

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

December 15, 2017

Durand & Anastas Environmental Strategies, Inc.  
c/o Tom Skinner  
250 Northern Avenue, Suite 400  
Boston, MA 02110

**Re: Written Determination Pursuant to M.G.L. Chapter 91**

Waterways License Application №: W17-5032-N

150 Seaport Blvd, Filled and Flowed Tidelands of Boston Harbor, Boston, Suffolk County

Dear Mr. Skinner:

The Department of Environmental Protection (the "Department") hereby issues this Written Determination, pursuant to Massachusetts General Law (M.G.L.) Chapter 91 (c.91), the Public Waterfront Act, and the Waterways Regulations at 310 CMR 9.00, and its intent to approve the referenced application, subject to the attached conditions.

Cronin Holdings, LP (the "Applicant"), requests authorization pursuant to M.G.L. c.91 and applicable provisions of 310 CMR 9.00 to demolish two existing buildings and redevelop the site into a mixed-use residential development with a public waterfront walkway and expanded public realm located on filled and flowed Commonwealth Tidelands of Boston Harbor at 150 Seaport Boulevard, (South) Boston, Suffolk County (the "project site").

The total project site encompasses 27,051-square feet, of which approximately 20,116-square feet (or 74.4% of the site) consists of previously authorized filled Commonwealth Tidelands and the remaining 6,935-square feet (or 25.6% of the site) is pile-supported over flowed Commonwealth Tidelands. The project site consists of an assembly of nine (9) parcels/easement areas (as depicted on Figure 6-14 of the above referenced Waterways Application), all of which must be owned or legally controlled by the Applicant prior to licensing, as required in the Secretary of Energy and Environmental Affairs' (the "Secretary") Decision on the South Boston

Waterfront Municipal Harbor Plan Renewal and Amendment (the “2016 South Boston MHP”) issued on December 21, 2016.

The proposed project consists of the demolition of two (2) existing bar/restaurant buildings (The Atlantic Beer Garden and Whiskey Priest) and the redevelopment of the project site into one (1) 22-story, 247-foot high mixed-use building with a building footprint of 14,625-square feet (including overhangs and covered open space) totaling 282,833-square feet of gross building space and a 3-level underground private parking garage accommodating approximately 179-vehicle parking spaces and 124-bicycle parking spaces; a ground floor restaurant, universally accessible public restroom, integrated public waiting area/lobby, upper floor accessory services (UFAs); a second-floor restaurant with exterior waterfront balcony dining; third floor residential amenities, and 124-residential units located on floors three through twenty-two.

The proposed exterior open space components of said project consists of a 10-foot wide Harborwalk located within the Water Dependent Use Zone (WDUZ) along the existing project shoreline, an abutting 6,935-square foot publicly accessible pile-supported wharf (2,206-square foot Massport Wharf and 4,729-square foot Seaport Wharf required per the 2016 South Boston MHP) with railing along the seaward edge, benches, lighting, etc., and expanded public sidewalks with associated streetscape improvements along Seaport Boulevard, which totals 12,426-square feet (excluding covered open space). However as explicitly stated in the Secretary’s Decision on the 2016 South Boston MHP, Seaport Wharf and Massport Wharf are not to be considered for the calculation of lot coverage and open space for this project. Therefore, the size of the project site for the purpose of meeting the regulatory requirements is limited to 20,116-square feet (area minus Seaport Wharf and Massport Wharf) and accordingly the calculation of open space on site is 5,491-square feet (or 27% of the site) and nonwater-dependent building coverage is 14,625 (or 73% of the site).

Additionally, the proposed project will straighten the shoreline via the installation of 257-linear feet of new sheet-pile bulkhead wall and 148-cubic yards of associated fill. As a part of the shoreline straightening, the proposed project also includes the removal of 290-square feet of existing authorized solid fill, resulting in the reclamation of said amount of flowed Commonwealth Tidelands.

The 2016 South Boston MHP both renewed and amended the original South Boston Waterfront District Municipal Harbor Plan (the “2000 South Boston MHP”) approved by the Secretary on December 6, 2000, therefore both MHPs are still in effect. The Secretary’s Decision on the 2016 MHP approved a ten (10) year renewal of the 2000 MHP (set to expire in 2026) and authorized an amendment only for a small section of the overall 2000 MHP Planning Area. The scope of the MHP amendment is only for the properties at 146 to 150 Seaport Boulevard (now known as 150 Seaport Boulevard), located at the northeastern edge of the MHP Planning Area along Boston Harbor, between Commonwealth Pier and Pier 4. The renewal and amendment of said plan will allow for the City of Boston to realize many of its development goals for the South Boston Waterfront District under the guidelines, planning elements, and specific regulatory amplifications and substitution provisions approved in both of the Secretary’s Decisions.

Said project is subject to two (2) amplifications: one to 310 CMR 9.02 required in the Secretary's Decision on the 2000 South Boston MHP and one to 310 CMR 9.53(2)(b) required in the Secretary's Decision on the 2016 South Boston MHP, as further detailed below. Pursuant to 310 CMR 9.34(2)(b)(2), the Department shall adhere to the greatest reasonable extent to all applicable guidance specified in an MHP which amplifies any discretionary requirements of 310 CMR 9.00.

- 1) Amplification to 310 CMR 9.02 – The baseline regulation permit Upper Floor Accessory Services (UFAs) or a use which must locate on the ground floor in order to serve any Facility of Private Tenancy (FPT) located on the upper floors provided it does not occupy more than 25% of the building footprint. The Secretary's amplification to said citation restricts UFAs on the ground floor to no more than 20% of the building footprint and UFAs cannot front along any waterside of the building. The Applicant complies with this amplification as 19.9% of the ground floor of said building is proposed as UFAs while the remaining 80.1% is proposed as a Facility of Public Accommodations (FPAs) or accessory use thereto (as depicted on Sheet 15 of Draft License Plans No. W17-5032-N). Additionally, no proposed UFAs on the ground floor front any waterside of the proposed building. The Department has determined that some of the proposed ground floor space identified by the Applicant as an FPA is actually shared space by UFAs, therefore pursuant to 310 CMR 9.53(2)(c) the Department will count any or all the 8,416-square feet of proposed restaurant space on the second floor (3,456-square feet of interior dining space, 2,032-square feet of exterior waterfront balcony dining space, and 2,928-square feet of restaurant back-of-house space) as depicted on Sheet 17 of the Draft License Plans toward any potential discrepancy of shared FPA/UFA space on the ground floor. Furthermore, the Department finds that the proposed second floor restaurant will more effectively promote public use and enjoyment of waterside space on the project site while allowing more non-waterside ground level space for required UFAs.
- 2) Amplification to 310 CMR 9.53(2)(b) requires the construction of an approximately 5,000-square foot pile-supported deck (Seaport Wharf) beyond the existing project shoreline and in addition to the 10-foot wide Harborwalk located within the WDUZ along the existing project shoreline. The Secretary noted that this amplification is a significant amenity to the overall project for public access and activation of tidelands but it is not being considered for the calculation of lot coverage, open space, or WDUZ, and it is not proposed as an offset for any requested substitution. Although this amplification will result in the loss of open water, it grants greater publicly accessible exterior space to enhance the transient public's waterfront experience. The inclusion of the abutting pile-supported wharf will effectively widen the public realm from 10-feet to an average of 25-feet wide along the seaward site of the project site. The Secretary found that given the factors, conditions, and site constraints, including the lack of water-dependent use opportunities the space could accommodate, the strong public desire to unify the abutting waterfront with the proposed development, along with the greater public activation that would be realized through a new wharf, therefore the benefits of Seaport Wharf outweigh the detriments of the net loss of watersheet in the area. This amplification was conditioned by the Secretary such that the Applicant must own or legally control the entire development site prior to licensing. The Applicant complies with the Secretary's

amplification as the proposed 4,729-square foot Seaport Wharf structure meets the approximate 5,000-square foot requirement, Seaport Wharf is proposed to locate seaward of the Harborwalk, and the project site is owned and/or legally controlled by the Applicant.

Said project is also subject to three (3) substitutions required in the Secretary's Decision on the 2106 South Boston MHP as further detailed below: one from 310 CMR 9.51(3)(c), one from 310 CMR 9.51(3)(d), and one from 310 CMR 9.51(3)(e). Pursuant to 310 CMR 9.34(2)(b)(1), the Department shall apply the use limitations or numerical standards specified in a State approved MHP as a substitute for the respective limitations or standards provided that the project supplies an offsetting public benefit which was approved in an MHP Decision issued by the Secretary.

- 1) Substitution from 310 CMR 9.51(3)(c) - permits the reconfiguration of the Water Dependent Use Zone (WDUZ) provided that the minimum width of the WDUZ is no less than 10-feet and the modification does not result in a net loss of WDUZ area. The offset for this substitution includes a 10-foot setback from the existing project shoreline, except the area which is under the cantilevered balcony/or building overhangs, and one of two alternative area of approximately 2,000-square feet, with the preference being Massport Wharf. The Applicant complies with the substitute provision as the entire proposed building footprint (including overhangs) is setback at least 10-feet from the existing project shoreline and the Applicant is proposing to install the preferred Massport Wharf option (a 2,206-square foot pile-supported wharf).
- 2) Substitution from 310 CMR 9.51(3)(d) - increases the lot coverage of nonwater-dependent use buildings/structures from 50% to 75% provided that as an offsetting measure the Applicant program a portion of the ground floor of the building to include a public waiting area with clear signage on the interior and exterior of the building indicating the location, hours of operation, and purpose of the public waiting area and the Applicant is required to contribute \$1.5 million dollars for offsite improvements to Martin's Park at Children's Wharf (located along Fort Point Channel). The Applicant complies with said substitution as the nonwater-dependent building (including overhangs) covers 14,625-square feet of 73% of the 20,116-square feet project site (area minus Seaport Wharf and Massport Wharf) and the amount of public open space on site is 5,491-square feet or 27% of the site). The Applicant is proposing a 500-square foot public waiting area on the ground floor, and the installation of interior and exterior signage for said purpose and the contribution of \$1.5 million dollars to the City of Boston for said purpose will be a condition of the license to be issued pursuant hereto.
- 3) Substitution from 310 CMR 9.51(3)(e) - to increase the building height from 55-feet high within 100-feet of the high water mark and an additional 1-foot in height for every 2-feet setback from the 100-foot mark to up to maximum of 250-feet in height regardless of the distance setback from the high water mark. The increased building height substitution shares the same offsets as the lot coverage substitution above (public waiting area on the ground floor of the building and a requirement to contribute \$1.5 million dollars for offsite improvements to Martin's Park at Children's Wharf). The Applicant complies



with said substitution as the nonwater-dependent building is proposed to be 247-feet high, the Applicant is proposing a 500-square foot public waiting area on the ground floor, and the installation of interior and exterior signage for said purpose and the contribution of \$1.5 million dollars to the City of Boston for said purpose will be a condition of the license to be issued pursuant hereto.

The proposed project has complied with all the Secretary's applicable amplifications detailed in the 2000 and 2016 South Boston MHP and has effectively provided, or will provide as conditioned herein, the required offsetting measures approved by the Secretary in the 2016 South Boston MHP for each applicable substitute provision.

**Findings:**

- 1) The Department determines that the use of filled Commonwealth Tidelands for a restaurant, residential units, and associated underground parking is a nonwater-dependent use pursuant to 310 CMR 9.12(2)(f)(1), (5), and (3) respectively. The Department also determines that the use of authorized filled and flowed Commonwealth Tidelands for public open space and for a publically accessible waterfront walkway is water-dependent per 310 CMR 9.12(4). Given the project does not consist entirely of water-dependent uses, the Department has processed the application as a nonwater-dependent use project in accordance with 310 CMR 9.12(1).
- 2) The Department determines that the total project site encompasses 27,051-square feet (including Seaport Wharf and Massport Wharf), of which approximately 20,116-square feet (or 74.4% of the site) consists of previously authorized filled Commonwealth Tidelands while the remaining 6,935-square feet (or 25.6% of the site) is pile-supported over flowed Commonwealth Tidelands. The Department's Presumptive Line Project delineated the historic high water (HHW) mark from U.S. Coast Survey Plan titled "Plan of the Inner Harbor of Boston" dated 1847, which indicated that the project site is located more than 100-rods (1,650 linear feet) from said HHW mark.
- 3) The Department determines that the required public notice was published in the Boston Herald and in The Environmental Monitor on August 23, 2017. The required public hearing was held on September 6, 2017 at 3:00pm at MassDEP Headquarters, Meeting Room 2212A, One Winter Street, Boston. The Department received one thousand five hundred and sixty-two (1,562) public comments during the 30-day public comment period, the majority of which support the proposed project, while only five (5) were adverse comments or comments which required a response by the Applicant, including comments from the Massachusetts Port Authority, Conservation Law Foundation, Boston Harbor Now, the Cottonwood Group, and Steve Hollinger. Said comment letters were reviewed and responded to satisfactorily by the Applicant and/or addressed in the Department's Findings and/or Special Conditions of this Written Determination.
- 4) The Applicant has submitted, or will submit prior to licensing, relevant documentation regarding compliance with other regulatory requirements including but not limited to the Massachusetts Environmental Policy Act (EEA #15631) Environmental Notification Form

(ENF) Certificate issued by the Secretary of Energy and Environmental Affairs (the "Secretary") on February 10, 2017, the Wetlands Protection Act per Order of Conditions (DEP File #006-1524) issued by the Boston Conservation Commission on August 2, 2017 and Order of Conditions (DEP File #006-1544) issued on October 14, 2017 by the Boston Conservation Commission, The Municipal Planning Board Notification signed by the Boston Deputy Director for Climate Change & Environmental Planning on October 19, 2017 and the Municipal Zoning Certificate signed by the Boston Senior Zoning Planner on October 19, 2017.

- 5) The Department determines that the project, as conditioned, complies with all applicable standards of the Waterways Regulations, including the special standards for nonwater-dependent use projects at 310 CMR 9.51 through 9.53. In addition, the Department determines that the project complies with all of the requirements, modifications, limitations, qualifications, and conditions set forth in the Secretary's Decision on the 2000 and 2016 South Boston MHP.
  - a. The reconfigured Water Dependent Use Zone (WDUZ) includes the 10-foot setback from the existing project shoreline, as amplified in the Secretary's Decision on the 2016 South Boston MHP issued on December 21, 2016, and also includes Massport Wharf as required to offset the substitution to 310 CMR 9.51(3)(c) in said Decision
  - b. The project meets the Facilities of Private Tenancy (FPT) setback requirement at 310 CMR 9.51(3)(b) and 310 CMR 9.53(2)(c) as amplified in the Secretary's Decision on the 2000 South Boston MHP issued on December 6, 2000, and renewed and updated in said 2016 South Boston MHP. The Secretary amplifies that 80% of the ground floor must be devoted to FPAs and limits Upper Floor Accessory (UFA) uses on the ground floor to only 20% of the building footprint. The proposed project appears to meet said ratio requirement, however the Department has determined that some areas of FPA space identified on the Draft License Plans are also shared with UFAs, and properly calculating the exact ratio of percentage of uses is difficult. Therefore, in order to avoid any discrepancy or shortfall of required FPA space on the ground floor, and in order to properly meet the Secretary's amplification, the Department has determined that pursuant to 310 CMR 9.53(2)(c) the Applicant is permitted to count additional FPA space on the second floor to rectify said circumstance. Specifically, an additional 8,614-square feet of interior and exterior restaurant space along the waterside second story of said building can be used to cover any required ground floor FPA discrepancy or shortfall. This alternative location would more effectively promote public use and enjoyment of the project site's waterfront while allowing shared ground floor non-waterside space for required UFAs.
  - c. The project meets the lot coverage requirements at 310 CMR 9.51(3)(d) by meeting the substitute provision authorized in the Secretary's Decision on the 2016 South Boston MHP. Specifically, up to 75% of the project site can be occupied by a nonwater-dependent building provided a portion of the ground floor of the proposed building include a public waiting area with clear signage of such on the interior and exterior of the building and the Applicant contribute \$1.5 million

dollars to the City of Boston for offsite improvements to Martin's Park at Children's Wharf. The Applicant meets the substitute provision as approximately 14,625-square feet (or 72%) of the 20,116-square foot project site (excluding Seaport Wharf and Massport Wharf) is covered by a nonwater-dependent building footprint, while the remaining 5,491-square feet (or 27%) consists of public open space, and said offsetting measures will be provided and/or required by the Department in the license to be issued pursuant hereto.

- d. The project also meets the height requirements at 310 CMR 9.51(3)(e) by meeting the substitute provision authorized in the Secretary's Decision on the 2016 South Boston MHP. Specifically, said substitution allows new or expanded nonwater-dependent buildings onsite to be built up to 250-feet high provided that a portion of the ground floor of the proposed building include a public waiting area with clear signage of such on the interior and exterior of the building and the Applicant contribute \$1.5 million dollars to the City of Boston for offsite improvements to Martin's Park at Children's Wharf. The Applicant meets the substitute provision as the building will be 247-feet high and said offsetting measures will be provided and/or required by the Department in the license to be issued pursuant hereto.
- 6) The Department determines that the proposed project, as conditioned herein, serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands in accordance with 310 CMR 9.31(2)(b).
- 7) The Applicant requested an extended term of 90-years for the license to be issued pursuant hereto. The Department gave considerable thought to the appropriate weighted average license term length and determines that the project, as conditioned herein and in providing the necessary supporting information, meets the requirements of 310 CMR 9.15(1)(b). The Department finds that an appropriate weighted term length for said nonwater-dependent structures located on filled tidelands and water-dependent structures located on flowed tidelands is 65-years. The factors considered in making this decision include: the extent of filled and flowed Commonwealth Tidelands on the project site and the corresponding stewardship responsibilities of the Department; consistency with State and local planning objectives articulated in the State approved 2000 and 2016 South Boston MHP and the City approved South Boston Waterfront Transportation Plan, Boston Inner Harbor Passenger Water Transportation Plan, Boston Open Space Plan, Imagine Boston 2030 Plan, Boston Creates Plan, Climate Ready Boston Plan, as well as others; will contribute funds toward the buildout of civic space to be determined by the Boston Planning and Development Agency (BPDA) and approved by the Department; will contribute funds toward water transportation services in Boston Harbor; the extent of private investment in and long-term maintenance of onsite and offsite public amenities; longevity, appropriateness, and financing of the structures; and other relevant factors like public benefits not required by any State Regulation or MHP requirement, such as accommodating sea-level rise in the building design, and a commitment to achieve Silver Level LEED Certification. The Applicant has also submitted letters in support of the extended license term from the architect, structural engineer, and the financing agent, attesting, respectively, to the expected life of the structure and the financing requirements for the proposed project.

- 8) The Department presumes that the proposed project is consistent with all applicable Coastal Zone Management (CZM) policies, in accordance with M.G.L. c.91 § 18.
- 9) The Department is not required to make a Section 61 finding pursuant to M.G.L. c.30 § 61, the Massachusetts Environmental Policy Act (MEPA), since the Secretary did not require an Environmental Impact Report (EIR) in the Environmental Notification Form (ENF) Certificate issued on February 10, 2017.

**Conclusion:**

On the basis of the foregoing analysis, the Department will approve the proposed structures and uses described herein, as shown on the Draft License Plans and as shall be modified and delineated on the final license plans in accordance with the terms of this Determination. This Determination is subject to the attached Special Conditions to be carried out by the referenced Applicant (hereinafter the "Licensee"). These Special Conditions will be included, in substantially the same form, along with the Standard Conditions, with the final Chapter 91 Waterways License to be issued pursuant hereto. This Determination, including the attached Special Conditions, is subject to appeal as described in more detail in the Notice of Appeal Rights section on Pages 9 and 10. The Department will grant the Chapter 91 Waterways License if no appeals are filed within twenty-one (21) days of the issuance of this Determination and upon receipt of the final mylar license plans.

No construction or alteration in or to any portion of the project site within jurisdiction pursuant to M.G.L. c.91 is authorized until a Waterways License has been issued. If you have any further questions, please contact Frank Taormina, Waterways Regulation Program, at [frank.taormina@state.ma.us](mailto:frank.taormina@state.ma.us) or (617) 292-5551.

THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON THE 15<sup>th</sup> DAY OF DECEMBER TWO THOUSAND SEVENTEEN.



Ben Lynch  
Section Chief  
Waterways Regulation Program

Cc: Mayor Martin J. Walsh, City of Boston  
Boston City Council  
Boston Planning & Development Agency  
Boston Conservation Commission (DEP #006-1524 and #006-1544)  
State Senator Linda Dorcea Forry  
State Representative Nick Collins  
1,562 public commenters  
Ecc: Massachusetts Office of Coastal Zone Management



Massachusetts Division of Marine Fisheries  
Massachusetts Port Authority  
Massachusetts Convention Center Authority  
Boston Harbor Now  
Conservation Law Foundation  
Cottonwood Group Company (Boston Seaport M1 & M2 Land, LLC)  
Steve Hollinger  
Jim Carmody  
Save the Harbor Save the Bay

### NOTICE OF APPEAL RIGHTS

#### **Who has the right to appeal?**

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit, in accordance with 310 CMR 9.17(1): (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth who, pursuant to M.G.L. Chapter 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; and (e) CZM, for any project identified in 310 CMR 9.13(2)(a) for CZM participation or 310 CMR 9.13(2)(b) for DCR participation, if it has filed a notice of participation within the public comment period.

#### **How can I request an adjudicatory hearing?**

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Adjudicatory Hearing Fee Transmittal Form and include the details specified below, within twenty-one (21) days of the date of issuance of this decision. The Fee Transmittal Form is available at the following website: <http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc> The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

MassDEP  
Case Administrator  
One Winter Street, 2nd Floor  
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the Applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP  
Waterways Regulation Program  
One Winter Street, 5th Floor  
Boston, MA 02108

The MassDEP Adjudicatory Hearing Fee Transmittal Form and a valid check payable to "The Commonwealth of Massachusetts" in the amount of one hundred dollars (\$100) must be mailed to:

MassDEP  
Commonwealth Master Lockbox  
P.O. Box 4062  
Boston, MA 02211

**What information must be included in the hearing request?**

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

- (a) the MassDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the Applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the Applicant and the municipal official of the city or town where the project is located.

**Dismissal of request**

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver.

**Exemptions**

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

**Waiver**

The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

WRITTEN DETERMINATION AND  
DRAFT SPECIAL CONDITIONS

Cronin Holdings, LP

of -- Boston -- in the County of -- Suffolk -- and Commonwealth aforesaid -- has applied to the Department of Environmental Protection for license to -- demolish two (2) existing restaurant buildings and construct and maintain one (1) mixed-use residential building with underground parking garage, a publicly accessible waterfront walkway ("Harborwalk"), public pile-supported wharf, and other public amenities as further described below -----

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

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

Cronin Holdings, LP -- subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, is hereby licensed to -- demolish two (2) existing buildings (former Atlantic Beer Garden and Whiskey Priest) and redevelop the project site into one (1) 22-story, 247-foot high mixed-use residential building with a 14,625-square foot building footprint (including overhangs and covered open space) with a 3-level underground parking garage contained within subsurface slurry walls located within existing fill; ground floor restaurant, public waiting area/lobby, back-of-house uses, and upper floor accessory services; restaurant with exterior balcony dining located on the second floor, residential amenities on the third floor, and a total of 124-residential units located on floors three through twenty-two. The proposed exterior space includes 12,426-square feet of total public realm improvements consisting of a Harborwalk with associated public amenities, 6,935-square foot publicly accessible pile-supported wharf (referred to as "Seaport Wharf and Massport Wharf"), and expanded sidewalks fronting Seaport Boulevard. Additionally, the proposed project will

straighten the existing project shoreline via the installation of 257-linear feet of new sheetpile bulkhead wall and 148-cubic yards of new fill. As a part of the shoreline straightening, the proposed project also includes the removal of 290-square feet of existing authorized fill and reclamation of said amount of flowed Commonwealth Tidelands -----

on filled and flowed tidelands of -- Boston Harbor -- at 150 Seaport Boulevard -- in the -- City of Boston -- and in accordance with the locations shown and details indicated on the accompanying Draft License Plans No. W17-5032-N (20 sheets) dated December 8, 2017, prepared by Feldman Land Surveyors.

Specific Legislative Authorizations and Licenses issued previously at the project site include: 1889 conveyance between the Commonwealth of Massachusetts and the New York and New England Railroad Company recorded at the Suffolk County Registry of Deeds in Book 1885, Page 1; Harbor and Land Commissioners (H&L) License No. 3107 issued on September 26, 1906; Directors of the Port of Boston License No. 169 issued on February 9, 1916; Department of Public Works (DPW) License No. 1025 issued on August 21, 1929; DPW License No. 3812 issued on January 30, 1956; Department of Environmental Protection (DEP) License No. 6970 issued on September 11, 1997 and subsequent Minor Project Modification issued to said License on July 1, 1999; DEP License No. 13204 issued on March 2, 2012; DEP License No. 13772 issued on October 29, 2014. The authorized structures and fill shall be maintained in accordance with the terms and conditions of said licenses and plans, or as modified herein.

The structures authorized hereby shall be limited to the following uses: residential and accessory uses thereto, structured parking, restaurant, public waiting area, and public access to and enjoyment of waterfront open space for passive recreational purposes.

This License is valid for a term of sixty-five (65) years from the date of issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in this license.

**This Determination is subject to the following Special Conditions and Standard Conditions. These Special Conditions will be included, in substantially the same form, along with the Standard Conditions, with the Chapter 91 Waterways License to be issued pursuant hereto.**

Special Condition 1: Issuance of this License does not relieve the Licensee of the obligation to comply with all other applicable State or Federal statutes or regulations.



Special Condition 2: The Licensee shall provide a restroom facility free of charge for public use on the ground floor of the licensed building, open seven (7) days a week to the public during the business hours of the ground floor uses. Access to the restroom facility shall not require patronage of the ground floor use. Signage of adequate size indicating availability of public restrooms on the ground floor shall be posted at eye level near the front and rear entrances to the building. The Licensee shall provide the Department with a draft sign specification along with proposed installation locations for review and approval within one (1) year of license issuance. The Department approved restroom signs shall then be installed and photographic evidence of the installation shall be supplied to the Department prior to the issuance of the first Certificate of Occupancy issued by the City of Boston for the building.

Special Condition 3: The Licensee shall install exterior and interior signage for the public waiting area that clearly indicates the location, hours of operation, and purpose of the public waiting area. The exterior sign shall be installed at eye level near the entrance to the building fronting Seaport Boulevard, while the interior sign shall be installed at eye level in the public waiting area. The Licensee shall provide the Department with a draft sign specification along with proposed installation locations for review and approval within one (1) year of license issuance. The Department approved interior and exterior public waiting area signs shall be installed and photographic evidence of the installation shall be supplied to the Department prior to the issuance of the first Certificate of Occupancy issued by the City of Boston for the building.

Special Condition 4: There shall be no restaurant table service or bar service in the public waiting area located on the ground floor of the building. The primary use of the area is as a waiting area for the transient public seeking accessible indoor space on the waterfront, including but not limited to, a waiting area for water transportation passengers. The Management Plan required in Special Condition #13 below shall include appropriate provisions to ensure this primary use.

Special Condition 5: The Licensee shall install and maintain in good repair two (2) wayfinding signs of adequate size to be clearly visible to pedestrians from the following locations: one (1) located on the expanded sidewalk fronting Seaport Boulevard near the entrance to the onsite Harborwalk, and one (1) on the Harborwalk at the connection to the abutting Pier 4 Harborwalk section. The signs shall be designed in accordance with all local laws and regulations, with the City of Boston's Harborwalk Sign Specifications, and with the Department's Sign Specifications attached hereto. Within one (1) year from the issuance of this License, the Licensee shall submit a Draft Sign Plan to the City of Boston Planning and Development Agency (BPDA) for review and approval of the sign specifications and all proposed sign installation locations. Within thirty (30) days of BPDA approval, the Licensee shall submit the Approved Sign Plan along with written approval from the BPDA, to the Department. The signs shall be installed in accordance with the Approved Sign Plan before or by the time the Harborwalk is constructed and open for public use and enjoyment.

Special Condition 6: The Licensee shall pay one million five hundred thousand dollars and zero cents (\$1,500,000.00) to the City of Boston for offsite improvements to Martin's Park at Children's Wharf (located along the Fort Point Channel) to offset a substitution to 310 CMR 9.51(3)(d) and 310 CMR 9.51(3)(e), as required in the Secretary's Decision on the South Boston Waterfront Municipal Harbor Plan Renewal and Amendment issued on December 21, 2016. The Licensee shall provide the Department with proof of payment to the City of Boston for said purpose prior to License issuance.

Special Condition 7: The Licensee shall pay two hundred fifty thousand dollars and zero cents (\$250,000.00) to the City of Boston Planning and Development Agency (BPDA) for the build-out of civic space to be determined by the BPDA and approved by the Department. The Licensee shall pay the BPDA within thirty (30) days of License issuance and provide proof of such payment to the Department within thirty (30) days of payment.

Special Condition 8: The Licensee shall contribute a total of three hundred ninety-nine thousand six hundred thirty-nine dollars and zero cents (\$399,639.00) into an escrow account established by the Licensee for use as a subsidy for water transportation within Boston Inner Harbor, as approved by the Department.

- a) Within one (1) year of License issuance, the Licensee shall draft an escrow agreement, for Department review and approval, consistent with a sample agreement provided by the Department upon request.
- b) At or before issuance of the first Certificate of Occupancy for the building, full payment of the amount shall be made into the escrow account and proof of payment shall be provided to the Department.

Special Condition 9: The operation and maintenance of Seaport Wharf, Massport Wharf (also known as "Seaport Boulevard Harborwalk Extension" or "Harborwalk Extension"), and other site open space shall be the responsibility of the Licensee in accordance with a Management Plan prepared and updated in accordance with Special Condition #13 below.

Special Condition 10: Seaport Wharf and Massport Wharf shall be fully constructed and open for public use and enjoyment no later than the issuance of the first Certificate of Occupancy issued by the City of Boston for the building.

Special Condition 11: The Licensee shall maintain the ground floor as Facilities of Public Accommodations (FPAs) with no more than 20% as an upper floor accessory service (UFA). The interior FPAs onsite include, but are not limited to, a public waiting area/lobby, restaurant, and accessory uses thereto on the ground floor totaling 7,793-square feet and a restaurant with outdoor balcony dining and accessory uses thereto on the second floor totaling 8,416-square feet. Pursuant to 310 CMR 9.53(2)(c) the Department (1) determines the second floor restaurant and balcony dining space qualifies as an alternative FPA that will more effectively promote public use and enjoyment of

the project site and (2) allows appropriate allocation of UFAs at the ground level.

- a) Any use specifically listed in the FPA definition at 310 CMR 9.02 shall be presumed to meet the above requirements for such facilities. Conversely, any use proposed as a FPA that is not specifically listed in the regulatory definition shall require prior review and approval of the Department before any future change in use occurs.
- b) The interior FPAs shall be maintained and programmed in accordance with a Management Plan prepared and updated in accordance with Special Condition #13 below.

Special Condition 12: The Licensee shall maintain in good repair exterior public open space of not less than 12,426-square feet (including Seaport Wharf and Massport Wharf) with no obstacles for safe, free and universally accessible public passage. All open space shall be accessible twenty-four (24) hours a day with no gates or other barriers installed to impede pedestrian circulation. The exterior open space shall include at least the following pedestrian amenities: Harborwalk, benches, lighting, trash receptacles, bike racks, landscaping that complements but does not obstruct public access, and water features. Exterior open space shall be maintained and programmed in accordance with a Management Plan prepared and updated in accordance with Special Condition #13 below.

Special Condition 13: The Licensee shall submit, within six (6) months of the issuance of this License, a Management Plan for the Department's review and written approval. The Management Plan will become final upon receipt of the Department's approval, and shall include any conditions of the Department's approval.

- a) Purpose: The objectives of the Plan are, to achieve effective public use and enjoyment of all publicly accessible facilities by diverse user groups from a broad geographic area while minimizing conflicts with other legitimate interests including the protection of private property and natural resources.
- b) Management Oversight: The Management Plan shall clearly describe the roles and responsibilities of each management entity involved in the project site.
- c) Content: At a minimum, the Plan shall address long-term programming, management, and maintenance that will be employed at all interior and exterior publicly accessible space. Specifically, the Plan shall address all interior and exterior public spaces including without limitation: public restrooms, public waiting area, and exterior open space including landscaping, onsite Harborwalk and associated appurtenances. With regard to the public waiting area, the Plan shall include management provisions to ensure its primary use as a public waiting area. The Licensee shall identify and provide contact information for the persons responsible for carrying out the duties of the Plan, the property manager, and operators of the restaurant and public waiting area. Provided that they are not inconsistent with any express requirements of this License, the Licensee may adopt reasonable rules, subject to prior review and written approval by the Department, as are necessary or appropriate for the protection of public health and safety and private property, and to ensure public use and

enjoyment by minimizing conflicts between user groups.

- d) **Periodic Review:** The approved Management Plan shall be periodically reviewed and revised as necessary based on changes in the operation and management of the FPAs. Any subsequent updates of the Plan shall include an update of all contact information for persons responsible for carrying out the duties of the Plan, the property manager, and operators of the restaurant and waiting area. Any updated Management Plan shall also include a copy of the Department's plan approval letter(s) and a compliance inspection report performed by the Licensee detailing compliance with the Special and Standard Conditions of this License. When the Plan is updated, it shall be submitted to the Department for review and approval. At a minimum, an updated Management Plan shall be submitted for Department review on every five (5) year anniversary of the issuance date of this License.

**Special Condition 14:** Any changes made to the project authorized herein will require further notification to and may require approval by the Department in accordance with 310 CMR 9.05(1), 9.22(3) or 9.24.

**Special Condition 15:** The use by the public of the publicly accessible areas at the project site shall be considered a permitted use, to which the limited liability provisions of M.G.L. Chapter 21, § 17C shall apply.

**Special Condition 16:** The Licensee shall provide to the Department, within thirty (30) days of receipt, adequate proof of issuance of the first Certificate of Occupancy for the building.

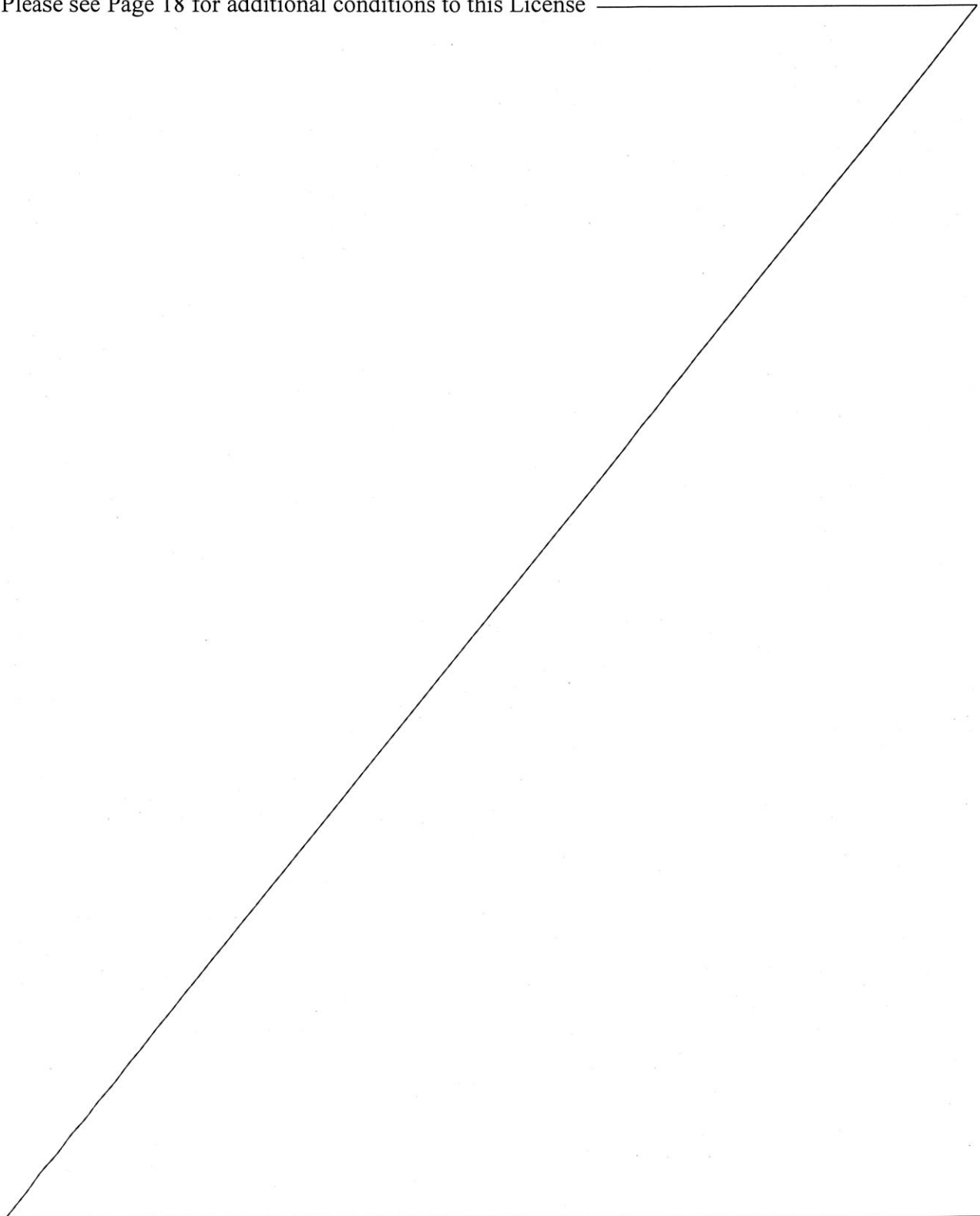
**Special Condition 17:** The Licensee shall allow agents of the Department to enter the project site to verify compliance with any conditions of this License.

**Special Condition 18:** Within sixty (60) days of completion of the licensed project, the Licensee shall request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed to do business in the Commonwealth that the project was completed in accordance with the terms and conditions of the License.

**Special Condition 19:** The Written Determination shall remain valid for up to one (1) year after issuance. The term may be extended for one (1) or more one (1) year periods, provided that the Applicant submits to the Department at least thirty (30) days prior to the expiration of said term a written request to extend the term and provides adequate justification for the extension. This condition shall expire upon issuance of the License to be issued pursuant hereto.



Please see Page 18 for additional conditions to this License



Duplicate of said plan, Draft License Plan No. W17-5032-N is on file in the office of said Department, and original of said plan accompanies this License, and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

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

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

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

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

\_\_\_\_\_ Navigable River or Stream - The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.

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

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

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- Cronin Holdings, LP -- by paying into the treasury of the Commonwealth -- ten dollars and zero cents (\$10.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department -- one thousand eight hundred ten dollars and zero cents (\$1,810.00) (181-cubic yards x \$10.00 = \$1,810.00) (***exact amount to be determined at licensing***)

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

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

~~IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set~~  
their hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand and eighteen.

Commissioner \_\_\_\_\_

~~Section Chief~~ \_\_\_\_\_

*Department of  
Environmental Protection*

### THE COMMONWEALTH OF MASSACHUSETTS

This license is approved in consideration of the payment into the treasury of the Commonwealth by the said -- Cronin Holdings, LP -- the further sum of -- one hundred six thousand two hundred ten dollars and zero cents (\$106,210.00) (817-square yards x \$2.00 x 65-year term = \$106,210.00) (***exact amount to be determined at licensing***) -- the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

\_\_\_\_\_  
BOSTON,

~~Approved by the Governor.~~

\_\_\_\_\_  
Governor

SIGN SPECIFICATIONS  
OF THE MASSDEP WATERWAYS REGULATION PROGRAM

Unless otherwise expressly provided in a license or other written authorization of the Department, all required signage shall conform to the following specifications, as applicable.

1. All signs shall utilize durable materials and methods of construction and be a minimum of 18" by 18" in size and letter height shall be a minimum of 1/2".
2. Signs shall conform to all local laws and regulations.
3. If the site is located on a formal waterfront public accessway (Harborwalk), a minimum area of 5" diameter shall be reserved for any identifying state or municipal logo.
4. Design, text, and location of the signage shall be reviewed and approved by the Department or as otherwise conditioned in the License. (Refer to Special Condition #5)
5. The Licensee shall maintain all signs in good condition and repair at all times.
6. The signs shall be placed in a prominent location at the entrance of the accessway stating that public access was required by MassDEP, and shall include hours of public access, the Waterways License Number, the location where the public may inspect a copy of the License, and the statement "Protecting the Commonwealth's Waterways since 1866".
7. Signage shall be permanently posted and unobstructed from the view of a passerby.

*A pictorial example of an acceptable sign is provided below.*

