

NOTE TO REVIEWERS:

The starting point for this proposed revision to the regulations is the final regulations expected to be promulgated on November 25, 2022 which approve 16 Municipal Harbor Plans listed in 310 CMR 10.57. These proposed draft regulations add the City of Chelsea Municipal Harbor Plan and Designated Port Area Master Plan (dated April 1, 2022) to 310 CMR 9.57.

Proposed changes are limited to the text in 310 CMR 9.09 – Effective Date and Severability and 310 CMR 9.57 – Approved Municipal Harbor Plans, excerpted below.

9.09: Effective Date and Severability

- (1) 310 CMR 9.00 shall take effect on October 4, 1990. Revisions to 310 CMR 9.07 and 9.10 shall take effect on April 19, 1996. Revisions to 310 CMR 9.00 shall take effect on July 1, 2000. Revisions to 310 CMR 9.10 shall take effect on February 25, 2005. Certain revisions to 310 CMR 9.00 shall take effect on October 3, 2008. 310 CMR 9.29: *General License Certification*, 310 CMR 9.30: *Permitting Test Projects*, and revisions to 310 CMR 9.02, 9.05(2), 9.05(3), 9.09, 9.10, 9.11(2), 9.11(3), 9.13 and 9.14, 9.16, 9.17(4), and 9.40(1) shall take effect on May 23, 2014. *Approved Municipal Harbor Plans*, and the addition of 9.57 shall take effect on [date of promulgation]. The addition of 9.57(1)(q) and 9.57(2)(q) shall take effect on [date of promulgation].
- (2) Except as provided in 310 CMR 9.28, 310 CMR 9.00 shall apply to any application for a license, permit, or amendment thereto, and to all subsequent proceedings related thereto, if:
 - (a) said application is filed on or after the effective date of 310 CMR 9.00; or
 - (b) in the case of an application for a nonwater-dependent use project including one or more activities requiring an EIR, except for any such project which the Department determines, with the concurrence of the municipal planning board, provides essential economic support to an associated water-dependent use project of particular statewide or regional significance, a Certificate of the Secretary stating that a Draft EIR adequately and properly complies with M.G.L. c. 30, §§ 61 through 62H had not been issued as of May 23, 2014.
- (3) In the case of any application for license, permit, or amendment thereto filed prior to the effective date of 310 CMR 9.00, except for that to which 310 CMR 9.00 apply pursuant to 310 CMR 9.09(2)(b), the prior applicable regulations shall remain in full force and effect for all subsequent proceedings related thereto; such application shall be subject to the content and other requirements of 310 CMR 9.11(2)(a), 9.11(2)(b)1. through 3., and 9.11(5) only.
- (4) 310 CMR 9.08, 9.22, 9.23, 9.25, 9.26 and 9.27 shall apply to all projects for which a license or permit was in effect on the effective date of 310 CMR 9.00, or is obtained in accordance with 310 CMR 9.09(3), and for which a new license or permit application is not required pursuant to 310 CMR 9.05(3).
- (5) A Certification of the General License affirmed by the Department in accordance with 310 CMR 9.29 shall take effect when the proponent records the Certification in accordance with 9.29(6).
- (6) Severability. If any provision of any part of 310 CMR 9.00, or the application thereof, is held to be invalid, such invalidity shall not affect any other provision of 310 CMR 9.00.

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NOTE TO REVIEWERS:

No changes are proposed between 310 CMR 9.09 and 310 CMR 9.57.

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9.57: Approved Municipal Harbor Plans

- (l) The following Municipal Harbor Plans are Approved Municipal Harbor Plans:
 - (a) 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)
 - (b) Fort Point Downtown (Boston) Municipal Harbor Plan Phase I (October 10, 2002, as renewed on February 12, 2013)
 - (c) Fort Point Downtown (Boston) Municipal Harbor Plan Phase II (March 8, 2004, as renewed on April 9, 2014)
 - (d) Harborpark (Boston) Plan (May 22, 1991, as renewed and amended on July 29, 1999, October 12, 2006, and April 4, 2008)
 - (e) South Boston Waterfront District Municipal Harbor Plan (December 6, 2000, as renewed and amended on December 31, 2002, October 22, 2009, and December 21, 2016)
 - (f) Cohasset Municipal Harbor Plan (November 25, 2020)
 - (g) Central Waterfront (Everett) Municipal Harbor Plan (February 10, 2014)
 - (h) Gloucester Municipal Harbor Plan and DPA Master Plan (July 6, 1999, as renewed and amended on December 11, 2009 and December 19, 2014)
 - (i) Lynn Municipal Harbor Plan and DPA Master Plan (June 28, 2010, as renewed and amended on November 25, 2020)
 - (j) Nantucket and Madaket Municipal Harbor Plan (December 21, 2009)
 - (k) New Bedford Fairhaven Municipal Harbor Plan and DPA Master Plan (September 24, 2002, as renewed and amended on June 14, 2010)
 - (l) Provincetown Harbor Management Plan (May 4, 1999, as renewed and amended on February 29, 2012 and April 10, 2019)
 - (m) Salem Municipal Harbor Plan and DPA Master Plan (June 24, 2008)
 - (n) Hull Harbor Plan (February 14, 2000)
 - (o) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed on July 23, 1999, October 21, 2005, and May 12, 2015)
 - (p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003)
 - (q) Chelsea Municipal Harbor Plan and Designated Port Area Master Plan (April 1, 2022)

- (2) Approved Substitute Provisions: Substitute Standards, Offsets, Amplifications, and Other Provisions

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NOTE TO REVIEWERS:

No changes are proposed between 310 CMR 9.57(2)(a) and 310 CMR 9.57(2)(p).

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- (p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003)
This Approved Harbor Plan does not include any substitute provisions.

- (q) Chelsea Municipal Harbor Plan and Designated Port Area Master Plan (April 1, 2022)

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. Table 1. Summary of Alternative Site Coverage Ratio and Offsets

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Alternative Site Coverage Ratio</u>	<u>Offsetting Measure(s)</u>
<u>SUPPORTING DPA USES:</u> <u>310 CMR 9.32(1)(b)5</u>	<u>The Department shall waive the numerical standard for Supporting DPA Uses as defined at 310 CMR 9.02, if the project conforms to a DPA Master Plan or Marine Industrial Park Master Plan which specifies alternative site coverage ratios and other requirements which ensure that:</u> <ol style="list-style-type: none"> <u>1. said Supporting Uses are relatively condensed in footprint and compatible with existing water- dependent industrial uses on said pier;</u> <u>2. said Supporting Use locations shall preserve and maintain the site's utility for existing and prospective water-dependent industrial uses;</u> <u>3. parking associated with a Supporting Use is limited to the footprint of existing licensed fill and is not located within a Water-dependent Use Zone; and</u> <u>4. The use of tidelands for this purpose in a DPA shall be governed by the provisions of 310 CMR 9.15(1)(d)1 and 310 CMR 9.36(5).</u> 	<u>Applicable to 111 Eastern Avenue:</u> <u>Supporting DPA Uses may occupy up to 35% of filled tidelands outside of the water-dependent use zone.</u>	<u>For any area of Supporting DPA Use in excess of 25% of the project site within Chapter 91 jurisdiction, direct operational or economic support shall be provided to an extent that adequately compensates for the reduced amount of tidelands on the project site available for water-dependent industrial use during the term of the license.</u> <u>Offset in the capacity of operational support shall be preferred.</u> <u>If employed, economic support shall be calculated at a premium rate, to be determined during the Chapter 91 licensing process.</u> <u>Economic support payments may be made to the Waterfront Improvement Fund to provide direct support to Water-dependent Industrial Use in the DPA.</u>

2. Table 2. Summary of Substitute Provisions

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measure(s)</u>
<u>HEIGHT LIMITS:</u> <u>310 CMR 9.51(3)(e)</u>	<u>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 of the high-water mark; for every foot beyond 100 feet from the shoreline, the height of the building can increase by 0.5 feet.</u>	<u>Applicable to 111 Eastern Avenue:</u> <u>Allow new or expanded buildings for non-water-dependent use to be built to 80 feet in height within 100 feet of the shoreline.</u>	<u>The maximum height of any proposed structure on the project site shall be limited to 80 feet and result in decreased massing from what is allowed under the regulation.</u> <u>DEP will evaluate the need for additional offsetting measures during licensing.</u>
<u>WATER DEPENDENT USE ZONE:</u> <u>310 CMR 9.51(3)(c)</u>	<u>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:</u> <ol style="list-style-type: none"> <u>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</u> 	<u>Applicable planning area wide:</u> <u>The required WDUZ dimensions may be modified on any project site within the planning area 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 within Chapter 91 jurisdiction.</u>	<u>The reconfigured WDUZ shall result in no net loss of total WDUZ area and must be adjacent to the waterfront and within Chapter 91 jurisdiction and achieve a greater effectiveness in the use of the water's edge for water-dependent industrial use if within the DPA or water-dependent use outside of the DPA.</u> <u>This substitution does not</u>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measure(s)</u>
	<p><u>property, but no less than 25 feet; and</u></p> <p><u>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</u></p> <p><u>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.</u></p>		<p><u>alter the calculation for WDUZ on piers and wharfs.</u></p>

3. Table 3. Summary of Amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
<p><u>COASTAL OR SHORELINE ENGINEERING STRUCTURES:</u> <u>310 CMR</u> <u>9.37(2)(b)(2) and (3)</u></p>	<p><u>9.37(2)(b)(2) incorporate projected sea level rise during the design life of the buildings; at a minimum, such projections shall be based on historical rates of increase in sea level in New England coastal areas.</u></p> <p><u>9.37(3) Projects with coastal or shoreline engineering structures shall comply with several requirements relating to location, design, size, function, materials, impact on water and sediment flow, preference for non-structural alternatives where feasible, compatibility with abutting coastal or shoreline engineering structures, and minimizing adverse effects on the project site or adjacent or downcoast and downstream areas after construction of any coastal or shoreline engineering structure.</u></p>	<p><u>Applicable planning area wide:</u></p> <p><u>Coastal or shoreline engineering structures shall be designed to accommodate future sea level rise for the life of the structures on site and shall not negatively affect the capacity of the DPA to support water-dependent industrial uses.</u></p>

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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