

MEMORANDUM OF UNDERSTANDING

BETWEEN

MASSACHUSETTS PORT AUTHORITY

AND

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

This Memorandum of Understanding ("MOU") entered into as of February 15, 2002 by and between the Massachusetts Port Authority ("Massport") and The Commonwealth of Massachusetts Department of Environmental Protection ("DEP") relative to the licensing of certain projects on certain properties owned by Massport in East Boston.

WHEREAS, Massport is a body politic and corporate, created by Chapter 465 of the Acts of 1956, as amended (the "Enabling Act"), to engage in, *inter alia*, the operation, maintenance and improvement of the Port of Boston;

WHEREAS, the DEP is an agency of the Commonwealth of Massachusetts, created pursuant to M.G.L. Ch. 21, authorized to administer the provisions of M.G.L. Ch. 91, §§1 through 63, commonly known as the Public Waterfront Act ("Ch. 91");

WHEREAS, pursuant to the authority contained in §18 of said Ch. 91, the DEP has promulgated regulations codified at 310 CMR 9.00 (the "Regulations");

WHEREAS, pursuant to §4C of the Enabling Act, Massport and *inter alia*, the DEP are authorized and empowered to enter into agreements furthering the purposes of the Enabling Act, which include, but are not limited to, the operation and development of the Port of Boston and other property owned by Massport;

WHEREAS, §6 of the Enabling Act provides that, although the DEP may "issue licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston... no such licenses or permits shall be required to be obtained by [Massport]";

WHEREAS, §9.03(3) of the Regulations states that Massport may undertake "without written authorization in the form of a license or permit from the Department ... any project consisting entirely of Water-Dependent-Industrial Uses or accessory uses thereto on previously filled or flowed tidelands within the Port of Boston;"

WHEREAS, §9.03(3) of the Regulations provides that "Massport shall obtain a license or permit pursuant to M.G.L. c. 91 for any project consisting entirely of uses other than Water-Dependent Industrial Uses";

WHEREAS, §9.03(3) of the Regulations further provides that the DEP and Massport may enter into agreements to further clarify the DEP's jurisdiction under Ch. 91 for certain activities undertaken on Massport land that include Water-Dependent Industrial or Accessory uses and Non-water-Dependent Uses;

WHEREAS, Massport has invested well over \$100,000,000 in the past ten years to provide infrastructure to facilitate the water-borne transportation of freight and passengers;

WHEREAS, Massport is endeavoring to undertake mixed-use development on certain portions of its land holdings in order to generate revenues sufficient to help subsidize substantial capital investments in and operating costs of Port facilities including the East Boston Shipyard, Conley Container Terminal, the Black Falcon Cruise Terminal, and the Massport Marine Terminal;

WHEREAS, Massport will continue to maintain the functions of the Designated Port Areas and will protect deep water berths, channels and transportation infrastructure necessary to support the operations of the Port of Boston and maintain its competitive position in the future;

WHEREAS, the improvement and continued availability of the East Boston Shipyard for Water-Dependent Industrial Uses contributes to the infrastructure necessary to support the operations of the Port of Boston and maintain the Port's competitive position in the future;

WHEREAS, Massport has undertaken extensive planning in concert with the East Boston community, community representatives and others to create a comprehensive strategy for investment and development of its properties in East Boston, in the context of and consistent with the City of Boston's East Boston Master Plan;

WHEREAS, the support of Water-Dependent Industrial infrastructure on Massport property to compensate for Non-Water-Dependent uses is consistent with Massport's mission to enhance the Port of Boston;

WHEREAS, the DEP desires to encourage and promote public access to the waterfront, to promote use of water transportation, and support Water-Dependent and Water-Dependent Industrial Uses;

WHEREAS, the DEP and Massport recognize the importance of establishing this agreement with respect to the confirmation by the DEP of Massport's compliance with Ch. 91 for activities on certain Massport Properties hereinafter described;

WHEREAS, Massport will obtain licenses from DEP for all activities in the Project Area unless exempt by statute, regulation or this MOU;

NOW, THEREFORE, Massport and the DEP agree that, with respect to the Massport-owned properties described herein, the terms of this MOU shall govern the licensing by DEP of certain Projects, as defined below.

Article 1 ***Definitions***

As used in this MOU, the following terms shall have the definitions set forth below:

- A. "Accessory Use" means a use customarily associated with and necessary to accommodate a principal Water-Dependent Use. Such use must be integral in function to the construction or operation of the Water-Dependent Use in question, or provide related goods or services to persons engaged in such Use, and be commensurate in scale with the operation of such Water-Dependent Uses. Examples of such**

Accessory Uses include, but are not limited to, access and interior roadways, surface and/or structured parking facilities, administrative offices and other facilities providing services to Water-Dependent Uses, yacht clubhouses and associated facilities, restaurants and retail facilities primarily serving patrons of Water-Dependent Uses, bait shops, chandleries, boat sales, and other marine-oriented retail facilities. Uses that may not be determined to be accessory to a Water-Dependent Use include, but are not limited to, general residential facilities, hotels, general office facilities and major retail establishments.

- B. "East Boston Shipyard" shall mean the land, piers and buildings identified as such on Exhibit A.
- C. "Grade" shall mean a reference plane representing the average finished ground level adjoining the building at all exterior walls.
- D. "Height" or "Height of Building" shall mean the vertical distance from grade to the top of the highest point of the roof beams of a flat roof, or the mean level of the highest gable or slope of a hip roof, excluding roof structures and penthouses normally built above the roof not devoted to human occupancy and the total area of which does not exceed 33-1/3 percent of the roof. A mansard roof shall be considered a flat roof.
- E. "Mixed-use Projects" means those Projects which contain both structures and/or uses for Water-Dependent Industrial Uses and other uses.
- F. "Offsets" means those activities, uses or structures included in a Project to mitigate the impact caused by the application of Substitutions under this MOU. Such Offsets may be:
 - 1. numeric, in-kind offsets;
 - 2. qualitative, out-of-kind offsets, provided there is a reasonable proportionality, geographic proximity and temporal proximity so that the public benefits outweigh the detriments within the same area and timeframe;
 - 3. offsets that are appropriate for the scale and density of existing structures, taking into account the character of the harbor and the location of the Project Area in an urban community; and
 - 4. offsets that appropriately reflect the relationship between proposed structures and the waterfront.

Such Offsets are to be provided where applicable under this MOU in addition to those Public Benefits which are necessary to compensate for the use of Filled or Flowed Tidelands for Non-Water-Dependent Uses. Offsets involving the construction or improvement of Water-Dependent Industrial Uses or structures, or the provision of financial support for the development, construction or maintenance of such uses or structures in the Project Area or the East Boston Shipyard are encouraged. Offsets also may include, but are not limited to, the creation, development or support of public purpose uses and structures, such as cultural facilities, additional on-site parks, public art, museums, cultural or other special public destination facilities, transportation facilities or services, transient docking facilities, additional on-site open space or greater activation of open space, additional on-site public pedestrian facilities; promotion, support and maintenance of public facilities, including the provision of financial support to public events or activities, community sailing or water transportation programs; and other similar programs or facilities which are designed to mitigate or otherwise ameliorate impacts to public access and the

public's right to use the waterfront resulting from the application of Substitutions. Offsets for height substitutions must be consistent with Section 3.2(A)5 herein. Where enhancements of public access are allowed as an Offset, enhancements may include financial support for facilities and programming which exceed the regulatory requirements.

5. The provisions of Offsets shall not create adverse impacts on the operations of the Designated Port Area.
- G. "Other Massport Properties" means those properties outside the Project Area owned or leased by Massport or leased by Massport to tenants of Massport.
- H. "Project" means any structure, activity, change in use or proposed new construction or Substantial Structural Alteration of a structure in the Project Area, that is proposed by Massport or a private entity under a ground lease of all or a portion of the Project Area, unless specifically excluded from the scope of this MOU, as set forth below.
- I. "Project Area" means those properties owned or leased by Massport or leased by Massport to tenants of Massport, which constitute Flowed or Filled Tidelands or are located within a Designated Port Area, as those terms are defined in the Regulations, comprising approximately sixty-four (64) acres of land, piers and water, located in the East Boston area of the City of Boston, commonly known as Piers 1 through 5 and the existing marina, extending back to Marginal Street, as such Area is more particularly identified on Exhibit A attached hereto and made a part hereof.
- J. "Public Benefits" means those features incorporated into a Project as required by 310 CMR 9.00 to compensate for the use of Filled or Flowed Tidelands for Non-Water-Dependent Uses and structures. Such Public Benefits may include, but are not limited to, facilities that promote active use of the Project shoreline, such as fishing piers, waterfront boardwalks, esplanades, walkways, parks, plazas, observation areas, facilities which support water-based activities such as ferries, cruise ships, water shuttles, excursion/charter/rental docks, boat landing docks and launching ramps, marinas, and community sailing centers. The provision of Public Benefits should not create adverse impacts on the operations of the Designated Port Area.
- K. "Public Parking" means parking open to the public, including users of Facilities of Public Accommodation and parking for car-sharing programs.
- L. "Qualified Financial Expenditures" means any capital investment, assumption of debt, or other form of financial assistance derived from or associated with a Project made to support, assist, reduce or defray capital, operating or maintenance costs associated with the East Boston Shipyard or the Project Area. Massport shall provide to DEP as a public document, on an annual basis until the requirement has been met, a description of Expenditures made and a certification that all Qualified Financial Expenditures were (i) derived from or associated with a Project and (ii) expended in accordance with the license issued pursuant to this MOU.
- M. "Shadow Protection Zone" (SPZ) means the first 100 feet (50 feet on the sides of piers) of watersheet, the Water-Dependent Use Zone, public open space and sidewalks in the Project Area.
- N. "Substitutions" means the substitution of the use and dimensional requirements set forth hereunder for

those set forth in the Regulations regarding open space (310 CMR 9.51 (3) (d) and 310 CMR 9.53 (2) (c)), ground floor Facilities of Public Accommodation, Facilities of Private Tenancy (310 CMR 9.51 (3)(b), and 9.53 (2)(b)), Height (310 CMR 9.51 (3)(e), and Water-Dependent Use Zones (310 CMR 9.51 (3)(c)).

All capitalized terms used herein and not specifically defined above shall have the definitions set forth in the Regulations.

Article 2
General Provisions

2.1. Applicability of MOU.

As the development of the Massport Properties will be undertaken on an integrated basis, including a combination of Water-Dependent Industrial Uses, Water-Dependent Uses, and Non-Water-Dependent Uses, except as specifically excluded in Section 2.2 of this MOU, the terms and provisions of this MOU shall govern and apply to Projects in the Project Area which do not consist solely of Water-Dependent Industrial Uses or Accessory Uses thereto. The terms of this MOU shall not apply to structures, projects or properties owned, operated, developed or leased by Massport on land not contained within the Project Area shown on Exhibit A hereto. Notwithstanding the foregoing, Massport may elect to identify an individual non-exempt Project which shall be subject to licensing pursuant to the provisions of 310 C.M.R. 9.00 or to the provisions of this MOU by written notice of such election to DEP.

Projects which are not exempt from licensing requirements pursuant to Section 2.2 shall be required to obtain a Chapter 91 license in accordance with the provisions of Articles 3 and 4 hereof.

2.2. Projects Not Requiring a License.

Notwithstanding anything to the contrary contained in this MOU, in no event shall the terms and provisions of this MOU apply to or govern, and no permit, license or approval pursuant to Ch. 91 shall be required for the following:

- A. All structures, Projects and activities specifically exempted from Ch. 91 and the Regulations pursuant to §9.03(3) of the Regulations, including:**
1. any Project consisting entirely of Water-Dependent Industrial Uses or Accessory Uses thereto on previously Filled or Flowed Tidelands within the Port of Boston; or
 2. any Project authorized pursuant to the Enabling Act on previously Filled Tidelands within the geographic boundary of the Airport, so long as it is operated as an airport.
- B. The continuation in use of any Project or structure in the Project Area, whether owned or leased by Massport or leased by Massport to tenants of Massport, existing as of October 4, 1990 and for which no unauthorized structural alteration or change of use has occurred since October 4, 1990, provided said Project or structure:**
1. includes Water-Dependent Industrial Uses or Accessory Uses thereto, including but not limited to that certain shipyard and marina project located on the Massport Properties

subject to "M.G.L. Ch. 30 Section 61 Finding and Ch. 91 Assurances on Boston Marine Works at the East Boston Shipyard by the Massachusetts Port Authority" dated November 29, 1988;

2. is any other Project for which a final EIR was certified as adequate and properly complying with M.G.L. Ch. 30, §§61 through 62H, prior to January 1, 1984; or
 3. is any Project, use or structure in existence as of the date of this MOU for which DEP has issued a determination of exemption from the requirements of Ch. 91.
- C. Maintenance, repair and minor modification of existing structures described in A through G herein, whether owned or leased by Massport or leased by Massport to tenants of Massport;
- D. Any other activity on the Project Area otherwise exempt from the requirement of the Regulations pursuant to §9.05(3) thereof;
- E. all Projects undertaken by Massport for the use of Massport and in aid of the performance of its governmental functions as provided in the Enabling Act;
- F. Any Project that contains only those uses described in Article 3.1(A)(1), (2), (3) or 3.1(B)(1) and (2) below; and
- G. Construction, modification and activities within Piers Park I and II.

2.3 Applicable Regulatory Provisions.

Except as provided herein, Projects which require licensing under this MOU shall be required to comply with the provisions of §§ 9.31, 9.32, 9.33, 9.35(1), (2), (3), (5) and (6), 9.36, 9.37, 9.38, 9.39, 9.40, 9.51, 9.52, 9.53, and 9.54 of the Regulations with respect to the structures and uses in the Project area.

2.4 MOU as Exclusive Regulatory Framework.

The terms and provisions of this MOU shall constitute the exclusive framework under Ch. 91 and M.G.L. c. 21A for regulation of structures and uses in the Project Area. The terms and provisions of any Municipal Harbor Plan now or hereinafter approved by the Executive Office of Environmental Affairs shall not govern the development, use or dimensional requirements of Projects in the Project Area.

Article 3

Massport Properties Development Program Elements

Mixed-use Projects that contain the following elements may apply for and be granted a license pursuant to Article 4 hereof. As provided herein, Projects must contain Public Benefits to compensate for the use of Tidelands for Non-Water-Dependent Uses and structures. Offsets shall be incorporated in Projects where impacts of structures for Non-Water-Dependent Uses exceed those which would result from the application of the Regulations in the absence of this MOU, as described in Section 3.2 below.

3.1. Allowable Uses

A. Non-DPA Area. The following uses shall be allowed on the portions of the Project Area currently located on Tidelands, but outside a Designated Port Area as designated pursuant to 301 CMR 25.00 (the "Non-DPA Area"). Projects involving the development of uses described in Paragraphs 3.1(A) (6), (7), (8) and (9) herein shall contain appropriate Public Benefits.

1. Water-Dependent Uses and uses accessory thereto as defined in 310 CMR 9.12(2);
2. As an amplification of the Chapter 91 regulations on the Pier 1 berths, only the following uses are allowed: Water-Dependent Industrial Uses as defined in 310 CMR 9.12(2)(b); visiting ships with significant public interest; and vessels carrying passengers or goods for hire;
3. A fuel dock, for fueling and refueling vessels, and pump-out facilities;
4. A recreational marina for seasonal short-term or long-term dockage or mooring of recreational vessels;
5. Parks and other places for public access, including, but not limited to, the extension of the East Boston Greenway at Pier 1, with walkways and bicycle/roller blade paths, a public fishing station, and pedestrian walkways and plazas along the water's edge, except any area reasonably deemed unsafe or unsecured for pedestrian access by Massport's Maritime Director in consultation with the Port Operator's Group in order to accommodate Water-Dependent or Water-Dependent Industrial Uses.
6. Hotels, motels, inns, bed and breakfasts, hostels, rooming houses and other transient and non-transient lodging facilities;
7. Residential uses, as provided in Section 3.2 (D) herein;
8. Parking, either at grade, below grade or in structures, in accordance with Sections 3.2 (B), (C) and (D) herein;
9. General commercial uses, including, but not limited to, office, retail shops, stores, restaurants, food courts, health clubs and seasonal food and beverage establishments; uses and structures accessory to the operation and maintenance of a marina, including, but not limited to, parking, yacht clubhouses, restaurants, snack bars, showers, sanitary facilities, small retail establishments, bait shops, chandleries, boat sales and repair facilities, and off-season boat storage areas and facilities;
10. Facilities of Public Accommodation as defined in 310 CMR 9.02(2);
11. Community, cultural, educational, and institutional uses; and
12. Accessory Uses.

B. DPA Area Uses. In addition to all Water-Dependent Industrial Uses and structures, Accessory Uses thereto, Supporting DPA Uses and Temporary Uses, the following uses shall be allowed in the portions of the Project Area currently located in a Designated Port Area pursuant to 301 CMR 25.00 (the "DPA Area"):

1. The current recreational marina containing 180 slips for seasonal short-term or long-term dockage or mooring of recreational vessels; and
2. All uses and structures accessory to the marina, including, but not limited to, parking, interior roadways, yacht clubhouses, showers, sanitary and pump-out facilities, marine-oriented retail facilities, bait shops, chandleries, boat sales and repair facilities and off-season boat storage areas and facilities.

3.2 Substitutions and Required Offsets

A. Building Heights.

1. Structures consisting of or containing only Water-Dependent Uses subject to licensing hereunder shall not be subject to Height limitations.
2. New or expanded structures containing Non-water-Dependent Uses located on Flowed Tidelands shall not exceed fifty-five (55) feet in Height, and any located on Filled Tidelands within 100 feet of the project shoreline shall not exceed 60 feet in height.
3. Except as provided in subparagraphs A.(1) and A.(2) above, the Height of new or expanded structures containing Non-Water-Dependent Uses at any location on Filled Tidelands where such structures are allowed may be up to 75 feet.
4. Notwithstanding the foregoing, Massport may elect to apply the provisions of the Regulations regarding heights at 310 CMR 9.51(3)(e) as an alternative to subparagraphs (2) and (3) above.
5. New or expanded structures in the Project Area shall be designed and constructed to minimize (1) the creation of adverse wind conditions and (2) additional shadow impacts on the Project Area. Where such impacts are determined to be greater than those, which would result from the construction of structures in accordance with the Regulations, Offsets commensurate with impacts shall be incorporated in the Project. Each square foot of additional shadow impact on the Shadow Protection Zone (SPZ) shall be offset by a reduction of two square feet of shadow cast on public areas on or adjacent to the Project Area. Height-related impacts are quantified as the net area within the designated SPZ that would be subject to new shadow (Net New Shadow, or NNS), beyond that generated under Chapter 91 baseline conditions, for at least one hour on October 23.

B. Water-Dependent Use Zone. A portion of the Project area shall be designated as a Water-Dependent Use Zone, which may contain Water-Dependent Uses, Accessory Uses, Public Ways, Public Parking and uses allowed by the Regulations, provided that such ways and parking are

necessary to encourage the public's use of the Water-Dependent Use Zone, and further provided that no more than fifteen percent (15%) of such Water-Dependent Use Zone shall be occupied by at-grade public parking located along a public way. The area and dimensions of the Water-Dependent Use Zone shall be:

1. An average of at least one hundred (100) feet from the end of Pier 1 and fifty (50) feet from the sides of Pier 1, with the setback varying by to a maximum variation of five (5) feet on the sides and ten (10) feet on the end of Pier 1, to break the uniformity of the structure to be built on Pier 1; and
2. An area along the shoreline of the Project Area, exclusive of the edges of piers and wharves and the DPA (the "Direct Shoreline"), which would be equal to the area calculated by the length of the Direct Shoreline multiplied by the lesser of one hundred (100) feet or twenty-five percent (25%) of the weighted average distance from the present high water mark to the southern edge of Marginal Street, but no less than twenty-five (25) feet deep at Pier 5 provided full Harborwalk access is provided, and fifty (50) feet deep at the Pier 1 backlands in any event.

Provided that the application of the above standards described in B (1) and (2) above result in Water-Dependent Use Zones on Pier 1, Pier 1 Backland, and Pier 5 each equal in area to that otherwise required by the Regulations, no Offsets are required for these Substitutions.

C. Open Space

1. On filled and on flowed tidelands, at least one square foot of the Project Area at ground level exclusive of areas lying seaward of the project shoreline shall be reserved as public open space for every square foot of tideland area within the combined footprint of buildings containing Non-Water-Dependent Uses in the Project Area. The footprint of buildings containing Non-Water-Dependent Uses on Pier 1 shall not exceed 79,000 square feet.
2. **Pier 1 Perimeter Surface Parking:** A maximum of 52 parking spaces shall be on the perimeter of Pier 1, and shall be available for the use of owners and employees of Water-Dependent Industrial Uses or for general public use at all times; special signage, stickers or other methods may be used to ensure that spaces are available for Water-Dependent Industrial Users. Spaces open to the general public may be metered or otherwise managed on a time-limited basis to discourage commuter parking.
3. **Pier 1 Non-perimeter Parking:** Any outdoor parking spaces in the non-perimeter area of Pier 1 shall be available for general public use at all times with the following exception: a maximum of 48 spaces in the non-perimeter areas may be provided as private deeded parking to support condominium development either as outdoor spaces or as spaces within a parking deck. Spaces open to the general public may be metered or otherwise managed on a time-limited basis to discourage commuter parking.
4. **Backlands Outdoor Parking:** All outdoor spaces in the Pier 1 backlands shall be available

for general public use at all times. Spaces open to the general public may be metered or otherwise managed on a time-limited basis to discourage commuter parking. Carports (surface spaces covered only by a roof, rather than by buildings or upper level garage parking) are prohibited.

5. All licensed projects on Pier 1 shall provide an appropriate landscaped pedestrian and bicycle connection from the East Boston Greenway to the seaward end of Pier 1. This landscaped corridor shall contain a minimum 12-foot wide pedestrian pathway, shall be a minimum of 40 feet wide and shall have an area equal to that of a 50 foot wide corridor from Marginal Street to the Pier's seaward end.
6. If private deeded outdoor parking spaces in the open space are provided to support condominium development, a one-time expenditure of \$10,000 per space shall be provided as follows: \$4,600 per space shall be made for construction of improvements related to the Greenway Project in addition to the Greenway extensions referenced in 3.2(C)5 and 3.2(D)1(c), on or in the vicinity of the license area, and \$5,400 per space shall be made for support of onsite maritime industrial use or for programming of public activities and events in the license area. The license shall describe the specific proposed uses for these funds or a mechanism for the allocation of these funds.

Such amounts may be paid in a single payment within six months of the date of issuance of a certificate of occupancy for the portion of the Project requiring the Offset, or by a series of payments over time not to exceed five years, provided that the net present value of such annual payments is equal to the amount required. Such amounts shall be in addition to any other benefits provided as baseline regulatory requirements or Offsets under the MOU.

7. The area within the legislatively-mandated boundaries of the existing Piers Park and the proposed Piers Park II shall be excluded from the calculations of open space required by this MOU and the Regulations.

D. Facilities of Private Tenancy; Facilities of Public Accommodation.

1. Filled Tidelands:

- a. Facilities of Private Tenancy ("FPTs") including residential uses shall be allowed on Filled Tidelands provided such FPTs do not displace any existing Water-Dependent Industrial Use except as provided in 310 CMR 9.36.
- b. Facilities of Public Accommodation ("FPAs") shall be provided in an amount equal to at least 25% of the ground floor area of new or redeveloped buildings containing Non-Water-Dependent Uses. FPAs shall be located within 100 feet of the Project Shoreline (exclusive of Pier 1) and shall be provided on Lewis Street; in addition, FPAs may be placed at other locations, which effectively promote public use and enjoyment of the Project Area.

- c. All licensed Projects in the Project Area shall be designed to enhance the connection of the Greenway to Piers Park by the provision of an open space and pedestrian corridor along Marginal Street from the western edge of Orleans Street to the western edge of the Phase II park. Such connection is in addition to the Greenway extension provided for in Section 3.2(C)5 and shall include pedestrian and bicycle paths, landscaping, and street trees.

Because the allowance of FPTs on the ground floor area in excess of the amount permitted by the Regulations constitutes a Substitution, a payment of twenty-five dollars (\$25.00) of Qualified Financial Expenditure committed to, in order of priority, (i) support for Water-Dependent Industrial Uses in the Project Area or East Boston Shipyard, (ii) additional water transportation facilities or services serving the Project Area, or (iii) enhancement of public access or programming of public activities in the Project Area, as determined by the Department and Massport, shall be provided for each square foot of ground floor FPTs (excluding Upper Floor Accessory Services which may not occupy more than 25% of the ground floor area, Water-Dependent Industrial Uses and Uses accessory thereto).

Such amounts may be paid in a single payment within six months of the date of issuance of a certificate of occupancy for the portion of the Project requiring the Offset, or by a series of payments over time but no more than 10 years, provided that the net present value of such annual payments is equal to the amount required. The License shall include a mechanism allowing periodic review by the Department and Massport of the expenditure priorities.

2. Flowed Tidelands (Pier 1)

- a. FPTs shall be allowed on Flowed Tidelands provided that no significant privatization of open space on the perimeter of Pier 1 will occur, in order that this area 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.
- b. The provisions of 310 CMR 9.36 shall apply to existing Water-Dependent Industrial Uses.
- c. Any Non-Water-Dependent Uses shall be designed, constructed and maintained in a manner to avoid conflicts with any adjacent Water-Dependent Uses, including using sound-insulating building techniques commercially available at the time of construction, and providing notice to prospective residents.
- d. No less than 48% of the ground floor shall be occupied by FPAs, Water-Dependent Industrial Uses, or Water-Dependent Industrial Accessory Uses. The water-facing perimeter of the ground floor of buildings containing Non-Water-Dependent Uses shall be occupied by Facilities of Public Accommodation,

Water-Dependent Industrial Uses or Uses accessory thereto, Upper Floor Accessory Services, or use by community-based or nonprofit organizations. Facilities of Public Accommodation may include community space, retail sales, restaurants, institutional facilities, parking facilities open to the public, or other FPAs allowed under the Regulations. In proposing the mix of uses on the perimeter, preference shall be given to facilities that enhance the destination value of the waterfront, serve significant community needs, attract a broad range of people, or provide innovative amenities for public use.

e. Residential uses are prohibited on the ground floor of structures. Notwithstanding the foregoing, Upper Floor Accessory Services (not to exceed 25% of the ground floor space) and private residential parking, leased, deeded or otherwise, are allowed on the ground floor of structures. There shall be no deeded parking on Pier 1 except in conjunction with condominium development.

f. Because the allowance of FPTs over Flowed Tidelands and on the ground floor area constitutes a Substitution, Offsets shall be provided as described below:

(i) As an Offset for Non-Water Dependent Facilities of Private Tenancy over Flowed Tidelands, a Special Public Destination Facility shall be provided. The special public destination facility shall 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. The special facility shall be located at or near the end of Pier One to offset privatization from the Facilities of Private Tenancy over flowed tidelands and to ensure the primacy of public use and enjoyment at the ground level. In the choice of special facilities, special consideration shall be given to those which encourage diversity in the pattern of uses and population of the waterfront, and special efforts shall be made to solicit creative use concepts from the planning and advocacy community at large; in the choice of facility operators, special consideration shall be given to public or non-profit organizations that otherwise would be unable to afford market rates for waterfront space. Development of special facilities shall be concurrent with development of the relevant Facilities of Private Tenancy, where development means all aspects of the design, financing, permitting, and environmental review process; concurrent means concurrent progress on such general aspects. The Special Public Destination Facility shall ensure proportionality between the degree of development and the quality of public benefits provided, so that the overall atmosphere is one that invites people to visit and underscores the public nature of the site. The Special Public Destination Facility shall be a minimum of 3,200 square feet, except that a smaller dimension may be licensed if the Facility includes substantial exterior components (e.g., a tall ship) or otherwise provides equivalent public benefits.

(ii) As an Offset for upper floor Non-Water Dependent Facilities of Private Tenancy over Flowed Tidelands, a Qualified Financial Expenditure of twenty-five dollars (\$25.00) for each square foot of Facilities of Private Tenancy on the

upper floors of buildings over Flowed Tidelands, to be expended only in support for Water-Dependent Industrial Uses in the East Boston Shipyard as determined by Massport. Such expenditures shall be based on an inventory and condition survey of Shipyard facility needs, and a program and schedule for capital improvements to be provided in the License application.

Such offset amounts may be paid in a single payment within six months of the date of issuance of a certificate of occupancy for the portion of the Project requiring the Offset, or by a series of payments over time but no more than 10 years, provided that the net present value of such annual payments is equal to the amount required.

(iii) As an Offset for Non-Water Dependent ground floor Facilities of Private Tenancy (FPT) over Flowed Tidelands, one square foot of additional open space for public pedestrian use on Pier 1 in excess of the requirements set forth in Section 3.2(C)(1) shall be provided for every square foot of FPTs (excluding Upper Floor Accessory Services, Water-Dependent Industrial Uses and uses accessory thereto) until the amount of additional open space equals 16,000 square feet. For each additional square foot of FPT (excluding Upper Floor Accessory Services, Water-Dependent Industrial Uses and uses accessory thereto) on Flowed Tidelands in excess of 16,000 square feet, the project shall provide either: a) one square foot of additional open space on Pier 1, or b) a one-time Qualified Financial Expenditure of either seventy-five dollars (\$75.00) or, for deeded parking spaces, eighty-five dollars (\$85.00), and an additional two dollar (\$2.00) annual payment committed to, in order of priority, (i) support for Water-Dependent Industrial Uses in the Project Area or East Boston Shipyard, or (ii) additional water transportation facilities or services serving the Project Area or enhancement of public access or programming of public activities in the Project Area or a combination thereof. Such open space shall be located either on the water-facing perimeter of Pier 1 or within a landscaped pedestrian corridor in the center of the Pier.

Such offset amounts may be paid in a single payment within six months of the date of issuance of a certificate of occupancy for the portion of the Project requiring the Offset, or by a series of payments over time but no more than 10 years, provided that the net present value of such annual payments is equal to the amount required. The License shall include a mechanism allowing periodic review by the Department and Massport of the expenditure priorities.

3. Licenses for Projects on Pier 1 and its backlands shall contain a provision requiring the developer to conduct an analysis of real estate market conditions in East Boston every ten years to evaluate the feasibility of increasing the percentage of ground floor building area devoted to FPAs, or the market viability of maintaining the existing percentage of ground floor FPAs, and shall be required to maintain the maximum practicable percentage of ground floor FPAs consistent with local market demand and project financing. This provision shall not apply to interior building area devoted to private deeded parking on Pier 1.

Article 4
Licensing for Non-Exempt Projects

4.1. General Requirements.

Massport may, from time to time, propose an individual Project or Projects in the Project Area. If such Project does not require a license as set forth in Section 2.2 hereof, Massport shall notify the DEP in writing that it will be commencing development of such Project. If such Project is subject to the terms of this MOU as provided in Section 2.1 hereof, Massport or its tenant shall file an application with the DEP in accordance with Section 4.2 below.

4.2. Application.

The Application for a license under this MOU shall be submitted to DEP by Massport or its tenant on forms provided by the DEP, and meeting the requirements 310 CMR 9.11 of the Regulations (the "Application").

4.3. Notice.

A. Within thirty (30) days of receipt of the Application and the information required in Section 4.2 above, the DEP shall notify Massport, and, if applicable, its tenant, whether the Application meets the minimum submittal requirements or whether additional information is required.

B. Once the DEP determines that the Application meets the minimum submittal requirements, it shall assign a file number to the Project and, in accordance with the Regulations, shall publish notice of receipt of a completed Application in the Environmental Monitor and shall send notice of the Application to:

1. The City of Boston Conservation Commission, the Boston Redevelopment Authority and Harbor Master;
2. The Massachusetts Coastal Zone Management Office; and
3. All abutters to the Project site, identified in accordance with the Regulations.

C. Massport or its tenant shall, upon assignment by the DEP of a file number of the Application and at its own expense, cause a notice in accordance with the Regulations to be published in one or more newspapers having circulation in the area affected by the Project and shall post such notice at one or more prominent locations on the Project site visible to the public. Massport shall also provide notice of such Application to its tenants located within the Project Area, and advise such tenants to notify their subtenants.

4.4. Public Hearing.

The DEP and Massport shall conduct a public hearing on the Application. The hearing shall be noticed in accordance with the Regulations, and shall be conducted no later than forty-five (45) days from the notice

in the Environmental Monitor provided above.

4.5. DEP Review.

Within thirty (30) days of the close of the applicable public comment period, DEP shall review the Application to determine: (i) whether the proposed Project meets the use and dimensional requirements set forth in the Regulations, as modified by this MOU; (ii) whether the Project incorporates the Public Benefits and Offsets required herein; and (iii) whether the Project will serve or contribute to a proper public purpose and provide greater benefit than detriment to the public rights in the subject area.

4.6. Coastal Zone Management Consistency Review.

Projects licensed pursuant to this MOU shall comply with the provisions of Section 9.54 of the Regulations and the applicable CZM Policies set forth at 301 CMR 21.98.

4.7 Issuance of License.

Within sixty (60) days after the close of the applicable public comment period, the DEP shall take action on the Application. Except for temporary licenses, which shall be for no more than 10 years, or unless a shorter term is otherwise requested by Massport, DEP shall issue a license for the Project with a term of ninety-five (95) years, provided it has determined that the requirements of this MOU have been satisfied. Any special license so issued by DEP shall be recorded in accordance with Section 9.18 of the Regulations.

4.8. Appeals.

The appeal of the grant or denial of any license issued by DEP pursuant to the terms of this MOU shall be governed by and subject to the provisions of Sections 9.17 of the Regulations. The standard for review of any appeal hereunder shall be whether the proposed Project meets the criteria set forth at Section 4.5 hereof.

4.9. Emergency Actions.

In the event of an emergency situation, as defined in Section 9.20 of the Regulations, Massport and DEP agree to follow the requirements set forth in said Section 9.20 for Massport Projects subject to this MOU pursuant to Section 2.1 hereof. For Projects exempt from this MOU pursuant to Section 2.2 hereof, Massport may take any action it deems necessary and desirable in connection with an emergency situation, provided it so notified the DEP in writing within ten (10) days thereafter of such action taken.

4.10. Maintenance, Repair and Minor Project Modification.

The provisions of Section 9.22 of the Regulations shall apply to Maintenance, Repair and Minor Project Modifications for Projects subject to this MOU pursuant to Section 2.1 hereof. Maintenance repair and minor project modifications for Projects exempt from this MOU pursuant to Section 2.2 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

4.11. Removal of Previously Licensed Structures.

The provisions of Section 9.27 of the Regulations shall apply to removal of structures licensed pursuant to this MOU. The removal of structures exempt from this MOU pursuant to Section 2.2 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

4.12. Enforcement.

The provisions of Section 9.08 of the Regulations shall apply to all Projects subject to the terms of this MOU pursuant to Section 2.1 hereof.

*Article 5
Miscellaneous*

5.1. Binding Effect.

This MOU is a legally binding document having the full force and effect of the law between the parties and shall be enforceable by the signatories hereto in a court of law by equitable relief.

5.2. Applicable Law.

This MOU shall be interpreted in accordance with the laws of the State.

5.3. Entire Agreement.

This MOU sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein, and no amendment of this MOU shall be effective unless it is in writing and signed by both parties to this MOU. The draft text of any amendment shall be published in the Environmental Monitor for a 30 day public review and comment period, and the text shall be published therein upon adoption and made available by DEP or Massport upon request.

5.4. Effective Date of MOU.

The terms and provisions of this MOU shall become effective immediately upon execution by the Commissioner of DEP and by a Massport officer duly authorized by the Massport Board of Directors, and no further action shall be required by the parties hereof.

5.5. No Waiver.

The parties agree that nothing in this MOU shall be construed to constitute assent to or assertions by either party that Massport, its agents, tenants, successors or assigns is or is not subject to the jurisdiction or regulatory authority of the DEP for licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston or is otherwise subject to the requirements of Ch. 91 or the Regulations.

5.6. Notices.

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed delivered hereunder if mailed postage prepaid or delivered by hand to the following address, or to such other address as may be specified by either of the parties in writing:

**If to the DEP: Commonwealth of Massachusetts
Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attention: Commissioner
Attention: Director, Waterways Division**

**If to Massport: Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02128
Attention: Executive Director**

**with a copy to: Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02128
Attention: Chief Legal Counsel**

5.7. Paragraph Heading.

The paragraph headings in this MOU are for convenience and reference only, and shall not be used to interpret, clarify, limit or amend the contents or meaning of any provision.

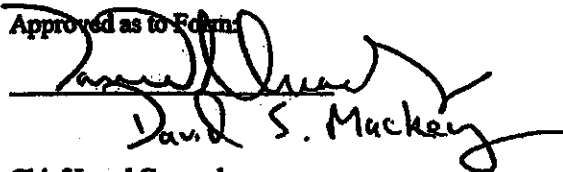
IN WITNESS WHEREOF, the Executive Director of the Massachusetts Port Authority, and the Commissioner of the Commonwealth of Massachusetts Department of Environmental Protection have executed this Memorandum of Understanding as of the date first written above.

MASSACHUSETTS PORT
AUTHORITY



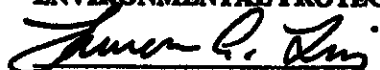
Thomas J. Kinton, Jr.
Acting Executive Director
Director of Aviation

Approved as to Form:



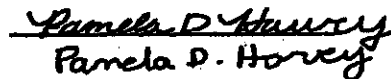
Chief Legal Counsel

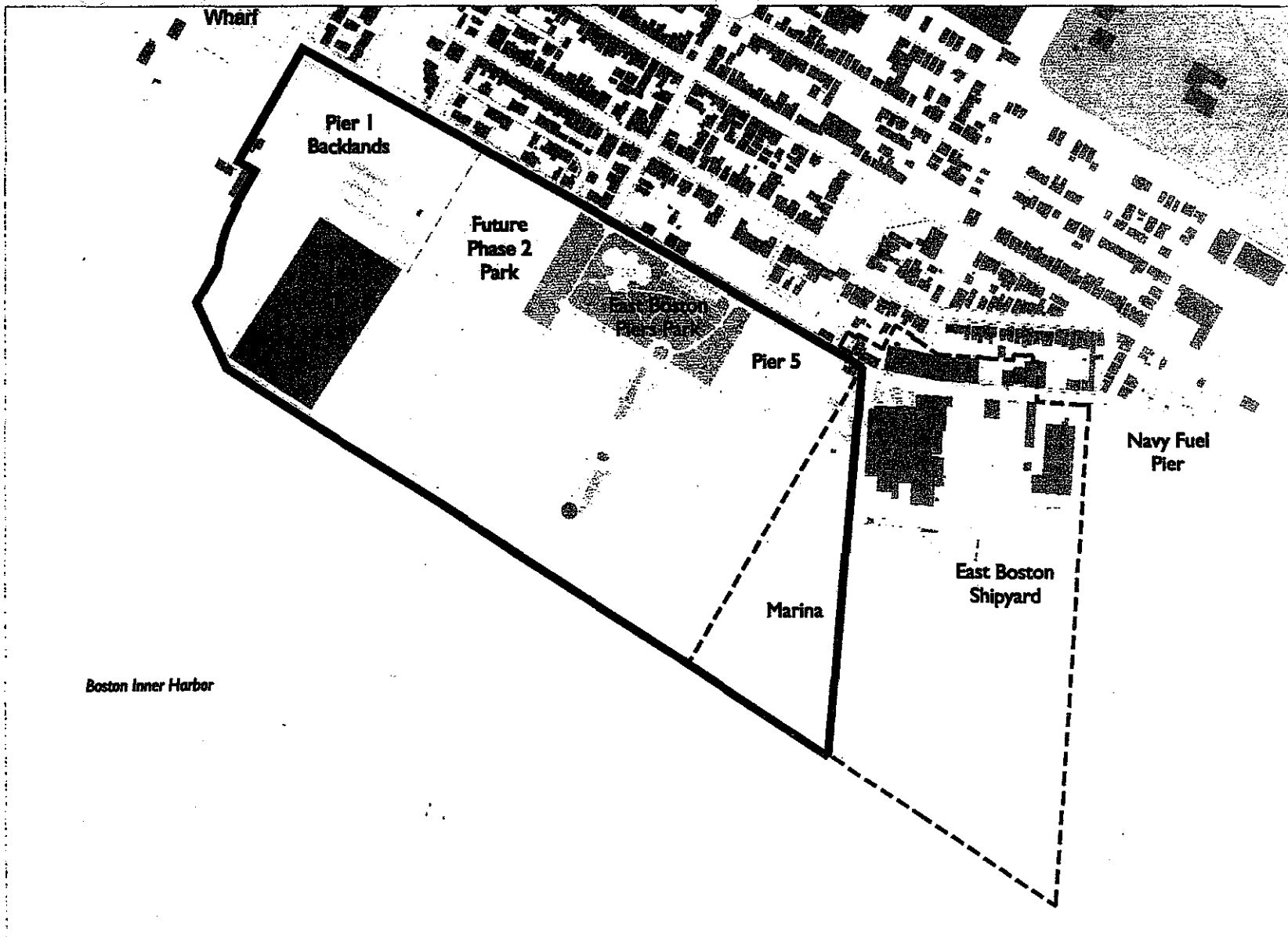
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Lauren Liss
Commissioner

Approved as to Form:





Massachusetts Port Authority
 Business Development Department
 August 2001



0 250 500
 IN FEET

————— Project Area

- - - - - East Boston Shipyard

Exhibit A
 East Boston Piers, MA