



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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Lieutenant Governor

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Secretary

ARLEEN O'DONNELL
Commissioner

6/12/07

Boiler Works LLC
C/o Richard Jabba
Fort Point Associates
33 Union Street, 3rd Floor
Boston, MA 02108

Re: **Written Determination pursuant to M.G.L. c.91 Waterways Application No. W05-1439-N**
Hodge Boiler Works, 101 Sumner Street, (East) Boston, Suffolk County
Filled & Flowed Tidelands of Boston Harbor

Dear Mr. Jabba:

The Department hereby issues this Written Determination, pursuant to MGL Chapter 91, the Public Waterfront Act, and 310 CMR 9.00, the Waterways Regulations, of its intent to approve the referenced application, subject to the attached conditions.

The Applicant plans to demolish the historic Hodge Boiler Works shop building and two smaller office buildings and replace them with an 8-story building of approximately 196,633 gross square feet for up to 119 residential units and a 2-level underground garage with 156 parking spaces. As proposed the project will include: approximately 3,691 square feet devoted to a 5-unit transient public lodging facility, a 30-slip marina with associated water taxi landing, and two freestanding buildings (of approximately 740 square feet each) for marina services and a public café. Approximately 60 % of the site will be devoted to open space in the form of a publicly accessible waterfront plaza, a 280 linear foot public waterfront walkway and a connecting sidewalk down London Street from Sumner Street. Through this development, the East Boston Harborwalk will connect two public parks, joining LoPresti Park through Carlton and Clippership Wharves to the Piers Park off Marginal Street. The Applicant also plans to remove abandoned timber piers and straighten the shoreline causing a net increase of 474 cubic yards of fill that will facilitate water-dependent uses, namely public access and shoreline stabilization.

The 3.5-acre *Project Site* is included within the planning district of the "*East Boston Waterfront District Municipal Harbor Plan*" approved by the Secretary of Environmental Affairs on July 15, 2002. The Massachusetts Historical Commission has allowed the demolition of the Hodge Boiler Works building, a building listed on the state Register of Historic Assets and eligible for listing on the National Register, in accordance with a fully executed Memorandum of Agreement on file with the Department.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

MassDEP on the World Wide Web: <http://www.mass.gov/dep>

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FINDINGS:

- 1) The Department determines that the use of filled tidelands for residential, restaurant, transient public lodging, and associated vehicular circulation and parking purposes is a nonwater-dependent use pursuant to 310 CMR 9.12(2)(e) and 9.12(4). The Department further determines that the use of filled and flowed tidelands for a public recreational boating facility and a publicly accessible waterfront plaza and walkways is a water-dependent use pursuant to 310 CMR 9.12(2)(a). Since the project consists of a mix of water-dependent and nonwater-dependent uses, the Department has processed the application as a nonwater-dependent use project in accordance with 310 CMR 9.12(1).
- 2) The Department determines that the entire *Project Site*, approximately 3.5 acres in size, is located on previously authorized filled Private Tidelands and flowed Private and Commonwealth Tidelands¹. The historic high water line is located along Sumner Street and the historic low water line is located within Boston Harbor. The marina is proposed landward of the 1949 State Harbor Line and 120 feet from the federal channel (a distance equal to three times the 40 foot depth of the channel).
- 3) The Applicant published the public notice in the Boston Herald on January 7, 2006, and the Department published it in the Environmental Monitor on January 11, 2006. The public hearing was held at the MassDEP Boston Offices on January 19, 2006. Twelve people attended the public hearing and 3 gave supportive testimony – Sarah Barnat, an abutter, Jamy Madeja, representing the owners of 4-20 New Street, and Vivien Li, of The Boston Harbor Association. Written comments were received from Massachusetts Office of Coastal Zone Management (CZM) and the Boston Environment Department during the public comment period. Written comments were also received from The Boston Harbor Association (TBHA) and the Conservation Law Foundation (CLF) on March 20, 2006. All of the public comments were reviewed, responded to by the project team, and addressed in the Department's findings or special conditions of this determination. The issues contained in the public comment that were within the MGL c. 91 jurisdiction can be grouped in the following manner: open space design, amenities and management; marina design and operation; interior *Facilities of Public Accommodation* management and operation; LoPresti Park design compatibility and financial commitments; lack of water transportation contribution; extended term; and zoning compliance with the Municipal Harbor Plan.
- 4) The Applicant has submitted relevant documentation regarding compliance with other regulatory requirements including those listed below.
 - a. Massachusetts Environmental Policy Act (Certificate on the SFEIR for EOEA #13031 dated February 14, 2005)
 - b. The Wetlands Protection Act (Order of Conditions for File #06-1058 issued by the Conservation Commission on December 19, 2005)
 - c. Water Quality Certification (issued February 16, 2006 under Transmittal # 07-1954)
 - d. The Mass. Historic Commission Act (Memorandum of Agreement executed on April 11, 2007)
 - e. Planning Board Notification dated December 14, 2004
 - f. The Municipal Zoning Certificate signed January 25, 2005 noted that variances were required from the zoning code for the Waterfront Manufacturing District. Through a

¹ The 153,046 square foot site includes 64,777 square feet landward of the Project Shoreline and 88,269 square feet seaward of the Project Shoreline.

decision granted June 7, 2005, the Boston Zoning Board of Appeals issued variances for the proposed dimensional requirements and uses to be consistent with the approved Municipal Harbor Plan. It was then made consistent with local zoning through a Map Amendment and Text Amendment adopted by the City of Boston on October 18, 2006.

- 5) Pursuant to MGL Chapter 30 section 61, the Department determines that the proposed project as conditioned will incorporate the appropriate feasible measures to avoid or minimize potential environmental impacts that may result from construction and operation of the project. As identified in the Secretary's Certificate on the Supplemental Final EIR, the following issues have been resolved within this review: MHC Determination of No Adverse Effect; clear delineation of the *project shoreline* and the associated calculations for open space and the *Water Dependent Use Zone*; and tangible and agreed upon financial commitments for improved pedestrian connections to, and redesign of, the adjacent LoPresti Park. Regarding the latter, LoPresti Park renovations have been estimated to cost \$150,000. The Applicant has committed \$30,000 in matching funds towards this effort and obtained commitments from other park abutters to provide 50% of the funding, a total of \$75,000. To date, the City has not been able to identify a source for the remaining \$75,000 cost of planning, designing and constructing improvements to LoPresti Park.
- 6) The Department determines that the proposed project, as conditioned, complies with all applicable standards of the Waterways Regulations, including the special standards for nonwater-dependent use projects at 310 CMR 9.51-9.53. Three aspects of this project are worth noting.
 - a) First, delineating the *project shoreline* on this site is complicated by the extent of existing, dilapidated, previously authorized, timber piers. While all dilapidated piers will be removed, the Department concludes that only approximately 1940 square feet of these derelict structures are "structures supported by existing piles" as required by the definition of *project shoreline*. (See Figure 6 of the Applicant's Response to Comments for the accurate depiction of the *project shoreline*.) The Applicant also plans to straighten the shoreline causing a net increase of 1,377 square feet of fill that will facilitate public access and shoreline stabilization, both water-dependent uses (474 cubic yards).
 - b) Secondly, the Department determines that the 5 units proposed for public lodging meet the definition of a *Facility of Public Accommodation* since this decision is conditioned to ensure that the lodging will be "made available directly to the transient public on a regular basis, or which the advantages of use are otherwise available on essentially equal terms to the public at large" (e.g. patrons of a waterfront hotel) "rather than restricted to a relatively limited group of specific individuals" (e.g. guests of a condominium owner).
 - c) Finally, the Department determines it is feasible to relocate the proposed floats so no float is closer than 25 feet from either property line extension, as required by 310 CMR 9.36(2), with the exception of any float(s) used exclusively as a water taxi landing. The Applicant states that 247 linear feet of floats are proposed along the western property line extension due to shallow water depths from the remains of an old pier. The Department's review of the bathymetry for the area found the water depth below the proposed marina floats in question ranged from 7 to 10 feet, with no dredging proposed, and the shallowest depths, from 2 to 7 feet, are under the float used as a water taxi landing². So with the abutter's consent³, the Department finds it is appropriate to accommodate the public water taxi use in its proposed location along the property line extension. This location will provide

² See Attachment 6 of the Response to Comments, dated May 5, 2006, and water depth survey received electronically on April 23, 2007.

³ The western abutter, the City of Boston Parks and Recreation Department, has no objection to the proposed float location per a letter from its Chief Engineer dated September 28, 2006

greatest visibility of the taxi operations from the park. Should the Applicant decide dredging is necessary in the future, the Department will require submission of a request for further authorization, beyond that contained herein, in accordance with the applicable provisions of 310 CMR 9.00.

- 7) The Department determines that the project complies with all of the requirements, modifications, limitations, qualifications, and conditions set forth in the "*Decision on the City of Boston's East Boston Waterfront District Municipal Harbor Plan*" approved by the Secretary of Environmental Affairs on July 15, 2002 (hereinafter the "Approved MHP"). The Secretary's decision approved one area-wide substitution for the width of the pedestrian access network [310 CMR 9.52(1)(b)(1)] and several substitute provisions for height [310 CMR 9.51(3)(e)], reconfiguration of the *Water Dependent Use Zone* [310 CMR 9.51(3)(c)], and location of the *Facilities of Public Accommodation* [310 CMR 9.51(3)(b)]. The project as designed is consistent with the Approved MHP, and was made consistent with local zoning through a Map Amendment and Text Amendment adopted by the City of Boston on October 18, 2006.
- 8) The Department determines that the project as conditioned serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands in accordance with 310 CMR 9.31(2)(b). The entire development site, all 1.49 acres landward of the proposed shoreline, is filled Private Tidelands. As designed and conditioned, the project will encourage the public enjoyment of the waterfront through both interior and exterior public uses. This link in the East Boston Harborwalk will connect two public parks, joining LoPresti Park through previously authorized developments to the Piers Park off Marginal Street. The adjacent LoPresti Park also will benefit from the construction of additional public services (including the public Café, public restrooms, waterfront walkway to London Street, recreational fishing, and the sale of bait and tackle) as well as a financial commitment toward the park's restoration. Furthermore, the public water taxi landing and public lodging facility offer opportunities for different groups of people to enjoy the East Boston waterfront.
- 9) Based on a letter dated June 12, 2007 from the Massachusetts Office of Coastal Zone Management (CZM), the Department determines that the proposed project is consistent with all applicable CZM policies, in accordance with M.G.L. c.91 § 18.
- 10) The Applicant requested a license with an extended term of 99 years. The license to be issued pursuant hereto shall be valid for term of 60 years from the date of the License issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in the original License. The factors considered in making this decision include: the extent and type of tidelands on the *Project Site*; consistency with state and local planning objectives articulated in the approved Municipal Harbor Plan; the extent of private investment in, and long-term maintenance of, public amenities; longevity, appropriateness, and financing of the structures; and other relevant factors. It is important to note that the Applicant's only support for water transportation at the *Project Site* is the proposed water taxi landing even though at least limited financial and operational support has been consistently provided by other licensed developments with the ¼ mile catchment area of the water transportation terminal planned for Lewis Mall. In addition to the public comments requesting greater support for water transportation, the Secretary's decision on the Approved MHP states, "I expect that specific and enforceable commitments to provide docks, land-side support facilities, and operating subsidies for water transportation will be a baseline condition (and not an offset) of

6/12/2007

the Chapter 91 licenses for all major projects within the harbor planning area.”⁴ In light of the Secretary’s stated expectations relative to the public benefits proposed, the Department can not support the Applicant’s request for the maximum extended term.

On the basis of the foregoing analysis, the Department will approve the proposed structures and uses described herein, as shown on the draft license plan and as shall be modified and delineated on the final license plans in accordance with the terms of this Determination. This Determination is subject to the attached special conditions to be carried out by the referenced Applicant (hereinafter the "Licensee"). These special conditions will be included, in substantially the same form, along with the standard conditions, with the final Chapter 91 Waterways license to be issued pursuant hereto. This Determination, including the attached Special Conditions, is subject to appeal as described in more detail in the Notice of Appeal Rights section. The Department will grant the Waterways license if no appeals are filed within 21 days of the issuance of this Written Determination and upon receipt of the final mylar plans.

No construction or alteration in or to any portion of the site within jurisdiction pursuant to M.G.L. Chapter 91 is authorized until a Waterways License has been issued. If you have any further questions, please contact Andrea Langhauser at (617) 348-4084 of the Waterways Regulation Program.

**THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION ON THE DAY OF 2007**

Lealdon Langley
Director, Wetlands and Waterways Program

Cc: Mayor Thomas Menino & Boston City Council
Paul McCann, Boston Redevelopment Authority
Chris Busch, Boston Conservation Commission (File #06-1058)
East Boston Harbor Planning Committee c/o Rich McGuinness, BRA
Bruce Carlisle, Coastal Zone Management
Brona Simon, Massachusetts Historical Commission
Massachusetts Environmental Policy Act Office (EOEA # 13031)

Abutters:
(Maverick Landing) City of Boston, 52 Chauncy Street, Boston 02111
(LoPresti Park) Boston Parks & Recreation Dept. 1010 Mass. Ave. Boston 02118
Trinity East Boston Two LP – Carlton Wharf, 40 Court Street, Suite 550, Boston 02108

THOSE THAT SUBMITTED PUBLIC COMMENTS
Vivien Li, TBHA
John Pike, Conservation Law Foundation

Ecc: MASSDEP/NE – DWW (File #06-1058)
Division of Fish and Game
Paul Sneeringer, U.S. Army Corps of Engineers, New England Division

WRP Files (2)

⁴ See page 12 of the Secretary’s Decision on the City of Boston’s East Boston Waterfront district Municipal Harbor Plan” dated July 15, 2002.

Notice of Appeal Rights:

Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the MassDEP at:

MassDEP Waterways Regulation Program
One Winter Street, 6th Floor
Boston, MA 02108

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the MASSDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;

- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MASSDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Filing Fee and Address

A copy of the Notice of Claim along with a MASSDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

WRITTEN DETERMINATION AND CONDITIONS

Boiler Works LLC

of – Boston - has applied to the Department of Environmental Protection --- to remove 3 existing buildings and to construct and maintain a building (up to 8 stories tall with a footprint of approximately 25,015 square feet), two free-standing, one-story buildings (with footprints of approximately 740 square feet each), approximately 38,282 square feet of open space including a 280 linear foot waterfront walkway, interior driveways and public sidewalks, a 2-level underground parking garage, 12” storm drain outfall and other underground utilities, a 30-slip public recreational boating facility and water taxi landing, and --- to remove existing timber piles, decking and bulkhead and to straighten minor irregularities in the shoreline through the placement of 267 linear feet of vertical steel sheet retaining wall and 240 linear feet of rip rap revetment with a net increase of approximately 474 cubic yards of riprap and fill -----

and has submitted plans of the same; and whereas due notice of said application, and of the time and place fixed for a hearing thereon, has been given, as required by law, to the – Mayor -- of the – City -- of --- Boston. -----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said -----

Boiler Works LLC --, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- to remove 3 existing buildings and to construct and maintain a building (up to 8 stories tall with a footprint of approximately 25,015 square feet), two free-standing, one-story buildings (with footprints of approximately 740 square feet each), approximately 38,282 square feet of open space including a 280 linear foot waterfront walkway, interior driveways and public sidewalks, a 2-level underground parking garage, 12” storm drain outfall and other underground utilities, a 30-slip public recreational boating facility and water taxi landing, and --- to remove existing timber piles, decking and bulkhead and to straighten minor irregularities in the shoreline through the placement of 267 linear feet of vertical steel sheet retaining wall and 240 linear feet of rip rap revetment with a net increase of approximately 474 cubic yards of riprap and fill -----

in and over filled and flowed tidelands of --- Boston Inner Harbor -- in the --- City -- of --- Boston --- and in accordance with the locations shown and details indicated on the accompanying *DRAFT* MASSDEP License Plan No. W05-1439-N received March 13, 2007 (9 sheets).

Specific legislative authorizations and licenses issued previously at the project site include: H&L 2340, H&L 610 (1881), H&L 3227 (1907), and DEP 8474 (2004). Harbor Lines were established across the southern property line first through Chapter 48 of the Acts of 1882 then through Chapter 124 of the Acts of 1949.

The structures authorized hereby shall be limited to the following uses: residential, public lodging for transient occupancy, restaurant, vehicular circulation, underground vehicular parking, public use and enjoyment of waterfront open space, dockage for commercial waterborne passenger vessels and recreational boats, marina support services, recreational fishing, and to provide a public recreational boating facility as the term is defined by the waterways regulations at 310 CMR 9.02.

This License to be issued pursuant hereto is valid for a term of 60 years from the date of issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in this license.

This License to be issued pursuant hereto is subject to the following Special Conditions and Standard Conditions.

Italicized terms used, but not defined, herein shall have the meanings assigned to such terms in the Waterways Regulations, generally at 310 CMR 9.02. All building measurements hereunder are defined in accordance with the Boston Zoning Code or as otherwise noted on the License Plans.

Special Condition #1 Removal of water-based structures: The Licensee shall remove and properly dispose of all deteriorated piles and wooden decking from the *Project Site* as located and described on Sheets 4 and 5 of 9 of the *Draft License Plans*. The piles shall be extracted by pulling unless structural reasons are identified, pursuant to the procedure identified in the Order of Conditions, that would necessitate cutting the piles at the mud line.

Special Condition # 2 Building Height: The building height shall be limited to 65 to 80 feet in accordance with the approved Municipal Harbor Plan as located and described on Sheet 9 of 9 of the *Draft License Plans*.

Special Condition #3 WDUZ: Surface parking for any use and all buildings for nonwater-dependent use shall be constructed outside the Water Dependent Use Zone, with the only exception being the café building as allowed by the Secretary's MHP Approval on page 33, and confined to the footprints shown on the *Draft License Plans* Sheets 2 and 3 of 9. The *Project Shoreline* and *Water-Dependent Use Zone*, which is approximately 18,497 square feet in size, shall be delineated on the Final License Plans.

Special Condition #4 Open Space Components: The Licensee shall construct and maintain in good repair approximately 38,282 square feet of open space. All pathways and the Waterfront Plaza shall be publicly accessible 24 hours each day with no obstacles for safe, free and universally accessible public passage. No gates or other barriers shall impede circulation, and the referenced open spaces shall be kept free of snow and ice during the winter months. The open space shall include the following components.

- a) A permanent Harborwalk of approximately 280 linear feet that makes a seamless connection at Carlton Wharf and LoPresti Park is located and to be described on the *Final License Plans* Sheets 3 and 6 of 9. The Harborwalk shall be a minimum of 12 feet clear of obstructions and be constructed of brick or concrete pavers similar to other paths on the Project Site. The Harborwalk shall include, at a minimum, these amenities: a row of 5 benches, trash receptacles, lighting to safely illuminate the path without shedding light on to the adjacent water or abutting properties, a Mutt-Mitt dispenser, and a flagpole in the Southeast corner of the *Project Site* near the base of London Street. To ensure public awareness of the Harborwalk network through the Project Site, at least 2 signs, designed in accordance with City of Boston Harborwalk Standards, shall be

- installed at the waterfront property line - one abutting LoPresti Park and another at the intersection of London and Sumner Streets.
- b) A publicly accessible Waterfront Plaza shall provide seating to view the harbor and a lawn area for passive recreation. Since the plaza is elevated above the Harborwalk, it shall be graded with a slight rise in the middle of the plaza and slope gently to either side thereby ensuring universal public access.
 - c) A tree-lined, concrete sidewalk shall be constructed along the length of London Street that seamlessly connects to the Harborwalk. The Final license plans shall clearly label the entrance and egress ramps to the underground parking garage ramp. Given that the garage ramp on London Street is an entrance only, no sensory aids need be installed to alert pedestrians of approaching vehicles.
 - d) In addition to the pedestrian amenities noted along the Harborwalk in item a), the open space shall include the following amenities to be located and described on the Final license plans. At least 5 bike racks installed at the base of London Street. An interpretative display shall be located within the public open space along the harbor that describes the historical and architectural significance of the *Project Site* in the context of the East Boston maritime history. The historic interpretative display to be installed along the waterfront is in addition to the Clippership sculpture and historic bronze plaque proposed for the entrance of the building at the intersection of Sumner and London Streets.
 - e) All of the above facilities shall be completed prior to the issuance of the first Certificate of Occupancy issued for the site except for landscaping and other matters awaiting seasonal opportunity that shall be completed within six months after the issuance of such Certificate of Occupancy.
 - f) All pedestrian and non-motorized modes of transit shall be permitted and shall be considered a permitted use to which the limited liability provisions of M.G.L. Chapter 21, §17c shall apply.

Special Condition #5 LoPresti Park Redesign: The Licensee shall deposit, within 6 months of the date of issuance of the first Certificate of Compliance on the Project Site, a thirty thousand dollar financial contribution (\$30,000) in a fund or escrow account designated by the Boston Parks Department for the purpose of matching City funds for planning, designing and constructing improvements to LoPresti Park. The Licensee shall submit adequate documentation to the Department within 30 days of the deposit to demonstrate compliance with this special condition.

Special Condition #6 LoPresti Park Impacts: The Licensee shall use all reasonable measures to minimize construction impacts on LoPresti Park including, but not limited to, keeping all construction staging within the *Project Site* and maintaining pedestrian access to and within the park during the construction periods. The existing chain link fence bordering the park shall be removed and replaced with a landscaped buffer of variable width as shown on the *Draft* license plans Sheet 3 of 9 prior to the issuance of the first Certificate of Occupancy issued for the site.

Special Condition #7 Interior Facilities of Public Accommodation: The Licensee shall provide a minimum of approximately 4,391 square feet of ground floor space for interior *Facilities of Public Accommodation* as located and described on the *Draft* License Plans Sheet 3 of 9 (ground floor plan to be included in final license plans). This interior space shall be occupied by the following specific facilities that shall commence operation by the date the first Certificate of Occupancy is issued for the *Project Site*.

- a) An approximately 3,691 square foot, separately owned area on the ground floor facing the waterfront shall be devoted to public lodging facility for transient occupancy consisting of 5 bedroom units and a common sitting room. Said facility shall be operated by an entity that is

independent of the residential condominium units, subject only to cooperative arrangements with the residential condominium units as may be necessary to provide for general maintenance, repair, overall site security, and other property management services of common benefit to all users of the project site (see Special Condition #8(b), Management Plan Oversight). The Licensee shall ensure that the common room and bedroom units of the lodging facility are made available directly to the transient public on a regular basis and the advantages of use are otherwise open on essentially equal terms to the public at large rather than restricted to residents or guests of the residential condominium units. Operation of the public lodging facility (including advertising efforts) shall meet generally accepted industry standards for bed and breakfast facilities as shall be specifically described in an approved Management Plan required pursuant to Special Condition # 8 and documented in subsequent updates to said plan.

- b) A stand-alone public Café, a separately owned unit with a footprint of approximately 740 square foot, shall be located on the southeastern portion of the Waterfront Plaza with a minimum setback of 25' from project shoreline. The restrooms within said Café shall be available to the general public regardless of Café patronage with at least one sign installed on the outside of the building notifying the public of these facilities. The signage shall be designed and posted to be clearly visible from the Harborwalk and Waterfront Plaza. Seasonal outdoor seating on the enclosed patio adjacent to the Café shall be available to the general public regardless of restaurant patronage in accordance with an approved Management Plan described in Special Condition # 8 below.
- c) The 2-level underground parking garage with 156 spaces shall provide parking for patrons of all *Facilities of Public Accommodation* on the *Project Site* as well as the marina.

Special Condition #8 Management Plan: The Licensee shall prepare a Management Plan for all interior and exterior publicly accessible space on the project site in accordance with 310 CMR 9.35(5) including but not limited to the open space, public lodging facility, public café, marina, and commercial water transportation operations.

- a) **Purpose:** The objectives of the Plan are, over the short-term, to advertise over a broad geographic area and to diverse user groups the availability of the public facilities; and, over the long-term, to achieve effective public use and enjoyment of all publicly accessible facilities while minimizing conflicts with other legitimate interests including the protection of private property and natural resources. There may be 2 plans – one for the landside facilities and one for the marina.
- b) **Management Oversight:** The Licensee has identified the condominium association as the future responsible entity for maintaining the signs, Harborwalk, open space and the associated exterior amenities on the *Project Site*. The residential condominium owners and their agent(s) shall use best efforts to ensure public use and enjoyment of all publicly accessible facilities by minimizing conflicts between user groups. This shall include, but not be limited to, working cooperatively with the managers of the public lodging facility, public café, and marina that shall be operated by entities independent of the residential condominium units to develop arrangements necessary to provide for general maintenance, repair, overall site security and other property management services of common benefit to all users of the *Project Site*. The Management Plan shall clearly describe the roles and responsibilities of each management entity involved in the *Project Site* to demonstrate compliance with this condition.
- c) **Content:** At a minimum, the Plan(s) shall address long-term programming, management, maintenance and marketing methods that will be employed. In particular, the Licensee shall describe methods to actively market and promote the use of both (1) the water transportation facilities to commercial operators and potential customers living at, near, or using the taxi landing on the project site, as well as the (2) public lodging to the general public and visitors frequenting the Greater Boston area. Further, the Licensee shall identify and provide contact information for the persons responsible for carrying out the duties of the Management Plan, the property

manager, and the operators of the marina, public lodging facility, and café. Finally, the Licensee may adopt reasonable rules, subject to prior review and written approval by the Department, as are necessary for the protection of public health and safety and private property, and to ensure public use and enjoyment by minimizing conflicts between user groups.

- d) Draft Plan: The Department has reviewed the initial draft Management Plan submitted with the license application and will provide specific comments under separate cover. The revised draft Management Plan shall be submitted for Department review and approval within 1 year of issuance of the license to be issued pursuant hereto. Coincident with the Department's receipt of the Revised Draft Plan, the Licensee shall provide a copy to those on the distribution list of this Written Determination for a 30-day comment period. The Final Management Plan and any conditions associated with the Department's approval thereof shall take effect immediately upon said approval unless another date is identified in the Department's approval of the plan.
- e) Periodic Review: The final Management Plan shall be periodically reviewed and revised as necessary based on changes in the operation and management of the Facilities of Public Accommodation. Any subsequent updates of the Management Plan shall identify the contact information for the property manager, marketing plans for the water taxi operations and public lodging facility, identify those uses that are utilizing the interior and exterior space reserved for *Facilities of Public Accommodation*, and otherwise be consistent with this Written Determination. The updated Management Plan(s) shall also include a copy of the Department's plan approval letter(s) and the results of annual compliance inspection reports detailing the Licensee's compliance with the Special and Standard Conditions of the Licenses to be issued pursuant hereto. When the Management Plan is updated, it shall be submitted to the Department for review and approval. At a minimum, an updated Management Plan shall be submitted for Department review on every 5-year anniversary of the issuance date of License to be issued hereto.

Special Condition # 9 Marina Reconfiguration: No marina float, unless used exclusively as the water taxi landing, shall be located closer than 25 feet from a property line extension to avoid significant interference with the littoral property owner's right to approach their property from the water, and to approach the waterway from said property, as provided in MGL c. 91, s. 17. The seaward most marina floats shall be located no closer than 120 feet from the edge of the federal channel and landward of the existing state harbor line. The marina floats shall be relocated on the final license plans to be consistent with this condition. Should the Applicant decide maintenance dredging is necessary in the future, the Department will require submission of a request for further authorization, beyond that contained herein, in accordance with the applicable provisions of 310 CMR 9.00.

Special Condition #10 Marina: The Licensee shall provide a *Public Recreational Boating Facility* with no more than 30 boat slips as located and described on the *Draft License Plans Sheets 2, 4, 5, 7 and 8 of 9, to be modified on the Final license plans per Special Condition #9 Marina Reconfiguration*, and in accordance with the following conditions listed below.

- a) All vacant berths shall be assigned in a fair and equitable manner to the public patrons of said facility, by means of a waiting list or other comparably unbiased method; nothing in this provision shall be construed to prevent berthing assignments based on vessel characteristics, or the offer of first refusal rights to existing patrons of the facility who wish to relocate to a vacant berth.
- b) Any contract or other agreement for exclusive use of berths at said facility shall have a maximum term of one year, and may be renewable upon each expiration for an additional period of up to one year.
- c) Reasonable arrangements shall be made to accommodate transient boaters, including, at a minimum, a procedure for making any berth available for transient use during periods of vacancy

- in excess of 24 hours. In the draft management plan described in Special Condition #8, the Licensee shall revise the 3-day vacancy period to maintain consistency with 310 CMR 9.38(1)(c).
- d) Any utility services provided at the marina shall be constructed and maintained in compliance with all applicable local and state requirements.
 - e) All lighting at the marina shall be designed to minimize interference with navigation by reflection, glare or interference with aids to navigation.
 - f) All exterior pedestrian facilities on the project site shall be open to the general public, except where access restrictions are necessary in order to avoid significant interference with the operation of the facility or to maintain security at slips, ramps, floats, and other docking facilities. Reasonable rules and regulations governing the use of areas subject to public access may be adopted by the Licensee as part of the marina management plan, subject to prior review and written approval of the Department.
 - g) The marina services building shall be universally accessible and provide marina patrons with restrooms and showers, bilge socks, and information that is posted and freely distributed on the sewage pump-out facilities located within close proximity to the Project Site, such as the Boston Harbor Shipyard and Marina, as well as contact information for pump-out boat services.
 - h) No fueling facilities have been proposed at the *Project Site* nor shall they be authorized in the license to be issued pursuant hereto.
 - i) Refuse receptacles shall be provided and maintained at every gangway and in each restroom.
 - j) Recreational fishing shall be allowed from the Harborwalk. The marina services building shall sell bait, tackle and the ability to rent fishing poles to the general public at prices charged at comparable facilities.

Special Condition #11 Marina Reconfiguration Zone: The Licensee may, upon written approval by the Department but without further licensing action, reconfigure the docking facilities to be authorized in the license to be issued pursuant hereto within the Zone of Reconfiguration drawn 25 feet inward of the side property line extensions as shall be described on the Final License Plans provided that:

- a) The Licensee submits to the Department a written request and plan for reconfiguration which does not extend beyond the delination zone, which does not result in an increase in the area of the waterway occupied from that which was originally licensed, and is otherwise consistent with the conditions of the license to be issued pursuant hereto;
- b) The Licensee submits to the Department a statement affirming that the material submitted to the Department has, at the time of such submittal, also been sent to the Conservation Commission and Boston Harbormaster, and that said Conservation Commission and Harbormaster has been informed that they have 30 days to register, with the Department, any objections to the proposed reconfiguration;
- c) The Licensee also shall submit a statement affirming the Boston Parks Department has reviewed the same material submitted to the Department and that the Boston Parks Department has no objection with any marina structure, including the public water taxi landing, located along the western property line; and
- d) All other applicable permits have been obtained, including any required approval under the Wetlands Protection Act.

Special Condition #12 Water Taxi Landing: The Licensee shall provide and maintain in good repair a water taxi landing, with a minimum length of 30 feet, in the northwest corner of the marina as clearly located and described on the License Plan Sheets 2 and 4 of 9. The Licensee is required to maintain sufficient depths for the public water taxi landing including requesting separate authorization for

maintenance dredging if it proves necessary in the future. Both sides of the public landing shall be used for commercial water transportation operations. The Water Taxi tenant may allow public transient dockage when space is available and it would not interfere with the water transportation operations. For purposes of the license to be issued pursuant hereto "*Transient*" shall be defined as touch and go berthing not to exceed 2 hours in duration unless the time period is modified in an approved Management Plan per Special Condition #8. No gates shall restrict access to the landing during the hours of taxi operation, which is 7:00 am to 12 midnight as may be modified by a Management Plan reviewed and approved by the Department. While a gate may be used to block public access to the marina slips, the initial draft Management Plan shall be revised to reflect the unimpeded access to the water taxi landing.

Special Condition #13 Construction Term: All work authorized herein shall be completed within five (5) years of the date of issuance of the license to be issued pursuant hereto. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Licensee submits to the Department no later than thirty (30) days prior to the expiration of said construction period a written request to extend the period and provides an adequate justification for said extension.

Special Condition #14 Annual Compliance Fee: The Licensee shall be subject to an annual compliance fee for nonwater-dependent uses pursuant to 310 CMR 4.00.

Special Condition #15 Department Compliance Access: The Licensee shall allow agents of the Department to enter the project site to verify compliance with the conditions of the Chapter 91 License prior to completion of this portion of the project.

Special Condition #16 Certificates of Compliance: The Licensee shall request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed to do business in the Commonwealth that the project was completed in accordance with the License.

Special Condition #17 Written Determination Term: The Written Determination issued hereto, shall remain valid for up to one year after issuance. Said term may be extended for one or more one year periods, provided that the Applicant submit to the Department, thirty (30) days prior to the expiration of said term a written request to extend the term and provides adequate justification for said extension. This condition shall expire upon issuance of a License pursuant hereto.

Please see the following Standard Waterways License Conditions. -----

Duplicate of said plan, number W05-1439-N is on file in the office of said Department, and original of said plan accompanies this License to be issued pursuant hereto, and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP.

This License authorizes structure(s) and/or fill on:

X Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the Licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.

X Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.

 a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this License.

Unless otherwise expressly provided by this License, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said – Boiler Works LLC -- by paying into the treasury of the Commonwealth -- ten dollars and zero cents (\$10.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department. *[Estimated as 156 c.y. = \$1560.00]*

Nothing in this License shall be so construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plan are recorded within sixty (60) days from the date hereof, in the Suffolk County Registry of Deeds.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this day of in the year two thousand seven.

Program Chief _____
Program Director _____
Commissioner _____

**Department of
Environmental
Protection**

THE COMMONWEALTH OF MASSACHUSETTS

This license is approved in consideration of the payment into the treasury of the Commonwealth by the said --- Boiler Works LLC of the further sum -----

of -- *(Estimated as Fifty three thousand five hundred eighty dollars and zero cents \$53,580.00) --*

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON

Approved by the Governor.

Governor