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November 26, 2001

Mark Maloney, Director
Boston Redevelopment Authority
Boston City Hall
Boston, MA 02201

Dear ~~Mr. Maloney~~ Mark:

In accordance with the state Municipal Harbor Plan (MHP) regulations (301 CMR 23.00), I am pleased to issue the following Notice to Proceed (NTP) for the Fort Point Downtown Waterfront District Municipal Harbor Plan. My office looks forward to working with you, members of your staff, and the Municipal Harbor Plan Advisory Committee (MHPAC) as you proceed with the development of an MHP for this downtown waterfront area.

Pursuant to 301 CMR 23.03, the Boston Redevelopment Authority (BRA) submitted a Draft Request for Notice to Proceed (RNTP) on September 14, 2001. Upon determination that this submission conformed adequately with the Submission Requirements at 301 CMR 23.03(1), notice of this request was published in the *Environmental Monitor* on September 26, 2001. A public meeting was convened on October 11, 2001 at which time my office received oral comments. Public comments were also accepted for a thirty-day period ending on October 26, 2001, during which time my office received six (6) comment letters from interested parties, copies of which were forwarded to the BRA and, by request, to any interested parties. All procedural requirements of 301 CMR 23.03 have, therefore, been met. Based on a review of the BRA's request and the public comments received, I issue this NTP and, in accordance with 301 CMR 23.03(4), include additional guidance relative to the content and level of detail that I shall expect with the submission of the MHP.

Overview

The MHP Regulations establish a voluntary procedure by which municipalities may obtain state approval of MHPs that promote long-term, comprehensive, municipally based planning of harbors and other waterways and that fully incorporate state tidelands policies governing the stewardship of public trust lands. Additionally, approved plans guide and assist the Wetlands and Waterways Division of DEP in making regulatory decisions pursuant to MGL c. 91 and 310 CMR 9.00 (the Waterways Regulations) that are responsive to harbor specific conditions and other local and regional circumstances. As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating nonwater-dependent use projects located on tidelands. Municipal Harbor Plans present communities with an opportunity to adopt and implement a vision that modifies these uniform standards through the amplification of the discretionary requirements of the Waterways Regulations or through the adoption of provisions, which if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.51(3)(a) through (e), 9.52(1)(b)(1), and 9.53(2)(b) and (c).

The MHP boundary for this RNTP has been defined to include lands subject to Chapter 91 jurisdiction (37 +/-acres) and, as a result of advanced consultation with CZM, the area of the Fort Point Channel watersheet (44 +/- acres). Generally, the harbor planning area is defined to include those lands within Chapter 91 jurisdiction that are bounded by the southern edge of the Old Northern Avenue Bridge to the north, the Fort Point Channel to the east, Atlantic Avenue and Summer Streets to the west and the West Fourth Street Bridge to the south. A preliminary review of historic plans and maps of this area indicates that this area consists of both Private and Commonwealth Tidelands. The seven parcels that constitute the upland portion of the harbor planning area include: Hook Lobster; 470 Atlantic Avenue; 500 Atlantic Avenue (BECO); Russia Wharf; the Federal Reserve Building; 245 Summer Street; and the Postal Annex. The proposed MHP planning area does not include the Old Northern Avenue Bridge.

As stated by the BRA in its RNTP request, the City's primary focus for this MHP is to modify the nonwater-dependent use standards of the state Waterways Regulations (310 CMR 9.00). Of equal significance, the Fort Point Downtown Waterfront MHP has been structured to allow proposed construction on the BECO site (for which final design plans are nearing completion) to move forward in advance of projects elsewhere in the harbor planning area.

The BECO site consists of approximately 100,775 SF of primarily filled tidelands and is the site on which the 240-foot tall Central Artery Tunnel Project (CA/T) Ventilation Tower #3 will be constructed to a height that allows conformance with DEP's air quality standards. A proposed hotel/residential complex is designed to wrap around and mask the vent stack. As currently proposed, the 230 +/- foot nonwater-dependent hotel/residential structure requires a substitute provision to the height standards of 310 CMR 9.51(3)(e).

To ensure that the BECO project could move expeditiously through the permitting process, CZM recommended in its November 6, 1998 MEPA DEIR comments that an MHP process be started for the west side of Fort Point Channel and, in response to the City's desire to begin the scoping process, expressed its willingness to provide guidance on the area-wide

planning analysis and data needed to evaluate a substitute height provision to accommodate the proposed building. The significance of the City moving forward with an MHP for this waterway segment was further reflected in then Secretary Coxe's DEIR Certificate, dated December 1, 1998, which strongly encouraged the proponent not to file the Final EIR until such time as an approved MHP, including the project site, had been developed. For a variety of reasons, however, progress on the Fort Point Waterfront MHP has been slower than anticipated. Recognizing the positive visual benefit associated with "wrapping" the vent stacks, which was a commitment of the CA/T project under its Chapter 91 license, and recognizing that the BECO project has been modified to increase compliance with the Waterways regulations, CZM offered, in its July 9, 2001 MEPA FEIR comment letter, the option of a phased MHP process that would accommodate an acceleration of the BECO permitting process while still maintaining the broad planning objectives of the MHP regulations.

As set forth in the RNTP, the City has proposed a four-phased approach to the development of an MHP for the Fort Point Waterfront harbor planning area as follows:

Phase 1	(BECO, 500 Atlantic) July 2001-April 2002
Phase 2	(Hook Lobster, 470 Atlantic, 530 Atlantic, Russia Wharf) February 2002-October 2002
Phase 3	(Federal Reserve Building, 225 Summer Street) October 2002-March 2003
Phase 4	(United States Postal Annex) March 2003-March 2004

After carefully reviewing the RNTP and public comment letters and considering the many discussions at the City's MHP Advisory Committee meetings, I believe that this proposed approach would result in planning for this important area of the Boston waterfront on a parcel-by-parcel basis, antithetical to the comprehensive approach envisioned by the MHP regulations for harbors or waterway segments. A four-phased approach would also seriously restrict the City's ability to implement the Fort Point Channel Watersheet Activation Plan as part of this MHP. Finally, based on its comment letter, I believe that a four-phased approach is inconsistent with the Executive Office of Transportation and Construction's (EOTC) plans for future South Station track expansion. In light of the recent history discussed above, and as discussed in further detail below, I am not persuaded that this approach to harbor planning is justified. I am issuing this Notice to Proceed, therefore, subject to the guidance, organized by issue, in the following discussion.

Discussion

I. Municipal Harbor Plan: Phasing

Recognizing the vast area encompassed by Boston Harbor, the City of Boston has, over the last decade, approached harbor planning in a phased approach, organized around waterfront areas with common characteristics and planning visions. It has completed two MHPs and two limited geographic amendments, and it is currently developing two more MHP proposals, including this Fort Point Downtown Waterfront MHP. This MHP harbor planning area includes the BECO site at 500 Atlantic Avenue, where the Central Artery Project is building the 240-foot

Ventilation Tower #3. Plans call for this Ventilation Tower to be wrapped by a building of similar height, which requires a substitute provision to the Waterways standards at 310 CMR 9.51(3)(e). Recognizing that there is significant interest in allowing the BECO site to move ahead of other projects in the harbor planning area to facilitate the "wrapping" of the previously approved Ventilation Tower #3, I am approving a two-phased approach that is consistent with the City's overall MHP efforts.

As discussed in detail in the MHP Amendment Decisions for North Station (July 29, 1999) and the Charlestown Navy Yard (October 21, 1999), the Secretary has not supported use of the MHP process to modify Chapter 91 dimensional and numerical requirements for nonwater-dependent use projects on a parcel-by-parcel basis unless distinct and unique circumstances apply. In these two instances, the Secretary's willingness to review the parcels as limited geographic amendments was supported largely by the amendment area's relative proximity to the outer boundaries of Boston's 1991 MHP. Indeed, as stated in these decisions, the North Station amendment area represented "a logical and minor extension of the harbor planning area previously established by the City" while the Charlestown Navy Yard amendment area constituted a logical harbor planning area boundary "within the context of potential Boston Harbor MHP boundaries."

In contrast, the BECO site is located within, and identified by the City as an integral part of, the harbor planning area of an MHP (Fort Point Downtown Waterfront) that forms the nexus of two existing MHPs (Downtown and South Boston). As such, it is not an appendage parcel but rather a prominent component of the Fort Point Downtown Waterfront MHP and must, therefore, conform to the set of planning principles that will guide the City throughout this MHP.

An immediate goal of the City, as expressed in its July 2000 *South Boston Waterfront District Municipal Harbor Plan*, is to proceed with an MHP for the Fort Point Waterfront area. Having reviewed the advanced design for the BECO site in its FEIR, CZM agrees that, while BECO's location within the proposed harbor planning area does not warrant review as a limited geographic amendment, an acceleration of the permitting process for BECO can be accommodated under the auspices of a two-phased harbor plan. In this manner, the framework for development in the harbor planning area could be set forth in a comprehensive MHP addressing the BECO site specifically and the harbor planning area in general in Phase 1, and the details of the remainder of the harbor planning area, comprising six landside parcels and the watersheet, in a subsequent Phase 2 MHP submittal.

II. Municipal Harbor Plan Guidance

As described by the City in its RNTP, this waterfront area has "the potential to become the next great place in the City." For the reasons discussed above, this NTP has been developed to accommodate a two-phased approach, recognizing that the structure of the plan necessarily requires a well-crafted and thoughtful approach that will achieve the short-term goal of the expeditious "wrapping" of the vent stacks at the BECO site within the context of the overriding long-term goal of an integrated and comprehensive harbor plan for the Fort Point Channel area.

With these goals in mind, this section discusses specific guidance on the structure of the MHP in its two phases and the information and supporting documentation (in addition to that

required to satisfy the requirements of 301 CMR 23.04 and 23.05) that will facilitate the Secretary's formal plan review process. Sections III and IV provide guidance specific to substitute provisions and amplifications, and the manner in which the MHP must address any proposed modifications, while sections V and VI address specific requests presented by the City in its RNTP.

A. Phasing Approach

To accommodate the first phase of the MHP expeditiously, while respecting the fundamental precept of the harbor planning regulations - and, indeed, planning as a discipline - this NTP looks to ensure that individual developments are considered in relation to the planning area as a whole. Accordingly, Phase 1 must develop a consistent planning framework that will guide planning decisions in Phases 1 and 2, in order to provide context within which decisions affecting the BECO project can be meaningfully assessed. For the purposes of this NTP, *planning framework* refers specifically to the identification and explanation of the planning rationales to be used to guide the development of the detailed planning analysis required for each substantive element of both phases of the MHP.

CZM has carefully considered the comments expressed at the MHPAC meetings and those expressed in writing as part of the formal NTP public participation process. Based on this review, the following general guidance and requirements are provided for clarity and to facilitate the development of the two-phased approach to the Fort Point Downtown Waterfront District MHP.

- Phase 1 should develop a planning framework, covering the full planning area, for each of the substantive elements (e.g., open space, height, setbacks, linkage of the watersheet activation plan to landside development, etc.) of the MHP.
- Phase 1 should also complete the detailed planning analysis required for the BECO site only, ensuring that final project plans fall within the overall MHP planning framework.
- Phase 2 should complete the detailed planning analysis required for the balance of the planning area.
- In addition to the specific requirements discussed below, both phases of the Fort Point Downtown Waterfront MHP must be developed in accordance with the plan content and submission requirements at 301 CMR 23.04(1). Upon submission of plans meeting these requirements, a formal public participation process will be conducted for each phase in accordance with the provisions described at 301 CMR 23.04(2) through (6).

1. Phase 1

Phase 1 shall establish the planning framework under which the two-phased approach will proceed. Phase 1 shall also focus specifically on the geographic area and planning challenges defined by the BECO site and, therefore, I do not expect it to include planning analysis for proposed substitutions for any site within the planning area other than BECO. To ensure continuity and consistency of vision throughout the two-phased process, however, the Phase 1 plan should include the following:

a. A clear presentation of the planning framework that will guide the City's harbor planning approach for both phases of the process. At a minimum, this presentation should provide, on an area-wide basis, the planning framework for determining:
   - The orientation and type of public open spaces envisioned;
   - Minimum standards for aggregate open space and water-dependent use zones;
   - How building heights and aggregate massing will be approached in relation to the requirements of 310 CMR 9.51(3)(e);
   - A suitable method(s) for quantifying the impacts of proposed substitute provisions;
   - Criteria on which offsets to ground level adverse impacts associated with proposed substitute provisions, that cannot be otherwise mitigated, will be based; and
   - Those items (such as the development of a plan showing the extent of Commonwealth and Private Tidelands within the harbor planning area) that are appropriate and necessary to ensure that both phases proceed within the context of a comprehensive area-wide approach, as discussed in items II.B, II.C, and II.D below.

b. A clear discussion of the planning principles that will guide the development in Phase 2 of the mechanism(s) by which implementation of watersheet offsets identified in the Fort Point Channel Activation Plan may be linked to the ground level impacts associated with the proposed substitute provisions for specific landside development projects.

c. A schedule for the development of the Phase 2 plan, including MHPAC meeting dates and topics, that acknowledges the need to move expeditiously towards completion of the entire MHP.

d. A demonstration that offsets proposed to mitigate any impacts associated with the BECO height substitute provision will, in addition to meeting the approval standards at 310 CMR 23.05, conform with the planning framework developed for the entire planning area.

In summary, Phase 1 of the MHP shall also address the planning and substitute provision requirements of the BECO site within the context of the entire harbor planning area. Specifically, proposed substitute provisions along with associated offsets should be discussed, and analysis provided, in accordance with the planning framework developed in items (a), (b), and (d) above, and with the specific substitute provision guidance provided in Section III below.

Based on comments received during the public comment period, I understand that the location of the water transportation facility in the vicinity of the BECO site and Russia Wharf has been determined. I expect, therefore, that the details of this facility will be provided in Phase 1 and that this location will not impact the previously determined DEP schedule for completing this facility. Specifically, the plan should ensure that potential use conflicts in the basin bordered

by the BECO and Russia Wharf sites are avoided and that interests of water transportation and navigation are promoted in a manner that is in keeping with the broader public interest. To make this determination, therefore, Phase 1 should discuss in sufficient detail how uses proposed for the harbor planning area are to be integrated with current plans for Boston Harbor water transportation needs.

2. Phase 2

General

Building on the vision and planning framework developed in Phase 1, Phase 2 of the MHP shall conclude the harbor planning process for the Fort Point Channel area with the submission of a plan that covers the remaining six (6) landside parcels: Hook Lobster, 470 Atlantic Avenue, Russia Wharf, the Federal Reserve building, 245 Summer Street, the Postal Annex, and the watersheet. As with Phase 1, the Phase 2 plan must meet the plan content and submission requirements of 310 CMR 23.04(1) and provide the information discussed in sections II.B, II.C, and II.D below, as appropriate. Recognizing that the vision for Phase 2 may not have progressed to the level achieved by the BECO site, I am providing the following guidance to ensure that plan development, particularly that related to any proposed substitute provisions, is able to move forward while still achieving the broader goals of the MHP process. Based on the framework established in Phase 1, the Phase 2 plan should similarly employ the type of analysis developed for the BECO site to assess and evaluate the impacts and tradeoffs associated with proposed substitute provisions and offsets on an area-wide basis.

Should design detail for several of the parcels comprising the Phase 2 planning area be preliminary in nature, I would recommend using an approach similar to that employed for the Fort Point North and South Historical Districts in the South Boston Waterfront MHP. As you will recall, at the time of the South Boston MHP submittal, final design plans for portions of these Districts had not progressed to a point that would facilitate individual project review. To deal with the requisite substitute provision analysis and offset specification, the South Boston MHP developed a broad vision for these areas, accompanied by a conceptual development scenario. This conceptual plan was in turn supported by a broad proposal for substitute provisions (e.g., zones establishing maximum building heights, areas and standards for the aggregation of open space, and standards for the development of effective water dependent use zones) upon which a representative development plan was created. Potential impacts to the quality of the ground level were subsequently evaluated and major mitigating measures and offsets identified for incorporation into final design plans. MEPA and the Chapter 91 licensing processes can subsequently facilitate any fine tuning necessary to ensure that the public access, use, and enjoyment of the waterfront is advanced, and to ensure that these measures are implemented in a manner that is appropriate for the proposed development.

Approached in this manner, I am confident that the broad and comprehensive planning objectives of the MHP process, particularly those that relate to a contemporary recognition and expression of the public's rights in tidelands, can be achieved in a most productive and efficient manner. Additional guidance regarding the approval standards that the Secretary will apply to the review of proposed substitute provisions is provided in section III below.

Water Transportation

As indicated in the RNTP, the MHP should include a well-developed discussion that illustrates how uses proposed for the harbor planning area are to be integrated with current plans for Boston Harbor water transportation needs. The discussion should be focused on general infrastructure requirements, the siting of proposed water transportation facilities, recreational boating opportunities, and the compatibility of proposed uses with the proposed water-dependent activities designed to promote public access and the public's use and enjoyment of the waterfront. As set forth in the Secretary's Approval Decision for the *South Boston Waterfront District MHP*, consistent with previous DEP decisions, water transportation facilities and subsidies should be considered as baseline Chapter 91 licensing conditions, and will only be eligible for limited credit as offsets when they are above and beyond Chapter 91 baseline requirements.

Fort Point Channel Watersheet Activation Plan

The Fort Point Channel provides a major link and means of integrating the planning vision for this MHP and that established through the South Boston MHP process. I agree strongly with the RNTP's characterization of the Channel as a valuable urban resource with extraordinary opportunities for public activation and, as the Secretary indicated in his South Boston MHP decision, many are looking forward to seeing the fruits of the hard work of the committee charged with the development of the Fort Point Channel Watersheet Activation Plan. I envision this MHP process as one that will not only help promote these efforts but also facilitate the implementation of the City's vision to make the Fort Point Channel a significant public amenity and destination.

In addition to its vision as a contemporary world-class public resource, the Watersheet Activation Plan represents an integral component of both phases of the Fort Point Downtown Waterfront MHP, as a focus for amplifications and as a potential source of offsets in conjunction with proposed substitute provisions. The challenge for the MHP in this respect will be to demonstrate clearly the link between the Watersheet Activation Plan and the criteria for those measures proposed to offset negative impacts to state tideland policy objectives for the ground level of tidelands. Among other things, these objectives include:

- Providing sufficient space immediately adjacent to the water for public access and water-dependent activities exclusively;
- Providing extensive upland open space that further promotes public use and enjoyment of the waterfront and other water-dependent activities; and
- Maintaining a physical environment that is conducive to pedestrian activity at and near the waterfront.

I look forward to an MHP that respects these ground-level objectives and provides a creative and functional framework for watersheet activation. At the same time, I caution that the offset strategy presented in the MHP should not be developed around the premise that it need only offer a collection of watersheet activation benefits, unrelated to the land-side public interests described above. Rather, to properly comply with the approval standards at 301 CMR 23.05(2)(c) and (d), all offsets must relate directly to the tidelands policy objective associated with each

substitute provision, and be reasonably proportional to the degree of adverse impact that is revealed through detailed planning analysis.

While this process will not focus on a review of individual components of the Watersheet Activation Plan, I request that this MHP, as with all MHPs, be developed in a manner that ensures that existing water-dependent use activities and water-dependent industrial uses (such as at Hook Lobster and Gillette) are protected and not displaced or impaired. Further, where appropriate, the MHP should strive to promote these types of activities and uses along with those that will enhance the public's use or enjoyment of waterways or shorelines within the harbor planning area. Based on my review of the RNTP and the comments I have received, the following guidance is provided:

1. As a key element for both phases of the plan, the use of the Watersheet Activation Plan as a potential source of offsetting measures to proposed substitute provisions must be approached with an eye towards the entire harbor planning area. As discussed in greater detail in Section III below, measures proposed to offset impacts to ground level objectives associated with any proposed substitute provision must relate directly to the nature, and be proportional to the magnitude, of the identified impact. This requirement obviously underscores the need for a broad planning approach to substitute provisions and offsets as discussed above, one in which the goals for the watersheet and landside development are considered from an area-wide perspective and not parcel-by-parcel.
2. As discussed in section II.A above, this plan should ensure that navigation and water-dependent uses and activities be given priority on the watersheet. The MHP, therefore, should include analysis of the physical characteristics of each basin with particular attention to the basin adjacent to the Russia Wharf/BECO parcels, the constraints and capacity for navigation within each basin, and the management of future water-dependent uses. The Fort Point Channel possesses great potential for innovative and interesting activation of its watersheet while simultaneously maintaining and enhancing its inherent attributes as a navigable waterway. Given the value of an unencumbered watersheet, maintaining navigability within each basin to the maximum extent practicable (given existing limitations) should be a guiding principle.
3. The Watersheet Activation Plan envisions many new uses and activities on the Fort Point Channel, such as water-transportation, small boat rentals, new supporting infrastructure including a possible bridge over Basin D, and possibly a boathouse. With the plan not yet finalized, the manner in which implementation will be accomplished with respect to any challenges created by the location of the existing harborline has yet to be defined. This MHP process may be a suitable forum for resolving potential harborline issues, exploring various alternatives, and identifying the most effective means of achieving the Fort Point Channel vision.
4. During the initial stages of the South Boston MHP effort, some discussion was focused on the prohibition of marinas within Fort Point Channel. Subsequent discussions with the City indicated that such uses would not in fact be prohibited, but be considered a conditional use pursuant to the Boston Zoning Code. I would request that the MHP provide an update to the current thinking on this subject and, if

appropriate, discuss the nature of the regulatory process and conditions envisioned to regulate them.

5. Finally, while I understand that the redevelopment of the Old Northern Avenue Bridge is not part of this harbor planning effort, I would recommend that care be exercised in the formulation of future plans to ensure that water-dependent uses planned for the basin are not impacted negatively.

B. Supporting Documentation

To place the proposed harbor planning area in the context of adjacent land uses and other development activities, I will expect the MHP to include discussion and a series of maps that illustrates the relationship of the harbor planning area to the Downtown Boston waterfront area and its larger Boston Harbor context. At a minimum, the MHP should contain one or more maps, at suitable scales, that:

- Present a well-defined boundary of the proposed MHP in a manner that facilitates effective public participation and review.
- For planning purposes, delineate the extent of Commonwealth and Private Tidelands in the harbor planning area. The methodology and the sources used for the determination of the historic high and low water marks should be documented clearly and discussed in the MHP. I would recommend that staff at DEP Waterways be consulted early in the plan development process to ensure that the boundaries of such tidelands are based on best available information and any regulations and/or administrative guidelines for historic tidelands delineation.
- On a parcel-specific basis, identify properties and ownership of parcels within, and significant parcels adjacent to or in close proximity to, the harbor planning area in such a way that defines the relationship of these parcels to the harbor planning area.
- Depict on one map the relationship between the proposed harbor planning area and existing and proposed land and water transportation links (e.g., the City of Boston's *Inner Harbor Passenger Water Transportation Plan.*

C. Compatibility with Plans of State Agencies in the Harbor Planning Area

Pursuant to 301 CMR 23.05(3), an MHP must include all feasible measures to achieve compatibility with the plans or planned activities of all state agencies responsible for implementation or development of plans or projects within the harbor planning area. In order to comply with this approval standard, therefore, I will expect Phase 2 of the MHP to include sufficiently detailed discussions that establish this MHP's compatibility with state agency plans in the harbor planning area. In particular, I ask that the MHP be responsive to EOTC transportation planning interests. Based on current plans and the comments provided by Secretary of Transportation and Construction Kevin J. Sullivan, these discussions should, at a minimum, address:

1. The nature and status of the various mitigation and construction components of the CA/T project relevant to the Fort Point Channel planning area; and
2. The nature, status, and planning implications of the proposed South Station track expansion onto property currently owned by the U.S. Postal Service, in response to the increasing demand for commuter rail service to the west and south.

D. Enforceable Implementation Commitments

Pursuant to 301 CMR 23.05(4), the MHP "must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00 [the Waterways Regulations]." Further, pursuant to 301 CMR 23.06 and as discussed in the Secretary's South Boston MHP decision, for an approved plan to become effective for the purposes of 310 CMR 9.00, the Secretary must determine that the City has met all relevant conditions of the approval decision, including those related to the implementation of any ordinances or zoning bylaws. When such action requires adoption or other formal action by a municipal body, this determination can only be made if the municipal clerk has certified in writing that all such actions have been taken and has submitted copies of the enactments in question to the Secretary. To avoid potential timing issues, I would encourage the BRA to refer to the discussion on "Enforceable Implementation Commitments" set forth in Section XI of the Secretary's South Boston Waterfront approval decision as a basis for ensuring that each phase of this MHP complies satisfactorily with this approval standard, thereby preventing unnecessary project-specific delays in the Chapter 91 licensing process.

III. Substitute Provision Guidance

State tidelands policy objectives and associated regulatory principles are set forth in the state Waterways Regulations of DEP (310 CMR 9.00), which seek to promote responsible stewardship of public rights in trust lands. Where nonwater-dependent uses, such as offices, retail, hotels, and residences, are proposed on tidelands, DEP is authorized to issue a license allowing the project to proceed provided it conforms strictly with uniform and statewide dimensional and numerical standards developed to ensure that public access to the waterfront and the public's use and enjoyment of the waterfront is protected and promoted. These standards can be modified (i.e., made more or less restrictive) through carefully crafted substitute provisions set forth in a municipality's harbor plan. (Similarly, the many discretionary requirements of the Waterways Regulations can be modified through the use of amplifications, as discussed in detail in section IV below.) The substitute provisions of MHPs, in effect, can serve as the basis for a DEP waiver of up to seven specific use limitations and numerical standards affecting nonwater-dependent use projects, thereby incorporating local planning goals into complex decisions involving the Commonwealth's balancing of public rights in and private uses of tidelands.

In its RNTP, the BRA has identified the following substitute provisions to the Waterways Regulations that it feels may be necessary for the implementation of the Fort Point Downtown Waterfront vision:

- Expansion of pile-supported structures [310 CMR 9.51(3)(a)];
- Facilities of Private Tenancy (FPTs) and Facilities of Public Accommodation (FPAs) [310 CMR 9.51(3)(b) and 310 CMR 9.53(2)(c)];
- Setback Requirements [310 CMR 9.51(3)(c)];
- Lot Coverage and Open Space [310 CMR 9.51(3)(d) and 310 CMR 9.53(2)(b)];
- Height [301 CMR 9.51(3)(e)]; and
- Public Access Networks [310 CMR 9.52(1)(b)1].

In the absence of an approved MHP that specifies alternative requirements, limitations and guidance, projects proposed for areas within Chapter 91 jurisdiction must adhere strictly to the requirements of the Waterways Regulations. This RNTP identifies potential substitute provisions to Waterways requirements associated with nonwater-dependent use projects that will be requested as part of the MHP.

For our review of the Fort Point Downtown Waterfront MHP, I will expect each phase to contain, as appropriate, relevant background material identified in 301 CMR 23.03(1)(a)-(d) together with the information required in 301 CMR 23.04(a) and (b) for all substitute provisions proposed in each of phase of the MHP. Specifically, with respect to 301 CMR 23.04(b), the MHP shall include analysis (in written and graphic form) and data that establishes how the Plan complies with the standards for approval at 301 CMR 23.05(c) and (d), and a discussion of the measures proposed to offset impacts to corresponding state tideland policy objectives for each substitute provision requested. I offer the following additional guidance.

A. Planning Analysis and Review Standards

Substitute provisions may include alternative use limitations or numerical standards that are less or more restrictive than the Waterways requirements provided that, considering the balance of effects on an areawide basis, they are accompanied by related measures that will mitigate, compensate for, or otherwise offset adverse impacts on ground-level tidelands policy objectives in a manner that is of comparable or greater effectiveness than that afforded through strict application of the Waterways standards. When assessing adverse impacts, therefore, the analysis and discussion should address directly those impacts to water-dependent activities, public access, and public use and enjoyment of the waterfront. Adverse impacts must be evaluated with consideration given to the character of the anticipated use at the ground level. For example, adverse impacts on areas proposed for public strolling would be evaluated differently than adverse impacts on areas proposed for public seating and viewing, land and water-related recreation, etc.

The Fort Point Channel Waterfront MHP should, at a minimum, discuss how appropriate approval standards are met and provide analysis and discussion addressing the adverse impacts and corresponding offsets for each substitute provision proposed in Phases 1 and 2, as discussed below.

1. Expansion of Pile-Supported Structures [310 CMR 9.51(3)(a)]

Pursuant to 301 CMR 23.05(c)1, governing pile-supported structures that extend beyond the footprint of existing, previously authorized pile-supported structures, the plan must specify alternative replacement requirements that ensure that no net loss of open water will occur for nonwater-dependent purposes. In addition, the plan must demonstrate that the proposed substitute provision will, with comparable or greater effectiveness, maintain or improve the overall capacity of the state's waterways to accommodate public use in the exercise of water-related rights.

Where appropriate, therefore, the Plan should include, at a minimum, detailed maps establishing the location and spatial extent of all existing pile-supported structures (noting whether or not the structure was authorized) as well as analysis and calculations that support a

conclusion that no net loss of open water will occur as a result of the proposed substitute provision. Further, the Plan should identify those offsetting measures proposed to mitigate or compensate adverse impacts associated with any new or expanded pile-supported structures.

2. FPTs and FPAs [310 CMR 9.51(3)(b) and 310 CMR 9.53(2)(c)]

Pursuant to 301 CMR 23.05(c)2, for substitutions governing the location of FPTs, the plan must specify alternative limitations and other requirements which ensure that no significant privatization of waterfront areas will occur immediately adjacent to the water-dependent use zone. Through appropriate analysis the plan must quantify the proposed FPT/FPA relationship and demonstrate that the substitute provisions will, with comparable or greater effectiveness, maintain waterfront areas immediately adjacent to the waterfront-dependent use zone generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question.

Further, pursuant to 301 CMR 23.05(c)7, when projects are located on Commonwealth Tidelands, the Plan must specify additional requirements for interior FPAs that will establish the project site as a year-round locus of public activity. Through appropriate analysis, the plan must also demonstrate that public use and enjoyment of these tidelands will be promoted to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes. Pursuant to 310 CMR 9.53, the latter standard shall be evaluated in terms of those factors affecting the quantity and quality of benefits provided to the public compared with the detriments to public rights associated with FPTs. Based on the above requirements, therefore, at a minimum, the plan must discuss future development conditions in terms of the nature and extent of the public benefit associated with ground floor interior FPA space. Further, this discussion must establish clearly that the quantity/quality of public benefits provided will establish the site as a year-round locus of public activity, outweighing any detriments to public water dependent activities, public access, and other public water-related interests resulting from any private uses of Commonwealth Tidelands.

In the case of Commonwealth Tidelands, special consideration shall be given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use and to provisions for other facilities that would generate water-dependent activity of a kind and to a degree that is appropriate for the site. The plan should also identify those measures proposed to mitigate or compensate for the adverse impacts associated with any reduction in interior space dedicated to FPAs.

Substitute provisions, supported by appropriate analysis, offsets, and mitigating measures, are necessary to accommodate the siting of FPT uses on any pile-supported structures over flowed tidelands ((310 CMR 9.51(3)(b)); on the ground level of any structure to be located on filled tidelands within 100 feet of the project shoreline ((310 CMR 9.51(3)(b)); or on the ground level of any structure located on filled Commonwealth Tidelands ((310 CMR 9.53(2)(c)).

3. Setback Requirements [310 CMR 9.51(3)(c)]

Pursuant to 301 CMR 23.05(c)3, governing the establishment of setbacks for the delineation of a water-dependent use zone (WDUZ), the plan must specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to the project shoreline. In addition, the plan must demonstrate through appropriate analysis that the substitution provision will, with comparable or greater effectiveness, devote sufficient space along the water's edge to water-dependent activity and public access, as appropriate for the harbor in question.

Where appropriate, the Plan should include a level of analysis that quantifies the difference between the area of any reconfigured WDUZ and that resulting from a strict application of the Waterways standards. For any reconfiguration of the water-dependent use zone, special consideration should be given to maintenance of the overall setback area. Further, the plan shall establish the extent to which the proposed substitute provision will result in a diminished water-dependent use zone and increased ground level impacts. Finally, the Plan should identify those offsetting measures proposed to mitigate or compensate for adverse impacts associated with any decrease of the setback requirements of the Waterways Regulations and include discussion justifying that the reconfigured WDUZ will promote water-dependent activity and public access with an effectiveness that is comparable or greater to that provided by the Waterways Requirements.

4. Open Space and Lot Coverage [310 CMR 9.51(3)(d) and 9.53(2)(b)]

Pursuant to 301 CMR 23.05(c)3, for substitutions governing the amount of open space to be provided, the plan must specify alternative site coverage ratios and other requirements, which ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, as appropriate for harbor-specific conditions. For any restructuring of the open space requirements, special consideration should be given to site-coverage requirements that maintain 50% of the site area as open space. At a minimum, the plan must quantify any difference in the amount of open pace area to be provided and that required under strict application of the Waterways standards and demonstrate through appropriate analysis that the substitution provision will, with comparable or greater effectiveness, reserve sufficient open space to accommodate water-dependent activity and public access in a manner that is commensurate with the area occupied by buildings.

Further, pursuant to 301 CMR 23.05(c)7, where projects are located on Commonwealth Tidelands, the plan must specify additional requirements for public recreation facilities that will establish the project site as a year-round locus of public activity. Through appropriate analysis, the plan must also demonstrate that public use and enjoyment of these tidelands will be promoted to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes. Pursuant to 310 CMR 9.53, the latter standard shall be evaluated in terms of those factors affecting the quantity and quality of benefits provided to the public compared with the detriments to public rights associated with a reduction in the quality of water-related open space. The plan, therefore, should identify clearly those measures proposed to mitigate or compensate for the adverse impacts associated with a reduction of open space area.

The plan must evaluate future development conditions in terms of the nature and extent of the public benefit associated with exterior open spaces for active or passive recreation; the nature of the proposed public access network; provisions for public water transportation facilities; and provisions for other facilities that would generate water-dependent activity beyond that required by the Waterways Regulations. At a minimum it must be accompanied by sufficient discussion establishing clearly that the quantity/quality of public benefits provided will establish the site as a year-round locus of public activity, outweighing any detriments to public water dependent activities, public access, and other public water-related interests resulting from private uses of Commonwealth Tidelands. Further, if appropriate, the analysis should also include a discussion of any differences between City of Boston and Chapter 91 open space policy, definitions and dimensional requirements, and should identify any measures proposed to mitigate and compensate for such differences.

The City has indicated that it may explore open space aggregation to link with on-going open space projects in the area, thereby maximizing the benefit provided to the public. For such cases, the plan should include a detailed discussion that, in addition to maximizing public open space benefits, ensures physical and functional connectivity to the watersheet, and an equitable distribution within the harbor planning area and along the waterfront, as appropriate. The plan should also contain specific guidelines for managing and implementing any proposed open space aggregation program, including a discussion of how any open space offsets located concurrently in and out of Chapter 91 jurisdiction will be treated and, if appropriate, how offsetting open space under multiple ownership will be administered. Further, the Plan should address important temporal aspects of such a program, such as when and how aggregated open space area will be provided relative to the timing of individual projects

5. Height Limitations [301 CMR 9.51(3)(e)]

Pursuant to 301 CMR 23.05(c)4, for substitutions governing the height of buildings, the plan must specify alternative height limits and other requirements which will ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, as appropriate for a particular harbor. Through appropriate analysis, the plan must also demonstrate that the substitute provisions will, with comparable or greater effectiveness, result in wind, shadow, and other conditions of the ground-level environment that will be conducive to water-dependent activity and public access, as appropriate for the harbor in question.

The plan should, at a minimum, quantify the following differential effects related to the proposed height substitute provision and a strict application of the Waterways standards.

- Massing
- Pedestrian Level Winds (can be qualitative with sufficiently developed analysis and discussion)
- Shadow

Further it should provide compelling documentation that increased height associated with the proposed substitute provision will result in massing, wind, shadow and other ground level conditions that will be conducive to water-dependent and public pedestrian ground-level activity

and access in a manner of effectiveness that is comparable to or greater than that achieved through strict conformance with the Waterways Standards. To this end, the plan should include a massing analysis, comparing the gross volume associated with the proposed modified building heights within the harbor planning area to that achievable under the Waterways Regulations. CZM suggests that the comparative Chapter 91 scenario be developed in a manner that reflects not only the Waterways standards but also urban design principles appropriate for the Fort Point Channel context. The plan should also identify measures or offsets, including an implementation strategy, proposed to mitigate and compensate for increased shadows, winds, other adverse impacts related to height, and those measures proposed to maintain or enhance visual access or "view corridors" to the water. Where site characteristics permit, I will expect the results of these analyses to show that the massing impacts associated with the proposed substitute provisions are comparable to development under the Waterways requirements.

Should planning for Phase 2 projects be conceptual at the time of MHP submittal, the City may set suitable, not-to-exceed performance criteria or maximum thresholds for wind and shadow impacts in the MHP. These criteria could be used to form the basis for an evaluation of, and to subsequently limit, the wind and shadow impacts of individual projects. Should the City wish to pursue this performance-based and more flexible approach to height substitute provisions, the Plan must include discussion in sufficient detail to define suitable wind and shadow criteria and an analysis of the differential effects associated with the wind and shadow conditions of the proposed criteria as compared to those under Chapter 91 heights. Finally, pursuant to 301 CMR 23.05(3)(d)3 and 23.05(5), the Plan must discuss how the proposed criteria will be enforced, in order to ensure that the ground-level environment is conducive to water-dependent activities and public access.

With regard to the analysis of differential effects, I do not expect that, at an MHP level of planning, individual building heights will be known for each developable parcel in the Phase 2 planning area. I believe, however, that height zones, with maximum heights, can be established generally for this area. In this way, the effects of wind, shadow, and massing resulting from increased height can be evaluated adequately and addressed for the planning area as a whole. Supporting analysis, comparing the ground-level effects of maximum threshold height conditions with those heights permitted by the Waterways Regulations should be provided and adverse impacts to the public pedestrian ground-level environment mitigated or offset. Although proposed offsets should be located generally within the proximity of the affected building or parcel, a broader district approach to impact analysis and mitigation using the Fort Point Channel Watersheet Activation plan as a basis for organizing area-wide decisions can be considered for offset implementation, where appropriate.

6. Public Pedestrian Access Network [310 CMR 9.52(1)(b)1]

Although the RNTP lists the Public Pedestrian Access Network as a potential substitute provision, given the City's traditionally aggressive approach to requiring a continuous Harborwalk, it is not clear from the discussion exactly what the nature of such a modification would entail. I would point out, therefore, that pursuant to 301 CMR 23.05(c)6, governing the provision of pedestrian access networks, an MHP may specify a minimum walkway width other than ten (10) feet, provided that the alternative width is appropriate, given, among other things,

the size and configuration of the water-dependent use zone and the nature and extent of water-dependent activity and public uses that may be accommodated therein. With the exception of this ability to modify the minimum walkway width, all other pedestrian access network provisions of the proposed plan must conform strictly with appropriate standards of the Waterways Regulations.

As presented during the South Boston Waterfront MHP process, the City envisions its Harborwalk as a seamless pedestrian connection around the entire perimeter of the Fort Point Channel connecting with existing elements of the Harborwalk leading north along the waterfront. In light of the widespread public support for the Harborwalk, I will expect the City's Harborwalk standards for this MHP to, at a minimum, comply with the Waterways requirements for public access networks. Although not discussed in this RNTP, the City's 1991 State Approved MHP requested an amplification of the Waterways Regulations for public access networks to implement a 12-foot wide Harborwalk. This MHP should discuss any similar Harborwalk dimensional characteristics proposed for the Fort Point Channel Waterfront. Further, it is my understanding that several segments of Harborwalk will be provided to satisfy mitigation agreements formulated during the permitting phases of the CA/T project. The MHP, therefore, should discuss the timing of this construction and how this mitigation project will be incorporated into the larger public access network.

In accordance with 310 CMR 9.52(1)(b), the Harborwalk should be of a kind and to a degree that is appropriate for harbor planning area activities and facilities. Generally, the pedestrian access network should consist of 24-hour accessible walkways and related facilities along the entire length of the water-dependent use zone and, where feasible, along the project shoreline. This network should also provide connecting walkways that allow pedestrians to approach the shoreline from public ways or other public access facilities within the harbor planning area.

B. Qualitative Offset Analysis

The MHP must at a minimum ensure that the standards for approval at 301 CMR 23.05(c) and (d) are met. As discussed in Section III.A, substitute provisions may consist of alternative limitations or numerical standards that are less restrictive than the Waterways requirements, provided the plan includes other requirements, which considering the balance of effects on an areawide basis, will mitigate, compensate for, or otherwise offset adverse effects on ground level tidelands policy objectives. Where appropriate and supported by justifying analysis as was the case in the South Boston Waterfront MHP, substitute provisions and their associated offsets can be out-of-kind or of different types. For example in Section III.A.5, carefully crafted and sited ground level public benefits, rather than a corresponding reduction in height at another location, might offset more effectively the impacts of increased height on the pedestrian-level environment. For the purposes of this MHP, these benefits would, of necessity, have to be of a quality that clearly promotes or enhances the corresponding state tidelands policy objective, relates directly to the nature of the adverse impact, and incorporates amenities that seek to enhance the destination value of the waterfront (i.e. cultural or civic space, unique or expanded open space, *etc.*). As with all offset identification, the analysis must establish clearly that the quality of such benefits is above and beyond those required by the Waterways Regulations.

In addition to flexibility in terms of the type of offset, an inclusive and well-defined harbor planning area, among other things, provides significant planning advantages in the form of expanded spatial offset flexibility. To meet the standards for approval at 301 CMR 23.05(2)(c) and (d), therefore, analysis can also be developed that supports alternative (offsite or aggregate) locations for offsets within reasonable proximity to the locus of the impact, such as the open space aggregation program discussed in Section III.A.4.

Should the City wish to propose substitute provisions supported in part by offsets that differ in type or spatial orientation, the MHP must provide detailed discussion and analysis that establishes clearly the nature of any less restrictive requirement(s) and the degree to which the impacts associated with the proposed modifications differ from those associated with a development scenario that complies strictly with the numerical and dimensional standards of the Waterway regulations. Further, the plan must establish clearly how the proposed offset(s) will serve to mitigate the identified impacts and promote ground level tidelands policy objectives. Finally, this discussion must ensure that the benefits to public rights in tidelands will outweigh any adverse impacts associated with a deviation from an in-kind offset approach, contribute to an enhancement of ground level tidelands objectives, and that they will be provided in a timeframe that is coincident with the impact(s). Although the analysis associated with qualitative offsets may be more subjective, this type of approach, when appropriate, can potentially achieve ground level tideland policy objectives more effectively than a strictly quantitative analysis.

IV. Amplifications

I applaud the City's interest in providing guidance to DEP for future Chapter 91 license deliberations related to this harbor planning area in such a way that helps achieve many of the planning objectives identified in the RNTP and particularly those that will evolve from the finalized Watersheet Activation Plan. MHPs can include such guidance in the form of amplifications that expand upon or strengthen discretionary requirements of the Waterways Regulations. At a minimum, any amplification proposed in an MHP must identify clearly the corresponding Waterways discretionary requirement to which it applies, the nature and intent of the proposed clarification, and any additional guidance to DEP that may be helpful with regard to future licensing decisions.

Further, the plan must include a well-developed discussion that describes the manner in which a proposed amplification is complementary to the tidelands policy principles of the underlying Waterways discretionary requirement. Pursuant to the approval standards at 301 CMR 25.05(2)(b)1, because an amplification cannot supercede Waterways requirements or prohibitions, the plan must also demonstrate that any proposed modification or guidance does not contradict any other Waterways requirement. Finally, in accordance with 301 CMR 25.05(2)(b)2, the MHP must demonstrate clearly that any proposed amplification will not alter the substantive nature of a Waterways requirement, narrow the range of factors that may be considered, or otherwise affect the ability of DEP to interpret and apply relevant provisions of 310 CMR 9.00.

V. Minor Deviations from the Approved Municipal Harbor Plan

The RNTP proposes that a mechanism allowing post-approval flexibility for minor deviations to approved substitute provisions be considered for City of Boston MHPs. The goal of the MHP process is not to develop detailed and final design plans for each individual parcel within a harbor planning area but rather to establish a sound foundation from which local planning visions can move forward confidently. I am convinced, therefore, that design flexibility for individual parcels can be addressed in the context of an inclusive MHP that incorporates well thought out provisions as substitutes to the Waterways requirements. Developed in this manner, the MHP can thus provide a level of certainty that will facilitate future planning and design decisions for individual parcels while offering future flexibility that accommodates final design plans.

Supported by an appropriate level of analysis and documentation, a proposed substitute provision must be evaluated during the MHP review process to ensure that state tidelands policy objectives are promoted. Employing the guidance discussed in Section II.A.5 for example, an analysis of threshold development conditions, though more complex, can be developed to be representative of those harbor planning areas for which final planning has yet to be completed. In this manner, the City can structure its planning effort in such a way that future development of individual parcels is accomplished in a manner that promotes the vision presented in the MHP. In addition, the MHP regulations at 301 CMR 23.06 do provide the flexibility necessary to modify or amend an approved MHP for those instances involving additions of geographic area or subject matter.

I will expect, therefore, that the MHP shall incorporate fully all substitute provisions necessary for anticipated development within the harbor planning area for the term of the approval and that future development projects within the harbor planning area will adhere strictly to the quantitative and qualitative requirements of any substitute provisions approved as part of the MHP.

VI. MHP Expiration Date

Traditionally, an approved MHP, if not renewed, would expire after a period of five years. In its RNTP, the City has requested that, once approved, this harbor plan remain in effect for ten years. In light of the long-term vision typically associated with the City's harbor planning efforts, I would agree that further discussion is warranted concerning the proposed 10-year expiration date, which will ultimately be determined by Secretary Durand in his approval decision.

I have prepared this discussion with the goal of providing the BRA with meaningful guidance and specificity to proceed with the development of a two-phased Fort Point Channel Waterfront Municipal Harbor Plan. My staff and I support your desire to move forward with the Municipal Harbor Plan in an expeditious manner. As always, we will be available to provide you

with technical assistance as you proceed with the development of this harbor plan. We look forward to continuing our partnership with the BRA and the City of Boston.

Please feel free to contact me at 617-626-1201 any time during the harbor planning process.

Sincerely,

Thomas W. Skinner
Director

Cc:

Linda Haar, BRA, Director of Planning and Zoning
Nancy Tentindo, BRA, Deputy Director of Planning
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