

# Can you put a price on waterfront access? Conservation Law Foundation aims to try.

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Developers looking to build on many waterfront properties in Massachusetts know they'll probably need to offer something to the community if they want their project to proceed through permitting. They usually have a good idea of how much their site will increase in value if they can win a waiver to get around the strict height and width restrictions that govern state-regulated tidelands under a law known as Chapter 91. But neighborhood leaders and advocates who are across the table negotiating for public benefits usually are in the dark.

The Conservation Law Foundation hopes to shed more light on this site-by-site negotiating process by launching an online tool this month that can estimate how much a particular waterfront property would increase in value if a developer is granted leeway to build beyond the stringent limits imposed by Chapter 91.

Deanna Moran, CLF's interim vice president for healthy and resilient communities, said her organization hired real estate consulting firm HR&A Advisors to create the online calculator, with financial help from the Barr Foundation, after CLF sued to block a 22-story waterfront condo tower in the Seaport. That suit in 2018 yielded a settlement that included \$13 million for a new park from developer Jon Cronin; he went on to build the \$300 million St. Regis luxury condo high-rise, currently under construction on Seaport Boulevard.

She said CLF's online calculator accounts for a profit margin of 15 to 18 percent for the developer. But beyond that, Moran said, any premium provided by relief from tidelands restrictions should be reflected in the value of the mitigation package. HR&A uses its research to provide data for the online tool, and Moran said she expects the real estate firm will update the database every three years as real estate values rise or fall.

The tool, she said, could come in handy as the Wu administration advances new rules for development on the East Boston waterfront in particular. But it's not just for Boston: The online calculator could be used to assess how projects will change the value of a particular piece of waterfront land in at least a dozen other cities with Chapter 91-regulated tidelands.

Developers, she said, have been lowballing the public for decades on this front.

"The point of this tool ... is to level the playing field between the developer and everybody else," Moran said. "Developers are capturing a lot of private value on the waterfront and, in many cases, are not giving back to the community their fair share."

However, the development industry warns that CLF might be taking too simplistic an approach by placing a monetary value on Chapter 91 construction rights. NAIOP Massachusetts chief executive Tamara Small cautioned that “simply assigning a dollar amount ignores the myriad public benefits responsible development brings to a waterfront parcel” while Greg Vasil of the Greater Boston Real Estate Board noted that assigning values to development potential could be problematic because real estate values fluctuate, even during the time it typically takes to build a large project.

Matthew Kiefer, a development lawyer with Goulston & Storrs, praised the concept of trying to bring more analytical rigor to the process.

“It seems like every project is its own mini-negotiation,” Kiefer said. “You reinvent the world with each project.”

But Kiefer said the CLF calculator falls short because it doesn’t factor in public benefits that often come from development along the water, such as opening up a site that was previously inaccessible.

“There’s something missing to think it’s only about the residual land value,” Kiefer said.

Still, some waterfront advocates welcome the extra information. Kathy Abbott, the head of Boston Harbor Now, said she appreciates the effort to bring some consistency to Chapter 91 negotiations.

“I feel like we do consistently undervalue what the public has rights to get,” said Abbott, whose organization often lobbies for improved waterfront access. “There should be standards. I think that could only ... help community-level folks and organizations have a way to understand and think about it. They don’t know what they deserve. This gives them a place to start.”

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