

**Fort Point Channel
Watersheet Activation Plan**

Watersheet Permitting

**VHB/Vanasse Hangen Brustlin
APPENDIX B**

January 2002

Preliminary Assessment of Regulatory & Permitting Requirements

The facilities envisioned by the Fort Point Channel Watersheet Activation Plan will be subject to compliance with Federal, state, and local permitting and regulatory programs. Vanasse Hangen Brustlin, Inc. (VHB), in cooperation with Goody, Clancy & Associates, has conducted a preliminary assessment of the regulatory program requirements likely to be applicable to the Plan's facilities.

The following narrative provides a general overview of the regulations, permitting requirements, and associated issues most relevant to the Watersheet Activation. The accompanying table presents a summary of the anticipated permits and governmental actions for each of the major physical components of the Plan. The table reviews the requirements that would be expected for each project element if that element were implemented separately on its own. It is expected that multiple proponents will be involved in implementing and construction the various Watersheet Activation facilities and it is possible that many of the Plan's elements will be implemented as part of new office, hotel, institutional, or other projects to be developed on properties that abut the Fort Point Channel. Therefore, many of the Watersheet Activation components may be permitted as parts of larger development projects subject to a more broad set of regulatory requirements and approvals than discussed here. Further, some facilities of the Watersheet Activation Plan might be advanced together as a group. These variables ultimately will influence the exact permitting requirements for the facilities.

It is important to bear in mind that regulations and permitting requirements often change over time in response to new legislation and/or administrative procedures. The Watersheet Activation Plan elements will likely be implemented over a time period of 5 -10 years or more. As each component of the Plan is advanced, VHB recommends that the proponent(s) seek the guidance of competent legal counsel for assistance in determining the specifically applicable permitting and regulatory requirements

**Summary of Anticipated Permits or Actions
Fort Point Channel Watersheet Activation**

| Project Name/ Location | Federal Permits/ Action | State Permits/ Action | | City of Boston Permits/ Action | | | Comments/ Issues |
|--|--|-----------------------|---------------------|--------------------------------|----------|-----------------------|--|
| | | MEPA | Chapter 91 | Harbormaster | Con Comm | Article 80 | |
| Projects Assumed to Require Legislative Action (Harbor Line Exemption)¹ | | | | | | | |
| Channel Walk West Russia Wharf to 470 Atlantic Avenue | If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. If filling required: ACOE Permit under Sec. 404 of Clean Water Act | X (see Comments) | X (see Comments) | | X | Potential Requirement | <input type="checkbox"/> Transportation Terminal already permitted by CA/T Project <input type="checkbox"/> MEPA Review and Chapter 91 Licensing assumed to be required <input type="checkbox"/> ADA Access Assumed |
| Channel Walk East Children's Wharf -- Public landing to be incorporated -- Dock/pier -- Floating classrooms | If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. If filling required: ACOE Permit under Sec. 404 of Clean Water Act | X (see Comments) | X (see Comments) | | X | Potential Requirement | <input type="checkbox"/> Children's Museum already has legislative exemption from Harbor Line <input type="checkbox"/> MEPA Review and Chapter 91 Licensing assumed to be required <input type="checkbox"/> ADA Access Assumed |
| Small Boat Program Terminal (rowboats, canoes, kayaks, sculls, paddleboats) and Model Boat Area Seawall Basin south of Summer Street Bridge | If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. If filling required: ACOE Permit under Sec. 404 of Clean Water Act | X (see Comments) | X (see Comments) | | X | Potential Requirement | <input type="checkbox"/> Operator of this facility likely to have responsibility for oversight of all or most facilities and activities in the Seawall Basin <input type="checkbox"/> MEPA Review and Chapter 91 Licensing assumed to be required <input type="checkbox"/> ADA Access Assumed |
| Projects Assumed Not to Require Legislative Action (No Harbor Line Exemption) | | | | | | | |
| Kayak/Canoe Launching Area South Bay Urban Industrial Wild | If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act If filling required: ACOE Permit under Sec. 404 of Clean Water Act | X (see Comments) | X (see Comments) | X (see Comments) | X | Potential Requirement | <input type="checkbox"/> MEPA Review could be triggered if there is alteration of coastal bank and/or alteration of 5,000 SF or more of bordering vegetated wetlands <input type="checkbox"/> Either Chapter 91 licensing or a Boston Harbormaster Section 10A Permit will be required – exact requirement to be determined |
| Bridge lighting/ water lighting All locations (to be determined) | | | | | | | <input type="checkbox"/> No permitting requirements assumed for installation of lighting on existing structures |

¹ Assumes the need to obtain exemption from the state "Harbor Line." Relocation of the Harbor Line requires approval of the Massachusetts General Court (Legislature).

**Summary of Anticipated Permits or Actions
Fort Point Channel Watersheet Activation**

| Project Name/ Location | Federal Permits/ Action | State Permits/ Action | | City of Boston Permits/ Action | | | Comments/ Issues |
|--|---|-----------------------|---------------------|--------------------------------|----------|-----------------------|--|
| | | MEPA | Chapter 91 | Harbormaster | Con Comm | Article 80 | |
| Interpretive Trail Program Throughout Ft. Point Channel Area | Assume no requirement | | | | | | <input type="checkbox"/> Assume no separate permitting requirements since the Interpretive Trail will primarily involve installation of signage or wayfinding elements that will likely utilize other existing/new walkways and facilities |
| Moorings (Temporary) All locations (to be determined) (outside of Federal Channel Line) | Prohibited within Federal Channel area | | X (see Comments) | X (see Comments) | | | <input type="checkbox"/> Assume no permit requirement for moorings of a temporary short-term duration <input type="checkbox"/> Either Chapter 91 licensing or a Boston Harbormaster Section 10A Permit will be required – exact requirement to be determined <input type="checkbox"/> An Annual Permit for Moorings may be required from the Boston Harbormaster for moorings of up to a year. <input type="checkbox"/> Some larger moorings/facilities may require an exemption from the Harbor Line and then be subject to Chapter 91 Licensing |
| Dredging (as required) Various locations (outside Federal Channel Line) | Within area subject to Rivers & Harbors Act: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. | X | X | | | | <input type="checkbox"/> For certain minor activities, an ACOE Letter of Permission may be sufficient for Federal compliance |
| Projects that May Require Legislative Action (Need for Harbor Line Exemption to be Determined) | | | | | | | |
| Floating Art Exhibits or Floating Display Pavilions (temporary and/or permanent exhibits, including tidal sculpture) Primarily to be located in "Art Basin" between Congress and Summer Streets Bridges (other locations also possible) | Prohibited within Federal Channel area If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. If filling required: ACOE Permit under Sec. 404 of Clean Water Act | X (see Comments) | X (see Comments) | X (see Comments) | X | Potential Requirement | <input type="checkbox"/> For certain minor activities, an ACOE Letter of Permission may be sufficient for Federal compliance <input type="checkbox"/> Even minor, temporary exhibits must not be a barrier to free navigation <input type="checkbox"/> Larger exhibits or pavilions could require exemption from Harbor Line (depending on exact location) and then be subject to Chapter 91 Licensing and potentially MEPA review. <input type="checkbox"/> If no Harbor Line exemption is necessary, a Boston Harbormaster Section 10A Annual Permit should be sufficient |
| Art Barge/Moveable Barge Potential for tie up in various locations (assumed primarily w/in Seawall Basin) | If dredging required: Army Corps of Engineers (ACOE) Permit under Sec. 10 of Rivers & Harbors Act. If filling required: ACOE Permit under Sec. 404 of Clean Water Act | | X (see Comments) | X (see Comments) | | | <input type="checkbox"/> If minor dredging or filling is necessary to accommodate this type of use, an ACOE Letter of Permission may be sufficient <input type="checkbox"/> Even temporary exhibits must not be a barrier to free navigation <input type="checkbox"/> Either Chapter 91 licensing or a Boston Harbormaster Section 10A Permit will be required – exact requirement to be determined |

Federal Regulatory Context

The implementation of the Watersheet Activation Plan will be influenced by the location of the “Federal Channel Line” within the Fort Point Channel and by the need to comply with several Federal regulatory programs that will govern filling and dredging activities and the placement of the various facilities and structures proposed under the Plan.

Federal Channel Line

In order to protect the public safety and interests in the navigability of the nation’s waterways, Congress adopted the U.S. Rivers and Harbors Act. The Act sets forth numerous provisions including the establishment of a defined Channel Line within certain navigable waters of the United States. The U.S. Army Corps of Engineers is authorized to conduct dredging and other activities within the established boundaries of the Federal Channel Line so as to maintain the openness of the waterway for general navigation and commerce. No other dredging or fill activities are permitted within the Channel Line area and, most importantly, the erection or placement of structures (permanent and temporary), permanent moorings, or other hazards is strictly prohibited.

Within the Fort Point Channel, the existing Federal Channel Line extends from the mouth of the Channel (at the entrance to the Inner Harbor) southward to the Summer Street Bridge. The Channel Line width varies but is approximately 180 feet at its widest and may be generally described as occupying the center one-third of the waterway.

In order to place roadway crossings, utility crossings, or other encumbrances through or within the Federal Channel Line, it is necessary to either obtain an exemption from the normal prohibitions or to relocate the Channel Line boundaries accordingly. Congressional approval is necessary in either case.

In general, it is recommended that the Watersheet Activation Plan facilities program not intrude upon the Federal Channel Line so as to preserve the interests of the Channel and avoid the need for Federal legislative action. In particular, this should be considered when locating the facilities proposed for the “Art Basin” area between the Congress and Summer Street bridges where floating public art displays are envisioned.

Federal Regulatory Programs

The U.S. Army Corps of Engineers (ACOE) regulates certain activities in the “waters of the United States” under the authority of several Federal laws. This section presents an overview of the Federal laws as well as the ACOE jurisdictional and permitting environment likely to apply to development of the facilities proposed under the Watersheet Activation Plan.

The definition of "waters of the United States" is broad and includes the following:

- Navigable waters of the United States;
- Wetlands;
- Tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds;
- Interstate waters and their tributaries, including adjacent wetlands; and
- All other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce.

In tidal waters (such as the Fort Point Channel Watersheet), Federal law defines the landward limit of regulatory jurisdiction as the high tide line. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland. The term *wetlands*, including those adjacent to "waters of the United States," is defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." The term "adjacent" means bordering, contiguous, or neighboring, including those areas separated from other waters of the United States by man-made dikes or barriers, natural river banks, beach dunes and the like. Wetlands generally include swamps, marshes, bogs, and similar areas. For ACOE regulatory programs, the wetlands boundary must be determined according to the mandatory technical criteria for vegetation, hydrology, and soils as described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

The Fort Point Channel and adjacent wetlands clearly fall within the definition of "waters of the United States" under ACOE jurisdiction and it is expected that most of the facilities proposed under the Watersheet Activation Plan will be subject to some level of ACOE review and permitting.

Section 10 of Rivers & Harbors Act

Section 10 of the Rivers and Harbors Act (1899) authorizes the ACOE to regulate structures and work in navigable waters of the United States. For the purpose of Section 10 permitting, the ACOE regulations broadly define "navigable waters of the United States" to include the oceans and navigable coastal and inland waters, lakes, rivers, and streams. The ACOE general definition of navigable waters of the United States is "those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity." In Massachusetts, the ACOE has established a more specific definition of navigable waters to include "all tidal waters and their tributaries to the head of tide"

and the ACOE jurisdiction in coastal waters extends shoreward to the mean high water line.

Structures and work regulated under Section 10 include, without limitation, the following:

- Any wharf, dolphin, weir, boom, breakwater, jetty, or groin;
- Bank protection or stabilization activity (e.g. riprap, revetment, or bulkhead);
- Permanent mooring structures such as pilings;
- Aerial or subaqueous power transmission lines;
- Intake or outfall pipes;
- Permanently moored floating vessels;
- Tunnels, artificial canals;
- Boat ramps;
- Aids to navigation;
- Any permanent or semi-permanent obstacle or obstruction;
- Dredging or disposal of dredged material, excavation, and filling; or
- Other modifications affecting the course, location, condition, or capacity of navigable waters of the United States.

Section 103 of Marine Protection, Research and Sanctuaries Act

In addition to the Section 10 permit requirements related to the actual activity of dredging in navigable water bodies, the ACOE in some cases also has jurisdiction over the permitting of the *discharge* of dredged material. Section 103 of the Marine Protection, Research and Sanctuaries Act (1972), as amended, authorizes the ACOE to regulate the transportation of dredged material for the purpose of disposal in the ocean at approved locations. Discharges of dredged or fill materials into territorial seas also require authorization under Section 404 of the Clean Water Act (see below). There is no Federal/ACOE permit requirement for the discharge of dredged material at approved disposal sites on land (although there may be a requirement for review and approval of the water quality of the outwash of dredged material).

Section 404 of Clean Water Act

Section 404 of the Federal Clean Water Act authorizes the ACOE to regulate the discharge of fill or dredged material into all waters of the United States.

The discharge of fill material includes, without limitation, the following activities:

- Placement of fill that is necessary to the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction;
- Site-development fills for recreational, industrial, commercial, residential, and other uses;
- Causeways or road fills, dams and dikes;
- Artificial islands;
- Property protection and/or reclamation devices such as rip-rap, groins, seawalls, breakwaters, and revetments;
- Beach nourishment;
- Levees;
- Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and
- Artificial reefs.

The ACOE regulations apply to both permanent and temporary work. Examples of temporary discharge include dewatering of dredged material before final disposal or temporary fills for access roadways, cofferdams, storage, and work areas.

In tidal waters such as the Watersheet of the Fort Point Channel, Section 404 permitting will likely apply to the above activities that are proposed in the waters below the Fort Point Channel seawalls as well as within any adjacent tidal, brackish, or freshwater wetland areas that may exist along the upper (southerly) stretch of the Channel (i.e., in the South Bay Urban Industrial Wild area).

Army Corps of Engineers Permitting

The Section 10 and Section 404 regulations and requirements are expected to be the Federal programs most applicable to implementation of the Watersheet Activation Plan. The U.S. Army Corps of Engineers (ACOE) administers both of these regulatory programs.

The ACOE encourages proponents/applicants to contact the ACOE early in the planning stages of any project within jurisdiction of the ACOE regulatory programs in order to ascertain the likely permitting requirements. Under both Section 10 and Section 404 types of permitting, the ACOE issues different types of permits to authorize construction and fill activities.

“General Permits” apply to activities that the ACOE has determined are substantially similar in nature and cause minimal environmental impacts, both individually and cumulatively. No individual permit application is required, although the ACOE requires notification in some cases before the activity is authorized and work can begin. In fact, certain minor projects qualify for permitting under a series of “nationwide permits” defined in the ACOE regulations. Some examples are aids to navigation which meet U.S. Coast Guard requirements, outfalls and intakes that have received an NPDES permit, single private mooring buoys, backfill and bedding for utility lines, minor bank stabilization, and minor road crossings. All nationwide permits have special conditions that must be met in order for a project to qualify for nationwide permit status. In Massachusetts, the ACOE also authorizes a range of activities under a State Programmatic General Permit that are in addition to the activities authorized by the “national permits” (see discussion below).

“Individual permits” are required for activities that exceed the threshold criteria authorized by the Massachusetts General Programmatic Permit.

For projects in Massachusetts, the ACOE has established two (2) tiers/categories of permitting:

- ❑ **Tier I/Category I** permitting is equivalent to those projects categorically authorized by the Massachusetts General Programmatic Permit and not requiring individual permit applications or review.
- ❑ **Tier II/Category II** permitting involves a “screening” review of the project by the ACOE for those projects that exceed the General Programmatic Permit criteria. The ACOE will determine whether a project exceeding the Tier I/Category I criteria requires a full individual permit application. Those projects that require individual permit applications are sometimes referred to as Tier III/Category III.

Massachusetts General Programmatic Permit

The ACOE authorizes certain activities under a Massachusetts General Programmatic Permit. Activities allowed by the Programmatic General Permit include certain docks, piers and mooring buoys in tidal waters, minor roadwork by a town or state agency, minor hydro projects, and maintenance dredging with upland disposal. Although the ACOE does not require an individual permit application and a detailed review for activities authorized by the Massachusetts General Programmatic Permit, it is recommended that written authorization be obtained prior to proceeding with any work. It is required that the ACOE be notified before work begins. Certain individual facilities and activities proposed under the Watersheet Activation Plan may be authorized under the Massachusetts General Programmatic Permit.

Individual Permits

Individual permit applications are required and must be submitted to the ACOE for activities that exceed the threshold criteria authorized by the Massachusetts General Programmatic Permit. An individual permit application must include a detailed project description and drawings. It is important to note that the ACOE, not the applicant, first defines the "basic project purpose" of the proposed activity.

For Section 404 regulated fill activities, the ACOE evaluates a project's compliance with established guidelines prepared by the U.S. Environmental Protection Agency in consultation with the ACOE. The guidelines restrict discharges of dredged or fill material where less environmentally damaging, practicable alternatives exist. The guidelines assume that alternatives exist for non-water dependent projects. The applicant must gather and present all necessary data for the evaluation of practicable alternatives for the project consistent with the analysis of alternatives reviewed by the ACOE. Unless the project is contrary to the public interest, the ACOE will ordinarily grant a permit subject to compliance with the Section 404 guidelines. However, it is important to understand that if a less damaging practicable alternative to the project exists, the ACOE will not issue the permit. When unavoidable impacts occur, the ACOE requires all appropriate and practicable action be taken to mitigate such impacts.

The ACOE will base its decision to issue a permit on the evaluation of impacts during a "Public Interest Review" process. The ACOE's review may involve site visits, coordination with other agencies, and data analysis. The ACOE also gives consideration and appropriate weight to comments of Federal, state, and local agencies and other experts as well as the general public.

The following general requirements are applicable to obtaining an individual permit from the ACOE (particularly a Section 404 permit):

- Required State and Local Approvals
 - A Final Order of Conditions under Massachusetts Wetlands Protection Act (MGL c. 131 Section 40) must be provided to the ACOE
 - A Waterways License or Permit (MGL Chapter 91)
 - An individual Section 401 Water Quality Certification from the Massachusetts Department of Environmental Protection (if applicable)
 - Coastal Zone Management Coordination/Conformance
- Complete and submit an ACOE application form to obtain ACOE authorization for all dredging within navigable waters of the U.S. or involving work that is not subject to state jurisdiction.
- Massachusetts Historical Commission/State Historic Preservation Officer Finding of No Adverse Effect – Category II and Category III applicants shall submit a copy of their Water Quality Certification and/or Chapter 91 application materials to the Massachusetts Historical Commission to obtain the State Historic Preservation Officer Finding of No Adverse Effect.

Time frames for processing permit applications vary depending on the complexity of the project, but are generally in the range of 3 to 6 months.

Coast Guard Coordination

The U.S. Coast Guard, along with state and local police units, oversees the safety and security of navigation activities in Boston Harbor. The Coast Guard is concerned with issues of safe navigation operations, seaworthiness of vessels, and emergency/rescue efforts associated with distressed vessels. Within Fort Point Channel, the Coast Guard is primarily concerned with ensuring that there are no encumbrances to clear navigation within the Federal Channel area, particularly above (north of) the Congress Street Bridge.

In general, the implementation of the Watersheet Activation Plan will not be subject to direct review by the Coast Guard as long as no facilities intrude within the Federal Channel or otherwise affect safe navigation. However, there will be opportunity for Coast Guard input and comment on proposed facilities subject to review under the Massachusetts Environmental Policy Act (MEPA) and/or Chapter 91 licensing under the state waterways program (see discussions in State Regulatory Context section). In addition, when a facility is permitted with a Section 10A Mooring Permit issued by the Boston Harbormaster (see discussions in State Regulatory Context and Local Regulatory Context sections), the Harbormaster will forward a copy of the application and Permit to the Coast Guard for coordination and informational purposes. The Coast Guard, Harbormaster, state police, and officials from other appropriate state and local agencies also conduct interagency coordination meetings at least once per month that provide opportunity for review and coordination on specific projects as necessary.

Because of the possibility of changing requirements due to heightened awareness of security issues in Boston Harbor, it is recommended that proponents applying for either Chapter 91 licenses or Section 10A Annual Mooring Permits inquire as to the current status of any Coast Guard review requirements at the time the project is being advanced in the permitting process.

State Regulatory Context

The Fort Point Channel Watersheet Activation Plan facilities program must consider the limiting affect of the Boston Harbor “Harbor Line” (which extends into the Channel) as well as the need to comply with a number of state programs that regulate the placement of fill, structures, and other related activities. This section discusses facilities planning considerations related to the existing Harbor Line and reviews the requirements of the principal state environmental/regulatory review programs that are likely to apply to all or part of the project.

Harbor Line Considerations

There are several state statutes that provide for the regulation of navigation and other activities in the state’s harbors. A defined “Harbor Line” is established within the geographic area of each harbor, and within the area encompassed by the Harbor Line there is a general prohibition of the placement of structures, fill, and other encumbrances (as well as prohibition of most non-navigation activities). Under normal circumstances, the Massachusetts Department of Environmental Protection (DEP) regulates and licenses activities within flowed tidelands under the provisions of M.G.L. Chapter 91 (please see the “Chapter 91 Licensing and Permitting” section immediately below). However, the DEP is not authorized to issue Chapter 91 licenses or permits for those areas located within the limits of a Harbor Line. Section 10A of Chapter 91 does include provisions for limited activities such as boats or barge moorings and authorized small docks to be allowed in the Harbor Line area subject to annual permitting by the local Harbormaster (please see the “Harbormaster Section 10A Permitting” discussion in the “Local Regulatory Context” section).

The location of the Harbor Line within Fort Point Channel is important to the implementation of the Watersheet Activation Plan. Within the Fort Point Channel, the Harbor Line presently includes the entire Channel northward of a line that is parallel to and just north of the state highway layout line for the Central Artery/Tunnel (CA/T) Project. The Massachusetts General Court (state legislature) enacted Chapter 367 of the Acts of 1992 to authorize relocation of the Harbor Line to this current location so as to accommodate the CA/T construction. The Harbor Line encompasses the full width of the channel water body up to the seawalls.

A number of facilities envisioned by the Plan would currently be prohibited within the portion of the Channel that is within the Harbor Line area. Legislative action will be required to either move the Harbor Line or (more preferably) obtain an exemption from its normal prohibitions to allow many of the public activities envisioned within (i.e., to the north of) the current Harbor Line. In particular, it appears that an exemption will be required to implement the Channel Walks on the west and east sides of the Channel as well as to allow most of the facilities associated with the small boat program terminal area proposed for the Seawall Basin south of the Summer Street Bridge. If the state legislature were to grant an exemption from the Harbor

Line to allow these proposed activities, it is likely that the legislature would stipulate a requirement for review and Chapter 91 licensing of these activities by the Department of Environmental Protection.

Chapter 91 Licensing and Permitting

Massachusetts General Law Chapter 91 and its implementing regulations (310 CMR 9.00) establish regulatory jurisdiction over certain activities in all *flowed tidelands* including areas currently subject to the ebb and flow of the tide and all *filled tidelands*, regardless of the prior licensing or legislative history. Filled tidelands located landward of a public way and greater than 250 feet landward of the existing mean high water mark are exempt from jurisdiction under Chapter 91. The Chapter 91 program also regulates work on waterways on which public funds have been expended for stream clearance, flood control, or prevention work, except for those portions of these rivers or streams that are not navigable during any season. The Bureau of Resource Protection – Waterways Regulation Program of the Massachusetts Department of Environmental Protection (DEP) administers Chapter 91 licensing and permitting.

Activities Subject to Chapter 91

The Chapter 91 regulations require a license or permit for any placement, modification, or removal of any fill or structure within flowed tidelands or any change in the structure or use of any filled tidelands. Repair, maintenance, or minor modifications to existing authorized structures or fill may be permitted without a new license or permit application provided the work is consistent with the previously licensed or permitted activity and does not increase the footprint of the fill or structure by greater than 10 percent.

Unless specified in a license or permit, a valid license or permit shall run with the land and automatically be transferred upon any change in ownership. All terms and conditions of the license or permit remain in full force and effect [310 CMR 9.23].

Applicability to Fort Point Channel

The Fort Point Channel itself is a *flowed tideland* and there is Chapter 91 jurisdiction over those portions of the Channel that are outside of the defined Harbor Line of Boston Harbor (see earlier discussion on the Harbor Line). There will be a need to apply to the DEP for a Chapter 91 license or permit for any of the above-described activities that will occur in the jurisdictional area outside of the Harbor Line.

For those areas located within the Harbor Line, the placement of structures, fill, and other encumbrances is prohibited and the DEP is not authorized to issue Chapter 91 licenses or permits. However, Section 10A of Chapter 91 includes provisions for limited activities to occur in the Harbor subject to permitting by the local Harbormaster. Section 10A authorizes the Harbormaster to issue annual mooring

permits and permits for other limited activities through a simple administrative procedure. Please refer to the Local Permitting section for discussion of the regulations promulgated by the City of Boston pursuant to Section 10A of Chapter 91 and administered by the Boston Harbormaster.

The geographic history of the Fort Point Channel area indicates that much of the abutting land (a mix of public and private ownership) is *filled tideland*. In addition to the licensing requirements applicable within the Fort Point Channel waterway, Chapter 91 licensing/permitting will be required for activities on at least some of the abutting “upland” areas above the Channel seawalls. Given that the Watersheet Activation Plan’s proposed facilities program on abutting properties is focused along the water’s edge—in the areas that are most likely filled tideland—it should be assumed for general planning purposes that there is Chapter 91 jurisdiction over activities on these abutting properties.

To determine the exact extent of areas subject to Chapter 91 filled tidelands jurisdiction, it will be necessary to conduct detailed research and a review of the following resources:

- DEP Licensing History in area
- Existing Conditions Survey Plans
- Aerial Photography (historic, if available)
- USGS Topographic maps (historic, if available)
- Historic City of Boston and Other Maps

A review of these resources will help determine the man-made changes in the coastline of the Fort Point Channel area.

Proper Chapter 91 licensing is probably in place for many of the existing facilities on the abutting properties. However, any substantial change in the structure or use of the existing seawalls, bridges, piers, and the like would require additional review by the Waterways Program. Where an existing license exists, proposed maintenance, repair, and minor modifications of the existing structures could likely be authorized under the existing license. Minor modifications to existing licensed fill and structures may be permitted without a new application if the proposed work does not exceed the footprint of the originally authorized structure or fill by greater than 10 percent. Any work within the Chapter 91 jurisdictional area (i.e., non-Harbor) below existing mean high water would require a new license or permit application. The exact licensing requirements for each type of facility will be able to be ascertained as more detailed plans are developed.

Water-Dependent versus Nonwater-Dependent Uses

Chapter 91 licensing distinguishes between water-dependent uses and nonwater-dependent uses. A water-dependent use is an activity that relies upon being in or

near the water. A nonwater-dependent use is an activity that does not rely upon being in or near the water. The DEP has established guidelines for evaluation of projects to determine if the proposed use(s) is water-dependent or nonwater-dependent. The guidelines set forth a number of water-dependent "project type" categories, each with an associated definitional "use statement."

- ❑ The DEP will consider a project to be *water-dependent* if it may be included in one or more of the project type categories and clearly meets the associated use statement(s).
- ❑ The DEP will considered a project to be *nonwater-dependent* if:
 - The project does not fall into one of the project type categories and/or fails to clearly meet the associated use statement(s); or
 - If none of the use statements (single or combination) describes the project in its entirety. When a project involves a number of activities that are clearly covered by the use statement guidelines, it is important to recognize that the DEP may nonetheless consider the project to be nonwater-dependent when only a single activity fails to be within the use statement descriptions.

It is expected that all currently envisioned elements of the Watersheet Activation Plan would qualify as water-dependent uses, including the "Channel Walk" and any similar pedestrian access facilities. However, if one or more elements of the Plan are to be advanced or implemented as part of a development project on abutting "upland" property, such element(s) would be licensed as nonwater-dependent uses because they would be part of a larger project that would clearly be nonwater-dependent.

The distinction between water-dependent and nonwater-dependent uses is important under the Chapter 91 licensing process. The DEP has established several categories of Chapter 91 licenses and permits and, generally speaking, there are more substantial submission requirements for nonwater-dependent uses (e.g., complete professionally certified reproducible construction plans, documentation of all local approvals) as well as higher application fees. The application review periods for licensing do not, however, necessarily provide a benefit (faster review timeline) for water-dependent projects. In addition, the valid term or "life" of Chapter 91 licenses for both water-dependent and nonwater-dependent uses is 30 years.

Licensing/Permitting Process

As noted above, the currently envisioned elements of the Watersheet Activation Plan appear to all qualify (individually and collectively) as water-dependent uses. If these elements are advanced and permitted strictly as water-dependent activities, without connection to any nonwater-dependent uses, they will likely be licensed under a General Water-Dependent Chapter 91 Waterways License. A General License for a water-dependent project is subject to an application review period of up to 276 days. This period incorporates timelines for a public hearing and comment period, administrative completeness review, technical review, issuance of a written

determination, a 21-day appeal period, and issuance of the license within 45 days of the end of the appeal period.

Any facility that is advanced and permitted as part of a development project on abutting property would likely be licensed under a General Nonwater-Dependent Chapter 91 License. There are four categories of application for this type of license with the review periods varying from 231 to 311 days.

There is a streamlined review timeline provided for nonwater-dependent projects that trigger the separate requirement for review under the Massachusetts Environmental Policy Act (MEPA). In this case—where a higher level of public review is implicitly afforded through the MEPA process—the DEP guidelines set forth an application review period of 191 days. This type of application would appear most applicable to those aspects of the Plan that may be implemented as part of a larger development project on abutting land (e.g., planned office, hotel, institutional uses) that would itself already be subject to MEPA review.

Simplified procedures have been created for owners of small docks, piers, seawalls, and bulkheads to make the Chapter 91 licensing process easier (e.g., no requirement for professionally prepared plans) along with a low fee. The Simplified Chapter 91 License provisions apply to residential owners and to structures that serve as non-commercial community docking facilities. New structures must be water-dependent and less than 300 square feet in area. The application review period is 276 days and the license term is 10 years. There may be the ability to use the simplified licensing procedure for a single small dock or pier for public use at Fort Point Channel. However, the limited 10-year life of the Simplified License may make it more desirable to obtain the standard General License (with a 30-year life) for even small facilities.

Section 401 Water Quality Certification

As part of Federal permitting by the Army Corps of Engineers (ACOE), land altering and development activities are subject to water quality certification requirements pursuant to Section 401 of the Federal Clean Water Act, as amended. This Federal law requires applicants for ACOE permits to obtain a certification or waivers from the state water pollution control agency to discharge dredged or fill materials. The Water Quality Certification process is directly related to both the Federal and state wetland permitting processes.

In Massachusetts, the Department of Environmental Protection (DEP) is the reviewing and implementing authority for Section 401 Water Quality Certification. In keeping with the provisions of the Federal law, the DEP has established standards for the water quality certification of projects (314 CMR 9.00). Those wetland fill or alteration activities that qualify for the ACOE Section 404 Wetlands General Programmatic Permit for Massachusetts (Tier I) are not required to apply for an

individual water quality certification from the DEP. In most of these cases, the DEP considers the Order of Conditions issued by the local conservation commission for a project (under the Massachusetts Wetlands Protection Act) to serve as the project's Water Quality Certification.

Many of the individual facilities proposed as part of the Watersheet Activation Plan will likely involve little filling/dredging activities or wetland alteration and will therefore qualify for coverage under the ACOE Section 404 General Programmatic Permit. Therefore, it is anticipated that most of these facilities will not be required to obtain an individual water quality certification with the DEP. However, if a project does not qualify for coverage under the ACOE Section 404 General Programmatic Permit, it will be necessary to apply to the DEP for an individual water quality certification.

Massachusetts Environmental Policy Act

Some Watersheet Activation facilities or components may be subject to review under the Massachusetts Environmental Policy Act (MEPA). The purpose of MEPA (MGL Chapter 30, §§61-62H) and its implementing regulations (301 CMR 11.00) is to provide "meaningful opportunities for public review of the potential environmental impacts of Projects for which [state] Agency Action is required." The MEPA process is intended to enable coordinated state agency review of a Project. It is designed to assist each state agency involved in the permitting or approval of a Project in using "all feasible means to avoid damage to the environment or, to the extent damage to the environment cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable."

The applicability of MEPA review to any given project is determined based on whether a state agency permit or action is required for the project. The MEPA regulations establish review thresholds (301 CMR 11.03) that identify categories of Projects or aspects thereof of a nature, size, or location that are presumed likely, directly or indirectly, to cause damage to the environment. With certain exceptions, projects that are undertaken by a state agency or that utilize state funds are assumed to be in under MEPA purview. If a Project involves state financial assistance, MEPA jurisdiction is assumed to be "broad" and extend to all aspects of the Project that may directly or indirectly cause damage to the environment.

For privately initiated projects not involving state financial assistance, MEPA review may be required when a state agency permit or agency action is required and when specified aspects of the project or its potential impacts exceed thresholds of review established under the MEPA regulations. The regulations establish jurisdiction over a Project based on those aspects of the Project that are within the subject matter of the required state permit or agency action. When no state financial assistance is involved, MEPA review is required only when one or more of the established review thresholds are met or exceeded and the subject matter of the review threshold is conceptually or physically related to the subject matter of a required state permit.

There must be both the triggering of a review threshold and a requirement for a related state permit or action. For instance, a Project may exceed a transportation-related MEPA review threshold but MEPA review would be required only if the Project also requires a transportation-related state permit. The exception to this is the “Land” category of MEPA review thresholds. MEPA review is required if any Land category review threshold is exceeded and any state permit or agency action is required (though the jurisdiction of MEPA review would be limited to the subject matter of the triggered Land review threshold category and the subject matter of the state permits or agency actions required for the Project).

The MEPA review thresholds are established in categories that specify whether MEPA review shall consist of (1) a mandatory Environmental Impact Report (EIR), or (2) an Environmental Notification Form (ENF) and other MEPA review if required by the Secretary of Environmental Affairs (in this second category, normally only an ENF filing is required).

Based on a preliminary review, it appears that many elements of the Watersheet Activation would not individually trigger any of the MEPA review thresholds. Nonetheless, many of the facilities may end up being reviewed under the MEPA process because of requirements for legislative exemption from the state Harbor Line and/or Chapter 91 licensing through the Department of Environmental Protection (DEP) that would in effect be required state “actions” or “permits.” This could potentially trigger MEPA review of one or more of the Watersheet Activation facilities, particularly in a scenario where a group of facilities is advanced and developed simultaneously as a single “Project” that is sufficiently large enough in size or impacts to trigger a MEPA review threshold. Furthermore, as noted previously, it is expected that many of the Watersheet Activation facilities will be implemented incrementally over time as elements of larger non-water-dependent projects on adjacent development parcels (e.g. to serve in part as amenities for those projects or to provide Chapter 91 mitigation for those projects). These larger developments on the abutting land will almost certainly require Chapter 91 licensing or other state permits and probably also trigger one or more of the MEPA review thresholds, resulting in some level of mandatory MEPA review.

Thus, a number of variables will affect the applicability of MEPA review to the Watersheet Activation. Correspondingly, there could be several “permutations” or scenarios of MEPA review. Ultimately, whether MEPA review is required for a given Watersheet Activation facility and what the jurisdiction or scope of review is will be determined based on:

- How the facility is to be funded (i.e., if public funds are involved),
- How the facility is advanced and implemented (individually, collectively, or as part of an unrelated development project),
- What state actions or permits are required, and
- What MEPA review thresholds are triggered (per 301 CMR 11.03) –

It is worthwhile to itemize here those MEPA review thresholds that appear potentially applicable to implementation of the Watersheet Activation Plan:

- Provided that a [state] Permit is required, alteration of coastal dune, barrier beach or coastal bank (301 CMR 11.03[3][b][1][a]).
- Provided that a [state] Permit is required, alteration of 5,000 or more square feet of bordering or isolated vegetated wetlands (301 CMR 11.03[3][b][1][d]).
- Provided that a [state] Permit is required, alteration of ½ or more acres of any other wetlands (301 CMR 11.03[3][b][1][f]).
- Dredging of 10,000 or more cubic yards of material (301 CMR 11.03[3][b][3]).
- Construction, reconstruction or expansion of an existing solid fill structure of 1,000 or more square feet base area or of a pile-supported or bottom-anchored structure of 2,000 or more square feet base area, except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways (301 CMR 11.03[3][b][6]).

Massachusetts Historical Commission

As a requirement of both Federal and state statutes, prior to the issuance of any Federal or state agency permits it is necessary for the State Historic Preservation Officer to issue a finding as to whether a proposed project or action has an adverse effect on historic or archaeological resources. There must either be a finding of “no adverse effect” or, in cases where there is a finding of adverse effect, there must be a review of project alternatives to document avoidance or minimization of adverse effects. The Executive Director of the Massachusetts Historical Commission (MHC) is the State Historic Preservation Officer for Massachusetts.

For projects subject to review under the Massachusetts Environmental Policy Act (MEPA), the MHC review of the project and determination of adverse effect typically occurs as part of the MEPA review process. In cases where no MEPA review is required but state and/or Federal permits are still required, it will be necessary for a proponent to submit information separately to the MHC to enable a review and determination with respect to adverse effect prior to issuance of the applicable state and Federal permits. Typically, a proponent files a short Project Notification Form (PNF) with the MHC along with a copy of the applicable state/Federal permit application (e.g., application for Chapter 91 license, application for Individual Permit from the Army Corps of Engineers, application for Water Quality Certification, etc.). The MHC review is administrative and usually occurs in a short time frame.

Based on preliminary review, it appears that none of the proposed Watersheet Activation facilities will directly or indirectly impact any significant historic or archaeological resource. However, it will still be necessary for the MHC to make this official determination for any facility subject to state or Federal permitting.

Local Regulatory Context

The facilities envisioned by the Fort Point Channel Watersheet Activation Plan will be subject to review by the City of Boston for compliance with certain state and local regulations. This section provides a brief summary discussion of the anticipated reviews by the Boston Conservation Commission (for Massachusetts Wetlands Protection Act compliance), the Boston Harbormaster issuance of (“Section 10A” annual mooring permits within the Harbor), and the Boston Redevelopment Authority (Article 80 Development Impact Review).

Boston Landmarks Commission

To be added

Boston Conservation Commission

Portions of the Watersheet Activation Plan area are subject to the jurisdiction of the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40) and its implementing regulations (310 CMR 10.00), as amended. The Wetlands Protection Act and regulations authorize the local conservation commission in each of the Commonwealth’s cities and towns to locally administer and implement the regulations. The Boston Conservation Commission administers the Act within the city of Boston.

General Requirements Under the Wetlands Protection Act

Any proposed work within 100 feet of a state-regulated wetland will require the filing of a Notice of Intent (NOI) with the Boston Conservation Commission. It is assumed that an individual NOI will be submitted to the Conservation Commission for each of the Plan’s individual facilities (as applicable) as the given facility is advanced through the permitting process. Upon the filing of an NOI by a proponent/applicant, the Conservation Commission will conduct a public hearing and review of the proposed work and activities affecting regulated wetland resource areas. The Conservation Commission may issue an Order of Conditions under the Act to authorize and to set forth conditions applicable to such work. Any appeal of a Conservation Commission Order of Conditions or other determination under the Act is made to and reviewed by the Massachusetts Department of Environmental Protection (DEP), and the DEP may issue a Superseding Order of Conditions or other superseding determination as applicable.

Regulated Wetland Resource Areas

The Wetlands Protection Act implementing regulations define both Coastal and Inland Wetland resource areas. The Fort Point Channel area contains at a minimum the following regulated Coastal Wetlands resources:

- Land Under the Ocean
- Land Under Water
- Coastal Banks

Portions of the project area also may be within the 100-year floodplain and/or defined as Land Subject to Coastal Storm Flowage, which are also regulated resources.

In the southerly extent of the Fort Point Channel area, state-regulated Inland Wetlands resource areas may exist including Land Under Water, Bank, Bordering Vegetated Wetlands (BVW), Isolated Land Subject to Flooding, and Bordering Land Subject to Flooding. A 100-foot buffer zone extends horizontally from the up-gradient limit of BVW and Bank.

A field assessment would be necessary to determine the existence and delineation of any of these potential resources based on technical criteria set forth in the Act's implementing regulations. The delineation would be subject to review and acceptance by the Boston Conservation Commission, which is authorized to establish jurisdiction limits under the Wetlands Protection Act.

Work Within Resource Areas

All defined wetland resource areas are presumed significant to the protection of some or all of the public interests identified in the Wetlands Protection Act. Work may be permitted within wetland resource areas if it meets the performance standards provisions in the regulations and is adequately protective of the public interests identified in the Act. Generally, this means that impacts to resource areas must be avoided or minimized to the extent practicable; areas temporarily impacted must be restored; and permanently altered areas must be replaced by new wetlands designed to replace the functions provided by the lost areas.

The regulations at 310 CMR 10.03(1)(a) place the burden of proof on the applicant to demonstrate that proposed activities are consistent with the Act and regulations. The applicant must demonstrate that the proposed work in resource areas is protective of the interests identified in the Act, including:

- Protection of public and private water supply,
- Protection of groundwater supply,
- Flood control,
- Storm damage prevention,

- Prevention of pollution,
- Protection of land containing shellfish,
- Protection of fisheries, and
- Protection of wildlife habitat.

Work within resource areas and any associated buffer zones is presumed to be protective of the interests of the Act if the proposed activities conform to the general performance standards for the affected resource area. The following are examples of the performance standards for some of the resources that may exist in the project area.

Land Under Water

Work within Waterbodies and Waterways that alters Land Under Water may be permitted by the Conservation Commission if the work conforms to the performance standards contained in the regulations. Among the performance standards are requirements that the work not impair the following:

- The water carrying capacity of the channel,
- The ground and surface water quality,
- The capacity to provide breeding habitat, escape, cover and food for fisheries; and,
- The capacity of the water body or waterway, or land under water to provide important wildlife habitat.

Bank/ Coastal Banks

The performance standards for work in Bank require that projects altering greater than 50 linear feet of Bank not result in significant adverse impacts to wildlife habitat. If Bank resource area exists in the Fort Point Channel area, it is unlikely that it supports significant wildlife habitat. The Boston Conservation Commission or the Massachusetts Department of Environmental Protection would need to concur that any significant alterations to Bank would not result in significant adverse impacts to wildlife habitat.

Bordering Vegetated Wetlands (BVW)

The performance standards for work in BVW (310 CMR 10.55[4]) limit alterations to 5,000 square feet and require replacement wetlands to provide for lost wetland function.

Harbormaster Section 10A Permitting

Under Section 10A of MGL Chapter 91, certain specified activities that do not involve construction of structures or dredging/filling are exempt from the normal direct review, licensing, or permitting by the Massachusetts Department of Environmental Protection (DEP). Section 10A provides for the efficient use of appropriate and

designated areas of Boston Harbor for the mooring and anchoring of vessels and authorizes the local harbormaster to issue Annual Permits for Moorings, Floats and Rafts (hereafter “Annual Mooring Permit”). The City of Boston Harbormaster, an official appointed by the Police Commissioner, has authority over the entire watersheet of the Harbor with respect to review of navigational concerns (and thus has authority over the entire Fort Point Channel watersheet including the areas both inside and outside the Harbor Line).

The provisions of Section 10A apply to those areas that are within the “Harbor Line,” which is the area that the DEP has no Chapter 91 Licensing jurisdiction over. Section 10A also provides for certain small facilities that extend beyond the Harbor Line (where the DEP does have Chapter 91 jurisdiction) to be eligible for permitting through an Annual Mooring Permit. The DEP will not require a Chapter 91 license or permit for such minor facilities provided that an Annual Mooring Permit is granted by the Harbormaster pursuant to the implementing regulations at 310 CMR 9.07.

In general, a Section 10A Annual Mooring Permit may be granted to boats, floating facilities, barges, or other bottom-anchored facilities that are less than 2,000 square feet in area. Larger facilities, as well as fill or pile-supported facilities and facilities that are anchored or attached to a seawall or bulkhead, are not generally eligible for an Annual Mooring Permit.

An application for an Annual Mooring Permit may be submitted to the Boston Harbormaster for the temporary placement of moorings, floats, or similar small structures held by bottom-anchor, and associated ramps. The City of Boston has promulgated mooring and operating regulations for Boston Harbor (City of Boston Code, St. 11, §§ 28-30) in accordance with Section 10A and in conformance with Federal regulations (CFR Title 33, Parts 110, 330, and 322).

Applicability to Watersheet Activation Plan

Certain of the facilities and activities envisioned in the Watersheet Activation Plan may be eligible to be permitted under the Section 10A provisions. It is important to note two definitional terms set forth in the City of Boston regulations:

- Mooring* means “Any apparatus, including floats and rafts, held in place by cable(s) and anchor(s).”
- Vessel* means “Any ship, boat, or other type of watercraft being used as a means of transportation on the water as well as other floating apparatus such as barges and rafts.”

The regulations give priority over mooring permit applications that serve a public purpose. Individual facilities/activities that may be able to be authorized under Chapter 91 upon issuance of an Annual Mooring Permit by the Boston Harbormaster include:

- ❑ The “Moveable Art Barge” and/or the “Barge of Good Ideas.”
- ❑ Anchored small “Floating Islands” (less than 2,000 square feet in area) for display of public art, for public way stations, or for refreshment stations—in order to qualify for an Annual Mooring Permit, the facilities would need to be bottom-anchored (not pile supported), be located outside of the Federal Channel, and not interfere with navigation.

In addition to the above-noted facilities, it also may be possible to permit a very small marina or boat landing under the Section 10A provisions (although this would be subject to renewal of the Section 10A annual permit). It is important to note the Section 10A presumption that such facilities/activities are located within the Harbor Line waters subject to the Boston Harbormaster’s jurisdiction (Chapter 329 of the Acts of 1961). It is recommended that proponents consult with the Harbormaster and/or DEP officials early in the design process to confirm the exact permitting and facility design requirements for the activities that may be permissible under Section 10A .

Requirements for Annual Mooring Permits

The requirements for an Annual Mooring Permit stipulate that the application and permit include at minimum the date of application, physical characteristics of the vessel(s) to be moored or anchored, and the purpose of the vessel (recreational or commercial). If the placement of floats or rafts for public recreational boating facilities (exclusive of moorings) extends beyond the established Harbor Line, encompasses an area greater than 2,000 square feet (SF), or constitutes a marina, additional procedures apply as follow:

- 1) There must be a public hearing held by the Harbormaster, with notice published in a local newspaper at least 7 days in advance; and
- 2) There must be a written statement issued from the Harbormaster stating the reasons for issuing the permit, including findings that the Project:
 - Serves a public purpose;
 - Does not unreasonably interfere with navigation in the harbor;
 - Cannot be located reasonably within the Harbor Line, if the project extends beyond such line; and/or
 - Complies with the provisions of 310 CMR 9.39 (1), if the project includes a marina.

Upon issuance of the Annual Mooring Permit, a copy of the permit and the Harbormaster’s written statement shall be submitted to the Department of Environmental Protection. The Department may review any such permit within 30 days of receipt and may either affirm the permit, set such action aside, or amend such action by imposing its own conditions and restrictions as deemed necessary. No Annual Mooring Permit for a mooring, float, or raft may authorize unreasonable interference with the public rights to use waterways for any lawful purposes including fishing, fowling, and navigation in tidelands. No permit for a mooring, float or raft shall be transferable to another person, except within the immediate

family of the permittee (upon approval of the Harbormaster). However, the regulations also specifically stipulate that nothing shall prevent moorings for which a permit(s) is duly issued to a recreational boating facility from being assigned to individual patrons or members of such facility.

The terms and conditions applicable to all Annual Mooring Permits are as follow:

- No permit is valid for a period longer than to the end of any given calendar year.
- No permit may authorize structures other than the placement of moorings, floats, rafts, or eligible small structures accessory to residences under 310 CMR 9.07.
- No permit shall be construed as authorizing the placement of moorings, floats, rafts, or other structures on private tidelands of anyone other than the applicant if objected to by the owner(s) thereof.
- No permit shall authorize the placement of moorings, floats, rafts, or other structures in any navigation channel or turning basin formally designated by the Federal or state government or by a municipality pursuant to a municipal harbor plan, unless the designating authority or other agency with jurisdiction over said area has previously approved such placement.
- No permit shall be inconsistent with the municipal harbor plan, if any, unless permitted under 310 CMR 9.07(2)(b) to be issued for a project extending beyond the Harbor Line.
- No mooring, float, raft, or other small structure may interfere with public rights associated with a common landing, public easement, or other historical legal form of public access that may exist on or adjacent to the project site.

Article 80 Development Impact Review

Article 80 of the City of Boston Zoning Code sets forth the requirements and standards for development impact review of both large and small types of projects, based on the type of use, size, and the zoning district location of a given project. For instance, certain types of development activity within the Harborpark District are subject to development impact review under the provisions of Article 80. Pursuant to Article 80, Section 80B-3(d) of the Zoning Code, "Large Project Review" is required for projects within the Harborpark District that propose to construct, demolish, or alter any pier, or to alter any shoreline, which construction, demolition or alteration affects 1,000 SF or more of Lot Area.

All proponents of Waterfront Activation facilities should consult directly with the Boston Redevelopment Authority to ascertain the exact zoning district designation and use designation(s) applicable to their projects/facilities and, correspondingly, the applicability of Article 80 development impact review.