



Memorandum

To: Mike Lambert
File

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CC: Tim Macaskill
Lance Hill

Project No.: 10111.32

From: Lisa Standley
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Re: South Station Expansion
Regulatory Constraints

This memorandum summarizes the federal, state and local environmental regulations applicable to the South Station Expansion project, and the extent to which these regulations constrain the redevelopment of either of the two parcels under consideration.

The South Station Expansion project includes three elements:

- Relocating the existing U.S. Postal Service (USPS) General Mail Facility to a property owned by Massport in South Boston (bound by E Street to the west, Fargo and L Streets to the North, Pappas Way to the east and a private way to the south). This Massport property is designated as the Fargo Street Terminal, which currently consists of approximately 15 acres of paved land generally used for maritime-based industrial and industrial purposes, including vehicle storage and support of activities at Conley Terminal and the Black Falcon Cruise Terminal.
- Expanding the South Station facilities (platforms, tracks, passenger facilities, and freight facilities) onto the USPS site.
- Future air-rights private development above the expanded South Station facilities, on the USPS site.

A review of laws and regulations that would be applicable to the South Station Expansion Project was undertaken to determine the regulations applicable to redevelopment of the two sites, and whether these regulations would impose any physical or usage constraints on redevelopment. The information reviewed is listed at the end of this memorandum. The environmental laws and Regulations, including zoning, that appear to be applicable to the South Station Expansion Project are listed in Table 1 below.

Table 1 Potential Applicable Laws and Regulations

Title	Statute/Regulation	Resource/Topic	Description
National Pollutant Discharge Elimination System	33 U.S.C. §1251/40 CFR Part 122	Surface Water	Permit to discharge stormwater to the Boston Water and Sewer Commission/Massachusetts Water Resources Authority Combined Sewer Overflow System.
Massachusetts Wetlands Protection Act	M.G.L. Chapter 131/310 CMR 10.05	Coastal Wetlands/Surface Water	Regulates work within 100 feet of Coastal Bank, including stormwater discharges.
Massachusetts Public Trust Act	M.G.L. Ch. 91/310 CMR 9.00	Filled Tidelands	Protection of Public Trust interests within potential development area (on filled land between existing mean high water and the historic MHW mark).
City of Boston Zoning Code	Chapter 665 of The Acts of 1956	Land Uses	Zoning dimensional requirements for development within the USPS property.
Regulations Governing the Use of Sanitary and Combined Sewers and Storm Drains	M.G.L Ch 83	Wastewater	Potential discharge of stormwater and/or wastewater to the BWC/MWRA CSO system.

Our evaluation of these regulatory programs indicates that there are no regulatory constraints to site redevelopment, at the Fargo Street site (the USPS Relocation Site), that would restrict the amount of the site that could be redeveloped, the specific area that could be redeveloped, or the height of buildings.

This evaluation indicates that, at the USPS Site (South Station Expansion) there are no regulatory constraints to the South Station rail facilities expansion. The Chapter 91 Waterways regulations, applicable to the USPS site, require that infrastructure facilities on tidelands must “provide open spaces for active or passive recreation at or near the water's edge, wherever appropriate.” There are constraints that would apply to a commercial development above the rail station expansion, as described under the Chapter 91 Regulations below.

The following sections describe each regulatory program and its applicability to each site. The South Station Expansion Site (current USPS Site) is referred to as the USPS Site. The USPS Relocation Site is referred to as the Fargo Street Site.

1. Massachusetts Public Trust Act (Chapter 91)

The Massachusetts Public Trust Act (Massachusetts General Law Chapter 91) is the modern codification of a series of laws designed to protect the public rights in certain trust lands established by Massachusetts law. The statute aims to preserve and protect the public’s rights in tidelands by ensuring that such lands are only used for water-dependent uses or otherwise serve a proper public purpose. Compliance with Chapter 91 is administered by the Massachusetts Department of Environmental Protection (DEP) through the Waterways Regulations at 310 CMR 9.00.

The DEP historic shoreline mapping project indicates that both the South Station site and the USPS relocation site contain filled tidelands and are therefore subject to Chapter 91 and the Waterways Regulations.

Chapter 91 jurisdiction potentially extends to two key project components, in relation to the proposed Project and USPS relocation:

- ▶e New construction, substantial alteration or expansion of existing structures or changes in use within filled tidelands at the USPS Site (South Station expansion parcel); Chapter 91 jurisdiction extends from the Fort Point Channel to the “historic high water mark” (i.e., the mean high water mark that existing prior to human alteration of the shoreline); and
- ▶e New construction, substantial alteration or expansion of existing structures and uses within landlocked tidelands at the planned USPS relocation site (Fargo Street Site);

1.1 South Station Expansion (USPS Site)

The proposed South Station Expansion Project would occur within filled tidelands. The Waterways Regulations at 310 CMR 9.02 define filled tidelands as “former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill.” The jurisdictional boundaries of filled tidelands are defined by the Historic High Water Mark which is defined by 310 CMR 9.02 as:

“the high water mark which existed prior to human alteration of the shoreline by filling, dredging, excavating, or other means. In areas where there is evidence of such alteration by fill, the Department shall presume the historic high water mark is the farthest landward former shoreline which can be ascertained with reference to topographic or hydrographic surveys...”

The DEP preliminary shoreline mapping project indicates that the entire existing USPS facility at South Station is within filled tidelands. The redevelopment of the site would require a new license under Chapter 91.

The planned rail improvement portion of the project would likely be regulated as a non-water dependent infrastructure facility project under 310 CMR 9.55. Such projects are largely exempt from the typical Chapter 91 dimensional limitations regarding building setbacks, height and open space. However these infrastructure projects must comply with 310 CMR 9.55 which require they:

- e Protect maritime commerce, industry, recreation and associated public access;
- e Protect, restore and enhance living marine resources;
- e Attain state water quality goals;
- e Reduce flood and erosion-related hazards on lands subject to the 100-year storm event or toe sea level rise, especially those in damage-prone or natural buffer areas;
- e Protect and enhance public views and visual quality in the natural and built environment of the shoreline;
- e Preserve historic sites and districts, archaeological sites, and other significant cultural resources near waterway;
- e Provide open spaces for active or passive recreation at or near the water's edge, wherever appropriate.

The construction of a building or buildings above or adjacent to the rail expansion project is not likely to meet the criteria for non-water dependent infrastructure facilities and would be subject to the dimensional limitations contained in 310 CMR 9.51 through 9.53. These regulations would create the following development constraints:

1. No buildings for non-water dependent uses shall be permitted within 100 feet of the high water mark of the Fort Point Channel;
2. One square foot of open space shall be provided for every square foot of buildings for non-water dependent use;
3. Filled land within Commonwealth Tidelands not within the foot print of buildings shall be reserved for open space. Such open space shall be at least 50 percent pedestrian orientated in nature;
4. The ground floor of any buildings within Commonwealth Tidelands shall be dedicated to facilities of public accommodation, with the exception of a maximum of 25 percent upper floor accessory;
5. Building heights shall be limited to 55 feet within 100 feet of mean high water of the Fort Point Channel. At greater landward distances, the height shall not exceed 55 feet plus one-half foot for every additional foot separation from the high water mark;
6. The project must dedicate a reasonable portion of the site to water dependent uses such as a pedestrian access network or Harborwalk;

1.2 Proposed U.S. Post Office Relocated Property (Fargo Street Site)

The USPS relocation site is within filled tidelands which are considered Landlocked Tidelands due to the presence of Pappas Way, a road that meets the definition of "public way". The Waterways Regulations do not require a license for construction or changes in use within landlocked tidelands, defined in 310 CMR 9.02 as:

"any filled tidelands which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands which are presently located:

- (a) *Within 250 feet of the high water mark, or*
- (b) *Within any Designated Port Area. Said public way or ways shall also be defined as landlocked tidelands, except for any portion thereof which is presently within 250 feet of the high water mark".*

Massachusetts General Law Chapter 91, Section 18B as established by the Statute 2007, Chapter 168, Section 8 reaffirms this exception from licensing for filled tidelands. The site is subject to 301 CMR 13.00 and requires a Public Benefit Determination. A Public Benefit Determination is issued by the Secretary within 30 days of the issuance of a final MEPA certificate.

2. National Pollutant Discharge Elimination System

As authorized by the U.S. Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. The NPDES program includes permitting for municipal, industrial and construction-related sources of pollution under general or individual permits. The proposed South Station Expansion Project and the proposed U.S. Post Office Relocation must meet the standards included in the City of Boston's NPDES permit (No. MA 0101192), which allows the City to discharge stormwater from Combined Sewer Outfalls (CSOs) that discharge to the Fort Point Channel and Boston Inner Harbor, respectively.

The proposed Project would likely result in the disturbance of more than one acre of land and thus would require the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) for both the expanded South Station project area and the USPS General Mail Facility relocation site, in accordance with the NPDES Construction General Permit.

3. Massachusetts Wetlands Protection Act

A GIS analysis was conducted to determine approximate wetland resource jurisdictional boundaries within the South Station and the U.S. Post Office (USPS) properties, as well as the proposed relocated USPS General Mail Facility in South Boston. There are no wetland resources within the relocation site, therefore regulatory constraints of the South Station and current USPS property will be analyzed.

The Fort Point Channel, subject to the Massachusetts Wetlands Protection Act, is located directly east of Dorchester Avenue (MassGIS wetlands datalayer). The wetland resource areas associated with the Fort Point Channel include Land Under the Ocean, Coastal Bank, and Land Subject to Coastal Storm Flowage. The upland within 100 feet of the edge of the Channel is designated as Buffer Zone, and work within this 100-foot area would be subject to review by the Boston Conservation Commission. There are no performance standards, setbacks or restrictions associated with the Buffer Zone to Coastal Bank.

4. Massachusetts Stormwater Management Standards

Projects that fall under the jurisdiction of the WPA must comply with the Massachusetts 2008 *Stormwater Management Standards* (310 CMR 10.05). The South Station and existing USPS properties include wetland resource areas. It appears that the USPS relocation site does not include WPA-protected resources, therefore the Stormwater Management Standards would only apply to the South Station expansion area. The performance standards of the Stormwater Management Standards that would likely apply to the South Station expansion Project are presented below.

1. Standard 2: *Stormwater management systems shall be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.*
2. Standard 3: *Loss of annual recharge to ground water shall be eliminated or minimized to the maximum extent practicable through the use of environmentally sensitive site design, low impact development techniques, stormwater best management practices, and good operation and maintenance.*
3. Standard 4: *Stormwater Management systems shall be designed to remove 80% of the average annual post-construction load of Total Suspended Solids (TSS).*
4. Standard 5: *For land uses with higher potential pollutant loads, source control and pollution prevention shall be implemented to eliminate or reduce the discharge of stormwater runoff from such land uses to the maximum extent practicable.*
5. Standard 7: *Redevelopment of previously-developed sites must meet the Stormwater Management Standards to the maximum extent practicable: When it is not practicable to meet all the standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.*
6. Standard 8: *Erosion, sedimentation, and other pollutant sources must be controlled during construction and land disturbance activities to prevent impacts.*

7. Standard 9: *A long-term operation and maintenance plan shall be developed and implemented to ensure that stormwater management systems function as designed.*
8. Standard 10: *All illicit discharges to the stormwater management system are prohibited.*

5. Massachusetts Municipal Harbor Plan Regulations

Pursuant to Massachusetts General Law Chapter 21, Executive Office of Energy and Environmental Affairs (EEA), regulations governing the Review and Approval of Municipal Harbor Plans (301 CMR 23.00) establish a voluntary procedure for the development and submittal of municipal harbor plans (MHPs) to the EEA Secretary. Approved MHPs serve to inform and guide state agency actions affecting the implementation of waterway management programs at the local level. Specifically; approved plans will be of direct assistance to the DEP in making regulatory decisions pursuant to the Massachusetts Public Trust Act and enabling Waterways Regulations.

5.1 USPS Site

The City of Boston's 1990 Municipal Harbor Plan; Harborpark Plan is the City's first MHP, which provides a planning vision for all waterfront and harbor areas within the City limits. Although the Harborpark Plan includes the Downtown Waterfront, the planning area ends landward of the Northern Avenue Bridge and does not include the South Station/USPS area. However, the EEA Secretary approved the City's Fort Point Downtown Waterfront Municipal Harbor Plan as an amendment to the Harborpark plan, which included the USPS property in the planning boundaries. The decision on the approval of the MHP issued by the Secretary on March 8, 2004, excluded the area south of the Summer Street Bridge; 245 Summer Street, the USPS property, and the South Station area, from the approved MHP amendment. The Secretary stated that "I will not commence further review of the Fort Point Channel area south of Summer Street until the City completes a comprehensive master planning effort for this combined United States Postal Service Annex/245 Summer Street and South Station area, in coordination with USPS, EOTC and the MBTA, other affected landowners and stakeholders." A master planning effort has not been completed for this area, to date. Therefore, in the absence of guidance from an MHP, specifically regarding substitutions from, and amplifications of, the Waterways Regulations requirements, all applicable provisions of the Waterways Regulations would apply to the project.

The decision also stated that this planning area (United States Postal Service Annex/245 Summer Street and South Station area) will be added to the Approved MHP in accordance with the amendment procedures of the MHP Regulations at 301 CMR 23.06. The Fort Point Phase II MHP includes a planning framework comprised of principles that guide the City in determining the following regulatory constraints for the harbor planning area, which would be applied if the USPS area was added to the approved MHP through an amendment:

- The orientation and type of public open spaces envisioned;
- Minimum standards for aggregate open space and water dependent use zones;
- How building heights and aggregate massing will be approached in relation to the requirements of the Waterways Regulations at 310 CMR 9.51(3)(e);
- A suitable method for quantifying the impacts of proposed substitute provisions;
- Criteria for offsets to ground level adverse impacts associated with proposed substitute provisions that cannot otherwise be mitigated; and
- Those items (such as the development of a plan showing the extent of Commonwealth and Private Tidelands within the harbor planning area) that are appropriate and necessary to insure that both phases proceed within the context of a comprehensive area-wide approach.

An amendment to the Fort Point Channel Downtown Waterfront MHP Phase II must be issued by the City of Boston and approved by the EEA Secretary prior to the approval of the expansion of South Station into the USPS property.

The feasibility of water transportation facilities serving the Fort Point Channel "Seawall Basin" (Channel watershed south of the Summer Street Bridge to the Dorchester Avenue Bridge), in proximity to the USPS property, may also be considered in conjunction with future development of the USPS site. The Fort Point Channel Watersheet Activation Plan describes the City's desired water-dependent public uses for the Seawall Basin as:

- ▶ Small boat rental concessions and rowing clubs located in the Seawall Basin with such uses allowed upstream of the Congress Street Bridge;
- ▶ Designated recreational boating areas/concessions limited to non-powered, self-propelled small vessels such as kayaks, rowing boats, canoes, sailing dinghies, paddleboats, etc; and
- ▶ Concessions for small boats that can be capsized (sail, canoe, kayak, etc.), contingent on water quality and regular monitoring.

5.2 Fargo Street Site

The relocation site for the USPS General Mail Facility; Fargo Street Terminal, is owned by Massport and is not included within the Harborpark planning area or the South Boston Municipal Harbor Plan Harborpark amendment. Municipal harbor plans are applicable only when a Chapter 91 license is required, which is not the case for the Fargo Street site as "landlocked tidelands".

6. City of Boston Zoning Code

The South Station and USPS properties are not included in the Harborpark Zoning District. Therefore, in the absence of this zoning overlay, these areas must meet the baseline zoning requirements of the City of Boston Zoning Code, as described below.

6.1 USPS Site

The South Station property is located within the City of Boston South Station Economic Development Area (EDA) Zoning District. The zoned height restriction is 300 to 400 feet with a maximum Floor Area Ratio of 12 to 14. This District includes a Planned Development Area, within the boundaries of both properties, called the Air Rights Development Area. The Boston Redevelopment Authority (BRA) may approve a development plan within this area if it meets the requirements of Article 80, Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria. The BRA has established the following planning goals for the South Station EDA (in accordance with Article 40, South Station Economic Development Area):

- (a) The diversification and expansion of Boston's economy in new areas of economic activity, such as private investment in the research and development of pharmaceutical and biomedical products;
- (b) The provision of public benefits in accordance with the Parcel-to-Parcel Linkage program guidelines;
- (c) The creation or retention of job opportunities; or

- (d) The enhancement of intermodal transportation capabilities and transit oriented development.

The existing USPS property is not included in the Harborpark Zoning District. Therefore, in the absence of this zoning overly, this area is regulated as the Boston Proper Business Zoning District B-10 (under the City of Boston Zoning Code base requirements. Table 2 shows the dimensional zoning restrictions that would apply to proposed development on this property, according to Article 13, Dimensional Requirements.

Table 2 Existing USPS Property Dimensional Zoning Restrictions

Restriction Type	Restrictions	
	Any Dwelling	Other Use
Minimum Lot Size (square feet)	*	none
Minimum Lot Area (square feet for each additional dwelling unit)	*	none
Minimum Lot Width (feet)	*	none
Maximum Floor Area Ratio	10.0	10.0
Maximum Height (feet)	40	none
Maximum Height (number of stories)	3	none
Minimum Useable Open Space (square feet per dwelling unit)	*	none
Minimum Frontage Depth (feet)	*	none
Minimum Side Lot Width (feet)	*	none
Minimum Rear Lot Depth (feet)	*	$\frac{10+L^1}{20}$
Minimum Setback From Lot Line (feet)	$\frac{H+L^1}{8}$	$\frac{H+L^1}{8}$
Maximum Rear Lot Accessory Building (percentage of lot)	none	none

- 1 Length of wall parallel (or within 45 degrees of parallel) to the lot line, measured parallel to lot line at greatest length above the height below which no setback is required.
- * Any dwelling in an L, B, M, I, MER or W district shall conform to the lot area, lot width, usable open space, and yard requirements for the nearest S, R or H district, or in the case of any dwelling in a B-8 or B-10 district, to the lot area, lot width, usable open space and yard requirements for the least restricted residence district; provided however, that if the nearest S, R, or H district, or the least restricted residence district does not specify a minimum lot width, any such dwelling shall have a minimum street frontage of not less than 50 feet.

Common mechanisms for compliance with zoning include the development of a Planned Development Area or zoning variance.

6.2 Fargo Street Site

The City's zoning requirements are not applicable to Massport, as a state authority authorized by its Enabling Act. However, Massport in some cases has voluntarily participated in an Article 80-like process for development review with the City.

7. City of Boston Water and Sewer Commission Regulations

The City of Boston Water and Sewer Commission (BWSC) has promulgated *Regulations Governing the Use of Sanitary and Combined Sewers and Storm Drains* that both the South Station expansion and relocation of the USPS General Mail Facility would likely be required to comply with. The following applications and permits are required by these Regulations and issued by BWSC, as they apply:

- Permit to Enter Commission Sewers;
- General Service Application;
- Termination Verification Approval Application;

- Drainage Discharge Permit and/or Dewatering Discharge Permit; and
- Sewer Use Discharge Permit (issued jointly with MWRA).

8. References

National Pollutant Discharge Elimination System Permit for the Boston Water and Sewer Commission, Number MA 0101192,

<http://www.epa.gov/ne/npdes/permits/bostonwspermit.pdf>;

Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, June 2009,

<http://www.mass.gov/dep/service/regulations/310cmr10a.pdf>;

Massachusetts Waterways Regulations (Chapter 91), 310 CMR 9.00, June 2009,

<http://www.mass.gov/dep/service/regulations/310cmr09.pdf>;

Massachusetts Department of Environmental Protection, *Massachusetts Stormwater Management Standards*, <http://www.mass.gov/dep/water/laws/policies.htm#storm>;

Massachusetts Executive Office of Energy and Environmental Affairs, *Decision on the City of Boston Fort Point Downtown Waterfront Phase 2 Municipal Harbor Plan*, March 8, 2004,

<http://www.mass.gov/czm/secdecfpdwp2mph.pdf>;

Massachusetts Executive Office of Energy and Environmental Affairs, *Decision on the South Boston Waterfront District Municipal Harbor Plan*, December 6, 2000,

<http://www.mass.gov/czm/mhpfdes.htm>;

City of Boston *Fort Point Downtown Waterfront Municipal Harbor Plan, Phase 2*, September 2003,

<http://www.bostonredevelopmentauthority.org/pdf/PlanningPublications/FORT%20POINT%20DOWNTOWN%20WATERFRONT%20MUNICIPAL%20HARBOR%20PLAN%20RevisedFinalFullDoc03August29.pdf>;

City of Boston, *South Boston Waterfront District Municipal Harbor Plan*, July 2000,

<http://www.bostonredevelopmentauthority.org/pdf/PlanningPublications/2000SouthBostonMHP.pdf>;

City of Boston Municipal Harbor Plan; Harborpark Plan, October 1990;

City of Boston Zoning Code, Articles 13, 40, 42, 80,

<http://www.bostonredevelopmentauthority.org/zoning/zoning.asp>; and

Boston Water and Sewer Commission, *Regulations Governing the Use of Sanitary and Combined Sewers and Storm Drains*, August 1998, <http://www.bwsc.org/REGULATIONS/SewerRegulations.pdf>.

Boston Redevelopment Authority, *Map 4 South Boston*, September 10, 2009

http://www.bostonredevelopmentauthority.org/pdf/ZoningCode/Maps/4_SouthBoston.pdf