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February 14, 2000

Jay Szklut
Director, Office of Community Development
Town of Hull
253 Atlantic Avenue
Hull, MA 02045

Dear Mr. Szklut:

I am pleased to inform you that I have approved the Hull Harbor Plan, dated January 25, 1999, in accordance with the procedures and standards set forth in 301 CMR 23.00. My Approval Decision is enclosed.

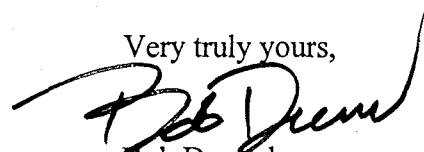
Hull is the sixth community in the Commonwealth to obtain state approval under these regulations. The Town deserves to feel proud of this accomplishment, and I want to congratulate all who participated in the harbor planning process. Especially deserving of praise are the members of the Town's Harbor Planning Committee who, under your very capable leadership, labored so diligently in seeing the Plan through to completion.

Let me also congratulate the Town for the coherent vision and strong sense of community preservation expressed in the Hull Harbor Plan. The plan stands out for recommending a meaningful strategy to enhance Nantasket Pier and other facilities for recreational and commercial boating, and to improve public access to the shores of Hull Bay and the Weir River estuary. Further, the Plan is clearly mindful that marine and natural resource protection are inseparable from public use and enjoyment of this splendid shoreline, and particularly acknowledges the importance of maintaining high water quality within the Weir River Area of Critical Environmental Concern (ACEC). The Plan is an excellent example of how municipal objectives and priorities can be pursued in harmony with state policies.



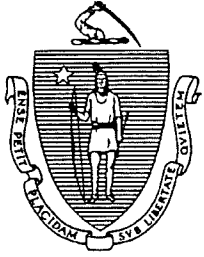
Again, please accept my congratulations for the outstanding planning work you have completed to date. I look forward to working with you further on plan implementation and you can be assured of continuing assistance in this regard from the staff of the MCZM Office.

Very truly yours,



Bob Durand

cc: Tom Skinner, MCZM Director
Elizabeth Grob, MCZM Boston Harbor Regional Coordinator
Lois Bruinooge, Director, DEP Wetlands and Waterways Division
Elizabeth Sorenson, DEM ACEC Program
Karen Kirk Adams, US Army Corps of Engineers



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
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LAUREN A. LISS
Commissioner

December 6, 1999

Robert Durand, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street, 20th floor
Boston MA 02202

RE: Hull Municipal Harbor Plan

Dear Secretary Durand:

The Department of Environmental Protection, Waterways Regulation Program (WRP) has reviewed the Town of Hull's Municipal Harbor Plan (MHP), dated January 25, 1999. WRP staff have worked closely with the Hull Harbor Planning Committee and MCZM throughout the planning process, and our comments have been adequately addressed and incorporated into the final MHP. The WRP therefore recommends that you approve the MHP and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of Hull's approved MHP in the case of all waterways license applications submitted subsequent to its effective date, as well as to all pending applications for which the public comment period has not expired by that date. The MHP will also serve as a useful frame of reference for WRP review of pending Amnesty applications (310 CMR 9.28), and we will adhere to the greatest reasonable extent to any plan recommendations germane to such projects.

It is our understanding that the MHP contains no provisions intended to substitute for any use limitations or numerical standards in the waterways regulations, nor does it amplify upon any discretionary requirement on either a generic or site-specific basis. In a broader sense, however, the MHP provides guidance that will undoubtedly be useful to the WRP for project review purposes. For example, it contains a detailed roster of public access improvements that license applicants might be called upon to help implement, in fulfillment of public benefit requirements

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

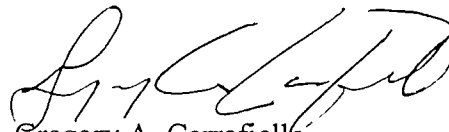
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applicable to nonwater-dependent use projects. Also, the MHP assigns high priority to upgrading town piers and seawalls, as public service projects that are essential for improving harbor infrastructure for water-dependent use. This is especially true for Nantasket Pier, where both the MHP and the public comment received during the plan approval process served to highlight a series of regulatory issues. will be addressed in the context of WRP review of any specific redevelopment proposal..

Should you have any questions with regard to the foregoing, please feel free to call me at (617) 292-5686.

Sincerely,



Gregory A. Carrafiello
Program Chief
Waterways Regulation Program

Cc: L. Bruinooge, DEP
T. Skinner, MCZM
E. Grob, MCZM
D. Ducsik, MCZM
M. Smith, Chair, Hull Harbor Planning Committee
J. Szklut, Hull Planning Director
File

DECISION ON THE TOWN OF HULL
REQUEST FOR APPROVAL OF THE
HULL HARBOR PLAN
PURSUANT TO 301 CMR 23.00

February 14, 2000

Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Robert Durand, Secretary

DECISION ON THE TOWN OF HULL
REQUEST FOR APPROVAL OF THE
HULL HARBOR PLAN
PURSUANT TO 301 CMR 23.00

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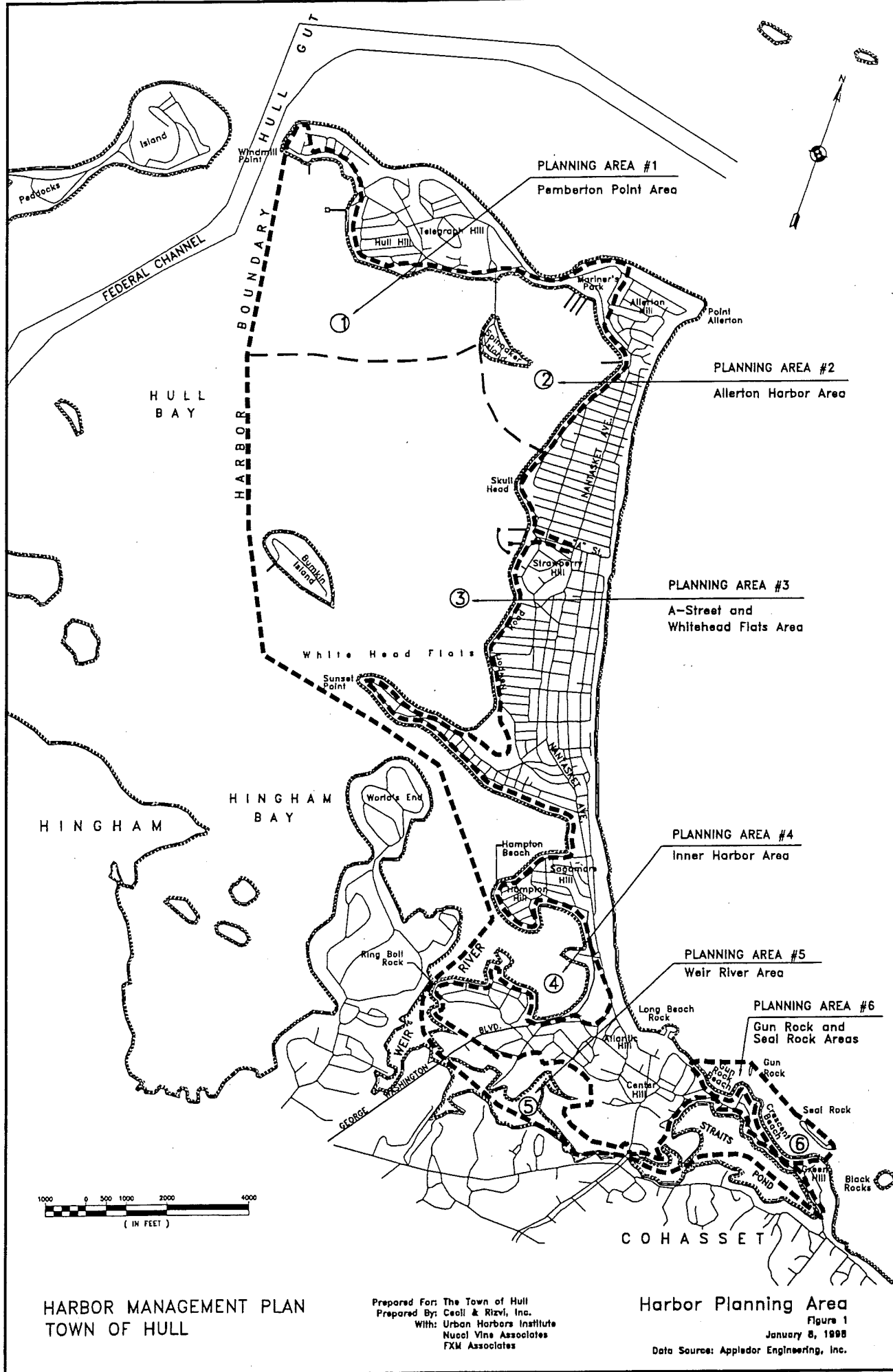
I. INTRODUCTION

Today I am pleased to approve the Harbor Management Plan for the Town of Hull, dated January 25, 1999 ("Plan"). This Decision presents a synopsis of Plan content, together with my determinations on how the Plan complies with the standards for approval set forth in the municipal harbor planning (MHP) regulations at 301 CMR 23.00.

The Plan has been reviewed in accordance with procedures contained in the MHP regulations, beginning with advance consultation to obtain submittal guidance from the Massachusetts Coastal Zone Management (MCZM) Office and the Waterways Regulation Program of the Department of Environmental Protection (DEP). The Plan, together with a supporting Compliance Document addressing the plan approval standards, was officially submitted on February 2, 1999. Following a review for completeness, MCZM published a notice of public hearing and 30-day opportunity to comment in the Environmental Monitor dated March 23, 1999. A public hearing was held in Hull on April 5, 1999, at which time oral testimony was received. Three written comments were received during the comment period, which closed on April 21, 1999. These included letters from the Department of Environmental Management (DEM), the Boston Harbor Associates (TBHA), and a group of five Hull residents (from the Hampton Circle area). In the course of reaching my approval decision I have taken into account fully the testimony of all public and agency commentators.

As shown in Figure 1, the harbor planning area for Hull consists primarily of the waters of Hull Bay and the immediately adjoining lands running along the entire westerly shore of the Town - from Windmill Point southward and extending into the Weir River estuary to Straits Pond. Except for the Gun Rock and Seal Rock cove areas, Hull's ocean-facing shore (from Nantasket Beach to Stoney Beach and Village Beach to the north) is not included within the geographic scope of the Plan, because separate planning processes have been initiated to address issues unique to this beachfront district. Of the five distinct districts into which the harbor planning area is divided on the Bay side, the two lying southward of Sunset Point encompass the Weir River Area of Critical Environmental Concern (ACEC). Designated as such in 1986 by the Secretary of Environmental Affairs, this estuarine system contains one of the most extensive salt marsh areas in the Greater Boston Harbor area, a relatively undisturbed habitat with extensive wildlife populations and a significant shellfish resource¹.

¹ The ACEC is home to over a hundred migratory and indigenous bird species, numerous species of small mammals, an anadromous fish run (alewife), and varied populations of soft-shell clams, mussels, blueback herring, smelt, eel, bluefish, striped bass, and flounder.



**HARBOR MANAGEMENT PLAN
TOWN OF HULL**

Prepared For: The Town of Hull
 Prepared By: Ceoli & Rizvi, Inc.
 With: Urban Harbors Institute
 Nucol Vine Associates
 FXM Associates

Harbor Planning Area
 Figure 1
 January 8, 1998
 Data Source: Applador Engineering, Inc.

Hull is primarily a residential community with a long maritime tradition, and with a unique peninsular geography that attracts many visitors for seasonal outdoor recreation. In keeping with this dual identity, the Plan takes a carefully balanced approach to harbor management. It seeks to protect the beauty, tranquility, and environmental quality of the harbor areas and the value placed on the relationship between them and the residential neighborhoods. At the same time, it recognizes that existing water-dependent uses and traditional waterfront access points are integral to the character of the community and should not be displaced by residential needs. The Plan also recognizes that visitors represent significant economic potential, such that Hull " can and should become a place that is a more diversified regional destination with both waterside and landside access." Indeed, the Plan foresees a long-term shift in the perception of Hull as one of the most interesting destinations in the Boston Harbor Islands region, with bicycle, shuttle-bus, and pedestrian networks linking Hull's attractions to ferry terminal facilities at Pemberton Point.

This is a vision I heartily endorse, one that is much in keeping with my high priority goal of community preservation. In applying this goal to the circumstances in Hull, I have been especially mindful of the historical context. For generations in the not so distant past, this splendid seaside Town served as one of our preeminent beach resorts, providing countless hours of enjoyment to people from all corners of the state and region. In this role Hull made a very significant contribution to the public welfare in New England, but it came at no small sacrifice to the interests of local residents who endured excessive traffic and other adverse effects of congestion throughout each summer season.

Against this background, it is gratifying that the Town remains cognizant of the regional significance of its one-of-a-kind recreational potential and hopes to recapture much of its prior destination value, but this time in a manner that is far more compatible with local community character. While still providing for very active recreation along the spectacular eastern beaches, the Town is wisely planning to augment its appeal with a pleasantly revitalized series of " quiet" harborfronts along Hull Bay and the Weir River ACEC.

II. PLAN CONTENT

A. Enhancement of Recreational and Commercial Boating

On the water side, the cornerstone of the Hull Harbor Plan is the promotion of vessel-based activity with an emphasis on the opportunities available in Pemberton Harbor, Allerton Harbor, and the Inner Harbor at Nantasket Pier. In these primary areas, the Plan contemplates a variety of improvements to accommodate commercial fishing, recreational boating, and water-borne passenger transportation.

Commercial fishing is currently supported at all three locations. Although Pemberton Pier is the most convenient due to its greater proximity to the fishing grounds, the majority of full-time fishermen moor their boats in the more-protected Allerton Harbor, and typically retreat farther southward to Nantasket Pier during storms. Nantasket Pier also is used by lobstermen on a seasonal basis, and further commercial fishing activity is desirable to the Town from the standpoint of maritime image and culture, since the Pier is well positioned to serve as a center of interest for residents and visitors alike. The Plan calls for the continuation of all fishing-related activities in the existing venues, and identifies a series of much-needed infrastructure improvements. None of the areas from which the fishermen currently work is well suited to meet operational requirements. Some of the piers are in poor condition, and far better support facilities are needed, such as coolers, off-loading facilities, hydraulic hoists, storage areas, ice, and so forth.

Concerning passenger vessel operations, Nantasket Pier is viewed as having some potential to serve seasonal visitors and as a jumping off point for excursions to the Boston Harbor Islands. For this purpose, however, the Plan identifies Pemberton Pier as the primary terminal connecting Hull to the water transportation network serving greater Boston Harbor. Due to its very convenient approach into the Harbor through the federal channel at Hull Gut, Pemberton Pier already supports a commuter ferry operation. If adequate parking can be provided without detriment to existing water-dependent uses, this facility easily could become a point of origin for whale watch boats or excursion tours to the Harbor Islands park system. The same geographic advantage makes the pier an excellent gateway for seasonal tourism to present and future destinations in Hull itself.

Recognizing the unique potential of the Pemberton Point area to accommodate commercial navigation, the Plan includes a number of recommendations for physical improvements. On behalf of commercial fishermen, for example, the Plan calls for the addition of floats, fueling and maintenance facilities, and a small lobster pound. Further, as the most effective measure to dramatically expand the usefulness of the harbor for all vessels, the Plan calls for the building of a floating breakwater to

protect the Town facilities at Pemberton Pier and the waters around it from severe wave conditions. The shallow bay enclosed by Pemberton Point is very exposed to southwesterly winds, which makes it unsuitable for mooring and hampers or interrupts loading activities for all types of vessels during certain times and conditions. Further, because of the strong littoral currents in the area, the Town boat ramp is frequently overwashed by sand and gravel and requires constant maintenance to keep it operational. According to the Plan, the proposed breakwater would effectively eliminate or reduce these significant problems.

The Plan also contains several recommendations to strengthen recreational boating, an extremely active use of Hull waters that operates from a series of boat ramps, marinas, and mooring fields. For example, it appears that capacity can be expanded in both Pemberton and Allerton Harbors by the installation of additional floats and tie-up facilities. The Plan also includes programs to expand and improve Town-managed moorings in these locations, together with a recommendation that a comprehensive mooring survey be taken to support planning and administrative efforts. Finally, the Plan suggests that it may be appropriate to adjust zoning restrictions in certain locations if off-street parking for marina patrons can be accommodated without conflict with other nearby uses.

The most significant improvement with regard to recreational boating is the proposed restoration of an active marina at Nantasket Pier. Presently, siltation along the perimeter and the lack of shoreside facilities has left this prime public property with minimal vessel capacity, serving mostly as a parking lot for beachgoers in the summertime. The Plan calls for a complete transformation of the Pier into a multi-use boating center, consisting primarily of leased and transient slips for recreational vessels but with dockage space available for commercial fishing and water transportation operations as well. This redevelopment project would provide all needed landside support facilities, including parking and marina support structures, and would also provide an improved boat ramp with float on the site. The remaining pier area would be available for compatible retail and restaurant uses. For illustrative purposes, the Plan includes a hypothetical build-out that incorporates each of these elements in a manner that generally appears to be consistent with applicable state and local regulatory principles².

² The hypothetical build-out is displayed in the Plan at Figure 8 (after page 66), titled "Nantasket Pier Area: Illustrative Marina Development". At the time an actual project comes forward for environmental review, I look forward to seeing a higher level of design detail describing how the proposed redevelopment complies with applicable standards.

B. Marine and Natural Resource Protection

The Plan is clearly mindful that high water quality and other environmental amenities make a great contribution to public use and enjoyment of Hull Bay, and particularly acknowledges the environmental importance of the Weir River Area of Critical Environmental Concern. The Plan seeks to protect this natural endowment from potential impacts associated with land and water activities.

Boating in relatively shallow coastal waterways is made possible, in many cases, only through periodic dredging to maintain entrance and tributary channels and associated berthing and maneuvering areas. In Hull, a key component of the Town's strategy to unlock the economic potential of Nantasket Pier is a program of dredging the Weir River access channel, which includes the water areas immediately adjacent to the pier (extending to the limits of the current ACEC boundary³). Maintenance dredging is long overdue, as the channel/pier area was last dredged in the 1930s, and thus has been accorded a high priority by the Plan. Approximately \$300,000 in state funding has been set aside for the project by the Department of Environmental Management (DEM), which is undertaking engineering and environmental studies to resolve such issues as the quantity and characteristics of the material to be removed, the preferred disposal method for such material, and mitigation of potential impacts on water quality and environmental resources. The Town specifically supports all efforts to satisfactorily resolve these issues in the context of the permitting process that is now underway.

Looking beyond this essential short-term dredging need, the Plan also indicates that it may be desirable economically to expand the footprint of the dredged area around the Pier, to provide more developable space for marina slips⁴. This would involve improvement dredging in the ACEC, which is prohibited by the waterways regulations at 310 CMR 9.32(1)(e). To lift this prohibition, the Town understands that it must pursue either a variance under the waterways regulations at 310 CMR 9.21, or a boundary modification under the ACEC regulations at 301 CMR 12.13. Clearly, it would not be appropriate to pursue either type of petition unless the economic feasibility of the redevelopment project is dependent on an expansion into ACEC waters. I concur with the Town that additional study is necessary, as discussed generally in the Plan as follows⁵:

³ The ACEC boundary is approximately 150 feet away from the pier perimeter in all waterside directions.

⁴ This discussion assumes that waterside structures in the proposed marina will be publicly-owned, insofar as privately-owned structures cannot be licensed under the waterways regulations in the absence of a resource management plan for the ACEC. See 310 CMR 9.32(1)(e)(4).

⁵ Plan, at page 74.

Preliminary studies suggest that an economically feasible marina layout that does not encroach on the ACEC may require, at a minimum, the entire watershed surrounding the pier without adequate provision for other desirable uses (e.g. excursion boats, commuter boats, and commercial boats). Marina development that is both economically feasible and does not occupy the entire pier may require dredging within the ACEC, although this cannot be firmly established without further study...Numerous factors regarding the marina need to be resolved to determine whether dredging within the ACEC would be required....

Accordingly, the Plan recommends that "detailed feasibility studies be undertaken as a high priority, along with dredging studies, [to] reach definitive conclusions concerning the need for incursions into the ACEC and the extent and location of such incursions⁶". This is a sensible approach to pursuing economic development goals in environmentally sensitive areas, insofar as exploration of "avoidance alternatives" logically precedes consideration of measures to minimize and mitigate adverse impacts.

Apart from calling for careful deliberation relative to water-based development around Nantasket Pier, the Plan also recommends that the Town develop a comprehensive stormwater management plan to safeguard the water quality and overall integrity of Hull Bay. With non-point source runoff from storm drains having been identified as a primary source of pollution, the Plan concludes that "the problem of stormwater contamination cannot and should not be mitigated and managed solely through the use of best available technology or best management practices⁷". In this respect, the Plan recommends:

- carrying out field studies to assess the impacts of stormwater on the Bay and to distinguish between impacts from septic system leachate and stormwater runoff;
- establishing a program using pollutant constituent monitoring and a full suite of other water quality, physical, and hydrological indicators to provide a realistic assessment of the overall health of the aquatic system; and
- pursuing a grant from MCZM's Coastal Pollution Remediation Grant Program to decrease stormwater impacts.

These measures, coupled with the elimination of a major regional source of contamination upon closing of the Nut Island Sewage Treatment Plant, will hasten the day when recreational shellfishing returns to Hull. And, more broadly, as water quality improves so too will the enjoyment by residents and

⁶ Plan, at page 75.

⁷ Plan, at page 93.

visitors alike of all the diverse water-dependent uses the Town is promoting vigorously throughout the harbor planning area.

C. Enhancement of Public Access

On the land side, the primary emphasis of the Hull Harbor Plan is on making the bayfront more approachable for public use and enjoyment. In particular, a program is proposed to improve nearly three dozen public access points, including a series of Town-owned landings, public piers, and street ends that extend to the water's edge. To supplement local funding of the access program, the Plan recommends that the town apply for state financial assistance under the DEM Coastal Access Grant Program.

The first step in this multi-phase effort would be to confirm the legal status of all access properties abutting the waterfront. Over the years, several historic public ways have been lost to public access due to lack of maintenance or construction of private improvements⁸, and questions have arisen about the status of private ownership in certain locations⁹. In conjunction with this research, the Plan strongly recommends that a comprehensive access signage project be carried out to the greatest extent practicable as an early phase improvement. Addressing the need for consistent and attractive signage, developed in accordance with design standards to be established by the Town, is given high priority because it "will have a strong impact on public perceptions of access and the provision of amenities along the waterfront"¹⁰.

Over the longer term, the access enhancement program is based upon a catalog of physical improvements proposed for dozens of specific parcels. These run the gamut from expanding public parking, to providing landscape and/or streetscape improvements (including improving the appearance of certain gas/electric/sewer facilities), to developing short walkways/trails and accessory pedestrian amenities (such as lighting, kiosks/lookouts, and interpretive exhibits). Another key element of the access program is the recommended protection of certain natural and built features that impart a strong sense of identity as a coastal community. Included among these are the Coast Guard Boathouse at Pemberton Point; the natural cobble and gravel beach at Hull Gut; and the undeveloped land in possession of the Hull Redevelopment Authority between Bay Street and Electric Avenue/Edgewater Road, which contributes substantially to the open water views that are highly-valued in that vicinity. This explicit recognition of the importance of "character-giving" features is yet another indication that community preservation,

⁸ Specifically, the Plan identifies the land seaward of Cadish Avenue or Sunset Avenue as an area where private land ownership should be reviewed in order to preserve public rights.

⁹ One example is the public way between 41 and 51 Highland Avenue, where removal of private impediments to public passage is called for by the Plan.

¹⁰ Plan at page 83.

in the sense I so strongly support, is at the heart of the Hull Harbor Plan.

A final noteworthy feature of the Plan relating to public access is the emphasis given to improving linkages between existing and potential nodes of recreation activity. One key recommendation in this respect is that the Town should improve and manage a system of linked bikeways and pedestrian routes, with the location of public access points communicated to users through a public education and information program. Regarding bikeways, the Plan proposes a comprehensive study to consider (among other things) the appropriate use of segments of the abandoned rail right-of-way that connects segments of Hull. This study also would address opportunities to connect with regional bikeway improvements and access through water transportation, especially at Pemberton Point where the Plan calls for the provision of bicycle rental facilities and shuttle buses on a seasonal basis.

As an equally significant linkage initiative, the Plan supports a long-term redevelopment strategy for the land between Nantasket Pier and Nantasket Beach. More specifically, it states that "redevelopment of Nantasket Pier should be undertaken in concert with broader consideration of the reorganization of public land use and circulation patterns along George Washington Boulevard, within the public parking areas, and within the MDC-owned lands¹¹". Developing a comprehensive vision of both coherent use and aesthetics for this area of town would be instrumental in the revitalization of the Inner Harbor district in general and Nantasket Pier in particular. Toward this end the Plan identifies four specific elements to consider in developing a reorganization strategy; among them are the possibility of altering the boulevard to create an open space edge along the Weir River estuary, and of creating a more active and direct pedestrian connection between Nantasket Beach and Nantasket Pier.

¹¹ Plan at page 86.

II. COMPLIANCE WITH APPROVAL STANDARDS

A. Consistency with MCZM Harbor Planning Guidelines

The manner in which MCZM's Harbor Planning Guidelines (Revised, 1988) apply to Hull was set forth in the Scope for the municipal harbor plan that was issued by the prior Secretary of Environmental Affairs on July 30, 1996. The Scope identified the geographic area to be covered by the plan and established a study program to address seven priority issues that grew out of a town-wide "visioning" process that took place during 1994. The Scope also stipulated the public participation process to be carried out in the course of developing the Plan. In addition to explaining the make-up and role of the Harbor Planning Committee and other key participating bodies, the public participation element stipulated that a series of workshops and other public meetings be carried out as an integral part of each of the five major tasks assigned to the Town's planning consultant.

The record before me, including a separate compliance document submitted by the Town in conjunction with the Plan¹², indicates that both the study program and the public participation process were carried out in a manner that adequately and properly complied with the Scope. Accordingly, I have determined that the Plan is consistent with the MCZM Harbor Planning Guidelines as required by 301 CMR 23.05(1).

B. Consistency with MCZM Policies

The harbor plan approval regulations at 301 CMR 23.05(2) require that I find the Plan to be consistent with all applicable CZM Policies. At the time the Scope was issued there were 27 separate Policies¹³, of which the following have been determined to be applicable to the Hull Harbor Plan:

- Policy 1: protect ecologically significant resource areas
- Policy 2: protect unique marine resource areas
- Policy 3: support attainment of national water quality goals
- Policy 4: condition construction in water bodies... to preserve water quality and marine productivity
- Policy 5: minimize adverse effects of dredging
- Policy 10: conform to state/federal regulations concerning air and water pollution
- Policy 14: encourage and assist...restoration and management of fishery resource

¹² "Hull Harbor Plan: Standards for Plan Approval", January 25, 1999.

¹³ The current policy statements are set forth in EOEPA regulations at 301 CMR 21.98 (effective March 11, 1997). The prior policy statements were contained in 301 CMR 20.05(3). While the new policies were re-organized under categories and renumbered, changes in the policies applicable to this plan were minimal. The Plan is consistent with these policy revisions.

- Policy 18: encourage the compatibility of proposed development with local community character and scenic resources
- Policy 19: provide public benefit from channel dredging
- Policy 21: improve public access to coastal recreational facilities
- Policy 22: increase capacity of recreation areas
- Policy 23: provide technical assistance concerning the development of private recreational facilities that increase public access to the shoreline
- Policy 24: expand existing recreational facilities and acquire and develop new public areas for coastal recreational activities
- Policy 26: ensure wastewater treatment projects primarily serve existing development areas
- Policy 27: encourage revitalization of existing development centers.

The Plan sections cited in the Town's compliance document contain ample evidence that the Plan embraces the spirit and intent of these Policies. Based on the public record, however, there may be some ambiguity concerning the application of what is now referred to as Protected Areas Policy #1, pertaining to the ACEC Program. In a comment letter dated April 9, 1999, The Boston Harbor Association (TBHA) advocated that " careful attention be given to the environmental and water quality impacts from any proposed boundary modification to the ACEC" . Further, by letter dated April 16, 1999, the Department of Environmental Management (DEM) pointed out that the Plan includes references in favor of relocating the ACEC boundary. DEM is of the opinion that such references may be premature at this time, because " the Plan clearly states that further study is required before such actions are contemplated" .

To dispel any potential for confusion, it should be noted that the most expansive discussion of the ACEC boundary issue is provided in the section titled *Water Use Plan: Nantasket Pier Area and the ACEC*¹⁴, which is described as " a summary of the overall approach to the relationship between the ACEC and the potential development of Nantasket Pier and **is the basis for related recommendations concerning the Pier and its redevelopment in the Harbor Plan**" (emphasis added). Clearly, this section provides the context in which all other statements in the Plan are intended to be read. Equally clear is that the text of this section repeatedly acknowledges that further study is a prerequisite to any Town action that would seek relief from ACEC regulatory restrictions. Accordingly, for approval purposes I have interpreted the Plan as making a commitment to this prior study process.

Finally, as discussed previously, it is clear that the Town understands that improvement dredging in the ACEC can be pursued only through a variance under the waterways regulations at 310

¹⁴ Plan at pages 73-75.

CMR 9.21 or a boundary modification under the ACEC regulations at 301 CMR 12.13. I am confident that the procedures associated with both regulations ensure that appropriate feasibility studies will be undertaken with sufficient opportunity for public review and comment¹⁵. In this regard, I strongly encourage Town officials to maintain close coordination with MCZM, DEP, and ACEC Program staff throughout the study effort.

Subject to these clarifying remarks, I find that the Plan is consistent with all applicable CZM Policies.

C. Consistency with Tidelands Policy Objectives

Under 301 CMR 23.05(3), I also find the Plan to be consistent with state tidelands policy objectives and associated regulatory principles, as set forth in the waterways regulations of DEP. Again, the Plan sections relating to this standard have been summarized effectively in the Town's compliance document.

I gather from the Plan and supporting documentation that the Town is comfortable in leaving c. 91 licensing decisions to be reached on a case-by-case basis, with the judgements of DEP being adequately informed through public comment and appropriate consultation with municipal authorities. Accordingly, the Plan does not provide amplification of any of the discretionary requirements of the waterways regulations, on either a generic or a site-specific basis. Nor does it propose any substitute requirements for the dimensional restrictions applicable to nonwater-dependent projects, because "no obvious inconsistencies" were found between these restrictions and the corresponding standards of the Hull Zoning By-Law.

In other ways, however, the Plan does provide useful guidance that will have a bearing on DEP licensing decisions within the harbor planning area. For example, a review of previous licenses and historic maps of the Hull shoreline¹⁶ offers some preliminary indication as to the incidence of unauthorized structures and uses, including some which are being used for nonwater-dependent purposes. This information will assist DEP in determining whether license applications should be submitted to bring certain tidelands sites into compliance with M.G.L. c.91.

During the consultation session, DEP has pointed out that for some existing residential structures over flowed tidelands it may not be appropriate to seek public access benefits on the

¹⁵ For example, the information-gathering provisions of the ACEC regulations (at 301 CMR 12.07) ensure that any review of a proposed ACEC boundary change will be preceded by appropriate planning analysis that addresses all of the feasibility issues identified in the above-referenced section of the Hull Harbor Plan. If the Town pursues this course, ACEC Program staff at DEM should be contacted for technical assistance regarding the contents and process of preparing an ACEC boundary amendment.

¹⁶ Plan at pages 88-89.

project site itself, as normally required in the course of authorizing nonwater-dependent projects. Where applicable, provisions of the waterways regulations afford DEP the flexibility to accept off-site benefits as an exception to this general rule, the Plan will be most helpful as a basis for identifying improvements that can be made elsewhere in the harbor (preferably in the immediate vicinity of the project site). Ideal for this purpose are the various recommendations for site-specific improvements contained in Table 4 of the Plan (page 84) and more fully explained in the text at pages the 95 through 100. To build even further on this framework, the Town should consider developing additional guidance regarding the appropriate amount of monetary payments to be made in lieu of direct expenditures for on-site benefits, and perhaps establishing a coordinating mechanism. A useful model in this regard was approved recently as part of the Provincetown Harbor Plan, which established a Harbor Access Improvement Fund and stipulated a formula for determining comparable value to the public where off-site benefits are determined preferable by DEP. I support this creative approach, and encourage the Town to pursue it as a follow-up planning task and plan amendment.

Another instructive aspect of the Hull Harbor Plan, from a regulatory perspective, is that it highlights a variety of specific public service projects that are needed to upgrade the town's infrastructure for water-dependent uses. To begin with, a program of repair, reconstruction and maintenance has been described for important foreshore structures, including the Gunrock breakwater, the Pemberton Pier seawall and seawalls near Point Allerton, the Green Hill breakwater and seawalls, and seawalls along Highland Avenue and Crescent Beach. Also, improvements have been recommended for town-owned facilities at Pemberton Pier, James Wharf, and the A-Street Pier; and, as noted previously, a cornerstone of the Plan is the proposal for redevelopment of Nantasket Pier entirely for water-dependent uses and accessory uses thereto¹⁷.

This waterfront public works program appears to enjoy widespread support within the community. The only potential reservation contained in the record is a comment letter authored jointly by five residents of Hampton Circle, which raises issues having to do with " the kind of community we want the marina included:[at Nantasket Pier] to become¹⁸". These residents call for additional information in three specific areas:

¹⁷ I note that the Plan at page 85 adopts a contingency scenario in saying that " should marina or other water-dependent uses prove infeasible at Nantasket Pier, the town should retain the option to allow nonwater-dependent uses such as retail, restaurant, and parking to occur in this location" . These are all " facilities of public accommodation" as defined in the waterways regulations, and I support this expression of Town intent to maximize the destination value of the pier for public use and enjoyment.

¹⁸ Letter dated April 9, 1999 with attached written comments submitted to Hull Harbor Planning Committee on February 4, 1998.

- defining the scope of dredging around the pier based on a profile of boats to be accommodated together with considerations of maintaining water quality and the integrity of nearby shellfishing beds;
- determining what specific types of vessels will be accommodated at the marina and for what time period; in this respect the commentors voiced particular support for working fishermen¹⁹ and island cruise boats, while opposing year-round recreational berths, "live-aboards" and commercial party boats; and
- developing support facilities in a manner that is sensitive to neighborhood interests; in this respect the commentors advocate careful attention to lighting, noise and traffic considerations, encourage the provision of a launch or dinghy dock to serve mooring fields, and express opposition to a fuel dock and relaxation of on-street parking restrictions.

While these are legitimate points, it is not unusual (and arguably prudent) for programmatic details of the sort referenced above to be left undecided at this early planning stage, in order to retain maximum flexibility to consider alternatives when a project is actually designed and reviewed in the more carefully focussed context of state and local permitting. On behalf of EOE, I am confident that issues such as those voiced by the Hampton Circle residents will be adequately addressed through the combined workings of the MEPA and c. 91 licensing processes. DEP is in agreement with this approach and has indicated that the Hampton Circle comments should be addressed in any license application for pier redevelopment (see Attachment A).

D. Relationship to State Agency Plans

The only state agency owning real property in the harbor planning area is DEM, the proprietor of Bumpkin Island. The Plan contains no recommendations pertaining to this site, and in the absence of any contraindication I can only presume that no incompatibility exists with the plans or planned activities DEM may have for the island.

E. Implementation Commitments

The Plan devotes an entire chapter to identifying actions that will be required for implementation. It presents an overall matrix that organizes these actions, together with cost

¹⁹ DEP staff, in the consultation session following the close of the public comment period, voiced a similar sentiment to the effect that any redevelopment program should facilitate (both physically and economically) continued use of the pier by fishermen.

implications and organizational responsibilities, according to each discrete element of the Plan. Also provided is a more specific discussion of recommended roles and responsibilities for plan implementation within the governmental framework of Hull together with state and federal agencies. The format of the implementation framework mirrors that of the Plan's recommendations, with the various actions prioritized according to their importance and relationship to the overall goals and objectives of the Plan.

The primary recommended change in Town management is the institution of a new Hull Harbor Advisory Committee. This committee is intended to work with the Town Manager to monitor plan implementation, with responsibilities including preparation of an annual progress report to the Town and Board of Selectmen, support of funding initiatives, review of policy issues, and advisory review of chapter 91 license applications through input to the Planning Board²⁰. The Committee is also seen as a potential forum to resolve issues and conflicts concerning harbor and waterfront use in the Town. Finally, the Plan indicates that special Task Forces should be established to implement particular programs, such as the proposed improvements to Pemberton Point, with membership reflecting a cross-section of affected interests.

²⁰ It is my understanding, based on the primarily advisory role contemplated for the proposed committee, that for waterways licensing purposes under 310 CMR 9.34(2)(a) the Hull Planning Board will serve as the municipal body with lead responsibility for plan implementation.

IV. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted 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 Hull Harbor Plan as the municipal harbor plan for the Town of Hull (subject to the modifications and exclusions noted below). This Decision shall take effect immediately upon issuance on February 14, 2000 and shall expire on February 14, 2005, unless a renewal request is filed by the Town of Hull prior to that date in accordance with 301 CMR 23.06(2)(a).

The Approved Hull Harbor Plan ("Approved Plan") shall be the plan dated January 25, 1999, as modified to incorporate the editorial corrections and clarifications identified in the DEM comment letter and to include all letters received during the public comment period as a final appendix (Appendix D), together with this Approval Decision. For waterways licensing purposes, however, the Approved Plan shall not be construed to include any of the following:

(1) any subsequent addition, deletion, or other revision to the submitted plan dated January 25, 1999, 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);

(2) any determination by DEP, express or implied, as to the conformance of any project requiring authorization under M.G.L. c.91 with the applicable standards of the waterways regulations at 310 CMR 9.00; DEP retains full discretion to modify or condition any specific use program or layout/design proposal to achieve conformance with said standards on a case-by-case basis; and

(3) any provision which, as applied to the project-specific circumstances of an individual license application, is determined by DEP to be in conflict or otherwise inconsistent with the waterways regulations at 310 CMR 9.00.

Bound copies of the Approved Plan, incorporating this Approval Decision as an Attachment, shall be kept on file by the Hull Town Clerk, at MCZM offices in Boston, and at the DEP/Waterways offices in Boston and Lakeville.Wilmington.

By letter from the Program Chief of the Waterways Regulation Program, dated December 6, 1999, DEP has stated that the Approved Plan will become operational for waterways licensing purposes in the case of all applications for which the effective date of Plan approval occurs prior to the close of the public comment period. With the exception of applications for existing structures and uses reviewed under the amnesty provisions of 310 CMR 9.28, a determination of conformance with the Approved Plan will be required for all proposed projects in accordance with the

provisions of 310 CMR 9.34(2). In the case of amnesty projects, DEP has stated that it will adhere to the greatest reasonable extent to any applicable guidance specified in the Approved Plan.


Robert Durand
Secretary of Environmental Affairs


Date