



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street 9th Floor Boston, MA 02114 • 617-292-5500

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September 22, 2023

Massachusetts Port Authority
c/o Bradford Washburn, Deputy Director - Environmental Planning and Permitting
One Harborside Drive, Suite 200S
East Boston, MA 02128

Re: 88 Black Falcon, Revised Final Waterfront Development Plan – September 12, 2023

Dear Mr. Washburn,

The Massachusetts Department of Environmental Protection Waterways Regulation Program (“MassDEP”) issues this letter in response to the Massachusetts Port Authority (Massport) submittal of the September 12, 2023 Revised Final Waterfront Development Plan (“WDP”) for 88 Black Falcon, South Boston. This WDP has been modified from the conditionally approved July 22, 2022 Final Waterfront Development Plan to incorporate all necessary information for MassDEP to issue an unconditional approval. MassDEP has confirmed that there are no changes to the 88 Black Falcon project from that previously described. The WDP provides a description of the proposed land uses, dimensional characteristics of buildings and open space, and an outline of Public Benefits, Substitutions and Offsets for the Special Planning Area, and wholly supersedes the July 22, 2022 Final Waterfront Development Plan.

MassDEP’s review of this WDP was conducted in accordance with the standards and criteria detailed in the August 19, 2022 letter (enclosed), pursuant to the South Boston Memorandum of Understanding (the “MOU”) by and between Massport and MassDEP for projects under G.L. c.91 (Chapter 91) within South Boston. The MOU was originally executed on March 15, 2001 and amended on June 15, 2022.

The WDP identifies two additional Substitutions required to authorize certain project elements, along with corresponding required Offsets. New Public Benefits, as this term is defined in the MOU, have been added and items previously incorrectly characterized as Public Benefits are now described as public amenities. No previously proposed public amenities have been removed.

This approval of the WDP is subsequent to and supersedes MassDEP’s August 19, 2022 Conditional Approval of the Final Waterfront Development Plan. The availability of the Preliminary Waterfront Development Plan and the announcement of a 30-day public comment period thereon was published in

the Environmental Monitor on August 5, 2021. The availability of the Final Waterfront Development Plan was published in the Environmental Monitor on April 8, 2022. The availability of this WDP will be published in the Environmental Monitor on September 25, 2023.

Section 3.2C of the MOU stipulates that MassDEP may approve, conditionally approve, or disapprove a Final Waterfront Development Plan. Furthermore, the MOU requires an approval to include specific determinations stipulated in Section 3.2C, Subsections 1 – 4. This letter affirms the Section 3.2C, 1-4 Determinations as described in the enclosed letter dated August 19, 2022 (incorporated herein by reference) and advises Massport that certain conditions identified in said letter will be incorporated into the Consolidated Written Determination and/or individual Chapter 91 licenses to be issued pursuant thereto.

In accordance with the forgoing, and pursuant to the MOU and 310 CMR 9.00, MassDEP hereby approves the 88 Black Falcon WDP as submitted by Massport dated September 12, 2023.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel J. Padien", with a stylized flourish at the end.

Daniel J. Padien, Chief
MassDEP Waterways Program

cc: Michael Cantalupa, The Davis Companies

Encl: MassDEP August 19, 2022 Conditional Approval



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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August 19, 2022

Mr. Brad Washburn
Manager, Environmental Planning and Permitting
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

Re: 88 Black Falcon Terminal, Final Waterfront Development Plan
Conditional Approval

Mr. Washburn,

The Department of Environmental Protection's Waterways Regulation Program (the "Department" or "MassDEP") has reviewed the 88 Black Falcon Terminal Final Waterfront Development Plan ("WDP" or the "Plan") prepared by the Massachusetts Port Authority (Massport), dated and received by the Department on July 22, 2022. The Final Waterfront Development Plan conditionally approved herein establishes certain substitute standards for Massport Projects stipulated in the South Boston Memorandum of Understanding (the "MOU") by and between Massport and MassDEP for projects under G.L. c.91 (Chapter 91) within the South Boston Designated Port Area. The MOU was originally executed on March 15, 2001 and amended on June 15, 2022.

The Department's approval of the final Waterfront Development Plan follows our review of a preliminary Waterfront Development Plan. The availability of the preliminary Waterfront Development Plan and the announcement of a 30-day public comment period thereon was published in the August 5, 2021 Environmental Monitor. The availability of the final Waterfront Development Plan was published in the April 8, 2022 Environmental Monitor.

As stipulated in the MOU and affirmed in the Plan, Massport Projects located within a Special Planning Area established by the MOU and subject to licensing pursuant to G.L. c.91, may be licensed in accordance with the terms of an approved Waterfront Development Plan within the context of the MOU and the Waterways Regulations at 310 CMR 9.00. Neither the Waterfront Development Plan, nor the MOU replace these regulations. They establish special provisions to govern specific aspects of licensing.

Section 3.2C of the MOU stipulates that MassDEP may Approve, Conditionally Approve or Disapprove a Final Waterfront Development Plan and shall specify the conditions of such approval. Furthermore, the MOU requires a Conditional Approval to include specific determinations stipulated in Section 3.2C,

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

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Subsections 1 – 4. This letter provides the conditions of MassDEP’s Conditional Approval and make the required determinations.

Conditions of Approval

The Final Waterfront Development Plan is hereby conditionally approved with the following conditions:

1. Terms used in the Waterfront Development Plan shall have the meanings stipulated in the MOU and if not specifically defined in the MOU, shall have the meanings defined in 310 CMR 9.00.
2. The Waterfront Development Plan requires that at least 175,000 square feet of interior building space be dedicated to Water Dependent Industrial Uses and/or Maritime Projects and such uses may be located on the ground floor, second floor and third floor.
Water Dependent Industrial Uses or Maritime Projects to be located on the second or third floor may be credited towards the 175,000 square foot minimum only upon demonstration in writing by Massport, Massport’s tenant or Licensee that the proposed uses do not require ground floor or loading dock access, unless such access is constructed on the second floor.
3. Supporting DPA Uses, as defined at 310 CMR 9.02, with the capacity to additionally serve non-WDI and/or non-Maritime Project tenants may be licensed on the ground floor only to the extent demonstrated that such uses require a ground floor location to provide its intended use (i.e., sandwich shop, bike storage, etc.).
4. The project’s contribution towards water transportation shall be determined during licensing in accordance with the Department’s Draft Water Transportation Policy.
5. The license application or application for Consolidated Written Determination for the expansion of the existing 88 Black Falcon building shall include the following:
 - a. Detailed description of pier maintenance and repair responsibilities to become the responsibility of Massport’s tenant, including but not limited to the geographic limits of tenants’ responsibility and a schedule of near-term and expected capital repairs.
 - b. Location and size of proposed non water-dependent uses and corresponding Offsets and Public Benefits required by the MOU and/or 310 CMR 9.00, including a demonstration that proposed uses, improvements, considerations, etc., meet the definitions stipulated in the MOU and/or 310 CMR 9.00.
 - c. Detailed assessment of the proposed net new shadows created by the project, an assessment of potential impacts related thereto, the proposed corresponding Offset if any, and demonstration that the proposed Offset is commensurate with the anticipated impact.
6. Temporary uses may be licensed by the Department in accordance with 310 CMR 9.15(1)(d) for a term not to exceed 10 years.

Section 3.2C, 1-4 Determinations

Based on review of the Final Waterfront Development Plan and in accordance with the MOU, the Department hereby determines the following:

1. The Waterfront Development Plan makes possible substantial financial benefits to be accrued by Massport to support operations within the Port of Boston, in part through the addition of 4 new stories of Supporting DPA Uses to be located on proposed upper floors. Additionally, the project will complete badly needed transportation improvements adjacent to 88 Black Falcon resulting in direct, measurable and long-lived transportation improvements benefiting current and future water dependent industrial operators at and adjacent to the project site. The plan achieves these significant financial and public benefits while occupying minimal new footprint at the site. Based on the Department's review, the plan balances the economic and public benefits of the proposed Plan with Massport's statutory obligation to operate and develop the Port of Boston.
2. The Waterfront Development Plan promotes public trust in waterways because, in part, it encourages the location of significant supporting DPA uses with only minimal additional ground-level footprint, does not displace any existing or planned water dependent industrial use and will result in net improvements to existing water dependent industrial operations at and adjacent to the site. The plan preserves the existing significant waterfront access presently supporting the Flynn Cruiseport, Coastal Cement operations and others. The plan provides for the licensing of the site in a manner consistent with the applicable provisions of 310 CMR 9.00 and applicable CZM policies.
3. The Waterfront Development Plan furthers the Commonwealth's public tidelands policies with an equal or greater effectiveness than 310 CMR 9.00. The plan continues to require significant dedication of the ground floor to water dependent industrial uses with the added flexibility afforded by the MOU to support Maritime Projects. The project provides significant supporting DPA uses and corresponding financial support without any diminishment of the Water Dependent Use Zone and will provide substantial transportation improvements.
4. The implementation of the Waterfront Development Plan, subject to successful review of a complete application for a license or consolidated written determination pursuant thereto, would serve a proper public purpose by providing greater benefits than detriments to public rights in tidelands. Achieving this proper public purpose is predicated on (i) the requirement that the significant financial support to be achieved by the project be dedicated to supporting WDI uses within the DPA, and (ii) the anticipated application demonstrates compliance with applicable provisions of 310 CMR 9.31(2)(b).

Conclusion

In accordance with the forgoing and pursuant to the MOU and 310 CMR 9.00, the Department hereby conditionally approves the 88 Black Falcon Terminal Final Waterfront Development Plan as submitted by Massport dated July 22, 2022 and as conditioned herein.

88 Black Falcon – Final Waterfront Development Plan
MassDEP Conditional Approval
August 19, 2022

The Department looks forward to the completion of the project's review under the Massachusetts Environmental Policy Act and receipt of a complete license application for the proposed project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel J. Padien". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Daniel J. Padien, Chief
MassDEP Waterways Program