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15 State Street, Suite 1100  
Boston, MA 02109  
617 223 8104  
[bostonharbornow.org](http://bostonharbornow.org)

Lisa Berry Engler  
Massachusetts Office of Coastal Zone Management  
251 Causeway Street, Suite 800  
Boston, MA 02114

July 22, 2016

Re: 2016 Draft South Boston Municipal Harbor Renewal & Amendment

Dear Ms. Engler,

Thank you for the opportunity to comment on the draft amendment to the South Boston Municipal Harbor Plan (MHP). Boston Harbor Now, a new non-profit civic organization, was formed in April 2016 bringing more than six decades of waterfront, open space and recreational experience together to maximize recreational, cultural and social opportunities in and around Boston Harbor; promote an integrated water transportation system and foster mixed economic development that will be a model for climate change resiliency. We look forward to working with the State and our other partners to promote a vibrant, livable and resilient City and waterfront.

As discussed during the MHP advisory committee process, we have two main concerns with the proposal as currently configured. First, the MHP amendment substantially departs from the Massachusetts Public Waterfront Act (Chapter 91) and the existing MHP regulatory standards for height, lot coverage, open space and water dependent use zone. Second, we are concerned about the use of a single-building MHP amendment for this significant zoning change, especially in the context of the city's extensive on-going planning processes, which we support and are actively participating in.

#### **Proposed Project**

The proposed amendment to the South Boston MHP covers an area of approximately 25,000 SF of filled and flowed Commonwealth tidelands. Presently, the 10,515 SF parcels consist of two restaurants located at 146-150 Seaport, the Whiskey Priest and Atlantic Beer Garden. As presented in the draft MHP amendment, the proponent seeks to double the current parcel size from 10,515 SF to 25,000 SF through a combination of fee interest ownership, leases, and easements on land and over water. This parcel assemblage is made up of:

- 1,902 SF for a Massport historic easement on land
- 1,688 SF for a Massport Harborwalk easement over water

- 3,148 SF for a Pier 4 easement on land and over water
- 3,803 SF for a City of Boston Triangle Parcel on land, and
- 3,828 SF for an existing City of Boston public sidewalk.

The articulated goal of the proposed MHP amendment is to facilitate the redevelopment of the restaurant parcels from two moderately sized restaurants to a 250-foot, 22-story mixed-used project with a restaurant on the ground/second floor, 124 high-end condominium units, and approximately 170 underground parking spaces accessible by car elevator. The MHP amendment also proposes substitute provisions and offsets for deviations from the building footprint, lot coverage, and building height, as summarized below.

**Summary of Proposed Substitute Provisions & Offsets**

Nonwater Dependent Use Standard	Chapter 91-Compliant Standard	Substitute Provision	Offset
Lot Coverage – 310 CMR 9.51 (3)(d)	One square foot of open space for each square foot of building footprint, or a maximum of 50% lot coverage	Lot coverage of up to 50% at the ground level and an additional 20% of overhang beginning at 42’ above grade for a total lot coverage of not more than 65%	\$1.5 million to improve open space within or adjacent to the South Boston MHP Planning area
Building Height – 310 CMR 9.51(3)(e)	Building height of 55 feet	Building height of 250 feet	

**MHP Approval Standards**

Chapter 91 allows municipalities to use MHPs to modify certain dimensional and use standards of Chapter 91 only if the new harbor plan specifies alternative requirements that will promote the tidelands’ public trust policy objectives with comparable or greater effectiveness. This approach is intended to provide flexibility to accommodate variations in waterfront redevelopment, while ensuring that overall public benefits are enhanced.

Both Commonwealth tidelands and private tidelands are subject to the Public Trust Doctrine. The intent is for all proposed MHP substitution provisions to ensure that appropriate benefits are provided for the public use and enjoyment commensurate with the proprietary rights of the public. In short, that the project provides greater public benefits than detriments, consistent with the Public Trust Doctrine. MHP exemptions are intended for use on an area-wide basis, so that development along a collection of parcels within a planning area can be coordinated to maintain or increase overall public benefits. Table 1 shows how the draft MHP amendment compares to Chapter 91 standards, MHP approval standards and the 2000 South Boston Waterfront MHP for four key project components: height, lot coverage, open space and water dependent use zone.

As is made clear by Table 1, the proposed MHP amendment for a single building proposes a substantial deviation from the standards currently in force for the site. The amount of this deviation is cause for significant concern about whether this is an appropriate application of the MHP amendment process. (We could find eight other single-parcel MHP amendments in Boston: Battery Wharf, Clippership Wharf, Building 114, 226 Causeway Street, Carleton Wharf, 125 Summer Street, 148 Border Street and Atlantic Wharf; none included such significant departures from current standards.)

**Precedent for Other Waterfront Projects**

In addition, as we note above, we believe that the proposed project should be evaluated in the context of the larger planning processes now underway, including Imagine Boston 2030, Climate Ready Boston, and, especially, the recently announced waterfront planning initiative. We applaud the City for launching these initiatives, all of which appear to be on a timeline that could be useful in evaluating this project and others that emerge in the months and years ahead. We do not believe that a project that departs from regulatory standards to this extent should precede such comprehensive planning.

We look forward to working with CZM, MassDEP and the Executive Office of Energy and Environmental Affairs to ensure that all projects provide substantial and appropriate public benefits to activate and protect the public interests associated with tidelands.

Sincerely,



Julie Wormser  
VP of Policy



Jill Valdes Horwood  
Waterfront Policy Analyst

**Table 1. Draft MHP Amendment Proposals Vs. Current Waterfront Regulations**

<b>Waterways Regulation (Ch. 91)</b>	<b>Chapter 91 Requirement</b>	<b>Corresponding MHP Approval Standards</b> 301 CMR 23.05(2)(c+d) “The proposed substitute provision must, with comparable or greater effectiveness,…”	<b>2000 South Boston MHP Requirements</b>	<b>2016 Draft South Boston MHP Amendment</b>
<b>New Pile-Supported Structures</b>  310 CMR 9.51(3)(b)	Shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site	<ul style="list-style-type: none"> <li>• specify alternative replacement requirements that will ensure that no net less of open water will occur for nonwater-dependent purposes,</li> <li>• in order that the overall capacity of the state’s waterways to accommodate public use in the exercise of water-related rights is maintained or improved, as appropriate for the harbor in question</li> </ul>	Identical to Chapter 91 language.  ...because watershed is a scarce public resource, public watershed use should be for water-dependent purposes. No substitutions for this provision are included in this Municipal Harbor Plan. (pg. 124)	Proposes building approximately 7,600 SF of new decking over open water for the Harborwalk and restaurant seating (i.e., a non-water dependent use) (pg. 46, Fig 1-8)
<b>Water-Dep. Use Zone</b>  310 CMR 9.51(3)(c) (Setback)	Width of Water-Dependent Use Zone (WDUZ) determined as follows:  1. Along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but not less than 25 feet; and  2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and  3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in	<ul style="list-style-type: none"> <li>• specify alternative setback distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline,</li> <li>• in order that, sufficient space along the water’s edge will be devoted exclusively to water-dependent use and public access associated therewith, as appropriate for the harbor in question.</li> </ul>	Figure 10-2 shows a 55-foot setback distance from both water sides of the project, and a 55-foot height limit, translating into an allowable building footprint of 5,000 SF from the existing water’s edge (including the triangle of land currently owned by the City)	Currently there is no setback from the existing project shoreline. The proposal would continue to cover 100% of the lot with a new building with no proposed setback for a WDUZ. The proposed Harborwalk (i.e., WDUZ) and deck would be built over what is currently open water. (5/4/16 MHP mtg. notes, p. 7)  Given that the project proposes razing the existing buildings, the WDUZ (i.e., Harborwalk) can and should be located on filled tidelands, not over flowed tidelands.

	question to the edges immediately opposite, but no less than ten feet.			
<b>Open Space</b>  310 CMR 9.51(3)(d) (Lot Coverage)	<p>At least 1 square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every SF of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p> <p>At least 50% of the project site must be reserved as open space for water-dependent activity and public access. A maximum of 25% of the open space area may include public streets and parking, provided it does not exceed the amount of public open space provided on-site.</p>	<ul style="list-style-type: none"> <li>• specify alternative site coverage ratios and other requirements, that ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint,</li> <li>• in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question.</li> </ul>	<p>The Waterways Regulations limit the portion of a lot area that may include nonwater-dependent uses to 50%. The Waterways Regulations do not include the portion of a lot area that is watersheet in making this calculation.</p> <p>Also, new pile-supported and floating structures are not included in making this calculation. Thus, the building footprints of new structures for nonwater-dependent uses may cover 50% of only those portions of a parcel that are located on existing pilings or fill. This Municipal Harbor Plan maintains these restrictions. (pg. 92)</p>	<p>The lot coverage for this project is 100% as the project should not be allowed to define the project shoreline as the seaward edge of a proposed 26'-wide, pile-supported deck.</p> <p>The draft MHP calculates lot coverage as between 65 and 70% by including in these calculations the proposed decking to be built over the watersheet, and the existing public sidewalk (pg. 16). (We also understand that in order to qualify as a Planned Development Area under Article 80, proponents are in the process of securing acreage under flowed tidelands from Pier 4.)</p>
<b>Height</b>  310 CMR 9.51(3)(e)	<p>Non-water-dependent use building heights restricted to 55 feet within 100 feet of the high water mark. Heights can increase one half foot for each additional foot over 100 feet that building is setback from high water mark.</p>	<ul style="list-style-type: none"> <li>• specify alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size,</li> <li>• in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question.</li> </ul>	<p>Figure 8.1 in the 2000 MHP indicates that the site is currently in a no-build zone (pg. 109). However, Figure 10-2 shows a 55-foot height limit.</p>	<p>The Plan specifies a change in building height from 55 feet to 250 feet under the provisions of 310 CMR (pg. 30).</p>