

**From:** Lorraine Iovanni

**Sent:** Thursday, October 5, 2023 2:30 PM

**To:** Christopher Olney <olneyc@manchester.ma.us>; Ann Harrison <harrisona@manchester.ma.us>

**Cc:** Greg Federspiel <federspielg@manchester.ma.us>; Gail Hunter <HunterG@manchester.ma.us>; Betsy Ware <wareb@manchester.ma.us>

**Subject:** [EXTERNAL] - Filled Tidal Lands (chapter 91) and MBTA Zoning Guidance

**Attn: PB, MBTA Task Force**

CC: TA, Town Planner

(Ms Hunter, please distribute to all PB and MBTA Task Force Members, thank you.)

Good Afternoon,

As a resident, I am interested in how MBTA Zoning interfaces with CZM flood projections and FEMA zoning, particularly with regard to the Harbor's Point area that appears to be a major focal point of the Subcommittee's interest.

I would like to share some data with the *full* Planning Board and MBTA Zoning Task Force regarding filled tidal land as it relates to MBTA Zoning. My research has led to a series of email exchanges with Northshore Coastal Zoning Management Representatives and data received via a Public Records Request to EOHLIC

1. Email dated 10/03/2023 from **Kathryn Glenn North Shore Regional Coordinator Massachusetts, Office of Coastal Zone Management**

*"The short answer to your question is that both filled tidal land and FEMA flood zones such as AE are developable land, though they are subject to specific regulatory standards. Development in both areas must meet the requirements of the MA Building Code, and development in filled tidelands must also be permitted/licensed under the MA waterways regulations (Chapter 91). Neither of these are areas defined as "Excluded land" under Section 3A of the Zoning Act.*

2. Email dated 10/03/2023 from Nathan Carlucci (EOHLIC) to MBTS representatives:

*"Thank you so much for your patience on the impact of c. 91 lands on 3A districts, I know it has taken some time to provide an answer. After consultation with our legal team, data team, and with Energy and Environmental Affairs, it has been decided that an overlap between a 3A district, and c. 91 jurisdiction, will not automatically cause a conflict with MBTA communities' requirements. **We encourage you to avoid overlap** where it is possible to do so. If there is an overlap, it is likely that a letter determining compliance would contain language stating that, if it becomes apparent in the future that c. 91 licensing is substantially affecting potential unit capacity, **the estimated size of the district could be revisited**. This is how we handle overlaps with local historic districts."*

This guidance appears to be an expansion of the EOHLC Guidance revised on August 17, 2023, and certainly adds significant insight to the TF's work. Based on discussion of the MBTA Subcommittee regarding residential development of Harbor's Point, it appears that the EOHLC is encouraging avoidance of residential development in this area.

I am also attaching for your research the Harbor's Point Master Deed and its one Amendment recorded publicly by the Southern Essex Registry of Deeds that limits **"uses" to retail uses only, not residential.**

The emphasis here is that the Town has a critical duty to protect people and property and must **always** act to prevent loss of life and property. I believe that is what the EOHLC seems to be suggesting in avoiding an "overlap," although not spelled out.

Hope this research is **useful** to the PB and the MBTA Task Force in its work. Some of you may already be in receipt of the EOHLC Guidance. Appreciate the opportunity to input.

Regards,

Lorraine Iovanni  
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