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BY EMAIL AND CERTIFIED MAIL

Ocean Management Task Force
Executive Office of Environmental Affairs
251 Causeway Street
Boston, MA 02114
Attn: Dr. Susan F. Tierney

Re: Draft Principles and Preliminary Recommendations
Ocean Management Task Force ("Task Force")

Dear Dr. Tierney:

On behalf of New England Development and Nantucket Boat Basin LLC, we would like to address the following comments to you and to the Ocean Management Task Force, with respect to the Draft Principles and the Preliminary Recommendations issued by the Task Force in December, 2003.

General Comments.

We note there appears to be no representation on the Task Force of those interests that typically own, operate or develop real estate. Thus, one of the major groups of principal stakeholders and property owners likely to be directly and disproportionately affected by the changes proposed by these recommendations has had no voice on the Task Force. We are very concerned by this oversight. Since the Colonial Ordinances of 1641 and 1647, the role of private property owners and business interests in the use and development of the shoreline has been a central component of the Commonwealth's public policy with regard to these resources. The exclusion of these interests from the Task Force is very problematic.

Comments on Draft Principles.

Principle 1 *Protect the public trust*. The implication of this draft principle, that economic development on the shoreline is in derogation of the public trust, is contrary to the constitutional principles of the Commonwealth. Please note that Article 88 to the Articles of Amendment of the Constitution of the Commonwealth states that the industrial development (which includes commercial development generally) is a public

function to which public resources may be devoted. While it is important to balance the many different interests and values that relate to the ocean and shoreline areas, the commercial development of shoreline lands cannot be presumed to be compromising to the public trust.

Principles 2 through 5. *Biodiversity, Ecological Interdependence, Sustainable Use and Best Information.* We would certainly endorse these principles. However, human life and economic activity must not be a mere footnote to such principles. We cannot view the ocean or the shoreline as an ecological preserve into which human activity is viewed as an intrusion to be minimized.

Principle 6 *Public Participation.* We hope that the principle of public participation is fulfilled in the subsequent stages of this process by including a broader representation of business and real estate industry stakeholders.

Comments on Task Force Recommendations

Comprehensive Ocean Resource Management Act.

Recommendation #1 *Ocean Resource Management Act.* The proposal to enact a new Ocean Resource Management Act is sweeping. We believe that it is critical that any such legislation take into consideration that the areas to be further regulated, particularly the shoreline areas, are not only biological and ecological resources, but are the location and forum for a vast amount of economic and social activity which plays a critical role in the viability and prosperity of the Commonwealth. Such considerations must have a prominent place alongside of the considerations articulated by the Task Force. We are also concerned that the comprehensive and detailed planning envisioned by the Act would exceed the bounds of appropriate regulation and not merely interfere with private property rights, but run contrary to the individual initiative and entrepreneurial spirit that, however messy or chaotic they may be, are the principle drivers of our economy and prosperity.

Policy Issues

Recommendation #2: *Streamlined Regulatory Process.* We wholeheartedly endorse the proposal to streamline the state planning and regulatory review processes. Regardless of how these matters should be substantively be regulated, no one (other than obstructionists) should have any interest in a process that is unnecessarily cumbersome or delay-ridden. Note that it is widely accepted in the real estate industry that nowhere is more difficult, more time consuming or more expensive to do business than Massachusetts.

Currently, among the real estate development community, one of the most significant problems with any activity involving the development, change of use, or even repair of real estate on the shoreline is the persistent and extreme understaffing of the Waterways Office of the Department of Environmental Protection. We believe that it would be irresponsible of the Commonwealth to even consider additional regulation of the shoreline and ocean areas until ample resources have been provided to implement current regulations.

Recommendation #5: *Increase Chapter 91 Fees* We are strongly opposed to any change to the current fee structure under Chapter 91. Very substantial investments in shoreline development projects currently underway and in existing shoreline properties are premised on economic projections and assumptions extending out decades. Any consideration or review of fees should take into consideration, and not run counter to, reasonable, investment-backed expectations.

Recommendation #6: *Visual, Cultural, Aesthetic Impacts.* We strongly oppose expanding the role of these subjective and highly discretionary standards in the permitting process.

Recommendation #9: *Designation of Resource Areas*. We believe that it is critical that any such increase in power to designate areas that would receive special protection from development or disturbance be very cautiously exercised. Habitat, and especially potential habitat, can be perceived to exist virtually everywhere, if one is predisposed to favor it. The need to preserve pristine areas must always be balanced against the need to allow appropriate range to productive human activity.

Recommendation #13. *Historic Baseline Conditions.* We strongly object to the assumptions that underlie Recommendation #13. This section assumes that the appropriate baseline by which to judge activity within the shoreline and ocean areas is the "undisturbed state" -- that is the condition of these areas prior to "centuries of human exploitation and degradation". The prospect that the proposed development in the South Boston Seaport, for example, might be judged relative to the conditions that existed in Boston Harbor prior to the influence of human activity is chilling and non-sensical. While the pursuit of such reconstructed baselines may have a valid scientific purpose and role to play in certain types of resource management, we think that it is important to distinguish these goals and purposes very clearly from any possible use of these reconstructed conditions to evaluate economic development of shoreline properties. The starting point of reasonable evaluation cannot be the view that the development of real estate is always the destruction of some higher value resource.

Thank you for the opportunity to comment on the Draft. Please contact us if we can provide any further information with regard to any of these matters.

Sincerely,

Peter D. Corbett
Attorney for and on behalf of
New England Development and
Nantucket Boat Basin LLC

PDC/kmm
cc: Ellen Roy Herzfelder, Secretary of Environmental Affairs

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