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March 27, 2018

Via email to: [Ben.Lynch@state.ma.us](mailto:Ben.Lynch@state.ma.us)

Ben Lynch  
DEP Waterways Regulation Program  
One Winter Street, 5th Floor  
Boston, MA 02108

Re: 500 Atlantic Avenue Draft Management and Maintenance Plan

Dear Mr. Lynch,

On behalf of Boston Harbor Now, thank you for the opportunity to comment on the 500 Atlantic Avenue Draft Management and Maintenance Plan. 500 Atlantic Avenue is a mixed-use project which includes the Intercontinental Hotel, the Residences at the Intercontinental, and a parking garage. In November of 2003, the property was issued a 99-year DEP Waterways License.

Last October, as part of a waterfront property managers forum led by Boston Harbor Now, the Intercontinental and five other properties pledged to take concrete steps to promote public access, adhere to Chapter 91 regulations, and help advance the goal of increasing public access for residents and visitors from every neighborhood to Boston Harbor. We commend the Intercontinental for developing a Chapter 91 management plan and taking steps to ensure that there are clear and consistent practices around public access--especially regarding temporary closures of portions of the Harborwalk and other public spaces for private events.

As a general comment, three documents are referenced in this draft management plan: DEP Waterways Licenses No. 5065 and 9825 as well as the October 2014 Administrative Consent Order. To ensure that commenting parties understand the requirements and have access to the exact language of prior agreements--not merely the applicant's interpretation of these agreements--all documents referenced in the plan should be included with the Draft Management Plan at the time of submittal.

#### **Public Access & Programming**

As depicted on Page 10, Figure 3 of the draft management plan, 500 Atlantic is proposing to track private vs. public use of the waterfront areas using a daylight-and-dusk-hours percentage calculation. This is not a commonly used monitoring system and contradicts the language in Special Condition 3 of DEP Waterways License No. 9825 that requires "publicly accessible exterior open space facilities . . . be open

to the public, free of charge, 24 hours per day.”<sup>1</sup> Basing the monitoring system on a 10:00 am to 10:00 pm schedule is not only unnecessarily complicated but also breaks away from the Chapter 91 license requirement. We recommend eliminating the daylight-and-dusk-hours of use analysis and basing the monitoring system on a simple private vs. public events ratio.

The use of Boston Harbor Now’s website to publicize free public events is a welcomed proposal. Additionally, the Harborwalk Webtool Map and Database, scheduled to launch this summer, will help the public understand and navigate publicly accessible waterfront areas--the Intercontinental included. We look forward to working with the hotel and residences team to ensure they can make the most of these opportunities.

### **Calendar of Events**

A brief review of the free community-sponsored events listed on Page 18 of the draft management plan shows Intercontinental's commitment to free public programming and activation of the waterfront. We appreciate the team’s efforts to promote activity and programming along Boston Harbor.

Section 7 of the draft management plan refers to the activation and programming requirements imposed by DEP Waterways License No. 9825. As proposed, the list of events in Section 7 is a menu of possible public programs and not a full set of scheduled events. There is no mention of private events.

Public access to the waterfront and Chapter 91 tidelands is a priority for all Boston waterfront properties, an appropriate next step would be for the Intercontinental to create a calendar of all proposed events taking care to prioritize free public programming and minimize private income-generating events that obstruct the Harborwalk and other publicly accessible areas—especially during peak months when the public is most likely to visit the waterfront.

Similar to other properties along the waterfront that host numerous events on or along the Harborwalk (The Boston Harbor Hotel, the ICA, Atlantic Wharf, and Fan Pier), the Intercontinental should, at a minimum, submit an annual programming calendar that clearly defines the maximum number of private events it anticipates hosting in any given year. The nature and purpose of these events may shift annually but the total number and frequency should be pre-approved by DEP. We recommend including the following:

- A list of anticipated free, ticketed, and private events proposed for any given year,
- The anticipated duration of all events (including tentative dates),
- A diagram (similar to Fig. 1) that depicts the Harborwalk and all public areas that will remain open during limited scheduled special events, and
- The creation of a communication outreach system to inform the public of any temporary closures (clear signage, social media alert, mailing list, etc.).

The number of proposed private events is only one of several factors DEP should consider when approving the final management plan. The frequency, time of year, weekend vs. weekday, and the size of the proposed party all affect the public’s use of the Harborwalk and exterior spaces. Limiting the number of private events per quarter ensures that income-generating events are reasonably spaced out throughout the year. This will also serve to reinforce a principal tenet of Chapter 91--to preserve and enhance the Commonwealth’s tidelands and the public's right to use them.

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<sup>1</sup> These areas include the Harborwalk, ticket kiosk, 40-foot wide public path between Atlantic Avenue and Fort Point Channel, public pathway along the northern property line varying in width from 26-43 feet, and the walkway through the building.

That said, we acknowledge that many private events are booked in advance and that the Intercontinental may have some existing private event contracts for the remainder of the 2018 calendar year. We strongly recommend that an approved management plan only allow the scheduled 2018 events to take place under two conditions:

- The planned events do not block or restrict public access to and along the Harborwalk, are announced ahead of time, and with clear signage, and
- 2018 is considered a “transition year” wherein, upon approval of the revised management plan, the Intercontinental hotel/residences team abides by the new maximum allotment of private events and does not enter into any additional contracts once that maximum is reached.

We support the applicant’s commitment to provide an annual report to DEP detailing the events of the preceding year. A comprehensive report should also include a calendar of events already scheduled and anticipated for the upcoming year.

### **Signage**

Chapter 91 requires clear, prominent Harborwalk signage that indicates it is a public walkway and highlights associated facilities of public accommodation, public restrooms, and other public amenities. It has been our experience that consistent and “Harborwalk branded” signage helps the public recognize areas and amenities that are publicly accessible. The traditional Harborwalk includes the white lettering and sailboat image set against a signature blue backdrop. We encourage 500 Atlantic to incorporate the more commonly recognized Harborwalk signage across all three of the signage areas delineated on page 15 of the management plan.

Before a final management plan is approved, we also request that the applicant include the following items:

- Images of all Harborwalk, wayfinding, and interpretative signage that is DEP compliant and will be featured in prominent areas of the property, and
- Images of all proposed “temporary” signage that will be used during temporary closures for all special events.

The Friends of the Boston Harborwalk, a group of volunteers dedicated to enhancing the enjoyment of Boston’s Harborwalk, works with property managers to install and update interpretive and wayfinding signage. The Friends would be glad to work with the Intercontinental to develop additional wayfinding signage on site and explore interpretative signage opportunities.

### **Exterior Public Open Space**

Section 3 of the draft management plan refers to the operation of a seasonal outdoor bar. According to Intercontinental staff, this is an existing and permanent structure with a valid permit from the City of Boston. This structure is, however, built on public land and not authorized under the existing Chapter 91 license. While we acknowledge Intercontinental’s recent efforts to create a bar/outdoor seating experience that is more inviting to the public, in practice, the public continues to feel unwelcome.

In exchange for continuing to use the bar, 500 Atlantic proposes to offset the area, by providing two additional public spaces located on the public lawn adjacent to the hotel. This may be a worthwhile proposal but requires resolution of the following concerns:

- Clear signage, education of staff, and daily practices that eliminate the public’s perception that the bar and associated areas are reserved for hotel guests and bar patrons, and

- A commitment from 500 Atlantic that the newly added public spaces will not be burdened by or reserved for private events unless the hotel/residences receive prior approval from DEP.

### **Water Transportation Facility**

Section 3.3 of the draft management plan, refers to a kiosk structure constructed by 500 Atlantic to support an authorized-but-never-constructed water transportation facility along the Fort Point Channel. As presented in the draft plan, 500 Atlantic maintains that it has fulfilled its Chapter 91-required obligation. It is unclear when MBTA/MassDOT will commence construction of the Water Transportation Facility.

It has been fifteen years since the issuance of License No. 9825. Special Condition 5 and subsequent agreements between DEP and the applicant lists the total contribution required from 500 Atlantic as \$648,000 with \$404,672 designated for the construction cost of the water transportation kiosk and the remaining \$242,455.69 reserved for water transportation services and subsidies. At this point, a clear plan for the completion of the water transportation facility has not been set. The kiosk structure, intended to support the to-be-constructed water transportation facility remains woefully underutilized. Until a docking structure is constructed, we suggest exploring alternative ways for 500 Atlantic to make the most and best use of the kiosk structure. As a climate-controlled space and public restroom, the kiosk provides much needed respite for waterfront visitors year-round. In addition to these uses, the kiosk could include an information center or a rotating interactive exhibit.

Thank you for your consideration of our comments. We look forward to continuing to work with the 500 Atlantic Avenue team to explore additional ways to promote public access along the waterfront.

Sincerely,



Jill Valdes Horwood  
Director of Policy