to MassDEP because Pier 6 receives a high volume of pedestrian and vehicle use year round due to the existence of the restaurant on the Pier. Once the litigation is resolved, MassDEP expects that all repairs not identified as "immediate repairs" shall be included in a supplemental license application for reconstruction of the marina. If the professional engineer identifies additional issues or determines that any previously identified area is now in need of immediate repair based on the weekly inspections required by Paragraph 7 of the Preliminary Injunction, then those matters shall be addressed in accordance with the weekly inspection and reporting requirement set forth in that Paragraph.

Regards,



Andrea Langhauser, Senior Planner
Waterways Regulation Program

Cc: Gary P. Moccia, Deputy Commissioner and Inspector of Buildings
Stephanie Krueel, Boston Conservation Commission
Sgt. Cheevers, Boston Harbormaster
Seth Schofield, Assistant Attorney General
Anthony Fiotto, Esq.
Nicholas Carter, Esq.

Appendix D



Phone (508) 533-6666

Fax (508) 533-0600

email: bce@bournece.com

TO:	Asher Hertzberg Shipyards Quarters Marina 950 3rd Ave New York, NY 10022	DATE:	June 10, 2014
		BCE#	33930
		RE:	Shipyards Quarters Marina
FROM:	Blake Peters	SUBJ.:	Marina Inspection - Weekly Report

In response to the requirement of regular walkthrough site inspections *BCE* performed a walkthrough inspection of the Pier 6 & Pier 8 Marina facility with Shipyards Quarters Personnel.

Date: June 10, 2014 at about 12:00 pm, Tide was approximately mid tide (approximately +6.00 MLW)
Purpose: Compare the current conditions to previous inspection(s), note changes and actions required
Changes in conditions found during the inspection are noted in RED text.

During the time of the walk through the tidal elevation was about level approaching mid tide on an outward cycle.

All defects noted in previous reports and inspections are assumed to be accurate and existing across the site.

Consistent to the *BCE* May 2012 pile report, nearly all the piles had signs of advanced deterioration near the mean high water area and some additional piles had failed below the water.

The findings of this walk through are presented in RED below by dock lettering and on Exhibit 1 and 2 attached.

Pier 8

(V-Dock) Breakwater Floats

- Pile 12 is failed below water line. Pile laying on float. 04/15/14 - broken piece has been removed
- Pile 9 is failed (top missing) below water line. 02/11/14
- Pile 18 is failed (top missing) below water line. Pile guide is missing. 1/16/14
- Piles 8, 21, 23, 24 are now failed below the water line (piles missing) 11/4/13
- Pile Notation Changes as of 11/26/13
 - Piles 1 thru 3 and 5 are leaning, downgraded to 50% Deterioration
 - Pile 13 has failed, no remnants of the pile was on top of the floats
 - Pile 20 was not marked, condition downgraded to failed
 - Pile 21 was marked failed, changed to 15% deterioration
 - Pile 24 was marked failed, changed to 15% deterioration

Q-Dock

- Pile 2 is now failed below the water line. (pile missing)
- Pile 8 was found to have 50% of the perimeter weld failed at approximately +3.0 MLW.
- Inshore most finger had been damaged and has been removed and disposed

S-Dock

- Pile 3 is now failed below the water line. (pile missing)

T-Dock

- Pile 7 had a failed weld at approximate elevation of +5.0 MLW. (Appears to be supported in place solely by the supports attached to the pier deck.

U-Dock

- Pile 3 Does not exist and never did.

R-Dock

- Pile 2 -1/3 of perimeter hole.

O-Dock



Phone (508) 533-6666

Fax (508) 533-0600

email: bce@bournece.com

- Mooring chain at pile 3 got caught up in corroded pile at low water. Required float to be saw cut to relieve pressure. Float will be disposed by current contractor. Float is temporarily tied off to contractors barge. 5/27/14

All the docks units showed no major change in condition in comparison to recent inspections. The only vessels on the site is the marina work boat. All the docks had lines attaching the fingers together to limit movement and access. Previous inspection found one vessel sunk and scheduled for immediate removal.

Sunken Vessel removed along with 2 other vessels - 3 sailboats have been removed (2/11/14)- see Exhibit 1

Pier 6

North side: inshore end of main float - flotation unit is dislodged. (still connected to float)

North side / inshore most finger - now twisted about 90 degrees. Finger should be cut off and disposed of as note on Exhibit 2. Finger has been removed.

Harborwalk

- No changes to harbor walk found

SECURING OF FLOATS

Pier 8:

- Lines to secure floats have been added between the wave attenuator (V) and the Q, R and S floats as indicated on plan. Diving contractor was installing chains at time of inspection
- The installation of chains at 6 locations has been completed as required per sketch 02

Pier 6:

- Additional lines have been added to both the north side and south side of Pier 6 per the plan.
 - All lines extend back to main float
 - South side: Line to be secured back to base of Harborwalk pile has been installed as shown on Exhibit 2

Regularly scheduled walkthroughs should continue to be performed by *BCE* and Shipyard Quarters Marina Personnel to monitor the deterioration of the marina.

CHANGES FOUND: Inshore most finger float on Dock Q has been removed and disposed.

OTHER NOTES

- Contractor was working on Pier 8 continuing with pile posting
- Contractor has installed approximately 43 post repairs
- Gazebo structure was still onsite, barge was not onsite

BCE performed an inspection of the construction activities at Shipyard Quarters Marina. The inspection was performed from a float with the contractor foreman on June 2, 2014 between 9am and 10:30am. This inspection was performed in conjunction with the weekly marina inspection. The tidal elevation was around 0.0 MLW.

Current Status:

- 43 post repairs were completed.
- Deck repair around the gazebo has been completed.
- The gazebo has been positioned over concrete deck onsite, but was not repainted at the time of inspection.
- Repairs to the walkway between pier 7 and Pier 8 have been completed.

Outstanding work items:

- Min of 7 post repairs remain. Several repairs along the roadway edges were not completed.
- Min of 2 pile cap repairs, contractor was to review other repairs noted while under the pier.



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Fax (508) 533-0600

email: bce@bournece.com

- Several stringer repairs were identified as being required
- Installation of new piles
- Gazebo reinstallation

Anticipated completion estimated as June 13, 2014.

Per discussion with Sea & Shore Foreman Andy Arnold -06/10/14

Regarding outstanding work items listed above:

- 7 post repairs remain
- No pile cap or stinger repairs have been done outside of the area of the decking replacement at Gazebo.
- 2 pile cap repairs at north east corner - **does not anticipate performing work**
 - Indicated he did not have drawing titled "Repair Locations & Details" dated 02/06/14
- Stringer repairs identified - **does not anticipate performing work**
 - Indicated he did not have drawing titled "Repair Locations & Details" dated 02/06/14
- Installation of new piles - 3 to be installed with 2 pile caps 06/11/14 (Northwest inshore corner)
- Gazebo - sand blasting and painting has not occurred and gazebo will remain onsite. Gazebo has not been put back into original location.
- Identified an area of concrete settlement straight off of west side harborwalk.
 - previously discussed 06/02/14 on site that area needed posting
 - contractor indicated missing or deteriorated pile cap nothing to post too. **requires pile cap replacement - does not anticipate performing work**
- Contractor anticipates being done and off site by Thursday 06/12/14

Upon review of correspondence:

Drawing titled "Repair Locations & Details" was developed for the Building Department.

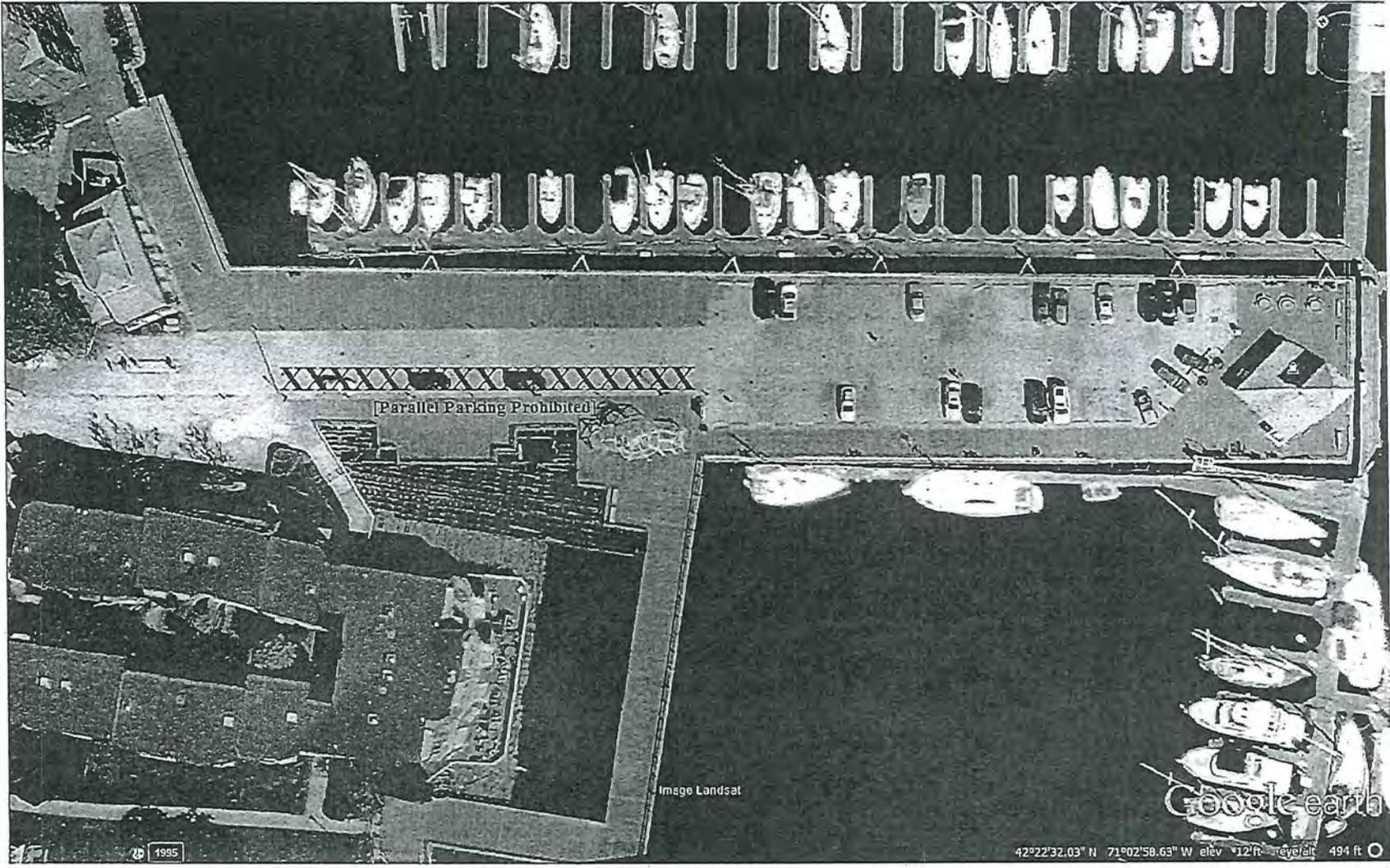
Copies of drawing were sent to Geoff Lake - Sea & Shore on 02/10/14.

Sea & Shore filed for the Building Permit

Electronic copy of Drawing titled "Repair Locations & Details" was sent to Geoff Lake on 06/03/14 upon his request.

Our understanding through telephone conversation between Kevin Buruchian - BCE and Geoff Lake - S&S these repairs would be done.

Appendix E



Shipyards Quarters Marina - Pier 8 - Displaying Parallel Parking Prohibition

Appendix F



The Official Website of the Executive Office of Energy and Environmental Affairs

Energy and Environmental Affairs

EEA Home > Agencies > MassDEP > Water Resources > Laws & Rules > Signage Specifications of Waterways Regulation Program

Signage Specifications of the MassDEP Waterways Regulation Program

Last updated: September 25, 2009

Unless otherwise expressly provided in a license or other written authorization of the Department, all required signage shall conform to the following specifications, as applicable.

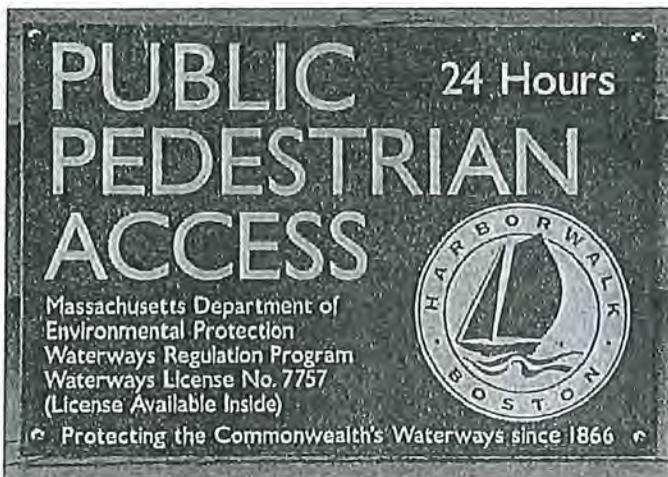
1. All signs shall utilize durable materials and methods of construction and be a minimum of 18" by 18" in size. Letter height shall be a minimum of 1/2".
2. Sign shall conform to all local laws and regulations.
3. If the site is located on a formal waterfront public pathway, a minimum area of 5' diameter shall be reserved for any identifying state or municipal logo.
4. The Licensee shall maintain all signs in good condition and repair.
5. The signs shall encourage public patronage and access of the all of the facilities required by the license conditions (using directional graphics, if necessary) and state the hours of public access.
6. At least one sign shall be placed in a prominent location stating that the walkway facilities were required by the MassDEP, the waterways license number of the project, and the location where the public may inspect a copy of the license.
7. Signage shall be permanently posted and unobstructed from the view of a passerby.

Below is an example of an acceptable sign.

MassDEP Water Resources

A to Z Quick Links

Water Resources Index



Did you find the information you were looking for on this page? *

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- No

Send Feedback

Appendix G



TO: Asher Hertzberg Shipyard Quarters Marina 950 3rd Ave New York, NY 10022	DATE:	9/23/13 rev 10/10/13
	BCE#	33930
	RE:	Shipyard Quarters Marina and Harborwalk
FROM: Kevin Buruchian	SUBJ.:	Facility Inspection -Repairs

Below are the inspection findings from the structural dive inspection on Friday 8/22 and 8/23 2013. Inspection was performed by BCE personnel. Red text describes the requirements of the repairs required to rehabilitate the boardwalk and pier facilities. Immediate repairs should be made as soon as possible to restore structural capacity of the structures. Immediate repairs are repairs to restore pier use in areas which have been decreased to limited or no access. Other repairs defined below should be considered important and should be completed within the next 5 years to maintain structural capacity.

Pier 8

- Piles typical satisfactory condition with minor defects
- 95% of Cross bracing missing
 - Repairs may want to be considered in future to extend life of the pier at current capacity
- 3% of piles in poor condition exhibited severe trenching by marine borers with 5"± diameter remaining.
 - Pile protection repairs should be considered in near future to extend the life of these piles
- 3 piles were found to be missing/ critical condition
 - Immediate repair - removal of existing and installation of new piles
- Pile caps
 - 20% of pile caps have end rot present
 - Structural repairs should be considered in near future to extend the life of the pile caps
 - Where they were 12x12 - typically exhibited severe rot or loss of section, in poor to serious condition
 - Immediate repair- restore structural capacity- approximately 25 locations to be confirmed in field.
 - Serious rot present along edge of roadway at beginning of pier
 - Immediate repair – Restore structural capacity to regain loading capacity- approximately 20 locations to be confirmed in field.
 - Typically split 6x12 caps or 12x12 cap- varied within bents
 - Unless otherwise noted were in satisfactory condition
- Stringers
 - Most of the stringers were in satisfactory condition except as follows:
 - Near the gazebo, majority of stringers exhibited serious rot and decay – major section loss present
 - Immediate repair – Restore structural capacity all members within marked area to regain loading capacity.
 - Along the north side near the 3rd most outshore mooring pile along the pier – 3rd significantly rotted and failing
 - Immediate repair – Restore structural capacity to members to regain loading capacity, approximately 3 beams to be confirmed in field.



Harbor walk

Pier 8 and North End

- Timber piles along edge have moderate deterioration, but only 2-3' of length exposed
- No major cracking or signs of movement present
- Filled foundation in other locations – no access

Pier 8 along timber structure

- Structure is in satisfactory condition
- Major structural components in satisfactory condition
- Attachment to timber structure – corroded or failed
 - Many bolts heavily corroded
 - Steel brackets failing
 - Repairs should be considered in the short term to restore lateral capacity of system in event of a large storm event.
- Decking signs of deterioration and surface damage
 - Decking was previously inspected, Review of Pedestrian Boardwalk for Hazards, 8/16/13.
 - All repairs should be performed as outlined in above mentioned report.
 - All decking repairs should be phased for full decking replacement within 5 years.

Timber structure and stone wall

- Piles in good condition
- Pile caps in satisfactory to good condition
- Stringers typically in fair to satisfactory condition unless noted
- Localized areas of concern
 - Along back edge of walkway near corner – stringers failing or failed – heavily rotted
 - At inshore corner – pile cap rot present – extending to 2nd pile
 - Immediate repair – restore structural capacity of members to regain loading capacity.
- Decking typically in satisfactory condition

Pier 7 to Pier 6

- Foundation – H-pile with steel caisson jackets
 - Steel thickness's is consisted along length
- Concrete typically in satisfactory condition
 - Some local spalling and defects noted
- Deck consistent with rest of boardwalk
 - Decking was previously inspected, Review of Pedestrian Boardwalk for Hazards, 8/16/13.
 - All repairs should be performed as outlined in above mentioned report.
 - All decking repairs should be phased for full decking replacement within 5 years.

Pier 6 – south limit

- Same as Pier 7 - Pier 6



Pier 6

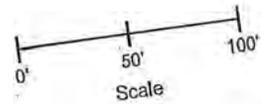
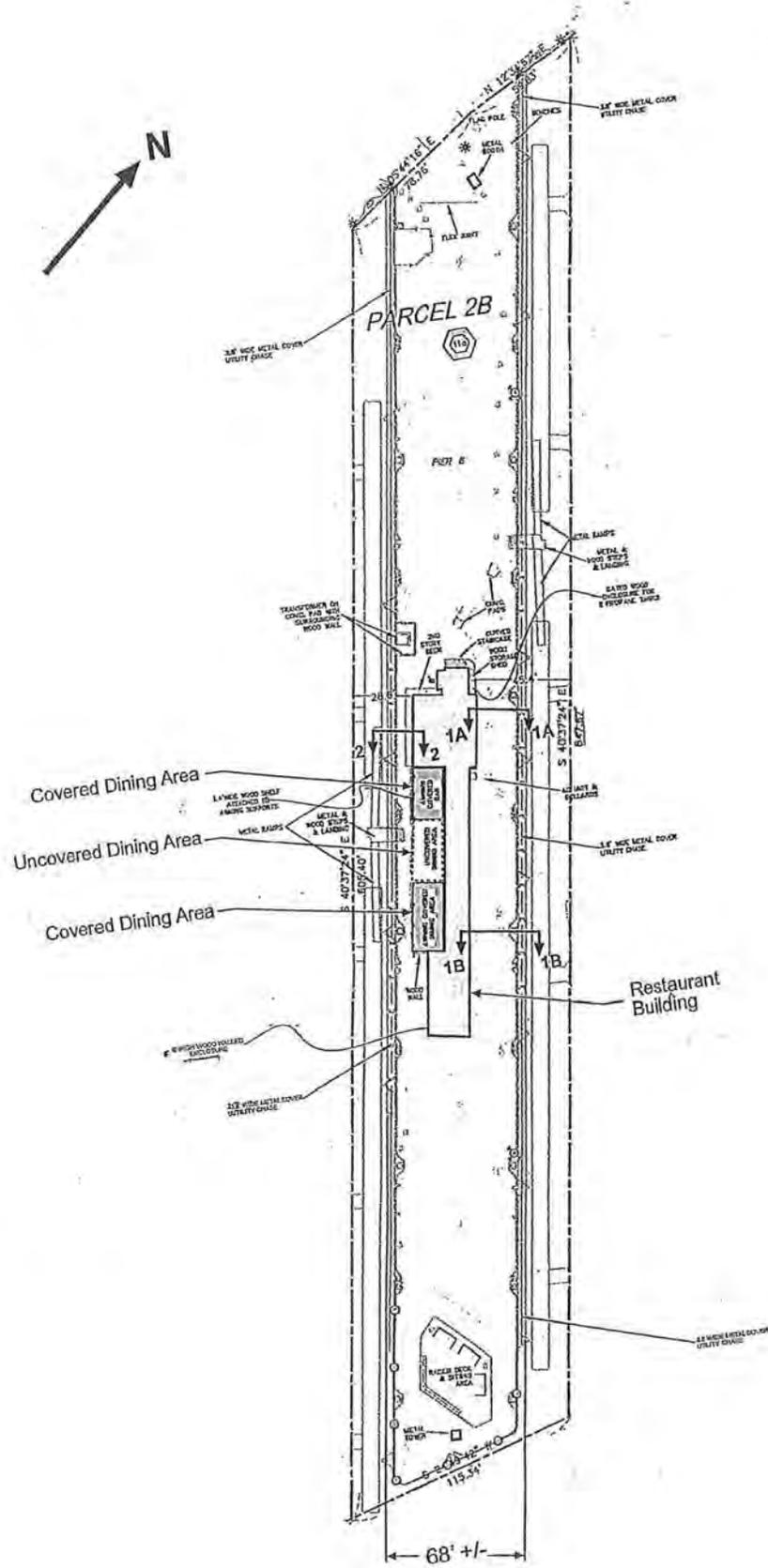
Foundation is steel pipe piles - 14" diameter with a reinforced concrete deck

- Piles below MHW appear to be in fair to satisfactory condition – consistent thickness readings (.205")
- Piles appear to be filled for the top 5 feet with concrete. Below this elevation they sound hollow
- Above MHW – piles exhibit moderate to severe corrosion
 - Some piles exhibit localized corrosion failures – estimate 75% remaining
 - Concrete exposed in localized areas in top 5 feet- approximately 15% of piles, limit to be confirmed in field.
 - Structural repairs should be made in near future to restore pile integrity and limit further deterioration
- Concrete caps - Generally in good condition
 - Exhibit signs of minor to moderate deterioration- cracking and spalling
 - Many areas of spalling present, no major section loss present in rebar – approximately 50% of concrete caps, limit to be confirmed in field.
 - Concrete repairs should be made in near future to spalls and cracks to limit further deterioration
 - Many locations do not exhibit rust staining
- Concrete Deck - Generally in good condition
 - Minor areas of minor spalling with limited rebar present – approximately 10% of the deck, limit to be confirmed in the field.
 - Concrete repairs should be made in near future to spalls and cracks to limit further deterioration
 - One localized location of a moderate spall- timber board placed in spall – limited view to damage

Appendix H

Shipyard Quarters Marina

Pier 6

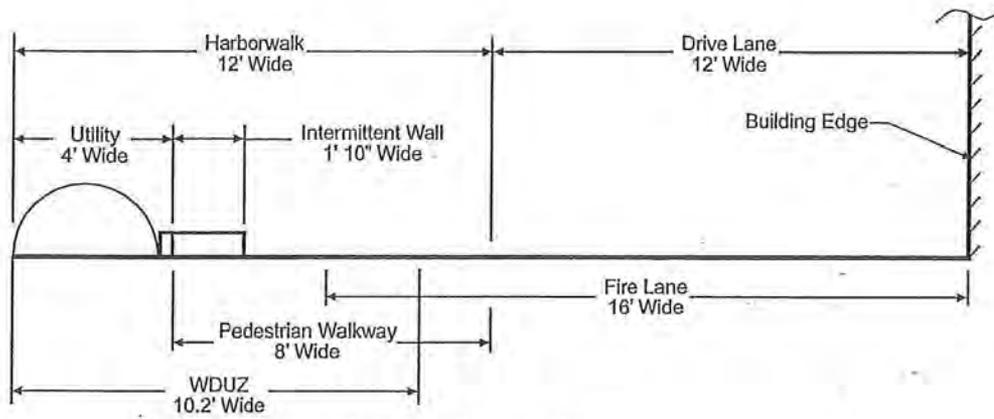


- Notes
1. See Appendix I, Pier 6 Sections for section details
 2. Source: Survey prepared by DGT Survey Group, 803 Summer Street, Boston, MA 02127, 1 Eighth Street, Preliminary Draft, 9/9/14

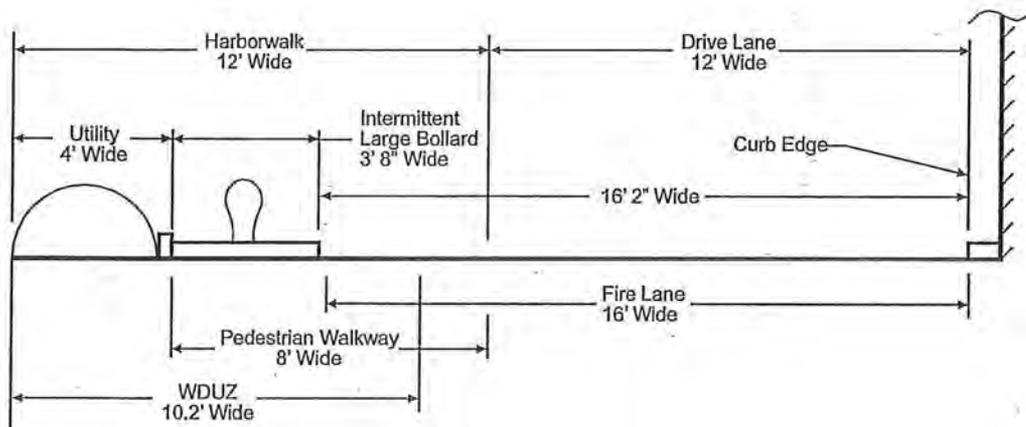
Appendix H - Pier 6 Existing Conditions

Charlestown, Massachusetts

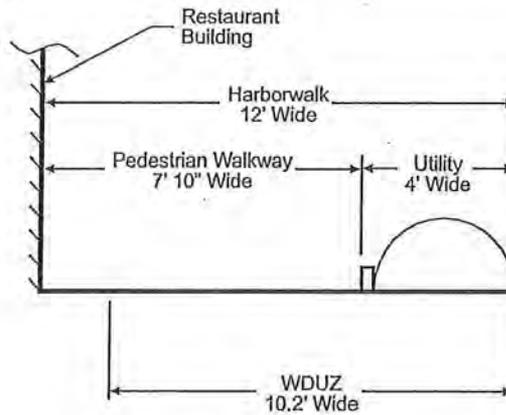
Appendix I



Section 1A - North Side



Section 1B - North Side



Section 2 - South Side