

**Decision on City of Boston Request for
Approval of the Boston Harborpark
Plan Pursuant to 301 CMR 23.00**

Wednesday, May 22, 1991

Commonwealth of Massachusetts
Executive Office of Environmental Affairs, Susan F. Tierney, Secretary

**DECISION ON CITY OF BOSTON REQUEST FOR
APPROVAL OF THE BOSTON HARBORPARK PLAN
PURSUANT TO 301 CMR 23.00**

CONTENTS

I.	INTRODUCTION	2
II.	COMPLIANCE WITH CZM CONSISTENCY REQUIREMENTS	4
III.	COMPLIANCE WITH TIDELANDS CONSISTENCY REQUIREMENTS	13
IV.	COMPLIANCE WITH OTHER APPROVAL STANDARDS	27
V.	REQUIREMENTS	29
VI.	EXCLUSIONS	37
VII.	EFFECTIVE DATE AND TERM OF APPROVAL	38
VIII.	STATEMENT OF APPROVAL	38

I. INTRODUCTION

In 1984, the Commonwealth of Massachusetts and the City of Boston (City) ushered in a new era of public stewardship over the shores of urban waterways, with two separate but equally significant actions. The Massachusetts General Court enacted major modifications to M.G.L. c. 91, the oldest "public trust" statute in the nation, by adding filled tidelands to the areas where development is subject to state jurisdiction, and by setting forth a number of substantive and procedural requirements for the Department of Environmental Protection (DEP) to incorporate into new regulations for the expanded licensing program. At Boston City Hall, in keeping with the fact that municipalities exercise the lead responsibility to control land use generally, the Boston Redevelopment Authority (BRA) unveiled an ambitious program for waterfront planning -- based on the "Harborpark" concept -- to serve as the basis for a complete overhaul of zoning along the Boston shoreline.

These two initiatives shared another important milestone last October, when new state Waterways regulations (310 CMR 9.00) took effect under ch. 91 and the City published its blueprint for the waterfront rezoning effort -- the Boston Harborpark Plan. The events were related, because the regulations defined a substantive role for such a plan in the application of many of the newly established state licensing requirements, provided that the Secretary of Environmental Affairs approves the plan in accordance with a companion set of regulations developed by the state's office of Coastal Zone Management (CZM). Also adopted during October, these regulations [301 CMR 23.00] established review procedures and specific approval standards to ensure that a municipal harbor plan (MHP) conforms to state environmental policy for the coastal zone, as expressed in CZM policies and guidelines as well as in the Waterways regulations themselves. These events set the stage for the submission of Boston's proposed MHP for waterways licensing purposes, including the revised zoning text for a number of subdistricts in the harbor. The City submitted its Harborpark Plan (Plan) on October 19, 1990.¹

Today, I am approving key portions of the Harborpark Plan pursuant to the MHP regulations. The effect of this Decision is to establish a joint venture of the state and the City, with the former establishing the basic regulatory framework and the latter providing a more detailed plan with harbor-specific guidance for DEP's review of ch. 91 license applications. This will result in DEP decisions that are tailored more effectively to local needs and circumstances, to the benefit of the public-at-large as well as affected property owners. Significant advantages will also accrue to the general development community, in the form of

¹ Except as expressly indicated otherwise, all terms used herein are as defined pursuant to the MHP regulations at 301 CMR 23.00 and/or the Waterways regulations at 310 CMR 9.00.

greater predictability and consistency in the project-specific reviews carried out in the future by each level of government.

In reviewing a proposed MHP such as Boston's, I am authorized by the transition procedures of the MHP regulations to waive the first major step in the review process -- the issuance of a Scope specifying how the CZM Harbor Planning Guidelines shall apply, and the information and analysis necessary to determine whether a proposed plan complies with such guidelines and all other standards for approval. In the present case I have exercised my waiver authority in reviewing the Harborpark Plan as it relates to two major segments of the Boston shoreline: a) the shoreline between the Northern Avenue Bridge and the northern City boundary at Somerville, Everett; and b) the shoreline between Castle Island and the southern City boundary at Milton. For these portions of the Harborpark area, Boston's planning effort is essentially complete, and new zoning articles covering all filled tidelands subject to DEP jurisdiction have been formally adopted by the City.

For the remainder of Boston's shoreline, where the Harborpark planning program is still underway, I have decided that it would be inappropriate to apply the transitional review procedure. Therefore, the following areas are not covered by the Decision set forth herein: East Boston, the Harbor Islands, and the waterfront areas on both sides of the Fort Point Channel and west of the Northern Avenue Bridge -- all areas for which the City has not yet issued comprehensive zoning language for community review; and the Fort Point District and South Boston Designated Port Area -- areas for which I find that presently available planning and zoning materials are not sufficiently advanced, integrated, and/or encompassing of all filled tidelands to warrant my review at this time. When further work is accomplished and information becomes available at a later date, I will consider adding these significant geographic areas to the approved Harborpark Plan in accordance with the amendment procedures of the MHP regulations [301 CMR 23.06 (1)(b)].

The procedure for making substantial additions to an approved plan requires development of a Scope beforehand. In pursuing this approach it will be possible to avoid much of the difficulty the City encountered in developing the first major portions of the Harborpark Plan last year, when the City was the first applicant to go through a process whose evaluation criteria had yet to be applied and interpreted. The exact requirements for complying with the Chapter 91-related standards were not known to the City when it was preparing its plan, since they were promulgated in final form only last June. The City also lacked the benefit of precedent regarding how the CZM Harbor Planning Guidelines would be applied to actual cases. Thus, unavoidably, certain differences in approach manifested themselves in the Harborpark Plan as compared to both the harbor planning and Waterways regulation programs of CZM and DEP. Reconciling

these differences was a task requiring a great deal of cooperation and flexibility on the part of both the state and City, and it resulted in the imposition of a somewhat greater number of conditions and limitations on my approval than I expect will be the case in the future.

This Decision presents my findings and determinations on how the Boston Harborpark Plan satisfied each of the standards that must be met in order to approve a MHP. Pursuant to the MHP regulations, these standards can be summarized as follows:

- 1) the plan must be consistent with all applicable CZM Policies and Harbor Planning Guidelines [301 CMR 23.05 (1)-(2)];
- 2) the plan must be consistent with state tidelands policy objectives and associated regulatory principles, as set forth in the Waterways regulations of DEP [301 CMR 23.05(3)];
- 3) the plan must include all feasible measures to achieve compatibility with the plans and planned activities of all state agencies owning real property or otherwise responsible for the implementation or development of plans or projects within the harbor planning area [301 CMR 23.05(4)]; and
- 4) the plan 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 the Waterways regulations [301 CMR 23.05(5)].

II. COMPLIANCE WITH CZM CONSISTENCY REQUIREMENTS

A. Consistency with CZM Policies

In 1978, EOEA adopted an overall program to manage the Massachusetts coastal zone, in the form of CZM regulations containing 27 broad statements of policy. I find that the proposed Harborpark Plan is consistent with such policies, as required by 301 CMR 23.05(2). The City has documented that the Plan correlates in numerous ways with each of the relevant policy statements. Further evidence to this effect is found throughout the body of the Plan, which is organized according to four primary themes. Fleshed out in detail, these themes are virtually identical to, and in several ways even improve upon, the underlying concepts of the CZM program relating to the management of urbanized ports and harbors. A brief review of these concepts, as reflected in both the CZM policies and the Harborpark Plan, follows.

The CZM program not only stresses the ecological importance of natural areas like barrier beaches and salt marshes, but also recognizes the social and economic significance of commercial ports and other intensively developed harbors. For the latter type of resource area, a major program goal of CZM is to improve the availability and suitability of the shoreline for traditional vessel-related activities, especially deep-water shipping, commercial fishing, and other marine industries that have special physical and operational requirements that are nearly impossible to meet except in certain existing locations. CZM Policy No. 7 identifies twelve places in the state, known as Designated Port Areas (DPAs), where the preemption of maritime commerce by other waterfront use is generally prohibited by state regulation. Furthermore, CZM Policy No. 20 sets forth a CZM commitment to provide and solicit funding for the improvement of the "waterways infrastructure" (docks, piers, bulkheads, channels, and so forth) required not only to maintain shipping and fishing but also to accommodate other activities such as cruise and ferry services and recreational boating. Finally, CZM strongly supports measures to minimize the filling of waterways, even for water-dependent activities, in order to maximize protection of the public's navigation rights as well as the integrity of natural systems.

Another key CZM principle relating to developed harbors is that the urban waterfront is special not only as a place to engage in commerce but also to enjoy a rich heritage of visual, cultural, and historic amenities. Recreation in its many forms attracts more people to the Massachusetts coast than any other use, supporting a multi-billion dollar tourist industry and adding immeasurably to the quality of life for residents and visitors alike. Making the shoreline available for an increasingly greater segment of the population is a central concern of the CZM program, especially in the Boston metropolitan region where demand for coastal recreation opportunities far exceeds the supply. Accordingly, CZM Policy Nos. 21-24 promote increased open space and recreational facilities close to the state's center of population, through public expenditure and any other available means. Within this context, CZM emphasizes increasing visual access to the urban coastscape, a policy that is expressly not limited to natural features but also includes the industrial artifacts of the working waterfront. As Policy No. 20 puts it, views of port operations "are particularly encouraged by CZM, since these activities have significant educational and interest value as integral elements of the coast's visual resources."

The third proposition underlying CZM harbor management policies explicitly favors waterfront revitalization in existing centers of residential, commercial, and industrial development. Such renewal maximizes the efficiency of prior investment in environmental infrastructure, enabling the more urbanized areas to support further growth with relatively less impact on coastal resources. CZM Policy No. 20 encourages the intermingling of private housing with retail shops, restaurants, parks, and other public facilities, because such a mixture of uses "can provide immeasurable opportunities for visual and physical

access to the waterfront." This policy is expressly limited to mixed-use developments that otherwise serve critical public purposes of the CZM program, that is, those that avoid conflict and preemption of maritime activities and advance the recreational/cultural interests of the public (by maintaining open space, adaptively reusing older structures, enhancing views, and so forth). A related constraint is set forth in CZM Policy No. 12, which calls upon proposed developments to respect the preservation intent of and minimize adverse impacts on historic districts and sites.

The Boston Harborpark Plan is built on the same comprehensive goals as CZM's urban waterfront policies. The Plan stresses that the economic rebirth of stagnant waterfront areas through private investment cannot come at the expense of the public's quality of life; as the City puts it, "the Harborpark Plan recognizes Boston Harbor as a unique resource that should be accessible to all residents of the City as a place to live, work, and gather for recreation or the quiet enjoyment of nature." This emphasis on the need for "enlightened" redevelopment is further reflected in one of the four basic goals stated in the Plan, which is to "revitalize Boston's underutilized and dilapidated piers and shoreline by promoting growth through private investment that is appropriately designed and is a balanced mix of uses that bring vitality to the waterfront and benefits of development that are shared by all of Boston's residents" (emphasis added).

According to the Harborpark Plan, rejuvenation of the Boston waterfront will have two principal aims: to ensure public access to and enjoyment of an "activated" water's edge; and to preserve and enhance the harbor's maritime industries which require deep-water shipping channels and landside facilities. The Plan has a multitude of features derived from these cornerstone goals, the most noteworthy of which are as follows:

Promoting Public Use and Enjoyment

- * create Harborwalk, a 43-mile continuous waterfront walkway system that will provide 24-hour physical (including handicapped) access to the Boston shoreline, stretching from the Neponset River to Charlestown and East Boston, with extensive connections to the pedestrian networks of adjoining neighborhoods; the public will be well-directed via signage and will have the benefit of all basic amenities such as seating, lighting, landscaping, and works of public art; features of special interest will also be provided, such as fishing piers, observation decks, public boating facilities, beach paths, and grassy areas;
- * create, in conjunction with Harborwalk, an extensive open space/outdoor recreation network totalling over 1500 acres (nearly 50 percent of the waterfront land area), comprising various parks, waterfront setback areas, plazas, and greenspaces provided as a condition of development; this is conceived as the waterfront continuation of the "Emerald Necklace" park system of Olmstead

design, with direct links to that system planned in five strategic areas; again, these public open spaces will be enlivened by cultural facilities such as historic exhibits, outdoor performance areas, kiosks and shops, urban gardens and wilds, waterfront boulevards, and an environmental communication system;

- * ensure that a substantial amount of interior space at the ground level is devoted to facilities of public accommodation, such as cultural facilities and theaters, restaurants and cafes, retail issues, recreational facilities, and hotels; at least 40 percent of the first floor must be devoted to such uses in all the mixed use/commercial districts of the Inner Harbor; in the Downtown subdistrict at least an additional 25 percent must be devoted to cultural uses chosen and designed with particular emphasis on providing public attraction to the water's edge;
- * facilitate the reestablishment of an extensive water transportation system in Boston Harbor by requiring waterfront projects to include appropriate infrastructure such as docks and associated facilities, in accordance with prototype docking standards that have recently been developed in a special consulting study; in all inner harbor subdistricts, zoning requires consideration of the need for terminals and landings for water ferries, water shuttles and taxis, and free public landings; in the Downtown subdistrict (designated as a Water Transportation Priority Area) emphasis is placed on main terminals for commuter, cruise, and ferry boats;
- * establish dimensional limitations so that new waterfront development is appropriately scaled in relation to the pedestrian environment, and require compliance with an extensive list of design guidelines aimed at maximizing the sensitivity of built form to the waterfront context.

Protecting the Working Waterfront

- * establish eight Maritime Economy Reserve (MER) Districts wherein some 660 acres of waterfront land adjoining deep water port facilities is reserved exclusively for shipping and other water-dependent industrial uses; all of the properties zoned MER are contained within state Designated Port Areas, and their continued dedication to port purposes is considered essential to maintaining the competitiveness of New England manufacturers in the international marketplace;
- * establish a series of Waterfront Service Districts to protect small and medium-size water-dependent businesses engaged in activities like vessel maintenance and repair, fueling and provisioning, shipping support, lobstering, and so forth; and establish Waterfront Manufacturing Districts to accommodate general manufacturing and industrial uses, recognizing their synergistic relationship with working waterfront uses; when the amount of land area zoned in these categories (over 300 acres) is added to that zoned as MER, roughly one-third of the Harborpark District is designated as a locus for predominantly water-dependent use;
- * protect the integrity of the waterway for navigation and other water-related public purposes by essentially banning new fill for nonwater-dependent projects and restricting new pile-supported structures, along 90 percent of the waterfront, to water-dependent uses;
- * provide proximate, safe access to working waterfront districts so the public can view maritime industrial activities, an opportunity that not only lends diversity to the pedestrian experience but also engenders understanding of and support for the overall maritime sector of the economy.

These features of Boston's Harborpark Plan are clearly consistent with the broad goals established by CZM for redevelopment of the state's urban waterfronts.

B. Consistency with the Harbor Planning Guidelines

To approve a municipal harbor plan, I also must determine that it is consistent with CZM's Harbor Planning Guidelines (Revised, 1988). Generally, the criteria for such consistency would be defined in the Scope for a plan, where I would specify how to apply these Guidelines to a particular municipality. However, no Scope is available in this case, since my review of Boston's plan has taken place under the transition procedures of the MHP regulations. Therefore, I have evaluated the plan in terms of its consistency with the underlying spirit and intent of these Guidelines. For this level of evaluation, there are two basic issues that need to be considered: plan coverage and plan content.

1) Plan Coverage

Plan coverage involves both the geographic scope of the planning area and the range of issues considered. The Guidelines allow ample discretion on the part of a community in the choice of plan coverage, subject to a clearly stated requirement of "comprehensiveness." To be consistent with this requirement a plan must: define a harbor planning area that encompasses all areas relevant to the effective use and management of the harbor and all filled tidelands subject to DEP jurisdiction; and address all significant and interrelated land- and water-use issues.

The geographic coverage of Boston's Harborpark Plan is clearly comprehensive, insofar as the overall planning area extends from the City's northern to southern borders and includes all filled tidelands subject to DEP jurisdiction, with the exception of a few areas along the Fort Point Channel and within the South Boston Designated Port Area. The water-side of the planning area is also completely encompassed, since the zoning maps of the October 19 Plan delineate boundaries that clearly include the waterway of Boston Harbor seaward to the limits of City jurisdiction.

Although the geographic scope of the overall harbor planning effort meets the requirement of comprehensiveness, the implementation program has yet to be developed for some sub-areas and a variety of planning issues remain to be addressed. The City's October 19 submission did not include zoning text for East Boston, the Harbor Islands, and certain segments of the Fort Point/South Boston planning areas (including the Fan Pier/Pier 4 site). The proposed plan as of that date did include zoning text for the Fort Point Zoning District but, as I noted in the Introduction, it would be premature to review that material

because it is preliminary and needs coordination with yet-to-be-developed zoning revisions for the nearby Designated Port Area. In keeping with the requirement of comprehensiveness, I am requiring that the City submit plan amendments in the future to address all of the above-referenced areas that are presently excluded from the approved Harborpark Plan [See Requirement 1].

The Harborpark Plan addresses a considerable range of significant issues which reflect the objectives of the waterways program: providing public access to the waterfront, revitalizing and activating the waterfront, and preserving water-dependent uses, particularly maritime industrial uses. While the focus of the City's October 19 Plan submission is primarily land-use issues, a number of water-use issues were addressed and the City has voiced a commitment to expand substantially on the range of water-use and other relevant issues in subsequent plan amendments.

The Plan treats the interrelationship between some significant water-use and land-use issues; for example, the siting of Maritime Economy Reserve zoning districts, which reserve land for shipping activities, was based upon deep port criteria. The Plan also includes mooring and harbor safety regulations which address the use of Boston Harbor's water surface. I find that the October 19 Plan's coverage of these issues, when considered in conjunction with the coverage of land-use issues, meets the comprehensiveness requirement as it relates to the scope of issues for an initial phase of plan development. Consistent with the provisions of the regulations concerning phasing, the incorporation of a broader range of issues into the plan will be achieved through the filing of subsequent plan amendments for my review and approval. Requirement 1 of my approval requires such plan amendments.

The following is intended as guidance in developing the scope of the water-side and other issues to be addressed in future phases of plan development.

Various water-dependent activities may compete for the use of the Harbor's waters. Such uses include water passenger transportation, recreational boating, commercial fishing and lobstering, and shipping. To avoid conflict between such existing and potential uses, Boston should study their water-side interactions. On the land side, the City should explore opportunities to preserve and enhance existing water-dependent businesses and to site new water-dependent commercial ventures other than water transportation uses.

The Harborpark Plan cites among its goals certain water quality objectives, including assisting the Massachusetts Water Resource Authority (MWRA) in the development of the combined sewer overflow system now required to clean up area waters. The City should flesh out the details of the actions it plans

to undertake to assist the MWRA both in meeting the specific objective cited and in other aspects of the large-scale harbor clean-up program for which this Authority is responsible.

Many additional water-side plan components can enhance the general harbor planning effort; these include a waterways management plan for the use of the water, and a dredging plan setting goals and priorities for the dredging of public and private channels of the harbor. In subsequent plan amendments Boston also should address issues relating to such natural resources of the harbor planning area as salt marshes, shellfish beds, and tidal flats. Maps and inventories of these natural resources should be included in the planning document covering these issues.

Requirement 1 requires the submission of proposed plan amendments addressing both the geographic areas and water-side issues cited above. This Requirement also requires that any plan amendment address all relevant water-side issues simultaneously with the geographic area it encompasses. While my present approval of the Harborpark Plan is not contingent upon compliance with such requirements, they will serve as important criteria for evaluation of future submissions by the City in connection with its municipal harbor plan.

2) Plan Content

The MHP regulations require every plan to incorporate four basic elements: 1) a statement of goals and objectives and the corresponding applied policies to guide development in terms of its desired sequence, patterns, limits, and other characteristics; (2) an implementation program; (3) planning analysis which takes into consideration technical data, community input, and other information which serves as the basis for evaluating tradeoffs among alternatives and choosing preferred courses of action; and, (4) a review of the public participation program. The interrelationship among these elements should be reflected in the content of the plan.

(a) Goals and Applied Policies

The Harborpark Plan provides a clear and well-elaborated statement of goals, and contains summary expressions of applied policies for each of the major planning sub-areas. In addition, the Plan incorporates a master plan for the Charlestown Navy Yard subdistrict, which consists primarily of land owned or otherwise controlled by the City. This document lays out land use strategies intended to manage growth in this area and documents the planning rationale for these strategies. The details of this master plan provided a useful supplement to the broad policy statements of the Harborpark Plan, in terms of the City's planning decisions

regarding the open space network, housing and transportation issues, and historic preservation. While an equivalent level of specificity may not be appropriate in planning for other Harborpark subareas which are not City-owned, plan amendments in the future should be accompanied by master planning documents to ensure the Harborpark policies as applied to the subareas in question will be as fully articulated as possible.

(b) Implementation Program

The Harborpark Plan's strongest element is its implementation program. Appendix A of the October 19 Plan submission contains an extensive set of regulatory measures, many of which have already been adopted by the City. These measures primarily consist of amendments to Boston's Zoning Code. Representing substantial changes in the Code, these amendments codify the goals and applied policies of the Plan and provide an enforceable means of carrying them out.

(c) Planning Analysis

The Yard's End Master Plan successfully documents the analytical basis for each of its basic elements, its goals, its policies, and its implementation measures. Its treatment of transportation issues is particularly exemplary because of the comprehensiveness of the record it provides of the analysis conducted in addressing these issues. The Boston Inner Harbor Water Dependent Use Report, included as Appendix E of the Plan, is another good example of planning analysis that was undertaken, although its role in leading to recommendations of the Plan is not explained. I recognize that the Plan was developed before guidance was available concerning the emphasis to be placed not only on planning analysis but also on providing a record of such analysis. Still, it would be more useful to the public's ability to understand and support the Plan's recommendations, if a more extensive explanation were provided regarding the connection between analysis and those recommendations. I expect future plan submissions, including proposed amendments to the Boston Harborpark Plan, to ensure that the basis for plan recommendations is as fully documented as possible.

(d) Public Participation Program

Community input is another source of information providing a basis for evaluating the tradeoffs among plan alternatives and the choice of a preferred course of action. The plan provides ample evidence of a strong citizen participation program providing the opportunity for public comment on the Plan. However, the Plan does not identify the significant issues raised through public comment, how the Plan was modified in light of these comments, the implications of these modifications, or, in sum, the effects of the

public participation program. Such information, along with the rationale for zoning language that may have been negotiated to address these concerns, would enable a better understanding of both the intent of a plan and the public role in defining this intent. These results are an important component of a strong public participation program.

In this case, it is evident that the City carried out an extensive public participation program that eventually influenced the Plan in substantial ways. Among the prime examples cited by the BRA in this regard was the relocation of the Aquarium site from the Shipyard Park area to the Yard's End of the Charlestown Navy Yard. Thus, I find the basic plan element concerning the public participation process to be consistent with the Harbor Planning Guidelines. Subsequent plan amendments, however, must provide a review of the public participation program and its effects, consistent with the guidance of this Decision.

III. COMPLIANCE WITH TIDELANDS CONSISTENCY REQUIREMENTS

A. Introduction

Consistency with underlying CZM policies and guidelines is a necessary but not sufficient condition for approval of a municipal harbor plan. I must make a further determination of consistency with the specific objectives and principles of regulation embodied in 310 CMR 9.00, to ensure that harbor plans also serve positively to augment state requirements as applied on a case-by-case basis. The MHP regulations contemplate a two-part evaluation in this regard: a broad review of the effect of all plan provisions that correspond in some way to the substantive elements of the Waterways regulations; and a more focussed review of the implications of so-called "substitute" provisions -- alternative requirements which, if approved in accordance with various stated criteria, can serve as the basis for a DEP waiver of up to seven specific use limitations and numerical standards affecting nonwater-dependent use projects. My findings on these two basic aspects of the Boston Harborpark Plan are set forth below.

B. Evaluation of Non-Substitution Provisions

Chapter VIII of the Harborpark Plan highlights numerous features of the City's zoning program that support the primary state tidelands policy objectives, as set forth in 301 CMR 23.05(3)(a). My examination of the zoning text for the respective subdistricts confirms that a high degree of consistency exists with those objectives. Indeed, there are only a handful of provisions that vary in any sense with the Waterways regulations, apart from those proposed as substitutions. For example:

- * the definition of certain terms under zoning includes elements clearly excluded from the same term under 310 CMR 9.02;
- * in some zoning districts, uses and/or structures categorically restricted by the Waterways regulations are not similarly prohibited by the Plan; these include seaward expansion of existing piers for nonwater-dependent uses and the location of certain non-maritime activities in state Designated Port Areas;
- * the provisions governing affordable housing benefits allow, in certain circumstances, funds provided as a condition of development on Commonwealth tidelands to be spent not only off-site but outside the Harborpark district entirely.

Such points of departure are infrequent and immaterial because the corresponding provisions of the Waterways regulations will supersede in actual licensing situations. Nevertheless, the presence of such items in an approved plan may give rise to confusion on the part of license applicants, who could mistakenly presume that all conflict and inconsistency was removed as a result of the review and approval process. Accordingly, I require that the Plan be revised in a manner that identifies the most significant inconsistencies and clarifies that the zoning provisions in question shall not be construed as superseding any corresponding provision(s) of the Waterways regulations [See Requirement 2]. I also urge the City to consider making technical adjustments in the Harborpark zoning articles to eliminate as much potential for confusion as possible.

The MHP regulations require me to find that any non-substitution provision that amplifies a discretionary requirement of the Waterways regulations will be complementary in effect with the regulatory principle(s) underlying that requirement. Upon such a finding, DEP is committed to "adhere to the greatest reasonable extent" to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). While the Harborpark zoning articles contain many provisions, such as the urban design guidelines articulated for the commercial/mixed use subdistricts, that will have operative significance in the licensing process, DEP has indicated that there are only two segments of the Plan which elaborate upon specific Waterways requirements in the highly particularized manner contemplated by the regulations. These are the prototype docking standards (Plan Appendix K), and the mooring and harbor safety regulations (in Plan Appendix A). I concur with DEP's recommendation that only these documents meet the criteria necessary to attain 310 CMR 9.34(2)(b)(2) status. The only relevant qualification pertains to the mooring regulations, which represent acceptable amplification of 310 CMR 9.37-9.39 but should not be construed to meet the specific standards contained in 310 CMR 9.07, governing issuance of annual harbormaster permits.

As to the remaining Appendices accompanying the Plan and zoning articles, only one can presently be considered to have significant usefulness for the review of Waterways license applications: the Master Plan for Yard's End (Plan Appendix N). This is a key document for interpreting the Charlestown Navy Yard zoning, although the latter would govern if any conflicts were found to exist. By contrast, Plan Appendices B-J and L-M contain a certain amount of material that is either dated, in draft form, or extraneous for licensing purposes. These materials were most helpful as background for the plan evaluation process, but cannot be considered part of an approved plan at the present time. I urge the City to synthesize the most relevant information into discrete guidance documents that can be incorporated into the Plan at a later date, in accordance with the amendment procedure of the MHP regulations. It would be especially helpful to do this with the four appendices (E, F, H, and M) concerning water transportation issues, which contain an

abundance of water-side information and analysis that may only need to be condensed and reformatted in order to serve as a functional addendum to the Plan for Waterways licensing purposes.

C. Evaluation of Substitute Provisions

In Chapter VII of its Harborpark Plan, the City requests a waiver of the use limitations and numerical standards of the Waterways regulations, 310 CMR 9.51(3)(a)-(e) and 9.53(2)(b)-(c), that apply to new and expanded buildings for nonwater-dependent use. Such a waiver has been requested for all subdistricts where these provisions are more restrictive on their face than the corresponding provisions of the Harborpark zoning articles, as well as where there are definitional or other technical inconsistencies that could prejudice the ability of developers to meet both sets of requirements. The substitute requirements contained in the zoning would thus govern such key matters as the expansion and use of piers for facilities of private tenancy, the specification of maximum building dimensions, and the determinations of minimum amounts of indoor and outdoor space to be devoted to facilities of public accommodation.

This approach to substitution is the most comprehensive way to coordinate the respective bodies of state and local regulation. At the same time, it has the disadvantage of making the plan review and approval process unnecessarily complex, in that it does not screen out provisions that will have no practical bearing on future licensing actions. One simplifying distinction that can be made, for example, involves waterfront development projects that have progressed sufficiently far in the environmental review process to have been grandfathered from the present Waterways regulations. Insofar as these projects are not legally bound to comply with the new standards in the first place, the exercise of waiving those standards is irrelevant. Nor does it serve any useful purpose to consider waiving requirements in areas where the proposed zoning alternatives simply reflect preexisting conditions. Where full-build status has already been attained, requirements governing new or expanded buildings will have, again, little or no operative significance in the foreseeable future.

Based on the foregoing, it is appropriate to exclude from this evaluation any substitution provision that does not serve to tailor the new Waterways regulations so they may operate effectively, in concert with Harborpark zoning, to shape prospective waterfront projects to which both systems of regulation apply. This eliminates the need to consider any of the various substitution proposals for the Downtown subdistrict, where the only parcels that could foreseeably accommodate new development are part of the Central Wharf project, which submitted a license application prior to October 4, 1990 and is not subject to the new provisions of 310 CMR 9.00 governing nonwater-dependent use projects. In the remaining subdistricts, moreover, the list of candidates for substitution need not include the requirement for open water replacement

to offset expansion of existing piers or pile-fields for nonwater-dependent purposes. Such expansion is everywhere prohibited by the combination of applicable zoning (which allows lateral extensions only for public access) and the non-waivable Waterways provision which precludes further seaward projections except for water-dependent use.

Having identified these and a number of other instances where there is no apparent need to authorize the waiver of Waterways requirements, I have decided to narrow the scope of evaluation of the Harborpark Plan to consider proposed substitute provisions only for the following combinations of issues and locations:

- Open Space: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.
- Facilities of Public Accommodation at Ground Level: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.
- Setbacks: all subdistricts, except those designated as open space, from the North End to the northern City boundary and from Castle Island to the southern City boundary.
- Height: North End (Sargents Wharf), Charlestown Gateway (Tudor Wharf), Charlestown Navy Yard (Yard's End parcels 4/4A and 6/7).
- Facilities of Private Tenancy Over Water: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.

The framework for my evaluation of these proposed substitutes is established in the MHP regulations at 301 CMR 23.05(3)(c) and (d). Subsection (c) requires me to find that a specific criterion has been met in the case of each use limitation or numerical standard of the Waterways regulations proposed to be waived in favor of the alternative requirements of the plan. Subsection (d) sets forth what a municipality must do to demonstrate that the respective criteria have been met, which in essence is to show that the plan "will promote, with comparable or greater effectiveness, the state tidelands policy objectives stated in the corresponding provisions of the waterways regulations." The MHP regulations allow substitute provisions to be less restrictive than the Waterways requirements as applied in individual cases, "provided that the plan includes other requirements which, considering the balance of effects on an area-wide basis, will mitigate, compensate, or otherwise offset adverse effects on water-related public interests."

1) Open Space

The Waterways regulations contain two numerical standards whose effect on the provision of open space is interrelated: 310 CMR 9.51(3)(d), which limits the site coverage of nonwater-dependent buildings to approximately 50 percent, and 310 CMR 9.53(2)(b), which requires that approximately half of a project site on Commonwealth tidelands consist of exterior open spaces for public use and enjoyment. Under the Harborpark zoning articles for the North End and Charlestown Gateway subdistricts, publicly accessible open space is required to be provided on at least 50 percent of the area for any proposed project involving new construction at grade; and in the Charlestown Navy Yard, a similar percentage requirement must be met on an aggregate basis, on the total lot area of all lots in the subdistrict (exclusive of the Historic Monument Area).

The Harborpark requirements reflect definitional differences that in some ways are more restrictive and in other ways less restrictive than the Chapter 91 approach. On the whole, I am satisfied that in practice the net results will be essentially equivalent in terms of the amount of open space that will remain available for water-dependent activity and public recreation. I applaud the City, in fact, for the greater extent to which the Harborpark rules discourage use of waterfront land for roads and surface parking. Regarding implementation commitments, I believe that there is a need only for some technical improvement in the procedure for meeting the 50 percent goal in the Charlestown Navy Yard subdistrict [See Requirement 3].

2) Facilities of Public Accommodation at Ground Level

The Waterways regulations require, in effect, that the ground floor of buildings containing private nonwater-dependent uses be devoted to facilities of public accommodation, in all areas except filled private tidelands located more than 100 feet landward of the project shoreline. Under the Harborpark zoning articles for the North End and Charlestown Gateway subdistricts, any project with more than 10,000 square feet of floor area, regardless of location, must devote at least 40 percent of the ground floor to public facilities. The positioning of such space within buildings is at the discretion of the City. No such minimum requirement is specified for the Charlestown Navy Yard subdistrict, although the Master Plan for Yard's End (Plan Appendix N) identifies a number of locations where indoor space will be programmed for public activity.

The differential effect of these respective requirements depends a great deal on how Commonwealth versus private tidelands are distributed throughout a given subdistrict. For example, based on historic shoreline information provided by DEP, filled private tidelands are more prevalent than filled Commonwealth

tidelands in two of the three subdistricts at hand: the North End and Charlestown Gateway. Throughout these areas, the Harborpark rule is likely to result in a quantity of public interior space which surpasses the minimum obtainable under the Waterways regulations, which do not require the provisions of public facilities on private tidelands. The zoning requirement may also result in a more uniform distribution of public space than would the Waterways rule, given that the geographic configuration of filled Commonwealth tidelands can be highly irregular. For these reasons, I am persuaded that the 40 percent requirement set forth in the Harborpark zoning articles is an effective substitute for the Waterways standard, with respect to projects on filled tidelands within the North End and Charlestown Gateway subdistricts.

The Charlestown Navy Yard subdistrict presents a different situation due to the fact that the immediate waterfront is predominately filled Commonwealth tidelands. In this subdistrict, the City has committed to many public developments, such as the Aquarium project at Yard's End, an adjoining hotel, and a series of special facilities in historic buildings which will serve to memorialize the unique maritime culture of the Yard, America's oldest naval shipyard. Recognizing this ambitious commitment to public uses, I have decided to allow for substitution of the same 40 percent minimum requirement at Yard's End that I found acceptable in the other subdistricts. However, because such requirement is not presently codified in the appropriate zoning article, I include it here as a condition to be applied in the chapter 91 licensing process, with the understanding that DEP will act consistently with its usual practice, in the case of hotels, of utilizing the flexibility in 310 CMR 9.53(2)(c) to credit space devoted to facilities of public accommodation on the second as well as the ground floor [See Requirement 4(a)].

Nonetheless, I am not satisfied that the Harborpark Plan in the North End-to-Navy Yard region provides sufficiently for the location of facilities of public accommodation in ground-level spaces at the immediate waterfront. Therefore, I am specifying additional conditions to increase the amount of such public interior space required on piers, and also within the first 100 feet of the project shoreline except in certain circumstances where good cause exists to place the public facilities elsewhere on the project site [See Requirement 4(b)-(c)]. This latter condition allows flexibility to utilize interior space in a manner that best serves the interests of public use and enjoyment on the waterfront site as a whole. A prime example of the benefit of retaining such flexibility is found in the Yard's End Master Plan, which establishes the Sixteenth Street side of the proposed multi-phased Biomedical Research Building (rather than the more remote shoreline of the Little Mystic Channel) as the principal public thoroughfare leading to the new Aquarium site, and thus the logical priority area for the placement of ground floor public uses.

3) Setbacks

The Waterways regulations establish a "water-dependent use zone" which runs parallel to and landward of the present shoreline, including the edges of existing piers and wharves, and whose width is proportional to the lot depth or pier dimensions (generally 25 percent is used). In all subdistricts except those designated as open space, the Harborpark Plan creates a similar "Waterfront Yard Area" from which nonwater-dependent buildings are generally excluded. However, rather than sizing this waterfront yard on a percentage basis, the Harborpark Plan sets fixed setback distances -- generally 35 feet along the shoreline and at the ends of piers and 12 feet along the sides of piers.

Since the purpose of the water-dependent use zone is to conserve the capacity of waterfront sites to accommodate water-dependent use, by preventing undue encroachment of nonwater-dependent buildings along the seaward edges of such sites, modification of the numerical standards in the Waterways regulations may occur only in the event that "sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith, as appropriate for the harbor in question" [301 C.M.R. 23.05(3)(c)(3)]. In this connection, the required Waterfront Yard Area of the Harborpark Plan is well-designed to accommodate Harborwalk, which will provide continuous pedestrian access to the water's edge throughout large portions of the harbor. For this particular purpose, the minimum setback distances specified in the Plan appear to be quite adequate.

I am concerned, however, that setback requirements also be adequate to preserve the utility and adaptability of the waterfront for a broader range of water-dependent uses. Clearly, the City has emphasized the provision of new facilities for water transportation, and anticipates both transient and permanent dockage along large parts of the harbor shoreline as it is redeveloped. Yet, the various zoning rules as applied to many sizable lots and piers protect only one-third to one-half of the space that would otherwise be reserved by the Waterways regulations along the seaward end of the property, and in many cases even a lesser portion on the sides of piers. The Plan does not attempt to justify this reduction in the context of specific vessel-related programming on an area-wide basis; nor does it contain any generic guidelines or criteria by which determinations of need for additional setback space can be made on a case-by-case basis.

I am also concerned that the Harborpark zoning articles can be read to allow, in certain circumstances, that the Waterfront Yard Area be located on a new pile-supported structure extending into open water by the same distance as is required for the setback. Therefore, nonwater-dependent building construction could take place right at the existing pier or shore edge, effectively reducing the width of the water-dependent use zone to zero. This outcome is not allowable under the substitution criterion stating

that such buildings shall not be constructed "immediately adjacent to a project shoreline" [301 CMR 23.05(3)(c)(3)].² The underlying principle here is that water-dependent use should be allocated a reasonable portion of existing buildable space, because carving setbacks out of the waterway itself is normally detrimental to navigation interests and other public rights.

While the proposed substitute setback requirements depart from the relevant DEP tidelands policy objectives, the City deserves credit for placing numerical limits on the expansion of existing piers in all areas where nonwater-dependent use of such piers may occur, i.e., in the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts. These limits are based on a variety of water-side considerations including proximity to main shipping channels, patterns of existing vessel traffic, and other site-specific navigational factors. This is important for limiting the extent to which open water can be lost indirectly as a result of pressure to maximize the buildable space available for nonwater-dependent purposes.

In recognition of the progress the City has made to comply with the spirit of the waiver criterion, I approve at this time a partial substitution for the Waterways standard for the three subdistricts noted, by accepting the Harborpark method of utilizing the new edges of expanded pile-supported structures as the baseline for measuring setback distance (rather than the project shoreline--see Requirement 5). Otherwise, the Waterways rule shall remain in effect, including the specified percentage and minimum distances from the project shoreline, until the Plan is revised to incorporate a more substantial planning basis for the alternative requirements proposed in the respective zoning subdistricts. I am encouraged that in one important area, the Charlestown Navy Yard, the City is developing precisely the sort of specific vessel-related program that can substantiate appropriate modifications to the waterways rule. For example, the Yard's End Plan calls for a generous 75 foot (average) setback along Pier 11 on the northeastern side of Parcel 5, in order to accommodate the large naval and oceanographic vessels that will be encouraged to tie up near the proposed Aquarium. In contrast, a relatively small space of 20 feet is reserved between the Biomed Center and the Little Mystic Channel, based on a reasonable presumption that the Parcel 6/7 shoreline (which is not a pier or wharf) is not well-suited as a location for many types of water-side facility development due to the narrowness of the channel and its priority status as a fairway for maritime

² In the case of pile-supported structures, the project shoreline as defined in 310 CMR 9.02 is the existing pier edge unless the pier is reconfigured in accordance with the one-for-one on-site replacement standard set forth in 310 CMR 9.51(3)(a), in which case the baseline for measuring setbacks would become the new pier edge.

commerce (being within a Designated Port Area). On this latter parcel the Yard's End Master Plan, now pending MEPA review, could justify a setback of the 20 foot size proposed by the City.

4) Height

The Waterways regulations at 310 CMR 9.51(3)(e) require that the height of new or expanded buildings for nonwater-dependent uses be limited to 55 feet over flowed tidelands and within 100 feet of the high water mark on filled tidelands; for every additional foot of separation from the high water mark on filled tidelands, such height may increase by one-half foot. Within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts, the corresponding height limits set forth in the respective zoning articles exceed these numerical standards in four relevant locations, all on filled tidelands³: Sargents Wharf and Tudor Wharf, where uniform limits of 75 feet are proposed; and Parcels 4/4A and 6/7 in the Navy Yard, where maximum heights range between 90 and 135 feet on the site of the proposed hotel (Parcel 4/4A), and from 125 to 155 feet on the site of the proposed Biomedical Center (Parcel 6/7). In the case of Sargents and Tudor Wharf, the alternative heights are less restrictive than the Waterways standards within a distance of approximately 140 feet of the project shoreline, although the increase allowed is at no point greater than 40 percent. On the Yard's End parcels, by contrast, the zone of lesser restrictiveness extends considerably deeper into each site (from 200-300 feet in each case), and the maximum allowed height averages two to three times that of the ch. 91 numerical standard -- resulting in a substantially greater shift in overall massing toward the seaward edges of these properties.

In accordance with 301 CMR 23.05(3)(c)(5), no waiver of the Waterways height provision may occur unless I find that the alternative limits and other requirements specified in the plan will "ensure that, in general, [new or expanded] buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question." This criterion contemplates that the substitution of local requirements for state height standards should occur only on the basis of a well-reasoned and duly-restrained strategy for controlling the built environment at the waterfront, on an area-wide basis. If a full-build program cannot be judged to be relatively modest in such general planning terms, there is little reason to anticipate a favorable evaluation of the more particular relationship between buildings sizes and the quality of the pedestrian experience.

³ This discussion does not apply to proposed height limits on Pier 5 in the Charlestown Navy Yard, which is on flowed tidelands and thus subject to the terms of Requirement 7.

In this regard, one constructive feature of the Harborpark zoning articles is that the sites where greater height is being allowed represent a very limited portion of the overall subdistrict in which each is located; according to City computations, in fact, those sites represent less than six percent of the aggregate land area within the three subdistricts. Everywhere else, the general rule is to keep all new buildings, as well as many existing ones, at or below the ch. 91 ceilings. This holds true for the Charlestown Navy Yard, especially in the waterfront segment to the south of First Avenue where most existing buildings do not exceed 55 feet and virtually no expansion is allowed. A similar policy of restraint is in effect in the North End and Charlestown Gateway subdistricts, where 55 feet is an absolute limit that does not increase, as the waterways standard does, with distance landward of the high water mark. Also, on each of the sites where waivers are needed from the ch. 91 standard for the seaward side of the lot, the zoning is more restrictive on the landward side.

Taller buildings have been planned by the City only in locations where the additional height is in keeping with the dimensional characteristics of nearby structures. For example, a 75 foot height limit was chosen for Sargents Wharf in order to be consistent with the size of historic buildings in the surrounding area, especially the Pilot House which for many decades has stood at the seaward end of the adjoining property. The same height standard has been specified for the filled portion of Tudor Wharf, so that new buildings will be at once comparable to the large existing structures in the nearby Hoosac Pier area (at 60-70 feet) as well as allowed to rise above the adjacent Washington Avenue Bridge -- the combined effect of which is to reinforce the intended image of this locale as a gateway to Charlestown and its southern waterfront district.

At Yard's End in the Charlestown Navy Yard the circumstances are more complex. Two existing structures in the vicinity of Parcels 4/4A and 6/7 are quite bulky and exceed 100 feet in height, which can be considered comparable to the sizing of the proposed hotel and Biomedical Center. However, these proposed waterfront buildings will be the tallest in the Yard and will be at least twice the size of most nearby structures, which are predominately 55-60 feet in height. This progressive increase in scale with decreasing distance to the water is not an approach I would ordinarily find acceptable, because it is the opposite of the widely accepted proposition that, within a waterfront district, successive buildings generally should "step down" to a considerable degree as the water's edge is approached. In this situation, however, I am persuaded that a number of unusual planning circumstances provide reasonable justification to depart from this general rule. The principal factor is that the locale is a transitional one, bordering on a regime of highly industrialized activity -- the Mystic River Designated Port Area (DPA) -- which contrasts sharply with the residential/commercial use pattern on the western side of Yard's End. In my judgement, the siting of larger commercial buildings at this interface is acceptable, even though the DPA begins with a relatively small

channel rather than as a continuation of the land mass. I am also mindful that consultations are ongoing between the City and the Massachusetts Historical Commission (MHC), the purpose of which is to adjust the heights of different portions of the proposed buildings with an eye toward ensuring compatibility with nearby historic structures. I am confident that this "fine-tuning" process will further serve to prevent excessive massing in the area, and I have provided a means for the building-specific height limits which result from the MHC consultations to be incorporated into this Decision [See Requirement 6].

I conclude that the Harborpark Plan is consistent with the spirit of the criterion for approving substitute height limits, which in the first instance is to define an appropriate relationship between new waterfront development and existing patterns of built form within the surrounding area. I must still determine whether the proposed height substitutes also pass the "comparable or greater effectiveness" test in terms of ensuring that the wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access. The best way for a municipality to show this would be to present generic massing studies, baseline microclimate information, and other data and analyses relevant to the sites in question. Where such material is not available, as in the present case, reliance must be placed on whatever less direct evidence and lines of reasoning can be marshalled in defense of a case-by-case approach to mitigation.

In this regard, the City maintains that Article 31 of the Boston Zoning Code, which requires significant projects to undergo comprehensive development and design review, represents ample capacity to assure that buildings are appropriately scaled and do not have adverse impacts on ground-level uses and pedestrian activity. Basically, this zoning provision vests the BRA with broad discretion to require whatever studies or other information it deems appropriate to evaluate pedestrian-level winds, shading and skydome obstruction, solar glare/heat gain, and other related topics. Pursuant to Article 31, the City's development review regulations include certain protocols and requirements which address such issues at a level of detail that is comparable to -- and in some respects exceeds -- the review requirements of the state MEPA process. However, with the exception of one numerical threshold that sets forth the conditions under which wind-tunnel testing may be required (i.e., building over 150 feet or twice as tall as an adjacent building), neither Article 31 nor the respective Harborpark zoning articles and regulations contain any text intended to shape either the impact evaluation methodology or the process of reaching mitigation decisions. This approach is appropriate, in the City's view, "since microclimate impacts are highly project-specific and are not effectively addressed through a uniform rule."

Without disputing that the mitigation of wind and shadow effects is ultimately a subjective process that is not highly codifiable, I cannot accept the proposition, at the other extreme, that this aspect of design

review has no structure and cannot be characterized in terms more specific than what is presently found in Article 31. The MHP regulations do not authorize me to accept case-by-case methods for offsetting the effects of less restrictive substitution provisions, unless the plan itself "sufficiently defines the parameters within which such process will operate, so that a reasonable assessment of likely effects under varying circumstances can be made." For these reasons, I am requiring the City to develop a set of standards, guidelines, and procedures to serve as a more explicit framework for reaching discretionary decisions about the size and configuration of buildings, relative to the quality of the ground-level environment at and near the water's edge [See Requirement 6]

I am confident that the City can respond effectively to this requirement, in large part simply by articulating a variety of basic principles of sound mitigation practice together with other discernible ingredients that play an instrumental role in the process. By drawing upon its extensive experience in design/development review, the City can undoubtedly identify such things as the factors most often considered, concepts used to determine the applicability of various solution techniques, indicators of need for additional data, and even some intuitive "rules of thumbs" that have evolved with time as BRA staff and consultants have increased their understanding of the microclimate in various waterfront districts.

The City's compliance with the above condition will suffice for purposes of meeting the "comparable or greater effectiveness" test in this case because, with the exception of only one limited area (Yard's End), the proposed waivers do not represent substantial deviation from the numerical standards in the Waterways regulations. Had the overall extent of departure been more extensive, I would not be inclined to rely on case-by-case review as the sole source of mitigation; rather, I would expect empirical information on pedestrian-level effects to be an important determinant in the process of setting height limits under zoning. This expectation will be reflected in future scopes for harbor plan development, and I encourage the City as well as other municipalities to commence with the appropriate planning studies at the earliest possible time.

5) Facilities Of Private Tenancy Over Water

The Waterways regulations prohibit housing, offices, and other private nonwater-dependent development on pile-supported structures over water, as a means of avoiding significant user conflict and design incompatibility with facilities that serve water-related public interests. To lift this prohibition in favor of an alternative provision in a harbor plan, the MHP regulations state that I must find that the plan contains other limitations and requirements "which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order

that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent use." Clearly, substantial use of pier buildings by facilities of private tenancy must be considered a major departure from this regulatory principle, and would thus require offsetting measures be taken to a degree that is similarly extraordinary.

The Harborpark zoning articles for the Charlestown Gateway, Charlestown Navy Yard, and North End subdistricts allow private, nonwater-dependent uses in substantial density to occur on existing piers over flowed Commonwealth tidelands. One such pier (Battery Wharf in the North End) is located within a Housing Priority Overlay Area where residential use is mandatory in at least a two-to-one ratio to other allowable uses in any proposed project. In addition, on one pier (Pier 5 in the Navy Yard) there is no apparent limitation placed on facilities of private tenancy; and on two others (Battery Wharf, and Tudor Wharf in the Gateway subdistrict), such facilities are excluded only to the extent that facilities of public accommodation are required to occupy at least 40 percent of the space on the ground level.

From the City's point of view, there is a compelling reason for certain existing piers to be available for primarily private development that is compatible with the type and density of surrounding land uses. These structures are underutilized and dilapidated to the point that their reclamation for public enjoyment and contemporary water-dependent activity is beyond the fiscal reach of the public sector, especially at a time when government is investing so heavily to improve water quality in Boston Harbor. In the City's view, in order to help rebuild the shoreline and revitalize the waterfront district outside of the working port areas, Boston must look to the private sector to supply the critical mass of investment that will result in full implementation of the Harborpark Plan.

Nevertheless, I am also mindful that the accommodation of local development objectives cannot become the primary purpose for the utilization of state tidelands, and must be kept in balance with the need to protect the interests of the broader public for whom such lands are held in trust by the Commonwealth. The Waterways regulations make it clear that the threat of undue privatization of interior spaces at and near the water's edge is inimical to those interests. In my judgment, the Harborpark Plan needs to focus additional attention on this issue before I can authorize the waiver of 310 CMR 9.51 (3)(a) as it pertains to pile-supported structures. For this to occur, additional measures must be put in place both to limit the density of facilities of private tenancy that may be located on flowed tidelands [See Requirement 7], and to expand the presence of facilities of public accommodation as a means of offsetting the substantial increase in private usage that would otherwise be excluded from the waterfront spaces in question [See Requirement 8].

The centerpiece of this latter strategy -- development of a network of "special public destination facilities" within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts -- is worthy of some elaboration. As a result of the consultation sessions following the public hearing on the Harborpark Plan, the City has made a commitment to serve as the "broker" responsible for the programming of substantial amounts of interior space which enhances the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use. One example of the kind of pedestrian network I am encouraging is already on the drawing board at the Charlestown Navy Yard, whose collection of historic piers, drydocks, and backland buildings lies squarely between the U.S.S. Constitution and the proposed site for the greatly expanded New England Aquarium. The concept under development is to integrate these dramatic anchor attractions with the unique maritime culture of the Yard itself by means of a "double interpretive loop", one branch of which will direct Yard visitors to the Chain Forge and Ropewalk cultural facilities along the spine of First Avenue, and then on to other special facilities of the type I contemplate along a return path traversing Piers 5-8, an area of substantial housing concentration. This is creative thinking on behalf of water-related public interests, and I hope similar concepts can be developed for other waterfront areas where intensive residential use will occur.

6) Determination on Proposed Substitute Provisions

Within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts, I have determined that the Harborpark zoning provisions referenced in the foregoing sections specify alternative requirements which, if applied in accordance with the conditions I have set forth in this Decision, will promote with comparable or greater effectiveness the state tidelands policy objectives served by the minimum requirements of the Waterways regulations at 310 CMR 9.51 (3)(b)-(e) and 9.53 (2)(b)-(c). More specifically, I have found that such alternative requirements subject to the conditions stated will ensure that:

- (a) no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes;
- (b) new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline;
- (c) buildings for nonwater-dependent use will be relatively condensed in footprint;

- (d) in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size; and
- (e) nonwater-dependent use projects on Commonwealth tidelands will establish the project site as a year-round locus of public activity.

These findings apply throughout each subdistrict, with the exception of (d) which applies only to the four parcels identified in section (4), above. These findings authorize DEP to waive the relevant use standards and numerical standards of the Waterways regulations, subject to the conditions stated. In accordance with 310 CMR 9.34(2)(6)(1), DEP will apply, as a substitute, the corresponding provisions of the Harborpark Plan as approved pursuant to the terms and conditions of this Decision.

The substitutions I have approved represent alternative minimum standards to those contained in the Waterways regulations, and my decision shall not be construed as an endorsement of any specific limitation or requirement as applied to individual cases. Rather, it should be taken as establishing the overall "envelope" within which case-by-case determinations of appropriate MEPA mitigation measures and Waterways licensing requirements will be made.

IV. COMPLIANCE WITH OTHER APPROVAL STANDARDS

A. Relationship to State Agency Plans

As in any major metropolitan area, responsibility for the management of land and water resources in Boston Harbor is shared in complex ways between the City and a number of state agencies, such that intergovernmental cooperation is essential to the success of any significant public planning enterprise. Fortunately, such cooperation has been much in evidence throughout the entire Harborpark Planning process. This is perhaps best demonstrated by the fact that the Harborpark Advisory Committee has included representatives of my office as well as the Executive Office of Economic Affairs.

Massport advises me that its staff have worked closely with the BRA over the past four years to ensure that the Harborpark Plan is generally consistent with plans for its own properties and with the future needs of the Port of Boston. One result attributable in part to this interaction is the City's establishment of Maritime Economy Reserve Zones to preserve deep-water areas for shipping and other water-dependent industrial uses, and the recognition of the critical nature of adequate landside access to the Port's terminals. In a similar vein, the Executive Office of Transportation and Construction (EOTC) has testified that the plan

reflects consideration of the impact of, and in many respects appears to be based upon, the successful completion of many EOTC-agency activities well into the planning process, especially those associated with the Central Artery/Third Harbor Tunnel Project. Finally, the MWRA has expressed appreciation for the City's commitment to assist in the development of the Authority's combined sewer overflow systems, and has stated a reciprocal commitment to work with Boston to accommodate the substantive goals and policies articulated in the Harborpark Plan

All three agencies have also expressed concern that an approval of the Harborpark Plan should not be misconstrued to subject all state projects that fall within the jurisdiction of Chapter 91 to local zoning as well. The written comments from EOTC are most extensive on this matter, and point to a number of both general and specific ways in which Harborpark zoning provisions, formulated with an eye toward controlling private development primarily, are incompatible with certain features of transportation projects proposed on both flowed and filled tidelands. It is clear to me that approval of a municipal harbor plan is not intended to make zoning requirements legally binding on state projects. Therefore, in the interest of avoiding any future misunderstanding on the applicability of the approved Harborpark Plan, this Decision shall not be construed to apply, pursuant to 310 CMR 9.34(2), to any state project or portion thereof that is exempt from zoning requirements by law. Such projects, of course, are expected to make every reasonable effort to comply with the spirit and intent of the Harborpark Plan as reflected in such requirements.

In a strictly legal sense, the above statement is all that is really needed to achieve compatibility between the Harborpark Plan and the project plans of any state agency owning real property within the Harborpark District. I am concerned, however, that reliance on zoning exemptions tends to defeat the purpose of encouraging both municipal and state planners to interact in a manner that will maximize the compatibility of their respective plans, and of producing approved harbor plans that will provide constructive local guidance to DEP staff for the licensing of public as well as private projects. Accordingly, in future phases of plan development in Boston as well as in other coastal communities, I will require enhanced coordination measures leading to the specification of appropriate non-zoning guidelines by which state projects can be most effectively dovetailed with planned uses on surrounding areas of privately-owned property [See Requirement 1(e)].

B. Enforceable Implementation Commitments

In my judgement, the Harborpark Plan will be effectively implemented as a result of commitments that have been codified in zoning and/or the conditions of this Decision, and as such are highly enforceable. Among other things, these commitments will ensure that 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 the Waterways regulations.

V. REQUIREMENTS

Requirement 1 (Subsequent Plan Amendments)

In order to ultimately address land and water issues in a comprehensive manner, the City shall develop proposed amendments to the Harborpark Plan and submit such amendments to the Secretary in accordance with 301 CMR 23.06(1). Generally, in preparing such amendments it will be necessary for the City to carry out the following planning tasks, on its own and with relevant state or federal agencies:

- (a) develop zoning articles and accompanying master plans for all sub-areas of the Harborpark District not covered by this Decision, including East Boston, the Harbor Islands, the waterfront areas on both sides of the Fort Point Channel and west of the Northern Avenue Bridge, the Fort Point District in conjunction with the South Boston Designated Port Area, and all associated water areas within the territorial limits of the City; the sub-area plans shall simultaneously address all relevant water-side as well as land-side issues and, in the case of East Boston, shall be fully coordinated with any plans of the City of Chelsea for the Designated Port Areas along the Chelsea Creek;
- (b) develop applied policies and an implementation program, beyond current zoning, to foster the continuation and growth of existing maritime commercial activities throughout the harbor, including but not limited to fishing and lobstering, tug and pilot boat operations, and passenger excursion businesses; said policies and program shall also address the potential for expanding the geographic area zoned as Maritime Economy Reserve;
- (c) develop a master plan for a public water-transportation system throughout the harbor which identifies terminal locations, assures the availability of docking facilities, and otherwise seeks to expand facilities for moving people economically by water;
- (d) develop applied policies and associated implementation programs addressing all relevant waterway use issues within City jurisdiction, including mechanisms to coordinate with state and federal programs regarding water quality and natural resource protection, dredging and dredged material disposal, and the allocation and management of navigable spaces (for deep draft commercial channels, mooring fields, recreational anchorages, sailing/rowing/sailboarding, and so forth); and

- (e) identify the plans and planned activities of all state agencies owning real property or otherwise responsible for the implementation or development of plans or projects within the sub-areas specified in (a), above, and develop applied policies and a non-zoning implementation program to guide such activities in a manner compatible therewith to the maximum reasonable extent.

The City shall submit written requests for Scopes for the required plan amendments, and shall set forth in such requests the specific manner and level of detail by which the City proposes to carry out the above referenced planning tasks.

Requirement 2 (Zoning Relationship to 310 CMR 9.00).

The Zoning Appendix to the Harborpark Plan shall be revised to include an introductory statement to the effect that not all zoning provisions are consistent with the substantive provisions of the Waterways regulations, and that no inconsistent zoning provision shall be construed as superseding any corresponding provision of such regulations. Said statement shall be prepared in consultation with DEP, and shall identify at a minimum the following elements of zoning which are explicitly in conflict with the Waterways regulations:

- (a) the definitions of filled tidelands and aquarium;
- (b) the allowance of height for new or expanded buildings in excess of the limits imposed by 310 CMR 9.51 (3)(e) and for which no substitute limit has been approved by this Decision;
- (c) the allowance of further seaward expansion of pile-supported structures for nonwater-dependent purposes;
- (d) the allowance of new fill and pile-supported structures, without 1:1 replacement, for nonwater-dependent uses;
- (e) the allowance for affordable housing requirements to be met through payments in support of such housing outside of the Harborpark District; and
- (f) the allowance of certain uses within Waterfront Manufacturing subdistricts which are categorically restricted by the provisions 310 CMR 9.00 governing Designated Port Areas.

Requirement 3 (Open Space).

At any location in the Charlestown Navy Yard subdistrict for which this Decision authorizes waiver of the numerical standards in 310 CMR 9.51(3)(d) and 9.53(2)(b), DEP shall grant such waiver if and only if a project includes or otherwise provides, on a reasonably concurrent basis, for sufficient public open space to ensure that the total amount of such space as a percentage of the total area of the subdistrict (exclusive of the Historic Monument Area) does not fall below 50 percent. The City shall keep a running tally of the open space percentage, and every Section 18 recommendation on a Waterways license application shall include certification, based on such tally, that the required minimum percentage will be maintained upon completion of the proposed project. The term "open space" as used herein shall be that as defined in Article 42F of the Harborpark District zoning.

Requirement 4 (Ground Floor Facilities of Public Accommodation).

At any location for which this Decision authorizes waiver of the ground floor use standards in 310 CMR 9.51(3)(b) and 9.53(2)(c), DEP shall grant such waiver if and only if a project meets the following requirements, as applicable:

- (a) the percentage of interior space devoted to facilities of public accommodation shall be at least 40 percent of the aggregate footprint of buildings on parcels 4, 4A, 6, and 7 in the Charlestown Navy Yard subdistrict; such public interior space shall be located at the ground level or at an alternative location that would more effectively promote public use and enjoyment of the project site, as provided in 310 CMR 9.53 (2)(c);
- (b) at least 50 percent of the ground floor spaces within all buildings containing nonwater-dependent facilities of private tenancy, on pile-supported structures on flowed tidelands, shall be occupied by facilities of public accommodation, including, to an extent deemed appropriate in accordance with Requirement 8, special public destination facilities;
- (c) for any project where buildings for nonwater-dependent use contain ground floor interior space within 100 feet of a project shoreline, such space shall be devoted to facilities of public accommodation unless an alternative location would promote public use and enjoyment of the project site in a clearly superior manner, is necessary to make ground level space available for upper floor accessory services, or is appropriate to accommodate or avoid detriments to water-dependent use; and

- (d) space devoted to public parking shall not be credited toward meeting the requirements of (a) or (b), above.

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Requirement 5 (Setback for Nonwater-Dependent Buildings)

At any location for which this Decision authorizes waiver of the numerical standards in 310 CMR 9.51(3)(c), DEP shall grant such waiver if and only if the project meets the following alternative requirements for computing minimum setback distances for new or expanded buildings for nonwater-dependent uses on piers and wharves:

- (a) the baseline for purposes of measuring setbacks shall be the seaward edges of any new pile-supported structures added beyond the project shoreline, provided that such addition is subject to numerical limitation under the applicable zoning article and meets the criterion of 310 CMR 9.32(1)(a)(3); otherwise, the baseline shall be the project shoreline as defined in 310 CMR 9.02, which means "the high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles or to be replaced pursuant to 310 CMR 9.32(1)(a)(4), whichever is farther seaward";
- (b) except as otherwise provided in (c), below, the minimum setback distance from the baseline shall be computed in accordance with the percentage rules set forth in 310 CMR 9.51(3)(c); under no circumstances, however, shall the setback distance from the project shoreline be less than 25 feet along the ends of piers and wharves, nor less than ten (10) feet along the sides of such piers and wharves; and
- (c) a reconfiguration of setback distances along the ends and sides of a pier or wharf may occur only if such reconfiguration will promote public use or other water-dependent activity in a clearly superior manner, and if no reduction will occur in the amount of total setback area required on such structure in accordance with the percentage rules set forth in 310 CMR 9.51(3)(b).

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Any other deviation from the minimum setback distance established pursuant to the Waterways regulations may occur only in accordance with a specific plan for vessel-related programming throughout the subdistrict, or with a set of guidelines for the determination of sufficient setback space for various types of water-based activity. Any such plan and/or guidelines shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1) or, in the case of the Charlestown Navy Yard, in the context of further MEPA proceedings on master planning issues as set forth in the Secretary's letter to the Boston Redevelopment Authority dated January 2, 1991.

Requirement 6 (Height of Nonwater-dependent Buildings)

At any location for which this Decision authorizes waiver of the height limits in 310 CMR 9.51(3)(e), DEP shall grant such waiver if and only if a project is subject to a special mitigation program to avoid or minimize adverse wind, shadow, and other impacts on the ground-level environment. Such program shall specify standards, guidelines, and other parameters to serve as a framework for reaching appropriate mitigation decisions; and shall include a procedure for documenting the application of such framework to individual projects, in reasonable detail and in terms of objectives and issues that were identified and their prioritization, the design options considered, and the evaluation of tradeoffs among the design options which led to the choice of specific mitigation measures.

In the case of the North End and Charlestown Gateway subdistricts, the special mitigation program shall be set forth in regulations to be promulgated under the respective Harborpark zoning articles, which shall be submitted for review and approval by the Secretary in accordance with the procedures of 301 CMR 23.06(1). In the case of the Charlestown Navy Yard subdistrict, the special mitigation program shall be incorporated into the Harborpark Plan in the context of further MEPA proceedings, as set forth in the Secretary's letter to the Boston Redevelopment Authority dated January 2, 1991. More specifically, in the case of the proposed hotel and Biomedical Building 1 at Yard's End, the Section 61 finding to be filed prior to the issuance of a ch. 91 license shall be used to describe mitigation parameters appropriate to those projects, and to document the choice of mitigation measures based thereon. For other nonwater-dependent projects in Yard's End, the required mitigation parameters and documentation procedures shall be set forth in the Yard's End Master Plan, to be filed as a Draft Supplemental EIR.

In the Charlestown Navy Yard subdistrict, in the event the zoning height limits presently set forth for the proposed hotel (Parcels 4/4A) and Biomedical Center (Parcels 6/7) are subsequently adjusted downward in accordance with any Memorandum of Agreement pertaining to historic preservation issues, as referenced

in Article 42F-12.2 (Table C), this Decision shall apply for substitution purposes only to the lower heights so established.

Requirement 7 (Facilities of Private Tenancy Over Water—Limits)

At any location for which this Decision authorizes waiver of the use standards in 310 CMR 9.51(3)(b) on flowed tidelands, DEP shall grant such waiver if and only if a project meets the following requirements applicable on pile-supported structures:

- (a) all buildings containing nonwater-dependent facilities of private tenancy shall conform to a height limit of 55 feet, to the setback requirements of Requirement 5(a)-(c), above, and to the site coverage limitations set forth in 310 CMR 9.51(3)(d);
- (b) no more than 50 percent of the ground floor spaces within such buildings may be occupied by facilities of private tenancy, including upper-floor accessory services; and no parking may occur seaward of the high water mark;
- (c) residential uses shall be allowed only on Battery Wharf in the North End and on Pier 5 in the Charlestown Navy Yard, and not then at the ground level; any residential use of the second floor shall be accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior facilities of public accommodation, or water-based public activities as the term is used in 310 CMR 9.53(2)(a); and
- (d) such facilities shall be subject to specific guidelines to avoid conflict and minimize incompatibility with the operation of nearby water-dependent and/or public activities; at a minimum, such guidelines shall address the factors identified in 310 CMR 9.51(1) that may give rise to such adverse effects; such guidelines shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1).

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Requirement 8 (Facilities of Private Tenancy Over Water—Offsets)

At any location for which this Decision authorizes waiver of the use standards in 310 CMR 9.51(3)(b) on flowed tidelands, DEP shall grant such waiver to a project if and only if the Harborpark Plan has been revised to include one or more plan(s), together with appropriate implementation commitments, to develop a network of "special public destination facilities" within interior spaces along or near the Harborwalk, primarily at the ground level. Such plan(s) shall be prepared in consultation with CZM, and shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1). Among other things, the plan(s) shall be developed in accordance with the following provisions:

- (a) in accordance with 310 CMR 9.53(2)(c), the term special public destination facilities shall mean "facilities [of public accommodation] 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"; such facilities may include, but are not limited to, cultural uses as the term is used in various articles of the Harborpark District Zoning;
- (b) in the choice of special public destination facilities, special consideration shall be given to those which encourage diversity in the pattern of uses and population of users at the waterfront, and special efforts shall be made in this regard to solicit creative use concepts from the planning and advocacy community at large. In the choice of facility operators, special consideration shall be given to public or non-profit organizations that otherwise would be unable to afford market rates for waterfront space;
- (c) within the aggregate of the three subdistricts in question, at least one square foot of gross interior space must be devoted to special public destination facilities for every four square feet of such space licensed under M.G.L. c. 91, subsequent to the date of this Decision, for nonwater-dependent facilities of private tenancy in the following locations: 1) anywhere on pile-supported structures in flowed tidelands; and 2) at the ground level of buildings on filled tidelands within 100' of a project shoreline, except for any segment of such shoreline which abuts a Designated Port Area; this computation shall not take into account space that is devoted to special public destination facilities at present or which has been proposed in a license application submitted prior to the date of this Decision;
- (d) special facility space shall be appropriately distributed among the respective subdistricts, and reasonable arrangements shall be made to locate such space on pile-supported structures in

conjunction with new facilities of private tenancy, taking into account the extent to which other public activities planned for interior building spaces on such structures will help ensure the primacy of public use and enjoyment at the ground level, on a year-round basis; special facility space may also be provided elsewhere in the surrounding area where opportunities exist to offset privatization, particularly at the immediate waterfront and at other sites that have traditionally played a significant role in the maritime culture of the subdistrict;

- (e) special facilities shall be of a condition, size, and type which is appropriate to meet needs identified in any relevant subdistrict plan, and shall be consistent with any guidelines developed for Harborwalk, the proposed "double interpretive loop" in the Navy Yard, and other networks for pedestrian circulation within a given waterfront area;
- (f) development of special facilities shall be concurrent with development of the relevant facilities of private tenancy, where "development" means all aspects of the design, financing, permitting, and environmental review process "concurrent" means concurrent progress on such general aspects, and as may be more specifically defined in the special facilities plan to be included in the amended Harborpark Plan; and
- (g) the special facilities plan may incorporate such other terms and conditions as the City may propose, in a manner analogous to the specification of public benefit criteria in other City zoning articles such as that pertaining to the Midtown Cultural District.

Certification as to whether the above requirements have been met shall be submitted by the City, as part of its Section 18 recommendation on the relevant Waterway license applications.

Requirement 9 (Preparation of Revised Plan)

In accordance with a good faith commitment to avoid undue delay, the City shall revise and resubmit to the Secretary the Harborpark Plan originally submitted on October 19, 1990, in accordance with the following requirements:

- (a) Chapters VII - IX of said Plan shall be deleted and replaced with a copy of this Decision; the remaining chapters and appendices shall be edited as necessary, pursuant to any guidance provided by CZM, to ensure consistency with the terms and conditions of this Decision;

- (b) Appendix A of the Harborpark Plan shall be revised to exclude Article 42E, map amendments No. 221 and 222, and the City of Boston regulations ch. 1 st. 11 sec. 28-30; to include the revised Article 42F and associated map amendment (as adopted by the Boston Zoning Commission on December 11, 1990); and to include the statement required in Requirement 2 together with a guide to all substitute provisions approved pursuant to this Decision;
- (c) all other Appendices shall be deleted from the Plan, with the exception of Appendices K (Docking Standards) and N (Master Plan for Yard's End, as revised in accordance with Requirements 5 and 6); and
- (d) new Appendix material shall include any document referenced in the Harborpark Plan and Zoning Appendix as of October 19, 1990 but not submitted for review and approval in accordance with 301 CMR 23.00, except for other portions of the Boston Zoning Code and except for documents that are unrelated to the terms and conditions of this Decision and to the Waterways licensing process; any such material shall be subject to the approval of the Secretary in accordance with such review procedures as may be deemed appropriate, including at a minimum publication of notice in the *Environmental Monitor* and solicitation of written public comment.

VI. EXCLUSIONS

For waterways licensing purposes pursuant to 310 CMR 9.34(2), the Approved Harborpark Plan applicable to a proposed project shall not be construed to include the following:

- (a) any zoning provision from which the project is exempt pursuant to sections 42A-4, 42F-4, or other like sections of the Harborpark zoning articles; such sections shall not be construed to exempt the project from any applicable requirement of the Waterways regulations at 310 CMR 9.00;
- (b) any zoning provision from which the project has been granted relief in any form other than a conditional use permit, provided that a determination has been made pursuant to 310 CMR 9.34(2)(a)(2) that the resulting deviation from the plan is de minimus or unrelated to the purposes of M.G.L. c. 91 or of the Waterways regulations;
- (c) any zoning provision which is inconsistent with a corresponding provision or other aspect of the Waterways regulations, as identified in accordance with Requirement 2 or otherwise determined by DEP;

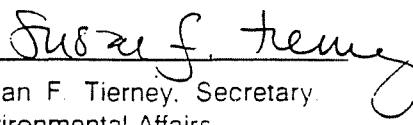
- (d) any subsequent addition, deletion, or other revision to the Harborpark Plan, including but not limited to changes in zoning maps, text, or associated regulations, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1); early notice of intent to propose any such changes shall be submitted to the Secretary, so that a determination of need for plan amendment can be made in a timely fashion; and
- (e) any provision that does not preserve rights held in trust by the Commonwealth for the public to use tidelands for fishing, fowling or navigation.

VII. EFFECTIVE DATE AND TERM OF APPROVAL

Except with respect to portions of the Harborpark Plan or any revision thereto subject to further review and approval by the Secretary, pursuant to any of the foregoing Requirements, this Decision shall take effect upon the date it becomes final in accordance with 301 CMR 23.04(5). The Decision shall expire on May 22, 1996, unless a renewal request is filed prior to that date in accordance with 301 CMR 23.06(2)(a). No later than six months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives. Nothing in the foregoing requirement, however, shall be construed to prejudice the City's right to seek renewal of the Approved Harborpark Plan.

VIII. STATEMENT OF APPROVAL

Based on the information presented to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the Harborpark Plan as the municipal harbor plan for the City of Boston. Such approval is subject to all requirements, limitations, qualifications, and other conditions set forth in this Decision.


 Susan F. Tierney, Secretary
 Environmental Affairs

5.22.91
 Date