

the downtown, Charlestown and South Boston waterfronts. As the municipal planning agency, the BRA is responsible for waterfront zoning and local project reviews.

The other is the Commonwealth of Massachusetts. In the 1970s, Massachusetts became one of the first states to impose a comprehensive environmental impact review mechanism on all significant projects requiring state land, money, or permits. The Secretary of Environmental Affairs administers the Massachusetts Environmental Policy Act (MEPA). This rigorous program applies to all agencies created by state legislative action, including both Massport and the BRA. MEPA review, typically through a detailed Environmental Impact Report, is an essential feature of any proposed waterfront infrastructure or development project, and must be successfully completed before any state action can be taken.

For projects which involve development in the water, on piers, or in filled tidelands, the most important state action is the issuance of a tidelands license by the state's Department of Environmental Protection. A statute known as Chapter 91 of the Massachusetts General Laws governs these licenses, and to a great degree any discussion about waterfront development in Boston is a discussion about Chapter 91.

Chapter 91: Defining the water line in Boston

Chapter 91 is the statutory expression of the ancient legal doctrine that the tidelands (that is, the area below the historic high-water line) are held in trust by the public. This doctrine is found in the Justinian Code as well as in the British Common Law and followed the Crown to New England; the Colonial Ordinances of 1641–1647 contain the direct antecedents of today's law. In general terms, the public trust doctrine requires that the tidelands be used only for water-related activity or otherwise serve a proper public purpose, and that in any event the right to "fish, fowl, and navigate" are reserved to the public.

For over three centuries, the public trust law in Massachusetts was applied almost exclusively to the placing of piers or fill in "flowed" tidelands. In a landmark 1979 case, however, the state's Supreme Judicial Court found that even tidelands filled long ago remain subject to a requirement that they serve a proper public purpose and accommodate a continuing public right of use and enjoyment. Because of this ruling, the legislature amended Chapter 91 in 1983 and 1987, and the Executive Branch, under the leadership of Governor Michael Dukakis, set about writing a sweeping new set of Chapter 91 regulations.

While tidelands licensing is administered by the state's Department of Environmental Protection, the governor recognized that the recodification of Chapter 91 was about something much bigger than traditional permits. The new regulations would shape infrastructure, land use, and development issues along the entire Massachusetts coastline. In Boston Harbor, recodification meant a new set of rules for waterfront development just as the rediscovery of the harbor was gathering momentum. The drafting of new regulations became an inclusive, policy-driven process, anchored in the Cabinet rather than the bureaucracy. An advisory committee representing maritime, environmental, development and legal interests provided