

Appendix H

[Attached]



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

JANE M. SWIFT  
Governor

BOB DURAND  
Secretary

LAUREN A. LISS  
Commissioner

June 28, 2002

The Fan Pier Land Company  
C/o Mr. Kyle Warwick  
Spaulding & Slye  
255 State Street  
Boston, MA 02109

RE: Consolidated Written Determination pursuant to M.G.L. c.91  
Waterways Application No. W02-0404-N  
Fan Pier, Boston

Dear Mr. Warwick:

The Department hereby issues this Consolidated Written Determination (CWD), 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. Since this project is expected to be built in phases over several years, the Department has issued this Consolidated Written Determination to regulate the project in its entirety, and ensure that public benefits commensurate with the project are provided at each phase. Individual licenses will be issued upon request of the applicant when each project component is ready for construction in accordance with the procedure detailed in the attached Special Conditions.

This project is the first to be designed and reviewed in accordance with the South Boston Waterfront District Municipal Harbor Plan, submitted by the City of Boston in July 2000 and approved by the Secretary of the Executive Office of Environmental Affairs on December 6, 2000. The Municipal Harbor Plan (MHP) offers a vision for the development of the area that preserves the public's rights to these tidelands and ensures public access to and enjoyment of the Boston Harbor waterfront while simultaneously allowing rejuvenation of this significant urban waterfront to move forward.

The Fan Pier project is the largest development covered by the Harbor Plan, and proposes approximately 3 million square feet of hotel, office, retail, and residential development, in addition to the new home for the Institute for Contemporary Art (ICA) and other civic and cultural spaces. The project will also include approximately 4.5 acres of waterfront public parkland; a one-third mile long segment of the Harborwalk between the existing or planned walkways at the adjacent federal courthouse and Pier 4 sites; a publicly accessible floating dock at the mouth of Fan Pier Cove; a water transportation terminal and supporting services; and a recreational boating facility with transient berths, a touch and go dock, and vessel pumpout service. In addition, the ground floor of every building is reserved for use by Facilities of Public Accommodation, such as restaurants, retail shops, and civic and cultural uses. These publicly accessible interior and exterior spaces will attract the public to the site and enliven the waterfront.

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171. TDD Service - 1-800-298-2207.

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

Printed on Recycled Paper

The project is subject to substitute provisions, offsets, amplifications, and other requirements of the approved MHP that modify standard c.91 regulatory standards. Substitute provisions allowing building heights in excess of the standard c. 91 height limits and establishing a reconfigured WDUZ were approved by the Secretary along with offset requirements that will result in an active and welcoming public pedestrian level environment. The offsets generally require the provision of open space and civic and cultural space above and beyond the c. 91 standards. The requirements of the MHP are incorporated into the attached Special Conditions. Please see the City of Boston's MHP submittal, and the Secretary's approval of the MHP, for more details.

#### FINDINGS:

1. The Department determines that the use of filled Commonwealth tidelands for residential, office, hotel, retail, civic and cultural uses, and associated parking, are nonwater-dependent uses pursuant to 310 CMR 9.12(2)(e)(1) and (6) and 9.12(4). Given that the project does not consist entirely of water-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 approximately 20 acre site is located on filled and flowed tidelands within a geographic area subject to MGL Chapter 91 jurisdiction pursuant to 310 CMR 9.04(2). The tidelands are all considered to be Commonwealth Tidelands because the site is located more than 100 rods (1650 feet) seaward of the historic high water mark. All fill has been previously authorized pursuant to the following legislative authorizations and c.91 licenses: Chapters 432, 450, and 461 of the Acts of 1869; Chapters 236 and 320 of the Acts of 1872; H&L License 229 (1874); Chapter 260 of the Acts of 1880; H&L License 555 (1880); Chapter 301 of the Acts of 1888; H&L License 2712 (1903); DPW License 647 (1926); DPW License 1681 (1935); DPW License 5554 (1969); and DPW License 5882 (1971).
3. The Department determines that relevant documentation regarding compliance with the Massachusetts Environmental Policy Act (EOEA No. 12083), local zoning, and planning board receipt of application, have been provided. Any other necessary approvals, such as the Wetlands Protection Act Order of Conditions from the Boston Conservation Commission and the Water Quality Certification from DEP, shall be obtained by the Applicant prior to the issuance of any licenses.
4. The Department determines that the required public notice was published by the Applicant on February 7, 2002 in the South Boston Tribune, on February 8, 2002 in the Boston Herald, and on February 9, 2002 in the Environmental Monitor. Two public hearings were held, the first on March 5, 2002 at the DEP offices at One Winter Street in Boston, and the second on March 6, 2002 at the Condon Community Center, 200 D Street in South Boston. Oral testimony presented at the hearing was generally favorable to the project, but emphasized that public benefits should be provided early and commensurate with the project buildout. There was also concern that opportunities for ongoing public review of the project be available.
5. An extended public comment period was established and ran from February 9, 2002 until March 29, 2002. The Department received written comments from 30 individuals and organizations. These comments were also generally supportive of the project. Common themes among the comments included: sequencing of project build-out and public benefits; interim uses of the site (prior to completion of the entire project); on-going public review of the project; provision of water transportation services; design, programming, and maintenance of the public open spaces; public use of dock space in the marina; and commitments of space and resources to the civic and cultural institutions. The Department carefully considered all public comments as part of its review of this project and sought to address these concerns in this Consolidated Written Determination.
6. The Department determines that the 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. In addition, 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 South Boston Waterfront District Municipal Harbor Plan approved by the Secretary of Environmental Affairs on December 6, 2000. Furthermore, no overriding detriment to a public interest has been identified to overcome

presumption that the project serves a proper public purpose in accordance with 310 CMR 9.31(3). Therefore, the Department determines that the proposed project serves a proper public purpose that provides greater public benefit than detriment to the public's rights in said tidelands.

7. Based on a letter dated June 26, 2002 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 310 CMR 9.54.
8. The Applicant requested an extended term license of 99 years pursuant to 310 CMR 9.15(1)(b). Based on its review, the Department has determined that a term of 96 years is appropriate for each of the licenses to be issued pursuant to this Consolidated Written Determination. This term was calculated as the weighted average between the maximum license term for projects on filled tidelands (99 years) and the maximum term for project components over flowed tidelands (65 years). As required by 310 CMR 9.15, the Applicant provided documentation to the Department justifying the extended terms, including a letter from a structural engineer attesting to the expected life of the structures, and an explanation of the necessity of the extended terms in light of the financing requirements of the project. Furthermore, the Department finds that the extended terms are warranted because the project is consistent with the MHP, and offers long-term public benefits in association with the use of these tidelands. Among the long-term benefits is a substantial investment by the Applicant toward water transportation infrastructure and monetary subsidies necessary to help provide viable ferry service to this part of the South Boston waterfront.

On the basis of the foregoing analysis, the Department will approve the proposed structures and uses described herein, as shown on the plans submitted with the application and as shall be modified and delineated on the final license plans in accordance with the terms of this Consolidated Written Determination. This CWD is subject to the attached special conditions to be carried out by the referenced Applicant. These special conditions will be included, in substantially the same form, along with the standard conditions, with the final Chapter 91 Waterways licenses to be issued pursuant hereto. This CWD, including the attached Special Conditions, is subject to appeal as described in more detail on page 5. The Department will grant Waterways licenses, pursuant to the procedure outlined herein, if no appeals are filed within 21 days of the issuance of this Consolidated Written Determination.

Please contact Alex Stryzky at (617) 348-4084 if you have any questions.

THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL  
PROTECTION ON THE 28<sup>th</sup> DAY OF JUNE, 2002.



Glenn Haas  
Director  
Division of Watershed Management

Cc: Please see attached distribution list.

Distribution List

DEP NERO

CZM

Mayor Thomas M. Menino

Boston Redevelopment Authority

Boston Conservation Commission

Boston Environment Department

Boston Harbormaster

Kyle Warwick, Spaulding & Slye

Greg Bialecki, Hill & Barlow

Bennet Heart, Conservation Law Foundation

Alice Boelter, Boelter & Associates

James E. Rooney, Massachusetts Convention Center Authority

Jon Seward, Seaport Alliance for a Neighborhood Design

John Twohig, Goulston & Storrs

Valerie Burns, Boston Natural Areas Network

Summer H. Cohen

Allen S. Marks

Joseph Mizzoni

Marie Mizzoni

Sarah Marks

George Kubitsky

Mary Szumski

Annie Martin

Rose M. Fantasia

Raymond Lapointe

Nina White

Nicholas Bizzari

Theresa Bizzari

James Campano

Stevan Goldin

Katherine F. Abbott, Island Alliance

Jill Medvedow, Institute of Contemporary Art

Patrick Moscaritolo, Greater Boston Convention & Visitors Bureau

Patricia Foley, Save the Harbor, Save the Bay

Diarmuid P. O'Connell, The McCourt Company

Sarah White & Martin Aronson

Vivien Li, The Boston Harbor Association

Valerie Fletcher, Adaptive Environments

Harlan Jones

Lisa Damtoft

Andrew Hally

**Notice of Appeal Rights:**

**A. 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:

Docket Clerk  
Office of Administrative Appeals  
Department of Environmental Protection  
One Winter Street, 3<sup>rd</sup> 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 DEP at:

DEP Waterways Regulation Program  
One Winter Street, 6<sup>th</sup> Floor  
Boston, MA 02108

**B. 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 DEP 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 DEP'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.

**C. Filing Fee and Address**

A copy of the Notice of Claim along with a DEP 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.

**Consolidated Written Determination and Special Conditions  
The Fan Pier Land Company**

**1. Consolidated Written Determination and License issuance**

**1. Definitions**

- a. "Applicant" as used herein shall mean the Fan Pier Land Company, its successors and assigns to the Project Site.
- b. "Consolidated Written Determination (CWD) Application" shall mean the application dated January 4, 2002, submitted by the Fan Pier Land Company, on file with the Department.
- c. "Project Site" shall mean the nearly 21 acre site, including land and watershed area, located on Old Northern Avenue in Boston, as more fully described in the CWD Application. The project site consists of nine (9) building parcels labeled Parcels A, B, C, D, E, F, H, I, and J. Parcels A, B, C, D, E, F, H, and I are designated for primarily commercial and/or residential development. Parcel J is designated for development of a new building for the Institute of Contemporary Art (ICA).
- d. "Public Realm" shall mean the exterior publicly accessible areas and accessory amenities, including parks, open spaces, piers and boardwalks, sidewalks, roads and streets, and water transportation infrastructure and operations subsidies.

**2. Development Program:** The structures and intended uses to be authorized for the building parcels are as follows:

<u>Parcel</u>	<u>Primary intended use</u>	<u>Alternate intended use</u>	<u>Gross Floor area</u>
A	hotel	residential or office	492,475 sq. ft.
B	residential	hotel or office	424,625 sq. ft.
C	residential	none	225,520 sq. ft.
D	residential & civic/cultural	none	212,460 sq. ft.
E	residential	hotel or office	314,025 sq. ft.
F	office	hotel or residential	492,635 sq. ft.
H	office & civic/cultural	hotel or residential & civic/cultural	320,115 sq. ft.
I	office	hotel or residential	492,145 sq. ft.
J	civic/cultural	none	60,000 sq. ft.

It is anticipated that each structure will also contain retail uses on the first and/or second floors. The structures and intended uses to be authorized for the watershed are as generally shown on Plan 2, Project Site Plan, submitted with the CWD Application.

**3. Municipal Harbor Plan:** This CWD is issued pursuant to the "Decision on the City of Boston's South Boston Waterfront District Municipal Harbor Plan" issued on December 6, 2000 by the Secretary of the Executive Office of Environmental Affairs, which conditionally approved the

City of Boston's submittal dated July, 2000 ("Approved MHP"). Nothing in this CWD should be interpreted as authorizing or requiring anything that is inconsistent with the Approved MHP. This CWD shall remain valid for the purpose of issuing licenses for the structures and uses authorized herein for a period of five (5) years after the issuance of any license under this CWD even if within that five (5) years the South Boston Waterfront District Municipal Harbor Plan has been amended so as to materially change the conditions for the Project Site.

4. Term of the Consolidated Written Determination (CWD): This CWD shall remain valid until all structures/uses are licensed, or for up to five (5) years after the Final CWD is issued, whichever is sooner. Said term may be extended, provided that the Applicant submits to the Department, no less than thirty (30) days prior to the expiration of said term, a written request to extend the term, and provides an adequate justification for said extension. In recognition of the large scale and long-term nature of this project, it is expected that an extension to the term of this CWD will be requested, and the Department's approval of an extension request shall not unreasonably be withheld.

5. Design review: Prior to requesting a license for any component of the project, the Applicant may submit schematic design plans to the Department for its review and comment. The Department shall review the plans and advise the Applicant as to whether the project design is proceeding in substantial conformance with the CWD.

6. License issuance: Upon request of the Applicant, the Department may issue multiple licenses for the structures and uses described herein, provided that the licenses are conditioned in the manner provided herein so that the overall public benefits will exceed public detriments as each portion of the project is completed. Said Licenses shall be issued in accordance with the following procedure:

- a. The Applicant's request for a license shall be accompanied by plans prepared in accordance with 310 CMR 9.11(3), including building plans and plans of all public amenities required for each construction phase; copies of all necessary state, federal, and local approvals or authorizations, including dredging permits; a comment disposition document that summarizes the comments of the Department made during the design review process and provides corresponding responses; and any additional information required in this CWD. Said request for a license shall be distributed to all parties that commented during the public comment period for this CWD (list of commentators attached).
- b. The Department shall review the materials submitted and determine whether the plans are in substantial conformance with the terms of this CWD. If the Department advises the Applicant that its license plans are not in substantial conformance with this CWD, the Applicant may revise the plans so that they conform, or submit a new application which shall be subject to a new and separate review under 310 CMR 9.00. In recognition of the long-term nature of the project, potential for changes in technology, desirable changes in design resulting from the design review process, requirements of other permitting agencies, and other relevant factors, the Department

may issue a license for a component of the project which differs in some aspects from the plans and description submitted with the application for this CWD, as long as the component remains in substantial conformance with the CWD. For purposes of this CWD, a final license plan will be found to be in substantial conformance with this CWD provided that:

- i. It is not inconsistent with any qualifications, limitations, conditions, or numerical requirements of the approved MHP;
  - ii. It meets all applicable conditions of this CWD;
  - iii. It conforms to the building and site layout shown on the Project Site Plan, Plan 2 submitted with the CWD application;
  - iv. It proposes no new use from those listed above; except for a change in use that maintains or enhances public benefits of the project and which represents an insignificant deviation from the use statement specified in this CWD;
  - v. Any proposed increase in the footprint of a building is less than 10% of the footprint area as shown in the Building Envelope Plans, Plans 5 through 13 submitted with the CWD application; and is accompanied, if necessary, by a corresponding reduction in other building footprint(s) in order to maintain consistency with the approved MHP; and
  - vi. It does not trigger further MEPA review (such as a Notice of Project Change).
- c. Upon determining the application to be in substantial conformance with this CWD, the Department shall establish a thirty (30) day public comment period and schedule a public informational meeting. The Department shall issue a public notice, to be distributed by the Applicant to all commentors on this CWD, all owners and tenants of the project site and abutters thereto, the Environmental Monitor, and the public officials and agencies identified in 310 CMR 9.13(1)(a).
- d. Upon the close of the public comment period, the Department shall either incorporate such comments as it deems appropriate in a manner consistent with this CWD and issue a final license or, through meetings with the Applicant, attempt to resolve any conflicting comments or disagreements regarding the terms and conditions of the proposed final license, in a manner consistent with this CWD, and make a final decision as to issuance of such license. The Department shall issue the final license under 310 CMR 9.14(5) within sixty (60) days of the expiration of the public comment period, or fifteen (15) days from the date of the Governor's signature, whichever is later.

7. Compliance with the Approved MHP: Each license application shall document that the proposed structures and uses comply with all offsets, amplifications, design guidelines, approval conditions, and all other provisions of the Approved MHP. At a minimum, the application shall include the following information:

- a. Each license application to construct a building shall include sufficient *documentation* to ensure that the proposed structure will not project into the TERPS limits. Should the proposed structure project into the TERPS limits, the application shall be accompanied by a written affirmation to the Department from both the FAA and the BRA, that no adverse effects are anticipated to the operations of runway 27 in a manner that would increase flights over other neighborhoods:
- b. To ensure that the Approved MHP-specified aggregate massing limit of 2.927 million s.f. ( $\pm 1\%$ ), exclusive of cultural/civic uses, for the Fan Pier site is not exceeded, each license application shall include a running account of individual building and aggregate site massing figures, including amounts licensed previously, the amount of the subject license application, and the amount remaining for future building licenses.
- c. Each license application shall include a Net New Shadow (NNS) analysis, based on the final building design and performed in accordance with the methods adopted in the Approved MHP. Each application shall include an updated accounting of NNS including calculations for the proposed building to be licensed, a running total of the NNS contributed by all other licensed buildings, and a table depicting the manner in which NNS has been, is, or will be offset. An updated version of Figure E-16 submitted as part of the CWD Application, reflecting as-built conditions, shall also be submitted with each building license application.
- d. Each license application shall include an updated, accurately-scaled version of Plan 4 of the CWD Application that reflects proposed and as-built conditions, site coverage totals and percentages, and tabulations of open space, pedestrian-useable space or other areas being provided in connection with a fixed offset as specified in the Approved MHP. Open space types shall be differentiated as shown on the plan.
- e. Each license application shall include a version of Table C-4 of the CWD Application that tracks the status of minimum offsets specified in the Approved MHP and the status of NNS calculations as reflected by as-built conditions. If necessary, additional offset categories shall be added to the table.
- f. The Water-dependent Use Zone (WDUZ) shall cover an area of at least 154,569 s.f., and have the minimum dimensions as shown on Figure C-3 of the CWD Application and described in the Approved MHP.
- g. Pursuant to the amplification in the Approved MHP, no more than 20% of the ground floor area of a nonwater-dependent building may be used for upper floor accessory services (as defined in 310 CMR 9.02). Furthermore, the upper

floor accessory services shall not front along the waterside of any buildings on the waterfront.

- h. The Department shall review the information required above at each construction phase to ensure that NNS is being offset adequately and that fixed offsets required by the Approved MHP are being provided accordingly. Upon submittal of the application for construction of the final building, the Department shall make a determination as to whether any additional offsets are required according to the formula established in the Approved MHP. If the final calculations indicate a shortfall, additional offsets shall be required as a condition of the license.
- i. In addition to the above, the first application submitted for a commercial/residential building shall be accompanied by certified registry copies of deed restrictions for all three civic/cultural uses.

8. Dredging permit(s): Upon request of the Applicant, the Department may issue a dredge permit or may authorize dredging in conjunction with a license. The dredge permit or authorization shall remain valid for a term of five (5) years, and shall, at a minimum, be subject to the Standard Waterways Dredging Conditions (attached). The following information shall be submitted as part of any request for authorization to dredge:

- a. Final Order of Conditions;
- b. 401 Water Quality Certificate;
- c. Information documenting that the proposed dredging complies with the Waterways Regulations, particularly the requirements of 310 CMR 9.40; and
- d. Any additional information concerning dredging activities required elsewhere in this CWD.

9. Master Schedule: The Applicant shall keep the Department reasonably informed from time to time as the Applicant develops more definitive plans for the phasing/timing of the various components of the project or if the Applicant alters its plans for the phasing and/or timing of the project from those described herein or in subsequent updates. The Applicant shall also use reasonable efforts to notify the Department of its intention to submit schematic design plans, requests for licenses for any components of the project, or dredge permit applications, at least three (3) months prior to the date of such submissions.

10. Common Area Entity: Prior to issuance of any license pursuant to this CWD, the Applicant shall provide to the Department documentation that the Common Area Entity has been incorporated as a legal entity with responsibility for implementing and maintaining the public benefits required by this CWD, pursuant to Section 4 of this CWD.

11. Interior areas: Plans and application materials submitted with any request for a license shall include the following information for each subject building:

- a. Clearly demarcated and tabulated upper floor accessory service areas located on the ground floor.
- b. Layout, area, and specific uses of ground floor Facilities of Public Accommodation.
- c. Layout and location of public entrances, interior lobbies, hallways, and similar public areas on the ground floor.
- d. Associated ground level exterior areas (such as restaurant patios or display areas).
- e. Hours of operation, consistent with any relevant requirements elsewhere in this CWD, and maintenance plans for interior publicly accessible areas.
- f. Upper-floor uses.

**12. Subdivision of the Project Site:** Nothing herein shall be deemed to preclude the division of the Project Site into separate parcels, or the separate conveyance, ground leasing or financing of such parcels, in order to facilitate the construction and use of the project site as provided herein. Licenses may be requested by and issued to the owners or ground lessees of such parcels. This CWD and licenses issued pursuant hereto shall run with the land identified herein and shall automatically be transferred upon a change of ownership of the affected property within the chain of title for which this CWD or License has been recorded. If there is a change of ownership with respect to a portion of the Project Site, all rights, privileges, obligations, and responsibilities specified in this CWD or in licenses issued pursuant hereto with respect to such portion of the Project Site shall be transferred to the new landowner(s) upon recording of the changed ownership(s). Notwithstanding the foregoing, the construction, maintenance, and management obligations with respect to the Public Realm shall remain with the Fan Pier Land Company or Common Area Entity, as provided below.

## **2. Interim Use License**

**1. Interim Use License Issuance and Term:** Within three (3) months of the issuance of the Final CWD, the Applicant shall file a license application for all existing unlicensed structures and uses that are to remain on the site on an interim basis as construction of the project described in this CWD progresses. Notwithstanding the license issuance process described in Section 1, the Department shall issue an interim license upon receipt of plans, prepared in accordance with 310 CMR 9.11(3)(c), that are consistent with the requirements of this section, and after the completion of a thirty (30) day public comment period. The interim use license shall be superseded incrementally by licenses issued for the construction of the residential/commercial buildings, the civic/cultural building on Parcel J, and components of the Public Realm. The term of the interim use license shall be coincident with the term of this CWD, except that no surface parking, except as allowed by the Approved MHP, shall be authorized for more than ten (10) years from the date of the issuance of the interim use license.

**2. Interim Public Benefits:** At a minimum, the Applicant shall provide the following public benefits within three (3) months of the issuance of the interim use license: construction of an interim Harborwalk from the Federal Courthouse site to the Pier 4 site along the project shoreline; appropriate interim park amenities such as benches and trash receptacles installed in

association with the interim Harborwalk; and signage consistent with the City of Boston Harborwalk signage specifications. No parking spaces shall be licensed within the Water-dependent Use Zone as defined in the approved Municipal Harbor Plan, with the exception that no parking shall be authorized within one hundred (100) feet of the shoreline along the fan edge. Undeveloped areas used for construction shall not interfere with the public's access to and enjoyment of public open space, nor shall construction activity, materials storage, or other use of vacant, undeveloped land, displace any portion of the interim or permanent Harborwalk without an acceptable detour.

3. The interim use license may authorize the use of the site for short-term entertainment or sporting events open to the public during its the term, provided, however, that no permanent structures or site alterations are made in connection with such uses. Any short term private event not open to the general public shall require prior written approval by the Department as a Minor Project Modification to the Interim Use license pursuant to 310 CMR 9.22.

4. The interim use license may authorize the continued use of the existing restaurant building along Old Northern Avenue, provided that no structural alterations or changes of use occur.

5. No other new permanent structure or use, except for minor accessory structures associated with the parking use located outside of the water dependent use zone, shall be eligible for licensing on an interim basis.

6. Any storage of construction materials, excavation, construction staging, any other site preparation/pre-construction use of the site for the water-dependent or nonwater-dependent use project components described in this CWD, shall only be allowed as part of a fully licensed project, and shall not be authorized in an interim use license.

7. The interim use license shall not be subject to any tidewater displacement or occupation fees.

### **3. Phasing of project build-out and public benefits**

1. In the event that the project components are constructed in phases, the required public benefits shall be provided according to the phasing schedule outlined in this section. The licensing of the civic/cultural building to be constructed on Parcel J shall not be counted as a trigger for public benefits in the phasing schedule. This schedule shall be incorporated into any license issued hereafter, as necessary, for the proposed Public Realm elements and commercial/residential buildings. The exterior open spaces shall be designed and constructed in accordance with the standards detailed in Section 4 of this CWD and shall be open to the public twenty-four (24) hours per day, subject to rules and regulations approved in advance by the Department. The intent of this phasing schedule is to ensure that the overall public benefits will exceed public detriments as each portion of the project is completed. The public benefits required in connection with a construction phase shall be completed and open to the public prior to the issuance of the Certificates of Occupancy for the licensed building(s), unless otherwise specified.

The Department may permit the temporary use of areas designated as public open space for construction purposes.

2. The following public benefits shall be made available in connection with the licensing of the first building.

- a. Two-thirds of the Public Green.
- b. A continuous Harborwalk adjacent to the project shoreline, portions of which may be provided in an interim condition, or the maintenance of same if previously provided as a condition of the interim use license.
- c. The entire Water-dependent Use Zone (WDUZ), as delineated in the Approved MHP, shall be maintained free of nonwater-dependent uses and be accessible to the public twenty-four (24) hours per day.
- d. At least one restroom accessible to the public twenty-four (24) hours per day. Use of said restroom(s) shall be free of charge and shall not require any purchase of goods or services on the project site.
- e. For the public areas listed above, a Construction Period Access Plan that establishes reasonable rules and regulations for access to public areas during the construction period. This Plan shall be updated accordingly as construction proceeds through other phases.

3. The following public benefits shall be made available in connection with the licensing of the second building.

- a. The water transportation dock and associated landside ticketing office and waiting area. The ticketing office/waiting area may be provided in either an interim or permanent location.
- b. Unless the Institute of Contemporary Art (ICA) has submitted a license application, the entirety of Parcel J shall be maintained as a publicly accessible lawn area until a license is issued for the ICA and construction commences.
- c. The interim Harborwalk proximate to the building proposed to be licensed in this phase shall be upgraded to its final condition.
- d. Upon issuance of the Certificate of Occupancy for the second building, the first of ten (10) annual payments of approximately \$150,000 each for water transportation operations and services shall be made in accordance with Section 4(C).

4. The following public benefits shall be made available in connection with the licensing of the third and fourth buildings, in addition to those required as part of the first phase:

- a. The remainder of the Public Green.
- b. At least one of the required civic/cultural uses (the ICA, Harbor Islands Gateway, and Family-Multi-cultural Center) or, alternately, the area of Fan Pier Park must be seeded and maintained as a publicly accessible lawn. Said lawn area shall contain seating and trash receptacles and shall remain publicly accessible twenty-four (24) hours per day, subject to rules approved by the Department.
- c. The interim Harborwalk proximate to the buildings proposed to be licensed in this phase shall be upgraded to its final condition.

- d. If no portion of the marina has been constructed or is proposed for construction in this phase, then a touch and go dock with a pump out service shall be provided.

5. The following public benefits shall be made available in connection with the licensing of the fifth and sixth buildings, in addition to those required as part of the earlier phases:

- a. Fan Pier Park, if buildings C and D have been licensed prior to or as part of this phase.
- b. If buildings C and D are not part of this phase, then the area of Fan Pier Park shall be maintained, or continued to be maintained, as a publicly accessible lawn with seating and trash receptacles, and the Lookout Pavilion shall be constructed and open to the public. The interim Fan Pier Park shall remain open to the public twenty-four (24) hours per day, and the Pavilion shall be open to the public during reasonable hours, seven days a week, subject to rules approved by the Department.
- c. Publicly accessible wave attenuator.
- d. At least one civic/cultural use.
- e. The interim Harborwalk proximate to the buildings proposed to be licensed in this phase shall be upgraded to its final condition.

6. The following public benefits shall be made available in connection with the licensing of the seventh and eighth buildings, in addition to those required as part of the earlier phases:

- a. Fan Pier Park (if not required to be constructed earlier).
- b. The remainder of the interim Harborwalk shall be upgraded to its final condition.

7. The following general requirements apply:

- a. Any marina construction, whether licensed separately or as part of a license for a building subject to the phasing requirements above, shall include the provision of transient and touch and go docks, and a pumpout facility.
- b. If not already available, a touch and go dock must be provided concurrently by the Applicant with the first civic/cultural use, including the ICA.
- c. Notwithstanding the phasing schedule detailed above, if four or more buildings have been licensed (other than Parcel J and the Lookout Pavilion) pursuant to this CWD, the following public benefits must also be provided within ten (10) years of the issuance of this CWD, if not previously completed: (1) the area of Fan Pier Park must be seeded and maintained as a publicly accessible lawn with seating, trash receptacles, and a seasonal pavilion; and (2) the Harborwalk along the entire project shoreline shall be upgraded appropriately; and 3) at least ten (10) transient berths for recreational boating shall be provided.

#### 4. Construction and maintenance of Public Realm

##### A. Common Area Entity

1. The Licensees, through membership in a Common Area Entity (CAE) established pursuant to this CWD, shall be fully responsible for the implementation, management,

maintenance, and control of the Public Realm and for compliance with the requirements of this CWD and Licenses issued pursuant hereto.

2. The Applicant shall submit to the Department, for its review and approval, a copy of the Articles of Organization and By-laws establishing a Common Area Entity as a Massachusetts non-profit corporation within three (3) months of the issuance of this CWD, but in any case no later than filing a request for an interim use license pursuant to Section 2. The CAE shall have the right and ability to assess the owners or ground lessees of the building parcels for the expenses of managing and operating the Public Realm and the right and ability to impose liens on the building parcels for non-payments of such assessments. The CAE shall consist of the owners of the nine building sites identified in the CWD application, plus the owner(s) of the Public Realm.

3. After the issuance of the first license for a building, the CAE shall hold a public meeting at least once per year for which broad public notice shall be given. At such meetings, the CAE will report on and discuss matters related to the Public Realm, including: a) on-going operational and maintenance issue; b) budget issues; and c) ongoing or proposed programming. The CAE shall distribute written meeting minutes to the Department, members of the public attending the meeting, and others upon request.

4. The CAE shall establish an advisory committee consisting of representatives of the on-site civic and cultural institutions, the City of Boston, neighborhood groups, and other organizations. This advisory committee shall meet at least three (3) times per year until all buildings and Public Realm components are constructed, and at least once per year thereafter. Broad public notice shall be given prior to each meeting of the advisory committee. The advisory committee shall review plans of the Public Realm elements before final plans are submitted to the Department, pursuant to Section 4(B)(1), and shall review the Public Realm Management Plan and amendments thereto before the Plan is submitted to the Department, pursuant to Section 4(D).

#### B. Licensing and Construction of the Public Realm

1. Contemporaneously with the filing of the first application for any new residential/commercial building on the project site (excluding the civic/cultural building on Parcel J), the Applicant or the CAE shall file a license application for all elements of the Public Realm, to be constructed in accordance with the phasing schedule contained in Section 3 of this CWD. Notwithstanding the submittal requirements for filing a license request in Section 1, the Department may accept schematic plans for purposes of issuing this license. After review by the advisory committee, final design plans shall be submitted for the Department's review and approval prior to construction each component of the Public Realm. The Department may conduct a public review period prior to issuing its final approval of the design of the Public Realm. In those instances where an open space area is to be constructed in phases, such as the Public Green and the Harborwalk, suitable transitional areas between final and interim conditions shall be designed and constructed. The Department may permit park areas to be constructed to

an interim condition, if said park area is required to be completed before it is used for construction purposes.

2. The Fan Pier Land Company or the CAE shall construct and maintain all elements of the Public Realm in accordance with the specifications listed below. Unless otherwise specified, all pathways and connections shall be consistent with City of Boston Harborwalk Design Guidelines. All public facilities shall conform to the applicable provisions of 521 CMR, the Massachusetts Architectural Access Board, and the design guidelines and other requirements of the Approved MHP. The management and maintenance of these areas shall be subject to a Public Realm Management Plan, as further described at Section 4(D) below.

a. Public Green

- i. The Public Green shall be designed as a generally open area adaptable to a variety of uses with the final design substantially as shown on Plans 16 and 17 of the CWD application.
- ii. Final dimensions of the landscaped portion of the Public Green shall be approximately 200 feet by 275 feet, as shown on Plan 16. In no case shall the distance between buildings F and H be less than 270 feet, at or above grade.
- iii. The section of Pier Street adjacent to the Public Green shall be designed, managed and maintained as a pedestrian-oriented way and shall include the use of paving materials, bollards, traffic calming measures, and park/street transitional areas to convey this effect.
- iv. The Public Green shall contain adequate lighting, seating areas, trash receptacles, signage, bicycle racks, lawn and landscaped areas, and internal pathways. A path system providing convenient pedestrian access from the west and south to the water transportation dock shall be provided. The major pathway elements shall be a minimum width of ten (10) feet clear. Secondary pathway elements shall be a minimum width of five (5) feet clear.
- v. The Public Green shall be designed so as to preserve a view corridor to the water transportation dock from Old Northern Avenue and from Promenade Street between the buildings on Parcels E and F.
- vi. The portion of the Harborwalk through the Public Green shall at a minimum meet the Harborwalk standards described elsewhere in this CWD. The final design, location, and number of park amenities shall be reviewed and approved by the Department.
- vii. The uses and programmatic activities anticipated in the Public Green, and any proposed rules and regulations, shall be incorporated into the Public Realm Management Plan.

b. Fan Pier Park

- i. Fan Pier Park shall be constructed in substantial conformance with Plans 14 and 15 of the CWD Application.
- ii. Dimensions of the landscaped portion of Fan Pier Park shall be approximately 550 feet by 125 feet, an area of roughly 68,750 s.f., as shown on Plan 14. This includes the area referred to as Lookout Point.
- iii. Fan Pier Park shall be designed, managed, and maintained with adequate lighting, seating areas, trash receptacles, signage, bicycle racks, lawn and landscaped areas, internal pathways and maintenance ways, and a portion of the Harborwalk. The portion of the Harborwalk through Fan Pier Park shall at a minimum meet the Harborwalk standards described elsewhere in this CWD. The final design, location, and number of park amenities shall be reviewed and approved by the Department.
- iv. Fan Pier Park shall feature a tidal pool designed, constructed, and maintained in a manner that will sustain its ecological integrity and provide educational opportunities. Final plans submitted shall detail the proposed grading, planting, and shoreline treatment of this area. A copy of the final Order of Conditions shall be submitted with the final plans. The use and management of this area, especially by the on-site civic/cultural institutions, shall be described in the Public Realm Management Plan.
- v. Fan Pier Park shall include the area identified as Lookout Point, including the Lookout Point Pavilion. Lookout Point shall be designed to enable the public to enjoy views of the Harbor, and shall include elements such as a raised viewing area, seating, and viewing equipment to achieve this purpose. The Pavilion building shall be a one-story building with a footprint of approximately 2,000 s.f. and shall be used solely to provide services to park users, such as a snack bar, fishing pole rentals, showers, and free restrooms. Tables and chairs shall be provided in connection with the Pavilion, but not limited to use by patrons of the snack bar. The restroom shall be open twenty-four (24) hours a day. The remainder of the Pavilion shall be open seven (7) days a week, during the hours described in the approved Public Real Management Plan. Architectural plans of the Pavilion shall be provided to the Department for its review and approval prior to construction.
- vi. The uses and programmatic activities anticipated in the Fan Pier Park, and proposed rules and regulations, shall be incorporated into the Public Realm Management Plan.

c. Harborwalk

- i. A continuous hard-surfaced multi-use Harborwalk pathway shall be constructed and maintained adjacent to the shoreline, as shown on the Project Site Plan, Plan 2 submitted with the CWD Application. Portions of the Harborwalk may be located on a fixed pier boardwalk, as shown on Plan 19. Pursuant to the Approved MHP amplification, the Harborwalk shall have a minimum width of twelve (12) feet, with ten (10) feet clear of obstructions.
- ii. The Harborwalk shall connect to open space areas, plazas, streets, sidewalks, and crosswalks, the floating wave attenuator and other floating piers, the water transportation dock, pathways on adjacent properties, and other destinations.
- iii. The Harborwalk shall be consistent with the City of Boston's Harborwalk standards, except as otherwise specified by the BRA.

d. Floating wave attenuator

- i. A publicly-accessible floating wave attenuator of approximately 17,500 s.f. shall be installed in the location shown on the Project Site Plan, Plan 2 submitted with the CWD Application. Since the publicly accessible portion of its surface qualifies as a fixed offset pursuant to the Approved MHP, the surface area shall be tabulated as required in the "Compliance with the MHP" paragraph in Section 1 of this CWD. The wave attenuator shall be designed in substantial conformance with section G-G on Plan 19 submitted with the CWD Application.
- ii. The wave attenuator shall include such free public amenities as fish cleaning stations, seating, trash receptacles, lighting, signage, and other such appropriate amenities.
- iii. The seaward side of the wave attenuator may be used for the docking of large vessels. As shown on Plan 2, the Project Site Plan, floating finger piers may be attached to the Fan Pier Cove side to accommodate marina slips.

e. Sidewalks, exterior plazas, and other open spaces

- i. A minimum of thirty (30) feet shall be maintained between the cultural building on Parcel J and the shoreline; wherever feasible, this area shall be forty (40) feet wide. A ten (10) foot clear portion of the Harborwalk shall run along the shoreline through this area. The remainder of this area shall be designed so as to balance the needs of the cultural institution, users of the Harborwalk, and other activities or uses planned for this space, as described in the site management plan. Benches,

- bicycle racks, lighting, trash receptacles, and signage shall be provided.
- ii. Sidewalks and street crossings as generally shown on the Plan 2, Project Site Plan, and in typical sections on Plan 18. On the major Fan Pier streets, the distance from building to curb shall be a minimum of fifteen (15) feet, as shown on Plan 18, and shall include a sidewalk, street trees, and other amenities where appropriate, such as bicycle racks, trash receptacles, lighting, and benches.
  - iii. A public plaza measuring approximately 5,200 square feet exclusive of adjacent sidewalks shall be constructed at the southern corner of Parcel E, with landscaping, lighting, pedestrian ways, and other amenities as appropriate.
- f. Water Transportation dock and ticket office -----
- i. A water transportation dock, as shown on the Project Site Plan, Plan 2 and in cross section on Plan 20, shall be constructed, measuring no less than 160 feet by 30 feet, with at least five (5) berths for water transit vessels. The dock shall be reserved solely for use by public water transportation vessels, except for interim uses approved by the Department for the period preceding the commencement of ferry service to the site. The dock and associated ramps and platforms shall meet all requirements of 521 CMR. The dock shall include a shade structure with a seating area and posted ferry schedules.
  - ii. A shoreside ticketing office/waiting area shall occupy a portion of the ground floor of the building on Parcel H. A visually unobstructed and convenient pedestrian path shall connect the ticketing office with the water transportation dock. The ticketing office shall include a free, publicly accessible restroom open twenty-four (24) hours per day, schedules for all Boston Harbor ferry services, and electronic information system to announce departures and arrivals. In the event that the building on Parcel H is constructed during a later phase of development, the ticketing facility may be located, on a temporary basis, in another building, or in a free standing structure subject to final review and approval of the Department.

### C. Water transportation requirements

1. Pursuant to the Approved MHP, the CAE shall provide water transportation infrastructure and subsidies to promote water transportation at the project site. The total monetary value of the water transportation infrastructure and subsidies is calculated at the

rate of \$2.00 per square foot, based on a total buildout of 2,927,000 square feet (the gross floor area of the private structures authorized by this CWD) less the square footage of the required ground floor FPAs (183,500 square feet). Accordingly, the total water transportation contribution for the project site shall be \$5,487,000.00.

2. Up to approximately \$4 million of the total water transportation contribution may be provided in the form of in-kind support for water transportation, as listed below:

- a. Construction of water transit terminals, docks, waiting areas, ticketing offices.
- b. Administration of dock management plans.
- c. Provision of marketing services for water transit operations.
- d. Emission Reduction Projects for marine vessels.

The CAE shall submit documentation of its direct expenses incurred for any infrastructure or other in-kind support provided in conformance with this section to the Department with its periodic compliance reports required in Section 7 below.

3. Approximately \$1.5 million of the total water transportation contribution shall be provided as a cash operating subsidy for water transportation services, such services to utilize the Project Site where consistent with water transportation planning for Boston Harbor. The payment shall be made to a water transportation fund to be established for this purpose and administered by the MBTA or other appropriate water transportation authority or agency. The CAE shall submit documentation of such payment to the Department within ten (10) business days of the payment. The following are eligible as creditable expenses for the purposes of this section:

- a. Operation and maintenance of water transit terminal, docks, waiting areas, and ticketing offices, up to a maximum of 30% of the annual cash subsidy.
- b. Provision of discount berthing for public water transit operators.
- c. Provision of discounts to water transit passengers at facilities located on the project site.
- d. Purchase of water transportation vessels.

4. Provision of the water transportation contribution shall be in accordance with the following schedule. The CAE may request an adjustment in the timing of the payments or services provided to account for the evolving needs of the water transportation service.

- a. The water transportation dock and waiting area shall be open to the public no later than the issuance of the Certificate of Occupancy for the second residential/commercial building constructed at the site.
- b. Upon issuance of the Certificate of Occupancy for the second building, the first of ten (10) annual payments of approximately \$150,000 each shall be made, as reduced by approved creditable expenses pursuant to section 4(C)(3), for water transportation operations and services shall be made. The payment shall be made to a fund established for this purpose and approved in advance

by the Department. A carryover credit will be given for any year in which payments and/or creditable expenses exceed the required annual amount.

- c. A final accounting, including a schedule for any remaining payments, shall be provided to the Department no later than ten (10) years from the issuance of a Certificate of Occupancy for the second residential/commercial building at the project site.

5. The commencement of water transportation services at the project site, the selection of service routes, and any subsequent changes to these services, shall be made by the MBTA or other appropriate water transportation authority or agency, in consultation with the Department and the CAE.

#### D. Public Realm Management Plan

1. Within six (6) months of the issuance of a License for any new structure or use at the site, except for the civic/cultural building on Parcel J, the Applicant or the CAE shall prepare a Public Realm Management Plan (PRMP) to be administered by the CAE, and shall provide a copy to the Department for its review and approval. An amended and updated PRMP shall be submitted within six (6) months of the issuance of any subsequent license or group of licenses issued concurrently as a single construction phase for the Department's review and approval. The PRMP, and any amendments thereto, shall be made available to the advisory committee established pursuant to Section 4(A)(3) for its review prior to being submitted to the Department. The PRMP shall be prepared in accordance with all of the requirements of this CWD and shall, at a minimum, include the elements listed below.

- a. A description and accompanying plan identifying all exterior areas subject to the PRMP, the nature of the ownership of these areas, and the means by which the CAE will maintain control over the areas (ownership, easements, or other binding legal agreements);
- b. Consistent with all relevant requirements elsewhere in this CWD, a description of the proposed signage, maintenance schedules and standards, hours of operation, and rules and regulations for all areas, except as otherwise stated in this section;
- c. Job descriptions for Director of public events programming and the Dockmaster;
- d. Consistent with all relevant requirements elsewhere in this CWD, a detailed management plan, including fees, for the marina, and other watersheet activities (such as transient berthing, touch and go dock, pumpout facilities);
- e. Any other information required elsewhere in this CWD.

2. Management of the water transportation facility: Either as a separate management plan or as part of the PRMP required above, the CAE shall detail the operational and maintenance activities related to the water transportation dock, ticket office, and related

facilities and services, and use of these facilities by private or public water transit service providers. This management plan should be prepared by the CAE in conjunction with a water transit service provider or agency, such as the MBTA. The management plan shall define the duties of the Dockmaster, which shall include ensuring that priority for use of Fan Pier Cove is granted to water transit services.

3. Maintenance: A detailed maintenance plan, including maintenance responsibilities, for all open space areas shall be submitted as part of the PRMP. Area-specific details of the maintenance plan may be developed as the corresponding open spaces are designed and constructed. As specified in the Approved MHP, the plan shall include an annual maintenance budget based on the level of maintenance required. The maintenance plan shall be in accordance with the standards specified in Appendix 2 of the City's MHP ("Maintenance Standards for Public Realm- Land and Water's Edge").

4. As-built plans: As-built plans of the Public Realm components shall be provided to the Department within six (6) months of the completion of construction of each component.

#### 5. Civic/cultural uses

1. As specified in the Approved MHP, a minimum of 107,000 s.f. of cultural/civic space, located as shown in on the Project Site Plan, Plan 2 of the CWD Application, shall be provided as part of the Fan Pier project. In addition to the minimum 60,000 s.f. ICA Building to be located on Parcel J, a minimum of 17,000 s.f. shall be provided on the first two floors of Parcel D for the Harbor Islands Gateway and/or the Island Alliance and a minimum of 30,000 s.f. on the first two floors of Parcel H for the Family Multi-cultural Center. A change of up to 10% of the area of each cultural/civic space may be permitted, as long as the square footage dedicated to cultural/civic uses totals no less than 107,000 s.f.

2. Certified registry copies of executed deed restrictions shall be required as conditions of the licenses to be issued for the buildings on Parcels D and H to ensure that the required space is maintained for use by civic or cultural institutions. Any change from the institutional tenants, programmatic uses, precise square footage, or building locations described in item #1 above, shall require that the Licensees provide the Department with a certification from the City of Boston that such changes are consistent with the public principles arising out of the City's civic/cultural masterplanning process for the Inner Harbor and Fort Point channel subdistricts. In no case shall the total square footage provided for civic and cultural uses on the site be less than 107,000 s.f.

3. Pursuant to the Final Environmental Impact Report, the Applicant shall assume the construction cost of the proposed cultural/civic use spaces to be located in the buildings on Parcels D and H, and shall deliver a core and shell premise for such use to the appropriate cultural institutions through a lease with an annual triple net rent of one dollar (\$1.00). The intended users shall have the opportunity to have a lease term co-terminus with the term of the License for such portion of the Project Site. In addition, the Applicant shall, in accordance with

its agreements with the BRA, provide these two institutions with a tenant fit up subsidy to be applied to interior design and construction costs.

4. Each cultural/civic space shall include free, publicly accessible restrooms available during its hours of operation.

5. Each cultural/civic institution shall be responsible for maintaining its interior spaces, establishing fees, and setting hours of operation and other rules and regulations.

6. The cultural/civic institutions identified as lessees of space in the buildings on Parcels D and H shall be provided with schematic design drawings for review prior to submission of the license applications for those buildings.

7. The ICA shall submit a license application in accordance with Section 1 of this CWD for the museum to be constructed on Parcel J.

8. A significant portion of the ground floor of the ICA building shall be open to the public free of charge during its standard hours of operation. This area shall include interpretive, artistic, or educational exhibits, retail uses, and/or or a restaurant. A free, publicly accessible restroom shall be located on the ground floor of this building. The layout and amount of ground floor space open to the public at no charge shall be subject to the Department's review and approval.

9. The ICA shall restore any adjacent open spaces, Harborwalk, or other publicly accessible areas completed as part of the Fan Pier development, that are impacted by the construction of the ICA.

#### **6. Recreational boating facility**

1. The Applicant shall construct and maintain a public recreational boating facility as shown on the Project Site Plan, Plan 2, in section on Plan 20 of the CWD Application, and as otherwise described in the CWD Application, except that, pursuant to 310 CMR 9.36(2), no structures in Fan Pier Cove shall extend to within twenty-five (25) feet of the easterly property line. The facility shall consist of pile-held floating docks and piers accommodating approximately thirteen (13) small boat slips (under 30 feet) and thirty-six (36) medium size vessel slips (less than 50 feet). The docks and slips shall be maintained in the configuration approved in the final License issued for the marina, unless otherwise approved by the Department pursuant to the process specified in Condition 8 below.

2. The pile-held floating pier along the northwest side of Fan Pier Cove shall be publicly accessible twenty-four (24) hours a day. No gates, fences or other structures may be placed in any area open to public access that impedes or discourages the free flow of pedestrian movement. Reasonable measures may be taken to restrict public access to gangways and finger piers serving recreational boats. This condition shall not be construed to prevent the Licensee from taking reasonable measures to discourage unlawful activities by users of the area(s) intended for

public passage, including but not limited to trespassing on the adjacent private areas and deposit of refuse of any kind or nature in the water or on the shore.

3. Fan Pier Cove Management Plan: The marina operation and maintenance shall be subject to a Fan Pier Cove Management Plan approved by the Department. The Management Plan shall detail navigational procedures within the Cove, with priority given to the operational requirements of the Water Transportation Facility as described elsewhere in this CWD. With respect to the marina, the Management Plan shall: include procedures for managing transient berths and the touch and go dock; describe the duties of the dockmaster; detail procedures for recreational boaters to ensure that priority within the Cove is given to water transportation vessels; provide details regarding the number, location, and content of signage; and establish fees for long-term and transient berths, pump-out facilities, and any other necessary fees. The fees shall be based on market conditions and consistent with those assessed at comparable facilities in Boston Harbor. A touch and go dock with adequate space for temporary tie-ups (15-20 minutes) by at least two medium size boats shall be provided for use by non-commercial recreational boaters at no charge. The required signage shall note the availability of the transient slips, touch and go dock, and pumpout, provide directions for their use, and be located, and of a suitable size, so that the signs are visible to passing vessels.

4. Any berth to be authorized in the License issued pursuant hereto shall be assigned in a fair and equitable manner, via waiting list or other appropriate, unbiased means. The Licensee may assign any berth authorized herein based upon vessel characteristics.

5. No berth in the marina may be assigned pursuant to any contract or other agreement that makes use of the berth contingent upon ownership or occupancy of a residence or other nonwater-dependent facility of private tenancy.

6. Every berth shall be made available for transient use during periods of vacancy in excess of twenty-four (24) hours. The dockmaster shall maintain a listing of available transient docks on a daily or weekly basis, and shall provide the Boston Harbormaster with an updated list on at least a weekly basis between the months of March to November. A sign at the entrance to the Cove shall state the availability of transient and touch & go docks, and provide phone numbers for the dockmaster and Boston Harbormaster.

7. Any contract or other agreement for exclusive use of any berthing area authorized herein shall have a maximum term of one (1) calendar year and may be renewed upon expiration on an annual basis.

8. Trash receptacles shall be placed at convenient and accessible locations throughout this marina facility. At a minimum, they shall be located at the end of every gangway, at fish cleaning stations, and at restroom areas.

9. As part of its application for the recreational boating facility, the Applicant may request that a reconfiguration zone be delineated. Upon Department's approval of the reconfiguration zone in a License, any reconfiguration may proceed upon written approval by the Department, but without further licensing action if:

- a. the Licensee submits to the Department a written request and plan for reconfiguration which does not extend beyond the delineation zone and which does not result in any increase in the area of waterway occupied from that which was original licensed
- 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 Boston Conservation Commission and Boston Harbormaster, and that said Conservation Commission and Harbormaster have been informed that they have thirty (30) days to register any objections to the proposed reconfiguration plan with the Department;
- c. all other applicable permits have been obtained, including any required approval under the Wetlands Protection Act.

10. At least one (1) public restroom with showers shall be provided for marina users. Said restroom and showers shall be open to the public, free of charge, twenty-four (24) hours a day.

11. A shoreside sewage pumpout station or pumpout vessel shall be provided. Signage shall be provided at the entrance to the Cove which states the availability of pumpout or and includes contact information for the dockmaster.

12. All lighting at the marina shall be designed to minimize interference with navigation by reflection, glare, or interference with aids to navigation.

#### **7. General Conditions applicable to all licenses**

1. License Term: The licenses issued for all project components pursuant hereto shall be valid for a term of ninety-six (96) years from the date of issuance. This term was calculated as the weighted average of the maximum terms that may be granted for fill and structures located on filled tidelands and over flowed tidelands, pursuant to 310 CMR.9.15. 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 licenses.

2. Limited Liability: The use by the public of the publicly accessible areas at the Project Site shall be considered a permitted use to which the limited liability provisions of M.G.L. Chapter 21, § 17c shall apply.

3. Hours of Public Access: All Public Realm areas at the Project Site shall be open to the public, free of charge, twenty-four (24) hours per day. 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. No amendment to said rules shall be made without prior written approval by the Department.

4. Ground-level interior uses: Except for ground level interior areas required by the MHP to be devoted to civic or cultural uses, or allowed as upper floor accessory services, all other uses shall meet the definition of Facilities of Public Accommodation (FPA) as defined in 310 CMR 9.02.

5. Common Area Entity (CAE) Membership: The Applicant shall become a member of the Common Area Entity that is subject to the obligations to construct and maintain the public amenities required in the CWD issued for this project and that is responsible for compliance with all relevant provisions of License No. \_\_\_ [license to be issued pursuant to Section 4(B)(1)] concerning those Public Realm components. Each Licensee shall become and remain (for so long as it owns or leases a portion of the Project Site) a member in good standing of the Common Area Entity for the duration of the License term. The Common Area Entity shall be fully responsible for the implementation, management, and control of the Public Realm and for compliance with the requirements of this CWD and Licenses issued pursuant hereto with respect to the Public Realm.

6. Completion of construction activities: All activities for which a license or permit has been issued shall be completed within five (5) years of the date of issuance of the license or permit. This period may be extended upon written request to the Department at least sixty (60) days in advance of the deadline specified herein, and said approval shall not be unreasonably withheld.

7. Minor Project Modifications: Pursuant to 310 CMR 9.22, Licensees may undertake minor project modifications upon written notice to, and approval by, the Department.

8. Compliance access: The Applicant shall allow agents of the Department to enter the project sites to verify compliance with the conditions of the Chapter 91 Licenses prior to the completion of individual sections of the project.

9. Certificates of Occupancy: The Licensee shall provide a copy of the Certificate of Occupancy for all buildings to the department immediately upon receipt.

10. Periodic compliance reports for extended term licenses: All Licensees shall submit to the Department (Waterways Regulation Program) periodic compliance inspection reports at least once every five (5) years from the date of License issuance detailing the Licensee's compliance with the Special and Standard Conditions of their License.

11. Certificates of Compliance: The Applicant shall request in writing that the Department issue Certificates of Compliance in accordance with 310 CMR 9.19, for each license issued.

12. Annual Compliance Fee: The Licenses issued pursuant hereto for nonwater-dependent project components shall be subject to an annual compliance fee for nonwater-dependent uses pursuant to 310 CMR 4.00.

13. Maintenance: All fill, structures, facilities, and landscaping to be licensed shall be maintained in good repair for the term of the license. With the prior written approval of the Department, the obligation to maintain all or portions of such fill, structures, and facilities may be assigned to

another responsible party following license issuance. A written legal agreement between the parties requesting a transfer of said maintenance responsibility shall be submitted to the Department clearly identifying the area to be maintained and the associated Waterways License number, and stating that the maintenance responsibility shall run with the term of the license, that failure to maintain said area will result in a violation of the Waterways License, and any structural alterations or changes in use to said area are subject to prior review and approval by the Department.

**14. Activity and Use Limitations (AULs):** The Applicant shall ensure that passive recreational use by the general public of the facilities required herein is fully and safely allowed on the site pursuant to any Activity and Use Limitations (AULs) that may be adopted in full compliance with the Massachusetts Contingency Plan, 310 CMR 40.0000. Such passive recreational use shall include that associated with public open space use involving more than casual contact with the ground, including, but not limited to, walking, strolling, bicycling, picnicking, and sitting. The Licensee shall ensure that the on-site areas specified in this License as publicly accessible open spaces, are fully remediated to levels that will not impede or prohibit the public use of open space, including passive recreational use. Any AUL adopted by the Licensee shall fully allow for such public open space and passive recreational uses. Any interpretation regarding what uses are allowed under an AUL shall be decided by the Department's Bureau of Waste Site Cleanup (BWSC) in the Northeast Regional Office.

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:

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.

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.

STANDARD WATERWAYS DREDGING CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the licensee to conform to all terms and conditions stated herein.
2. This license is issued 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 hereby authorized.
3. This 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, or his agent, and those persons who have filed a written request, with the Department, for such notice and has afforded the licensee 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 license void.
4. This license is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, s.40. In particular, this issuance is subject to the provisions of Sections 52 to 56, inclusive of Chapter 91 of the General Law and its Regulations 310 CMR 9.40(5), which provides, in part, that the transportation and dumping of the dredge material shall be done under the supervision of the Department, and, when required, the licensee shall provide at his/her expense a dredge inspector approved by the Department. When said inspector is required, a report certified by the dredge inspector shall be submitted to the Department within 30 days after the completion of the dredging. The report shall include daily logs of the dredging operation indicating volume of dredge material, point of origin, point of destination and other appropriate information.
5. This Waterways License is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with all applicable requirements and authorizations of the DEP, Division of Wetlands and Waterways.
6. All subsequent maintenance dredging and transportation and disposal of this dredge material, during the term of this license, shall conform to all standards and conditions applied to the original dredging operation performed under this license.
7. After completion of the work authorized, the licensee shall furnish, to the Department a suitable plan showing the depths at mean low water over the area dredged. The dredging under this license shall be conducted as to cause no unnecessary obstruction of the free passage of vessels. In doing the dredging authorized, care shall be taken to cause no shoaling. If, however, any shoaling is caused, the licensee shall, at his expense remove the shoal areas. The licensee shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the licensee shall pay all costs associated with such work. Nothing in this license shall be construed as to impair the legal rights of any persons, or authorize dredging on land not owned by the licensee without consent of the owner(s) of such property.
8. The licensee shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.
9. The licensee shall, at least three days before commencing any dredging in the tide water, give written notice to the Department of the time, location and amount of the proposed work.
10. Whoever violates any provisions of this license shall be subject to a fine of \$25,000 per day for each day such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or shall be subject to civil penalty not to exceed \$25,000 per day for each day such violation occurs or continues.

List of Commentors

Conservation Law Foundation  
62 Summer Street  
Boston, MA 02110-1016

Alice Boelter  
Boelter & Associates  
286 Congress Street  
Boston, MA 02210

Boston Natural Areas Network  
59 Temple Place, Room 558  
Boston, MA 02111-1307

Sumner H. Cohen  
33 Blossom Street  
Boston, MA 02114

Joseph Mizzoni  
33 Blossom Street  
Boston, MA 02114

Sarah Marks  
33 Blossom Street  
Boston, MA 02114

Mary Szumski  
33 Blossom Street  
Boston, MA 02114

Rose M. Fantasia  
33 Blossom Street  
Boston, MA 02114

Nina White  
33 Blossom Street  
Boston, MA 02114

Theresa Bizzari  
33 Blossom Street  
Boston, MA 02114

Massachusetts Convention Center Authority  
Boston Convention & Exhibition Center  
348 D Street  
South Boston, MA 02127

Seaport Alliance for a Neighborhood Design  
300 Summer Street  
Boston, MA 02210

New England Development  
c/o John E. Twohig  
Goulston & Storrs  
400 Atlantic Ave  
Boston, MA 02110-3333

Allen S. Marks  
33 Blossom Street  
Boston, MA 02114

Marie Mizzoni  
33 Blossom Street  
Boston, MA 02114

George Kubitsky  
33 Blossom Street  
Boston, MA 02114

Annie Martin  
33 Blossom Street  
Boston, MA 02114

Raymond Lapointe  
33 Blossom Street  
Boston, MA 02114

Nicholas Bizzari  
33 Blossom Street  
Boston, MA 02114

James Campano  
384 Highland Avenue  
Somerville, MA 02144

List of Commentors (continued)

Stevan Goldin  
4 Reilly's Lane  
Rockport, MA 01966

Institute of Contemporary Art  
955 Boylston Street  
Boston, MA 02115

Save the Harbor Save the Bay  
59 Temple Place, Suite 304  
Boston, MA 02111

Sarah White & Martin Aronson  
34 Douglass Avenue Ext.  
Hull, MA 02045

Boston Environment Department  
Boston City Hall, Room 805  
Boston, MA 02201

Island Alliance  
408 Atlantic Avenue, Suite 228  
Boston, MA 02110-3349

Greater Boston Convention  
& Visitors Bureau  
Two Copley Place, Suite 105  
Boston, MA 02116-6501

The McCourt Company  
600 Atlantic Avenue  
Boston, MA 02210

The Boston Harbor Association  
374 Congress Street, Suite 609  
Boston, MA 02210-1807

Adaptive Environments  
374 Congress Street, Suite 301  
Boston, MA 02201



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

GOV. TIMOTHY P. MURRAY  
*Timothy P. Murray*

DEVAL L. PATRICK  
Governor

IAN A. BOWLES  
Secretary

TIMOTHY P. MURRAY  
Lieutenant Governor

ARLEEN O'DONNELL  
Commissioner

April 18, 2007

Mr. Joseph Fallon  
Fan Pier Development LLC  
Two Seaport Lane  
Boston, MA 02210

Re: Request for Extension of Consolidated Written Determination  
Waterways Application No. W02-0404-N, Fan Pier

Dear Mr. Fallon:

Thank you for your letter dated April 3, 2007, requesting a five year extension of the Consolidated Written Determination (CWD) referenced above, issued on June 28, 2002. After the resolution of an appeal, the CWD became final on November 21, 2002. Therefore, the initial five year term of the CWD is set to expire on November 21, 2007.

Pursuant to Condition 1.4 of the CWD, the Department may extend the term of the CWD for additional five year periods upon request of the applicant. Based on the justification provided in your letter, your request is hereby granted, and the term of the CWD is extended an additional five years. The CWD is now valid until November 21, 2012. You are reminded that any additional extension necessary at that time must be filed with the Department pursuant to Condition 1.4 of the CWD.

Thank you for your cooperation. Please contact Alex Strysky of the Waterways Program at (617) 292-5616 if you have any questions.

Sincerely,

Ben Lynch  
Program Chief  
Waterways Regulation Program