



November 15, 2016

Matthew A. Beaton
Secretary
Executive Office of Energy & Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: 2016 South Boston Municipal Harbor Plan Renewal and Amendment

Dear Secretary Beaton:

On behalf of the Boston Planning & Development Agency (BPDA), I am submitting supplemental information regarding the South Boston Waterfront District Municipal Harbor Plan Renewal and Amendment (2016 South Boston MHP).

This supplemental information is based on discussions between the BPDA and your agencies, and primarily affects the proposed project at 150 Seaport Boulevard. Upon determination by the Massachusetts Department of Environmental Protection, (DEP), the project will be reviewed using the existing shoreline to define the seaward edge of the project site. We agree that this determination strengthens and helps to ensure the completion of the public benefits associated with the proposed project, which received overwhelming support during public review and comment periods.

As noted several times during our consultations, the project site and its most recent Waterways licensing history are complex. In spite of these complexities, the primary purpose of the 2016 South Boston MHP is to promote the broad goals of Chapter 91 and the Waterways regulations by providing on-site public access where there is currently none, and activation and public access improvements either adjacent to the site or within the MHP planning area. These circumstances – a complex project site with clearly defined and well-supported public benefits – are tailor-made for the type of site specific provisions authorized by the MHP regulations to clarify how the regulatory standards are met and to ensure the waterfront benefits that the public expects are provided within the broader context of the South Boston Waterfront District.

To that end, the supplemental information accompanying this letter includes information on changes to the 2016 South Boston MHP as submitted for substitute provisions, offsets, and amplifications, that reduce overall building footprint, add an interior ground floor

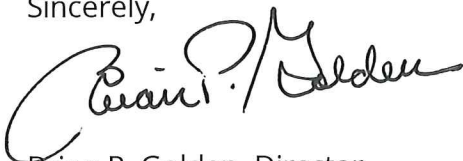
public area, and require the completion of new waterfront public access areas adjacent to the project. Specifically, the proposed changes include:

- Reduce the building footprint by 600 square feet or more;
- Provide an activated interior ground floor area as part of other interior ground floor uses;
- Amplify provisions of the Waterways regulations to require a public access area seaward of the existing project shoreline of up to 5,000 square feet, referred to below as Seaport Wharf;
- Require the construction of a new water transportation waiting area and enhanced Harborwalk between the project site and the World Trade Center as an offset for a water dependent use zone (WDUZ) substitute provision, referred to below as Massport Wharf;
- Require other public benefits in the original submission, such as an offset of \$1.5 million for Martin's Park at Children's Wharf.

As envisioned, the final project, with its offsets and amplifications, will promote both on-site and area-wide public activation and water dependent uses within the South Boston MHP Planning area by providing over 10,000 square feet of new public accessible waterfront. In addition, since the 2016 South Boston MHP was submitted, any significant mechanical systems that were shown on the ground floor of the 150 Seaport Boulevard project have been relocated to a new mezzanine level and to the second level, for increased climate resiliency and adaptability.

We appreciate your timely review of this information regarding the 2016 South Boston MHP and look forward to a successful completion of this review process.

Sincerely,



Brian P. Golden, Director
Boston Planning & Development Agency

cc: Ned Bartlett, Undersecretary, EOEEA
Gary Moran, Deputy Commissioner, MassDEP
Ben Lynch, Chief, Waterways Program, MassDEP
Andrea Langhauser, Waterways Program, MassDEP
Bruce Carlisle, Director, CZM
Brad Washburn, Assistant Director, CZM
Lisa Berry Engler, Boston Harbor Coordinator, CZM
Richard McGuinness, Deputy Director for Waterfront Planning, BPDA

Regulatory Framework Background

The landside portion of the project site has an area of 20,358 ±-square feet and consists of four parcels. The first is 146-150 Seaport Boulevard, which is owned by Cronin Holdings, LLC and has an area of 10,515± square feet (Cronin parcel). The second is a 1,044±-square foot area presently owned by 130 Northern Avenue, LLC, an affiliate of Tishman Speyer (Tishman parcel). The third is a 1,515±-square foot area presently owned by Massport (Massport parcel), and the fourth is a 7,285±-square foot triangular area presently owned by the City of Boston adjacent to Seaport Boulevard (City parcel) (Figure 1).

As discussed at length between our agencies during the consultation period, the project site presents a unique set of circumstances. The existing restaurant uses are nonwater dependent and only have access to the water by virtue of an easement from Tishman Speyer, the abutting landowner on the north, and a revocable license from Massport, which abuts the property on the east (Figure 1). When the existing structures were built, they encroached onto what are now the Tishman and Massport properties, and the easement and license became necessary to cure what otherwise would have been a trespass. The easement and license are limited in scope to allowing the current structures to remain in place. They do not expand the project site for purposes of future projects.

The complex nature of the existing conditions includes Waterways license #6970 granted by DEP in 1997 for a nonwater dependent use authorizing the construction of a water dependent pedestrian access boardwalk farther seaward than the existing structures to provide public access along this historically inaccessible shorefront. If the pile field authorized by this license were built, it would serve as a project shoreline pursuant to the waterways regulations at 310 CMR 9.02, which define "project shoreline" as "the high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles or to be replaced pursuant to 310 CMR 9.32(1)(a)4, whichever is farther seaward." However, completion of this section of Harborwalk, for decades a public realm priority, requires new agreements with Tishman and Massport in order to place the pilings on their property in accordance with the approved license plans. In the absence of these easements, completion of the Harborwalk along this section of the South Boston waterfront cannot be realized.

In developing the initial MHP submittal, BPDA considered three interpretations for the 150 Seaport Boulevard project shoreline. One interpretation was to view the project solely for the non-waterfront properties – the Cronin and City parcels. In this case, the project would not have a project shoreline because of the lack of waterfront access. While this approach was not fully evaluated as a potential option during the development of the MHP, it does represent a strict interpretation of the Waterways regulations for comparison purposes.

An alternative view was to look at the pile-supported public access structure authorized by DEP's 1997 Waterways license #6970, and delayed by an 18-year appeal as the project shoreline under the definition in 310 CMR 9.02, and either require the proponent first to build these pilings consistent with the approved license plan and then seek a minor modification, if necessary, to create consistency with the layout of the Harborwalk.

A third interpretation was to define the project shoreline by the existing fill and pile-supported structures, without considering ownership. On its face, this option most closely matches the regulatory definition – “the high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles” – but it is complicated by the fact that only the existing structures are authorized to remain in place by the Tishman easement and the Massport license. In the absence of new easements or conveyances for purposes of building the Harborwalk and adjacent public open space, the project would not include any rights in or over the shorefront parcels.

As originally proposed, the South Boston Waterfront District Municipal Harbor Plan Renewal and Amendment (2016 South Boston MHP) is based on the second interpretation. This option has the benefit of creating a WDUZ that conforms to the existing waterways regulations. As mentioned above, DEP has recently determined that the project shoreline should be based on the third interpretation and is therefore defined by the existing mean high water mark and pile-supported structures, whichever is farther seaward.

DEP's determination creates a project site of 20,358 +/- square feet, without the area authorized by Waterways license #6970 and causes the WDUZ to be nonconforming. As a result, a substitute provision is required in the 2016 South Boston MHP for a reconfigured WDUZ, whereas no such substitute was requested under the MHP Amendment and Renewal as originally proposed.

In addition, the City and the State have also discussed in the consultation period the broad, near-unanimous support that an expanded Harborwalk received from local officials, the Advisory Committee meetings, and the City's and the State's public comment periods. To ensure this significant public benefit is required as part of the 150 Seaport Boulevard development, the City is requesting through this letter an amplification for Seaport Wharf, a water dependent use in the area seaward of the existing project shoreline.

The supplemental information that follows provides an increase to the lot coverage substitute provision and an expanded offset, a request for a WDUZ substitute provision and offset in the form of a reconfigured WDUZ (aka Massport Wharf), an amplification for Seaport Wharf, and a more detailed analysis of the offsets provided in the 2016 South Boston MHP as submitted.

Revised Lot Coverage (310 CMR 9.51(3)(d) and 310 CMR 9.53 (2)(b)(1))

Lot coverage shall be reduced from a maximum of 15,600 square feet as submitted to a maximum of 15,000 square feet (Figure 3). While the overall lot coverage for the project has decreased under this approach, the percentage of lot coverage has increased from a maximum of 70% as submitted to a maximum of 75%. Under this approach the amount of open space area to be offset is 4,821 square feet.

In addition to the offset provided in the 2016 South Boston MHP as submitted, a further offset shall be provided onsite to promote public activation of the waterfront area consisting of a public interior waiting area and public general space on the ground floor of the proposed development. This ground floor public interior area shall be integrated with one or more other interior public areas, and shall be clearly signed on the interior and exterior of the building. A management plan shall be developed for this interior waiting area to ensure it is available and welcoming for public use.

The proposed building will be reconfigured to ensure a minimum 10-foot setback at the ground level from the project shoreline to meet the minimum standards in the Waterways regulations. A moderate amount of cantilevered balcony areas shall be allowed over this 10-foot setback area but no less than 45-feet above the ground level. Any area underneath the cantilevered balcony areas shall not be counted as part of the WDUZ or as open space.

WDUZ Substitute Provision and Offset (310 CMR 9.51(3)(c))

In following with the state's determination on the project shoreline, the area of the associated WDUZ would be 5,768+/- square feet. Under this same regulatory approach, the proposed project would have a WDUZ of 4,008+/- square feet, leaving a WDUZ deficit of 1,760+/- square feet (Figure 2). This deficit will be offset, at a one-square-foot-to-one-square-foot ratio, through a reconfiguration of the WDUZ that includes the construction of a pile-supported wharf area, known as Massport Wharf, along the existing Seaport Boulevard shoreline to the east of the project site, toward the World Trade Center (Figure 4). The preferred area for Massport Wharf shall be an area seaward of and parallel to Seaport Boulevard, and this wharf shall connect Seaport Wharf with the World Trade Center with an enhanced Harborwalk area and water transportation waiting area. An alternative area that would extend Seaport Wharf southeasterly from the project site may also be constructed as a WDUZ offset, but only if reasonable efforts are unsuccessful to complete the offset at the preferred area in the same timeframe as the completion of the 150 Seaport Boulevard project.

In the event the proponent is unable to construct Massport Wharf in either the preferred or the alternate location due to actions of someone other than the proponent, or due to circumstances beyond the control of the proponent, DEP shall require that the proponent make a contribution to an off-site amenity of DEP's choice in approximately the same square footage or approximately the same amount as the estimated cost of building Massport Wharf. For purposes of meeting the requirements of 301 CMR 23.05(2)(c), the required setback from the existing project shoreline ensures that new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline.

Amplification for Exterior Open Space (310 CMR 9.53(2)(b))

The proposed Seaport Wharf open space area seaward of the project shoreline has received considerable public support (Figure 3). However, as explained above, the complex ownership, regulatory, and licensing issues and the relatively small size of the parcel complicate a straight-forward approach to ensuring that the public access and water dependent use goals of Chapter 91, the Waterways regulations, and the MHP regulations are met. It is precisely these types of extraordinary circumstances for which the MHP regulations are uniquely qualified. This amplification will ensure that Seaport Wharf will be an integral component of this project, fulfilling a long-standing public realm priority for this site and the intent of Waterways License #6970 and its related licensing efforts.

The proposed amplification is for 310 CMR 9.53(2)(b) as it relates to public activation of Commonwealth tidelands. This section states that nonwater dependent use projects "...shall attract and maintain *substantial* public activity on the site on a year-round basis, through the provision of water-related public benefits *of a kind and to a degree* that is *appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances.*" The specific section states that the project shall "...include exterior open spaces for active or passive public recreation, examples of which are parks, plazas, and observations areas; such open spaces shall be located at or near the water to the *maximum reasonable extent...*" [Emphasis added to highlight DEP discretionary requirements].

Recognizing existing site constraints, such as no public access to the water, no water dependent uses, and no waterfront activation, and given the relatively small size of the project site, the City is requesting that the Secretary amplify the discretionary requirements of 310 CMR 9.53(2) by requiring an open space area known as Seaport Wharf of not more than 5,000 square feet seaward of the project shoreline. This amplification will result in a significant public exterior area that is open year-round to the public, completing long awaited City public realm plans and fulfilling Chapter 91 public access goals.

Other Public Benefits

A key public benefit of this project is the offset for lot coverage and net new shadow impacts of \$1.5 million towards the construction of Martin's Park at Children's Wharf. This proposed offset remains unchanged from the 2016 South Boston MHP as submitted.

The City adjusts one of its recommendations for long-term Waterways license fees to provide additional public amenities on Massport Wharf. In addition, the City continues to recommend that DEP consider long-term Waterways license fees be used for the build-out of the Fort Points Arts Community Inc., space at the Envoy Hotel.

The project, in conjunction with the Tishman project at Pier 4, will also be providing 46 units of deeply subsidized housing for seniors in South Boston, with on-site services and a live-in manager, as described in the 2016 South Boston MHP as submitted. The affordable housing component of the Project relates to the nonwater-related public benefits referenced at 310 CMR 9.53(3)(a)&(d).

Analysis of Offsets

The 2016 South Boston MHP referenced \$1.5 million as an offset for lot coverage and impacts associated with building height with the funds for the improvement of open space within or adjacent to the South Boston MHP planning area with the priority project of completing Martin's Park at Children's Wharf. In the City's notice to the state in December 2015 regarding the initiation of the renewal and amendment process, reference was made to the planning effort functioning to implement MHP public realm improvements that were envisioned, but not realized. Children's Wharf Park, referred to as the MBTA Mitigation Park and Parcel E in the MHP and Secretary's Decision, is a public realm objective from the original MHP that the proposed project can assist in completing. As background, the Seaport Public Realm Plan and MHP noted the Fort Point Channel as an area intended for intense civic and public uses in and along the Channel. To meet the Public Realm and MHP objective of enhancing community access and use of the waterfront, new and improved open space were seen as vital components of new projects and framed in the MHP and Secretary's Decision as the primary offset for project substitutions.

As a corollary to 150 Seaport Boulevard project, the MHP and Secretary's Decision specified that for certain small and fragmented South Boston Waterfront parcels an allowance for greater than 50% lot coverage would be allowed to encourage meaningful redevelopment. The Secretary's Decision provided for open space aggregation as a lot coverage substitution for these infill and fragmented parcels within the McCourt and Fort Point Districts, with a focus on creating a cohesive and significant open space resource

through the dedication of Parcel E as open space and adjacent Sleeper Street city parcels to enhance the MBTA Mitigation Park at Children's Wharf. As referenced in the MHP Renewal and Amendment, the priority project of Martin's Park at Children's Wharf was derived from the 2000 South Boston Waterfront District MHP and subsequent Secretary's Decision which expressed interest in a signature open space resource along the Fort Point Channel, and allowed for the aggregation of open space offsets at that location from other, smaller and more fragmented development parcels within the South Boston Waterfront District MHP planning area. The Advisory Committee for the MHP Renewal and Amendment process also prioritized completion of Martin's Park at Children's Wharf.

The offset funding amount initially proposed was based upon a review of open space improvement costs in the South Boston area and relating this cost on a square foot basis to the extent of lot coverage over 50% on the project site and square foot impact of new shadow caused by the 150 Seaport Boulevard building. Using comparable open spaces and through consultation with industry professionals, a range of \$75 - \$200 per SF for hard- or greenscape hard costs, plus 20% for soft costs, was developed. The 2016 South Boston MHP determined 3,100 SF of excess lot coverage and 8,320 SF of shadow needed to be offset, resulting in an offset range of \$1- to \$2.7-million. \$1.5-million was determined an appropriate amount given the inherent risk as an early action offset, a requirement necessary for the timely completion of Martin's Park at Children's Wharf. However, whereas the revised lot coverage has increased the amount of square footage to be offset, the BPDA is recommending an interior public space on the ground level of the proposed development to supplement the initial proposed offset. The BPDA believes that such a space, completed at cost to the proponent and delivered upon completion of the project, provides a greater waterfront environment and experience than would otherwise be afforded. The interior space combined with baseline Harborwalk, Massport Wharf, and the expanded Seaport Wharf, together increase the access and destination value of the project.

South Boston Waterfront District Municipal Harbor Plan Amendment and Renewal Substitute Provisions

Nonwater-Dependent Use Standard	Chapter 91-Compliant Standard	Proposed Substitute Provision	Proposed Offset	Revised Substitute Provision	Offset considered by state
<p><i>Water-Dependent Use Zone 310</i> <i>CMR 9.51(3)(c)</i></p>	<p>The lesser of 50 feet or 15% of the distance from the side, but no less than ten feet at any point.</p>	<p>N/A. There was no substitute provision proposed in the MHP submitted based up our understanding of the project shoreline and the license history.</p>	<p>N/A. There was no substitute provision proposed in the MHP submitted to the state.</p>	<p>No net loss of WDUZ. For this property, the WDUZ totals ~5,768 SF, 4,008 of which are on the project site, leaving ~1,760 SF to be established on "Massport Wharf".</p>	<p>The WDUZ will comprise the 10-foot setback from the project shoreline (except that which is underneath the cantilevered balcony areas) and "Massport Wharf".</p>
<p><i>Lot Coverage - 310 CMR</i> <i>9.51(3)(d)</i></p>	<p>One square foot of open space for each square foot of building footprint, or a maximum of 50% lot coverage.</p>	<p>Based upon a project site of 25,000 SF, lot coverage of up to 70% or 17,500 SF. Based upon the building's proposed footprint of 15,600 SF, approximately ~3,100 SF must be offset.</p>	<p>\$1.5-million to improve open space within or adjacent to the South Boston MHP area (e.g. Martin's Park at Children's Wharf).</p>	<p>Based upon a project site of 20,358 SF, lot coverage of up to 75% or ~15,269 SF. Based upon the building's proposed footprint of 15,000 SF, ~4,821 SF must be offset.</p>	<p>A public interior waiting area on the ground floor of the proposed development, which shall be integrated with one or more other interior public areas and clearly signed on the interior and exterior of the building.</p>
<p><i>Building Height - 310 CMR</i> <i>9.51(3)(e)</i></p>	<p>Building height of 55 feet</p>	<p>Building height of 250 feet. The proposed building casts ~16,640 SF of NNS in the shadow protection zone. Shadow is mitigated at a 2:1 ratio; therefore ~8,320 SF of NNS must be mitigated.</p>	<p>No change: Building height of 250 feet.</p>	<p>AND \$1.5-million to improve open space within or adjacent to the South Boston MHP area (e.g. Martin's Park at Children's Wharf).</p>	<p>AND \$1.5-million to improve open space within or adjacent to the South Boston MHP area (e.g. Martin's Park at Children's Wharf).</p>

Figure 1. Site Diagram from June 2016 South Boston Waterfront MHP Renewal & Amendment

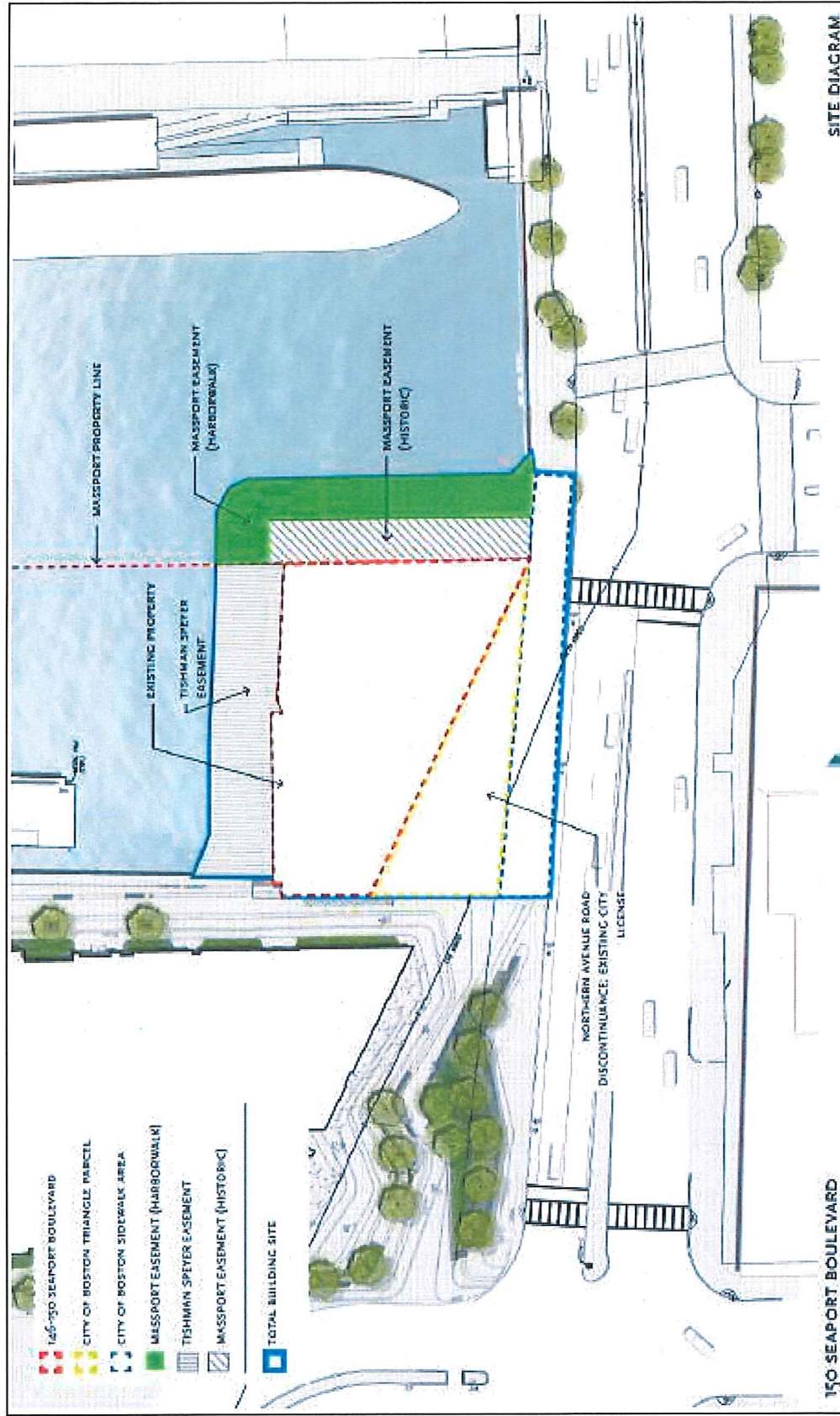
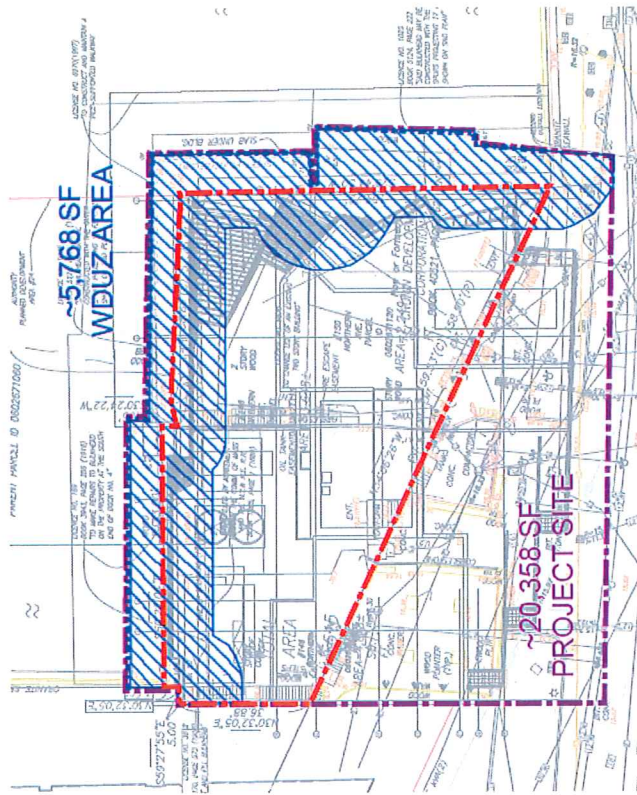
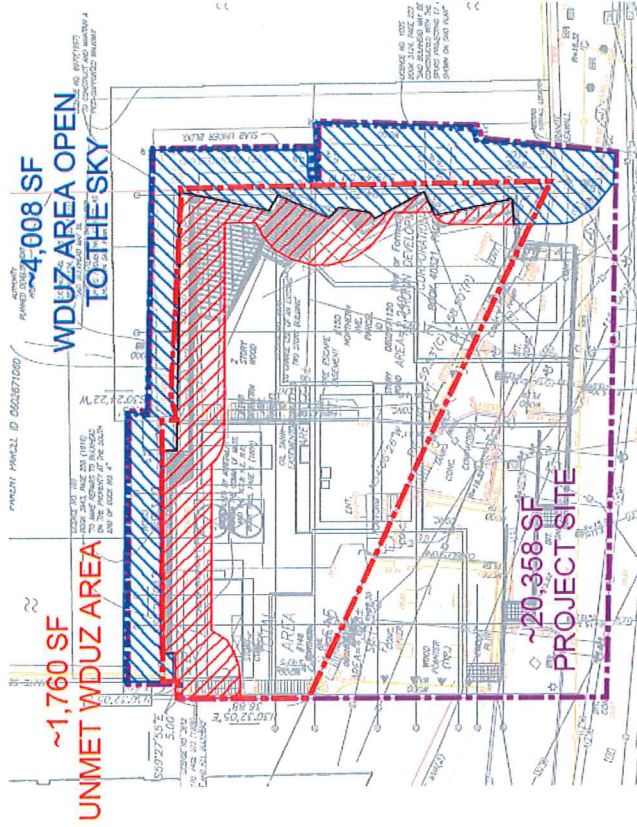


Figure 2. Water Dependent Use Zone

- CRONIN PROPERTY LINE
- PROJECT SHORELINE AS DEFINED BY DEP
- WDUZ DEFICIT AREA
- WDUZ AREA (OPEN TO THE SKY)
- PROJECT SITE



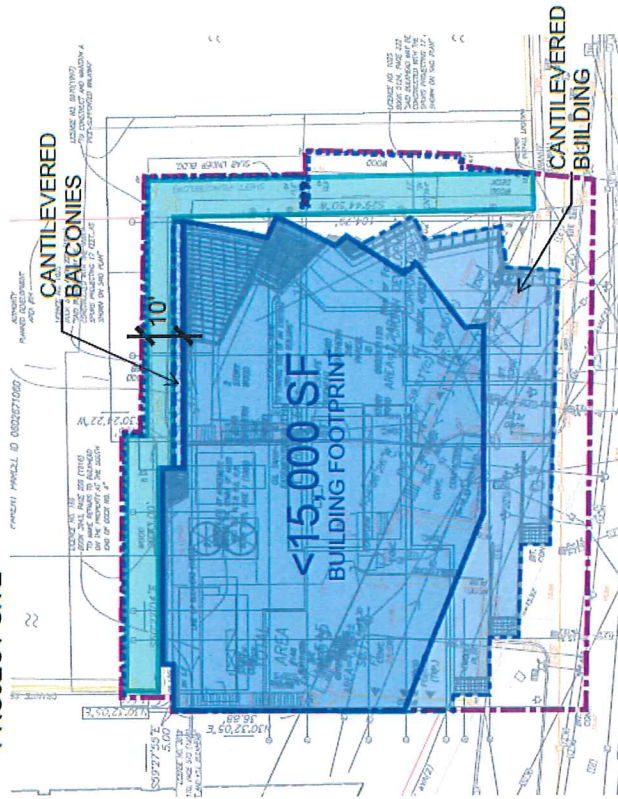
CHAPTER 91-COMPLIANT WDUZ AREA ~5,768 SF



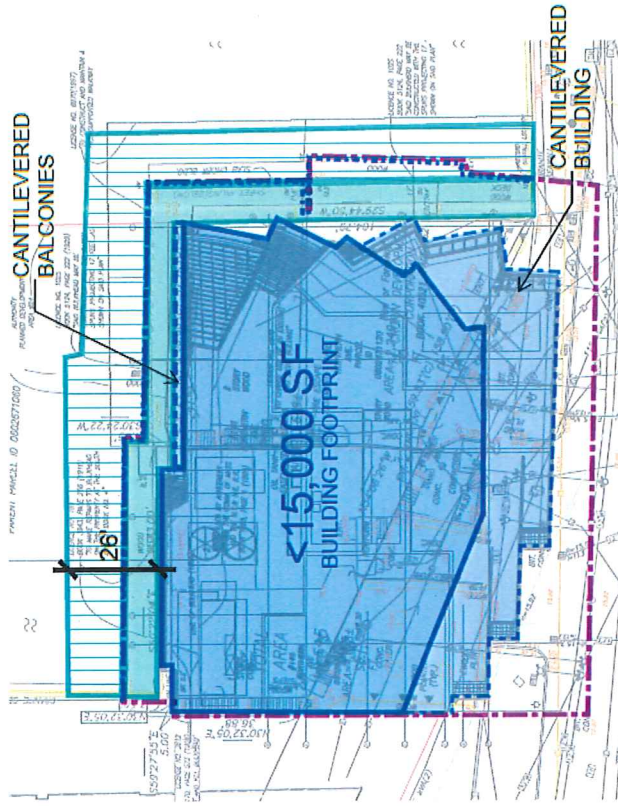
BUILDING FOOTPRINT WITH WDUZ AREA
~4,008 SF OF AREA OPEN TO THE SKY
~1,760 SF UNMET WDUZ AREA

Figure 3. Modified Regulatory Approach to 150 Seaport Boulevard

- PROJECT SHORELINE AS DEFINED BY DEP
- TOTAL PROPOSED PROJECT FOOTPRINT
- 10- FOOT SETBACK
- SEAPORT WHARF
- MASSPORT WHARF (PREFERRED LOCATION)
- MASSPORT WHARF (ALTERNATE LOCATION)
- PROJECT SITE

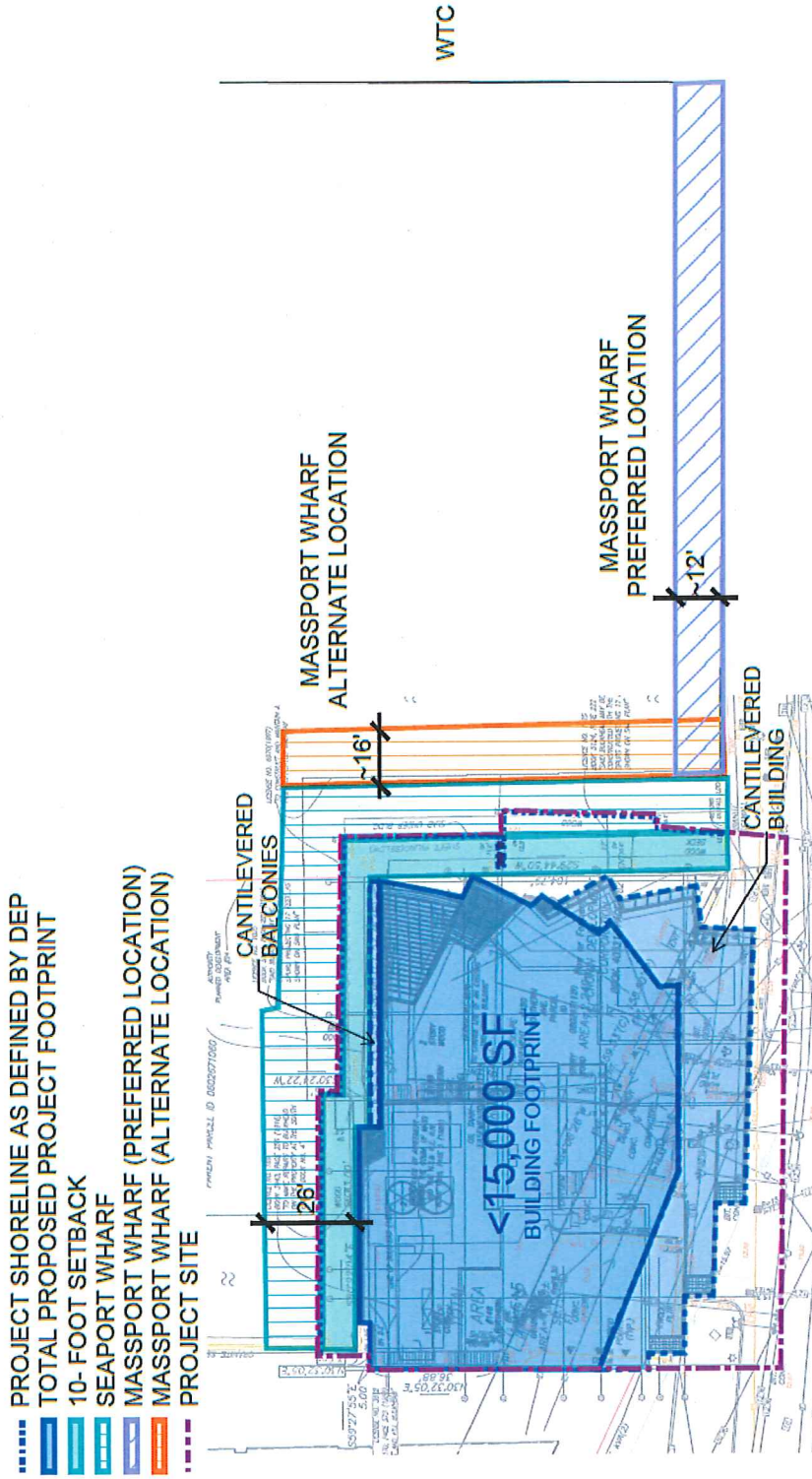


PROPOSED 150 SEAPORT BOULEVARD PROJECT SITE
 20,358 +/- SF WITHOUT SEAPORT WHARF AMPLIFICATION
 10-FOOT MINIMUM GROUND FLOOR SETBACK,
 <75% LOT COVERAGE
 WDUZ DEFICIT OF APPROX. 1,760 SF

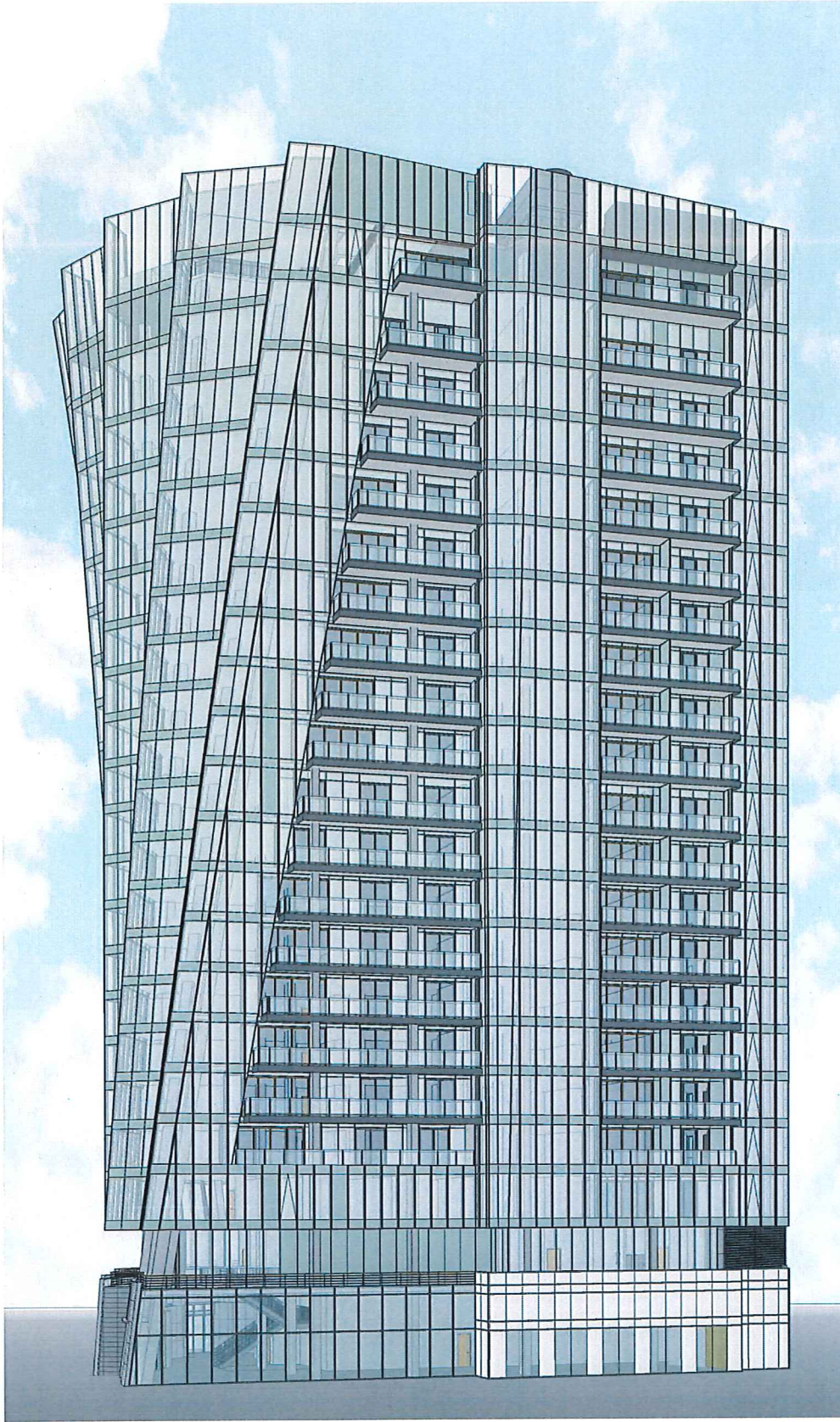


PROPOSED 150 SEAPORT BOULEVARD PROJECT
 WITH THE SEAPORT WHARF AMPLIFICATION

Figure 4. Modified Regulatory Approach to 150 Seaport Boulevard



PROPOSED 150 SEAPORT BOULEVARD PROJECT WITH SEAPORT WHARF AMPLIFICATION AND THE MASSPORT WHARF WDUZ OFFSET



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