



Are you on board?

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Via email to: erin.flaherty@mass.gov

Secretary Katherine Theoharides
Executive Office of Energy and Environmental Affairs (EEA)
MEPA Office, Attn: Erin Flaherty, EEA# 16014
100 Cambridge Street, Ste 900
Boston, MA 02114

Re: Happy Valley Ventures Environmental Notification Form, EEA#16014

Dear Ms. Flaherty,

Thank you for the opportunity to comment on the Happy Valley Ventures Environmental Notification Form. Boston Harbor Now staff has reviewed the project plans and supplemental information submitted by HVV East Boston LLC.

Project Description

Located at 200 William F. McClellan Highway, the proposal is for the redevelopment of an existing commercial building and concrete parking lot located on approximately one acre of land in East Boston. Prior to this proposal, the site was used as an Enterprise Rent-A-Car facility. As presented in the ENF, Happy Valley Ventures plans to open an adult marijuana facility and lease the remainder to a marine industrial tenant.

The entire site sits on filled tidelands and within the East Boston Designated Port Area (DPA). It is subject to Chapter 91 jurisdiction and the Commonwealth's DPA regulations.

Our comments are focused on two areas of interest:

- Clarification of the definition and limitations of supporting uses within DPAs, in particular for commercial tenants claiming to subsidize water-dependent industrial uses, and
- The proponent's intent to submit a petition requesting a review of the existing DPA boundary

Supporting Uses within Designated Port Areas

According to the Massachusetts Office of Coastal Zone Management (CZM) Policy Guide, the two central principles of the State's DPA policy are to promote water-dependent industries as an important sector of the State's economy and to prevent the loss of areas that have key characteristics:

- Access to a commercially-navigable waterway and associated developed waterfront;
- Backland space for industrial facilities and operations; and
- Land-based transportation and utilities intended for general industrial purposes (Policy Guide p. 68).

Our concerns with the DPA definitions and characterization included in the ENF are as follows:

The proponent's description of "supporting use." Currently, there are three types of uses allowed within a DPA boundary: 1) water-dependent industrial uses, 2) supporting DPA uses, and 3) temporary uses. Supporting uses can be industrial or commercial, limited to 25% of the area of the project site, and *must provide direct economic or operational support to* water-dependent industrial businesses in DPAs (310 CMR 9.02). The regulations consider commercial use compatible with DPAs except when that use conflicts with port operations or requires excessive consumption of port space.

As longtime advocates of the working port, Boston Harbor Now understands that maritime industrial businesses often lack the capital to invest in and improve existing infrastructure and often rely on additional income to maintain operations. In the past, we have supported requests by maritime business to market a portion of their sites to non water-dependent commercial office users as a way to provide direct economic support to the existing/proposed water-dependent industrial use and its business (see Mystic Pier and ICA Watershed).

It is our understanding that DPA supporting uses, in practice, have not been the primary use or project proponent on any one project site. Previous proposals for supporting uses have either been granted a temporary license or were not the primary motivation for the redevelopment of a particular site (ICA watershed and Mystic Pier respectively). As presented in this proposal, Happy Valley Ventures (a non-water dependent use) would not only maintain a retail operation that does not cater to the water-dependent industrial businesses but also, as the parcel owner and licensee, will be able to dictate the terms, length, and tenant fees for any water-dependent businesses on the remaining portions of the property. Without a clear partnership, the water-dependent tenant is especially vulnerable even in this space that is allocated for protected uses.

We are encouraged by the proponent's initiative to engage members of the fishing industry and its ongoing negotiations with BLC Properties, a subsidiary of Boston Lobster. This kind of collaboration has the potential to incentivize the capital investment and much-needed improvements to DPA parcels across the Commonwealth. That said, the information provided in the ENF and supplemental documents lack the detail necessary to better understand and

assess if Happy Valley Ventures is truly a supporting use as currently defined by the DPA program. This is an important distinction that should be clarified by CZM before the project is granted any kind of certificate or license.

The proposed 25/75 percent breakdown of uses on site. Part of the proponents supporting use description includes dedicating 75% of the 220 McClellan Highway site for marine industrial use. The remaining 25% will be occupied by the proposed adult marijuana retail shop. As depicted on floor plans A1 and A2 the total lot area is 43,083 SF, of which 5,916 SF is split across two levels and reserved for “water-dependent industrial use”—3,186 SF on the first floor and 2,730 SF on the mezzanine floor. Without a specific tenant defined in the filing, we are unable to access whether the allocated space is compatible with the intended use.

Further clarification is needed regarding the 25/75 breakdown, specifically, the areas and uses that are included in the 75% water-dependent industrial use calculation—for example, is the entire paved parking lot included in this calculation? If so, will these spaces be reserved exclusively for use by the water-dependent industrial tenant? What areas of the lot are common to both uses? Will any of these proposed uses conflict with or negatively affect the water-dependent business?

Petition to Review the East Boston DPA Boundary

As part of its development plan, the proponent also plans to request a modification to the DPA boundary. The supplemental document does not provide information on the areas that will be included in the review or the expected timeline of the request and is counter to the rest of the proposal as a “supporting use” within the DPA.

Moreover, by the proponent’s own admission on page 6 of the *Supporting DPA Uses and DPA Uses* supplemental information, “the proponent has been successful in finding a DPA use that it will support.” This refutes all prior claims that lack of direct access and “functional characteristics” prevent this site from functioning as a viable DPA that is able to support a water-dependent industrial use.

For these reasons, we disagree with the proponent’s claim that there is a “high likelihood that this area will meet the boundary modification test,” and the assertion that lack of direct access to Chelsea Creek and functional characteristics warrant a modification of the existing DPA boundary.

This proposal sets a dangerous precedent for redefining “supporting uses” within DPAs. For this reason, we respectfully request that the proponent be required to submit a proposal that more clearly and accurately identifies the proposed uses and the direct economic or operational support it would provide to potential water-dependent businesses at 200 William F. McClellan Highway.

In its current form, Boston Harbor Now would not support a DPA boundary review or modification under the proposed conditions or for the reasons offered by the Happy Valley Ventures proposal.

Thank you for your time and consideration.

Sincerely,

Jill Valdes Horwood
Director of Policy