

1 **SECTION 1.** The general court finds that:

2 (a) In 1990, the department of environmental protection adopted a regulation exempting
3 activities within certain landlocked tidelands from the licensing requirements established
4 by chapter 91 of the General Laws, which landowners relied on for the purchase and
5 improvement of certain landlocked tidelands;

6 (b) The supreme judicial court has held that the department of environmental protection
7 lacks statutory authorization for the exemption;

8 (c) Passage of this act, which authorizes the department of environmental protection to
9 exempt certain landlocked tidelands from the licensing requirements established by said
10 chapter 91 of the

11 General Laws, will promote the public interest by maintaining marketable titles and
12 continuing the beneficial redevelopment and economic revitalization of such landlocked
13 tidelands. Further, the redevelopment and revitalization facilitated by this exemption
14 maintains and increases the public's access to the waterfront. Any benefits to private
15 parties from this authorization will be incidental to achieving these public purposes.

16 **SECTION 2.** Section 61 of chapter 30 of the General Laws, as appearing in the 2006
17 Official Edition, is hereby amended by inserting after the word "grounds", in line 16, the
18 following words:- , reduction of groundwater levels, impairment of water quality,
19 increases in flooding or storm water flows.

20 **SECTION 3.** Section 1 of chapter 91 of the General Laws, as so appearing, is hereby
21 amended by inserting after the definition of "Department" the following 2 definitions:-

22 "Landlocked tidelands", filled tidelands, which on January 1, 1984 were entirely
23 separated by a public way or interconnected public ways from any flowed tidelands,
24 except the portion of such filled tidelands which are presently located: (a) within 250 feet
25 of the high water mark of flowed tidelands; or (b) within any designated port area under
26 the Massachusetts coastal zone management program. For the purposes of this definition,
27 a public way may also be a landlocked tideland, except for any portion thereof which is
28 presently within 250 feet of the high water mark of flowed tidelands.

29 "Public way", a road, street or highway for vehicular use, open to the public and for
30 which a public agency is responsible for maintenance and repair.

31 **SECTION 4.** Section 18 of said chapter 91, as so appearing, is hereby amended by
32 adding the following 2 paragraphs:-

33 The department may adopt regulations that exempt landlocked tidelands from licensing
34 under this chapter. Unless the department adopts regulations requiring licensing under
35 this chapter, no license under this chapter shall be required for fill on landlocked
36 tidelands, or for uses or structures within landlocked tidelands.

37 The proponent of any new use or structure, or modification of an existing use or
38 structure, within landlocked tidelands who is otherwise required to file an environmental
39 notification form pursuant to section 62A of chapter 30 shall comply with the
40 requirements of this paragraph. The environmental notification form, and the
41 environmental impact report, if the latter is required, shall include a discussion of the
42 project's impact on the public's right to access, use and enjoy tidelands as protected by
43 this chapter, and shall identify and commit to taking measures to avoid, minimize or
44 mitigate any adverse impact on such rights set forth herein. The environmental
45 notification form, and the environmental impact report, if the latter is required, shall also
46 include a discussion of the project's impact on groundwater levels if the project is located
47 in an area where low groundwater levels have been identified by a municipality as a
48 threat to building foundations, and shall identify and commit to taking measures to avoid,
49 minimize or mitigate any adverse impact on groundwater levels. Measures identified by
50 the secretary of the executive office of energy and environmental affairs pursuant to this
51 section shall be set forth in a Massachusetts policy act certificate on the environmental
52 notification form, or in a certificate on the environmental impact report, if the latter is
53 applicable. Within 30 days after the issuance of a certificate under this paragraph, the
54 proponent shall file with the department of environmental protection a completed form
55 notifying the department that work will be conducted within landlocked tidelands, and
56 shall attach the Massachusetts environmental policy act certificate to the form. The
57 proponent shall comply with all obligations set forth in the certificate pursuant to this
58 section, and the department shall have the authority to enforce such conditions consistent
59 with this chapter.

60 **SECTION 4A.** Said chapter 91 of the General Laws is hereby amended by inserting,
61 after section 18, the following section:-

62
63 Section 18 ½. The secretary of energy and environmental affairs shall appoint an
64 individual to act as the chapter 91 information officer. The individual shall be qualified
65 by training and experience to perform the duties and exercise the powers of this position
66 as provided in this section. The duties of this office may be exercised in combination
67 with other duties, as the secretary shall see fit. The chapter 91 information officer shall
68 perform the following duties as directed by the secretary: 1) prepare an annual report on
69 the public benefits required by licenses issued under this section; 2) file the report not
70 later than January 31 of the following year with the joint legislative committee on natural
71 resources and agriculture and the house and senate committees on ways and means; 3)
72 make recommendations to said committees, the secretary, and the department of
73 environmental protection with respect to such public benefits and any proposed changes

74 in regulations or procedures to improve the chapter 91 licensing process; and 4) be
75 available to work with members of the public to answer questions about the chapter 91
76 licensing process, to provide history and context regarding chapter 91 and to discuss past
77 and future decisions. The chapter 91 information officer may have input in, but not direct
78 responsibility for, the licensing process once an application for that project has been filed
79 with department of environmental protection.

80 **SECTION 5.** The eleventh paragraph of section 18 of chapter 91 of the General Laws,
81 inserted by section 4, shall apply to all fill, uses and structures, whether existing before,
82 on or after the effective date of this act.

83 **SECTION 6.** The twelfth paragraph of said section 18 of said chapter 91, inserted by
84 said section 4, shall only apply to proponents who file environmental notification forms
85 after the effective date of this act.

86 **SECTION 7.** Regulations of the department of environmental protection exempting
87 landlocked tidelands from licensing before the effective date of this act and
88 determinations of applicability are hereby validated and confirmed as if this act had been
89 in effect when regulations and determinations of applicability were issued. Any fill, use
90 or structure developed pursuant to such regulations shall not be subject to challenge on
91 the ground that the department of environmental protection lacked the authority to issue
92 such regulations.

93 **SECTION 8.** The department of environmental protection shall undertake a study of
94 ground and surface water flow and drainage in the sections of the cities of Cambridge,
95 Somerville and Boston formerly identified as the Miller's River. This report shall be
96 filed with the clerks of the house and senate not later than April 1, 2008.