

August 6, 2021

**By Electronic Mail:**

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Martin Suuberg  
Commissioner  
Department of Environmental Protection  
Commonwealth of Massachusetts  
One Winter Street  
Boston, Massachusetts 02108

Re: Comments of Harbor Towers I and II Condominium Trusts  
Regarding Proposed Amendment to Chapter 91 Regulations

Dear Commissioner Suuberg:

The Trustees of the Harbor Towers I and Harbor Towers II Condominium Trusts ("Harbor Towers"), thank you for the opportunity to submit this comment letter concerning the Department of Environmental Protection's proposed amendments to the Waterways Regulations at 310 CMR 9.00 *et seq.* For the reasons set forth below, Harbor Towers requests that the DEP exclude from its draft amendments the 600-foot height substitution for the Harbor Garage, as set forth in Section 9.57 of the draft regulation. The Harbor Garage height substitution is vastly greater than any other dimensional variance ever approved in a municipal harbor plan. It contradicts longstanding state policy restraining waterfront development, and is an affront to sound planning. If enshrined into regulation, this grossly excessive height dispensation would cause significant harm to the Downtown Waterfront neighborhood, and would set a dangerous precedent for future waterfront development on all waterways of the Commonwealth.

**I. Introduction**

DEP has a solemn legal obligation to protect the public trust in the tidelands. That duty is set forth in Chapter 91 of the General Laws, which directs DEP to ensure, after a public hearing, that any "structures or fill" proposed to be placed on tidelands "shall serve a proper public

purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands.” G.L. c. 91, § 18.

One of the most important ways DEP fulfills this legislative mandate is by restraining the heights and densities of “nonwater-dependent” development projects, such as office buildings or residential structures, in the tidelands. DEP’s regulations impose these restrictions in order to ensure the shoreline can be used for “water-dependent” purposes. The current regulations presumptively limit the heights of “nonwater-dependent” buildings within 100 feet of the water—a region that includes parts of the Harbor Garage site—to 55 feet, with stepped-up heights permissible further inland.

DEP’s new draft regulations contradict this policy by allowing a nonwater-dependent structure of up to **600 feet** in height on the Harbor Garage site, where DEP’s baseline regulations limit building heights to 55 to 155 feet. The only stated reason for this amendment is that an equivalent height allowance was included in the Downtown Waterfront District Municipal Harbor Plan (the “MHP”), which then-Secretary of the Executive Office of Energy and Environmental Affairs Matthew Beaton approved in 2018. The Suffolk Superior Court effectively struck down the MHP in its April 1, 2021 decision in *Armstrong v. Theoharides*, 1884CV02132-BLS1, and *Conservation Law Foundation v. Theoharides*, 1884CV02144-BLS1.

As we explain below, the Secretary’s approval of the Harbor Garage height allowance was antithetical to good waterfront planning, both in process and substance. The process gave maximal consideration to the interests of a particular developer, with little regard for the public interest. In substance, the allowance will cause unacceptable increases in wind speeds at the ground level; will set a precedent allowing numerous glass towers to wall off the seashore from the rest of Boston; and will result in development so intense as to choke off public enjoyment of this precious resource. Secretary Beaton’s mistake should not be repeated in DEP’s new regulations.

Now is a time for a new, reimagined waterfront planning process. Rather than mechanically re-approving the 2018 Harbor Garage height allowance, DEP should recommit to fulfilling its statutory mandate to protect public access to the tidelands, and exclude the Harbor Garage height dispensation from its draft amendments.

## **II. Factual Background**

### **a. Harbor Towers**

Harbor Towers is a residential community of some 1,200 persons, located on East India Row adjacent to the Harbor Garage. Built in the 1970s, when the downtown waterfront consisted of decrepit wharves and parking lots, the pioneering Harbor Towers development helped spark a revitalization of the neighborhood. In the 1980s and 1990s, vast public investments in the area—especially the cleanup of Boston Harbor, the Big Dig, and the creation of the Rose Kennedy Greenway—significantly furthered that revitalization. Today, the downtown waterfront is a thriving neighborhood of residences, businesses, public attractions, and water-based activities.

In 2009, the new owner of the Harbor Garage, RHDC 70 East India, LLC, (“RHDC”) proposed redeveloping the site. Since then, Harbor Towers has consistently agreed with RHDC that the Harbor Garage should be redeveloped, provided that the project does not cause unacceptable harm to the Downtown Waterfront neighborhood and is consistent with the public interest in the use of the tidelands, as largely set forth in the Chapter 91 of the General Laws and its existing regulations.

Harbor Towers has been a participant in efforts to set reasonable parameters for development of the Downtown Waterfront. As just a few examples, Harbor Towers representatives have served on the group that promulgated the Greenway District Planning Guidelines, on the BPDA’s Impact Advisory Group, on the Downtown Waterfront Municipal Harbor Planning advisory group, and on the Wharf District Council. Harbor Towers residents and trustees have volunteered thousands of hours of their free time to this public process.

**b. The Greenway District Guidelines**

In 2009, after the completion of the \$24 billion Big Dig project, the City of Boston began a planning initiative for the area of the city surrounding the newly-constructed Greenway. The city engaged the assistance of expert urban planning and consulting firms and led an extensive and inclusive public process.

In August 2010, the BRA adopted the Greenway District Planning Study Use and Development Guidelines (the “Greenway Guidelines”). The Greenway Guidelines provide a comprehensive vision for the parcels of land adjacent to the Greenway, including the Harbor Garage, and assign appropriate building envelopes to those parcels, the better to ensure the continued vitality of the Greenway and connectivity between the city and the Waterfront.

The Greenway Guidelines assign a height limit of 200 feet to the Harbor Garage site. As the guidelines explain:

The Boston Harbor Garage site presents a richness of possibility, boasting proximity to the harbor, adjacency to the New England Aquarium and the hub of tourist activity, and frontage along some of the ‘greenest’ parts of the Greenway. These and other advantages also bring with them certain responsibilities, including enhancing waterfront visibility and access, responding to the urgent need for publicly accessible and active edges, and protecting the Greenway from excessive shadow or wind effects. A height limit of 200’ at this location, in conjunction with a varied building profile, can provide the porosity necessary to ensure the same east-west visual access to the water inherent in most other Wharf District parcels.

**c. The Process Leading to the Downtown Waterfront Municipal Harbor Plan**

Notwithstanding the comprehensive public process that led to the Greenway Guidelines, in 2013, the City largely discarded its carefully-considered approach to preserving public resources. Instead, the City convened an advisory group to create a downtown waterfront municipal harbor plan. Right off the bat, the City announced that its municipal harbor planning

process would depart from the height standards of the Greenway District Planning Study, released just four years earlier.<sup>1</sup>

At one of the first meetings of the Downtown Waterfront Municipal Harbor Planning Advisory Committee, in 2014, the BRA invited RHDC to present its proposed redevelopment for the Harbor Garage. RHDC initially presented a building in excess of 700 feet tall, and later revised its plans to 600 feet due to Federal Aviation Administration height restrictions. From that inauspicious beginning, the MHP process proceeded backwards: first to determine what RHDC wanted to build, and then do planning to facilitate those ambitions.

The MHP's Advisory Committee met numerous times during 2014 and 2015, but at other times the BRA left the committee in the dark, cancelling or postponing meeting after meeting. During this period, it became apparent that the BRA intended any planning to be accomplished not via the MHP Advisory Committee, but rather through negotiations conducted privately between the BRA and RHDC. During 2015, the BRA cancelled fourteen scheduled meetings of the advisory group as it conducted such private discussions.

In December 2015, BRA director Brian Golden stated publicly that the BRA was "struggling to arrive at a consensus" with RHDC about its informal proposal to develop the Harbor Garage. Golden stated that he did not think the MHP Advisory Committee should work to develop height and density rules "before the city had a better idea of what was economically feasible" for the Garage Property from the developer's perspective.<sup>2</sup> The last meeting of the MHP Advisory Committee took place on October 19, 2016.

Several months later, in 2017, the BRA released a Downtown Waterfront District Municipal Harbor Plan that was materially different from the version last shared with the Advisory Committee in 2016. Consistent with the developer's wishes, the MHP included a proposed height substitution for the Harbor Garage parcel of 600 feet—between four and eleven times the baseline height in the regulations for the parcel, and three times the height specified in the Greenway Guidelines. The BRA approved the plan in March 2017, and Secretary Beaton approved it on April 30, 2018.

### **III. The DEP Should Remove the Harbor Garage Height Substitution from its Proposed Amendment to 310 CMR 9.00.**

Below, we explain why the DEP should exclude the Harbor Garage height substitution from its draft regulations.

#### **a. The Harbor Garage Height Substitution Vastly Exceeds Those Included in Other MHPs.**

No other municipal harbor plan in the history of the program has included a height variance as great in magnitude as that approved for the Harbor Garage site. All previous MHPs have

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<sup>1</sup> Paul McMorrow, "How Tall Will a New BRA Go?," *Boston Globe*, April 1, 2014.

<sup>2</sup> Tim Logan, "Boston, Chiofaro Stalled over Harbor Garage Project," *Boston Globe*, Dec. 1, 2015.



allowed for much more modest variances, providing needed flexibility in waterfront development while still protecting the capacity of the waterfront to accommodate water-dependent use.

For example, at the Lovejoy Wharf site, baseline DEP regulations required nonwater-dependent buildings to be between 55 and 70 feet in height. The Secretary approved a height allowance of 115-185 feet, or about two to three times the height baseline. (Municipal Harbor Plan Amendment for Lovejoy Wharf, Jan. 4, 2006). Similarly, a municipal harbor plan for Fan Pier allowed heights up to 300 feet, or about five times the baseline. (South Boston Waterfront District Municipal Harbor Plan, July 2000). Even the plan for the Encore casino approves only a 400-foot height allowance.

This plan is different. The 600-foot dispensation is four times the highest baseline height limitation for the parcel (155 feet), and **eleven times** the baseline for the portion of the parcel closest to the water (55 feet). This exceedance, simply put, makes a mockery of the DEP's policy in 310 CMR 9.51 that the heights of waterfront buildings should be limited to ensure that nonwater-dependent uses will not "unreasonably diminish the capacity of such lands to accommodate water-dependent use." 310 CMR 9.51.

The so-called public benefits obtained for this exceedance do not remotely justify it. The proposed regulation purports to require RHDC to devote \$10 million toward potential planning for a "Blueway" connecting the New England Aquarium to the Greenway. It does not, however, require the construction of a "Blueway." What it does ensure is a massively intensive development, with a crush of new traffic,<sup>3</sup> dangerous ground level wind conditions, and pedestrian congestion, all while doing nothing to promote much-needed climate resiliency for the area.

**b. The Secretary's Decision Approving the MHP Was Fundamentally Flawed.**

Secretary Beaton's written decision approving the MHP was fundamentally flawed under EOEEA's own regulations. Those regulations, at 301 CMR 23.05(c), required Secretary Beaton to find that any height substitution will ensure development that is "relatively modest" in height. Instead, the Secretary found, "I believe that the proposed height is generally comparative in size and appropriate for the area of the harbor." That language departs from the regulatory standard. (Of course, any finding that a 600-foot tower is "relatively modest" would have been a stretch, to put it mildly.)

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<sup>3</sup> On January, 22, 2020, RHDC submitted a Project Notification Form to the Boston Planning and Development Authority for the office and residential tower the MHP was intended to facilitate. A traffic study included in the PNF shows that the increased volume from the proposed development will degrade traffic operations on East India Row at the intersection of Atlantic Avenue to a level of service of "F" during the evening peak hour, with delays exceeding 500 seconds per vehicle and queue lengths in excess of 600 feet, on a street that is less than 200 feet long. (See PNF of RHDC 70 East India, LLC, p. 2-66 and 2-73, Table 2-10; see *also* Synchro 9 Report, 4: Atlantic Avenue/Cross Street & India Street/East India Row, located at page 482 of 563-page pdf of PNF, available at <https://bpda.app.box.com/s/ig73r3buggagnnvo8ceh6e6bt2znqqn> (last accessed August 3, 2021)).

The Decision further errs by comparing the height substitution in the MHP to the tallest buildings in Boston, which are located far inland from the waterfront. Prior decisions approving MHPs have determined the question of “relative modesty” with reference to the built environment in the area, or to the Chapter 91 baseline regulations.<sup>4</sup> Under this precedent, the relevant built environment here would be the Downtown Waterfront District, which contains no buildings that are 600 feet tall. Instead of following this precedent, however, the Decision compares the Harbor Garage height substitution to “the entire City skyline.” (Decision on Downtown Waterfront MHP at 22-23). The comparison to the “entire City skyline” functions to overturn the fundamental governing principle of tidelands regulation: that the waterfront is imbued with a public trust, and thus its development must be different from, and less intense than, development inland.

**c. A 600-Foot Tower on the Harbor Garage Site Will Create Dangerous Ground Level Wind Conditions.**

DEP’s draft regulations purport to require that a 600-foot tower “meet City code for wind conditions at ground level.” This is an impossibility for any 600-foot tower.

Ground level wind conditions around the project site are already deplorable. In 2013, Harbor Towers engaged the engineering firm RWDI to perform a wind tunnel analysis of the Harbor Towers property in order to evaluate wind calming measures on the property. The firm determined that existing ground level wind conditions at India Wharf in the vicinity of Harbor Towers are “extremely uncomfortable for pedestrian usage.”

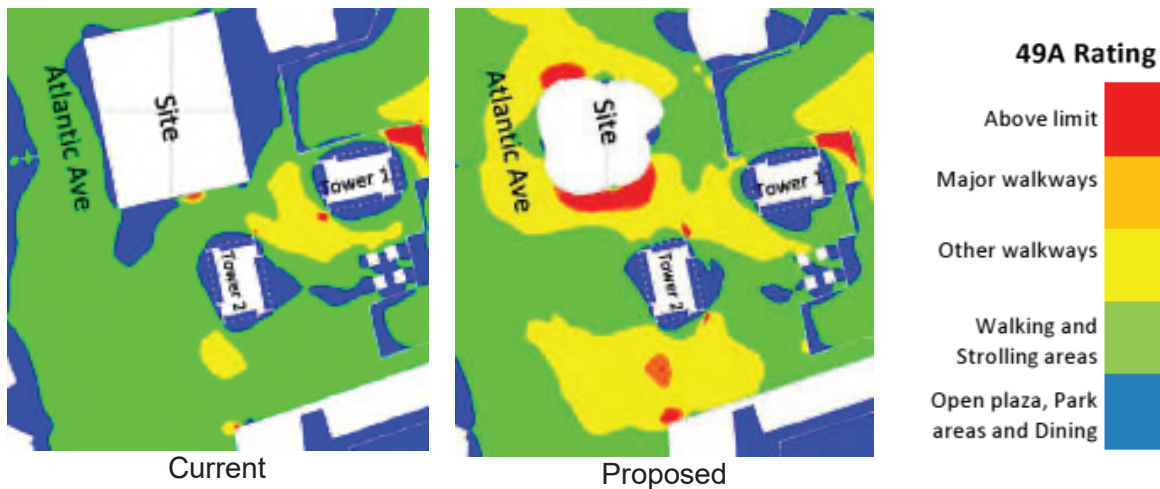
In 2020, after RHDC filed its Project Notification Form, Harbor Towers commissioned CPP, Inc., a well-respected wind modeling firm, to conduct a broader study of how RHDC’s proposed 600-foot tower on the site would affect ground level conditions in the surrounding area. CPP created a CAD model of the proposed tower based on the renderings in the PNF, and performed a computational study of how pedestrian wind conditions in the area would change as a result of the Project. The CPP report, attached as **Exhibit 1**, strongly indicates that a tower of such a height is likely to violate the BPDA’s wind standards, and will create dangerous wind conditions around the project site.

The BPDA has adopted two standards for assessing the wind comfort of pedestrians. First, the standards provide that an effective gust velocity (hourly mean wind speed + 1.5 times the root-mean-square wind speed) of 31 mph should not be exceeded more than one percent of the time. That standard is incorporated into Art. 49A of the Zoning Code, which applies to the Greenway Overlay District of which the Project is a part.

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<sup>4</sup> See South Boston Waterfront District Municipal Harbor Plan, December 6, 2000,” p. 40 (determining “relatively modest” question with reference to Chapter 91 baseline); “Decision on the City of Boston’s Request for Approval of the South Boston Waterfront Municipal Harbor Plan Renewal and Amendment Pursuant to 301 CMR 23.00, December 21, 2016,” p. 13-14 (using as comparators nearby buildings in South Boston waterfront)).

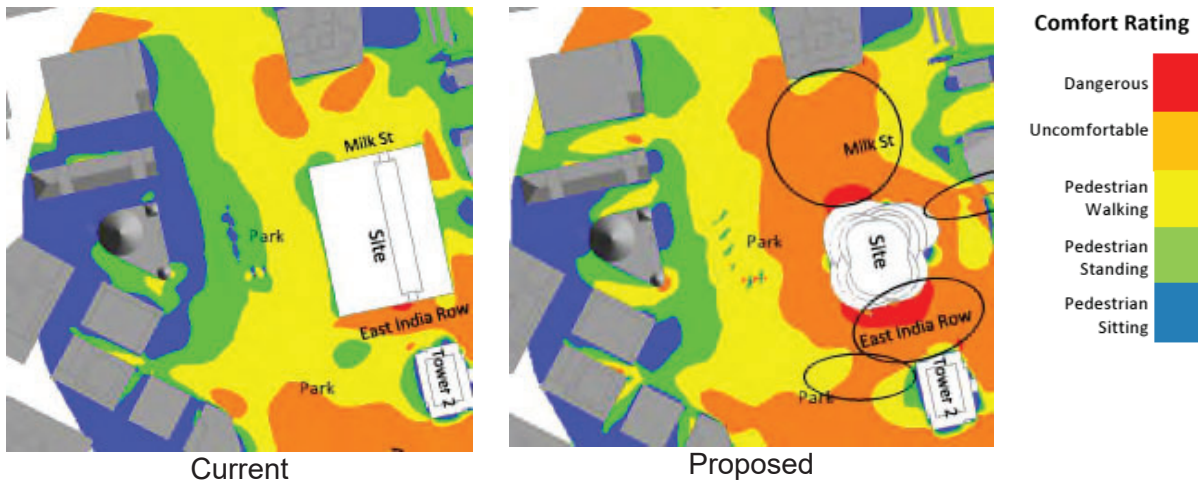
CPP's wind study shows that the tower is likely to cause wind speeds at substantial parts of the site and nearby properties to exceed the maximum wind speed/duration rating in Art. 49. These locations, where people are liable to get blown over by the wind, are shown in red, below.



(Exhibit 1, pp. 25-26). Significantly, these areas include a large portion of the property along East India Row, and the northwest corner of Rows Wharf. They also include part of a proposed public plaza on the northwestern corner of the proposed tower.

In addition to creating significant new areas of dangerous winds, the wind conditions of the proposed public plaza to the north of the tower are likely to exceed Chapter 49A's standards for "open plazas." Those standards provide that areas of plazas suitable for "open air restaurants," must not exceed an "effective gust velocity" of 4.0 m/sec (9 mph) more than 20% of the time on an annual basis. Areas meeting this standard are shown in blue in the map above. In the "walking and strolling" areas of such plazas (shown in green), velocity must not exceed 6.3 m/sec (14.1 mph) more than 15% of the time.

Another set of wind criteria used by the BPDA determine the relative level of pedestrian wind comfort for activities such as sitting, standing, or walking. The criteria are expressed in terms of benchmarks for the 1-hour mean wind speed exceeded 1% of the time. CPP has calculated the impact of the project under this criteria as set forth below:



The “uncomfortable” criteria, shown in orange, above, applies when wind speeds are up to 27 miles per hour 1% of the time, and it is deemed unacceptable for main public accessways. Red areas, where people are likely to get blown over, are deemed dangerous for pedestrians. As can be seen above, almost the entirety of the proposed “plaza” will be either “uncomfortable” or potentially “dangerous” for pedestrian use.

The primary “offset” identified in the MHP and the proposed regulations for the 600-foot height substitution is RHDC’s promised \$10 million contribution toward a “Blueway” along the north and east of the tower site. CPP’s wind study shows this benefit is illusory. A “Blueway” is of little public benefit if it is too windy for members of the public to use. See Anthony Flint, “As construction booms, Boston works to slow down wind tunnels,” *Boston Globe*, Feb. 29, 2020 (noting historic and continuing problem of wind tunnels in Boston).

Finally, the CPP study shows that the wind impacts of a proposed 600-foot tower are likely to extend not just to the immediate surroundings, but also to a significant section of the Greenway, and to streets in the financial district. As shown in the map above, a segment of the Greenway will move from yellow (acceptable for walking) to orange (uncomfortable). Milk Street and India Street near the Grain Exchange building will move from comfortable for sitting or standing to comfortable only for walking.

The chief driver of these uncomfortable-to-dangerous wind speeds is the height of the proposed building. Needless to say, the Greenway, which was made possible by a massive taxpayer-funded public works project, should not be turned into a wind tunnel. Yet the height substitution proposed in the draft regulation threatens to do just that, and to set a precedent for other waterfront buildings to bring about similar results in other waterfront locations.

#### **IV. DEP’s Proposed Amendments are Not of General Application and Future Effect.**

Quite apart from the substantive problems with the Harbor Garage height substitution, the proposed amended regulation is not even a regulation at all, and is beyond DEP’s power to enact.

The legislature has defined a “regulation” as “the whole or any part of every rule, regulation, standard or other requirement of general application and future effect.” G.L. c. 30A, § 1(5) (emphasis supplied). The height substitutions in DEP’s proposed section 9.57 are not of “general application”—they do not apply to all land having particular characteristics.<sup>5</sup> Rather, they are dispensations afforded to particular parcels, and to particular developers. Accordingly, the substitutions are more in the nature of determinations or adjudications, not regulations.

The distinction matters, because Chapter 91 does not permit DEP to set heights of buildings by regulation. Rather, G.L. c. 91, § 18 provides that the dimensions of nonwater-dependent tidelands developments may only be set by granting a Chapter 91 license after a public hearing, and after “a written determination by the department . . . following a public hearing that said structures or fill shall serve a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands and that the determination is consistent with the policies of the Massachusetts coastal zone management program.” Further, “[a]ny person aggrieved by a decision by the department to grant a license pursuant to this chapter shall have the right to an adjudicatory hearing in accordance with chapter thirty A.”

Here, DEP seeks to set the heights and densities of particular tidelands parcels outside of the legislatively-mandated Section 18 process. It does so under the guise of a document that purports to be a “regulation,” but is really a series of Chapter 91 licenses by another name. This gambit violates Chapter 91, and would be subject to legal challenge if enacted.

\* \* \*

Harbor Towers thanks you for the opportunity to submit these comments and materials. The Trustees remain available to consult with you about these matters at any time.

Sincerely yours,

/s/

Norman Meisner  
Robert Gowdy  
Martha LaPosata  
Frank Mairano  
Gary Robinson

Trustees of the Harbor Towers I Condominium Trust

/s/

Neal Hartman  
Kanan Alhassani  
Joanne Hayes-Rines  
Matthew Rubins  
Wes Stimpson

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<sup>5</sup> Nor, in many cases, are they of “future effect”—rather, they purport retroactively to permit buildings already built in the tidelands.

Trustees of the Harbor Towers II Condominium Trust

cc: Mayor Kim Janey (mayor@boston.gov)  
Representative Aaron Michlewitz (Aaron.Michlewitz@mahouse.gov)  
Senator Joseph Boncore (Joseph.Boncore@masenate.gov)  
Rev. Mariama White-Hammond (mariama.whitehammond@boston.gov)  
City Councilor Lydia Edwards (Lydia.Edwards@boston.gov)  
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# EXHIBIT 1

cpp



## Wind Comfort Study for: **Harbor Towers** Boston, USA

CPP 14226

Date	Revision	Prepared	Checked	Approved
20 March 2020	Interim report R00	Mohamed Zaid CFD Engineer <a href="mailto:mali@cppwind.com">mali@cppwind.com</a>	Christian Rohr CFD Manager <a href="mailto:crohr@cppwind.com">crohr@cppwind.com</a>	Roy Denoon Vice President <a href="mailto:rdenoon@cppwind.com">rdenoon@cppwind.com</a>
31 March 2020	Added 49A criteria, R01	MZ	CR	CR
30 September 2020	Final Report	MZ	CR	CR



WIND ENGINEERING &  
AIR QUALITY CONSULTANTS

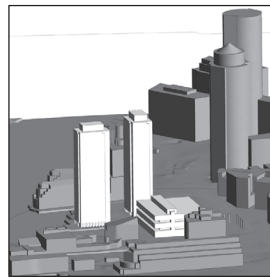
[www.cppwind.com](http://www.cppwind.com)

## Executive Summary

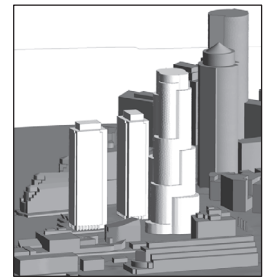
CPP were engaged by Prince Lobel Tye LLP to compare wind conditions around the Harbor Towers before and after the addition of a future 600 ft residential tower on the Boston Waterfront, replacing an existing parking garage.

The study indicates that the proposed tower will have a detrimental impact conditions close to the existing Harbor Towers, as well as along the adjacent waterfront. The study also indicates the potential for sufficiently high wind speeds close to the proposed tower to be hazardous to pedestrians.

Existing



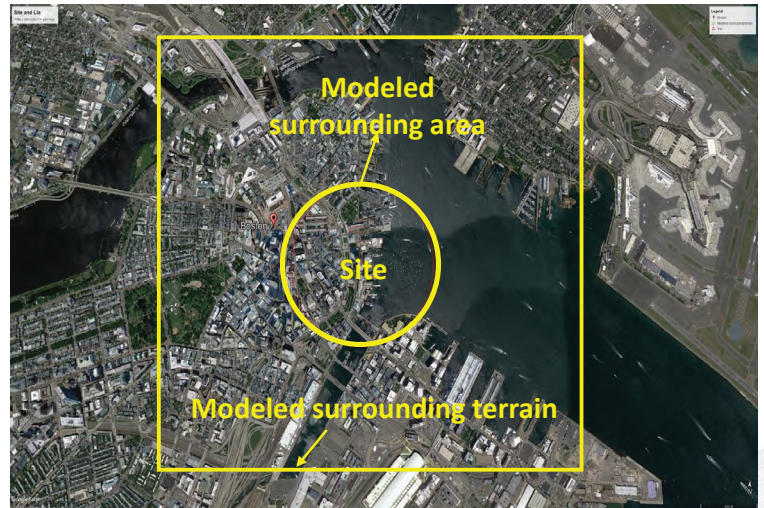
Proposed



# Site Location

- The site is within the downtown Waterfront of Boston, about 2 miles to the west of Logan International Airport, Boston (LIA).
- The area around the site primarily consists of urban medium/high-rise structures, with the densest cluster of high-rise towers to the west of the site in the Financial District of the Boston CBD.

- The site is relatively protected from winds from the west by the CBD and its irregular street layout.
- The site is exposed to winds from the east and south quadrant, where winds from over the bay approach the site relatively unimpeded.





## Site Description



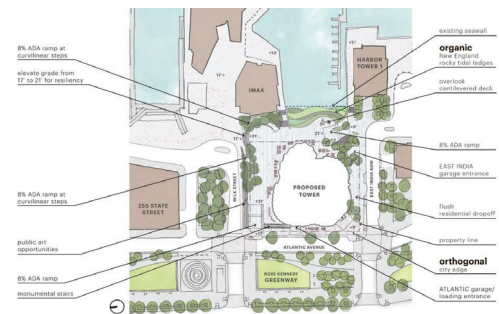
View from the North west along Milk Street



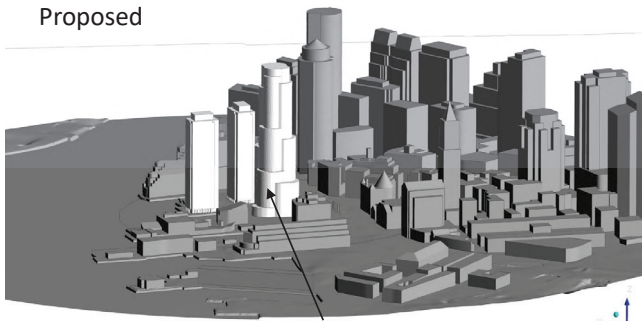
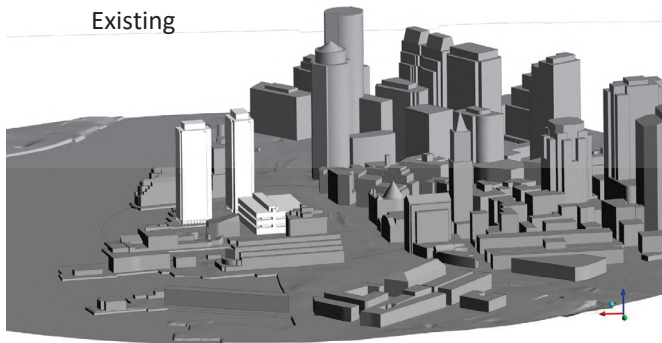
Harbor Towers are two 40-story (approx. 400 ft) residential towers situated on the waterfront of Boston, MA, located between the New England Aquarium and the Rows wharf mixed-use development.

These exposed towers have no podiums to reduce street-level wind speeds induced by downwash, and the surrounding streetscape is also open and exposed.

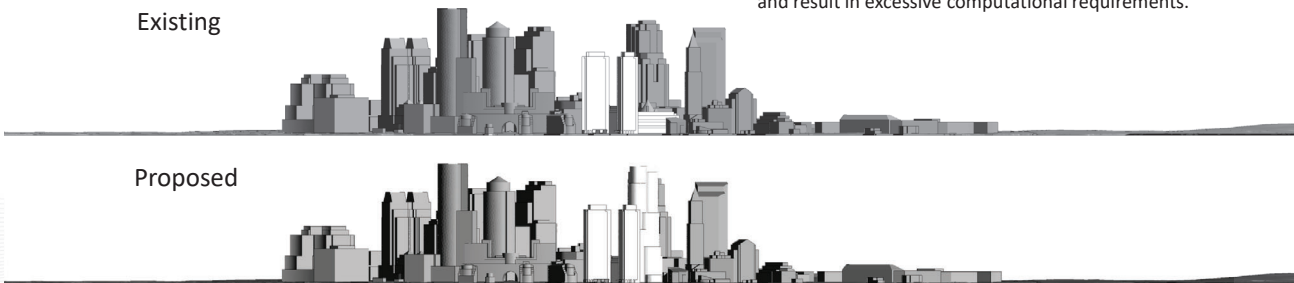
The proposed tower is 600 ft tall. A 3D CAD model has been generated based only on renderings and plans available in the public domain. The tower's shape consists of generally rounded extrusions segmented by small terraces at intermediate levels. The renderings do not indicate a podium at the base of the building.



# Model Geometry



Fins and scalloping of the façade are not included in the CFD simulation. These features would not significantly influence ground level wind speeds and result in excessive computational requirements.

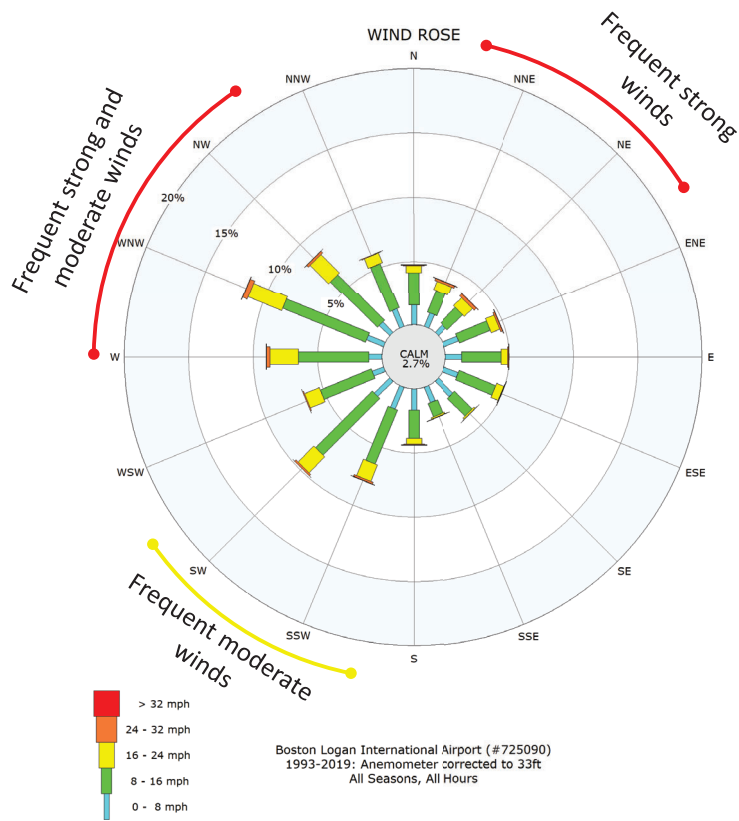


**East elevation.** All relevant surrounding buildings were included to a radius of approximately 2000 ft. Surrounding terrain was modeled out to a radius of approximately 6500 ft, with representative roughness.



# Boston Wind Climate

- Data from Logan International Airport is considered applicable to the site location after the data are corrected to account for the differences between the airport surroundings and site surroundings (i.e., approach roughness correction).
- Winds are calm about 3% of the time.
- Boston’s wind climate is complex. Prevailing winds are from the northwest and southwest quadrants. Stronger winds also occur frequently from the north-east. Light winds are more uniformly distributed.
- The wind comfort analysis presented in this report is based on the **annual** wind climate.








# BPDA Wind Criteria

The Boston Planning and Development Agency has two standards for assessing the pedestrians wind environment

- Safety: Effective gust velocity (**hourly mean wind speed +1.5 times the root-mean square wind speed**) of 31 mph should not be exceeded more than **1%** of the time.
- Comfort: Based on the work of Melbourne, W.H. Determines the level of pedestrian wind comfort for activities such as sitting, standing, or walking. The criteria are expressed in terms of maxima for the 1-hour mean wind speed 1% of the time.
- The Boston Zone Code also includes criteria in article 49A for Greenway Overlay Districts. Results are provided against these in Appendix B. Conclusions are similar.

1. Melbourne, W.H., 1978. Criteria for environmental wind conditions. Journal of Wind Engineering and Industrial Aerodynamics, 3(2-3), pp.241-249.
2. Boston Development Review Guidelines, (2006). [Pdf] Boston: Boston Redevelopment Authority, pp.45-46. Available at: <<http://www.bostonplans.org/getattachment/65dba1c1-0947-4dac-9309-23b395849bb0>>

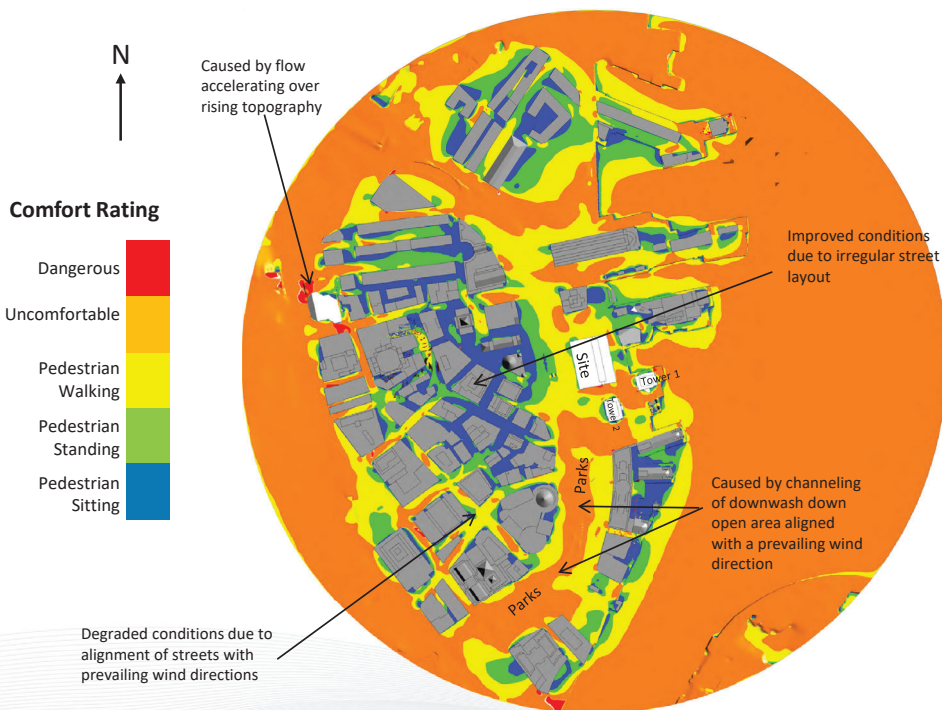
## BPDA Comfort Assessment Definitions

Wind speed that occurs 1% of the time (mph)		BPDA Comfort Rating	Suitable activities
12		Pedestrian sitting	Generally acceptable for long duration stationary activities such as in outdoor restaurants & theatres and in parks.
15		Pedestrian standing	Short duration stationary activities such as window-shopping, standing or sitting in plazas.
19		Pedestrian walking	Acceptable for walking, main public accessways.
27		Uncomfortable	Unacceptable as main public accessways.
Above 27		Dangerous	Completely unacceptable: people likely to get blown over.

*\*Applicable to the hourly mean wind speed exceeded 1% of the time  
All results are shown at the 5 ft level unless otherwise stated.*

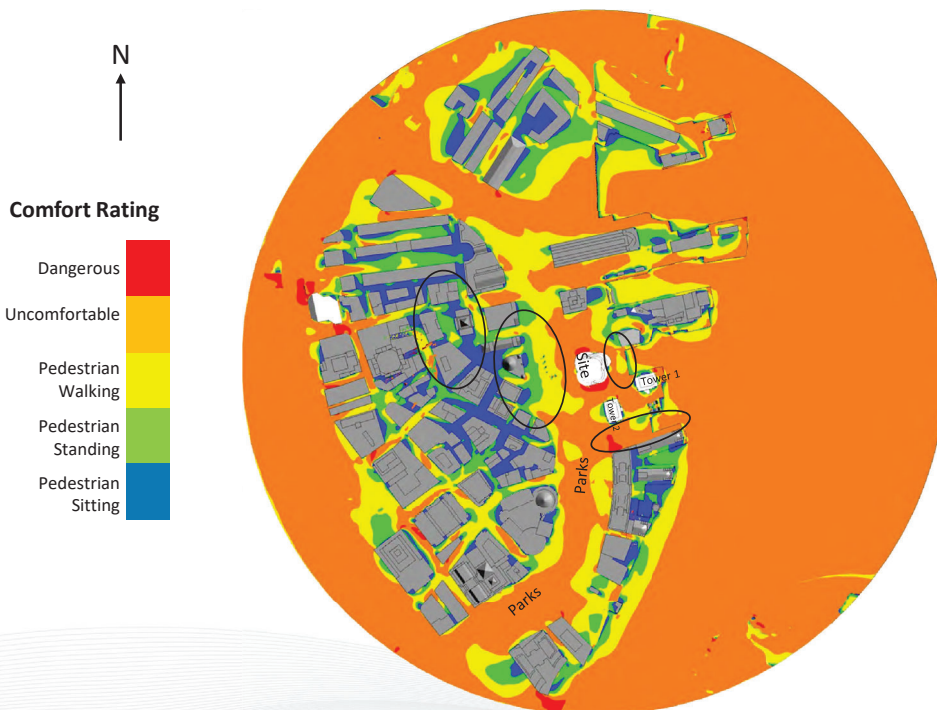
Examples for categories specified by BPDA are shown in table above, along with the colour key as used in the subsequent contour plots.

## Comfort – Surrounds (Existing)



- The waterfront comfort conditions are primarily driven by winds from the southeast quadrant due to shielding for other directions. Most street-level locations are relatively well protected from southwest quadrant prevailing winds due to the upstream massing of Waterfront Boston and irregular street layout, which directs some of the flow around and over the city rather than through it.
- Conditions along the parks between Atlantic Avenue and John Fitzgerald Surface Road are rated as *uncomfortable* and *walking* when closer to most building facades.
- Comfort levels are improved to *sitting* and *standing* in the Financial district of the CBD due to the irregular street layout which does not promote channeling. Conditions do degrade significantly in streets which are not interrupted and are aligned with prevailing wind directions.
- Conditions in the open (away from the influence of structures) are rated as *Uncomfortable*.

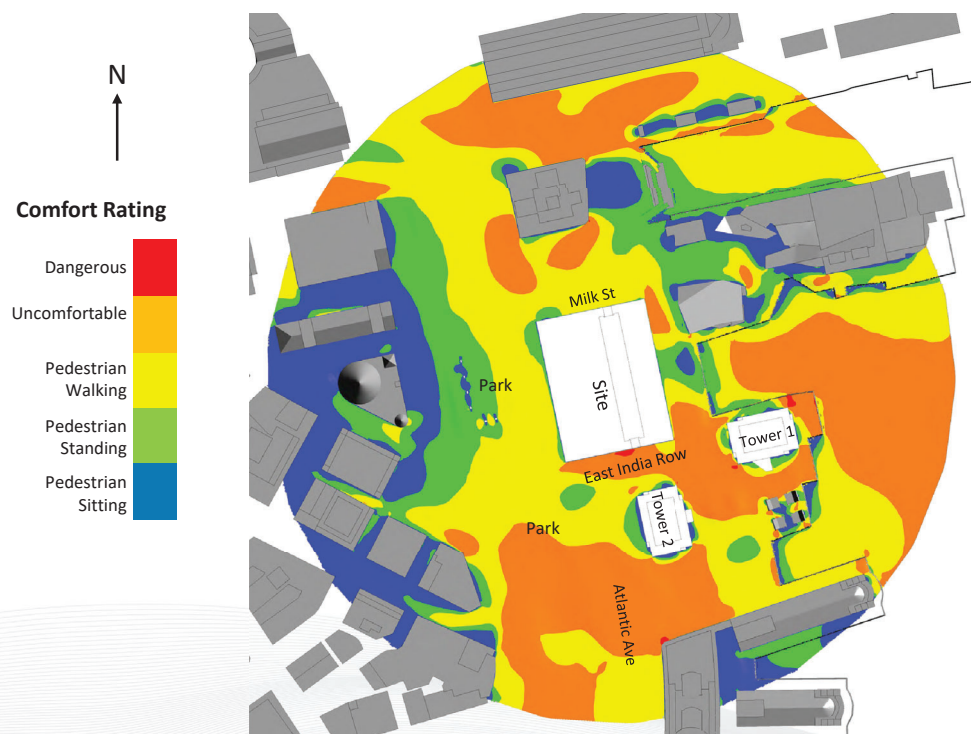
## Comfort – Surrounds (Proposed)



The proposed development has a measurable negative impact on pedestrian wind comfort, particularly in the areas circled.

- Conditions on the east side of the Financial District are degraded due to the reduction in shielding to the east previously provided by the garage which is approximately twice as wide as the proposed massing. This influence is also found deeper within the Financial District's connecting streets.
- The waterfront itself is affected primarily near Harbor Towers and will be detailed in the following slides.
- Other minor differences found further afield are not attributed to the proposed development.

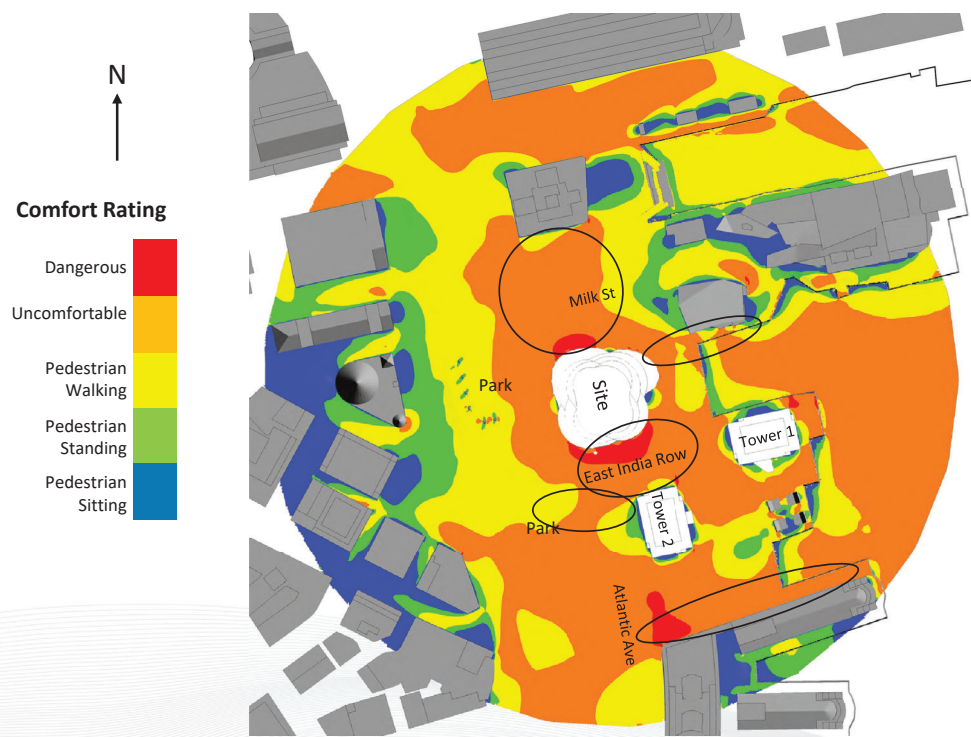
## Comfort – Street Level (Existing)



- Within the Harbor Towers façade line, conditions are rated as *Sitting*. They degrade rapidly first to *Standing*, then to *walking* and in some cases *Uncomfortable*.
- The windiest location is between Towers 1 and 2 where downwash from both towers combines, due to winds from the south-east. Conditions here are rated *Uncomfortable*, as is a large part of East India Row.
- Conditions along the water's edge vary significantly by location but can be described as generally within the *Walking* criterion except some *Uncomfortable* areas to the south and east of Tower 1.
- The area immediately to the west of the garage site is rated as a mixture of *Walking* and *Standing*, which is considered suitable for a park and footpaths.



## Comfort – Street Level (Proposed)

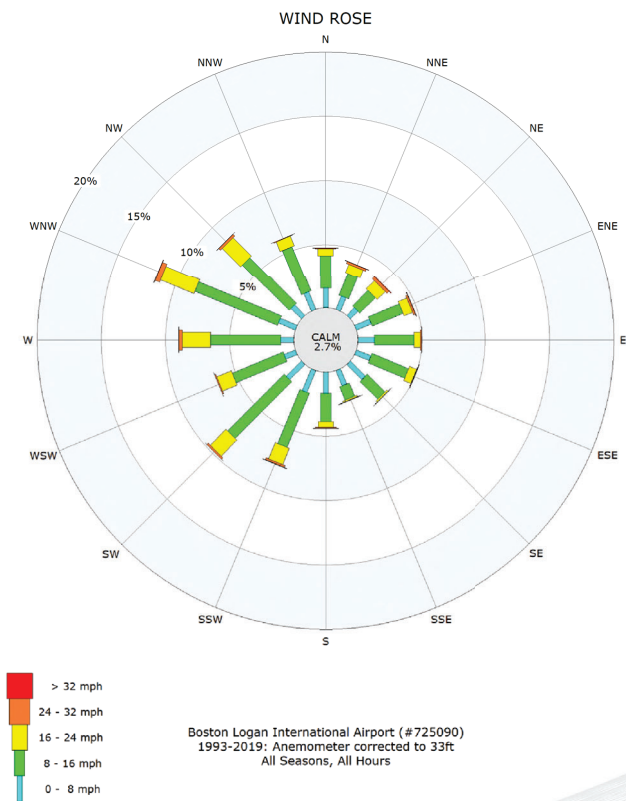


- Conditions in the near vicinity of Harbor Towers were already rated as *Uncomfortable* in large areas. The extent of these increases with the proposed development in place, particularly to the west of Tower 2.
- East India Row is also significantly impacted, and the north-west corner of Rowes Wharf degrades to *Dangerous*.
- Conditions are rated as *Dangerous* around the north and south sides of the proposed tower. This is due to a combination of downwash and flow accelerating around the curved sides of the tower without separating. These *Dangerous* ratings appear to extend into the public domain, particularly on the south side.
- The area around Milk street to the north of the proposed development degrades almost entirely to the *Uncomfortable* criterion, as do the circled parts of the waterfront.

# Flow Patterns

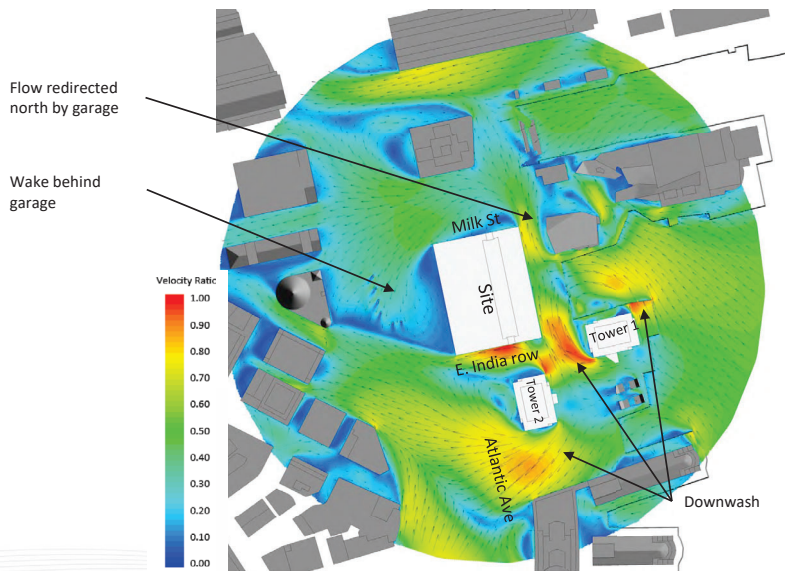
- Most of the comfort ratings are driven by winds from the southeast quadrant. This is because the harbor front location is exposed to winds from the south and east. The site is well protected from westerly winds by the high density of the city to the west.
- The flow mechanisms responsible for the wind conditions around the site are shown in the following figures as streamlines and contour plots of velocity ratio\* for winds from the east-southeast (ESE).

\*Velocity ratio is the local wind speed divided by the remote approach wind speed at 56 ft. The local wind speed is the greater of the mean or gust-equivalent mean. See Appendix A for details.

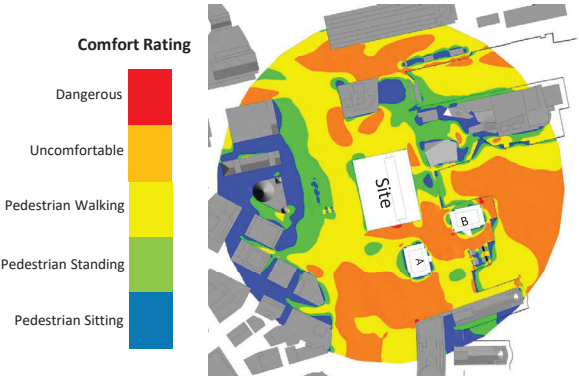


# Flow Patterns – Existing Site

Velocity Ratio - ESE Winds

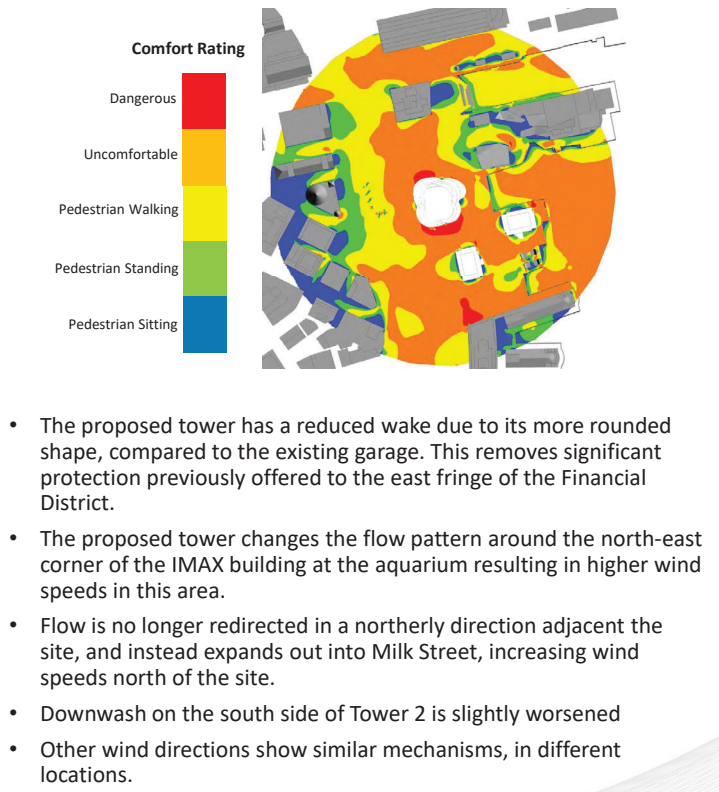
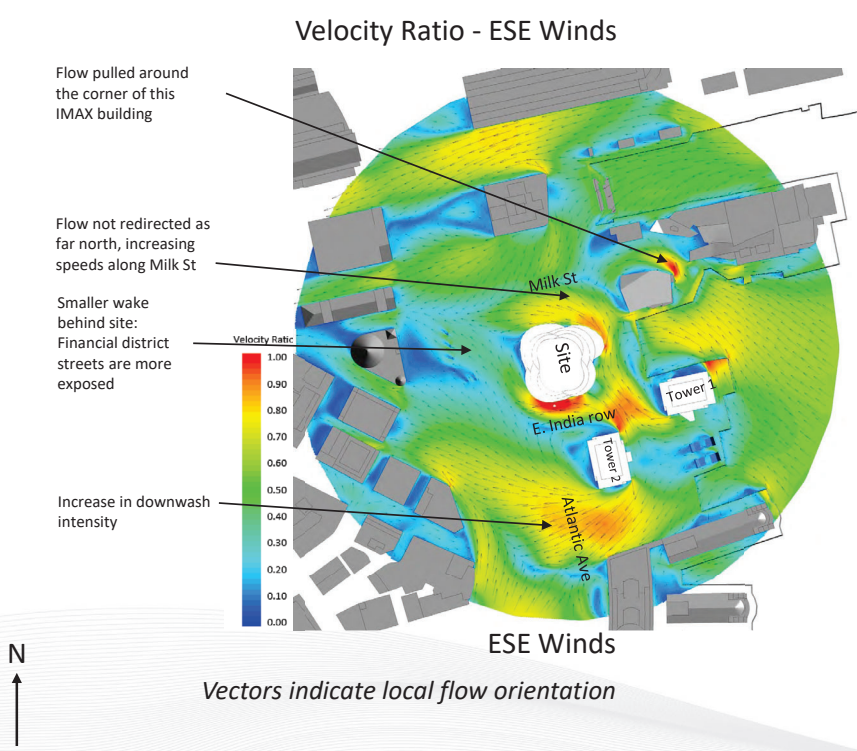


Vectors indicate local flow orientation



- The flow patterns around Harbor Towers and the existing garage (Site) are complex, with combinations of downwash and channelling, wakes with highly three-dimensional flow patterns, and redirected along streets.
- A strong pattern of downwash is generated by both Towers and combines between them, before being broken up by the existing garage.

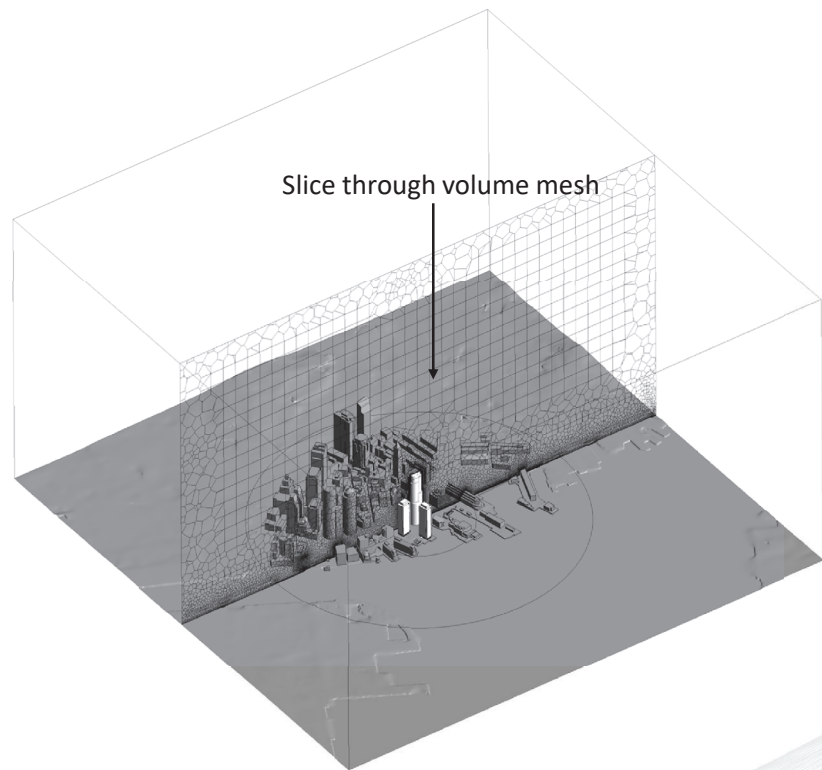
# Flow Patterns – Proposed



# Appendix A: Computational Model Details

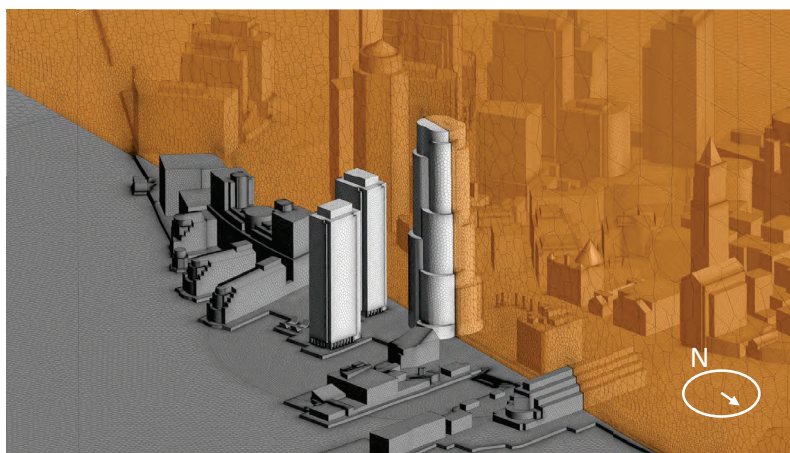
## Computational Model

- The domain was discretized into approximately 10 million cells comprising tetrahedral and quadrilateral cell types.
- The mesh was refined around the site, and inflation layers were included on all walls.
- Sixteen wind directions were simulated, and pressure and momentum quantities solved to first-order accuracy.





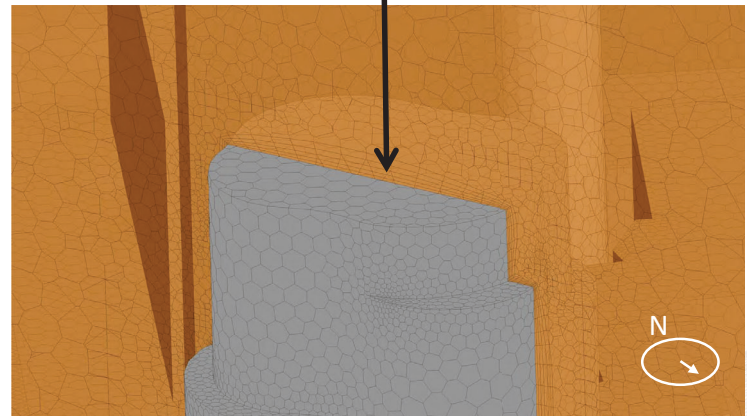
# Computational Model



Vertical slice through domain



Inflation layers on every wall of domain

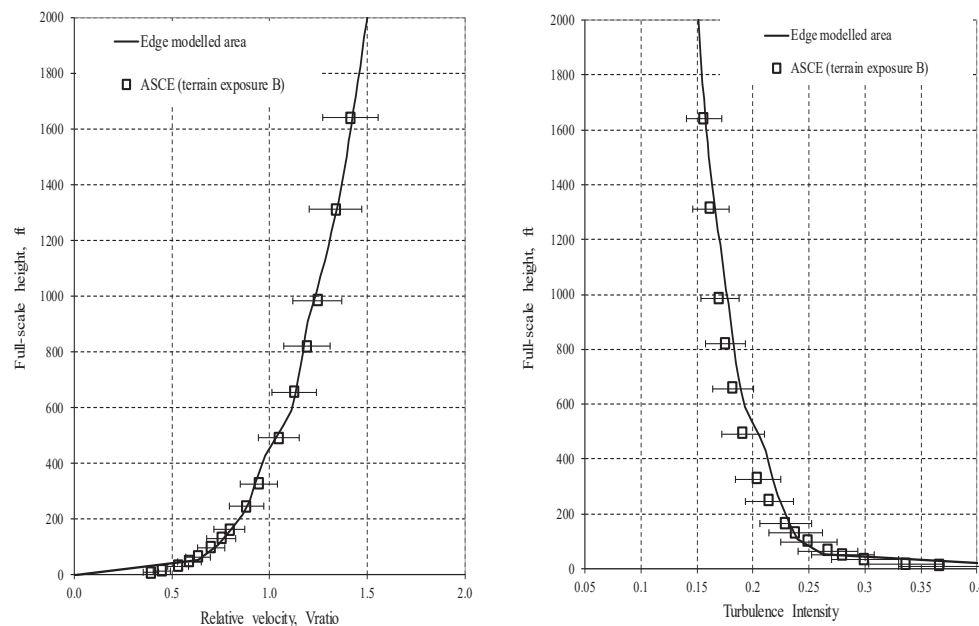


- Refined mesh resolution on areas around the site to capture the flow mechanisms in the areas of interest.
- Five inflation layers were imposed on all walls to adequately resolve near wall velocity gradients.

## Boston wind climate and site roughness corrections

Dir (°)	A	k	C (mph)	C <sub>ref,site</sub> (mph)	Modeled Exposure	H <sub>ref</sub> (ft)	394
						V <sub>ref</sub> (mph)	22
0	0.0475	2.08	12.16	17.94	B		
22.5	0.0391	1.93	13.56	17.66	C		
45	0.0369	2.03	14.81	19.74	C		
67.5	0.0473	2.00	13.57	19.46	D		
90	0.0497	2.17	12.87	19.47	C		
112.5	0.0496	2.17	12.82	19.79	C		
135	0.0377	1.97	10.12	14.13	C		
157.5	0.0254	1.63	9.73	13.38	C		
180	0.0438	1.87	11.80	15.67	B		
202.5	0.0793	2.41	13.75	18.72	B		
225	0.0982	2.83	14.07	19.48	B		
247.5	0.0656	2.77	14.51	20.11	B		
270	0.0898	2.95	15.65	20.89	B		
292.5	0.1161	2.90	15.63	23.55	B		
315	0.0850	2.88	15.09	23.14	B		
337.5	0.0616	2.65	12.88	18.57	B		

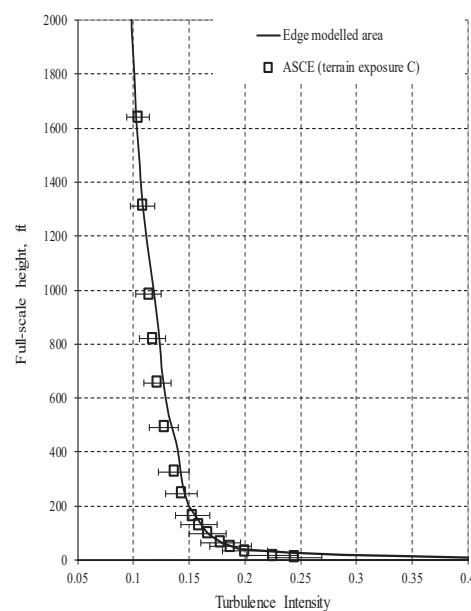
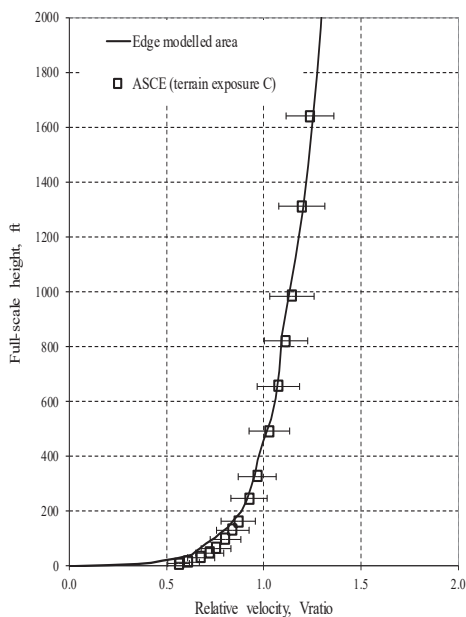
# Atmospheric Boundary Layer Calibration – Exposure B



- The left plot shows the variation of wind speed with height on approach to the explicitly modelled area (with  $\pm 10\%$  bounds) for Exposure B, as required by ASCE 7<sup>1</sup> compared to the domain's inlet boundary condition.
- The right plot shows the variation of turbulence intensity with height.
- Ensuring the propagation of the Atmospheric Boundary Layer (ABL) profile into the domain is a key requirement of conducting reliable CWE simulations. CPP techniques were used to ensure that this requirement was achieved for all wind directions.

1-American Society of Civil Engineers (2017), Minimum Design Loads for Buildings and Other Structures (ASCE 7–16).

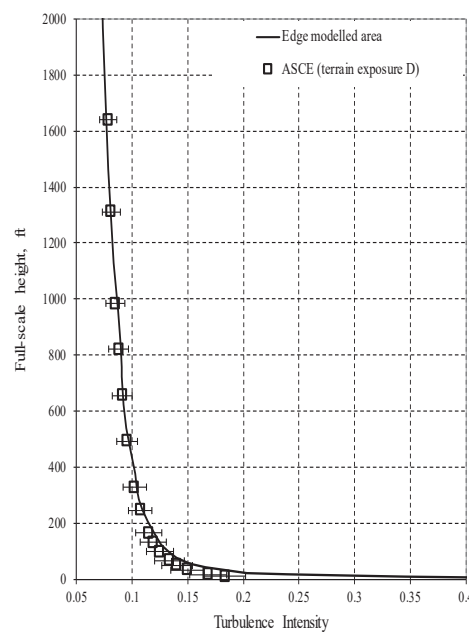
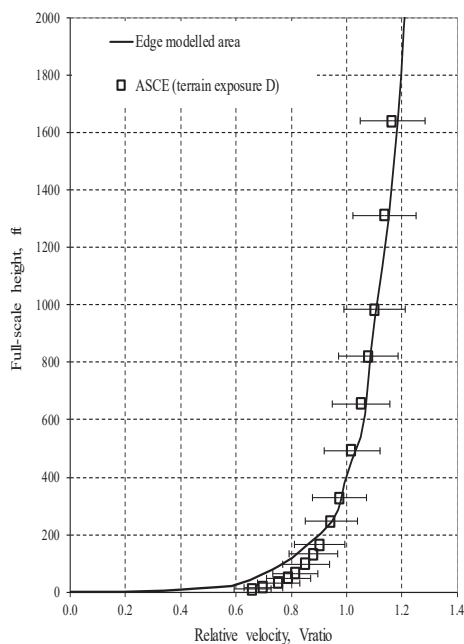
# Atmospheric Boundary Layer Calibration – Exposure C



- The left plot shows the variation of wind speed with height on approach to the explicitly modelled area (with  $\pm 10\%$  bounds) for Exposure C, as required by ASCE 7<sup>1</sup> compared to the domain's inlet boundary condition.
- The right plot shows the variation of turbulence intensity with height.
- Ensuring the propagation of the Atmospheric Boundary Layer (ABL) profile into the domain is a key requirement of conducting reliable CWE simulations. CPP techniques were used to ensure that this requirement was achieved for all wind directions.

1-American Society of Civil Engineers (2017), Minimum Design Loads for Buildings and Other Structures (ASCE 7–16).

# Atmospheric Boundary Layer Calibration – Exposure D



- The left plot shows the variation of wind speed with height on approach to the explicitly modelled area (with  $\pm 10\%$  bounds) for Exposure D, as required by ASCE 7<sup>1</sup> compared to the domain's inlet boundary condition.
- The right plot shows the variation of turbulence intensity with height.
- Ensuring the propagation of the Atmospheric Boundary Layer (ABL) profile into the domain is a key requirement of conducting reliable CWE simulations. CPP techniques were used to ensure that this requirement was achieved for all wind directions.

1-American Society of Civil Engineers (2017), Minimum Design Loads for Buildings and Other Structures (ASCE 7–16).

## Comfort Assessment






- Pedestrian comfort is assessed according to the Boston wind criteria<sup>1,2,3</sup> at 5 feet above ground.
- Wind speeds simulated for 16 wind directions are combined with the wind climate to determine the wind speed exceeded 1% of the time.
- BPDA criteria consider both the local mean and gust wind speeds. This report is based on Computational Wind Engineering (CWE). CPP's CWE techniques provide an overall view of the flow field and a reasonable prediction of comfort. However, gust wind speeds are only indicative for this type of study, and *wind tunnel testing is required to accurately assess conditions if safety is a concern.*

1. Melbourne, W.H., 1978. Criteria for environmental wind conditions. *Journal of Wind Engineering and Industrial Aerodynamics*, 3(2-3), pp.241-249.
2. Boston Development Review Guidelines, (2006). [Pdf] Boston: Boston Redevelopment Authority, pp.45-46. Available at: <http://www.bostonplans.org/getattachment/65dba1c1-0947-4dac-9309-23b395849bb0>.
3. Bostonplans.org. n.d. ARTICLE 49A GREENWAY OVERLAY DISTRICT. [PDF] Available at: <http://www.bostonplans.org/getattachment/d9068970-a9c6-4aad-b9e9-95191adb0f2b>.



## Appendix B: Article 49A - Greenway Overlay District

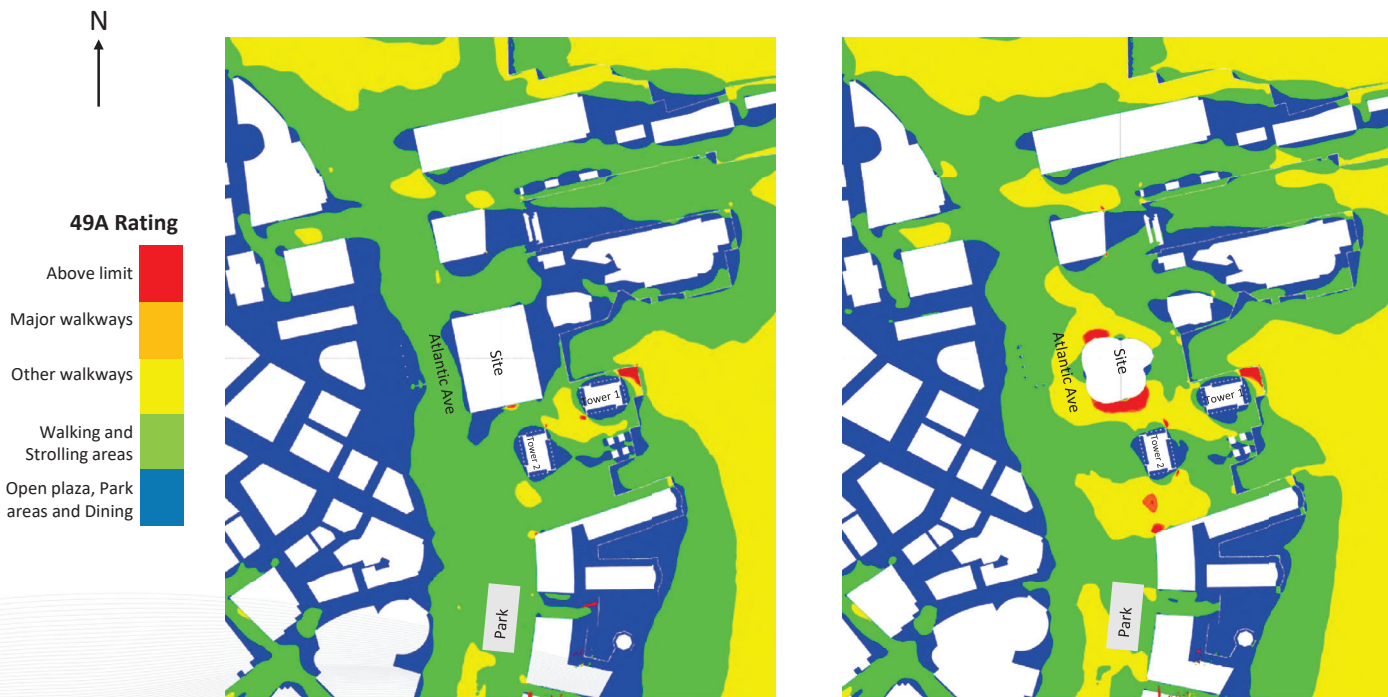
## ARTICLE 49A Comfort Assessment Definitions

Wind speed that occurs % of the time (mph)		ARTICLE 49A Comfort Rating	Suitable activities
9, 20%		Open Plaza , Park areas and Dining	Generally acceptable for long duration stationary activities such as in outdoor restaurants and in parks.
14.1, 15%		Walking and Strolling	Short duration stationary activities such as window-shopping, standing or sitting in plazas.
25, 5%		Other Pedestrian walkways	Acceptable for walking, main public accessways-including street and arcade shopping areas
31, 1%		Major walkways	Unacceptable as main public accessways- especially principal Egress path for High-Rise buildings
31+, 1%		Limit	Completely unacceptable: people likely to be blown over.

*All results are shown at the 5 ft level unless otherwise stated. Wind speeds are "Effective Gust Velocities" (mean + 1.5 standard deviations)*

1. Bostonplans.org. n.d. ARTICLE 49A GREENWAY OVERLAY DISTRICT. [PDF] Available at: <http://www.bostonplans.org/getattachment/d9068970-a9c6-4aad-b9e9-95191adb0f2b>.

## 49A Comfort – Direct Comparison





**ANDREA J. CAMPBELL**  
**BOSTON CITY COUNCILOR**  
**DISTRICT 4**

June 8, 2021

Martin Suuberg  
Commissioner  
Department of Environmental Protection  
Commonwealth of Massachusetts  
One Winter Street  
Boston, Massachusetts 02108

Re: Extension of Public Comment Period for Proposed Amendments to 310 CMR 9.00

Dear Commissioner Suuberg,

I recently learned of the Massachusetts Department of Environmental Protection's (MassDEP) proposed amendments to 310 CMR 9.00, the regulations concerning waterways. Subsequently I learned through several stakeholders in the waterfront area and the environmental community of concerns about the length of the comment period and the level of access to information regarding the proposed changes. Given the significance of the matter, I feel strongly that MassDEP's proposed process be extended and that it include greater opportunities for public engagement.

Additional public engagement strategies could include direct outreach to and within the impacted communities, easy access to legislation related to the proposed amendments, and simpler language to describe what the amendments are meant to achieve so that more residents can understand the potential impacts and then submit comments. As we seek to engage broader communities, particularly those communities historically left out of these processes, it is critical that these additional steps towards public engagement be taken.

The proposed regulations would affirmatively reenact an outdated and controversial Downtown Waterfront Municipal Harbor Plan (MHP) that threatens the public's ability to access and engage with the waterfront and that fails to take steps to adequately protect neighboring and water dependent properties.

**BOSTON CITY HALL, ONE CITY HALL SQUARE, BOSTON, MASSACHUSETTS, 02201**  
**617-635-3131 FAX: 617-635-4203 • ANDREA.CAMPBELL@BOSTON.GOV**



**ANDREA J. CAMPBELL**  
**BOSTON CITY COUNCILOR**  
**DISTRICT 4**

I am also aware of the letter sent to your attention by the Conservation Law Foundation (CLF) on May 18, 2021, requesting expansion of the public engagement process via extension of the public comment period and increased public hearings. For all the reasons stated in CLF's letter, I support its request, including specifically the request to extend the timeframe for written comments to sixty business days.

The Downtown Waterfront MHP is critical not just to residents of the plan area, but also to the City of Boston as a whole, as the area serves as a critical gateway to Boston Harbor for the many neighborhoods of Boston without waterfront access. Outreach to these impacted communities is essential and appropriate time and resources should be devoted to this effort prior to the close of the public comment period.

Thank you for your consideration and please do not hesitate to reach out if you have any questions.

Sincerely,

Andrea J. Campbell  
Boston City Councilor, District 4





**ANDREA J. CAMPBELL**  
**BOSTON CITY COUNCILOR**  
**DISTRICT 4**

July 27, 2021

Martin Suuberg  
Commissioner  
Department of Environmental Protection  
Commonwealth of Massachusetts  
One Winter Street  
Boston, Massachusetts 02108

Re: Proposed Amendments to 310 CMR 9.00

Dear Commissioner Suuberg,

Thank you for allowing me to provide testimony today on the proposed amendments to 310 CMR 9.00, the regulations concerning waterways. This testimony is in follow-up to my letter from June 8, 2021 in which I advocated for an extension of MassDEP's public engagement process to include greater opportunities for residents to understand the impacts of the proposed amendments and for impacted communities to participate in a more meaningful way. During these last two months I have continued to engage with stakeholders in the waterfront area and the environmental community about their concerns, and I am here today to request that the Boston Downtown Waterfront Municipal Harbor Plan be removed from the proposed regulations so that the City of Boston can undertake its own robust engagement and planning process.

The proposed regulations would affirmatively reenact an outdated and controversial Downtown Waterfront Municipal Harbor Plan (MHP) that threatens the public's ability to access and engage with the waterfront and that fails to take steps to adequately protect neighboring and water dependent properties. The MHP has been a point of community contention and frustration for over eight years. It was opposed by the Citizen Advisory Committee and hundreds of community members and it has never reflected the viewpoints of the citizens who will be most impacted or the public who should be served by it.

**BOSTON CITY HALL, ONE CITY HALL SQUARE, BOSTON, MASSACHUSETTS, 02201**  
**617-635-3131 FAX: 617-635-4203 • ANDREA.CAMPBELL@BOSTON.GOV**



**ANDREA J. CAMPBELL**  
**BOSTON CITY COUNCILOR**  
**DISTRICT 4**

The recent court decision that invalidated the 2018 MHP offers us a rare second chance to get it right. MassDEP should not respond to the decision by affirmatively reinstating this flawed plan. Boston, its changing leadership, and its residents and institutions deserve the opportunity to chart a new course for the Downtown Waterfront that reflects their priorities in the face of the pressing needs to address climate change, accessibility, and inclusivity.

We have all heard the outrage and criticism that the proposal for the Harbor Garage site authorized by the MHP is simply too tall, too dense, and too impenetrable. It will wall off our city and our citizens from their waterfront, one of Boston's most precious assets. It is critical not just to residents of the plan area, but also to the city as a whole, as the area serves as a critical gateway to Boston Harbor for the many neighborhoods of Boston without waterfront access. We need to step back now and think about what is truly best to ensure our city's waterfront is welcoming and accessible to all. Now is the time.

To date we have lacked a strategic long-term vision for our waterfront. As we collectively work on our economic recovery and deal with the urgency of climate change and equity, we need to develop a vision and a plan under new City leadership that is supported by our diverse citizens and will create a waterfront that is truly accessible, inclusive, welcoming, vibrant and resilient for all.

I call on the MassDEP to not supplant their judgement for ours. Every one of us aspiring to lead our City has recognized the inadequacy and failings of the 2018 MHP. I ask the DEP to drop the Boston Downtown Waterfront Municipal Harbor Plan from their proposed regulations and return the power to our people to decide what we want and need.

Sincerely,

Andrea J. Campbell  
Boston City Councilor, District 4

# *Macero Law P.C.*

*The Armory  
92 High Street,. Suite T-2A  
Medford, MA 02155  
(617) 494-1115    ram@macerolaw.com*

August 2, 2021

[DEP@Waterways@mass.gov](mailto:DEP@Waterways@mass.gov)

Daniel Padien  
Waterways Program Chief  
Department of Environmental Protection  
1 Winter St. 5<sup>th</sup> fl.  
Boston, MA

RE: Comments on DEP proposed regulations regarding Municipal Harbor plans

Dear Mr. Padien,

Please accept this letter as my confirmation of my strenuous opposition to the proposed inclusion of the Municipal Harbor Plans for Boston Harbor and more specifically the plan that deals with the Charlestown Navy Yard wholesale into the Department of Environmental Protection (DEP) regulations. The basis for my opposition to the inclusion of these Municipal Harbor Plans in the present DEP regulations is multilayered and will serve as further support for my comments made at the Public Hearing on July 26, 2021 in the 1:00 p.m. hearing. Thank you for permitting me to speak and for the generosity in the time allotted to me.

To recap, at the hearing, first and foremost, all public officials which participated in the hearing, including Mayoral Candidate and City Councilor Andrea Campbell, Mayoral Candidate and City Councilor Annissa Essaibi George, City Councilor Lydia Edwards and City Councilor candidate Ruthzee Louijeune, all concurred that the Municipal Harbor Plans for the City of Boston should not be made part of the DEP regulations. All public officials recognized that the existing Municipal Harbor Plans were outmoded, antiquated and did not recognize the current climate challenges begin faced by the City of Boston. All public officials requested that these Municipal Harbor Plans be excluded from the regulations so that Boston could return to the community and to engage in a process that reflects the needs and desires of its citizens such that a welcoming and accessible access to the Boston waterfront can be preserved. Each recognized that the present Municipal Harbor Plan(s) do not reflect climate change or climate resilience and equity and that Boston is just now addressing climate change, climate resilience and the public's need for equity and inclusion in the Boston Harbor as its precious resource to the citizens. All have urged that it is folly to include the existing controversial, outdated MHPs that will wall off the City from its harbor, do not address climate change are objectionable and contrary to public interest must not be made part of the DEP regulations. The DEP must remove the Boston Municipal Harbor Plans from the regulation to present Boston and its citizens with a second

chance to reimagine Boston Harbor access for all of its citizens and deal with the realities of climate change and sea level rise in Boston.

1. The adoption of the Municipal Harbor Plans by the Secretary of EOEA was determined by the Court to be beyond the authority of the Secretary's authority under the DEP regulations.

The adoption of the Municipal Harbor Plans at the time the regulations were adopted, were voluntary. The Superior Court Justice Davis determined that the delegation of the adoption of Municipal Harbor Plans to the Secretary of EOEA was beyond the Secretary's authority. See Armstrong et al v. Theoharides et al. Suffolk Superior Court 1884CV21322 and 1884Cv2144 decision on Cross Motions for Summary Judgment. The reasoning of Justice Davis reminds DEP that such the DEP has an express obligation to 'preserve the public trust and to protect the public's interest' Armstrong at p. 13 quoting Moot v. DEP 448 Mass. 340 at 342 (2007) referred to as Moot I. Further, Armstrong quotes Alliance to Protect Nantucket Sound Inc. v. Energy Facilities Siting Bd. 457 Mass.633 at 677 (2010) which holds that "Under the "pubic trust doctrine," the Commonwealth itself ' holds tidelands in trust for the use of the public for, traditionally, fishing, fowling, and navigation". Justice Davis then goes on to remind the DEP quoting Alliance at 678 that

The Legislature has designated DEP as the agency charged with responsibility for protecting the public trust rights in tidelands through the c. 91 licensing program.

As such, the complete inclusion without more of these Municipal Harbor Plans into the DEP regulations without the benefit of a full regulatory review of each and every aspect is a complete abrogation of DEP's statutory and regulatory duties which will not stand court scrutiny.

There is no evidence that DEP exercised its statutory duty in the original adoption of the Boston Municipal Harbor Plans and more particularly Charlestown Navy Yard plan which was adopted some 30 years ago. The DEP at that time was require to carry out its statutory mandate in c.91 sec. 2 to

have charge of the lands, right in lands, flats, shores and rights in tide waters belonging to the commonwealth and shall...prevent further encroachments and trespasses; ascertain what portions of such lands may be leased, sold or improved with benefit of the commonwealth and without injury to navigation or to the rights of riparian owners...

In carrying out its duties under the provisions of this chapter, the [DEP] shall act to preserve and protect the rights in the tidelands of the inhabitants of the commonwealth by ensuring that tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose. Quoting Armstrong at p. 13-14 quoting c.91 sec. 2.

During the adoption of the Municipal Harbor Plans for Boston, there is no evidence that there was any public hearing or public process as part of the original adoption. As such, the inclusion of Municipal Harbor Plans in to the DEP regulations at this time further compounds the original error of the DEP in not only delegating its authority to the Secretary of the EOEA but also in failing to carry out its statutory obligations under c.91 sec. 2.

Further, to wholesale adopt the Charlestown part of the Boston Municipal Harbor Plans at this time, some 30 years after the original Charlestown MHP which the City of Boston allowed to expire in 1996, when the DEP regulations have changed over the course of time is an absolute abdication of the DEP's statutory mandate under c. 91 to protect the access to the waterways of the Commonwealth for its inhabitants.

The Armstrong Court goes on to remind the DEP and the Secretary of EOEA that 'Section 18 of the Waterways Act sets out the statutory procedures that the DEP must follow in considering an application to build or perform other work on tideland property'...the DEP may license a non-water dependent use of tidelands... only if it has made a written determination, after public hearing, that the proposed structure or work,

Serves a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands...Armstrong at 14.

Here the DEP has had no such hearing and has made no such findings or such evaluation. The DEP can not now merely include these faulty, outdated (in the case of Charlestown) Municipal Harbor Plans without carrying out its statutory duties. These DEP duties are not delegable as the Armstrong Court has held. Therefore, the mere inclusion of the Municipal Harbor Plans in the DEP regulations as is proposed further compounds the violation of c.91 since the MHPs were not properly approved through a full DEP process at their inceptions. Inclusion in the DEP regulations without more cannot be magically cured the illegal delegation of authority to both the municipalities and the Secretary of EOEA of the DEP's obligation under c.91. As such, this regulatory process further violates the holding of Armstrong case, its progeny and c. 91 statutory authority given solely to the DEP.

Of note also are the regulatory mistakes noted in the comments of Mr. Victor Brogna which make the original adoption of the Boston Municipal Harbor Plans problematic at best. Mr. Brogna also raises the procedural violations in the form of the adoption of the Boston Municipal Harbor Plans in violation the Massachusetts Open Meeting Law which denied the public the ability to comment on the adoption of the Municipal Harbor Plans at the time of original illegal adoption.

The DEP has no authority to waive any regulatory defects in the adoption of the Municipal Harbor Plans. The inclusion of the public at this late stage to attempt to confirm the MHP flawed process, that excluded the public during the original process, further undermines the entire regulatory process and the protection of the waterways for public access which is DEP's mandate. The attempt at this stage to include wholesale the various different Municipal Harbor Plans for the different communities through this regulatory end run around the Armstrong Court's decision just compounds the folly that these Municipal Harbor Plans present.

2. The MHPs for Boston and Charlestown in particular are outdated and do not take into account present climate realities of rising sea levels.

The Charlestown MHP which is proposed to be included is 30 years old (adopted in 1991) and expired. The Charlestown MHP sought to be included, does not take into account climate



change realities of rising sea levels or the present FEMA flood elevation maps for the Charlestown Navy Yard or other areas of the City.

Much of Boston is filled land and as such is at more risk than average for flooding as the sea reclaims what land was formerly part of Boston Harbor. We saw this demonstrated in the January 2018 storm where sea waters surmounted the end of Long Wharf and ran up State St. As late as 1900 this area of State St. was connected to Boston Harbor and linked directly to the Custom's House. As such, any plan that fails to take into account the prospect of flooding of filled lands is a failure. Even the Boston Globe on July 26, 2021 had an article about rising sea levels in Boston City faces a rise in high-tide flooding NOAA predicts alarming increase. NOAA predicts high-tide flooding to rise from 18 days now to 35 days by 2030 and 95 days by 2050.

The issue with the Boston Municipal Harbor Plans, including the Downtown and expired Charlestown Navy Yard<sup>1</sup> plans, is that they fail to acknowledge the fact that these areas are filled land and flooding has occurred and will likely occur again as the sea water and harbor reclaim these filled lands. As such, to just write the MHP into the DEP regulations is a complete farce and abdication of the DEP responsibility to evaluate each project under the DEP existing regulations.

Specifically, the entire Charlestown Navy Yard is in a flood zone. The area most impacted by the now defunct Charlestown MHP which the DEP seeks to include in this regulatory change includes environmentally sensitive areas of Pier 5 and Dry Dock 2. These areas include lands filled by the US Navy. These areas, like lower State St., are at high flood risk.

In fact, instrument surveys in the possession of the BRA/BPDA from December 2004 show that Pier 5 in particular is in a Velocity zone 4 where the rising seas can reach at least 19.6 feet. Pier 5 itself is only at elevation 15.5 feet which means the entire end of Pier 5 will be inundated. Pier 5 is below the Vzone flood elevation for up to at least 210 feet from the end of Pier 5 until Pier 5 is even with A zone flood waters at a level of 15.5 feet. This flood mapping of the V zone generally requires buildings to be elevated over the flood elevation, even on land, by the use of raised pilings. The balance of Pier 5 is in an A 2 flood zone at flood elevation 11 and 10. Given the age of this flood mapping, it is obvious that the BRA/BPDA provided the MHP 2008 amendment (see footnote.) even with knowledge of the flood zone but with absolutely no consideration for the damage caused by such flooding. This is just one example of the reason

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<sup>1</sup>. The Charlestown Municipal Harbor Plan adopted in 1991 and expired after 5 years in 1996 and was not renewed. Boston failed to take affirmative action to renew the Charlestown MHP and has not taken action to do so to this time. Specifically, in August 2002, in a hearing in the US Bankruptcy Court case involving the developer holding the development rights to the Charlestown Navy Yard, the developer proved to the Court that the Charlestown MHP was expired and as such the successor to the bankrupt developer was not required to pay the BRA any subsequent payments under the Land Disposition Agreement. (See In re Compnetrol Acquisition Partnership et al (US Bankruptcy Court D. Del.) The BRA/BPDA attempted to resurrect this MHP in 2008 via comments from the Secretary of EOEa which involved no public process at all in violation of the Open Meeting Law.)

why the MHPs cannot be included in the DEP regulations because the MHPs do not take into account such known flood hazards and the City acting through the BPDA does not have the interest of the public and its access to the waterfront as a priority.

The proposed Charlestown MHP from 1991 includes these known flood areas in proposed areas for Non-Water Dependent Uses in the form of Private Tenancy which would be not only exposed to these flood zones but would not be buildable in under current FEMA regulations and would not be insurable under the NFIP (National Flood Insurance Program). Further, the attempted inclusion of this Charlestown Navy Yard Municipal Harbor Plan which is 30 years old does not take into account any of these flood elevation maps not to mention predicted sea level rise which by all accounts will overtop both Pier 5 and Dry Dock 2 in the next 10 years. Even the US Navy in the design of Dry Dock 2, predicted a 1 inch per year sea level rise in 1940 which makes Pier 5 and Dry Dock 2 at present, at their original design limit. Dry dock 2 was constructed in 1940 and at a rising sea level prediction of 1 inch per year, Dry dock 2 is close to its maximum capacity with a 80 inch or 7 foot 8 inch rise in sea level as designed.

The BRA/BPDA then attempted to illegally extend or impose MHP for Charlestown dated 1991 which had long expired, without any concern for the public or the process but only for the developer. The BRA/BPDA, through its illegal MHP amendment, attempted to allow the construction of up to a 55' building within 35 feet of the end of Pier 5. According to Flood zone mapping as discussed above, the entirety of Pier 5 is in the flood zone and such proposal should have been rejected. Given the age of this flood mapping, it is obvious that the BRA/ BPDA provided failed to provide full and complete information to the EOEA during this attempted MHP 2008 amendment to ignore or obscure the knowledge of the flood zone hazard with absolutely no consideration for the damage caused by such flooding. This is just one example of the reason why the MHPs cannot be included in the DEP regulations because the MHPs do not take into account such known flood hazards and the City acting through the BRA/BPDA does not have the interest of the safety of the occupants, not to mention the public and its access to the waterfront as even a remote concern.

3. Boston Climate Action initiative needs to be conducted before any municipal harbor planning can proceed.

The City of Boston 'Climate Action' makes as one of its goals, protecting our natural resources. The Boston Climate Action Initiative has barely had time to begin its work to evaluate the impact of climate change, rising sea levels and to adopt as law any of these Boston Harbor Municipal Harbor Plans is a complete rejection of the science of climate change and rising sea levels. The Climate Action Initiative is using even more aggressive mapping provided by the Wood Hole Oceanographic Institute which shows rising sea levels and flood mapping which carries through 2030 -2070. These flood elevation and rising sea level predictions make the adoption of the Charlestown expired 30 year old MHP a complete farce since the MHPs provide non-water dependent tenancies over areas that most definitely will be in areas that, if not now, will be covered by water according to the WHOI predictions of flooding and rising sea levels. These MHPs are supposed to protect our natural resources but they do anything but that.

Boston is now in the process of updating its ‘Boston Climate Action Plan’ so it is premature to make the MHPs for Boston a fixture in the DEP regulations just to benefit developers at the cost and expense of the citizens, which the DEP is supposed to protect. The blanket permission of the DEP to these uses by adding the MHPs to the regulation to permit extensive development to lands which will be subject to flooding and inundation, at the expense of the taxpayers who will be forced to pay to protect these uses from floods which floods are predicted to happen, is a gross dereliction of the DEP mandate in c.91. The insertion of the MHPs in to the DEP regulations is just an end run around the DEP process. It is the DEP’s obligation to insure the public is protected in its rights, use and access to the publicly protected waterfront.

Climate change is real. Even the MBTA has recognized this the Boston Globe of July 27, 2021 Rising seas called ‘existential threat’ to MBTA Coastal system must be fortified, report warns. The MHPs do not take into consideration the heavy reliance on public transportation and its need to be fortified against storms and flooding from rising sea levels. Charlestown Navy Yard is not even serviced in large measure by public transportation and as such the MHP adding residential units without any plan will become another Seaport District nightmare exacerbated by the limited entry points to the existing Charlestown Navy Yard and limitations on it as a historic district.

4. The Seaport District is an abomination that was created by the MHP for Boston and the abdication of the DEP in its charge to protect the public access to the waterfront under c.91.

The abomination of development that the Seaport District has become is a glaring example of overbuilding and construction which not only blocks the access to the Boston Harbor front to the public but walls off all views and vistas of the Boston Harbor from any vantage point except a high rise luxury condominium. The Seaport District demonstrates the atrocity that the Boston Municipal Harbor plan for that area has caused, by permitting unbridled overdevelopment of an area that is hard to access and virtually otherwise inaccessible. Pre-pandemic in 2019, exiting the Seaport area on Seaport Boulevard at 6:15 pm in November, from the intersection of Northern Ave. to the Moakley Bridge took 45 minutes in traffic with no available outlet for an alternate route. The citizens of Boston and the Commonwealth have rights to the Boston Harbor and these rights are being extinguished through unbridled overdevelopment.

The DEP is charged with protecting the rights of the public to its waterfront under c.91. The DEP has extensive regulations in place to evaluate the public interest in the development of any of the Boston Harbor front and balance such development with any private interests to protect the public’s rights. The DEP can not abdicate its statutory duty to the public by adding these illegal MHPs to the regulations.

5. The MHPs, and specifically Charlestown Navy Yard MHP, are outdated and fail catastrophically to protect the public’s access rights preserved in c.91 to access to the waterfront and more especially the Boston Waterfront.

The MHPs, as proposed for Boston, only serve to wall off the Boston Harbor access and vistas from virtually all areas of the City. We have removed the ugly wall of an elevated Route 93 to now create a wall of buildings blocking views, breezes and enjoyment of Boston Harbor.

The MHPs do not take into account need for open space and the concentrations of heat in the City in summer months. The Climate Initiative has also as its mandate to deal with these heat issues. We have seen an unprecedented hot summer with a heat wave in June 2021 the last 3 days of the month. It is a well-known fact that buildings attract, absorb and then emit heat in the summer. None of the MHPs call for the addition of open space or trees to absorb carbon and water, to both mitigate the heat created by buildings and additional pavement, absorb carbon and excess flood waters. This fact is noted by the Boston Globe Editorial Board on July 21, 2021 The heat is on cities — and it's not going away By The Editorial Board. Updated July 20, 2021, 12:45 p.m.

OpEd on July 22, 2021, sent to the Charlestown Patriot also note the need for open waterfront in the Charlestown Navy Yard. <https://charlestownbridge.com/wp-content/uploads/2021/07/CPB0722.pdf>

6. The DEP must reject the MHPs for Boston and more specifically the Charlestown Navy Yard in favor of a more citizen centric process and outcome for the Boston Waterfront and Pier 5.

The MHP should not be made an automatic part of the DEP regulations because these MHPs do not represent the public interest or the public input at the time or at present. Even the Boston Mayoral Candidates forum will deal with the need for a climate resilient waterfront and the planning for same. <https://www.eventbrite.com/e/coalition-for-a-resilient-and-inclusive-waterfront-mayoral-forum-tickets-163275388081?aff=ebdssbeac>

The addition of the MHPs to the planning not only will create obstacles to development but will create further litigation as the outdated, private interests served by these MHPs are contested by the public as it seeks to have its say. The DEP's mission is to protect public waterfront rights and to perform a balancing act between the needs and wants of private development on the waterfront and the RIGHTS OF THE CITIZENS OF THE COMMONWEALTH OF MASSACHUSETTS TO THEIR WATERFRONT unimpeded by buildings that they neither want nor need.

C. 91 sec. 3 specifically gives the DEP the rights and duties to Boston Harbor. The inclusion of the MHPs not developed by the DEP or vetted by the DEP in a public forum for the City of Boston violates c. 91 sec. 3. Further, DEP has the care and supervision of the harbors and tide waters within the commonwealth and 'shall protect the interests of the commonwealth in areas described herein in issuing any license and permit authorized pursuant to this chapter.' See sec. 10. The DEP in adding the MHPs is failing in its duties under c.91 from which all of its power flows.

Further to the extent that the adoption by regulation without following the existing DEP obligations under c. 91 constitute a violation of the rights of the citizens under the Massachusetts Constitution as follows:

## Article XCVII.

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

The General Court has acted and adopted chapter 91 which was formally established in 1866. The philosophy behind c.91 dates back to the earliest days of the Massachusetts Bay Colony, most notably in the Colonial Ordinances of 1641-1647. Chapter 91 is the oldest program of its kind in the nation, based on the “public trust doctrine that holds that the air, the sea and the shore belong not to any one person but rather to the public at large”. It is the main vehicle for protecting the public’s rights, access and interest in the waterways of the Commonwealth. It ensures that the public rights to fish, fowl and navigate are not unreasonably restricted and that unsafe and hazardous structures are repaired or removed.

Chapter 91 governs the strict open space requirements on flowed tidelands and requires that 50% of a project should be devoted to Open Space. **Requirement 7(d):** Requirement 7(d) of Chapter 91 seeks to “ensure that facilities of private tenancy over flowed tidelands are subject to specific guidelines to avoid conflict and minimize compatibility with the operation of nearby water-dependent and/or public activities.” None of these MHPs for Boston especially that of the Charlestown Navy Yard even remotely protect the public interest in the waterfront, the open space requirements of the DEP regulations and as such violate c.91, the DEP regulations and the spirit and the essence of the rights of the citizens of the Commonwealth of Massachusetts to their constitutional rights to the waterfront.

The DEP must withdraw these fatally flawed Municipal Harbor Plans for Boston and more specifically for Charlestown so that climate change, rising sea levels, public access and the citizen’s constitutional rights to the Boston Harbor Waterfront are protected and so that the public can have a full and fair opportunity to decide its future and that of its waterfront in one of the most historic and important cities in the United States.

Thank you for your attention to this serious issue of the c.91 waterfront rights of the citizens of the Commonwealth of Massachusetts and for withdrawing the Boston Municipal Harbor Plans and more specifically the 1991 expired Charlestown Municipal Harbor plans from the proposed changes to the regulations under consideration.



Very truly yours,

A handwritten signature in black ink, reading "Rosemary A. Macero". The signature is fluid and cursive, with the first name "Rosemary" being more prominent and the last name "Macero" following in a similar style.

Rosemary A. Macero

Cc: Governor Charles Baker  
Acting Mayor Kim Janey  
Councilor Andrea Campbell  
Councilor Annissa Essaibi George  
Councilor Lydia Edwards  
Councilor Michelle Wu  
Candidate Ruthzee Louijeune  
Representative Salvatore DiDomenico  
Representative Daniel Ryan  
Pier 5 Association Inc.



August 5, 2021

Commissioner Martin Suuberg  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Re: Massachusetts Department of Environmental Protection's Proposed Changes to the Waterways Regulations, 310 CMR 9.00 *et seq.*

Dear Commissioner Suuberg:

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to provide additional comments on the Massachusetts Department of Environmental Protection's (MassDEP) proposed changes to the Waterways Regulations, 310 CMR 9.00 *et seq.* As stated in our June letter and testimony, NAIOP supports and commends MassDEP's objective of confirming its approval of existing Municipal Harbor Plans (MHP) and affirming existing Chapter 91 Licenses in the wake of the Superior Court's decision in *Armstrong, et al. v. Theoharides*, Suffolk Superior Court No. 1884CV02132 and *Conservation Law Foundation v. Theoharides*, Suffolk Superior Court No. 1884CV02144 (*Armstrong Decision*).

Based on our further review of the proposed changes to the regulations, NAIOP respectfully submits the additional below comments. NAIOP has also provided suggested language to address our concerns in the accompanying redline of the regulations as posted for public comment for MassDEP's consideration. Please consider all comments supplemental to our June letter unless otherwise noted.

As stated in NAIOP's June comments, **NAIOP strongly urges MassDEP to ensure all references to the Approved Municipal Harbor Plans are revised to make it clear that the entirety of the applicable MHPs are approved** rather than limiting the references to the substitution provisions listed in 310 CMR 9.57. Also consistent with NAIOP's earlier comments, **NAIOP hopes that MassDEP will ensure references to the substitution provisions in the Approved Municipal Harbor Plans take into account that the MHPs are incorporated by reference**, rather than limiting the references to the specific substitutions originally listed in the draft revisions. NAIOP hopes that MassDEP, in order to capture the entirety of the intent of the harbor plans, **consider including a reference to the offsetting public benefits in all references to the substitutions in Approved Municipal Harbor Plans.**

In addition, if DEP does not follow our prior suggestion from the June letter to simply incorporate the Approved Municipal Harbor plans by reference, **NAIOP believes that it should be clear that the list of substitutions and other provisions of the Approved Municipal Harbor Plans in Section 9.57 is not intended to be comprehensive and that any conflicts with the Approved Municipal Harbor Plans themselves are to be resolved by reference to the terms of the Approved Municipal Harbor Plans.**

Further, in order to ensure complete clarity, **NAIOP believes that references to the Secretary and Department determinations with respect to the Approved Municipal Harbor Plans should be amended to explicitly reflect their respective prior participation in the determinations.**

In Section 9.57, NAIOP suggests the incorporation of language confirming that a) the existing Approved Municipal Harbor Plans are consistent with the proper public purpose found by the Department in the

applicable Ch. 91 licenses issued to date, and that the substitutes/offsetting benefits in the Approved Municipal Harbor Plans provide a greater public benefit than public detriment to the rights of the public in said lands, and b) that the determination of proper public purpose and greater public benefit than public detriment for future Ch. 91 licenses issued under the MHPs will take the substitute provisions and associated public benefits into account, in addition to all other licensing criteria.

Lastly, as NAIOP stated in our June letter, in light of MassDEP's recognition of the importance and value of the community input in waterfront planning that occurs through the municipal harbor planning process, NAIOP strongly encourages MassDEP to identify a path forward for approving future municipal harbor plans, amendments, renewals, and clarifications. As MassDEP is an engaged and active participant in the municipal harbor planning process, NAIOP believes MassDEP can approve future municipal harbor plans, amendments, and clarifications, as they are defined in the Municipal Harbor Planning Regulations, without the need to go through a regulatory amendment process each time. As there are several communities currently working on MHPs, MassDEP should provide a process that allows those communities to take advantage of the many months of work that have already been invested in the harbor planning process.

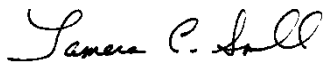
In order to achieve this goal, **NAIOP recommends that the existing proposed paragraph 9.57(2) be struck, and replaced with the below language in red** (further amended from NAIOP's previous submission in our June letter):

*(2) Approval of Municipal Harbor Plans. Upon the Secretary of the Executive Office of Energy and Environmental Affairs' issuance of a decision approving a Municipal Harbor Plan or part thereof pursuant to 301 CMR 23.05, or the Secretary's decision on an amendment, clarification, correction or renewal pursuant to 301 CMR 23.06, or the Secretary's decision of incompatibility pursuant to 301 CMR 23.07, the Secretary shall submit the same to the Department and the Department shall issue a finding as to whether it concurs with the Secretary's written decision. If the Department concurs with the Secretary's decision, the same shall become an Approved Municipal Harbor Plan.*

Thank you for your consideration of our comments and suggested language to date. NAIOP Massachusetts represents the interests of companies involved with the development, ownership, management, and financing of commercial properties. NAIOP has over 1,700 members who are involved with office, lab, industrial, mixed use, multifamily, retail, and institutional space.

Please contact me if you have any questions.

Sincerely,



Tamara C. Small  
Chief Executive Officer  
NAIOP Massachusetts, The Commercial Real Estate Development Association

CC:

Secretary Kathleen Theoharides, Executive Office of Energy and Environmental Affairs  
Daniel Padien, Waterways Program Chief, MassDEP  
Lisa Engler, Director, Office of Coastal Zone Management

May 18, 2021

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Commissioner Suuberg  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

**Subject: Expansion of the Public Engagement Process via Extension of the  
Public Comment Period and Increased Public Hearings**

Dear Commissioner Suuberg:

Conservation Law Foundation (CLF) intends to participate in the public comment process for the Massachusetts's Department of Environmental Protection's (MassDEP) proposed amendments to 310 CMR 9.00 Waterways ("Waterways Regulations"). This rulemaking process is far from a simple administrative fix to approve a "long-standing practice" of state agencies as stated by the Executive Office of Energy and Environmental Affairs (EOEEA) and MassDEP. Rather, it is a wholesale modification of the prior MHP practice and a new set of public purpose determinations. The proposed amendments constitute new determinations of proper public purpose and net public benefits by MassDEP that could or already have substantially altered public rights in tidelands throughout large portions of the state's coastline. MassDEP should provide a public process that is commensurate with the significant sweep of the amendments proposed.

Currently, MassDEP proposes to provide two public hearings on the same date and a public comment period ending after a mere 26 business days. To promote public engagement and ensure that all residents have a voice throughout this process, MassDEP must both extend the comment period to at least 60 business days and provide public hearings for each municipality subject to a municipal harbor plan (MHP) that contains provisions substituting alternative use standards and numerical limitations to the underlying provisions in the Waterways Regulations.

The proposed amendments purport to retroactively codify sixteen MHPs created over the course of three decades. Although MassDEP asserts that the previous MHP process "worked well to serve the [private] and public interest in tidelands," many stakeholders, who never received an opportunity to challenge a Secretary's MHP approval previously, might strongly disagree. That is particularly the case in recent MHP approvals where the Secretary of EOEEA

has departed significantly from the Waterways Regulations' use limitations and numerical standards. Other existing MHPs included controversial substitutions and offsets which substantially altered public rights in tidelands.

This rulemaking is complex and multilayered. The proposed regulations attempt to condense the contents of all sixteen existing MHPs, which collectively amass thousands of pages, into a series of tables that by themselves cumulatively amount to 30 pages in length. While the proposed regulations identify specific substitutions, amplifications and offsetting measures contained in each MHP, these substitutions, amplifications and offsets cannot be isolated from the terms and objectives of the MHP in which they were developed as the proposed regulation purports to do. It is also far from clear how MassDEP's public purpose determination decisions today on these identified MHPs should take into account the "as built" circumstances of those MHPs. The considerations that once made sense in a community, arguably, may well have changed significantly over the years.

One example of this complexity is found within the Harborpark Plan section of the proposed regulations. The amendment chart simply lists a "Requirement 4b-c" as the Approved Offsetting Measure of the proposed-to-be Approved Substitutions within this MHP without further detail. *See* Proposed Regulations at 310 CMR 9.57(2)(d). There is no way for even an experienced tidelands practitioner to know what this refers to. To understand what is meant by these "Requirements 4b-c," parties will need to read the original Boston Harborpark Plan, the Secretary's associated Decision documents, and multiple MHP amendments. Furthermore, each individual document cross-references previous documents.

To comprehend what MassDEP is proposing to do with these regulations requires an understanding of both the context and the substance of the MHP in question; few, if any of these substitutions, amplifications, and offsetting measures can be understood in isolation. A reader cannot fully comprehend this complex regulatory web by reading the single summary description set out in the proposed regulation of this documentary and regulatory saga; they must start at the very beginning and work their way forward. Some of these documents are readily available, some are not. In any event, five weeks is not reasonable; the public comment period should be extended to 60 business days and MassDEP should publish an addendum to these regulations identifying for the interested public where the relevant documents associated with these substitutes, amplifications and offsetting measures can be found and accessed.

CLF understands MassDEP's purpose in promulgating these proposed regulations as explicitly and formally making the Section 18 proper public purpose determinations, *see* G.L. c. 90, § 18, in each of the approved MHPs that it had previously improperly delegated to the Secretary of EOEEA. While CLF disagrees that such an approach is appropriate or legal at least on the material presented in the proposed regulation, more time and materials are needed to be provided to the public to prevent this entire exercise from being or being seen as a simple "rubberstamping" of the Secretary's earlier decisions. Such an approach would be wholly inconsistent with the Legislature's charge to MassDEP in the Public Waterfront Act. For the reasons outlined above, we strongly request that MHP extend the public comment period to a minimum length of 60 business days.

## CONSERVATION LAW FOUNDATION

The proposed regulatory amendment process offers public stakeholders in the planning areas covered by these MHPs an opportunity to voice their concerns regarding the protection of public rights in tidelands to the appropriate authority, MassDEP, for the first time in the history of the MHP process. The public should be given ample opportunity to engage, or re-engage, in this process and provide appropriate commentary. To allow for this process, which may require reflection upon three decades of administrative activities and changing priorities, MassDEP must provide a longer public comment period.

Currently, MassDEP proposes to offer two virtual public hearings, both on June 8. Given the depth and potential impact of the proposed regulatory amendments, public hearings are an essential aspect of this public engagement process. Each municipality that has received an approved MHP should be given a separate public hearing to ensure that all stakeholders throughout the state are given adequate time to voice their concerns and engage in the public process with appropriate local public notice. Those communities are the following: Chatham, Cohasset, Edgartown, Everett, Gloucester, Hull, Lynn, Nantucket, New Bedford, Provincetown, and Salem. For Boston residents, MassDEP should provide at least two public hearings specific to Boston's five separate MHPs.

Thank you for your consideration of our requests.

Sincerely,



Peter Shelley  
Senior Counsel  
Conservation Law Foundation





July 7, 2021

MassDEP Waterways Program  
One Winter Street, 5th Floor  
Boston, MA 02108

Dear Commissioner Suuberg,

Thank you for inviting comments to the proposed amendments to 310 CMR 9.00: Waterways ("Waterways Regulations") and allowing us the opportunity to provide feedback.

#### About TACC

As background, The American City Coalition (TACC) is a Roxbury based non-profit organization which has a strong track record of engaging a broad range of constituents in effective collaborations to increase collective impact. Three interrelated programs guide TACC's work and reflect the organization's focus on increasing equity while connecting people to place: 1) Resident Supports; 2) Economic Development and Asset Building; and 3) Neighborhood Vitality.

TACC serves the residents of Boston's Roxbury neighborhood, a racially and ethnically diverse community that is home to African American (53%) and Latinx (29%) residents. Residents are younger than most other areas of Boston (30% under age 20). In Nubian Square, Extremely Low Income (ELI) families are geographically concentrated (46.8% incomes below poverty line; 75% reside in public/subsidized housing).

TACC uses community-based research methods to identify local needs and assets, utilizing this information to develop responsive, effective programming and projects. TACC's goal is to increase collective impact by aligning the skills of partners around common outcomes that are responsive to community-identified fundamentals and engaging complementary partnerships and resources. By doing so, TACC advances equity initiatives that have resulted in systems-level change that actively thwarts the status quo of racism and bias.

#### TACC's Relevant Waterfront Work

In December 2017 with the Barr Foundation's Boston Waterfront Partners (BWP) Initiative support, TACC, together with our partners Kelley Chunn & Associates and Denterlein, launched Waterways: Connecting Residents of Roxbury and Dorchester to Boston's Waterfront. This project is based on the belief that for the waterfront to be fully realized and maintained as a resource for this and future generations, community- and resident-level perspectives from a broad range of neighborhoods must be consciously elevated and supported.

- Project Rationale: Boston's waterfront is the city's largest green space and a critical public asset for all of Boston's residents. Following a multi-billion-dollar public

investment in harbor clean-up, a network of civic and nonprofit organizations has made strides in increasing public access to the open spaces, cultural institutions, and economic resources of the waterfront. **However, knowledge gaps and ease of access still exist in neighborhoods that are not proximate to Boston Harbor, such as Roxbury, including in key policy discussions related to Harbor resiliency, access to public spaces as required by Chapter 91, water dependent and clean tech waterfront jobs, and development that will have ramifications for the region.**

- Project Goal: In the short term, TACC has documented resident-identified barriers to access and utilization and is catalyzing sustained engagement so that more Roxbury residents are invested in and are connected to the waterfront for recreation, culture, and employment. Ultimately, the aim is to give voice to a broader group of residents from Roxbury and Dorchester to impact programs, policies, and accessibility so that as the waterfront continues to evolve, it does so more equitably with the needs and interests of the Roxbury and Dorchester communities actively considered and implemented.
- Documenting Resident-Identified Barriers and Resident-Identified Solutions: Waterways conducted seven focus groups (four with subsidized/public housing residents, two with neighborhood and downtown stakeholders, one with large waterfront employers) to identify current perceptions of, experiences on, interests in, and barriers to accessing Boston's waterfront. In addition, Waterways engaged residents in waterfront activities through a series of seven waterfront activities (Spectacle Island, harbor cruises, bike trip to Moakley Park/Castle Island, etc.) and collected data/feedback through pre- and post-surveys. Through two data walks, we shared the data with the community, discussing its meaning and potential solutions.

TACC has collaborated with the BWP on a racial equity assessment of waterfront programming, using the resident-identified barriers, as well as demographic data to create a toolkit that includes shared, standardized procedures for program planning (to better ensure barriers are addressed) and a shared evaluation process to collect performance measures to fill gaps in performance data that are essential to inform ongoing quality improvements and a sustained focus on access and utilization of waterfront programming by BIPOC residents of the City of Boston; TACC is also drafting a racial equity assessment of waterfront employment to better understand the "access gap" for waterfront jobs.

### **Racial Equity and Economic Equity**

Acknowledging that these regulations have statewide applicability, there must be some recognition of community and demographic changes since the initial promulgation of the procedures, criteria and standards of the Waterways Regulations roughly 30 years ago. Demographic data for many of the Boston waterfront census tracts indicate that they are whiter and wealthier than Boston as a whole.

Focusing on BIPOC inclusion is important to "effective stewardship of trust lands" for all residents and will contribute to spatial justice. The regulations should more intentionally require documentation of how **racial equity and economic equity** are expected to be addressed

and the consequences to not having them addressed. Additionally, the regulations must place a value of increasing equity in the City of Boston by actively requiring that the mix of uses (recreational, cultural, and employment) as well as their relative ease of access to transportation (land and water based) be acknowledged and expanded.

Specifically, in reference to 310 CMR §9.53 (c), the use and programming of facilities of public accommodation (FPA) should be very intentional about supporting economic opportunities for businesses and artists from Roxbury and other inland neighborhoods. We believe that the state's seventeen existing MHPs, specifically those within the City of Boston, do not provide for these opportunities. TACC recognizes that for economic equity in the City of Boston, more specific and innovative strategies are required for these ground floor uses.

We urge your Department take this opportunity reassess existing MHPs, particularly the Downtown Waterfront District Municipal MHP, through this equity lens. A subtle but important element is to clearly acknowledge that diversity does not assume equity.

### **Community and Neighborhood/Defining Terms and Ongoing Engagement**

For the waterfront to be fully realized and maintained as a resource for this and future generations, community- and resident-level perspectives from a broad range of neighborhoods must be consciously elevated and supported. The current outreach plan appears to be on those communities that directly abut the waterfront rather than actively acknowledging that residents in less proximate locations also have a vested interest in the responsible stewardship of their "Common Wealth" and this codification of the Public Trust Doctrine.

The Proposed Regulations do not provide a process for the approval of future MHPs or the renewal of existing MHPs as may be required by 301 CMR §23.06(2). It is MassDEP's obligation to ensure that all residents have a voice in these processes.

We look forward to reading the final version of the Proposed Regulations and to staying engaged throughout this process.

Warm Regards,



Christine Araujo  
Executive Director

Daniel Padien  
Waterways Program Chief  
MassDEP  
One Winter Street  
Boston, MA 02108

Dear Mr. Padien,

I am writing to offer my support to MassDEP's proposed amendments to 310 CMR 9.00 and to endorse the confirmation of each of the sixteen existing municipal harbor plans, including Boston's Downtown Waterfront MHP.

I recognize and applaud that, for over thirty years, municipal harbor planning has been a critical mechanism for Massachusetts cities and towns to promote public access to and activation of the waterfront in a manner consistent with the unique character of the local harbor. This invaluable tool has benefited people across the Commonwealth by preserving and protecting natural resources and water-dependent uses where applicable, but also by harnessing private development as a means for bringing about positive transformation in the many instances where change is beneficial, and even necessary.

The Downtown Waterfront MHP is no exception. The Plan leverages new development to catalyze climate resiliency measures and to provide over an acre of new open space, including a new park and Harbor Islands Gateway at Long Wharf, additions to the Harborwalk, funding to support activation of the Fort Point Channel, and support for the New England Aquarium's Blueway Vision. As the product of five years of planning, across more than forty public meetings starting in 2013, the plan is the result of an exceptionally inclusive and comprehensive process and reflects the character of its location at the economic and transit core of the region.

I endorse the aspirations for increased equity, access and resilience on Boston's Downtown Waterfront and statewide, and I believe in the essential transformational opportunity before us. The Downtown Waterfront MHP provides both the foundation from which to achieve these objectives, as well as built-in protections to ensure that city development review and Chapter 91 licensing address associated development impacts.

There is urgency to take action on Boston's Downtown Waterfront. To remove the MHP from the proposed regulations would erase eight years of planning and progress, and I urge you to confirm the plan along with the other fifteen Approved Municipal Harbor Plans across the Bay State.

Sincerely,

Eric Gordon  
80 Broad St. (Unit 304)  
Boston, MA. 02110  
[egordon58@verizon.net](mailto:egordon58@verizon.net)



June 15, 2021

Commissioner Martin Suuberg  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Re: Massachusetts Department of Environmental Protection's Proposed Changes to the Waterways Regulations, 310 CMR 9.00 *et seq.*

Dear Commissioner Suuberg:

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to provide its initial comments on the Massachusetts Department of Environmental Protection's (MassDEP) proposed changes to the Waterways Regulations, 310 CMR 9.00 *et seq.* NAIOP supports and commends MassDEP's objective of confirming its approval of existing Municipal Harbor Plans (MHP) and affirming existing Chapter 91 Licenses in the wake of the Superior Court's decision in *Armstrong, et al. v. Theoharides*, Suffolk Superior Court No. 1884CV02132 and *Conservation Law Foundation v. Theoharides*, Suffolk Superior Court No. 1884CV02144 (*Armstrong Decision*). As the comment period has recently been extended, NAIOP may supplement this letter and provide further comment during the comment period.

Based on our review of the proposed changes to the regulations, NAIOP respectfully submits the below comments for consideration.

## **I. Preserving Local Planning**

NAIOP first and foremost commends MassDEP for its recognition that the municipal harbor planning process has successfully combined local and state level input to achieve significant public benefit through the tailoring of dimensional and use standards to particular locations throughout the Commonwealth. Communities that have created MHPs have engaged in lengthy, thorough processes involving substantial community and stakeholder input to determine what their waterfronts should look like. The harbor planning process is an important tool to allow communities to design waterfronts that reflect existing and future development policies and priorities and to obtain significant public benefits beyond those required by the baseline regulations. As MassDEP recognizes, part of what makes the Commonwealth's waterfront special is its unique character from the Cape and Islands, to Boston, to Gloucester, and each MHP reflects this character in a way that the baseline Waterways Regulations could not achieve.

Part of the significance of the municipal harbor planning process lies in the detailed documents it produces. MHPs are often hundreds of pages long reflecting detailed planning at the level of individual parcels. In addition, the Secretary's decision approving the MHPs includes important context, caveats and requirements that go beyond the substitutions and offsets. In order to preserve the detailed nature of both of these documents which must be read together, **NAIOP recommends that MassDEP strike proposed paragraph 9.57(2)**, which generally summarizes the substitutions and offsets contained in the original approval decisions, and **instead modify the**

**language of paragraph 9.57(1)** to incorporate the entirety of each proposed Municipal Harbor Plan and Secretarial decision at least by reference. As such, **NAIOP respectfully urges the inclusion of the below draft language in red:**

*9.57: Approved Municipal Harbor Plans*

*(1) The full text of each Approved Municipal Harbor Plan and the Secretary's decision with respect to such Municipal Harbor Plan and any subsequent amendments, renewals, modifications, interpretations and clarifications, as currently adopted including, without limitation, its offsets and substitutions, is incorporated by reference as if fully set forth herein. The incorporation of each Approved Municipal Harbor Plan confirms the Department's concurrence with each such Approved Municipal Harbor Plan as of the date of the Secretary's decision on each such plan (or as of the date of the Secretary's decision on each amendment or renewal, as applicable), and the Department hereby affirms its approval of all licenses issued pursuant to each Approved Municipal Harbor Plan. To the extent an Approved Municipal Harbor Plan has expired or been superseded, pursuant to 301 CMR 23.00 et seq., it shall not apply to new License applications. The following Municipal Harbor Plans are Approved Municipal Harbor Plans:*

Although the table of offsets and substitutions contained in many MHP approval decisions is a useful summary for quick reference, when one reads an MHP, the substitutions and offsets are rarely so neatly distilled and require reviewing the MHP in detail in order to be applied correctly. Accordingly, in order to fulfill MassDEP's goal of preserving the MHP process, **NAIOP recommends incorporating the entirety of each MHP by reference and striking the existing 9.57: Approved Municipal Harbor Plans, Sections 2a-2q.**

## **II. Timing**

In MassDEP's summary of the proposed changes to the regulations, MassDEP notes that it does not intend to make the draft regulations final until an appeal of the Superior Court Decision is resolved. NAIOP respectfully recommends that MassDEP consider making its proposed regulatory changes final as soon as possible. In our experience, even if the appeal were expedited and no party sought any extension of time in assembling the record or drafting their briefs, which would be unusual in and of itself, appeals generally take one year or more, which does not include time associated with any remand the court may order. As MassDEP acknowledges in its summary, the *Armstrong* Decision has created uncertainty both for holders of existing licenses issued pursuant to MHPs and for those who are in the midst of permitting or planning projects within MHP areas. Delaying for a year or potentially more may harm prospective projects and the refinancing and conveyance of existing licensed projects. Accordingly, NAIOP recommends that MassDEP consider adopting the proposed regulations as final once it has addressed comments. In the event an appeal is successful, MassDEP may repeal the proposed regulations if necessary.

## **III. Status of Previously Issued Licenses**

NAIOP agrees with MassDEP that it is critical to affirm the status of existing licenses in order to eliminate any uncertainty that the *Armstrong* decision may have generated, which otherwise may interfere with the financing or conveyance of existing licensed properties or the ability of property owners to amend their existing licenses as necessary. Although MassDEP clearly states this objective in its summary of the proposed regulations, if the proposed regulations are read alone, it is not clear that the language as drafted accomplishes this objective. Accordingly, to



avoid confusion and to ensure that the proposed regulations stand alone, NAIOP **again recommends adding language to clearly and unequivocally affirm existing licenses.**

#### IV. Future Municipal Harbor Plans, Amendments, and Clarifications

In light of MassDEP's recognition of the importance and value of the community input in waterfront planning that occurs through the municipal harbor planning process, NAIOP strongly encourages MassDEP to identify a path forward for approving future municipal harbor plans, amendments, renewals, and clarifications. As MassDEP is an engaged and active participant in the municipal harbor planning process, NAIOP believes MassDEP can approve future municipal harbor plans, amendments, and clarifications, as the same are defined in the Municipal Harbor Planning Regulations, without the need to go through a regulatory amendment process each time. As there are several communities currently working on MHPs, MassDEP should provide a process that allows those communities to take advantage of the many months of work that have already been invested in the harbor planning process.

In order to achieve this goal, **NAIOP recommends that the existing proposed paragraph 9.57(2) be struck, and replaced with the below language in red:**

*(2) Approval of Municipal Harbor Plans. Upon the Secretary of the Executive Office of Energy and Environmental Affairs' issuance of a written determination approving a Municipal Harbor Plan or part thereof pursuant to 301 CMR 23.05, or the Secretary's written approval of an amendment of clarification and correction or renewal pursuant to 301 CMR 23.06, or the Secretary's written certification of incompatibility pursuant to 301 CMR 23.07, the Secretary shall submit the same to the Department and the Department shall issue a written determination as to whether it concurs with the Secretary's written decision. If the Department concurs with the Secretary's decision, the same shall become an Approved Municipal Harbor Plan.*

#### V. Definitions

##### a. Municipal Harbor Plan (MHP)

In order to ensure that previously approved MHPs are captured in their entirety, NAIOP respectfully suggests the insertion of the following language, found in red, into the definition of Municipal Harbor Plan found in section 9.02 of the proposed regulations.

*Municipal Harbor Plan (MHP) means a document (in words, maps, illustrations, and other media of communication) ~~that has received written approval from the Secretary pursuant to 301 CMR 23.00: Review and Approval of Municipal Harbor Plans~~ setting forth, among other things: a community's objectives, standards, and policies for guiding public and private utilization of land and water bodies within a defined harbor or other waterway planning area; and an implementation program which specifies the legal and institutional arrangements, financial strategies, and other measures that will be taken to achieve the desired sequence, patterns, and characteristics of development and other human activities within the harbor area. Such plan shall take effect under 310 CMR 9.00 only upon approval by the Department through the adoption of ~~the substitute provisions of~~ Approved Municipal Harbor Plans ~~and Secretarial decisions~~ listed in 310 CMR 9.57.*

b. DPA Master Plan

NAIOP also respectfully submits the following language, in red, for consideration and inclusion into the Definition of a DPA Master Plan found in section 9.02 of the proposed regulations.

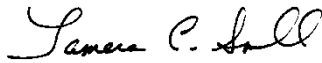
*DPA Master Plan means the component of an Approved Municipal Harbor Plan pertaining to lands and waters of a DPA within the municipality. Such master plan or portion thereof shall take effect under 310 CMR 9.00 only upon written approval by the Secretary in accordance with 301 CMR 23.00: Review and Approval of Municipal Harbor Plans and any associated written guidelines of CZM and approval by the Department through the adoption of the ~~substitute provisions of~~ Approved Municipal Harbor Plan ~~and Secretarial decision~~ listed in 310 CMR 9.57.*

NAIOP Massachusetts represents the interests of companies involved with the development, ownership, management, and financing of commercial properties. NAIOP has over 1,700 members who are involved with office, research & development, industrial, mixed use, multifamily, retail and institutional space.

Please contact me if you have any questions.

Sincerely,

NAIOP Massachusetts, The Commercial Real Estate Development Association



Tamara C. Small  
Chief Executive Officer

CC:

Secretary Kathleen Theoharides, Executive Office of Energy and Environmental Affairs  
Daniel Padien, Waterways Program Chief, MassDEP  
Lisa Engler, Director, CZM



August 5, 2021

[b](#)

Daniel Padien  
Waterways Program Chief  
Department of Environmental Protection  
1 Winter St. 5<sup>th</sup> fl.  
Boston, MA

RE: Comments on DEP proposed regulations regarding Boston and the Municipal Harbor plans

Dear Mr. Padien,

I oppose the inclusion of Boston Harbor in the Municipal Harbor Plan, especially in regards to the Charlestown Navy Yard.

The MHPs were written in the 1990's, and are outdated. The MHPs do not acknowledge nor address current and future climate issues which did not cause the risk that exists now and projected to worsen in days and years to come. Actual flooding and forecasts of rising sea levels causing more flooding along the Boston Harbor coast line are now commonplace news and scientific reports.

Boston is vulnerable to sea level rise, as well as storm surge. Over the history Boston, the city expanded on filled land, which poses a greater flooding risk as the sea reclaims formerly Boston Harbor waters and marshlands.

In January, 2018 the Aquarium MBTA Station was unusable when storm surge seawaters flooded the MBTA station area and Long Wharf, along State Street. The Boston Municipal Harbor plans fail to acknowledge the fact that much of the waterfront area is filled land and flooding has occurred and will likely occur again. Mother Earth has provided the warning. The City of Boston must heed the warning and protect the city from a known threat to life, health, well-being, quality of life, and property.

On July 26, 2021, The Boston Globe reported rising sea levels in Boston. NOAA predicts hightide increased flooding. NOAA high-tide flooding predictions forecast the rise from the current 18 days; to 35 days by 2030, and 95 days by 2050.

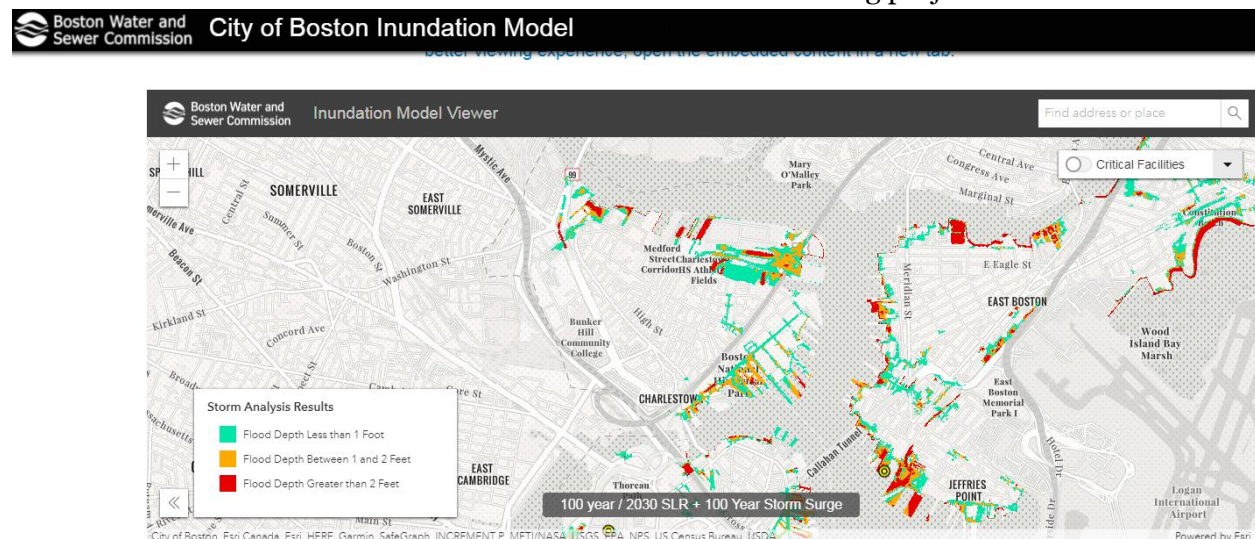
Boston must have its own plan. Writing the MHP into the DEP regulations is an abdication of the DEP responsibility to evaluate each project under the DEP existing regulations. Boston Harbor is unique, densely populated, and vital to our region's economy. The MHP for

Charlestown is likewise flawed. The original MHP was adopted in 1990 without any consideration for the rising sea levels or climate resilience issues which Charlestown faces, and is particularly vulnerable.

The DEP's failure to review each plan individually, through the use of a blanket approval of these MHPs constitutes a failure of the DEP mission and creates a violation of the public's right of access to the public waterfront in favor of developers who profit by building on what is subject to flooding as Boston Harbor reclaims these filled lands with rising sea levels. The MHP has been altered since 1990 in connection with developer requests for changes. These developer requests for changes short circuit the DEP public process. Further, the DEP has not yet nor can possibly consider the entire climate and rising sea level issues which the original or developer induced MHP alteration from 2008. Times have changed; our city has changed; our climate has changed.

The MHP for Charlestown Navy Yard does not take into consideration the nature and the extent of land previously filled by the US Navy before WWII which is also subject to flooding. I oppose the MHP for Charlestown dated 1990, updated through the sole efforts of the BPDA for a developer. The MHP as amended allows the construction of up to a 55' building within 35 feet of the end of Pier 5. According to Flood zone mapping from 2004 timeframe found in the BPDA records, the end of Pier 5 is in a flood velocity zone 4 at flood elevation 14. The MHP plan for Pier 5 showing flood velocity zone 4 at flood elevation 13 for that portion of Pier 5 and velocity zone 4 at flood elevation 12 for the areas of the in that area. Approximately half of Pier 5 is in a V zone which generally requires buildings to be placed on stilts. The balance of Pier 5 is in an A 2 flood zone at flood elevation 11 and 10. Given the age of this flood mapping, it is obvious that the BPDA provided the MHP 2008 amendment even with knowledge of the flood zone but with absolutely no consideration for the damage caused by such flooding. This is just one example of the reason why the MHPs cannot be included in the DEP regulations because the MHPs do not take into account such known flood hazards. The City acting through the BPDA demonstrates they do not have the interest of the public and its access to the waterfront as a priority.

The Boston Water & Sewer Inundation Model illustrates disturbing projections:



<https://www.bwscstormviewer.com/index.html>

The City of Boston 'Climate Action' identifies as one of its goals, the protection of our natural resources. These MHPs do not protect our resources. The MHPs are outdated and fail catastrophically to protect the public's access rights preserved in Chapter 91 to access to the waterfront and more especially the Boston Waterfront.

The Seaport area is an example of the lack of protection of the public's access to the Boston Harbor; shows the neglect of the protection of the public access and ignores the risk to the resources from sea level rise and climate change; and illustrates the remarkable lack of planning of infrastructure, greenspace, climate resiliency and "common wealth good sense." The overbuilding and construction block the access to the Boston Harbor front and constitutes a huge overdevelopment of an area that is hard to access and virtually otherwise inaccessible. Pre-pandemic in 2019, traffic exiting the Seaport to the Moakley Bridge was regularly in excess of 45 minutes, with no existing alternate routes.

The access to the Boston Harbor is a right of the people, for the people. Boston is experiencing the largest building boom in our city's history, since it's founding on September 7, 1630. These rights are being blocked through unrestricted overdevelopment. The Boston section of the MHPs proposal serves to wall off the Boston Harbor access and vistas from virtually all areas of the City.

The Commonwealth of Massachusetts with the support of the US Federal Government subsidized the removal of the "Expressway," the elevated highway which divided our city, and also blighted areas, and was an unsightly artifice. The cost of its removal in The Big Dig was over \$25 Billion, leaving residents to pay finance costs of \$268M annually. Now, the creation of a wall of blocks of buildings eliminating views, prevent breezes and destroying the public use and enjoyment of the Boston Harbor.

Boston is now in the process of updating its 'Boston Climate Action Plan' so it is premature to make the MHPs for Boston a fixture in the DEP regulations just to benefit one developer Don Chiofaro. The Chiofaro Company overpaid for the Harbor Garage, and has since used every opportunity to try to convince anyone who will listen that the Harbor Garage must be built to enhance our city. This misinformation is to hide their miscalculation of value. Their proposed remedy would require the public to pay the price of their error. Developers have benefits that taxpayer are not allowed; and this must end. The Boston Harbor belongs to the people, and is not for the benefit of private developers.

The DEP process and DEP regulations are intended to protect the public, to protect the public's rights, use and access to the publicly protected waterfront. Climate change is in the news on a daily basis because it is real. The Boston Globe on July 27, 2021 warned that rising seas called 'existential threat' and MBTA Coastal system must be fortified. The MHPs do not take into consideration the heavy reliance on public transportation and its need to be fortified against storms and flooding from rising sea levels.

Charlestown Navy Yard and its historic harbor is not a fungible asset. It is unique, and important to our city, State, and country's history. The Charlestown Navy Yard has limited

public transportation. The MHP with added residential units without any plan could become another Seaport District without learning from the error of lack of infrastructure planning. Charlestown is more vulnerable than the Seaport, with limited entry points to the Charlestown Navy Yard, and subject to substantial impacts from the planned redevelopment of The Bunker Hill Housing Development which is the largest public housing redevelopment in New England, slated to triple in size, with slivers of greenspace for the approximately 7000 residents.

Heat islands contribute to real urban health concerns, due to rising temperatures, expanding asphalt/glass/steel/stone surfaces covering acres of vertical and land spaces in our urban environment; and with the willful destruction of Boston's tree canopy which has lost 2% of the tree population in the past few years.

Open space is vital to the urban environment and the well-being of residents. The MHPs do not take into account need for open space and the concentrations of heat in the City in summer months. We have seen an unprecedented hot summer with a heat wave in June 2021 the last 3 days of the month. Buildings attract, absorb and then emit heat in the summer, which common knowledge and scientific fact. None of the MHPs call for the addition of open space to mitigate the heat created by buildings and additional pavement. This fact is noted by the Boston Globe Editorial Board on July 21, 2021 The heat is on cities — and it's not going away By The Editorial Board. Updated July 20, 2021, 12:45 p.m. OpEd on July 22, 2021, sent to the Charlestown Patriot also note the need for open waterfront in the Charlestown Navy Yard.

<https://charlestownbridge.com/wpcontent/uploads/2021/07/CPBo722.pdf>

The MHP should not be made an automatic part of the DEP regulations because these MHPs do not represent the public interest or the public input at the time or at present. Even the Boston Mayoral Candidates forum addressed the need for a climate resilient waterfront and planning. <https://www.eventbrite.com/e/coalition-for-a-resilient-and-inclusivewaterfront-mayoral-forum-tickets-163275388081?aff=ebdssbeac>

The DEP must protect the environment and preserve, protect and enhance the public right to an open, healthy, accessible, public harbor for all to enjoy.

Thank you for your consideration,

Diane Valle

CC: Governor Charles Baker  
Mayor Kim Janey  
City Council President Matt O'Malley  
City Councilor Michelle Wu  
City Councilor Andrea Campbell  
City Councilor Annissa Essabai George  
City Councilor Lydia Edwards  
Representative Daniel J Ryan  
Senator Sal DiDomenico  
Chief Mariama White-Hammond





## 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

### 310 CMR 9.00: WATERWAYS

#### Section

- 9.01: Authority and Purpose
- 9.02: Definitions
- 9.03: Scope of Jurisdiction
- 9.04: Geographic Areas Subject to Jurisdiction
- 9.05: Activities Subject to Jurisdiction
- 9.06: Requests for Determination of Applicability
- 9.07: Activities Subject to Annual Permit
- 9.08: Enforcement
- 9.09: Effective Date and Severability
- 9.10: Simplified Procedures for Small Structures Accessory to Residences
- 9.11: Application Requirements
- 9.12: Determination of Water-dependency
- 9.13: Public Notice and Participation Requirements
- 9.14: Decision on License and Permit Applications
- 9.15: Terms
- 9.16: Fees
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- 9.18: Recording
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- 9.23: Transfer of License Upon Change of Ownership
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- 9.26: Revocation and Nullification
- 9.27: Removal of Previously Licensed Structures
- 9.28: Amnesty
- 9.29: General License Certification
- 9.30: Permitting of Test Projects
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- 9.32: Categorical Restrictions on Fill and Structures
- 9.33: Environmental Protection Standards
- 9.34: Conformance with Municipal Zoning Law and Approved Municipal Harbor Plans
- 9.35: Standards to Preserve Water-related Public Rights
- 9.36: Standards to Protect Water-dependent Uses
- 9.37: Engineering and Construction Standards
- 9.38: Use Standards for Recreational Boating Facilities
- 9.39: Standards for Marinas/Boatyards/Boat Ramps
- 9.40: Standards for Dredging and Dredged Material Disposal
- 9.51: Conservation of Capacity for Water-dependent Use
- 9.52: Utilization of Shoreline for Water-dependent Purposes
- 9.53: Activation of Commonwealth Tidelands for Public Use

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- 9.54: Consistency with Coastal Zone Management Policies
- 9.55: Standards for Nonwater-dependent Infrastructure Facilities
- 9.56: Standards for Facilities of Limited Accommodation
- 9.57: Approved Municipal Harbor Plans

### 9.01: Authority and Purpose

(1) Authority. 310 CMR 9.00 is adopted by the Commissioner of the Department of Environmental Protection (DEP) under the authority of M.G.L. c. 91, § 18 to establish procedures, criteria, and standards for uniform and coordinated administration of the provisions of M.G.L. c. 91, §§ 1 through 63 and M.G.L. c. 21A, §§ 2, 4, 8 and 14. 310 CMR 9.00 also form part of the Massachusetts Coastal Zone Management (CZM) Program, established by M.G.L. c. 21A, § 4A, and codified at 301 CMR 20.00: *Coastal Zone Management Program*. The interpretation and application of 310 CMR 9.00 shall be consistent with the policies of the CZM Program, 301 CMR 20.00, to the maximum extent permissible by law.

### 9.01: continued

(2) Purpose. 310 CMR 9.00 is promulgated by the Department to carry out its statutory obligations and the responsibility of the Commonwealth for effective stewardship of trust lands, as defined in 310 CMR 9.02. The general purposes served by 310 CMR 9.00 are to:

- (a) protect and promote the public's interest in tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the public trust doctrine, as established by common law and codified in the Colonial Ordinances of 1641-47 and subsequent statutes and case law of Massachusetts;
- (b) preserve and protect the rights in tidelands of the inhabitants of the Commonwealth by ensuring that the tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose;
- (c) protect the public health, safety, and general welfare as it may be affected by any project in tidelands, great ponds, and non-tidal rivers and streams;
- (d) support public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the water; and
- (e) foster the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment under Article XCVII of the Massachusetts Constitution.

### 9.02: Definitions

Abutter means the owner of land which shares, along the water's edge, a common boundary or corner with a project site, as well as the owner of land which lies within 50 feet across a water body from such site. Ownership shall be determined according to the records of the local tax assessors office.

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Accessory Use means a use determined to be accessory to a water-dependent use, in accordance with the provisions of 310 CMR 9.12(3).

Aggrieved Person means any person who, because of a decision by the Department to grant a license or permit, may suffer an injury in fact, which is different either in kind or magnitude, from that suffered by the general public and which is within the scope of the public interests protected by M.G.L. c. 91 and c. 21A.

Applicant means any person submitting a license or permit application or other request for action by the Department pursuant to 310 CMR 9.00, and shall include the heirs, assignees, and successors in interest to such person.

Approved Municipal Harbor Plan means any Municipal Harbor Plan listed in 310 CMR 9.57(1).

Area of Critical Environmental Concern (ACEC) means an area which has been so designated by the Secretary pursuant to 301 CMR 12.00: *Areas of Critical Environmental Concern*.

Base Flood Elevation means the maximum elevation of flood water, including wave heights if any, which will theoretically result from the statistical 100-year frequency storm. Said elevation shall be determined by reference to the most recently available flood profile data prepared for the municipality within which the work is proposed under the National Flood Insurance Program, currently administered by FEMA; and in accordance with Wetlands Protection Act regulations at 310 CMR 10.57: *Land Subject to Flooding (Bordering and Isolated Areas)*.

Beach Nourishment means the placement of clean sediment, of a grain size compatible with existing beach sediment, on a beach to increase its width and volume for purposes of storm damage prevention, flood control, or public recreation. The seaward edge of the nourished beach shall not be confined by any structure.

Berth means any space wherein a vessel is confined by wet slip, dry stack, float, mooring, or other type of docking facility.

Boatyard means a facility whose function is the construction, repair, or maintenance of boats, which may include boat storage and docking for boatyard services.

9.02: continued

- (a) the Department shall presume that tidelands are Commonwealth tidelands if they lie seaward of the historic low water mark or of a line running 100 rods (1650 feet) seaward of the historic high water mark, whichever is farther landward; such presumption may be overcome only if the Department issues a written determination based upon a final judicial decree concerning the tidelands in question or other conclusive legal documentation establishing that, notwithstanding the *Boston Waterfront* decision of the Supreme Judicial Court,

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such tidelands are unconditionally free of any proprietary interest in the Commonwealth;

(b) the Department shall presume that tidelands are not Commonwealth tidelands if they lie landward of the historic low water mark or of a line running 100 rods (1650 feet) seaward of the historic high water mark, whichever is farther landward; such presumption may be overcome only upon a showing that such tidelands, including but not limited to those in certain portions of the Town of Provincetown, are not held by a private person.

Commissioner means the Commissioner of the Department of Environmental Protection (DEP).

CZM means the Massachusetts Coastal Zone Management Office.

CZM Program means the Massachusetts Coastal Zone Management Program established pursuant to M.G.L. c. 21A and codified in 301 CMR 20.00: *Coastal Zone Management Program*.

Date of Receipt means the date of delivery to an office, home or usual place of business by mail or hand delivery. The Department will presume that a document is received three business days after it is mailed, certified mail return receipt requested, to the correct address unless good cause is shown otherwise.

DCR means the Department of Conservation and Recreation.

Department means the Department of Environmental Protection (DEP).

Designated Port Area (DPA) means an area that has been so designated by CZM in accordance with 301 CMR 25.00: *Designation of Port Areas*.

Development Site means the area owned, controlled, or proposed for development by the applicant in which a project will occur.

DPA Master Plan means the component of an Approved Municipal Harbor Plan pertaining to lands and waters of a DPA within the municipality. Such master plan or portion thereof shall take effect under 310 CMR 9.00 only upon written approval by the Secretary in accordance with 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and any associated written guidelines of CZM and approval by the Department through the adoption of the ~~substitute provisions of~~ Approved Municipal Harbor Plans ~~listed in~~ [pursuant to](#) 310 CMR 9.57.

Dredged Material means rocks, bottom sediment, debris, refuse, plant or animal matter, or other materials which are removed by dredging.

Dredged Material Disposal means the discharge of dredged material, the transportation of such material prior to discharge, and the dispersion, deposition, assimilation or biological uptake or accumulation of such material after transportation or discharge.

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Dredging means the removal of materials including, but not limited to, rocks, bottom sediments, debris, sand, refuse, plant or animal matter, in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any flowed tidelands, rivers, streams, ponds or other waters of the Commonwealth. Dredging shall include improvement dredging, maintenance dredging, excavating and backfilling or other dredging and subsequent refilling.

Ecological Restoration Project means a project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. Ecological Restoration Project shall not include projects specifically intended to

9.02: continued

Marine Industrial Park means a multi-use complex on tidelands within a DPA, at which:

- (a) the predominant use is for water-dependent industrial purposes; in general, at least two thirds of the park site landward of any project shoreline must be used exclusively for such purposes;
- (b) spaces and facilities not dedicated to water-dependent industrial use are available primarily for general industrial purposes; uses that are neither water-dependent nor industrial may occur only in a manner that is incidental to and supportive of the water-dependent industrial uses in the park, and may not include general residential or hotel facilities; and
- (c) any commitment of spaces and facilities to uses other than water-dependent industry is governed by a comprehensive park plan, prepared in accordance with M.G.L. c. 30, §§ 61 through 62H, if applicable, and accepted by the Department in a written determination issued pursuant to 310 CMR 9.14.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H, and 301 CMR 11.00: *MEPA Regulations*.

MOU means a Memorandum of Understanding between the Department and another public agency. The draft text of any such document or other written interagency agreement shall be published in the *Environmental Monitor* for public review and comment, and the final text shall be published therein upon adoption and made available by the Department upon request.

Municipal Harbor Plan (MHP) means a document (in words, maps, illustrations, and other media of communication) setting forth, among other things: a community's objectives, standards, and policies for guiding public and private utilization of land and water bodies within a defined harbor or other waterway planning area; and an implementation program which specifies the legal and institutional arrangements, financial strategies, and other measures that will be taken to achieve the desired sequence, patterns, and characteristics of development and other human activities within the harbor area. Such plan shall take effect under 310 CMR 9.00 only upon



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approval by the Department through the adoption of the ~~substitute provisions of~~ Approved Municipal Harbor Plans ~~listed in~~ pursuant to 310 CMR 9.57.

Municipal Official means the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government.

Natural High Water Mark means the historic high water mark of a Great Pond.

Natural Low Water Mark means the historic low water mark of a Great Pond.

Net Operating Income means the rental income from a Facility of Limited Accommodation within the licensed structure minus its operating expenses and property taxes calculated as an amount per square foot for the licensed structure or a comparable value if owner occupied. Operating expenses may include expenses for management, legal and accounting services, insurance, janitorial and security services, maintenance, supplies, and utilities.

Noncommercial Community Docking Facility means a facility for berthing of recreational vessels accessory to residential or nonprofit seasonal camp use (*e.g.*, summer camps).

Non-profit Organization means an organization exempt from federal income taxation under § 501(c)(3) of the U.S. Internal Revenue Code.

Nonwater-dependent Use means a use as specified in 310 CMR 9.12.

Nonwater-dependent Use Project means a project consisting of one or more nonwater-dependent uses, or a mix of water-dependent and nonwater-dependent uses, as specified in 310 CMR 9.12(1).

Notification Date means a specified date by which a public notice must be published in the newspaper and/or the *Environmental Monitor*, and mailed to municipal officials, and on which the public comment period commences.

9.07: continued

(c) Standards. The local permitting program must find that the structure is limited to the minimum size necessary to achieve the intended water-related purposes, will not significantly interfere with any public rights to use waterways for fishing, fowling, navigation and other lawful purposes, mitigates for any interference by providing lateral access or other mitigation according to guidance issued by the Department, and complies with the provisions of 310 CMR 9.07.

(d) Application Requirements. The initial application shall be accompanied by plans or other documentation sufficient to accurately show the location and size of the structure. For proposed structures, the applicant must provide an Order of Conditions, a negative or conditional negative Determination of Applicability, or evidence of written request for action by the Conservation

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Commission and subsequent failure of the Conservation Commission to respond. For existing structures, no permit shall be issued if the Conservation Commission has determined that the structure or fill is in violation of the Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant shall provide notice to the Selectmen or Mayor, the Conservation Commission, and to abutters for proposed structures and for previously unauthorized structures. The applicant shall also publish a public notice of the project in a newspaper of general circulation, which may serve as joint notice for M.G.L. c. 91 and M.G.L. 131, § 40. Notices must be provided or published at least ten business days prior to the deadline for receipt of applications established by the local permitting program. Notices must include the applicant's name and address, the location and a concise description of the project, the address to which comments may be sent, and the deadline for receipt of comments.

(e) Program Requirements. The local program shall send to the Department a copy of each permit issued for proposed or previously unauthorized structures, but not renewals. The local program shall maintain in the municipality a list of applicants and permittees, and provide the list to any person upon written request. The local permitting program shall annually publish a public notice of its intention to renew permits for small structures in specifically named water bodies at least ten business days prior to the renewal date, identifying the address where information on the renewal applications may be obtained and comments should be sent, and specifying the deadline for receipt of comments. A copy of the annual notice and a list of permittees shall be sent to the Department. Any written comments within the scope of M.G.L. c. 91 submitted to the local permitting program on any permit application shall be considered, and a permit may not be issued prior to the close of the public comment period. A copy of any permit on which public comment was received shall be sent immediately upon issuance or renewal to persons submitting comments and to the Department.

(f) Renewals and Transfer. Projects meeting the provisions of 310 CMR 9.07(3), which previously obtained an annual permit, license, amnesty license or interim approval, may apply for extension of authorization under 310 CMR 9.07 as a renewal. No individual notice is required for renewals, unless specifically requested by the local permitting program. A permit for an eligible small structure attached to land under 310 CMR 9.07(3) is transferrable upon change of ownership of the land to a new owner.

(4) Terms and Conditions Applicable to all Annual Permits.

(a) No permit may be valid for a period longer than to the end of any given calendar year.

(b) No permit may authorize structures other than the placement of moorings, floats, rafts or eligible small structures accessory to residences under 310 CMR 9.07.

(c) No permit shall be construed as authorizing the placement of moorings, floats, rafts, or other structures on private tidelands of anyone other than the applicant if objected to by the owner or owners thereof.

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- (d) No permit may authorize the placement of moorings, floats, rafts or other structures in any navigation channel or turning basin formally designated by the federal or state government or by a municipality pursuant to an Approved Municipal Harbor Plan, unless the designating authority or other agency with jurisdiction over said area has previously approved such placement.
- (e) No permit shall be inconsistent with an Approved Municipal Harbor Plan, if any, or unless permitted under 310 CMR 9.07(2)(b), be issued for a project extending beyond the harbor line.

### 9.10: continued

If plans certified by an engineer or surveyor are not required under M.G.L. c. 131, § 40, the Wetlands Protection Act pursuant to 310 CMR 10.00: *Wetlands Protection*, certification for projects meeting the eligibility requirements of 310 CMR 9.10(1) will generally not be required. However, based on comments submitted during the public comment period or other relevant information, the Department may require plans to be certified by a Registered Professional Engineer or Registered Land Surveyor for a structure when it finds that the preparation of plans by a professional is necessary to ensure:

1. an adequate review of public access;
2. the preservation of public navigational rights;
3. structural integrity;
4. the accuracy of stated distances from property boundaries; or
5. that the plan is sufficiently clear and accurate to allow a licensing decision which otherwise could result in significant interference with public rights or environmental interests in tidelands, Great Ponds, and other waterways. The Department will provide a statement of reasons to support this finding.

When plans have not been prepared under M.G.L. c. 131, § 40, the Wetlands Protection Act, a plot plan or other scaled plan with structures to be licensed measured accurately from lot lines or other structures shall be prepared in accordance with application instructions.

(b) Applications for Projects within Great Ponds. The Department shall publish an inventory of Great Ponds which shall be available upon written request. Prior to the addition of any pond to the inventory, the Department will hold a public hearing in the vicinity of the pond. After a pond is added to the inventory, the Department will provide an opportunity for owners of existing structures that require licenses to come into compliance with M.G.L. c. 91 regulatory requirements by submission of an application within six months from the date of the addition of the pond to the inventory. The Department will take no enforcement action against the owners of a structure on a Great Pond not listed on the inventory unless and until the Great Pond has been added to the inventory and the opportunity for compliance has been afforded.

(c) Coordination with the Conservation Commission. At least 45 days prior to issuance of a license, the Department and the applicant shall coordinate with the Conservation Commission as follows:

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1. The Department will not require Conservation Commission approval for existing structures built before enactment of M.G.L. c. 131, § 40, the Wetlands Protection Act (1963 for coastal wetlands and 1965 for inland wetlands) and not substantially altered subsequently. Applicants should consult their local Conservation Commission regarding application of M.G.L. c. 131, § 40, the Wetlands Protection Act to maintenance or alteration of existing structures.
  2. For structures built between 1963 or 1965 (as applicable) and December 31, 1983, and not substantially altered after the latter date, the applicant shall provide notice of the application to the Conservation Commission. The Department shall proceed with licensing unless the Conservation Commission informs the Department that it has provided written notice to the applicant prior to the close of the public comment period to promote compliance with or to enforce M.G.L. c. 131, § 40, the Wetlands Protection Act.
  3. For structures proposed, built, or substantially altered on or after January 1, 1984, applicants shall provide an Order of Conditions, a negative or conditional negative Determination of Applicability, or a Certificate of Compliance. The Department may waive this requirement based upon evidence of a written request for action by an applicant to a Conservation Commission, and subsequent failure of the Conservation Commission to respond.
- (d) The applicant shall submit the notice of the application included in the application package to the Board of Selectmen or Mayor, the planning board, zoning authority and the Conservation Commission of the town or city where the work will be performed. The Department shall presume compliance with applicable state and local requirements unless it receives information to the contrary during the public comment period. Unless the Department receives a contrary determination from the proper zoning authority, signed by the Clerk of the affected municipality, compliance with applicable zoning ordinances and bylaws pursuant to 310 CMR 9.34(1) shall be deemed certified 45 days after notice to that zoning authority and clerk. Proposed structures must also conform to plans for waterways developed by agencies or commissions with legal authority, such as Approved Municipal Harbor Plans developed pursuant to 301 CMR 23.00 and listed in 310 CMR 9.57, or lake, regional commission, or other formal areawide policies or plans developed pursuant to 310 CMR 9.38(2)(b).

9.10: continued

- (7) Appeals. The appeal provisions in 310 CMR 9.17 apply to projects licensed under 310 CMR 9.10.

### 9.11: Application Requirements

- (1) Pre-application Consultation

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(a) Upon request of a prospective applicant for a license for any large or complex project, including those required to file an EIR, the Department shall conduct a pre-application consultation meeting in order to receive a presentation of the project proposal, provide preliminary guidance on the applicability of the substantive standards of 310 CMR 9.00 to the project, explain the necessary licensing procedures, and answer any appropriate inquiries concerning the program or 310 CMR 9.00. When appropriate, the Department may invite representatives of CZM, any other state agency, or representatives of the municipality in which the project is located, including the lead agency responsible for implementation of a Municipal Harbor Plan. The participants in the pre-application consultation meeting may make arrangements for further consultation sessions and for co-ordinated review of the project.

(b) In the case of an unusually large and complex set of activities undertaken by a public agency the Department may establish, in cooperation with the prospective applicant, a special procedure for the review of one or more applications for such activities. Such procedure may include, without limitation, as deemed appropriate by the Department, consolidation procedures, expedited review, and single or multiple licenses, permits, or written determinations. Public notice of any such procedure established under 310 CMR 9.11 shall be published in the *Environmental Monitor*.

### (2) Application Review Schedules.

(a) For a water-dependent use project, the Department shall, within 45 days of receipt of the information required under 310 CMR 9.11(3)(a) and (b), assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). Within 20 days of the notification date, the Department may hold a public hearing under 310 CMR 9.13(2). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 60 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct an administrative completeness review under 310 CMR 9.11(3)(c) and either determine the application to be complete or request additional information. Within 90 days of making a determination of administrative completeness, the Department shall complete a technical review and issue either a draft license or a final license as specified in 310 CMR 9.14.

(b) For a nonwater-dependent use project, the applicant may elect one of four application options by submitting the selected category of application under the Timely Action and Fee Schedule at 310 CMR 4.00.

1. Partial Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). The applicant shall submit the

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information identified in 310 CMR 9.11(3)(c)2. prior to the close of the public comment period, and the information identified in 310 CMR 9.11(3)(c)1. and 3. prior to the issuance of the written determination. Within 30 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct its administrative completeness review and determine the application to be complete or request additional information. Within 60 days of determining the application to be complete, or 90 days from the close of the public comment period, whichever comes later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

9.11: continued

2. Full Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a), and 310 CMR 9.11(3)(b)1., 2., 6., and 7., and 310 CMR 9.11(3)(c)1. through 3., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review of the information received, and determine the application to be complete or request additional information. The Department shall issue a public notice under 310 CMR 9.13(1) upon determination that the application is complete. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall provide upon request the draft license conditions seven days prior to the public hearing. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 60 days from the close of the public comment period and notification by the applicant that the public notice has been published, or the submission of the information identified in 310 CMR 9.11(3)(c)4., and 5., whichever is later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

3. Municipal Harbor Plan Application. For a project within an area governed by and in compliance with an Approved Municipal Harbor Plan approved under 301 CMR 23.00 and listed in 310 CMR 9.57, within 45 days of receiving an application containing the information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 30 days of the close of the public comment period

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and notification by the applicant that the public notice has been published, the Department shall conduct its administrative completeness review and determine an application to be complete or request additional information. Within 45 days of determining an application to be complete, the Department shall issue a written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

4. Joint MEPA EIR Application. An applicant may initiate coordinated review under MEPA and 310 CMR 9.00 by specifying in the Environmental Notification Form (ENF) filing under 301 CMR 11.05: *ENF Preparation and Filing* the intent to pursue a joint filing. The Draft EIR submitted under 301 CMR 11.07(3) shall also include information to meet the application requirements of 310 CMR 9.11(3)(a) through (c)2. for pre-application review by the Department. Within 25 days of receipt of a Final EIR meeting the requirements of 310 CMR 9.11(3)(a) through (c)2., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review, and issue the text for the public notice under 310 CMR 9.13(1). The Department shall hold a public hearing within 20 days of the notification date or ten days after the date of the Secretary's Final Certificate, whichever is later. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall send to the applicant, within ten days of the close of the public comment period and receipt by the Department of notification from the applicant that the public notice has been published, whichever is later, any public comment submitted within the comment period for response and may request additional information or determine the application to be complete in accordance with 310 CMR 9.11(3)(c). Any response to comments provided by the applicant shall also be distributed by the applicant to all persons that submitted comments during the public comment period. The Department shall issue the written determination under 310 CMR 9.14(1) within 30 days of receipt of the response to comments, or a determination that the application is complete, whichever is later. The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

9.11: continued

- b. appropriately-scaled principal dimensions and elevations of proposed and existing fill and structures and, if dredging is involved, the principal dimensions of all relevant footprints, contours and slopes;
- c. a delineation of the present high and low water marks, as relevant;
- d. a delineation of the historic high and low water marks, as relevant and in a manner acceptable to the Department in accordance with the definitions thereof at 310 CMR 9.02;



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- e. references to any previous licenses or other authorizations for existing fill, structures, or dredging at the project site, and a delineation thereof as well as a delineation of any historic dredging, filling, or impoundment;
  - f. indication of any base flood elevation of the statistical 100-year storm event, or of any coastal high hazard area, which is located on the project site; and
  - g. indication of the location of any on-site or nearby state harbor lines, federal pier and bulkhead lines, federal channel lines, and public landings or other easements for public access to the water.
2. a statement as to how the project serves a proper public purpose, provides greater benefit than detriment to public rights in tidelands or Great Ponds, and is consistent with the policies of the Coastal Zone Management Program, as applicable, in accordance with the provisions of 310 CMR 9.31(2); and a description of how the project conforms to any applicable provisions of an Approved Municipal Harbor Plan, pursuant to 310 CMR 9.34(2);
3. final documentation relative to other state and local approvals which must be obtained by the project including:
  - a. if the project is subject to zoning but will not require any municipal approvals thereunder, a certification to that effect pursuant to 310 CMR 9.34(1);
  - b. a certification that a copy of the license application has been submitted to the planning board of each city or town where the work is to be performed, except in the case of a proposed bridge, dam, or similar structure across a river, cove, or inlet, in which case notice shall be given to the planning board of every municipality into which the tidewater of said river, cove, or inlet extends;
  - c. if an EIR is required, the Certificate of the Secretary stating that it adequately and properly complies with M.G.L. c. 30, §§ 61 through 62H; and, if applicable, any Notice of Project Change and any determination issued thereon in accordance with M.G.L. c. 30, §§ 61 through 62H;
  - d. a final Order of Conditions and a Water Quality Certificate, if applicable pursuant to 310 CMR 9.33, unless the application is a Combined Application, and a certification of compliance with municipal zoning, if applicable pursuant to 310 CMR 9.34(1); or a satisfactory explanation as to why it is appropriate to postpone receipt of such documentation to a later time prior to license or permit issuance; and
  - e. copies of all other state regulatory approvals if applicable pursuant to 310 CMR 9.33; or a satisfactory explanation as to why it is appropriate to postpone receipt of such documentation to a later time prior to license or permit issuance, or to issue the license or permit contingent upon subsequent receipt of such approvals.
4. responses to public comment submitted to the Department within the public comment period, as deemed appropriate by the Department; and adequate proof that the responses were sent to all persons that submitted comments during the public comment period; and
5. any additional plans, documentation, and other information which have been requested by the Department, or a statement by the applicant indicating that no further information will be forthcoming in response to such request.

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### 9.14: continued

(4) If the project includes a set of activities, including without limitation those to which 310 CMR 9.11(1)(b) applies, which cannot reasonably be incorporated into a single license, the Department may upon request of the applicant issue a consolidated written determination which allows for multiple licenses to be issued independently for phases of said project, provided the Department finds that the licenses can be sequenced or conditioned in a manner which ensures that overall public benefits will exceed public detriments as each portion of the project is completed. Notwithstanding 310 CMR 9.14(3), licenses may be issued pursuant to a consolidated written determination issued under this provision for up to five years, with opportunity for extensions as deemed appropriate by the Department.

(5) The Department shall issue a license, permit, draft license, draft permit, or written determination, as appropriate after the application is determined to be complete by the Department, in accordance with the provisions of 310 CMR 9.11(3)(c). The Department may extend such deadline upon request by the applicant. Where a draft license, draft permit, or written determination is issued, the final license or permit shall not be issued prior to receipt of the state and local approvals specified in 310 CMR 9.11(3)(c)3. Notwithstanding the foregoing, the Department may issue a license, permit, draft license, draft permit or written determination as part of a Combined Permit or as a separate license, permit, draft license, draft permit or written determination issued at the same time as the issuance of or after the issuance of the final Order of Conditions and/or Water Quality Certification.

(6) Upon issuance, the Department shall send a copy of the license, permit, or written determination to:

- (a) the applicant;
- (b) any intervenor and any person who has requested a copy of said license, permit, or written determination;
- (c) CZM or DCR, for projects identified for participation pursuant to 310 CMR 9.13(2); and
- (d) the municipal official, conservation commission, planning board, and harbormaster, if any, of the city or town where the project is located.

In the case of a draft license or draft permit, the Department shall send copies to all parties listed in 310 CMR 9.14(6)(a) through (c) and to any party listed in 310 CMR 9.14(6)(d) who has commented on the application within the public comment period.

(7) The Department shall issue a license or permit after the completion of any appeal period established pursuant to 310 CMR 9.17(2) or the receipt of any plans, documentation, or other information requested by the Department in a written determination, whichever is later, unless a notice of claim for adjudicatory hearing has been filed pursuant to 310 CMR 9.17.

### 9.15: Terms

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### (1) Term of License

(a) All licenses issued by the Department shall contain a condition stating the term for which license is in effect, if any. All licenses shall be in effect for a fixed term not to exceed 30 years, unless otherwise deemed appropriate by the Department in accordance with 310 CMR 9.15(1)(b) through (d).

(b) Notwithstanding 310 CMR 9.15(1)(a), the Department may issue a license that establishes an extended fixed term, in accordance with the following provisions:

1. said term shall not exceed 65 years for any project or portion thereof which, upon completion, will be located on flowed tidelands or other waterways, and shall not exceed 99 years for any project or portion thereof which will be located on filled tidelands or Great Ponds; in the event the project site includes both flowed and filled tidelands, the Department may upon request of the applicant establish a single weighted average term for the entire project, or for a portion thereof as deemed appropriate by the Department, based on the relative amounts of the surface area of the flowed and filled tidelands associated therewith;

2. the applicant shall provide justification that an extended term is warranted given the expected life of the structure, typical financing requirements, consistency with an Approved Municipal Harbor Plan, if any, appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location, and any other relevant factors;

9.16: continued

TABLE 1 - FEES

Application Type	Permit Code	Fee Reg Citation (310 CMR 4.00)
<b>Determination of Waterways Applicability</b>	WW 04	4.10(8)(d)
General License Certification	WW 24	4.10(8)(f)(2)
Test Project Permit	WW 25	4.10(8)(f)(3)
Combined Application with Water Quality Certification and/or Notice of Intent	WW 26	4.10(8)(1)
Combined Application for Amendment with Water Quality Certification	WW 27	4.10(8)(1)(1)
<b>Chapter 91 Waterways License -Water-dependent<sup>1</sup></b>		
Water-dependent Residential Project, accessory to a residential use of four units or less	WW 01a	4.10(8)(a)
Other Water-dependent Use	WW 01b	4.10(8)(a)

<sup>1</sup> Except for facilities subject to 310 CMR 9.16(3)(b)(2), for which the applicable fees shall be the same as those listed for license with extended terms

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Projects		
Water-dependent License with extended terms	WW 01c	4.10(8)(a)
<b>Chapter 91 Simplified License</b>		
Water Dependent Use of Small Structures, Accessory to Residence	WW 06	4.10(8)(f)
Renewal, Water-dependent Use of Small Structures, Accessory to Residence	WW 12	4.10(8)(f)(1)
<b>Chapter 91 Waterways License -Non Water-dependent</b>		
Partial Initial Application - Non Water-dependent Residential four units or less	WW 14a	4.10(8)(a)(1)
Partial Initial Application - Other Non Water- dependent Use Projects	WW 14b	4.10(8)(a)(1)
Partial Initial Application Non Water-dependent Use Project with Extended Terms	WW 14c	4.10(8)(a)(1)
Full Initial Application - Non Water-dependent Residential Use, four units or less	WW 15a	4.10(8)(a)(2)
Full Initial Application - Other Non Water- dependent Use Projects	WW 15b	4.10(8)(a)(2)
Full Initial Application Non W-D Use Project with Extended Terms	WW 15c	4.10(8)(a)(2)
Application for License within an Approved Municipal Harbor Plan - Residential Non Water-dependent Project, four units or less	WW 16a	4.10(8)(a)(3)
Application for License within an Approved Municipal Harbor Plan, Other Non Water-dependent Projects	WW 16b	4.10(8)(a)(3)
Application for License within an Approved Municipal Harbor Plan, Non Water-dependent Use Project with Extended Terms	WW 16c	4.10(8)(a)(3)

9.30: continued

The applicant shall also send a copy of the notice to the persons identified in 310 CMR 9.13(1)(a) by certified mail, return receipt, and provide proof of such notice to the Department. With the agreement of the conservation commission, joint notice under M.G.L. c. 131, § 40, and M.G.L. c. 91 may be published and sent to abutters, provided it contains the requisite information and meets the requisite standards

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pursuant to each statute and its implementing regulations. Joint notice may be provided even if the applicant does not submit a Combined Application.

(5) Fees. All applicants for a permit under these procedures shall pay the application fee, or the renewal fee, in accordance with the provisions of 310 CMR 9.16. No tidewater displacement fees or occupation fees shall be assessed.

(6) Decision on Applications. The Department shall issue a permit or permit denial within 30 days of the close of the public comment period or receipt of the Order of Conditions, whichever is later.

(7) Term. A permit issued under 310 CMR 9.30 shall be valid for no more than one year.

(8) Extension of Permit. Upon request of the Permittee, the Department may extend the term of the permit for one additional one-year period, without the filing of a new application. Notice of the extension request shall be published by the Permittee and distributed to the persons identified in 310 CMR 9.30(4) above at least 30 days prior to the expiration of the permit.

(9) Appeals. The appeal provisions in 310 CMR 9.17 shall apply to proceedings under 310 CMR 9.30, provided, however, that if the Department determines that an application submitted for a permit under this section is not eligible for permitting as a Test Project pursuant to 310 CMR 9.30, the applicant shall seek authorization for the proposed project in accordance with the applicable permit or licensing procedures set forth in 310 CMR 9.11 through 310 CMR 9.27 and the performance standards set forth in 310 CMR 9.32 through 310 CMR 9.55 in *lieu* of requesting an adjudicatory hearing.

### 9.31: Summary of License and Permit Requirements

(1) Basic Requirements. No license or permit shall be issued by the Department for any project subject to 310 CMR 9.03 through 9.05 and 9.09 unless said project:

- (a) includes only fill and structures for uses that have been categorically determined to be eligible for a license, according to the provisions of 310 CMR 9.32;
- (b) complies with applicable environmental regulatory programs of the Commonwealth, according to the provisions of 310 CMR 9.33;
- (c) conforms to applicable provisions of an Approved Municipal Harbor Plan, if any, and local zoning law, according to the provisions of 310 CMR 9.34;
- (d) complies with applicable standards governing the preservation of water-related public rights, according to the provisions of 310 CMR 9.35;
- (e) complies with applicable standards governing the protection of water-dependent uses, according to the provisions of 310 CMR 9.36;
- (f) complies with applicable standards governing engineering and construction of structures, according to the provisions of 310 CMR 9.37;

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- (g) complies with applicable standards governing use and design of boating facilities for recreational or commercial vessels, according to the provisions of 310 CMR 9.38 and 9.39;
- (h) complies with applicable standards governing dredging and disposal of dredge materials, according to the provisions of 310 CMR 9.40; and
- (i) does not deny access to its services and facilities to any person in a discriminatory manner, as determined in accordance with the constitution of the Commonwealth of Massachusetts, of the United States of America, or with any statute, regulation, or executive order governing the prevention of discrimination.

(2) Proper Public Purpose Requirement. No license or permit shall be issued by the Department for any project on tidelands or Great Ponds, except for water-dependent use projects located entirely on private tidelands, unless said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands. In applying 310 CMR 9.31(2), the Department shall act in accordance with the following provisions.

9.33: continued

- (j) Mineral Resources Act, M.G.L. c. 21, §§ 54 through 58.
  - (k) Massachusetts Drinking Water Act, M.G.L. c. 111, §§ 159 through 174A, and 310 CMR 22.00: *Land Application of Sludge and Septage.*
  - (l) Underwater Archeological Resources Act, M.G.L. c. 91 and c. 6, §§ 179 and 180, and 312 CMR 2.00: *Massachusetts Underwater Archaeological Resources.*
  - (m) Hazardous Waste Management Act, M.G.L. c. 21C and 310 CMR 30.000: *Hazardous Waste.*
  - (n) Solid Waste Disposal Act, M.G.L. c. 16, §§ 18 through 24, and 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities.*
  - (o) Air Pollution Act, M.G.L. c. 111, §§ 142A through I and 310 CMR 7.00: *Air Pollution Control.*
  - (p) State Highway Curb Cuts, M.G.L. c. 81, § 21.
  - (q) Energy Restructuring Act, M.G.L. c. 164, §§ 69G through S, and 980 CMR 1.00 through 12.00.
  - (r) Regional land use control statutes, including the Martha's Vineyard Commission Act, St. 1974, c. 637, c. 831, and the Cape Cod Commission Act, St. 1989, c. 716.
- (2) Where a state or regional agency has authority to issue regulatory approval, issuance of such approval shall be conclusive as to compliance with the regulatory program in question.
- (3) With respect to M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*, if the Department has issued a final order of conditions the project shall be presumed to comply with the statute and the final order shall be deemed to be incorporated in the terms of the license or permit, with no additional wetland conditions imposed. If

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an order of conditions has been issued by the conservation commission and the Department has not taken jurisdiction, the Department shall presume the project complies with state wetland standards, except upon a clear showing of substantial non-compliance with such standards. In that event, the Department shall impose such additional conditions in the license or permit as will make the project substantially comply with state wetlands standards.

(4) Where a state agency has statutory responsibility but no authority to issue regulatory approval, the Department shall act in accordance with any MOU with said agency governing incorporation of its standards and requirements into waterways licenses and permits. In the absence of an MOU, the Department shall presume that the project complies with the statutes and regulations in question, unless the responsible state agency informs the Department otherwise. In that event, the Department shall consult with the responsible state agency and may adopt any formal recommendations received therefrom, provided such recommendations do not conflict with 310 CMR 9.00 or the purposes of M.G.L. c. 91.

### 9.34: Conformance with Municipal Zoning and Approved Municipal Harbor Plans

(1) Zoning Law. Any project located on private tidelands or filled Commonwealth tidelands must be determined to comply with applicable zoning ordinances and by-laws of the municipality(ies) in which such tidelands are located. The Department shall find this requirement is met upon receipt of written certification issued by the municipal clerk, or by another municipal official responsible for administering said zoning ordinances and by-laws, and signed by the municipal clerk, stating that the activity to be licensed is not in violation of said ordinances and by-laws. Compliance with zoning does not apply to any public service project that is exempted from such requirements by law, including but not limited to action of the Department of Public Utilities pursuant to M.G.L. c. 40A, § 3.

(2) Approved Municipal Harbor Plan.

(a) If the project is located within an area covered by an Approved Municipal Harbor Plan, said project must conform to the provisions of said plan to the degree applicable under plan approval at 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans*, including without limitation substitute provisions and associated offsetting public benefits adopted by the Department ~~and listed in~~ pursuant to 310 CMR 9.57. In making this determination the Department shall take into account all relevant information in the public record, and shall act in accordance with the following provisions:

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1. the Department shall consult with the planning board or other municipal body with lead responsibility for plan implementation, as appropriate and in accordance with the provisions of 310 CMR 9.11(1). In the event a written recommendation as to plan conformance is submitted by such board or other body, the Department shall presume that the



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requirement is met or not met in accordance with said recommendation, except upon a clear showing to the contrary and except as otherwise provided in 310 CMR 9.34(2)(a)2.;

2. the Department shall not find the requirement has been met if the project requires a variance or similar form of exemption from the substantive provisions of the Approved Municipal Harbor Plan, unless the Department determines the deviation to be *de minimis* or unrelated to the purposes of M.G.L. c. 91 or 310 CMR 9.00;

(b) If the project conforms to the Approved Municipal Harbor Plan the Department shall:

1. apply the use limitations or numerical standards and require the associated offsetting public benefits specified in the Approved Municipal Harbor Plan ~~and listed in~~, including without limitation pursuant to 310 CMR 9.57, as a substitute for the respective limitations or standards contained in 310 CMR 9.32(1)(b)3., 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c), in accordance with the criteria specified in 310 CMR 9.32(1)(b)3., 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c) and in associated plan approval at 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and associated guidelines of CZM;

2. adhere to the greatest reasonable extent to applicable guidance specified in the Approved Municipal Harbor Plan which amplifies any discretionary requirements of 310 CMR 9.00, in accordance with the criteria specified in 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and associated guidelines of CZM;

3. determine that the requirement of 310 CMR 9.54, governing consistency with CZM policies, has been met, if applicable, except upon a written showing by CZM for a project identified in 310 CMR 9.13(2)(a) for CZM participation that the project conflicts with CZM policy in effect when the license application was completed, in a manner that was not reasonably foreseeable at the time of plan approval.

### 9.35: Standards to Preserve Water-related Public Rights

(1) General. The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands, Great Ponds and other waterways for lawful purposes; and shall preserve any public rights of access that are associated with such use. In applying this standard the Department shall act in accordance with the provisions of 310 CMR 9.35(2) through (6), and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. Further, in assessing the significance of any interference with public rights pursuant to 310 CMR 9.35(2) and(3), the Department shall take into account that the provision of public benefits by certain water-dependent uses may give rise to some unavoidable interference with certain water-related public rights. Such interference may be allowed provided that mitigation is provided to the greatest extent deemed reasonable by the Department, and that the overall public trust in waterways is best served.

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### (2) Public Rights Applicable to All Waterways.

(a) Navigation. The project shall not significantly interfere with public rights of navigation which exist in all waterways. Such rights include the right to conduct any activity which entails the movement of a boat, vessel, float, or other watercraft; the right to conduct any activity involving the transport or the loading/unloading of persons or objects to or from any such watercraft; and the natural derivatives thereof.

1. The Department shall find that the standard is not met in the event a project will:

- a. extend seaward of any state harbor line unless said project is specifically authorized by law or, if not so authorized, is a pipeline, conduit or cable which is entirely embedded in the soil and does not in any part occupy or project into such tidewater beyond the harbor line, provided also that the Department may at any time require any pipeline, conduit or cable to be removed or relocated if channel changes or alterations demand the same, as required by M.G.L. c. 91, § 14;
- b. extend into or over any existing channel such as to impede free passage;
- c. impair any line of sight required for navigation;
- d. require the alteration of an established course of vessels;
- e. interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site;

9.35: continued

(d) The Department may include conditions in a license which restrict public pedestrian access in order to protect public health, safety, or the environment, and shall specify such additional access-related requirements as are deemed appropriate to offset any significant loss of benefits to the public which may be associated with such restrictions.

(6) Limitation on Liability. If a project includes measures to accommodate public pedestrian access in accordance with any provision of 310 CMR 9.35, the licensee shall be considered to be a private landowner who opens land to public recreational use without a fee and who is therefore not liable, pursuant to M.G.L. c. 21, § 17C, for injuries to persons or property due to public use, unless the owner's conduct is willful or reckless.

### 9.36: Standards to Protect Water-dependent Uses

(1) General. The project shall preserve the availability and suitability of tidelands, Great Ponds, and other waterways that are in use for water-dependent purposes, or which are reserved primarily as locations for maritime industry or other specific types of water-dependent use. In applying this standard the Department shall act in accordance with 310 CMR 9.36(2) through (5), and shall give particular consideration

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to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2.

(2) Private Access to Littoral or Riparian Property. The project shall not significantly interfere with littoral or riparian property owners' right to approach their property from a waterway, and to approach the waterway from said property, as provided in M.G.L. c. 91, § 17. In evaluating whether such interference is caused by a proposed structure, the Department may consider the proximity of the structure to abutting littoral or riparian property and the density of existing structures. In the case of a proposed structure which extends perpendicular to the shore, the Department shall require its placement at least 25 feet away from such abutting property lines, where feasible.

(3) The project shall not significantly disrupt any water-dependent use in operation, as of the date of license application, at an off-site location within the proximate vicinity of the project site. The project shall include such mitigation and/or compensation measures as the Department deems appropriate to avoid such disruption.

(4) The project shall not displace any water-dependent use that has occurred on the site within five years prior to the date of license application, except upon a clear showing by the applicant that said use:

- (a) did not take place on a reasonably continuous basis, for a substantial period of time; or
- (b) has been or will be discontinued at the site by the user, for reasons unrelated to the proposed project or as a result of voluntary arrangements with the applicant.

Absent the above showings, the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in an Approved Municipal Harbor Plan, if any. Permanent relocation to an off-site facility may occur in order to accommodate a public service project for which relocation arrangements are governed by law, or if the Department determines that it is not appropriate for the water-dependent use to continue on the site. Otherwise, only temporary relocation may occur as necessary for project construction.

(5) The project shall not include fill or structures for nonwater-dependent or water-dependent, non-industrial uses which preempt water-dependent-industrial use within a Designated Port Area (DPA). In applying this standard the Department shall act in accordance with the following provisions:

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(2) Private Recreational Boating Facilities.

- (a) Any project that includes a private recreational boating facility, any portion of which is located on Commonwealth tidelands or Great Ponds, shall

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include measures to avoid undue privatization in the patronage of said facility. In applying this standard, the Department shall act in accordance with the following provisions:

1. no berth in a marina shall be assigned pursuant to any contract or other agreement that makes use of the berth contingent upon ownership or occupancy of a residence or other nonwater-dependent facility of private tenancy;
  2. no berth in a marina shall be assigned pursuant to a contract or other agreement for exclusive use with a maximum term that exceeds one year, unless:
    - a. for existing marinas, the lease agreement, master lease agreement or notice thereof for such berths was recorded at the Registry of Deeds prior to July 6, 1990 in which event all berths subject to such agreement shall be exempt from the provisions of 310 CMR 9.38(2)(b); or
    - b. for new marinas or berths in an existing marina not grandfathered pursuant to 310 CMR 9.38(2)(a), the following conditions are met:
      - i. said marina is located on tidelands outside of Designated Port Area;
      - ii. the Department expressly authorizes the assignment of long-term exclusive use of such berths in the license, and the license includes a condition requiring written notification to any assignee that said license does not convey ownership of Commonwealth tidelands;
      - iii. the number of berths authorized in the license does not exceed 50% of the total berths in said marina; and
      - iv. said marina provides water-related public benefits commensurate with the degree of privatization, as deemed appropriate by the Department.
- (b) No project shall include a private recreational boating facility with fewer than ten berths on Commonwealth tidelands or Great Ponds, if the Department receives written certification from the municipal official or planning board of the municipality in which the project is located that such facility does not conform to a formal, areawide policy or plan which establishes municipal priorities among competing uses of the waterway, unless the Department determines that such certification:
1. is arbitrary, capricious, or an abuse of discretion; or
  2. conflicts with an overriding state, regional, or federal interest.

### 9.39: Standards for Marinas, Boatyards, and Boat Ramps

#### (1) Marinas.

- (a) Design Standards for Marinas. Any project that includes a new marina, or any expansion thereof to ten or more berths greater than the number of berths existing on the effective date of 310 CMR 9.00, shall comply with the following design requirements:

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1. all docking facilities, including passageways, shall be certified to be structurally sound by a registered professional engineer;
2. safe and unobstructed navigational ingress and egress to docking facilities shall be provided;
3. sanitary facilities shall be provided, including:
  - a. an adequate number of restrooms and refuse receptacles appropriate for the number of berths at the marina; in general, there should be one toilet fixture per sex for every 50 berths, and refuse receptacles at every gangway and restroom area; and
  - b. sewage pumpout facilities shall be provided as appropriate based on the number of berths and type of vessels at the marina, the availability of such facilities nearby, and environmental considerations including the water circulation patterns of the waterway and the proximity of shellfish resources; in general, there should be a sewage pumpout facility for marinas with more than 50 berths, or as otherwise specified in an Approved Municipal Harbor Plan; documentation shall be provided showing compliance with local, state, and federal requirements for said facilities;
4. any utility services provided at the marina shall be constructed and maintained in compliance with all applicable local and state requirements;
5. all lighting at the marina shall be designed to minimize interference with navigation by reflection, glare, or interference with aids to navigation;

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(4) Operational Requirements for Dredged Material Disposal.

- (a) Where determined to be reasonable by the Department, clean dredged material shall be disposed of in a manner that serves the purpose of beach nourishment, in accordance with the following provisions:
  1. in the case of a publicly-funded dredging project, such material shall be placed on publicly-owned eroding beaches; if no appropriate site can be located, private eroding beaches may be nourished if easements for public access below the existing high water mark can be secured by the applicant from the owner of the beach to be nourished;
  2. in the case of a privately-funded dredging project, such material may be placed on any eroding beach.
- (b) In the event ocean disposal of dredged material is determined to be appropriate by the Department, the licensee or permittee shall:
  1. publish in the *Notice to Mariners* the date, time, and proposed route of all ocean disposal activities and the coordinates of the ocean disposal site, as deemed appropriate by the U.S. Coast Guard;
  2. ensure that transport vessels are not loaded beyond capacity; are equipped with sudden, high volume release mechanisms; and are at a complete stop when the material is released; and
  3. ensure that disposal occurs within the boundaries of an approved or otherwise formally designated ocean disposal site; and that the discharge location is marked during disposal operations by a buoy equipped with a

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flashing light and radar reflectors which allow it to be located under variable sea/weather conditions.

(5) Supervision of Dredging and Disposal Activity.

(a) The licensee or permittee shall inform the Department in writing at least three days before commencing any authorized dredging or dredged material disposal.

(b) The licensee or permittee shall provide, at his or her expense, a dredging inspector approved by the Department who shall accompany the dredged material while in transit and during discharges, either upon the scows containing the dredged material or upon the boat towing them, for the following activities:

1. any offshore disposal;
2. any onshore disposal of dredged material greater than 10,000 cubic yards; or
3. the disposal of materials defined by the Department as potentially degrading or hazardous.

(c) The name, address, and qualifications of the dredging inspector shall be submitted to the Department as part of the license or permit application for approval.

(d) Within 30 days after the completion of the dredging, a report shall be submitted to the Department certified by the dredging inspector, including daily logs of the dredging operation indicating volume of dredged material, point of origin, point of destination, and other appropriate information.

### 9.51: Conservation of Capacity for Water-dependent Use

A nonwater-dependent use project that includes fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. In applying this standard, the Department shall take into account any relevant information concerning the utility or adaptability of the site for present or future water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall adhere to the greatest reasonable extent to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. At a minimum, the Department shall act in accordance with the following provisions.

(1) If the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which reasonably can be expected to locate on or near the project site. Characteristics of the respective facilities that may give rise to such user conflict include, but are not limited to:

- (a) presence of noise and odors;
- (b) type of equipment and accessory services;
- (c) hours of operation and spatial patterns of activity;
- (d) traffic flows and parking needs;

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- (e) size and composition of user groups;
- (f) privacy and security requirements;
- (g) requirements for public infrastructure.

(2) If the project includes new structures or spaces for nonwater-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site. Aspects of built form that may give rise to design incompatibility include, but are not limited to:

- (a) the total surface coverage by buildings and other permanent structures, insofar as it may affect the amount of open space where flexibility to serve water-dependent purposes will be retained;
- (b) the layout and configuration of buildings and other permanent structures, insofar as they may affect existing and potential public views of the water, marine-related features along the waterfront, and other objects of scenic, historic or cultural importance to the waterfront, especially along sight lines emanating in any direction from public ways and other areas of concentrated public activity;
- (c) the scale of buildings and other permanent structures, insofar as it may affect wind, shadow, and other conditions of the ground level environment that may affect users of water-dependent facilities; and
- (d) the landscape design of exterior open spaces, insofar as it may affect the attainment of effective pedestrian and vehicular circulation within and to areas of water-dependent activity.

(3) The Department shall find that the standard is not met if the project does not comply with the following minimum conditions which, in the absence of an Approved Municipal Harbor Plan ~~which promotes~~(which the Department has determined promote the policy objectives stated herein with comparable or greater effectiveness), are necessary to prevent undue detriments to the capacity of tidelands to accommodate water-dependent use:

- (a) new pile-supported structures for nonwater-dependent use shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the on-site replacement requirement if the project conforms to an Approved Municipal Harbor Plan which, as previously determined by the Secretary in the approval of said plan and has been determined by the Department through the adoption of substitute provisions and associated offsetting public benefits in said plan, specifies alternative replacement requirements which ensure that no net loss of open water will occur for nonwater-dependent purposes, in order to maintain or improve the overall capacity of the state's waterways to accommodate public



use in the exercise of water-related rights, as appropriate for the harbor in question;

(b) Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. The Department may allow any portion of the equivalent area of a Facility of Public Accommodation to be relocated within the building footprint, or in other buildings owned, controlled or proposed for development by the applicant within the Development Site if the Department determines the alternative location would more effectively promote public use and enjoyment of the project site. As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above use limitations if the project conforms to an Approved Municipal Harbor Plan which, as previously determined by the Secretary in the approval of said plan and has been determined by the Department through the adoption of substitute provisions and associated offsetting public benefits in said plan, specifies alternative limitations and other requirements which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question;

(c) new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:

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1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and
2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and
3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.

As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standards if the project conforms to an Approved Municipal Harbor Plan which, as has been determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions and associated offsetting public benefits in said plan, specifies alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted

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exclusively to water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(d) at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site; in the event this requirement cannot be met by a project involving only the renovation or reuse of existing buildings, ground level open space shall be provided to the maximum reasonable extent; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standard if the project conforms to an Approved Municipal Harbor Plan which, as [has been](#) determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions [and associated offsetting public benefits](#) in said plan, specifies alternative site coverage ratios and other requirements which ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(e) new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus  $\frac{1}{2}$  foot for every additional foot of separation from the high water mark; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive such height limits if the project conforms to an Approved Municipal Harbor Plan which, as [has been](#) determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions [and associated offsetting public benefits](#) in said plan, specifies alternative height limits and other requirements which ensure that, in general, such buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(4) the requirements of 310 CMR 9.51(1) through (3), shall also apply in the event a nonwater-dependent use project is located on a Great Pond;

(5) the requirements of 310 CMR 9.51(3), shall not apply to projects on filled tidelands in Designated Port Areas involving temporary uses, supporting DPA uses that are industrial, and marine industrial parks.

### 9.52: Utilization of Shoreline for Water-dependent Purposes

A nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands. In applying this standard, the Department shall take into account any relevant information concerning the

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capacity of the project site to serve such water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. Except as necessary to protect public health, safety, or the environment, the Department shall act in accordance with

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(1) In the event the project site includes a water-dependent use zone, the project shall include at least the following:

(a) one or more facilities that generate water-dependent activity of a kind and to a degree that is appropriate for the project site, given the nature of the project, conditions of the water body on which it is located, and other relevant circumstances; in making this determination, the Department shall give particular consideration to:

1. facilities that promote active use of the project shoreline, such as boat landing docks and launching ramps, marinas, fishing piers, waterfront boardwalks and esplanades for public recreation, and water-based public facilities as listed in 310 CMR 9.53(2)(a); and

2. facilities for which a demonstrated need exists in the harbor in question and for which other suitable locations are not reasonably available; and

(b) a pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of:

1. walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in an Approved Municipal Harbor Plan, shall be no less than ten feet in width; and

2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.

(2) In the event the project site does not include a water-dependent use zone, the project shall provide connecting public walkways or other public pedestrian facilities as necessary to ensure that sites containing water-dependent use zones will not be isolated from, or poorly linked with, public ways or other public access facilities to which any tidelands on the project site are adjacent.

(3) The requirements of 310 CMR 9.52(1) and (2), shall also apply in the event a nonwater-dependent use project is located on a Great Pond.

### 9.53: Activation of Commonwealth Tidelands for Public Use

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A nonwater-dependent use project that includes fill or structures on Commonwealth tidelands, except in Designated Port Areas, must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes. In applying this standard, the Department shall take into account any factor affecting the quantity and quality of benefits provided to the public, in comparison with detriments to public rights associated with facilities of private tenancy, especially those which are nonwater-dependent; and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. At a minimum, the Department shall act in accordance with 310 CMR 9.53(1) through (4).

(1) The project shall not include fill or structures for nonwater-dependent use of Commonwealth tidelands which the Department determines are necessary to accommodate a public agency which intends to pursue a water-dependent use project on such lands, provided written notice of such agency's intention is submitted to the Department prior to the close of the public comment period on the license application. Such determination shall be based upon a clear showing, within a period of time deemed reasonable by the Department, that the agency's project has met the criteria of 310 CMR 9.36(5)(a)2. through 4.

(2) The project shall attract and maintain substantial public activity on the site on a year-round basis, through the provision of water-related public benefits of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances. In making this determination, the Department shall act in accordance with 310 CMR 9.53(2)(a) through (e):

### 9.53: continued

(a) in the event the project site includes a water-dependent use zone, at least one facility utilizing the shoreline in accordance with the provisions of 310 CMR 9.52(1)(a) must also promote water-based public activity; such facilities include but are not limited to ferries, cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/ charter/rental docks, and community sailing centers;

(b) the project shall include exterior open spaces for active or passive public recreation, examples of which are parks, plazas, and observation areas; such open spaces shall be located at or near the water to the maximum reasonable extent, unless otherwise deemed appropriate by the Department, and shall include related pedestrian amenities such as lighting and seating facilities, restrooms and trash receptacles, children's play areas, and safety ladders along shoreline walkways, as appropriate; such facilities shall be sized in accordance with 310 CMR 9.53(2)(b)1. through 2.:

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1. the amount of such space shall be at least equal to the square footage of all Commonwealth tidelands on the project site landward of a project shoreline and not within the footprint of buildings, less any space deemed necessary by the Department to accommodate other water-dependent uses; the Department may also allow a portion of such open space to be devoted to public ways and/or surface parking open to the public, including users of the facility of public accommodation, provided that below grade or structured parking is not a reasonable alternative and that the open space devoted to public vehicular use does not exceed that devoted to public pedestrian use;
  2. as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the requirements of 310 CMR 9.53(2)(b)1., if the project conforms to an Approved Municipal Harbor Plan which, as [has been](#) determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions [and associated offsetting public benefits](#) in said plan, specifies alternative requirements for public outdoor recreation facilities that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner;
- (c) the project shall devote interior space to facilities of public accommodation, other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use; such public interior space shall be located at the ground level of all buildings containing nonwater-dependent facilities of private tenancy, unless the Department determines that an alternative location would more effectively promote public use and enjoyment of the project site or is appropriate to make ground level space available for water-dependent use or upper floor accessory services; the extent of such interior space shall be determined in accordance with 310 CMR 9.53(2)(c)1. through 2.:
1. such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy;
  2. as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the requirements of 310 CMR 9.34(2)(c)1., if the project conforms to an Approved Municipal Harbor Plan which, as [has been](#) determined by the Secretary in the approval of said plan, and by the Department through the adoption of substitute provisions [and associated offsetting public benefits](#) in said plan, specifies alternative requirements for interior facilities of public accommodation that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner;
- (d) the project shall include a management plan for all on-site facilities offering water-related benefits to the public, to ensure that the quantity and quality of such benefits will be effectively sustained; management elements which may be covered by the plan include, but are not limited to, signage, maintenance, hours and rules of operation, organizational arrangements and responsibilities, pricing, financing, and procedures for resolving use conflicts; if

deemed appropriate, the Department may require the applicant to offer to the public, in the form of an easement, an enforceable right of access to or use of a proposed water-dependent facility of public accommodation;

(e) in the event that water-related public benefits which can reasonably be provided on-site are not appropriate or sufficient, the Department may consider measures funded or otherwise taken by the applicant to provide such benefits elsewhere in the harbor or otherwise in the vicinity of the project site.

(3) The project shall promote other development policies of the Commonwealth, through the provision of nonwater-related benefits in accordance with applicable governmental plans and

9.53: continued

(a) the Department shall take into account any guidance forthcoming from a state, federal, regional, or municipal agency as to the extent to which the project will contribute to or detract from the implementation of any specific policy, plan or program relating to, among other things: education; employment; energy; environmental protection; historic or archeological preservation; housing; industry; land use; natural resources; public health and safety; public recreation; and transportation.

(b) the Department shall act in accordance with the written recommendation of the Secretary of any state Executive Office in whose area of agency or program jurisdiction the proposed project falls, provided that said recommendation is made pursuant to an MOU or other written agreement with the Department as to the manner and extent to which the nonwater-related policies, plans, and programs of said Executive Office will be promoted in relation to water-related public interests.

(c) the Department shall give primary consideration to the implementation of policies, plans, or programs that:

1. have been officially adopted by statute, regulation, or other formal instrument of legislative or administrative action; and

2. complement measures taken by the project to serve water-related public purposes; examples of such complementary policies include the improvement of public transportation systems in order to foster ease of public movement to and from waterfront facilities, and the inclusion of affordable housing in residential development in order to make waterfront tenancy and access available to a broader segment of the public than would be the case under prevailing market conditions;

(d) the Department shall consider only those nonwater-related benefits accruing to the public in a manner that is reasonably direct, rather than remote, diffuse, or theoretical. Examples of direct public benefits include meeting a community need for mixed-income residential development, creating a large number of permanent jobs on-site, and reutilizing idle waterfront properties. Corresponding examples of indirect public benefits include increasing the

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general supply of market-rate housing, improving overall economic conditions, and expanding the property tax base of a municipality.

(4) In the event a nonwater-dependent use project is located on Great Ponds, the Department shall apply the provisions of 310 CMR 9.53(1) through (3), to the portion of the project site lying below the natural low water mark.

### 9.54: Consistency with Coastal Zone Management Policies

Nonwater-dependent use projects located in the coastal zone shall be consistent with all policies of the Massachusetts Coastal Zone Management Program, pursuant to 301 CMR 20.05(3). In applying this standard for projects identified for CZM participation in license or permit proceedings pursuant to 310 CMR 9.13(2)(a), the Department shall consider any written statement submitted by the Coastal Zone Management Office pursuant to 310 CMR 9.13(2), and shall act in accordance with the following provisions.

(1) If the Department concurs with the conclusions and recommendations of CZM, said written statement shall be adopted as part of the written determination on license application.

(2) If the Department disagrees with any conclusions or recommendations of CZM and the disagreement cannot be resolved through routine consultation, the assistance and direction of the Secretary shall be sought in accordance with the provisions of M.G.L. c. 21A, § 4, governing mediation of administrative and jurisdictional conflicts within EOEEA. If the disagreement is not eliminated through such mediation, the Department shall include in the written determination an explanation of the specific basis for its final decision on consistency with CZM policies.

If the project site is within an area covered by an Approved Municipal Harbor Plan, the Department shall presume this standard is met, in accordance with the provisions of 310 CMR 9.34(2)(b)3.

### 9.55: Standards for Nonwater-dependent Infrastructure Facilities

(1) The requirements of 310 CMR 9.51 through 9.53, shall not apply to nonwater-dependent use projects consisting of infrastructure facilities on tidelands or Great Ponds. Such projects shall include mitigation and/or compensation measures as deemed appropriate by the Department to ensure that all feasible measures are taken to avoid or minimize detriments to the water-related interests of the public. Such interests include, but are not limited to:

- (a) the protection of maritime commerce, industry, recreation and associated public access;
- (b) the protection, restoration, and enhancement of living marine resources;
- (c) the attainment of water quality goals;
- (d) the reduction of flood and erosion-related hazards on lands subject to the 100-year storm event or to sea level rise, especially those in damage-prone or natural buffer areas;



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- (e) the protection and enhancement of public views and visual quality in the natural and built environment of the shoreline;
- (f) the preservation of historic sites and districts, archaeological sites, and other significant cultural resources near waterways.

(2) All nonwater-dependent use projects consisting of infrastructure facilities on tidelands or Great Ponds shall take reasonable measures to provide open spaces for active or passive recreation at or near the water's edge, wherever appropriate. Such measures may be provided by any means consistent with the need to avoid undue interference with the infrastructure facilities in question, and to protect public health, safety, or the environment.

### 9.56: Standards for Facilities of Limited Accommodation

Facilities of Limited Accommodation may be authorized on filled Commonwealth Tidelands or filled Private Tidelands under certain circumstances where a project site cannot support Facilities of Public Accommodation for a period of time. Projects including Facilities of Limited Accommodation as a substitution for Facilities of Public Accommodation described in 310 CMR 9.53(2)(c) and referenced in 310 CMR 9.51(3)(b) must meet any otherwise applicable requirements of 310 CMR 9.00. The substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation fulfills the requirements for licensing under 310 CMR 9.31(2)(b)1. provided otherwise applicable requirements are met. The calculation of the required amount of Facilities of Public Accommodation or the amount of the payment to allow the substitution shall be based on Facilities of Limited Accommodation located on the ground floor of buildings on filled Commonwealth Tidelands or Private Tidelands within 100 feet of the project shoreline. The substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation may not be inconsistent with an Approved Municipal Harbor Plan under 310 CMR 9.34(2).

(1) An application for a building less than or equal to 75' in height, may substitute Facilities of Limited Accommodation in up to 50% of the interior space required to be devoted to Facilities of Public Accommodation. The remainder of the required ground floor interior space, with the exception of Upper Floor Accessory Services, shall be devoted to Facilities of Public Accommodation. The requirement that no less than 25% of the otherwise required ground floor interior space be devoted to Facilities of Public Accommodation may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation. The Applicant shall provide notice of the project to the Local Economic Development Authority and any response it has received from the authority. If the Local Economic Development Authority responds in writing that the project area has a sufficient level of development to support a Facility of Public Accommodation, the Department shall not authorize the substitution of a Facility of Limited Accommodation. If the authority concurs in writing that the project area lacks sufficient development to support a Facility of Public Accommodation or does not respond to the notice and the

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Department does not request additional information within 60 days of receipt of a license application, the Local Economic Development Authority will be deemed to concur with the request and the substitution of a Facility of Limited Accommodation shall be authorized. The first floor design shall be capable of accommodating a Facility of Public Accommodation. 20% of the net operating income per year generated from the Facilities of Limited Accommodation shall be paid annually by the project to fund specific construction or activities, approved by the Department, to activate the waterfront in geographic proximity to the project site. The activation

### 9.56: continued

provided by the specific construction or activities shall extend to evening and/or weekend hours wherever feasible to compensate for any lack of activation that may result in the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation. The funding of specific construction or activities shall be in addition to applicable requirements at 310 CMR 9.52(1) and 9.53(2). The specific construction or activities to be funded shall be identified by the Applicant and approved by the Department prior to licensing.

A condition of the license shall include, on or before the 15<sup>th</sup> anniversary of the first certificate of occupancy, a requirement for the Department to review the uses of the Facilities of Limited Accommodation to determine whether the project site could support Facilities of Public Accommodation, typically based upon foot traffic and density, based on information provided by the Licensee. The Licensee shall file any relevant information at least six months prior to the fifteenth anniversary. If the Department determines that Facilities of Public Accommodation can be supported and the project is unable to obtain a contrary opinion as referenced in 310 CMR 9.56(2)(d), the Department shall provide the Licensee with a schedule for submittals for transition to such uses. If the Department determines that Facilities of Public Accommodation cannot be supported or the Licensee obtains such an opinion as referenced in 310 CMR 9.56(2)(d), the Department shall specify a time period for a subsequent review. The Licensee shall certify annually to the Department the amount of space devoted to Facilities of Limited Accommodation, the use of the space, the net operating income from the Facilities of Limited Accommodation, and a demonstration of payment for the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation as specified in 310 CMR 9.56(2)(f). The Licensee shall provide an electronic copy of the certifications and notice of any information submitted six months prior to the 15<sup>th</sup> anniversary review, upon request to any person who filed comments during the public comment period on the written determination for the project.

(2) An application for a building greater than 75' in height that can demonstrate that its project site is unable to fully support Facilities of Public Accommodation, based on foot traffic and density, may apply for a short-term condition in a license to authorize up to 50% of the interior space required to be devoted to Facilities of Limited Accommodation in accordance with 310 CMR 10.51 and 10.53 for some portion of the ground floor interior space otherwise required to be devoted to Facilities of Public Accommodation, provided that no less than twenty-five percent of

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such required interior space shall be devoted to Facilities of Public Accommodation. The requirement that no less than 25% of the ground floor interior space otherwise required be devoted to Facilities of Public Accommodation may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation. The short-term condition in the license may not exceed ten years. At the expiration of the term, the ground floor shall be devoted to Facilities of Public Accommodation unless the licensee applies for an extension for no more than ten years and proves that the provisions of 310 CMR 9.56(2)(a) through (d) are met. Applications for extensions prior to expiration of the term may be allowed only where necessary to maintain occupancy. For an Applicant seeking a short-term condition in the license to authorize Facilities of Limited Accommodation in the interior space otherwise required to be devoted to Facilities of Public Accommodation, 20% of net operating income per year generated from the Facilities of Limited Accommodation shall be paid by the licensee annually to fund specific construction or activities, approved by the Department, to activate the waterfront. The activation provided by the specific construction or activities shall extend to evening and/or weekend hours wherever feasible to compensate for any lack of activation that may result in the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation. The specific construction or activities to be funded shall be identified by the Applicant and approved by the Department prior to licensing. The funding of specific construction or activities shall be in addition to applicable requirements at 310 CMR 9.52(1) and 9.53(2). A project seeking a short term condition in a license shall:

- (a) not be inconsistent with any substitutions, offsets or conditions of approval established in an Approved Municipal Harbor Plan as provided in 310 CMR 9.34(2);
- (b) demonstrate that marketing efforts for at least one year have failed to identify any prospective Facility of Public Accommodation, even with the offer of up to 50% below market rents to civic or cultural not-for-profit organizations and a diligent good faith attempt to locate tenants which shall include advertisements in at least two commercial real estate marketing publications and listing with a commercial real estate brokerage;
- (c) comply with the conditions in the license requiring Facilities of Public Accommodation unless or until another use is authorized; this requirement may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation;
- (d) obtain the written concurrence of the Local Economic Development Authority that the project area lacks the level of development to support a Facility of Public Accommodation at the time of licensing or amendment. If the Local Economic Development Authority does not respond to the notice and the Department does not request additional information within sixty days of receipt of a license application, the Local Economic Development Authority will be deemed to concur with the request;
- (e) ensure that the first floor design will be capable of accommodating a Facility of Public Accommodation at the end of the term; and

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(f) certify annually the space devoted to Facilities of Limited Accommodation, the use of the space, the net operating income from those facilities, and demonstration of payment.

(3) A licensee may request an amendment of an existing license to authorize Facilities of Limited Accommodation, provided the request meets the requirements for an amendment at 310 CMR 9.24, the requirements identified in 310 CMR 9.56(2)(a) through (d), and other applicable requirements of 310 CMR 9.56(1) or (2). A short term license condition for Facilities of Limited Accommodation amending an existing license may be for a limited term of ten years or 15 years, depending on the height of the building.

### 9.57: Approved Municipal Harbor Plans

The Department has determined that licenses issued in accordance with the following Approved Municipal Harbor Plans are consistent with the requirements of Chapter 91, Section 18 of the Massachusetts General Laws (taking into account all applicable criteria under 310 CMR 9.00). This determination is based on the Department's participation in each municipal harbor planning process and its prior recommendations to the Secretary with respect to the following Approved Municipal Harbor Plans, and the Department's finding that, in conjunction with all other applicable licensing criteria, any substitute provisions and associated offsetting public benefits included in the relevant Approved Municipal Harbor Plans provide a proper public purpose, provide greater public benefit than public detriment to the rights of the public in tidelands, and are consistent with the policies of the Mass. coastal zone management program.

In conjunction with the issuance of any future Chapter 91 license for a project subject to an Approved Municipal Harbor Plan, the Department shall consider all applicable licensing criteria under 310 CMR 9.00, including without limitation any substitute provisions and associated offsetting public benefits in such Approved Municipal Harbor Plan, each of which has been determined by the Department to provide greater public benefit than public detriment to the rights of the public in tidelands and is therefore consistent with a proper public purpose determination under Chapter 91, Section 18 of the Massachusetts General Laws. The Department's consideration shall be informed by its participation in the municipal harbor planning process for the Approved Municipal Harbor Plans listed below (and any amendments thereto) or any future Approved Municipal Harbor Plan, including the Department's recommendations to the Secretary for the applicable Approved Municipal Harbor Plan.

(1) The following Municipal Harbor Plans are Approved Municipal Harbor Plans:

(a) Downtown Waterfront District (Boston) Municipal Harbor Plan (April 30, 2018)

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- (b) East Boston Waterfront District Municipal Harbor Plan (July 15, 2002, as renewed and amended on December 17, 2008, March 4, 2009, and August 2, 2012)
- (c) Fort Point Downtown (Boston) Municipal Harbor Plan Phase I (October 10, 2002, as renewed on February 12, 2013)
- (d) Fort Point Downtown (Boston) Municipal Harbor Plan Phase II (March 8, 2004, as renewed on April 9, 2014)
- (e) Harborpark (Boston) Plan (May 22, 1991, as renewed and amended on July 29, 1999, October 12, 2006, and April 4, 2008)
- (f) South Boston Waterfront District Municipal Harbor Plan (December 6, 2000, as renewed and amended on December 21, 2002, October 22, 2009, and December 21, 2016)
- (g) Cohasset Municipal Harbor Plan (November 25, 2020)
- (h) Central Waterfront (Everett) Municipal Harbor Plan (February 10, 2014)
- (i) Gloucester Municipal Harbor Plan and DPA Master Plan (July 6, 1999, as renewed and amended on December 11, 2009 and December 19, 2014)
- (j) Lynn Municipal Harbor Plan and DPA Master Plan (June 28, 2010, as renewed and amended on November 25, 2020)
- (k) Nantucket and Madaket Municipal Harbor Plan (December 21, 2009)
- (l) New Bedford Fairhaven Municipal Harbor Plan and DPA Master Plan (September 24, 2002, as renewed and amended on June 14, 2010)
- (m) Provincetown Harbor Management Plan (May 4, 1999, as renewed and amended on February 29, 2012 and April 10, 2019)
- (n) Salem Municipal Harbor Plan and DPA Master Plan (June 24, 2008)
- (o) Hull Harbor Plan (February 14, 2000)
- (p) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed in 1999, 2005, and May 12, 2015)
- (q) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003)

(2) Approval of Municipal Harbor Plans. Upon the Secretary of the Executive Office of Energy and Environmental Affairs' issuance of a decision approving a Municipal Harbor Plan or part thereof pursuant to 301 CMR 23.05, or the Secretary's decision on an amendment, of clarification, correction or renewal pursuant to 301 CMR 23.06, or the Secretary's decision of incompatibility pursuant to 301 CMR 23.07, the Secretary shall submit the same to the Department and the Department shall issue a finding as to whether it concurs with the Secretary's written decision. If the Department concurs with the Secretary's decision, the same shall become an Approved Municipal Harbor Plan.

**[NAIOP COMMENT: If existing (2) not removed per comment letter, revise as follows:]** (2) Approved Substitute Provisions: Substitute Standards, Offsets, Amplifications, and Other Provisions

The tables below are not intended to be comprehensive; any conflicts between the tables and the Approved Municipal Harbor Plans themselves are to be resolved by reference to the terms of the Approved Municipal Harbor Plans.

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(a) Downtown (Boston) Waterfront District Municipal Harbor Plan, effective 4/30/2018

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<b>Harbor Garage site</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ¥2 foot for every additional foot of separation from the high water mark.	Maximum height of 585 feet to highest occupiable floor (no more than 600 feet) <ul style="list-style-type: none"> <li>Minimize net new shadow</li> <li>Avoid new shadow on Long Wharf</li> <li>Meet City code for wind conditions at ground level</li> </ul>	\$300,000 for planning, feasibility assessment, design, engineering and permitting for a signature waterfront park and water transportation gateway at Chart House parking lot (Long Wharf)  \$10 million for design and construction of public realm improvements for the New England Aquarium Blueway
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	<ul style="list-style-type: none"> <li>New open space on 50% site from current conditions</li> <li>Lot Coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings</li> <li>Open space siting requirements apply</li> </ul>	N/A
<b>Hook Wharf site</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use	New or expanded buildings for nonwater-dependent use shall not exceed	Maximum height of 285 feet to highest occupiable floor (no more than 305 feet)	\$3.6 million for planning, feasibility assessment, design, engineering,

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
(Building height)	55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus 2 foot for every additional foot of separation from the high water mark.	<ul style="list-style-type: none"> <li>Minimize net new shadow</li> <li>Meet City code for wind conditions at ground level</li> </ul>	permitting and construction of a signature waterfront park at Chart House parking lot (Long Wharf)  \$500,000 one-time payment to Fort Point Operations Fund for programming and projects that advance open space and watersheet activation elements of the Fort Point Channel
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Maximum lot coverage of 70% <ul style="list-style-type: none"> <li>Lot Coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings</li> </ul>	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use -	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not	Reconfigured Water Dependent Use Zone (WDUZ) allowed <ul style="list-style-type: none"> <li>Maintain at least a 12 ft width along the waterfront</li> <li>Ensure potential restaurant uses do not encroach into WDUZ</li> <li>Reconfigured WDUZ to include slips for water taxi and other boating uses, free public touch-and-go docking, and</li> </ul>	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	docking for dinghies and small craft <ul style="list-style-type: none"> <li>Enhance pedestrian access where there currently is none</li> </ul>	
<b>Area-wide</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Maximum height of 30 ft <ul style="list-style-type: none"> <li>Limited to moving mechanicals from existing buildings to the roof or to an upper floor above current or future base flood elevation</li> <li>any additional height limited to only that necessary to accommodate the relocation of the building mechanicals</li> <li>new structure(s) on the existing building configured and set back from the sides so that it avoids if possible, and if not, minimizes net new shadow</li> <li>avoid net new shadow on Long Wharf</li> </ul>	Relocation of vulnerable building mechanicals will increase the planning area's resilience to current and future hazards; conditions will ensure that water-dependent activity and associated public access on the ground level will not be adversely affected

2. Table 2. Amplifications



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Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
<b>Area-wide</b>			
310 CMR 9.53(2)(b-c): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation and interior space for facilities of public accommodation)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	All exterior private tideland areas planned for public access shall meet public activation standard for Commonwealth Tidelands.	<ul style="list-style-type: none"> <li>City to develop Design and Use Standards</li> <li>Designation of New England Aquarium as Special Public Destination Facility (“SPDF”) and requirement for legally binding agreement between City, Harbor Garage developer, and Aquarium</li> </ul>
310 CMR 9.37(3)(c): Engineering and Construction Standards (Non-structural alternatives)	Non-structural alternatives are required for coastal or shoreline engineering structures associated with projects with such structures.	Areas improved for public open space shall be incrementally elevated to improve resilience, as feasible	<ul style="list-style-type: none"> <li>City to develop Design and Use Standards</li> </ul>

(b) East Boston Municipal Harbor Plan, effective 7/15/2002, revised 12/17/2008 and 3/4/2009)

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<b>Clippership Wharf (2002)</b>			
310 CMR 9.51(3): Conservation of Capacity for Water-dependent Use (Location of Facilities of Private Tenancy (“FPT”).	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	FPTs may occupy a portion of the ground floors of nonwater-dependent structures located on private tidelands within 100 feet of the project shoreline (measured from the high water shoreline) and on Commonwealth	<ol style="list-style-type: none"> <li>A minimum of 6,000 SF of additional WDUZ on the western side of the site with associated outdoor programming; offset at 1:2 ratio (FPT:WDUZ).</li> <li>Arts-related ground floor FPA space at</li> </ol>

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
		tidelands, provided that the amount of Facility of Public Accommodation ("FPA") space is greater than or equal to amount of interior space where FPT would otherwise be prohibited; all ground floor FPTs seaward of Marginal Street that would otherwise be for FPAs is for artist live/work space; and does not exceed 12,500 SF of area that would be otherwise required to be FPA.	<p>the harbor-most end of building on westerly wharf of no less than 2,000 SF at no cost for rental or fit-out for life of the c. 91 license (1:1 ratio).</p> <p>3. 1,000 SF of FPA space in buildings facing water on western side of site on Private Tidelands (1:1 ratio).</p> <p>4. 1,000 SF environmental/arts education FPA use on western side of project at no cost for rental and fit-out for license term (1:1 ratio FPT:FPA).</p> <p>5. 1,000 SF of community FPA space at no cost for rental or fit-out for license term (1:1 ratio on western side, 1:2 ratio - FPT:FPA elsewhere)</p> <p>6. On Private Tidelands, 5,000 SF of FPA space in buildings facing Lewis Mall (1:2 ratio)</p>
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use	New or expanded buildings for nonwater-dependent use, and parking facilities at or above	Reconfigured WDUZ, provided no loss of area, measured from the project shoreline as	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
zone)	grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	defined by the high-water mark along upland shorelines and filled wharves. Public parking for up to two hours allowed in WDUZ on the western pier parallel to and landward of the public way to encourage public use of the site. Minimum width of 100 feet along the high water mark except for area immediately southwest of the Boston Housing Authority ("BRA") Heritage Apartments where it shall be a minimum of 25 feet; a minimum of 100 feet from high water mark along the solid fill wharf ends; minimum setbacks of 45 feet on the western side of the project, 40 feet on the eastern side of the westerly wharf, and 30 feet on the western side of the easterly wharf.	
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater	All buildings located along Sumner Street and within 100 feet of the high water mark at the wharf ends shall be no taller than 65 feet in height; landward of the wharf ends	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	building height(s) may increase at the ratio of one vertical foot for every two additional feet from the 100 foot line up to a maximum 80 feet for the entire site, provided all buildings shall be set back a minimum of 100 feet from the high water mark along the solid fill wharf ends, all buildings shall have minimum setbacks of 45 feet on the western side of the project, 40 feet on the eastern side of the westerly wharf, and 30 feet on the western side of the easterly wharf. To accommodate greater floor-to-ceiling dimensions in FPAs, buildings may be up to 86 feet, provided that Net New Shadow (“NNS”) is offset.	
<b>Hodge Boiler Works</b>			

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<p>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation) and</p> <p>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>FPTs may occupy a portion of the ground floor of non-water-dependent structures located within 100 feet of the project shoreline, provided that the total area of ground floor FPA space is greater or equal to the amount of interior space where FPT would otherwise be prohibited; at least 50% of the FPA SF must be at the ground level of any non-water-dependent use structure located within 100 feet of the project shoreline adjacent to LoPresti Park; and no FPA SF is used to offset the SF for other non-water-dependent use structures within 100 feet of the project shoreline.</p>	<p>N/A</p>

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone...”	Reconfigured WDUZ, provided no loss of area, measured from the project shoreline as defined by the high-water mark along upland shorelines and filled wharves. Minimum setback is 75 feet except for the shoreline corner in common with LoPresti Park, where it may be 40 feet and, in order to accommodate a non-water-dependent use public activity structure at the London Street extension, 25 feet.	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus 2 feet for every additional foot of separation from the high water mark.	All buildings located along Sumner Street and within 100 feet of the high water mark at the wharf ends shall be no taller than 65 feet in height; landward of this line, building height(s) may increase at the ratio of one vertical foot for every two additional feet from the 100 foot line up to a maximum 80 feet for the entire site, provided all buildings shall be set back a minimum of 100 feet from the high water mark except at the corner shared with LoPresti Park, where the setback may be 40 feet. To accommodate greater floor-to-ceiling dimensions in FPAs, buildings may be up to 86 feet, provided that NNS is offset.	N/A
<b>Plan-wide (2002)</b>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“.walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	N/A

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
	in a municipal harbor plan, shall be no less than ten feet in width.”		
<b>6-26 New Street (2008)</b>			
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	Up to approximately 1,200 square feet of interior and exterior non-water dependent Facilities of Private Tenancy will be allowed to be located within 100 feet of the project shoreline, but not less than 70 feet from the project shoreline.	At least an equivalent area of Facilities of Public Accommodation (FPA) will be provided adjacent to other FPA space on the site, expanding the location of FPAs beyond 100 feet of the project shoreline.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“.walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width.”	The minimum width will be widened to 12 feet (10 feet clear). These enhancements shall replace the existing standard of 10 feet.	N/A
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½	Allow non water-dependent buildings up to a height of 70 feet within 100 feet landward of the high-water mark in locations as generally indicated in the plans diagrams. Appurtenant to the nine-story building redevelopment project, facade	N/A



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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	foot for every additional foot of separation from the high water mark.	treatments, fenestration, and exterior or enclosed balconies will be allowed up to the top of the existing structure and shall be considered part of the building footprint.	
<b>102-48 Border Street (2009)</b>			
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	A minimum of 25% of the ground floor (excluding upper floor accessory uses) shall be devoted to Facilities of Public Accommodation, including but not limited to: gallery, archway, exhibition space, teaching space, maritime history interpretive exhibit space, community meeting room, and community center. These facilities will be located within the ground floor to effectively promote public use and enjoyment of the project site. The facilities will be managed and programmed to establish the project as a year-round locus of public activity. The McKay Community Gallery will be provided in accordance with the Plan, built-out

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
			and rent-free for the license term and the public archway shall be provided in accordance with the Plan.
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“new or expanded buildings for nonwatery-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone...”	A reconfigured WDUZ will be established that will allow a minimum setback from the project shoreline of 25 feet for buildings containing nonwatery-dependent uses, as shown in the plans and diagrams in the Plan, while maintaining at least the same overall area (approximately 22,806sf) as the standard requirement.	The reconfigured WDUZ will provide setbacks along the waterfront and Harborwalk and setbacks in different areas of the site that are contiguous to the DPA and the proposed historic maritime interpretive area. There shall be no loss of WDUZ area.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	N/A
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water	The height of new or expanded buildings for non-water-dependent uses shall not exceed 85 feet as shown in the Plan’s	<ul style="list-style-type: none"> <li>Provisions of at least 2,201 SF of open space in addition to the standard requirement (1:2</li> </ul>

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	massing and building diagrams.	open space-shadow ratio) that shall include paved pedestrian access. amenities such as benches and special landscaping features, and public recreational features to promote public access and use.
<b>125 Sumner Street (2009)</b>			
310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)	“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwatery-dependent facilities of private tenancy...”	Permit facilities of private tenancy to occupy 75% of the ground floor (excluding upper floor accessory uses), provided that the site remains under the ownership or control of the Boston Housing Authority with the primary purpose to provide affordable housing to City residents.	A minimum of 25% of the ground floor (excluding upper floor accessory uses) shall be devoted to facilities of public accommodate including but not limited to: gallery, exhibition space, maritime history interpretive exhibit space, community meeting room, and community center. These facilities will be located within the ground floor to effectively promote public use and enjoyment of the project site. The facilities will be managed and programmed to establish the project site as a year-round locus of public activity.

2. Table 2: Summary of amplifications

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Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
<b>6-26 New Street (2008)</b>			
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	“the project shall include exterior open space for active or passive recreation, examples of which are parks, plazas and observation areas; such open spaces shall be located at or near the water to the maximum reasonable extent...”	The location of the open space features that serve to activate the public open space on the site may be distributed within both Commonwealth and private tidelands in a manner that will enhance interest, access, and use. Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor, and will follow guidance provided in Section 9 and Appendix 1 of the Plan Amendment.	Plan Amendment Appendix 1, Section 9

3. Table 3: Summary of planning principles and priorities

Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
<b>6-26 New Street (2008)</b>			
Preserve and enhance capacity of DPA for Water-dependent industrial use (“WDIU”)	Preserve and enhance capacity of DPA for WDIU	Removal or restoration of all on-site piles (both DPA and non-DPA watersheet areas); site-wide reconstruction of all deteriorated sections of the bulkhead; and	N/A

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Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
		inclusion of a permanent vehicular access route from New or Sumner Street to the DPA and WDUZ; provision of buffer between uses; provision of language in lease forms or deeds regarding existence of WDIU; docking facility for water taxi; site improvements for DPA area to be accessible.	
<b>102-148 Border Street</b>			
Preserve and enhance capacity of DPA for WDIU	Preserve and enhance capacity of DPA for WDIU	<p>Additionally, DPA improvements at the site will enhance water-dependent uses:</p> <ul style="list-style-type: none"> <li>• Removal of dilapidated pile fields</li> <li>• Restoration of seawalls and adjacent surfaces</li> <li>• Regrading and remediation of site</li> </ul> <p>Language in lease forms with notice of nearby WDIU</p> <ul style="list-style-type: none"> <li>• Use of appropriate construction materials for the non-water dependent (“non-WD”) building to mitigate adverse impacts of neighboring WDIU</li> <li>• Provision of buffer land uses</li> </ul>	

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Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
		along the ground floor of the non-WD building	

(c) (Boston) Fort Point Downtown Waterfront Municipal Harbor Plan, effective 10/10/2002, revised 3/8/2004 and 2/12/2013

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<b>500 Atlantic Avenue (2002)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwatery-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allows building heights up to 55 feet in the Height Zone 1 (0 to 35 feet from the high water mark); 63 feet in Height Zone 2 (35 to 70 feet); 132 feet in ' Height Zone 3 (70 to 79 feet); and 239 feet in Height Zone 4 (more than 79 feet) to the cornice line height of the maximum habitable space.	N/A
<b>Russia (Atlantic) Wharf (2004)</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwatery-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new	To accommodate the preservation of the historic structure, a reconfigured WDUZ that results in a loss of not more than 2,700 SF of WDUZ.	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.		
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	To accommodate the preservation of the historic structure, approximately 65,130 SF may be occupied by the redevelopment of structures within the existing footprint with slight alterations.	Secondary ramping system to Channel Walk West from the Fort Point Channel Watersheet Activation Plan ("FPCWAP"), Congress Street Bridge Lighting Project; improvements to Congress Street sidewalk; and provision of interpretive signage (Historic Piers Network Plan), combined value of \$1,125,000
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½	The roof of the highest occupied floor of 395 feet, provided that the elevation of the existing Tufts roof (91 feet) shall be maintained for a horizontal distance 15 feet landward of the present mean high water line and increase at the rate of 4.5 vertical feet for	Additional FPA space (25,000 SF more than required under c. 91), including two of the FPA spaces as SPDFs (6,000-7,000 SF total); \$1,000,000 to implementation of FPCWAP and maintenance of Children's Wharf Park (1/2 each).

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	foot for every additional foot of separation from the high water mark.	each additional foot landward to a maximum height of 395 feet.	
<b>Plan-wide (2002 &amp; 2004)</b>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	At a minimum, the pedestrian access network shall be no less than twelve feet wide, with ten feet clear of an obstruction.	N/A

2. Table 2: Summary of amplifications

Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
<b>Plan-wide (2004)</b>			
310 CMR 9.53(2)(a), (c), and (d): Activation of Commonwealth Tidelands for Public Use (Facilities for water-based public activity, interior facilities of public accommodation, management plan)	The project shall attract and maintain substantial public activity on the site on a year-round basis, through the provision of water-related public benefits of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances. Where there is a WDUZ, the project	<ul style="list-style-type: none"> <li>Where there is a WDUZ, the project shall provide at least one facility recommended by the FPCWAP that promotes water-based public activity in the WDUZ or provide a monetary contribution for implementation of the FPCWAP.</li> <li>The project shall devote interior space to FPAs with special</li> </ul>	FPCWAP, Section III.C and Section V of the Decision,



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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>	<b>Implementation Mechanism</b>
	must include at least one facility that promotes water-based public activity; the project shall devote interior space to FPAs; and the project shall include a management plan.	consideration given to facilities that enhance the year round destination value of the waterfront. <ul style="list-style-type: none"> <li>Management plan for water-based activities.</li> </ul>	

(d) (Boston) Harborpark Plan, effective 5/22/1991 and revised 7/29/1999 and 10/12/2006

1. Table 1. Substitute standards and offsetting measures

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
<b>Charlestown Navy Yard (1991)</b>			
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage) and 310 CMR 9.53(2)(b) Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Within the Charlestown Navy yard, the aggregate of open space of all lots in the subdistrict exclusive of the Historic Monument Area must be equal to or greater than 50% (excluding roads and surface parking) at all times.	N/A
310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)	“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community	Any project with more than 10,000 SF of floor area must include at least 40 percent of the ground floor to public facilities (not including public parking).	Requirement 4a

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwatery-dependent facilities of private tenancy..."		
<b>Charlestown Gateway and North End (1991)</b>			
310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)	“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwatery-dependent facilities of private tenancy...”	Any project with more than 10,000 SF of floor area must include at least 40 percent of the ground floor to public facilities; at least 50 percent of the ground floor spaces within all buildings containing nonwatery-dependent FPTs on pile-supported structures on flowed tidelands shall be FPAs in accordance with Requirement 8 not including public parking; and any project with nonwater- dependent use containing ground floor interior public space within 100 feet of a project shoreline, such space is for FPAs unless an alternative location would promote public use and enjoyment of the project site in a clearly superior	Requirement 4b-c

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
		manner, is necessary for upper floor accessory services, or is appropriate to accommodate or to avoid detriments to WDU.	
<b>Charlestown Navy Yard, Charlestown Gateway, and North End (1991)</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwatery-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	35 feet along shoreline and ends of piers, 12 feet along sides of piers based upon existing or new pile-supported structures that meets the criterion of 310 CMR 9.32(1)(a)(3); otherwise computed in accordance with 310 CMR 9.51(3)(c), but not less than 25 feet from the ends and not less than 10 from the sides; and only if such reconfiguration promotes public use or other water-dependent activity in a clearly superior manner with no net loss of area and in accordance with a specific plan for vessel-related programming or a set of guidelines for determining sufficient setback space for various types of water-based activity.	Requirement 5
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use	New or expanded buildings for nonwatery-dependent use shall not exceed	<ul style="list-style-type: none"> <li>75 feet for Sargents and Tudor Wharf;</li> <li>90-135 feet on</li> </ul>	Development and contribution/compliance with a special mitigation program to

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
(Building height)	55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Parcel 4/4A and 125-155 feet on Parcel 6/7 (Charlestown Navy Yard)	avoid or minimize adverse wind, shadow, and other impacts to ground-level environment (the program shall specify standards, guidelines, or other parameters to serve as a framework for reaching appropriate mitigation decisions).
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	<p>FPTs over flowed tidelands are allowed only at the following locations: • Battery Wharf (North End) ' • Tudor Wharf (Charlestown Gateway) • Pier 5 (Charlestown Navy Yard)</p> <p>Provided that all buildings are no higher than 55 feet and conform to setback requirements of 5(a-c), and site coverage limits of 310 CMR 9.51(3)(d); no more than 50% of ground floor within such buildings may be occupied by FPTs, including upper-floor accessory uses, and no parking is seaward of high water mark; residential uses only on Battery Wharf and Pier 5, but not at ground level and only</p>	Requirements 7 and 8: Harborpark Plan must be revised to include one or more plans to develop a network of SPDFs within interior spaces along or near the Harborwalk, primarily at the ground level.

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
		on the second level if accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior facilities of public accommodation, or water-based public activities; and shall avoid conflict/minimize incompatibility with nearby water-dependent and/or public activities.	
<b>226 Causeway (1999)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for non-water dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Maximum height of 155 feet to the top of the highest occupiable floor, insignificant net new shadow and no significant deterioration in wind conditions.	Maintenance of Port Park (DCR) for the term of the c. 91 license; fall and spring clear-up of the Prince Street Park for 10 years; 13,000 SF of FPAs on building ground floor; provisions for the sale of tickets for ferry/water transportation in the building lobby; additional landscaping, planting along 226 Causeway Street; 10% of residential units for affordable housing for 20 years (14 of which are restricted for elderly tenants for indefinite tenancy).
<b>Lovejoy Wharf (2006)</b>			
310 CMR	“...walkways and	At a minimum, the	N/A

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width..."	pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater- dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	Reconfigured, no net loss: minimum 76 feet from seaward edge of wharf, except for a 15 feet to accommodate Pavilion building on easterly portion of site (which will include upper level public viewing platform, foot access via interior and exterior stairways, and handicapped access via elevator).	N/A
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot	At least one square foot of the project site at ground level (exclusive of areas	All exterior space not within the footprint of the buildings (42,949 SF) or the Pavilion	4,429 SF of upper-level terrace on the Pavilion with associated public

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
coverage)	lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	(5,819 SF) shall be open space and all open space seaward of the building shall be for pedestrian use only.	access (see WDUZ requirement), public restrooms, and ground-level, rent-free space for a visitor center or other public use.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark	Heights ranging from 115 feet to 155 feet (to the roof of the highest occupiable floor) as shown in municipal harbor planning area (“MHPA”), provided wind meets Boston Redevelopment Authority’s (BRA) standards and minimal NNS.	\$150,000 annual water transportation facility operations subsidy for 5 years, maintenance of dock and shoreside facility for 10 years.

(e) South Boston Waterfront District Municipal Harbor Plan, effective 12/6/2000 and revised 12/31/2002, 10/22/2009 and 12/21/2016

1. Table 1. Substitute standards and offsetting measures

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
<b>Plan-wide (2000, not including 100 Acres Master)</b>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”		
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation) and 310 CMR 9.53(2)(b)1.: Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (i.e., cannot include watershed) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (i.e., 25% or more of the total project site) can be devoted to streets and ways.	All projects within the harbor planning area must comply, at a minimum, with the 50% open space area requirements of the Waterways Regulations. However, only a maximum of 20% of the lot area can be devoted to streets and ways, and surface parking lots are not allowed.	N/A
310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation) and 310 CMR 9.02: Definitions (Facilities of private tenancy and facilities of public accommodation)	A project within Commonwealth Tidelands must provide Facilities of Public Accommodation on the ground floor of all buildings containing Facilities of Private Tenancy (FPTs). At a maximum, ground floor accessory uses to upper floor FPTs must not exceed 25% of the area of the	The amount of ground floor space that can be devoted to upper floor FPT accessory uses cannot exceed 20% of the building footprint. Further, residential lobbies and entrances cannot front along the waterside of any building(s).	N/A



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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	building footprint.		
<b>Fan Pier (2000)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Moving landward from WDUZ, proposed height zones increase from 175 feet to 250 feet to 275 feet and 300 feet along Old Northern Avenue and Courthouse Way, except for Parcels H (175 feet) and J (75 feet).	1) 42,400 square feet of additional open space, in excess of 50% of the site area, at a ratio of 2:1; 2) Approximately 21,000 square feet of publicly accessible space on the surface of the breakwater, at a ratio of 1:1; 3) 15,500 square feet of the footprint of the civic building on Parcel J, at a ratio of 1:1; and 4) Approximately 30,000 square feet of pedestrian-usable open space, calculated as part of the 20% of the site area that could be devoted to streets and ways, at a ratio of 1:1. If other offsets are required under the formula, they may be provided from any of the above categories. In addition, the following offsets may be used: · No more than 15% of the total allowable offset in the form of water transportation benefits in excess of the baseline Chapter 91 requirements; and · No more than 10% of the total allowable offset as improvements to water related public

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
			access facilities within the Boston Harbor Islands National Park Area.
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	<ul style="list-style-type: none"> <li>• 150 feet along fan edge</li> <li>• 60-75 feet along cove edge</li> <li>• 30 feet (preference for 40 feet) along civic site</li> <li>• No net loss of WDUZ Area</li> </ul>	N/A
<b>Pier 4 (2000)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not	Landward of a 200-foot no-build zone at the seaward end of the pier, heights may increase from 100 feet to 170 feet to 250 feet.	200-foot no-build zone and 1 SF of open space for every 2 SF of NNS

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.		
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	<ul style="list-style-type: none"> <li>• 46 feet along cove edge</li> <li>• 100 feet at seaward end of pier (with additional 100 feet as height offset)</li> <li>• 26 feet along easterly edge of Pier 4</li> <li>• No net loss of WDUZ area</li> </ul>	N/A
<b>McCourt/Broderick Parcels A, B, C, and D</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback	No open space is required.	Parcel E (approximately 8,100 SF) will be 100% public open space; open space requirements for Parcels A-D, F shall be aggregated on Parcel E at a 1:1 ratio until Parcel E is completed and then at a 1.25:1

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	<p>distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.</p> <p>At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p>		<p>ratio on the McCourt Fan Pier Gateway Project property (i.e., outside of jurisdiction, thus 25% more open space), all of which shall be located adjacent to land subject to c. 91 jurisdiction and with a visual connection to the waterfront; all open space must be standards for open space on Commonwealth Tidelands and provided concurrent with impacts of individual projects.</p>
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not</p>	<p>Parcel A: 200 feet Parcels B and C: 250 feet Parcel D: 75 feet</p>	<p>For Parcels A-C: 1 SF of open space for every 2 SF of NNS No offset for Parcel D.</p>

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.		
<b>Barking Crab (2000)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	75 feet	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for	12-feet-wide coincident with public access structure, which may be an interior arcaded walkway with-in the first floor of the new structure	N/A

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	nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.		
310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d)(Conservation of Capacity for Water-Dependent Use (Lot coverage)	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.</p> <p>At least one square foot of the project site at ground level (exclusive of areas</p>	No open space is required.	Payment into open space fund.

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.		
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)	“...nonwater-dependent Facilities of Private Tenancy shall not be located on any pile- support- ed structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline...”	FPTs allowed on pile-support structures, except on the first, second and top floors; all structures must be within the existing pile field FPTs allowed on second floor if the exterior docking facilities, marine services, and interior space dedicated to WD uses are fully retained.	Top floor public observation area (100% of the gross floor area (“GFA”) on the top floor), capable of being enclosed for all-season use; with appropriate amenities; fully accessible; identified prominently by signage; no purchase required.
<b>Fort Point Historic North District (2000)</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed	No open space is required.	1) The City-owned parcel located on Sleeper Street, immediately adjacent to the MBTA Mitigation Park and Parcel “E”, should be designated as the specific locus for investment of the Open Space Fund, unless the City can propose an alternative site that meets the same standards. 2) 33 Sleeper Street, 11-13 Sleeper Street, and 321-323

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	<p>immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.</p> <p>At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p>		<p>Congress Street shall participate in the City's Open Space Fund as provided in the MHP, in accordance with the schedule of contribution proposed in the MHP.</p> <p>3) The Open Space Fund contributions of 33 Sleeper Street, 11-13 Sleeper Street, and 321-323 Congress Street should be used specifically for the design and construction of open space on the Cityowned Sleeper Street parcel, compatible with and supplemental to open space designs for the MBTA Mitigation Park and Parcel "E".</p> <p>4) At a minimum, the final design and construction of open space provided to meet these requirements shall satisfy the Chapter 91 standards for open space located on Commonwealth Tidelands.</p> <p>5) All open space commitments must be provided concurrent with the individual development projects. However, overall project work may be</p>



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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
			<p>phased; for example, one project's contribution may be sufficient to fund the design of a proposed open space, with construction dependent upon contributions from other projects. If necessary, any shortfall in funding beyond the project-specific contributions shall be made up from other sources to fully complete the design and construction of designated open spaces.</p> <p>6) The City shall develop a system that accounts for the status of the aggregation program, and shall maintain a running balance of the parcel to which open space funds are to be credited. Using this open space accounting system, the City shall include a certification of open space status to DEP as part of its Section 18 recommendation on Waterways licenses.</p>
<b>Fort Point Historic South and Industrial Districts (2000)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-	New or expanded buildings for nonwater-dependent	Historic South District: 150 feet south of Summer	NNS offset at 2:1 ratio

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
Dependent Use (Building height)	use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Street and 100 feet for remainder of district, except at 60 Necco Court, which is limited to 80 feet.	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	18 feet along edge of Fort Point Channel for 60 Necco Court, no net loss of WDUZ area in rest of Fort Point Historic South District.	N/A
<b>ICA (2002)</b>			
310 CMR 9.51(3)(c): Conservation of	New or expanded buildings for	Fourth-floor gallery space may cantilever	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Capacity for Water-dependent Use (Water-dependent use zone)	nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	over WDUZ at least 40 feet vertically above grade.	
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (i.e., cannot include watersheet) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (i.e., 25% or	Public grandstand setback approximately 24 feet from project shoreline, not less than 74 feet from the project shoreline to the structure at the northeastern edge of the building and not less than 68 feet from the project shoreline to the northwestern edge of the building.	N/A

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	more of the total project site) can be devoted to streets and ways.		
<b>100 Acres (2009)</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“New or expanded buildings for non water-dependent use...shall not be located within a water-dependent use zone”. The WDUZ in the MHP area includes a setback for non-water dependent uses that would vary from 80 to 100 feet, depending upon location and characteristics of projects that may be proposed.”	An alternative WDUZ will be established that generally increases the minimum setback to 110 feet from the project shoreline, except for that portion of the planning area between the Fort Point Channel and 60 Necco Court which will have a setback of 18 feet.	The reconfigured WDUZ will provide at least the same land area as would occur under the standard provisions. The WDUZ is larger throughout most of the planning area and will enhance public access and enjoyment of this area of the waterfront. No net loss of WDUZ will occur.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	The minimum width will be widened to 18 feet clear in areas where the WDUZ is at least 100 feet wide and 12 feet clear along the remainder of the shoreline.	The substitution directly benefits the public through enhanced access (open 24 hours/7 days per week); no offsetting public benefit is required.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high	Allow non water-dependent buildings ranging in height from 80 feet to 180 feet.	The substitution results in a required offset for net new shadow. The proposed offset is additional public open space. This offset is permitted on

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.		a 1:2 ratio of additional open space to net new shadow.
<b>150 Seaport Boulevard (2016)</b>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow height up to 250 feet  Proposed building will create 16,640 sf in net new shadow.	\$1.5 million to improve open space within or adjacent to the South Boston MHP planning area specifically Martin's Park at Children's Wharf.  Interior public waiting area and reception space on the ground floor of the proposed development integrated within the general lobby areas, including amenities and programming described above with clear signage on the interior and exterior of the building.
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Up to 75% lot coverage may be permitted.	
310 CMR 9.51(3)(c): Conservation of	"New or expanded buildings for	The required WDUZ dimensions may be	The reconfigured WDUZ will include

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
Capacity for Water-dependent Use (Water-dependent use zone)	nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone”.  On the Development Site, the required WDUZ would total 5,768 sf.	reconfigured as long as a minimum width of 10 feet is maintained along the project shoreline and as long as the modification results in no net loss of WDUZ area.	the 10 ft setback from the existing project shoreline (except that area which is under the cantilevered balcony areas) and one of two alternative areas of approximately 2,000 sf described above, with a preference for “Massport Wharf”.

2. Table 2: Summary of amplifications

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>	<b>Implementation Mechanism</b>
<b>100 Acres (2009)</b>			
310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes	“A facility that promotes active use of the project shoreline and requires the provision of a pedestrian network of a kind and to a degree appropriate for the project site.”	The amplification of these requirements directs the implementation of these regulations to the provision of the boating dock facility and pedestrian network envisioned in the Fort Point Channel Watersheet Activation Plan.  Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor, and will	FPCWAP and South Boston Waterfront District Municipal Harbor Planning Area (SBWDMHPA), Section 9 and Appendix 1

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Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
		follow guidance provided in Section 9 and Appendix 1 of the Plan.	
310 CMR 9.53: Activation of Commonwealth Tidelands for Public Use	Nonwater-dependent use projects located on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth and that ensures that private advantages of use are not primary merely incidental to the achievement of public purposes.	The amplification of this requirement will provide public benefits recommended by the Fort Point Channel Watersheet Activation Plan in the WDUZ and adjacent watersheet to promote public uses and enjoyment of Commonwealth tidelands.	FPCWAP
<b>150 Seaport Boulevard (2016)</b>			
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (i.e., cannot include watersheet) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (i.e., 25% or more of the total project site) can be devoted to streets and	5,000 SF of exterior open space on a deck beyond the existing project shoreline.	Easements with Massport

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>	<b>Implementation Mechanism</b>
	ways.		

(f) Town of Cohasset Municipal Harbor Plan, effective 11/25/2020

1. Table 1. Substitute standards and offsetting measures

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	New or expanded buildings shall not exceed 35 feet in height above Base Flood Elevation within the Harbor Village District(“HVB”) Overlay District.	No offset is required because, no new or expanded non-water dependent buildings will be greater than the waterways maximum numerical standard of 55 feet in height.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water- Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Walkways within the HVB Overlay District shall be along the entire length of the water-dependent use zone adjacent to the project shoreline and shall be no less than 25 feet in width.	N/A

(g) (Everett) Central Waterfront Municipal Harbor Plan, effective 2/10/2014

1. Table 1. Substitute standards and offsetting measures



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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Substitution</b>	<b>Offsetting Measures</b>
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	<p>“New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone”.</p> <p>On the Development Site, the required WDUZ would be 100 feet from the southernmost shoreline along the Mystic River, 85 feet along the embayment, and 100 feet from the northern portion of the shoreline along the embayment.</p>	The required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the project shoreline and as long as the modification results in no net loss of WDUZ area.	The reconfigured WDUZ will provide at least the same land area as would occur under the standard provisions. A minimum of 25 feet will be maintained along the project shoreline and only Facilities of Public Accommodation will be allowed on the ground floor of any portions of buildings that are located within 50 feet of the project shoreline. No net loss of WDUZ will occur.
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of Facilities of Private Tenancy and Facilities of Public Accommodation)	“...nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline...”	Lower Broadway: FPTs may be allowed within 100 feet of the shoreline.	At least an equivalent area of Facilities of Public Accommodation as required by the regulations will be provided elsewhere on the site in appropriate locations to effectively promote the public use and enjoyment of the project site. FPTs are not allowed within 50 feet of the project shoreline.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if	Wynn Everett: Allow heights up to 55 feet in Area A and up to 400 feet in Area B, as shown	No offset is required if there are no net new shadow impacts on jurisdictional tidelands.

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Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
(Building height)	located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	in Figure 2. Lower Broadway: Allow heights up to 105 feet in Area A and up to 150 feet in Area B, as shown in Figure 2.	Where increased heights result in net new shadow, one square foot of new/additional open space beyond what is required in the Waterways regulations will be provided in the Harbor Planning area within or immediately adjacent to jurisdiction for every one square foot of net new shadow.
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Up to 60% lot coverage (resulting in 40% open space) may be permitted.	<p>For Lower Broadway scenario development exceeding 50% lot coverage, one or more of the following open space improvements or public amenities must be provided:</p> <p>As a first priority, and to be pursued before alternative offsets below unless proven unfeasible due to property ownership or other restrictions, construct and maintain a continuous landscaped pedestrian/bicycle connection between on-site riverfront pathways and DCR open space at Gateway Park including a minimum of 50,000 square feet of off-site open space</p>

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Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
			<p>located on the MBTA-owned peninsula along and underneath the commuter rail line and/or other portions of the Gateway Center property.</p> <p>For Wynn scenario development, and if the priority offset above is not feasible for the Lower Broadway scenario, one or more of the following should be provided (in prioritized order) to equal at least the amount of lot coverage in excess of the 50% baseline:</p> <ul style="list-style-type: none"> <li>• For the first 10,000 square feet, provide and maintain a facility to provide river access by boat in Gateway Park (such as a canoe/kayak launch);</li> <li>• For the next 20,000 square feet, provide and maintain a fishing platform or pier with associated amenities;</li> <li>• For the next 10,000 square feet, provide and maintain 3,000</li> </ul>

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Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
			<p>linear feet of improved walking and/or bicycle paths in Gateway Park, widened to a minimum of ten feet clear; and</p> <ul style="list-style-type: none"> <li>• For every remaining one square foot, provide 25 square feet of ongoing maintenance of DCR facilities and/or property in the planning area which is not already maintained by Gateway Center.</li> </ul>

(h) Gloucester Municipal Harbor Plan & DPA Master Plan, effective 12/19/2014

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-	For project sites that meet the eligibility standard, the required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the	Substitution provision can only be applied to those project sites where it is shown that application of the Ch. 91 standard would result in an inefficient siting of uses in the

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
	<p>dependent use zone; except as provided below, the width of said zone shall be determined as follows:</p> <ol style="list-style-type: none"> <li>1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and</li> <li>2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and</li> <li>3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.</li> </ol>	<p>project shoreline and the ends of piers and wharfs and a minimum of 10 feet along the sides of piers and wharves, and as long as the modification results in no net loss of WDUZ area.</p>	<p>WDUZ, and where the reconfiguration achieves greater effectiveness in the use of the water's edge for water-dependent industrial use. The reconfigured zone must be adjacent to the waterfront and result in an increase in WDUZ immediately adjacent to the water. In no case will a reconfigured WDUZ that results in an area separated from the waterfront or in a net loss of WDUZ be allowed.</p>

2. Table 2. Summary of amplifications

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>
310 CMR 9.36(4)(b):	"...the project shall include	No project will displace

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
Standards to Protect Water-Dependent Uses ((Displacement of water-dependent uses))	arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in a municipal harbor plan...”	existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.
310 CMR 9.36(5)(b)4.: Standards to Protect Water-Dependent Uses (Supporting DPA Use)	“...in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses...”	For properties with a water-dependent industrial hub port use, economic support from the supporting use to the hub use will be presumed. If no water-dependent industrial use exists or is proposed on the site, an investment in onsite waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water dependent industrial infrastructure (piers, wharves, dredging) within the DPA.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes	“...walkways and related facilities along the entire length of the Water-	To the extent practicable for a site, public access facilities shall be integrated into a

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
(Pedestrian access network)	Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width..."	project to activate the waterfront as part of the open space required with a non-water dependent supporting DPA use but must be sited to be compatible with and not interfere with water-dependent industrial uses and activities. Open areas used to support working waterfront activities seasonally during the year shall accommodate temporary public access when possible. Within the WDUZ no use shall be licensed unless it provides access to water-borne vessels wherever possible.
310 CMR 9.12(2)(b): Determination of Water-Dependency (Water-dependent industrial uses)	The Department shall find to be water-dependent industrial the following uses: 1. Marine terminals and related facilities for the transfer between ship and shore, and the storage of bulk materials or other goods transported in waterborne commerce 2. Facilities associated with commercial passenger vessel operations 3. Manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation 4. Commercial fishing and fish processing facilities 5. Boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures 6. Facilities for tugboats, barges, dredges, or other vessels engaged in port	In addition to existing allowable water-dependent industrial uses, MassDEP may find that marine research, testing or development activities are water-dependent industrial uses if they include the following characteristics: 1. Access to coastal waters for research, testing or development; and 2. Commercial fishing facilities, including those engaged in research, testing, or development related to commercial fishing safety, conservation, and sustainability; or 3. Boatyards, dry docks, and other fishing facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures engaged in marine science and technology, including research, development, or testing; or 4. Facilities for tugboats,

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
	<p>operations or marine construction</p> <p>7. Any water-dependent use listed in 310 CMR 9.12(2)(a)9 through 14., provided the Department determines such use to be associated with the operations of a Designated Port Area</p> <p>8. Hydroelectric power generating facilities</p> <p>9. Offshore renewable energy infrastructure facilities in the Commonwealth, including ocean wave energy facilities used to deliver electricity, natural gas or Telecommunications services to the public from an offshore facility located outside the Commonwealth; and</p> <p>10. Other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).</p>	<p>barges, dredges, or other vessels engaged in port operations or marine construction, including those related to marine research, development, or testing.</p>

3. Table 3: Planning principles and priorities

Planning Principle/Priority	Decision Standard	Implementation Mechanism
<p>Allow up to 50% DPA supporting commercial uses on filled tidelands for most properties within the DPA by transferring the supporting use allowances for certain key parcels that will be 100% water-dependent industrial use.</p>	<p>MassDEP shall not license commercial DPA supporting uses within the Gloucester DPA within filled and flowed tidelands in the following areas: on the State Fish Pier; the U.S. Coast Guard Facility; Cruiseport Gloucester; or within or on any DPA roadway or pile-supported pier. MassDEP may license commercial DPA supporting uses on up to 50% of a project</p>	<p>Chapter 91 Licensing</p>



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Planning Principle/Priority	Decision Standard	Implementation Mechanism
	site on filled tidelands on DPA properties not listed above.	

(i) City of Lynn MHP and DPA Master Plan, effective November 25, 2020

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:</p> <ol style="list-style-type: none"> <li>1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and</li> <li>2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and</li> </ol>	<p>A minimum WDUZ setback of 100 feet from the shoreline, with a net total WDUZ area equal to or greater than the area of a 200 feet WDUZ setback for the project site. Applies to the harbor focus area only.</p>	<p>No offset is required as the substitution increases the WDUZ required under 310 CMR 9.51(3)(c).</p>

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
	3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.		
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Minimum walkway width of 15 to 30 feet outside of the DPA and within the harbor focus area unless the width is physically constrained. In no cases will the allowed width be less than 10 feet. Width shall be consistent with the guidance provided in the 2019 Waterfront Open Space Master Plan (“2019 WOSMP”) included as Appendix A. All opportunities to provide the appropriate width should be considered, including cantilevering as appropriate.	No offset is required because in all cases the waterfront promenade will be no less than the waterways minimum numerical standard of 10 feet wide.

2. Table 2. Summary of amplifications

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>
310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes	A nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including	Applies the tidelands standards at 310 CMR 9.53(2) for public use to any tideland areas within the expanded WDUZ outside of the DPA and within the harbor focus

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
	<p>public access in the exercise of public rights in such lands. In applying this standard, the Department shall take into account any relevant information concerning the capacity of the project site to serve such water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall give particular consideration to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2.</p>	<p>area, with specific guidance from the 2019 Waterfront Open Space Master Plan (2019 WOSMP). This amplification requires that these areas are designed to “maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas that also have public amenities that shall include seating, lighting, trash receptacles, restrooms, and children’s play areas, as appropriate” and must be consistent with the 2019 WOSMP.</p>
<p>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</p>	<p>A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a).</p>	<p>Design, materials, and layout for the waterfront promenade within the WDUZ and outside of the DPA and within the harbor focus area shall be consistent with the guidelines provided in the 2019 WOSMP.</p>
<p>310 CMR 9.52(1)(b)2.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</p>	<p>A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of: 2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing,</p>	<p>Specifies locations, with a process for substitute locations, for public access walkways to connect the Lynnway to the project shoreline through the harbor planning area (“HPA”). Design and amenity requirements for these lateral accessways shall be as shown and described in the 2019 WOSMP.</p>

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
	fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.	

3. Table 3: Planning principles and priorities

Planning Principle/Priority	Decision Standard	Implementation Mechanism
Continue lateral pedestrian access network with consistent design and amenities to the Lynnway	Lateral accessways shall be in the locations and with design and amenity requirements as shown and described in the 2019 WOSMP for entire length	Required through the Secretary's discretionary provisions for a public benefits determination under 301 CMR 13.00
Require the use of nature-based shorelines and incorporation of increased elevation to address future climate-related impacts.	Where feasible and appropriate, consistent with guidance from the 2019 WOSMP	Chapter 91 licensing

(j) Nantucket and Madaket Harbors Action Plan, 12/21/2009 – 12/21/2020)

1. Table 1. Summary of amplifications

Regulatory Provision	Chapter 91 Standard	Amplification
310 CMR 9.51: Conservation of Capacity for Water-dependent Use	A nonwater-dependent use project on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. Facilities of Private Tenancy must be developed in a manner that prevents significant conflicts in operation with water-dependent uses that can reasonably be expected to locate on or near the water.	The amplification of these requirements prohibits any new non-water dependent use, or extension of an existing nonwater dependent use, that would: <ol style="list-style-type: none"> <li>1. displace or significantly disrupt an existing water dependent use;</li> <li>2. unreasonably disrupt an existing water-dependent use;</li> <li>3. unreasonably diminish the capacity of the site to accommodate future water-dependent uses; and</li> <li>4. impede or infringe upon existing public access</li> </ol>
310 CMR 9.51: Conservation of Capacity	A nonwater-dependent use project on any tidelands shall	The amplification of these requirements prohibits certain

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Amplification</b>
for Water-dependent Use And 310 CMR 9.35(2)(a): Standards to Preserve Water-related Public Rights (Public Navigation Rights Applicable to All Waterways)	not unreasonably diminish the capacity of such lands to accommodate water-dependent use. Facilities of Private Tenancy must be developed in a manner that prevents significant conflicts in operation with water-dependent uses that can reasonably be expected to locate on or near the water. The project shall not significantly interfere with public rights of navigation.	water-dependent uses determined in the Plan to conflict with the traditional and historic use and character of the Harbor Overlay District, including: <ul style="list-style-type: none"> <li>• Cruise ship terminals or support services;</li> <li>• Personal watercraft rental; and</li> <li>• New facilities of private tenancy.</li> </ul>
310 CMR 9.35(3)(a)(1-2): Standards to Preserve Water-related Public Rights (Public Rights of Fishing and Fowling Applicable to Tidelands and Great Ponds) and 310 CMR 9.35(2)(a): Standards to Preserve Water-related Public Rights (Public Navigation Rights Applicable to All Waterways)	The project shall not: 1. pose a substantial obstacle to the public's ability to fish or fowl in waterway areas adjacent to the project site; 2. result in the elimination of a traditional fishing or fowling location used extensively by the public; or 3. interfere with public rights of navigation	The amplification of these requirements prohibits the construction of new private docks or piers but exempts certain public or commercial water-dependent dock and pier projects within the Harbor Overlay District.

(k) New Bedford/Fairhaven Joint MHP, effective 6/14/2010, as clarified 8/6/2020

1. Table 1. Substitute standards and offsetting measures

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
<b>Shoreline within MHP Planning Area and outside of the DPA</b>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a	Plan proposes to establish a dedicated 20-foot wide public access walkway along the portion of New Bedford and Fairhaven shoreline that is located outside the DPA and within that portion of the harbor bounded by	No offsetting measures were necessary as the proposed substitution “will promote, with comparable or greater effectiveness, the state tidelands policy objectives.”

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	municipal harbor plan, shall be no less than ten feet in width..."	the hurricane barrier on the South and the Rt. 195 bridge on the North.	

2. Table 2: Planning principles and priorities

Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
<b>Area-wide</b>			
010 MHP and 2020 MHP Clarification approved Potential Navigational Dredge Areas (PNDA) and potential Waterfront Development Shoreline Facility (WDSF) locations. Inclusion in the MHP and Clarification allowed these areas to be eligible for navigational dredging and potential filling of shoreline facilities with clean material through a streamlined permitting process within the Superfund Regulations known as the State Enhanced Remedy (SER).	EPA makes all final decisions on SER Work Plans for PNDA's and WDSFs. Approved SER activities are exempt from all state and federal procedural regulatory requirements, but must continue to meet all substantive environmental standards.	MADEP coordinates the SER Work Plan reviews and inputs from state and federal agencies. EPA makes all final decisions on SER Work Plans for PNDA's and WDSFs.	See 2020 MHP Clarification for potential PNDA and WDSF location.

(1) Provincetown Harbor Management Plan, 4/10/2019

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<b>Fisherman's Wharf</b>			
310 CMR 9.32(1)(a): Categorical	Public walkway must be located within the	The required 10 feet wide walkway on the	Payment of \$205,500 to the Harbor Access

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
Restrictions on Fill and Structures [Tideland (Outside of ACECs and DPAs)]	footprint of the existing pile supported structure	western side of the wharf may be located either within the existing pier footprint or cantilevered beyond the footprint of the existing pier.	Gift Fund
<b>227R Commercial Street</b>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone.	WDUZ reconfiguration (no net loss); no less than 25 feet setback	N/A
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Lot Coverage shall not exceed 60%	Monetary contribution to Harbor Access Fund; Public amenities. Amount to be determined at time of licensing

2. Table 2. Summary of amplifications

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>
310 CMR 9.16(2)(c): Fees (Tidewater displacement fee)	Except as provided in 310 CMR 9.16(4), prior to issuance of a license for any fill or structure that will displace tidewaters below the high water mark, the applicant, or his/her heirs or assignees responsible for such	The Provincetown Harbor Plan requires that tidewater displacement fees levied by DEP be paid directly to the Provincetown Harbor Access Fund, as described in Section 6(a)(2) of this Plan.

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Regulatory Provision	Chapter 91 Standard	Approved Amplification
	displacement, shall, at the discretion of [DEP]....[consider] a contribution to a special fund or other program managed by a public agency or non-profit organization in order to directly provide public harbor improvements.	
310 CMR 9.22(1): Maintenance, Repair, and Minor Project Modifications (Maintenance and repair of fill and structures)	“No application for license or license amendment shall be required for [maintenance and repair] activity. Maintenance and repair include...restoration to the original license specifications of licensed fill or structures that have been damaged by catastrophic events, provided that no change in use occurs and that...in the case of flood-related damage, the cost of such restoration does not exceed 50 percent of the cost of total replacement according to the original license specifications...”	The Provincetown Harbor Plan calls for a strict enforcement of this requirement and for close coordination between DEP and the Provincetown Building Inspector, to determine when further licensing is required for structures that have been damaged beyond the 50% replacement cost limit.
310 CMR 9.22(3): Maintenance, Repair, and Minor Project Modifications (Minor project modifications)	“The licensee may undertake minor modifications to a license project without filling an application for license or license amendment. Such modifications are limited to...No such modifications shall be undertaken until the licensee has submitted written notice to the Department describing the proposed work in sufficient detail with reference to any relevant license plans, for the Department to determine compliance with the above conditions.	The Provincetown Harbor Plan calls for strict enforcement of this requirement and for DEP to provide the Harbor Committee with opportunity to review and comment upon any written notice of proposed minor project modification.



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(m) Salem Harbor MHP and DPA Master Plan, June 24, 2008

1. Table 1. Substitute standards and offsetting measures

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet;	The minimum width of the WDUZ along the waterfront will be no less than 20 feet; the remaining area required by the Chapter 91 WDUZ calculation may be redistributed to create pedestrian/view corridors.  Applies only to Sub-Area A South Commercial Waterfront District.	There can be no net loss of WDUZ area. Requires the creation of two permanent pedestrian access corridors and one permanent view corridor linking the downtown area of Salem to the waterfront.
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along	The minimum width of the WDUZ along the waterfront will be no less than 20 feet  Applies only to the Waterfront Complex Site at Pickering Wharf	Upgrade and maintain an off-site portion of Pickering Wharf, including widening to a clear 10 feet, enhancing it to make it consistent with the existing design standards, and providing appropriate lighting. Create and maintain a “gateway” entrance to the Harborwalk at the

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Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
	portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet;		Congress Street Bridge.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.  Applies only in Sub-area A in the South Harbor District.	Additional public open space is required on the site calculated by determining the additional shadow cast at the ground level by the additional building mass during full-sun conditions on October 23rd between 9 a.m. and 3 p.m. No more than half the additional open space may be used for parking.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every	Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.  Applies only in the Waterfront Complex site at Pickering Wharf.	Require the addition of a ground-level public space in a “turret” portion of the new Harborwalk gateway adjacent to Congress Street. Require additional landscaping and design elements to improve appearance and to screen the gateway from the building’s loading and

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<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
	additional foot of separation from the high water mark.		service areas. Require construction of an observation platform on the southeast corner of Pickering Wharf.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network).	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Require a dedicated 20-foot wide public walkway around the South River, of which a minimum of 10 feet shall be an unobstructed pathway. The inland 10 feet will be used for landscaping and accessory amenities to enhance the general public’s waterfront experience.  Applies only in the South River Waterfront Sub-area	The substitution directly benefits the public through improved access of 20 feet instead of 10 feet. No additional offsetting benefit is required.

2. Table 2. Summary of amplifications

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Approved Amplification</b>
310 CMR 9.02: Definitions (Supporting DPA Uses)	The amount of supporting Designated Port Area Uses on filled tidelands within a DPA shall not exceed 25% of the area of the project site.	Only water-dependent industrial uses and temporary uses will be allowed in the Industrial Port District sub-area of the DPA.

REGULATORY AUTHORITY

310 CMR 9.00: M.G.L. c. 21A, §§ 2, 4, 8, and 14; c. 91, §§ 1 through 63; c. 91, § 18.

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**New England  
Aquarium**

*Protecting the blue planet*

August 5, 2021

Martin Suuberg  
Commissioner  
Department of Environmental Protection  
Commonwealth of Massachusetts  
One Winter Street  
Boston, Massachusetts 02108

Re: Comments on Proposed Amendments to 310 CMR 9.00

Dear Commissioner Suuberg:

The New England Aquarium (NEAq) writes today to share our wide-reaching concerns about Massachusetts Department of Environmental Protection's (MassDEP) proposed amendments to 310 CMR 9.00, the regulations concerning waterways. We have participated extensively in the public process associated with this rulemaking, including submitting a written request for expansion of the public engagement process on June 2, and providing oral testimony at the four public hearings held for this project on June 8 and July 27, 2021. We are deeply concerned about the impact that the proposed regulations would have on NEAq as an institution, on Central Wharf as a public gathering space, and on Boston's Downtown Waterfront more broadly. We appreciate this opportunity to provide our comprehensive written comments on the proposed regulations.

NEAq is a conservation organization that is deeply concerned about climate change and its implications for both the world's oceans and our own home here on Central Wharf. As a water-dependent use and a designated special public destination facility under the Chapter 91 program, we are keenly aware of MassDEP's role in ensuring that waterfront destinations be designed with resiliency in mind, serve significant community needs, attract a broad range of people to the waterfront, and provide innovative amenities for public use. Our priorities for Boston's Downtown Waterfront are accessibility, inclusivity, and climate resilience. It is not only possible to create a public realm that inspires the public, addresses sea level rise and creates opportunities for recreation, it is imperative. This precious resource should be a waterfront for *all*.

MassDEP has proposed these regulations to respond to Judge Davis's April Superior Court decision that found parts of Boston's Downtown Waterfront Municipal Harbor Plan (MHP) and the process that created it invalid. While we recognize that MassDEP needs to address the Court's decision and make changes to its MHP approval process, whatever 'fix' is proposed should not reinstate an outdated and ill-conceived Downtown Waterfront MHP that permanently harms the public's ability to access and engage with the waterfront and that fails to protect adjacent water dependent properties such as the Aquarium.

The world has changed in many ways since the planning process for this MHP began in 2013; we can and must do better with an inclusive and robust process that takes into account all we have learned since then. The City of Boston, its changing leadership, and its residents and institutions deserve the opportunity to set a new direction for the Downtown Waterfront that reflects their priorities in the face of the pressing needs to address climate change and climate justice, accessibility, and inclusivity. The decision that invalidated the Secretary's approval of the Downtown Waterfront MHP offers a rare second chance to get it right; for MassDEP to reinstate this MHP would be to abdicate its responsibility as steward of the public trust.

### *The Downtown Waterfront Municipal Harbor Plan is Fundamentally Flawed*

The Downtown Waterfront MHP has multiple fatal flaws:

- First, despite a lengthy process that included many public meetings, the final MHP failed to take community input and priorities seriously, a fact which was noted in the Secretary's own approval of the MHP.<sup>1</sup> Many members of the community, including members of the Downtown Waterfront MHP Citizen Advisory Committee (CAC), were dissatisfied both with the process and the end result, expressing concern that their input was discouraged and ignored and that important decisions were being made behind the scenes without appropriate public participation.<sup>2</sup>
- Second, the MHP deferred the bulk of the district wide planning to a later planning process to be run solely by the Boston Planning and Development Agency - a process which is still not complete. Matters relegated to this later process include those of primary importance to the public's rights in tidelands protected by MassDEP under Chapter 91, including open space, public

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<sup>1</sup> From the Secretary's Decision, April 30, 2018:

Comments received on the City's supplemental filing and the original Plan from March 2017, as well as those received at various points throughout the City's planning process, were directed at the City's stakeholder process, and more than a few shared the concern that while the City held a large number of meetings, they did not feel that stakeholder input was well reflected in the City's drafts and final Plan. There was also notable disappointment regarding the lack of engagement by the BPDA with its Advisory Committee between the time of the last committee meeting in October 2016 and submittal of the Plan in March 2017 and the time supplemental information filing was made in February 2018 following the consultation period. The Municipal Harbor planning process is intended to provide for robust opportunities for input and interaction with stakeholders and the general public during the development of the plan and their participation and input are critically important to help shape a Municipal Harbor Plan, especially since many elements of a plan will affect the public realm and interests. I strongly encourage the BPDA to evaluate how the role of, and interaction with, the Advisory Committee and the incorporation of stakeholder input can be improved in future Municipal Harbor Planning processes. I also urge the BPDA to engage stakeholders as part of upcoming Article 80 and other regulatory procedures related to the proposed developments addressed in the Plan.

<sup>2</sup> November 20, 2015 letter from members of Citizens Advisory Committee expressing concern about the cancellation of 14 meetings in a single year and the doubt the process created in their minds about the "relevance and transparency of the entire MHP process and whether [they] should continue to participate" (available upon request).

amenities, activation, signage and pedestrian connections as well as climate resiliency.<sup>3</sup> Moreover, at the time this plan was passed, the concept of climate justice was not yet on the City's radar screen; today, this is an issue that simply cannot be ignored and must be intentionally addressed.

- Third, rather than engage on those important matters, the MHP served primarily to authorize two private developers pathways to permit large, out-of-scale projects with heights much greater than those allowed under baseline Chapter 91 regulations on the Harbor Garage and Hook Wharf sites. In fact, the substitute height provision for the Harbor Garage site was four times higher than the baseline maximum allowable height under Chapter 91 of 150 feet, with limited required public benefits. In authorizing such an extraordinary variance from the baseline requirements, the Secretary's Decision bound MassDEP to accept the substitute height provisions without the usual opportunity that would occur during the Chapter 91 licensing process to review a proposed project's height and massing in the context of a comprehensive development proposal and its overall impact on the public's rights in tidelands. This approach effectively declared, "Waterfront for Sale."

We are now seeing the results of this flawed process and resulting MHP — development proposals that would permanently harm the public's ability to access and engage with the waterfront by creating irreversible wind and shadow impacts on the adjacent public realm space along the waterfront. The proposals would also negatively impact the neighborhood's ability to implement a district-wide climate solution by isolating and elevating the individual sites to the detriment of the abutting properties. Finally, the proposals would continue a history of creating invisible barriers that effectively exclude many Bostonians and would further solidify the deserved reputation of Boston's waterfront as an exclusive destination accessible only to people with financial means.

*Reinstating the Downtown Waterfront MHP Today would be an Abdication of MassDEP's Role as Steward of the Public Trust under Chapter 91*

We agree with the Superior Court that the process in place was open to misuse, which is what happened with the Downtown Waterfront MHP. There is a reason that *this* Downtown Waterfront MHP generated the lawsuit that led to the Superior Court's invalidation: it failed to safeguard the public's access to and enjoyment of the tidelands, which the Commonwealth is required to protect under Chapter 91 and the centuries-old public trust doctrine.

MassDEP has an independent obligation to protect the public's rights in tidelands and, more specifically, to ensure that any MHP proposed by a municipality will "promote, with comparable or greater

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<sup>3</sup> The Secretary's Decision deferred all major planning on significant Chapter 91 related items to a "Design and Use Standards" development process to be run by the Boston Planning and Development Agency (BPDA) to "inform" the Article 80 and MEPA processes for the two development sites addressed in the MHP. The process did not even begin until the projects were well into the Article 80 and MEPA review processes, was downgraded by the BPDA from the "Standards" required by the Secretary's Decision to the development of "guidelines", and offered little opportunity for real engagement by the community. The process was cut short following the Superior Court decision and has not resumed.



effectiveness, the state tidelands policy objectives” of Chapter 91 (301 CMR 23.05(2)(d)), and that any substitute provisions regarding height proposed by a municipality “will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access associated therewith” (301 CMR 13.05(2)(c)(5)).

In proposing to reenact the Downtown Waterfront MHP and re-establish the substitute provisions it contains, MassDEP is in effect stating that those standards are met by the Downtown Waterfront MHP *today*. Those standards were not met in 2018 and they are certainly not met in 2021, in light of the pressing need to maintain equitable access to the waterfront, protect water dependent uses and incorporate the best thinking in both climate resiliency and climate justice. MassDEP’s proposed regulations are not consistent with the Commonwealth’s stewardship of the public trust.

*MassDEP’s Regulations Do Not Address the Flawed Process that Led to the Downtown Waterfront MHP*

We also have serious questions about the validity of the regulations as proposed. The Superior Court ruling in the *Armstrong* and *Conservation Law Foundation* cases found that MassDEP’s regulations establishing the MHP process improperly delegated DEP’s statutory authority to protect the public trust to the Executive Office of Energy and Environmental Affairs (EEA). We share the view held widely in the community that the MHP regulations established a process which is open to abuse, under which it is possible to ‘buy out’ of the fundamental obligations established by M.G.L. Chapter 91. That process is precisely what enabled such out-of-scale substitute provisions to replace standard Chapter 91 protections in the Downtown Waterfront MHP. But the proposed regulations do nothing to address the serious concerns raised by the Superior Court ruling.

The age-old public trust doctrine requires that the Commonwealth preserve the public’s interest in the waterfront. The Chapter 91 program established by the Legislature places that solemn obligation with MassDEP through the licensing program that has shaped so much of our City’s waterfront including our home at Central Wharf. But, as the Superior Court found, the MassDEP regulations establishing Municipal Harbor Planning improperly gave up some of that authority, resulting in the absurd exemptions from the baseline protective standards we see in the Downtown Waterfront MHP. Chapter 91 mandates that MassDEP (and not EEA), as steward of the public trust, make individual licensing determinations incorporating its own analysis of public benefit and public detriment to the public’s rights in tidelands. The proposed regulatory amendments do not restore MassDEP’s ability to make those independent, project-specific determinations for sites like the Harbor Garage. Furthermore, the amendments keep the current MHP planning process in place and do nothing to ensure that similar abuses won’t happen again. Having done nothing to address the substantive concerns underlying the Superior Court’s decision, the regulations may very well fail for the same reasons the Superior Court invalidated parts of the Downtown Waterfront MHP in *Armstrong*.

Rather than address the significant issues raised by the Superior Court ruling, the proposed regulations do nothing to ensure a better process more consistent with the public trust going forward. Nor do they to restore the integrity of the Chapter 91 licensing process and its site-specific evaluation of public benefit and public detriment to the public’s rights in tidelands. We also note the highly unusual manner in which MassDEP is proceeding with the regulatory amendment process: no stakeholder sessions have

been held, no advice has been sought from the regulated and impacted community, and no working groups of practitioners have been established. Rather MassDEP drafted its proposed regulations in isolation, requested public comment, and publicly stated that it does not intend to implement the regulations unless and until it receives an unfavorable decision in its efforts to appeal the Superior Court ruling. This approach is short-sighted; MassDEP is squandering an opportunity to learn from the regulated community, to address a significant shortcoming of the Municipal Harbor Planning program, and to establish a better process more consistent with the public trust going forward.

*MassDEP Should Let Boston Establish a New Direction for the Downtown Waterfront*

Rather than reinstating the flawed and outdated Downtown Waterfront MHP through a questionable regulatory amendment, MassDEP should exempt the MHP from any proposed ‘fix’ and allow the people, the institutions, and the changing leadership of the City of Boston the opportunity to chart a new course for the Downtown Waterfront.

The conversation about what our priorities should be for Boston’s Downtown Waterfront has been evolving over the past few years, informed by the lessons learned about public health from the global pandemic, considerations of climate justice in the face of rapidly rising sea levels and increasing extreme weather events, and the application of a lens of equity and inclusion to both public and private actions. With the change in mayoral administration, the launch of the 2021 mayoral race, and the April Superior Court decision, the conversation has accelerated and become even more dynamic.

Recently, the Coalition for a Resilient and Inclusive Waterfront was formed by a diverse alliance of more than 40 non-profit organizations (including NEAq) to bring the pressing issues facing Boston’s harbor and rivers to the forefront of the public conversation. The Coalition prioritizes resilience, inclusivity, access and economic vitality and promotes a Waterfront for All. A recent poll commissioned by the Coalition shows that more than 60% of the City’s residents recognize that the waterfront does not reflect the diversity of our city and that the City’s communities of color felt less welcome along the waterfront than white residents. At a mayoral candidates forum hosted by the Coalition at the Aquarium on July 29, all the candidates in attendance agreed that more needs to be done to make the City’s waterfront more accessible to all residents. The candidates have expressed similar concerns in other mayoral forums and articulated their opposition to the Downtown Waterfront MHP and to the development proposals it has generated. Many of those candidates have also spoken at MassDEP’s public hearings and submitted comments requesting that MassDEP exclude the Downtown Waterfront MHP from its proposed regulations.

\* \* \*

On behalf of the entire New England Aquarium, we urge the team at MassDEP to remove the Downtown Waterfront MHP from its regulations and to allow the City of Boston time to engage in a robust and inclusive process to decide what the community’s present day priorities are in creating a Downtown Waterfront for All.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Vikki N. Spruill". The signature is fluid and cursive, with the first name "Vikki" and last name "Spruill" clearly distinguishable.

Vikki N. Spruill  
President and CEO  
New England Aquarium

CC:     The Honorable Charlie Baker, Governor  
          The Honorable Karyn Polito, Lt. Governor  
          Katie Theoharides, Secretary, Executive Office of Energy and Environmental Affairs  
          The Honorable Aaron Michlewitz, State Representative  
          The Honorable Joseph Boncore, State Senator  
          The Honorable Ronald Mariano, Speaker of the House  
          The Honorable Karen Spilka, President of the Senate  
          The Honorable Kim Janey, Mayor of the City of Boston  
          Rev. Mariama White-Hammond, Chief of Environment, Energy and Open Space  
          The Honorable Boston City Council  
          Brian Golden, Director, Boston Planning and Development Agency  
          Wharf District Council  
          Harbor Towers Condominium Trusts I & II  
          North End Waterfront Residents Association  
          North End Waterfront Neighborhood Council  
          Friends of Christopher Columbus Park  
          Harborfront Neighborhood Alliance  
          Fort Point Neighborhood Association  
          Conservation Law Foundation



# The Commonwealth of Massachusetts

## House of Representatives

State House, Boston 02133-1054

**ADRIAN C. MADARO**  
**REPRESENTATIVE**

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**CHAIR**

JOINT COMMITTEE ON  
MENTAL HEALTH, SUBSTANCE USE  
AND RECOVERY

August 6, 2021

Secretary Kathleen A. Theoharides  
Executive Office of Energy and Environmental Affairs  
100 Cambridge St., Suite 900  
Boston, Massachusetts 02114

Dear Secretary Theoharides:

I write in support of the many neighbors and activists who have called for the withdrawal and revision of the proposed Boston Municipal Harbor Plan. With a commitment to the vibrancy and resiliency of our harbor waterfront in mind, I am not confident that the proposal, as it currently stands, meets these objectives.

Representing the neighborhood of East Boston, which forms one side of the harbor shoreline, we are closely connected to and affected by development across the inner harbor. In 2018, flooding on the waterfront downtown shut down Aquarium Station on the Blue Line for two days, causing problems that took months to fix, affecting countless Blue Line riders in East Boston, Revere, Winthrop, the North End, and Downtown which rely on the system on a daily basis to travel back and forth across the harbor.

The proposals in the current Municipal Harbor Plan do not provide for adequate public access or benefits, and do not go far enough to ensure climate resiliency of the scale that we need to address the issues our harborfront will face in coming decades. It's important to remember that there is more than one side to the harbor. Plans for any single part of our waterfront must be made with all of our communities taken into account.

We must be intentional about having a harbor-wide vision for accessibility, climate resiliency, environmental justice, equity, and inclusion. The proposals outlined in the current Municipal Harbor Plans do not meet the moment, nor speak to the inclusion of waterfront communities in the planning process. The current plans allow developers to be exempt from Chapter 91, a critical state law that ensures public access to the waterfront for all. This is not how we should be approaching development in the MHP. All residents deserve access to our beautiful waterfront, one of our most important natural resources in the City of Boston.

With the current process outdated since being proposed in 2013, a new public process, prioritizing community engagement, including language outreach and outreach to environmental justice communities, should be undertaken, and the feedback from these communities should be at the core of developing any plan for the future of Boston Harbor. I join the calls being made today for this Municipal Harbor Plan to be excluded from the Mass Waterways Regulations. It does not respond to the needs of our communities and is not adequate for truly addressing the challenges of climate resiliency and inclusion in the years to come.

MassDEP must protect the public's rights to the waterfront and ensure projects offer robust public benefits and promote access to and enjoyment of the waterfront. I am committed to standing with the community as we strive to build an inclusive and resilient waterfront for all residents.

Thank you for your consideration of this testimony. Please do not hesitate to get in touch should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adrian C. Madaro', with a stylized, flowing script.

**Adrian C. Madaro**  
Representative  
First Suffolk District



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Environmental Planning  
Urban Design  
Architecture & Planning  
Production Design  
Property Development

May 20, 2021

## **Re: Waterfront Access as a Public Asset = Social Justice**

To Our Community, City and State Leaders,

### **Social justice needs were being met even during the 1970s Economic Recession.**

One of the only jobs in 1970s Boston was the Modernization Program for Public Housing in Charlestown - Phase 1; The goal was to re-establish these, then 30 year old, 1100 units as a substantial residential environment. Phase 1 was to renovate all of the bathrooms and kitchens; later phases were to be recreation areas, landscaping and community facilities. Ecodesign, Inc., my then fledgling architectural firm and an early Women's Business Enterprise (WBE), was awarded Phase 1.

This complicated job required us to work closely with the resident-elected, fully-empowered Task Force, do detailed site surveys, catalogue intolerable conditions of each unit, determine the common needs and design economical solutions to these problems. For example, in the 1970s Boston Housing projects the bathrooms did not have showers. As a solution, we designed a fixture easily installed in tub corners — **filling this need was greatly appreciated by the residents who called it “Shower Tower Power” (in true 60s style)!**

**Another Housing need was, and still is, recreation and open space.** Some of the Boston housing projects had some open space, some even had trees. When surveying Bunker Hill Housing, I remember the sense that the sea was so near by, but the U. S. Navy Yard waterfront was not available to the public in the early 1970s. Today, there is still the need for open space, but **TODAY there is a unique opportunity for all the public to have real open space access to the Charlestown Waterfront at the Head of the Boston Harbor- Pier 5.**

The recent Superior Court decision on the Conservation Law Foundation (CLF) lawsuit has brought to light how illegal approvals of the Municipal Harbor Plan (MHP) process (and in Charlestown the manipulation of an obsolete and expired Navy Yard MHP) was **used by the BRA/BPDA to block the promise of Chapter 91 and the Big Dig to “provide public access to the sea”.**

With public access blocked, these improper BRA/BPDA planning techniques were then used to give that waterfront access, instead, to powerful developers for access to only a very few residents. After public waterfront advocates have battled for a quarter century and the City of Boston has endured the Big Dig, **this CLF decision now offers a chance to reclaim this Waterfront Assess Public Asset for all the People!**

**The social justice of the need for true open space for all has never been more clear than during this time of Pandemics.** Waterfront activities such as that offered to the children of Boston by the world-renown Courageous Sailing Center should not be curtailed by continuing improper development of the waterfront. Rather than being impeded, outdoor learning and open space education opportunities should be expanded and maximized for many children. Such waterfront sites should not be made residences for only a few affluent or well-connected people. Legitimate, usable open space for education and recreation programs must not be "scraps of left over land" or "unreachable pretend gardens" or other Trojan Horse offerings.

**COVID has made us acutely aware of the need for recreational open space.** High levels of asthma in Charlestown residents makes us value the greenspace to breathe clean air. Numerous studies prove inadequate greenspace is a social and environmental injustice that burdens affordable housing residents.

In Boston, 20% of all housing units are income-restricted. The Report from the City of Boston on Income-Restricted Housing (2019) shows that of Housing Units that are Income-restricted, the neighborhoods with the highest percentage include Charlestown at 3rd highest with 25% (and growing exponentially). Of Rental Only Properties, where Boston has 27% of all rental units being income-restricted, Charlestown has 42% income restricted. That includes Bunker Hill Housing where the BPDA is now trying to remove 340 beautiful-mature trees- from their open space. **Charlestown, perhaps more than any other Boston Harbor area, needs and deserves the Public Asset that is Waterfront Access.**

**We also need Climate Justice** with responsible solutions to achieve resilient open space, environmental education and the chance to enjoy the Harbor now cleaned by our taxes. **We need to demand access to unique historic sites like the Head of Boston Harbor at Pier 5** — a special place of rare original harbor edge of the Charlestown Peninsula where Paul Revere started his ride, Bunker/Breeds Hill battle was fought, 1800s cannons were set, WWI and WWII ships were readied, the gateway to our Harbor ...but where the BPDA now conspires to take this public amenity for privatized development.

**"Waterfront Access is a Public Asset"**. Charlestown/Boston public and the residents of all Boston Public Housing deserve clear, equitable access to the worth of the waterfront —their right granted by the MA Public Waterfront Act, by the ancient Chapter 91 law and by the Promise of the Big Dig. **We need our Leaders to use their power to return the Public Asset that is Access to Our Waterfront!**

Please understand what is at risk by Privatization: [Pier5.org](http://Pier5.org) —

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