

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 9.00: WATERWAYS

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9.01 : Authority and Purpose

(l) 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. 91A, § 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.

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, 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~~ Municipal harbor-Harbor plan-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 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.

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 ~~written approval by the Secretary, provided that said plan approval is issued 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 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 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.

(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 Harbor planPlan, unless the designating authority or other agency with jurisdiction over said area has previously approved such placement.

(e) No permit shall be inconsistent with ~~the~~ an Approved Mmunicipal harbor-Harbor planPlan, 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:

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 Harbor plans-Plans~~ developed pursuant to ~~301 CMR 23.00310-CMR-9.38(4)(b) 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

- (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 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 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;
 - 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~~ Harbor planPlan, 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.

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(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~~ Municipal harbor Harbor planPlan, if any, appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location, and any other relevant factors;

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.16: continued

TABLE 1 - FEES

Application Type	Permit Code	Fee Reg Citation (310 CMR 4.00)
Determination of Waterways Applicability	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)
Chapter 91 Waterways License -Water-dependent ¹		
Water-dependent Residential Project, accessory to a residential use of four units or less	WW 01a	4.10(8)(a)
Other Water-dependent Use Projects	WW 01b	4.10(8)(a)
Water-dependent License with extended terms	WW 01c	4.10(8)(a)
Chapter 91 Simplified License		
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)
Chapter 91 Waterways License -Non Water-dependent		
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 <u>Approved</u> Municipal Harbor Plan - Residential Non Water-dependent Project, four units or less	WW 16a	4.10(8)(a)(3)
Application for License within an <u>Approved</u> Municipal Harbor Plan, Other Non Water-dependent Projects	WW 16b	4.10(8)(a)(3)
Application for License within an <u>Approved</u> Municipal Harbor Plan, Non Water-dependent Use Project with Extended Terms	WW 16c	4.10(8)(a)(3)

¹ 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

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 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;
- (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 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~~ Municipal harbor ~~harbor plan~~ 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 substitute provisions adopted by the Department and listed in 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:

9.34 : continued

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 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-Harbor plan-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-Municipal harbor-Harbor plan-Plan the Department shall:
1. apply the use limitations or numerical standards specified in the Approved Municipal harbor-Harbor plan-Plan and listed in 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-Harbor plan-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 Municipal harbor-Harbor plan-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.

(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 to applicable guidance specified in an Approved ~~municipal~~ Municipal harbor Harbor planPlan, 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~~ Municipal harbor Harbor planPlan, 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:

9.38 : continued

(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 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:

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~~ Municipal harbor ~~Harbor plan~~ 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;

9.40: continued

(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 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-Municipal harbor Harbor planPlan, 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;

9.51: continued

- (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 Harbor plan-Plan which promotes 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~~ Municipal harbor-Harbor plan-Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions 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~~ Municipal harbor-Harbor plan-Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions 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:

9.51 : continued

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-Harbor plan-Plan~~ Plan which, as determined by the Secretary in the approval of said plan, and by the Department through the adoption of substitute provisions 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 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-Harbor plan-Plan~~ Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions 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 ½ 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-Municipal harbor-Harbor plan-Plan~~ Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions 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 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-Municipal harbor-Harbor plan-Plan~~ 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

9.52 : continued

- (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~~ Municipal harbor Harbor planPlan, 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

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~~ Municipal harbor Harbor planPlan, 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.:

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~~ Municipal harbor-Harbor plan-Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions 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 9.53(2)(c)1., if the project conforms to an Approved ~~municipal~~ Municipal harbor-Harbor plan-Plan which, as determined by the Secretary in the approval of said plan, and by the Department through the adoption of substitute provisions 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 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~~ Municipal harbor 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;
- (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~~ 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 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 15th 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 15th 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 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~~ 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;

9.56: continued

- (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
 - (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

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

- (a) Downtown Waterfront District (Boston) Municipal Harbor Plan (April 30, 2018)
- (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) Approved Substitute Provisions: Substitute Standards, Offsets, Amplifications, and Other Provisions

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

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>Harbor Garage site</u>			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Maximum height of 585 feet to highest occupiable floor (no more than 600 feet)</u> <ul style="list-style-type: none"> • <u>Minimize net new shadow</u> • <u>Avoid new shadow on Long Wharf</u> • <u>Meet City code for wind conditions at ground level</u> 	<u>\$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)</u> <u>\$10 million for design and construction of public realm improvements for the New England Aquarium Blueway</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<ul style="list-style-type: none"> • <u>New open space on 50% site from current conditions</u> • <u>Lot coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings</u> • <u>Open space siting requirements apply</u> 	<u>N/A</u>
<u>Hook Wharf site</u>			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Maximum height of 285 feet to highest occupiable floor (no more than 305 feet)</u> <ul style="list-style-type: none"> • <u>Minimize net new shadow</u> • <u>Meet City code for wind conditions at ground level</u> 	<u>\$3.6 million for planning, feasibility assessment, design, engineering, permitting and construction of a signature waterfront park at Chart House parking lot (Long Wharf)</u> <u>\$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</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<u>Maximum lot coverage of 70%</u> <ul style="list-style-type: none"> • <u>Lot coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings</u> 	

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<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use -</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; 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.</u>	<u>Reconfigured Water Dependent Use Zone (WDUZ) allowed</u> <ul style="list-style-type: none"> <u>Maintain at least a 12 ft width along the waterfront</u> <u>Ensure potential restaurant uses do not encroach into WDUZ</u> <u>Reconfigured WDUZ to include slips for water taxi and other boating uses, free public touch-and-go docking, and docking for dinghies and small craft</u> <u>Enhance pedestrian access where there currently is none</u> 	<u>N/A</u>
<u>Area-wide</u>			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Maximum height of 30 ft</u> <ul style="list-style-type: none"> <u>Limited to moving mechanicals from existing buildings to the roof or to an upper floor above current or future base flood elevation</u> <u>any additional height limited to only that necessary to accommodate the relocation of the building mechanicals</u> <u>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</u> <u>avoid net new shadow on Long Wharf</u> 	<u>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</u>

2. Table 2. Amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>	<u>Implementation Mechanism</u>
<u>Area-wide</u>			
<u>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)</u>	<u>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.</u>	<u>All exterior private tideland areas planned for public access shall meet public activation standard for Commonwealth Tidelands.</u>	<ul style="list-style-type: none"> <u>City to develop Design and Use Standards</u> <u>Designation of New England Aquarium as Special Public Destination Facility ("SPDF") and requirement for legally binding agreement between City, Harbor Garage developer, and Aquarium</u>
<u>310 CMR 9.37(3)(c): Engineering and Construction Standards (Non-structural alternatives)</u>	<u>Non-structural alternatives are required for coastal or shoreline engineering structures associated with projects with such structures.</u>	<u>Areas improved for public open space shall be incrementally elevated to improve resilience, as feasible</u>	<ul style="list-style-type: none"> <u>City to develop Design and Use Standards</u>

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(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

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>Clippership Wharf (2002)</u>			
<u>310 CMR 9.51(3): Conservation of Capacity for Water-dependent Use (Location of Facilities of Private Tenancy (“FPT”).</u>	<u>“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.”</u>	<u>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 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.</u>	<u>1. 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). 2. Arts-related ground floor FPA space at 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). 3. 1,000 SF of FPA space in buildings facing water on western side of site on Private Tidelands (1:1 ratio). 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). 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) 6. On Private Tidelands, 5,000 SF of FPA space in buildings facing Lewis Mall (1:2 ratio)</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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; 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.</u>	<u>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. 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.</u>	<u>N/A</u>

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<p><u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>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.</u></p>	<p><u>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 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.</u></p>	<p><u>N/A</u></p>
<p>Hodge Boiler Works</p>			
<p><u>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)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</u></p>	<p><u>“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.”</u></p>	<p><u>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.</u></p>	<p><u>N/A</u></p>
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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...”</u></p>	<p><u>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.</u></p>	<p><u>N/A</u></p>

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<p><u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>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.</u></p>	<p><u>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.</u></p>	<p><u>N/A</u></p>
<p>Plan-wide (2002)</p>			
<p><u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u></p>	<p><u>“...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...”</u></p>	<p><u>At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.</u></p>	<p><u>N/A</u></p>
<p>6-26 New Street (2008)</p>			
<p><u>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</u></p>	<p><u>“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.”</u></p>	<p><u>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.</u></p>	<p><u>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.</u></p>
<p><u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u></p>	<p><u>“...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...”</u></p>	<p><u>The minimum width will be widened to 12 feet (10 feet clear). These enhancements shall replace the existing standard of 10 feet.</u></p>	<p><u>N/A</u></p>
<p><u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>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.</u></p>	<p><u>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 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.</u></p>	<p><u>N/A</u></p>

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102-48 Border Street (2009)			
<u>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</u>	<u>“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.”</u>	<u>“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.”</u>	<u>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 and rent-free for the license term and the public archway shall be provided in accordance with the Plan.</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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...”</u>	<u>A reconfigured WDUZ will be established that will allow a minimum setback from the project shoreline of 25 feet for buildings containing nonwater-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.</u>	<u>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.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.</u>	<u>N/A</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>The height of new or expanded buildings for non-water-dependent uses shall not exceed 85 feet as shown in the Plan’s massing and building diagrams.</u>	<u>• Provisions of at least 2,201 SF of open space in addition to the standard requirement (1:2 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.</u>
125 Summer Street (2009)			
<u>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</u>	<u>“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</u>	<u>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</u>	<u>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,</u>

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	<u>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 nonwater-dependent facilities of private tenancy...”</u>	<u>provide affordable housing to City residents.</u>	<u>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.</u>
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2. Table 2: Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>	<u>Implementation Mechanism</u>
6-26 New Street (2008)			
<u>310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)</u>	<u>“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...”</u>	<u>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.</u>	<u>Plan Amendment Appendix 1, Section 9</u>

3. Table 3: Summary of planning principles and priorities

<u>Planning Principle/Priority</u>	<u>Decision Standard</u>	<u>Implementation Mechanism</u>	<u>Notes</u>
6-26 New Street (2008)			
<u>Preserve and enhance capacity of DPA for Water-dependent industrial use (“WDIU”)</u>	<u>Preserve and enhance capacity of DPA for WDIU</u>	<u>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 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.</u>	<u>N/A</u>
102-148 Border Street			
<u>Preserve and enhance capacity of DPA for WDIU</u>	<u>Preserve and enhance capacity of DPA for WDIU</u>	<u>Additionally, DPA improvements at the site will enhance water-dependent uses:</u> <ul style="list-style-type: none"> • <u>Removal of dilapidated pile fields</u> • <u>Restoration of seawalls and adjacent surfaces</u> • <u>Regrading and remediation of site</u> 	

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		<ul style="list-style-type: none"> • <u>Language in lease forms with notice of nearby WDIU</u> • <u>Use of appropriate construction materials for the non-water dependent (“non-WD”) building to mitigate adverse impacts of neighboring WDIU</u> • <u>Provision of buffer land uses along the ground floor of the non-WD building</u> 	
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(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

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>500 Atlantic Avenue (2002)</u>			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>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.</u>	<u>N/A</u>
<u>Russia (Atlantic) Wharf (2004)</u>			
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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; 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.</u>	<u>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.</u>	<u>N/A</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<u>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.</u>	<u>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</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity</u>	<u>New or expanded buildings for nonwater-dependent use shall not</u>	<u>The roof of the highest occupied floor of 395 feet, provided that the elevation</u>	<u>Additional FPA space (25,000 SF more than required under c. 91).</u>

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<u>for Water-Dependent Use (Building height)</u>	<u>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 1/2 foot for every additional foot of separation from the high water mark.</u>	<u>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 each additional foot landward to a maximum height of 395 feet.</u>	<u>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).</u>
Plan-wide (2002 & 2004)			
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u>	<u>"...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..."</u>	<u>At a minimum, the pedestrian access network shall be no less than twelve feet wide, with ten feet clear of an obstruction.</u>	N/A

2. Table 2: Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>	<u>Implementation Mechanism</u>
Plan-wide (2004)			
<u>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)</u>	<u>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 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.</u>	<ul style="list-style-type: none"> <u>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.</u> <u>The project shall devote interior space to FPAs with special consideration given to facilities that enhance the year round destination value of the waterfront.</u> <u>Management plan for water-based activities.</u> 	<u>FPCWAP, Section III.C and Section V of the Decision,</u>

(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

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
Charlestown Navy Yard (1991)			
<u>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)</u>	<u>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.</u>	<u>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.</u>	N/A
<u>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands</u>	<u>"the project shall include interior space to facilities of public accommodation</u>	<u>Any project with more than 10,000 SF of floor area must include at least</u>	<u>Requirement 4a</u>

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<p><u>for Public Use (Interior facilities of public accommodation)</u></p>	<p><u>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 nonwater-dependent facilities of private tenancy...</u></p>	<p><u>40 percent of the ground floor to public facilities (not including public parking).</u></p>	
<p><u>Charlestown Gateway and North End (1991)</u></p>			
<p><u>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</u></p>	<p><u>“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 nonwater-dependent facilities of private tenancy...”</u></p>	<p><u>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 nonwater-dependent FPIs on pile-supported structures on flowed tidelands shall be FPAs in accordance with Requirement 8 not including public parking; and any project with non-water-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 manner, is necessary for upper floor accessory services, or is appropriate to accommodate or to avoid detriments to WDU.</u></p>	<p><u>Requirement 4b-c</u></p>
<p><u>Charlestown Navy Yard, Charlestown Gateway, and North End (1991)</u></p>			
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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; 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.</u></p>	<p><u>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.</u></p>	<p><u>Requirement 5</u></p>
<p><u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if</u></p>	<ul style="list-style-type: none"> <u>• 75 feet for Sargents and Tudor Wharf;</u> <u>• 90-135 feet on Parcel 4/4A and 125-155 feet</u> 	<p><u>Development and contribution/compliance with a special mitigation program to avoid or</u></p>

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	<u>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.</u>	<u>on Parcel 6/7 (Charlestown Navy Yard)</u>	<u>minimize adverse wind, shadow, and other impacts to ground-level environment (the program shall specific standards, guidelines, or other parameters to serve as a framework for reaching appropriate mitigation decisions).</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u>	<u>“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.”</u>	<u>FPTs over flowed tidelands are allowed only at the following locations:</u> <ul style="list-style-type: none"> • <u>Battery Wharf (North End)</u> • <u>Tudor Wharf (Charlestown Gateway)</u> • <u>Pier 5 (Charlestown Navy Yard)</u> <u>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 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.</u>	<u>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.</u>
<u>226 Causeway (1999)</u>			
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Maximum height of 155 feet to the top of the highest occupiable floor, insignificant net new shadow and no significant deterioration in wind conditions.</u>	<u>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).</u>
<u>Lovejoy Wharf (2006)</u>			
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u>	<u>“...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</u>	<u>At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.</u>	<u>N/A</u>

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	<u>less than ten feet in width...</u>		
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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; 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.</u>	<u>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).</u>	<u>N/A</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<u>All exterior space not within the footprint of the buildings (42,949 SF) or the Pavilion (5,819 SF) shall be open space and all open space seaward of the building shall be for pedestrian use only.</u>	<u>4,429 SF of upper-level terrace on the Pavilion with associated public access (see WDUZ requirement), public restrooms, and ground-level, rent-free space for a visitor center or other public use.</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>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.</u>	<u>\$150,000 annual water transportation facility operations subsidy for 5 years, maintenance of dock and shoreside facility for 10 years.</u>

(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

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>Plan-wide (2000, not including 100 Acres Master)</u>			
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)</u>	<u>"...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..."</u>	<u>At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.</u>	<u>N/A</u>
<u>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</u>	<u>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.,</u>	<u>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</u>	<u>N/A</u>

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<p><u>and</u> <u>310 CMR 9.53(2)(b)1.:</u> <u>Activation of</u> <u>Commonwealth Tidelands</u> <u>for Public Use (Exterior</u> <u>open space for public</u> <u>recreation)</u></p>	<p><u>cannot include watershed)</u> <u>and be accessible to the</u> <u>general public at all times.</u> <u>On Commonwealth</u> <u>Tidelands, a maximum of</u> <u>50% of the required open</u> <u>space (i.e., 25% or more of</u> <u>the total project site)</u> <u>can be devoted to streets</u> <u>and ways.</u></p>	<p><u>of 20% of the lot area can</u> <u>be devoted to streets and</u> <u>ways, and surface parking</u> <u>lots are not allowed.</u></p>	
<p><u>310 CMR 9.53(2)(c):</u> <u>Activation of</u> <u>Commonwealth Tidelands</u> <u>for Public Use (Interior</u> <u>facilities of public</u> <u>accommodation)</u> <u>and</u> <u>310 CMR 9.02: Definitions</u> <u>(Facilities of private</u> <u>tenancy and facilities of</u> <u>public accommodation)</u></p>	<p><u>A project within</u> <u>Commonwealth Tidelands</u> <u>must provide Facilities of</u> <u>Public Accommodation on</u> <u>the ground floor of all</u> <u>buildings containing</u> <u>Facilities of Private</u> <u>Tenancy (FPTs). At a</u> <u>maximum, ground floor</u> <u>accessory uses to upper</u> <u>floor FPTs must not</u> <u>exceed 25% of the area</u> <u>of the building footprint.</u></p>	<p><u>The amount of ground</u> <u>floor space that can be</u> <u>devoted to upper floor</u> <u>FPT accessory uses cannot</u> <u>exceed 20% of the building</u> <u>footprint. Further,</u> <u>residential lobbies and</u> <u>entrances cannot front</u> <u>along the waterside of any</u> <u>building(s).</u></p>	<p><u>N/A</u></p>
<p><u>Fan Pier (2000)</u></p>			
<p><u>310 CMR 9.51(3)(c):</u> <u>Conservation of Capacity</u> <u>for Water-Dependent Use</u> <u>(Building height)</u></p>	<p><u>New or expanded</u> <u>buildings for nonwater-</u> <u>dependent use shall not</u> <u>exceed 55 feet in height if</u> <u>located over the water or</u> <u>within 100 feet landward</u> <u>of the high water mark; at</u> <u>greater landward distances,</u> <u>the height of such</u> <u>buildings shall not exceed</u> <u>55 feet plus ½ foot for</u> <u>every additional foot of</u> <u>separation from the high</u> <u>water mark.</u></p>	<p><u>Moving landward from</u> <u>WDUZ, proposed height</u> <u>zones increase from 175</u> <u>feet to 250 feet to 275 feet</u> <u>and 300 feet along Old</u> <u>Northern Avenue and</u> <u>Courthouse Way, except</u> <u>for Parcels H (175 feet)</u> <u>and J (75 feet).</u></p>	<p><u>1) 42,400 square feet of</u> <u>additional open space, in</u> <u>excess of 50% of the site</u> <u>area, at a ratio of 2:1;</u> <u>2) Approximately 21,000</u> <u>square feet of publicly</u> <u>accessible space on the</u> <u>surface of the</u> <u>breakwater, at a ratio of</u> <u>1:1;</u> <u>3) 15,500 square feet of the</u> <u>footprint of the civic</u> <u>building on Parcel J, at a</u> <u>ratio of 1:1; and</u> <u>4) Approximately 30,000</u> <u>square feet of pedestrian-</u> <u>usable open space,</u> <u>calculated as part</u> <u>of the 20% of the site area</u> <u>that could be devoted to</u> <u>streets and ways, at a ratio</u> <u>of 1:1.</u> <u>If other offsets are</u> <u>required under the</u> <u>formula, they may be</u> <u>provided from any of the</u> <u>above categories. In</u> <u>addition, the following</u> <u>offsets may be used:</u> <u>· No more than 15% of</u> <u>the total allowable offset in</u> <u>the form of water</u> <u>transportation benefits in</u> <u>excess of the baseline</u> <u>Chapter 91 requirements;</u> <u>and</u> <u>· No more than 10% of</u> <u>the total allowable offset as</u> <u>improvements to water-</u> <u>related public access</u> <u>facilities within the Boston</u> <u>Harbor Islands National</u> <u>Park Area.</u></p>
<p><u>310 CMR 9.51(3)(c):</u> <u>Conservation of Capacity</u> <u>for Water-dependent Use</u> <u>(Water-dependent use</u> <u>zone)</u></p>	<p><u>New or expanded</u> <u>buildings for nonwater-</u> <u>dependent use, and</u> <u>parking facilities at or</u> <u>above grade for any use,</u> <u>shall not be located within</u> <u>a water-dependent use</u> <u>zone; Plan may specify</u> <u>alternative setback</u> <u>distances and other</u> <u>requirements which ensure</u> <u>that new buildings for</u></p>	<ul style="list-style-type: none"> <u>• 150 feet along fan edge</u> <u>• 60-75 feet along cove</u> <u>edge</u> <u>• 30 feet (preference for</u> <u>40 feet) along civic site</u> <u>• No net loss of WDUZ</u> <u>area</u> 	<p><u>N/A</u></p>

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	<u>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.</u>		
Pier 4 (2000)			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>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.</u>	<u>200-foot no-build zone and 1 SF of open space for every 2 SF of NNS</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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; 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.</u>	<ul style="list-style-type: none"> • <u>46 feet along cove edge</u> • <u>100 feet at seaward end of pier (with additional 100 feet as height offset)</u> • <u>26 feet along easterly edge of Pier 4</u> • <u>No net loss of WDUZ area</u> 	N/A
McCourt/Broderick Parcels A, B, C, and D			
<u>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)</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; 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.</u> <u>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</u>	<u>No open space is required.</u>	<u>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 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.</u>

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	<u>nonwater-dependent use on the project site.</u>		
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Parcel A: 200 feet Parcels B and C: 250 feet Parcel D: 75 feet</u>	<u>For Parcels A-C: 1 SF of open space for every 2 SF of NNS No offset for Parcel D.</u>
<u>Barking Crab (2000)</u>			
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>75 feet</u>	
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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; 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.</u>	<u>12-foot-wide coincident with public access structure, which may be an interior arcaded walkway within the first floor of the new structure</u>	<u>N/A</u>
<u>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)</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; 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.</u> <u>At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be.</u>	<u>No open space is required.</u>	<u>Payment into open space fund.</u>

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	<u>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.</u>		
<u>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</u>	<u>“...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...”</u>	<u>FPTs allowed on pile-support structures, except on the first, second and top floors; all structures must be within the existing pile field</u> <u>FPTs allowed on second floor if the exterior docking facilities, marine services, and interior space dedicated to WD uses are fully retained.</u>	<u>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.</u>
<u>Fort Point Historic North District (2000)</u>			
<u>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)</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; 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.</u> <u>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.</u>	<u>No open space is required.</u>	<u>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.</u> <u>2) 33 Sleeper Street, 11-13 Sleeper Street, and 321-323 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.</u> <u>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 City-owned Sleeper Street parcel, compatible with and supplemental to open space designs for the MBTA Mitigation Park and Parcel “E”.</u> <u>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.</u> <u>5) All open space commitments must be provided concurrent with the individual development projects. However, overall project work may be 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</u>

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			<p><u>project-specific contributions shall be made up from other sources to fully complete the design and construction of designated open spaces.</u></p> <p><u>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.</u></p>
Fort Point Historic South and Industrial Districts (2000)			
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>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.</u></p>	<p><u>Historic South District: 150 feet south of Summer Street and 100 feet for remainder of district, except at 60 Necco Court, which is limited to 80 feet.</u></p>	<p><u>NNS offset at 2:1 ratio</u></p>
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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; 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.</u></p>	<p><u>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.</u></p>	<p><u>N/A</u></p>
ICA (2002)			
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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; 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</u></p>	<p><u>Fourth-floor gallery space may cantilever over WDUZ at least 40 feet vertically above grade.</u></p>	<p><u>N/A</u></p>

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	<u>water-dependent activity and public access.</u>		
<u>310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)</u>	<u>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.</u>	<u>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.</u>	<u>N/A</u>
<u>100 Acres (2009)</u>			
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u>	<u>“New or expanded buildings for non waterdependent use...shall not be located within a waterdependent 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.”</u>	<u>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.</u>	<u>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.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>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.</u>	<u>The substitution directly benefits the public through enhanced access (open 24 hours/7 days per week); no offsetting public benefit is required.</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Allow non water-dependent buildings ranging in height from 80 feet to 180 feet.</u>	<u>The substitution results in a required offset for net new shadow. The proposed offset is additional public open space. This offset is permitted on a 1:2 ratio of additional open space to net new shadow.</u>
<u>150 Seaport Boulevard (2016)</u>			
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Allow height up to 250 feet Proposed building will create 16,640 sf in net new shadow.</u>	<u>\$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.</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be</u>	<u>Up to 75% lot coverage may be permitted.</u>	

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	<u>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.</u>		
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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”.</u> <u>On the Development Site, the required WDUZ would total 5,768 sf.</u>	<u>The required WDUZ dimensions may be 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.</u>	<u>The reconfigured WDUZ will include 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”.</u>

2. Table 2: Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>	<u>Implementation Mechanism</u>
<u>100 Acres (2009)</u>			
<u>310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes</u>	<u>“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.”</u>	<u>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.</u> <u>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.</u>	<u>FPCWAP and South Boston Waterfront District Municipal Harbor Planning -Area (SBWDMHPA), Section 9 and Appendix 1</u>
<u>310 CMR 9.53: Activation of Commonwealth Tidelands for Public Use</u>	<u>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.</u>	<u>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.</u>	<u>FPCWAP</u>
<u>150 Seaport Boulevard (2016)</u>			
<u>310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)</u>	<u>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</u>	<u>5,000 SF of exterior open space on a deck beyond the existing project shoreline.</u>	<u>Easements with Massport</u>

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	<u>50% of the required open space (i.e., 25% or more of the total project site) can be devoted to streets and ways.</u>		
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(f) Town of Cohasset Municipal Harbor Plan, effective 11/25/2020

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>New or expanded buildings shall not exceed 35 feet in height above Base Flood Elevation within the Harbor Village District (“HVB”) Overlay District.</u>	<u>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.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>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.</u>	<u>N/A</u>

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

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Substitution</u>	<u>Offsetting Measures</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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”.</u> <u>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.</u>	<u>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.</u>	<u>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.</u>
<u>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of Facilities of Private Tenancy and Facilities of Public Accommodation)</u>	<u>“...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...”</u>	<u>Lower Broadway: FPTs may be allowed within 100 feet of the shoreline.</u>	<u>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.</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use</u>	<u>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if</u>	<u>Wynn Everett: Allow heights up to 55 feet in Area A and up to 400 feet in Area B, as shown</u>	<u>No offset is required if there are no net new shadow impacts on jurisdictional tidelands.</u>

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Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
<u>(Building height)</u>	<u>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.</u>	<u>in Figure 2.</u> <u>Lower Broadway: Allow heights up to 105 feet in Area A and up to 150 feet in Area B, as shown in Figure 2.</u>	<u>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.</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<u>Up to 60% lot coverage (resulting in 40% open space) may be permitted.</u>	<p><u>For Lower Broadway scenario development exceeding 50% lot coverage, one or more of the following open space improvements or public amenities must be provided:</u></p> <p><u>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 located on the MBTA-owned peninsula along and underneath the commuter rail line and/or other portions of the Gateway Center property.</u></p> <p><u>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:</u></p> <ul style="list-style-type: none"> <u>• 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);</u> <u>• For the next 20,000 square feet, provide and maintain a fishing platform or pier with associated amenities;</u> <u>• For the next 10,000 square feet, provide and maintain 3,000 linear feet of improved walking and/or bicycle paths in Gateway Park, widened to a minimum of ten feet clear; and</u> <u>• 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.</u>

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

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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> <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 property, but no less than 25 feet; and</u> <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> <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>	<u>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 project shoreline and the ends of piers and wharves 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.</u>	<u>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 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.</u>

2. Table 2. Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
<u>310 CMR 9.36(4)(b): Standards to Protect Water-Dependent Uses ((Displacement of water-dependent uses)</u>	<u>"...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 a municipal harbor plan..."</u>	<u>No project will displace 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.</u>
<u>310 CMR 9.36(5)(b)4.: Standards to Protect Water-Dependent Uses (Supporting DPA Use)</u>	<u>"...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..."</u>	<u>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.</u>

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<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
		<u>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.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>To the extent practicable for a site, public access facilities shall be integrated into a 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.</u>
<u>310 CMR 9.12(2)(b): Determination of Water-Dependency (Water-dependent industrial uses)</u>	<u>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 operations or marine construction 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 8. Hydroelectric power generating facilities 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 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).</u>	<u>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, barges, dredges, or other vessels engaged in port operations or marine construction, including those related to marine research, development, or testing.</u>

3. Table 3: Planning principles and priorities

<u>Planning Principle/Priority</u>	<u>Decision Standard</u>	<u>Implementation Mechanism</u>
<u>Allow up to 50% DPA supporting commercial uses on filled tidelands for most properties within the DPA by</u>	<u>MassDEP shall not license commercial DPA supporting uses within the Gloucester DPA within filled and flowed tidelands in the following areas:</u>	<u>Chapter 91 Licensing</u>

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<u>transferring the supporting use allowances for certain key parcels that will be 100% water-dependent industrial use.</u>	<u>on the State Fish Pier; the U.S. Coast Guard Facility; Cruiseport Gloucester; or within or on any DPA roadway or pile-supported pier.</u> <u>MassDEP may license commercial DPA supporting uses on up to 50% of a project site on filled tidelands on DPA properties not listed above.</u>	
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(i) City of Lynn MHP and DPA Master Plan, effective November 25, 2020

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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> <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 property, but no less than 25 feet; and</u> <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> <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>	<u>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.</u> <u>Applies to the harbor focus area only.</u>	<u>No offset is required as the substitution increases the WDUZ required under 310 CMR 9.51(3)(c).</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>Minimum walkway width of 15 to 30 feet outside of the DPA and within the harbor focus area unless the width is physically constrained.</u> <u>In no cases will the allowed width be less than 10 feet.</u> <u>Width shall be consistent with the guidance provided in the 2019 Waterfront Open Space Master Plan (“2019 WOSMP”) included as Appendix A.</u> <u>All opportunities to provide the appropriate width should be considered, including cantilevering as appropriate.</u>	<u>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.</u>

2. Table 2. Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
<u>310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes</u>	<u>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 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.</u>	<u>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 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,</u>

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<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
		<u>restrooms, and children’s play areas, as appropriate” and must be consistent with the 2019 WOSMP.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>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).</u>	<u>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.</u>
<u>310 CMR 9.52(1)(b)2.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>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, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.</u>	<u>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.</u>

3. Table 3: Planning principles and priorities

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

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

1. Table 1. Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Amplification</u>
<u>310 CMR 9.51: Conservation of Capacity for Water-dependent Use</u>	<u>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.</u>	<u>The amplification of these requirements prohibits any new non-water dependent use, or extension of an existing non-water dependent use, that would: 1. displace or significantly disrupt an existing water dependent use; 2. unreasonably disrupt an existing water-dependent use; 3. unreasonably diminish the capacity of the site to accommodate future water-dependent uses; and 4. impede or infringe upon existing public access</u>

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<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Amplification</u>
<u>310 CMR 9.51: Conservation of Capacity 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)</u>	<u>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 project shall not significantly interfere with public rights of navigation.</u>	<u>The amplification of these requirements prohibits certain water-dependent uses determined in the Plan to conflict with the traditional and historic use and character of the Harbor Overlay District, including:</u> <ul style="list-style-type: none"> • <u>Cruise ship terminals or support services;</u> • <u>Personal watercraft rental; and</u> • <u>New facilities of private tenancy.</u>
<u>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)</u>	<u>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</u>	<u>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.</u>

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

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>Shoreline within MHP Planning Area and outside of the DPA</u>			
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</u>	<u>“...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...”</u>	<u>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 the hurricane barrier on the South and the Rt. 195 bridge on the North.</u>	<u>No offsetting measures were necessary as the proposed substitution “will promote, with comparable or greater effectiveness, the state tidelands policy objectives.”</u>

2. Table 2: Planning principles and priorities

<u>Planning Principle/Priority</u>	<u>Decision Standard</u>	<u>Implementation Mechanism</u>	<u>Notes</u>
<u>Area-wide</u>			
<u>2010 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 stream-lined permitting process within the Superfund Regulations known as the State Enhanced Remedy (SER).</u>	<u>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.</u>	<u>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.</u>	<u>See 2020 MHP Clarification for potential PNDA and WDSF location.</u>

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

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>Fisherman’s Wharf</u>			
<u>310 CMR 9.32(1)(a): Categorical Restrictions on Fill and Structures. [Tideland (Outside of ACECs and DPAs)]</u>	<u>Public walkway must be located within the footprint of the existing pile supported structure</u>	<u>The required 10 feet wide walkway on the western side of the wharf may be located either within the existing pier footprint or cantilevered beyond the footprint of the existing pier.</u>	<u>Payment of \$205,500 to the Harbor Access Gift Fund</u>
<u>227R Commercial Street</u>			
<u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</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.</u>	<u>WDUZ reconfiguration (no net loss); no less than 25 feet setback</u>	<u>N/A</u>
<u>310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</u>	<u>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.</u>	<u>Lot Coverage shall not exceed 60%</u>	<u>Monetary contribution to Harbor Access Fund; Public amenities. Amount to be determined at time of licensing</u>

2. Table 2. Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
<u>310 CMR 9.16(2)(c): Fees. (Tidewater displacement fee)</u>	<u>Except as provided in 310 CMR 9.16(4), prior to issuance of a license for any fill or structure that will displace tideswaters below the high water mark, the applicant, or his/her heirs or assignees responsible for such 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.</u>	<u>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.</u>
<u>310 CMR 9.22(1): Maintenance, Repair, and Minor Project Modifications (Maintenance and repair of fill and structures)</u>	<u>“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...”</u>	<u>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.</u>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

<p><u>310 CMR 9.22(3): Maintenance, Repair, and Minor Project Modifications (Minor project modifications)</u></p>	<p><u>“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.</u></p>	<p><u>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.</u></p>
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(m) Salem Harbor MHP and DPA Master Plan, June 24, 2008

1. Table 1. Substitute standards and offsetting measures

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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> <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 property, but no less than 25 feet;</u></p>	<p><u>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.</u> <u>Applies only to Sub-Area A South Commercial Waterfront District.</u></p>	<p><u>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.</u></p>
<p><u>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</u></p>	<p><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> <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 property, but no less than 25 feet;</u></p>	<p><u>The minimum width of the WDUZ along the waterfront will be no less than 20 feet</u> <u>Applies only to the Waterfront Complex Site at Pickering Wharf</u></p>	<p><u>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 Congress Street Bridge.</u></p>
<p><u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u></p>	<p><u>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.</u></p>	<p><u>Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.</u> <u>Applies only in Sub-area A in the South Harbor District.</u></p>	<p><u>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.</u></p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Substitution</u>	<u>Approved Offsetting Measures</u>
<u>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</u>	<u>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.</u>	<u>Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.</u> <u>Applies only in the Waterfront Complex site at Pickering Wharf.</u>	<u>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 service areas. Require construction of an observation platform on the southeast corner of Pickering Wharf.</u>
<u>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network).</u>	<u>“...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...”</u>	<u>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.</u> <u>Applies only in the South River Waterfront Sub-area</u>	<u>The substitution directly benefits the public through improved access of 20 feet instead of 10 feet. No additional offsetting benefit is required.</u>

2. Table 2. Summary of amplifications

<u>Regulatory Provision</u>	<u>Chapter 91 Standard</u>	<u>Approved Amplification</u>
<u>310 CMR 9.02: Definitions (Supporting DPA Uses)</u>	<u>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.</u>	<u>Only water-dependent industrial uses and temporary uses will be allowed in the Industrial Port District sub-area of the DPA.</u>

REGULATORY AUTHORITY

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

NON-TEXT PAGE