

July 11, 2017

Ben Lynch, Waterways Program Chief
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Subject: Intercontinental Hotel Boston (500 Atlantic Ave) Ch. 91 License # 9825

Dear Mr. Lynch:

Conservation Law Foundation (CLF) has been made aware that the Intercontinental Hotel located at 500 Atlantic Avenue in Boston is currently in violation of several conditions of Waterways License # 9825. CLF understands that you have also been made aware of these violations and we would like to take this opportunity to share our assessment of the site's noncompliance.

The following outlines the current conditions of the site as we understand them and the areas of noncompliance we have identified. We request that you keep us apprised of future enforcement actions with regard to this license.

Licensee: Intell Boston Harbor LLC
License #: 9825
Term: November 3, 2005 – November 3, 2102 (99 years)
Known As: Intercontinental Boston (Hotel)
Status: Noncompliant

Description

500 Atlantic Avenue is licensed to be a hotel and condominium complex. Intell Boston Harbor LLC obtained a Waterways License (License No. 9825) in November of 2003 authorizing the construction and maintenance of a mixed-use building including a 422-room hotel, including a lobby, several function rooms, restaurant and retail space, and

other publicly accessible interior space; a 141-unit condominium complex; a below-grade parking garage with 375 spaces; a water transportation ticket kiosk, and exterior public open space.

On information and belief, the site in question never developed or submitted a management plan for the site and thus the conditions of Waterways License # 9825 currently govern use and access on the site.

License Requirements

Interior Public Amenities

Special Condition 4 requires the licensee to provide publicly accessible restrooms open 24 hours a day as well as a general walkway through the ground floor of the lobby (referred to as an “interior walkway”) that includes directional signage, interpretive or informational exhibits, including information about the public water transportation serving the site, to be open to the public at no charge.

Exterior Public Amenities

Special Condition 3 (a) requires the licensee to construct and maintain 33,000 SF of publicly accessible exterior open space facilities (inclusive of the harborwalk and ticket kiosk) including landscaping, seating areas, lights, bicycle racks, signage and interpretive materials, and “as shown on the final license plan”. Facilities are required to be open to the public, free of charge, 24 hours per day. A portion of this open space area, immediately adjacent to the seaward end of the hotel building, ***but in no case within the “Atlantic Avenue Wharf Waterfront Public Access and Use Area”*** as delineated in the Joint Plan, may be used for outdoor dining area for customers of the restaurant (emphasis added).

Special Condition 3 (b) requires a 40-foot wide public pathway running between the sidewalk at Atlantic Avenue and Fort Point Channel and along the entire length of the southern property line of the site. A 25-foot wide portion of the pathway shall be clear of any obstructions. On the eastern end, the walkway shall merge with the publicly open space which includes the park and the ticket kiosk. There shall be directional signage indicating the location of the water transportation terminal posted in a manner visible to the Atlantic Avenue sidewalk. It must also preserve the view of the corridor.

Special Condition 10 reiterates the requirement that all publicly accessible exterior areas must be open to the public, free of charge, 24 hours a day.

Facilities of Public Accommodation (FPAs)

Special Condition 4 requires the ground floor of the building be reserved for FPA use including a hotel, restaurant, retail shops, interpretative exhibits for the public, and publicly accessible interior walkway. The hotel shall also include publicly-accessible restrooms open to the public at no charge 24 hours a day.

Special Condition 5 requires the construction and maintenance of a Water Transportation Ticket Kiosk. In addition to ticketing services, the ticket kiosk shall be heated and shall have at least one bathroom, a seating area, a telephone, and provide water transportation service information the public. Bathroom shall be open to the public free of charge, seven days a week, from dawn until dusk. A sign on the exterior of the ticket kiosk shall note the availability of additional restrooms inside the hotel.

Signage

Special Condition 3 (a) requires there to be signage along the harborwalk, as well as interpretive signage designed in coordination with the Boston Planning and Development Agency (formerly the Boston Redevelopment Authority).

Special Condition 3 (b) requires there to be directional signage indicating the location of the Water Transportation Ticket Kiosk posted in a manner visible to pedestrians on the Atlantic Avenue sidewalk.

Special Condition 3 (d) requires there to be signs indicating the public's ability use the walkway through the building and the availability of public restrooms, free of charge, 24 hours per day, to be posted at a visible location on the face of the building near Atlantic Avenue and the Fort Point Channel side of the building.

Special Condition 4 requires there to be directional signage in the lobby indicating the walkway and the public facilities as well as interpretive or informational exhibits.

Assessment of Compliance

CLF staff have inspected the 500 Atlantic Avenue site on numerous occasions to assess compliance with Waterways License No. 9825 and have made the following observations:

- In violation of Special Conditions 3 and 10, the hotel routinely rents out the public lawn area, which is referred to on their website as the "outdoor waterfront promenade", for private events through their banquet service (see pictures attached).

- In violation of Special Conditions 3 and 10, the hotel operates a bar/restaurant called “Five-10 Waterfront”, which is separate from their indoor restaurant operations on the public waterfront plaza located within the “Atlantic Avenue Wharf Waterfront Public Access and Use Area” identified in the Joint Plan. The hours of operation for Five-10 Waterfront are Wednesday through Saturday 11 am to 11 pm. This area is also blocked off from the harborwalk with a line of large potted plants which leave a very small clearance area between the handicap ramp to the lawn and the line of potted plants (see pictures attached).
- In violation of Special Conditions 3 and 10, the Residences at Intercontinental Hotel have put up signage on the one of the public lawn areas indicating that the seating area on the lawn is for the exclusive use of the residents of the condominium building (see picture attached).
- In violation of Special Condition 3(a), the site does not include any bicycle racks or bicycle amenities.
- In violation of Special Condition 3(b), there is no directional signage indicating the location of the Water Transportation Ticket Kiosk. It is also noteworthy that the ticket kiosk itself has no signage indicating its purpose. It is likely that people passing by are unaware that it is a ticketing kiosk.
- In violation of Special Condition 5, the ticket kiosk does not provide seating for patrons or a telephone. It is unclear what the hours of operation for the ticket kiosk are but CLF staff has visited the site on multiple occasions on different days and during different times of day and have never seen anyone behind the desk. When the kiosk is vacant, there are no water transportation materials available. There does appear to be pamphlets hidden in drawers of the unmanned desk but the average user likely is unaware of this.
- In violation of Special Condition 3(b) the pathway between the Atlantic Avenue sidewalk and Fort Point Channel does not have directional signage indicating the location of the water transportation terminal.
- In violation of Special Condition 3(d) the sign indicating that the public is invited to use the walkway through the building and the availability of restrooms on the face of the building near its Atlantic Avenue entrance is not visible (see picture attached).
- In violation of Special Condition 4, the publicly accessible interior walkway does not include any interpretive or informational exhibits for the public and no directional signage or information about the water transportation serving the site.

- In violation of the Joint Plan referenced in Special Conditions 1, 2 and 3, the “Atlantic Avenue Wharf Waterfront Public Access and Use Area” is not publicly available, free of charge, 24-hours a day and includes prohibited outdoor dining for restaurant customers (see exhibit from Joint Plan delineating this area).
- In violation of Special Condition 8, the licensee did not prepare a management and maintenance plan for the publicly accessible interior spaces and exterior areas and amenities.

As articulated in the Boston Planning and Development Agency’s own documents, the redevelopment of Russia Wharf and this area was envisioned to expand the quantity and quality of public access to the waterfront by converting the existing parking and loading area into a waterside plaza, a publicly accessible space with free public seating. Instead, the Intercontinental Hotel and the Residences at the Intercontinental have appropriated public open space for private use and benefit in violation of their Chapter 91 license, the tidelands program, and the public trust doctrine. CLF is outraged by the egregiousness of these violations and we trust that the Department will take appropriate action to ensure that the licensee is brought into compliance with these conditions.

We request that you keep us apprised of any enforcement actions against this licensee.

Sincerely,



Deanna Moran
Director, Environmental Planning
Conservation Law Foundation

Cc: Commissioner Martin Suuberg
Brian Golden, Director BPDA
Richard McGuinness, Deputy Director BPDA
Bradford Rice, General Manager Intercontinental Boston

Exhibit 1: Public lawn areas being used for private events

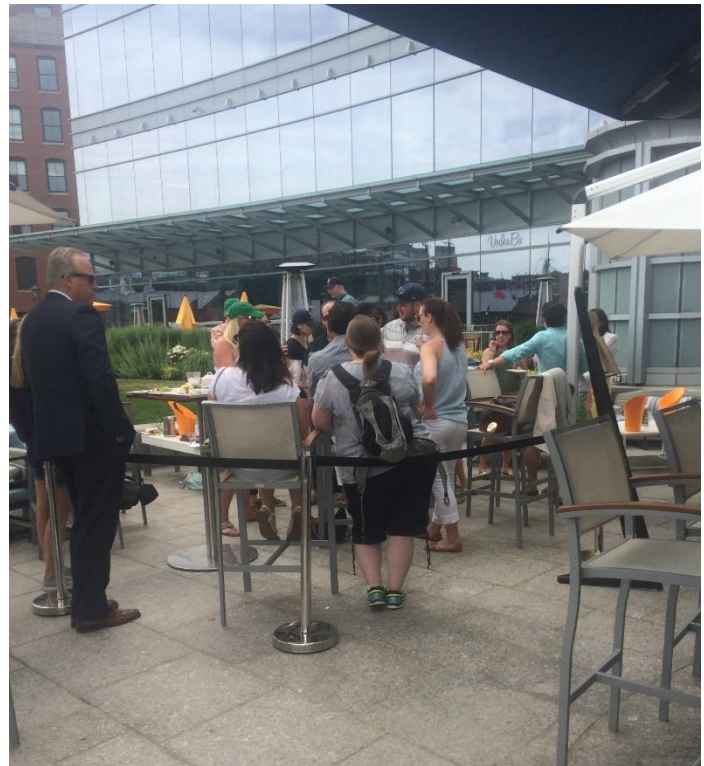
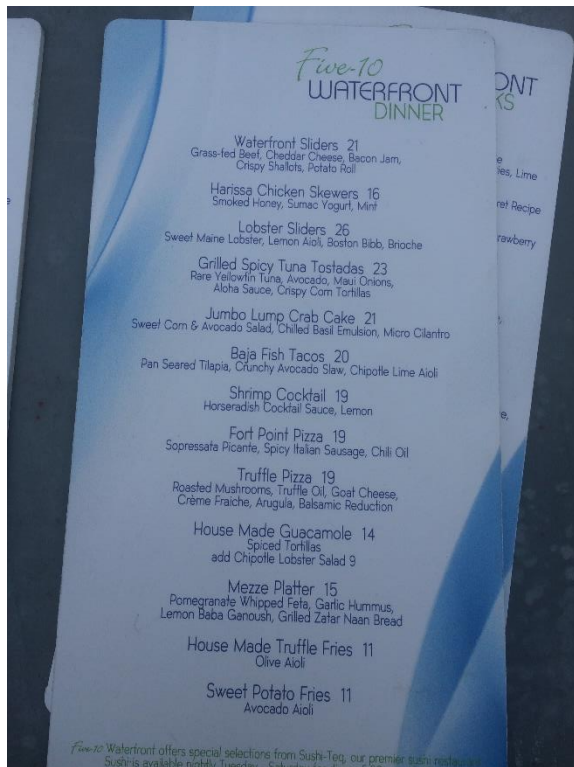


Top: Large public lawn area adjacent to the northern property line being used for a private event through the Hotel's banquet service

Bottom: Hotel staff setting up the lawn area for the event shown above.



Exhibit 2: Public plaza being used for private bar/ restaurant seating



Left: Menu for Five-10 Waterfront bar/restaurant available at the maître d' stand at the entrance to the seating area. Right: Roped off area within the restaurant seating for a private event



Left: Sign inside the restaurant seating area indicating the roped off area is for a private event. Right: line of potted plants walling off the seating area from the harborwalk and indicating the private nature of the plaza. Potted plants also completely cut off vertical access from the harborwalk to the interior public walkway.

Exhibit 3: Second public lawn area indicating exclusive use for condo residents



Top: Sign indicating the public lawn area is for the exclusive use of condo residents.

Bottom: Condo residents enjoying exclusive use of the seating area on the public lawn.



Exhibit 4: Signage on the water transportation ticket kiosk and at the front of building facing Atlantic Avenue not visible compared to signage elsewhere



Left: Signage on the front of the building facing Atlantic Avenue indicating the publicly accessible interior walkway and the availability of public restrooms inside the hotel. Right: Signage on the front of the ticket kiosk indicating public bathrooms inside and additional restrooms inside of the hotel.



Left: No smoking sign on the front of the building near the glass where the sign on the left above is located. Right: Waterways signage at the back of the building. Both images demonstrate alternative signage options that would be more visible on reflective surfaces. *Noteworthy that this sign indicates copies of the waterways license is available at the hotel registration desk but was not available upon request by CLF staff*

Exhibit 5: Interior signage

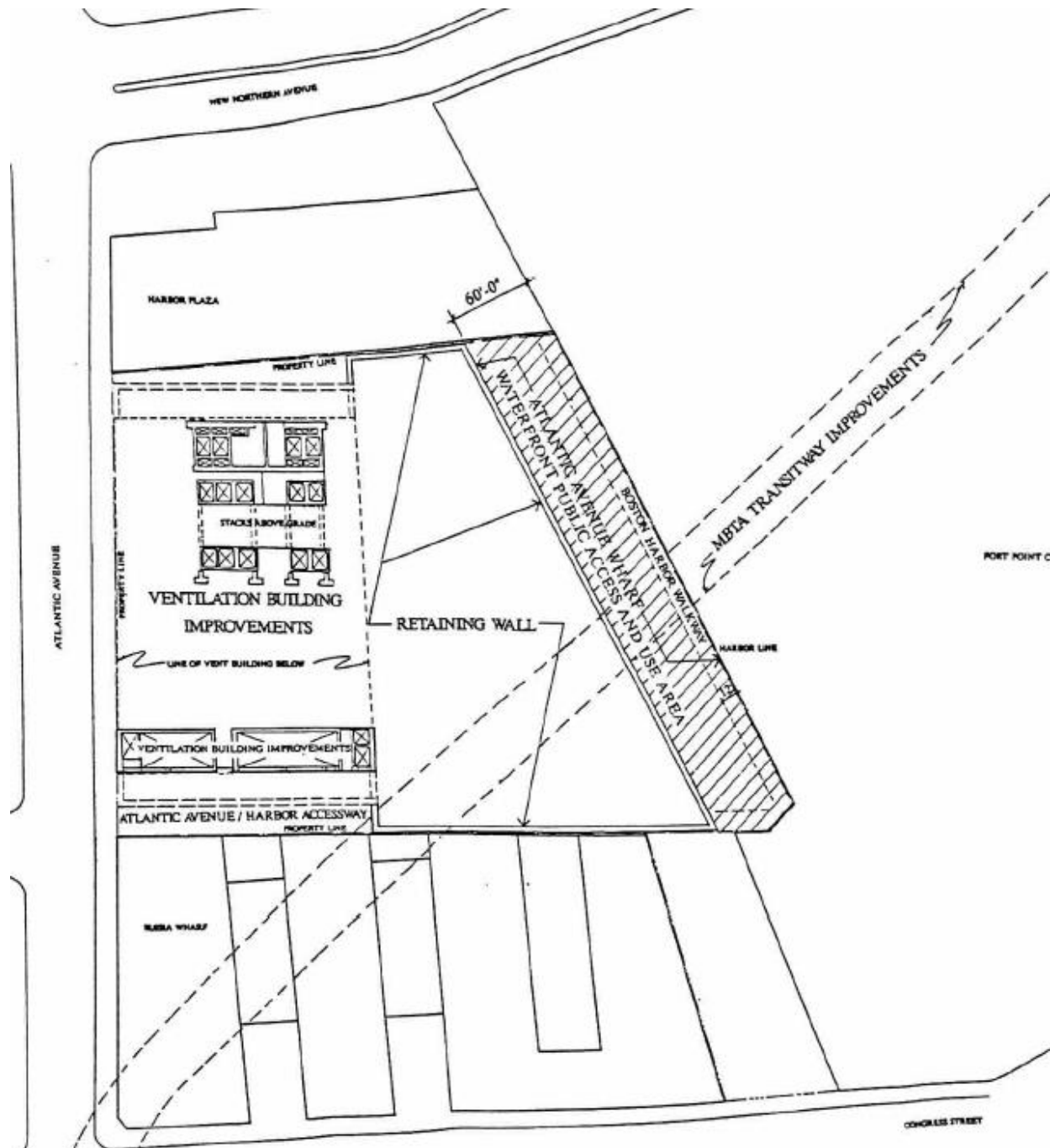


Pictures to the right show the only interior signage in the hotel lobby/public walkway area. The second sign indicates the location of the bathrooms but does not indicate they are available for the general public.

There is no directional signage to the harborwalk or water transportation ticket kiosk. There is no information available about the water transportation serving the site.



Exhibit 6: Atlantic Avenue Wharf Waterfront Public Access and Use Area as delineated in the Joint Plan (scan obtained from MassDEP hard copy of Joint Plan)



Above: boundaries indicate that the public access and use area is a 60-foot wide area extending from the shoreline in toward the building footprint. This area includes the present day restaurant seating and the two public lawns, which are currently being appropriated for private use and benefit.