



6538/Barking Crab

July 19, 2023

Ms. Purvi Patel
MEPA Office
100 Cambridge St., Suite 900
Boston, MA 02114
Purvi.Patel@state.ma.us

Subject: EEA #16699, Additional Project Alternative and Response to Preliminary Comments

Dear Ms. Patel:

Epsilon Associates, Inc. (Epsilon) has received “Preliminary Comments” from the Massachusetts Department of Environmental Protection Waterways Regulation Program (MassDEP) regarding the above-referenced Environmental Notification Form (ENF) and Proposed Environmental Impact Report (PEIR) submitted to the MEPA Office on May 15, 2023. This letter provides supplemental information addressing MassDEP’s Preliminary Comments.

Additional Project Alternative:

With regard to the supplemental information provided below, the Proponent wants to make clear that they continue to evaluate all possible alternatives to provide additional restaurant seating at the Project Site. As described in the ENF, the Proposed Alternative includes the fabrication of a barge, not the fabrication of *floats*, as asserted by MassDEP in their Preliminary Comments. The barge will be constructed such that it will be suitable for other uses typical of a barge (*e.g.*, transportation by a non-self-propelled vessel designed to a practical degree for carrying people or things over water). That the Proposed Alternative Barge will be fabricated under contract by the Proponent does not preclude its use as a Nonwater-dependent Facility of Public Accommodation (FPA) upon its commissioning. Nonetheless, as an alternative to be evaluated during the MEPA review process, the Proponent is assessing the feasibility of purchasing a used barge of similar dimensions to the Proposed Alternative that will then be modified to accommodate the proposed FPA (the “Used Barge Alternative”). At this time, the Proponent anticipates that the Used Barge Alternative will have comparable environmental impacts (*i.e.*, will require the same number and dimension of spuds) such that impact to Land Under the Ocean will be equivalent to that of the Proposed Alternative. However, for purposes of the ENF, the Proponent assumes that the Used Barge Alternative could require twice as many spuds and could impact approximately 21.6 square feet (sf) of Land Under the Ocean. Both alternatives will provide comparable seating capacity; consequently, no additional water, wastewater, or traffic impacts are anticipated.

Response to MassDEP “Preliminary Comments”

MassDEP’s letter is reprinted in Attachment A. Specific comments to which the Proponent is responding are noted in the margin with an abbreviation and sequential numbering. In response to those specific comments, the Proponent provides the following information:

DEP.01: *Although the floating structures are being described as a “barge”, the information in the EENF describes the construction of a floating structure which is designed for the purpose of accommodating the nonwater-dependent dining activities. While the floating structure is being characterized as a “barge”, it is not a stationary vessel that is being converted for the proposed use.*

Response: MassDEP’s assertion that the barge is not a “stationary vessel” is unsupported by 310 CMR 9.00 *et seq.* (Waterways Regulations). The term “stationary vessel” is not defined by the Waterways Regulations except in relation to “floating structures, *such as barges*,” where referenced at 310 CMR 9.32(1)(a)(6); meaning, under the plain text of the regulation, a barge can be a stationary vessel. Furthermore, 310 CMR 9.32(1)(a)(6) specifically envisions the building of barges, not just the modification of barges for Nonwater-dependent FPA. As noted above, the Proposed Alternative barge will be fabricated such that it will be suitable for other uses typical of a barge. In this instance, the Proponent is proposing the construction of the barge to accommodate an FPA, an allowed use under 310 CMR 9.32(1)(a)(6) because the barge will not serve primarily as support for new buildings. No buildings atop the barge are proposed. Nonetheless, the Proponent is now including the above-described Used Barge Alternative should MassDEP determine that the conversion of a barge is necessary to authorize the Project under the Waterways Regulations.

DEP.2: *In the event that project compliance with 310 CMR 9.32 is addressed, the MEPA filing should be supplemented with additional details for all proposed structures that will be located on the floats. Specifically, a plan with dimensions, height, and locations for the restrooms, canopy, tables/chairs, and any appurtenant structures, along with a detailed description of all structures.*

Response: The Proponent has prepared the requested materials which are included as Attachment B. Tables/chairs and any appurtenant structures have not been selected at this early stage of the project, however, for informational purposes, included in Attachment C are conceptual renderings of the Proposed Alternative barge.

DEP.3 *The proposed barge will be located seaward of a State Harbor Line established by the State Legislature. Pursuant to M.G.L. Chapter 91, §14 and §34, and the Waterways Regulations at 310 CMR 9.35(2)(a)1.a., the Department is not authorized to license any fill or structure seaward of a State Harbor Line, unless explicitly authorized by law. Pursuant to Chapter 204 of the Massachusetts Legislative Acts of 2010, the Department may issue a license to the City of Boston Redevelopment*

Authority (now known as the Boston Planning and Development Authority (BPDA)) and any co-applicant for compliant structures located seaward of the State Harbor Line in the Fort Point Channel if they comply with the standards therein, and as contemplated in "The Boston Inner Harbor Passenger Water Transportation Plan" dated January 2000 or in "The Fort Point Channel Watersheet Activation Plan" dated May 2002, as maybe amended thereto.

Response: As noted in the ENF, the Proponent acknowledges that the City will be a co-applicant, but not co-licensee, of the barge.

The Proponent thanks the MEPA Office for their thoughtful review of the Project. Should you have any further questions please feel welcome to contact me at your convenience at: erexford@epsilonassociates.com or 978-897-6241.

Sincerely,

EPSILON ASSOCIATES, INC.



Erik Rexford
Associate

cc: Susan You, MassDEP
Poseidon Enterprises, Inc. (Proponent)



Department of Environmental Protection

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Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

May 25, 2023

Eric Rexford
Epsilon Associates
3 Mill & Main Place
Maynard, MA 01754

RE: Waterways Regulation Program Preliminary Comments on MEPA EEA#16699 Expanded Environmental Notification Form

Dear Mr. Rexford,

The Department has reviewed the Expanded Environmental Notification Form (EENF), EEA #16699, describing the and the proposal to fabricate and install pile-held floats for restaurant use with accessory restrooms within flowed tidelands, at an existing licensed marina associated with the Barking Crab restaurant located in the Fort Point Channel at 88 Sleeper Street, Boston, Suffolk County. The restaurant and marina are presently authorized by Chapter 91 Amnesty License No. 14105 issued on June 8, 2016.

Based on the information submitted provided in the EENF, the Department's preliminary review concludes that the proponent has not sufficiently demonstrated compliance with the regulatory standards at 310 CMR 9.32(1)(a)6, and furthermore, the fabrication of floats for this purpose is inconsistent with the language of this regulation that describes "conversion of a stationary vessel to a Nonwater-Dependent Facility of Public Accommodation."

Although the floating structures are being described as a "barge", the information in the EENF describes the construction of a floating structure which is designed for the purpose of accommodating the nonwater-dependent dining activities. While the floating structure is being characterized as a "barge", it is not a stationary vessel that is being converted for the proposed use. Therefore, this does not appear to be an activity that is eligible for licensing. Additional preliminary comments are provided below. At this time, the Department recommends that the Proponent either request an extension of the MEPA comment period or withdraw the MEPA filing, in order to allow for coordination with our staff to address this potentially significant issue with respect to Chapter 91 and its regulations.

DEP.1

In the event that project compliance with 310 CMR 9.32 is addressed, the MEPA filing should be supplemented with additional details for all proposed structures that will be located on the floats. Specifically, a plan with dimensions, height, and locations for the restrooms, canopy, tables/chairs, and any appurtenant structures, along with a detailed description of all structures.

DEP.2

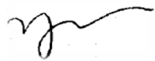
The proposed barges will be located seaward of a State Harbor Line established by the State Legislature. Pursuant to M.G.L. Chapter 91, §14 and §34, and the Waterways Regulations at 310 CMR 9.35(2)(a)1.a., the Department is not authorized to license any fill or structure seaward of a State Harbor Line, unless explicitly authorized by law. Pursuant to Chapter 204 of the Massachusetts Legislative Acts of 2010, the Department may issue a license to the City of Boston Redevelopment Authority (now known as the Boston Planning and Development Authority (BPDA)) and any co-applicant for compliant structures located seaward of the State Harbor Line in the Fort Point Channel if they comply with the standards therein, and as contemplated in “*The Boston Inner Harbor Passenger Water Transportation Plan*” dated January 2000 or in “*The Fort Point Channel Watersheet Activation Plan*” dated May 2002, as maybe amended thereto.

DEP.3

Should the Department determine that the project is otherwise eligible for licensing, a new Chapter 91 license would be required. In order to apply for a Chapter 91 license, because the project would extend waterward of the State Harbor Line, the Proponent would be required to provide written documentation from the BPDA identifying how the project is consistent with the applicable law and plan(s), and the Chapter 91 application would need to be submitted with the BPDA and the Proponent as co-applicants.

Please contact me at susan.you@mass.gov to schedule a meeting and/or to provide supplemental information.

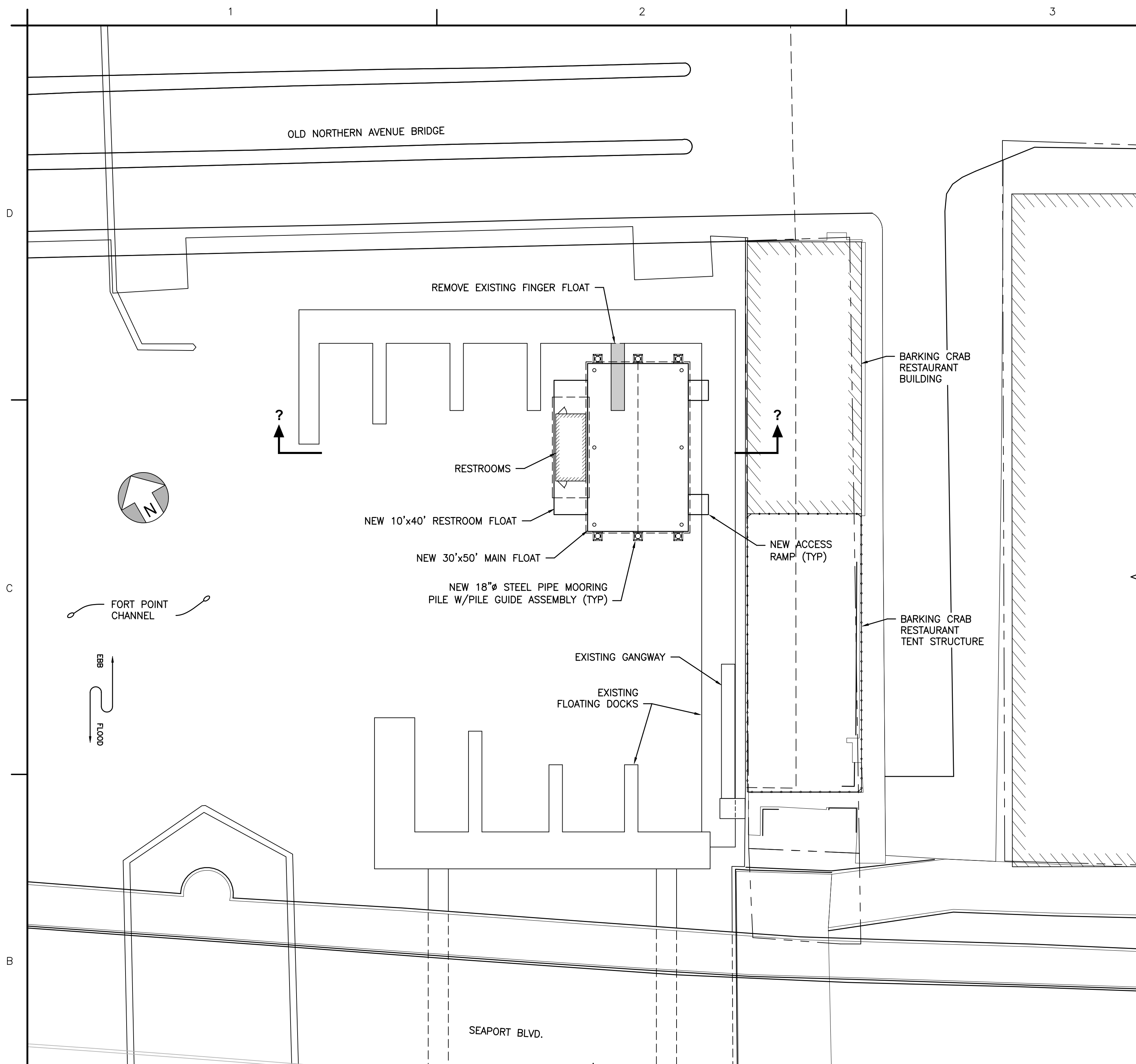
Sincerely,



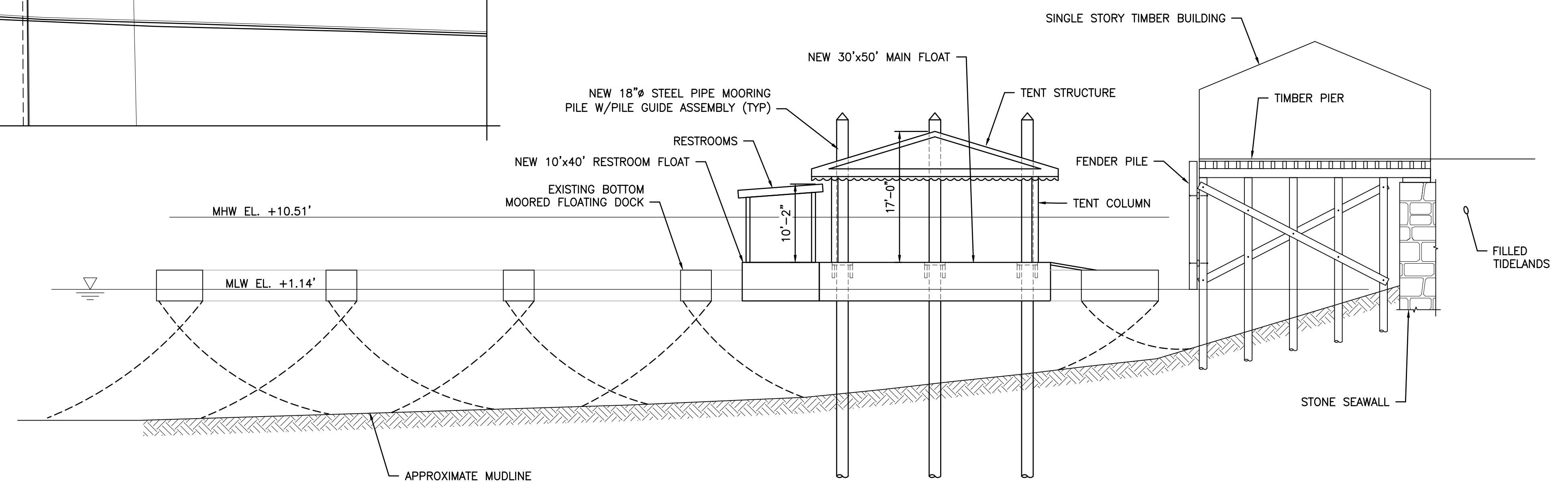
Susan You
Regional Planner
MassDEP Waterways Regulation Program

cc: Purvi Patel, MEPA Office

\$?quintt \$?K\2998-22.00 Floating Restaurant - Barking Crab\Cadd\Current Working Dwgs\299822 MS101 PROPOSED PLAN AND SECTION.dwg Jul 12, 2023 - 10:40am



PLAN
SCALE: 1"=20'-0"
1"=20'-0"
SCALE IN FEET



SECTION A-A
SCALE: 1"=10'-0"
1"=10'-0"
SCALE IN FEET



Date	Appr.

Designed by	CMR	Date	07/12/23
Drawn by	TEC	Check by	CMR
		Design file no.	299822 MS101
		Scale	AS NOTED

FLOATING RESTAURANT
BARKING CRAB
BOSTON, MA
**PROPOSED PLAN
AND SECTION**

Sheet
reference
number:
MS101
Sheet 1 of 1





