

Decision on
The City of Boston's
East Boston Waterfront District
Municipal Harbor Plan

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Table of Contents

- I. INTRODUCTION
- II. REVIEW OF BASIC PLAN ELEMENTS
- III. STANDARDS FOR MHP APPROVAL
- IV. APPLICATION OF APPROVAL STANDARDS: CZM POLICIES
- V. APPLICATION OF APPROVAL STANDARDS: COMPATIBILITY WITH STATE AGENCY PLANS OR PLANNED ACTIVITIES
- VI. APPLICATION OF APPROVAL STANDARDS: CONSISTENCY WITH STATE TIDELANDS POLICY OBJECTIVES
- VII. EVALUATION OF REQUESTED SUBSTITUTE PROVISIONS
- VIII. ENFORCEABLE IMPLEMENTATION COMMITMENTS
- IX. EFFECTIVE DATE AND TERM OF APPROVAL
- X. STATEMENT OF APPROVAL

I. INTRODUCTION

Today, I am approving, subject to certain conditions, the East Boston Waterfront District Municipal Harbor Plan (Approved Plan), which encompasses the planning area identified in Figure-1, submitted by the City of Boston in March of 2002.

Over two years ago the City of Boston began the planning process for over 59 acres of land located in East Boston. My approval of the East Boston Waterfront Municipal Harbor Plan, following closely my approval of the South Boston Waterfront Municipal Harbor Plan, represents the achievement of yet another milestone by Mayor Menino and the Boston Redevelopment Authority (BRA) as they proceed with the formalization and implementation of a planning vision for the public trust lands that comprise the waterfront areas of Boston Harbor. With its associated conditions, I believe this decision will help revitalize and reenergize this historic urban waterfront while guiding waterfront development in a way that promotes the public rights inherent in these tidelands, guaranteeing future generations use and enjoyment of this valuable resource.

Since the earliest days of the Massachusetts Bay Colony, the Commonwealth has been charged with protecting public interest in all tidelands. As Secretary of Environmental Affairs, I must look to ensure that waterways and harbor planning in Massachusetts continue to reflect:

- The public's fundamental rights and interests in natural resource areas such as the sea and its shores.
- The state's responsibility to preserve and enhance these areas, and the public's right to use them.

The state Waterways Regulations (310 CMR 9.00) establish tidelands policy objectives and associated regulatory principles that clarify the relationship between public and private rights in tidelands, establishing a priority for water dependent uses while supporting efforts to revitalize underdeveloped urban waterfronts in a manner that promotes public use and enjoyment of the shoreline. The regulations accomplish these objectives through the use of uniform statewide development standards and requirements for nonwater-dependent use projects.

As a companion piece to the Waterways Regulations, the Municipal Harbor Planning regulations allow communities to submit plans that promote future waterfront development in ways that, with a careful modifications of the Waterways Regulations, reflects a local vision for the harbor area. While respecting local goals, however, I must be mindful of my responsibilities to balance competing public and private rights in a way that will ensure that the plan promotes the public rights inherent in tidelands.

Unlike the South Boston Waterfront MHP, which was comprised almost entirely of Commonwealth Tidelands, the harbor planning area for the East Boston MHP includes both Commonwealth and Private Tidelands. The waterfront included in this area, with its rich history connected to local, regional, and international maritime industry, is also characterized by the

presence of the East Boston Designated Port Area (DPA). DPAs are “Geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water.” This section of the East Boston waterfront is home to several small businesses that contribute to the success of the Port of Boston, as well as the Massachusetts maritime infrastructure and economy. While the East Boston DPA does not have the backland space required to support the large-scale container-type operations found at Conley Terminal in South Boston or the Autoport in Charlestown, the East Boston waterfront is well suited for the tug boat, marine construction, vessel repair, industrial welding, and boating supply businesses, and other support services that are critical to port activities. Future investment could also support berthing space for fishing vessels and other activities that do not require large backland areas.

The MHP for the East Boston Waterfront District reflects significant effort on the part of the City and many members of the public who participated in the public process. I would like to once again commend the efforts of the members of the Municipal Harbor Planning Advisory Committee (MHPAC), who volunteered their time and talents over the course of weekly meetings for the past many months. This group has succeeded in developing a plan that I believe will guide private development in a way that implements a much-needed vision that will help realize the full potential of this urban waterfront, respecting maritime industrial needs of the port while embracing and promoting the longstanding public rights to the water. Traditionally, a decision involving the complex balancing of private interests and public rights in tidelands presents a double-edged sword, necessarily conferring some benefit to private landowners in order to achieve larger public benefits that are direct and immediate. In its broadest sense, therefore, an MHP approval decision must look to balance local development goals and objectives with my responsibilities as trustee to protect and promote the full range of public trust rights in tidelands. The weekly MHPAC meetings and the public participation process were particularly helpful in identifying those benefits that the MHP should provide in order to reflect, in contemporary terms, the nature of these rights.

Over the past 300 years, the nature of these rights has evolved significantly in response to changing conditions and demands. Initially, the nature of these rights focused on maintaining navigability for maritime commerce and free access to individual activities such as fishing and fowling so important to sustain a struggling colony. Today, the nature of these rights continues to evolve to include broader public activities that take advantage of harder to define, but equally valuable, characteristics of the waterfront that are dependent on the public’s ability to get to, use and enjoy the benefits of this unique resource.

The meetings of the MHPAC and the requisite public hearings served as an effective forum to articulate the goals and objectives of the East Boston MHP. As a strong proponent of the public process, I continue to look to public participation as a way of identifying those benefits that reflect a contemporary vision of the public rights inherent in this historic waterfront. These benefits can be summarized generally as follows.

Open Space

The preservation and protection of open space has been and will continue to be of personal importance to me. Experience has shown us that urban parks are a crucial component of the broader statewide open space system. My active role in the on-going discussions associated with the open space created by the depression of the Central Artery leaves me convinced that the role of open space and the urban park is even more critical when viewed in the context of the City of Boston, the largest urban city in the Commonwealth. Traditionally, urban open spaces have functioned as gathering places where diverse groups of people can meet and interact. Increasingly, they have become places that provide both active and passive recreational opportunities within the confines of daily city activity. Further, proximity to a resource such as Boston Harbor offers the unique opportunity to take advantage of recreational activities ranging from the passive viewing of contemporary harbor activities against the backdrop of an historic cityscape, to actively boating, fishing, jogging, and walking along the harbor's edge, or as a pleasant oasis for sitting, conversing, or relaxing.

For these reasons I am pleased to note that, in addition to providing open space areas that at a minimum will meet the requirements of the Waterways Regulations, this MHP has adopted programming strategies for Critical Open Space areas that will connect new areas of urban open space and parkland with existing areas furthering the City of Boston's goals focusing on public enjoyment of the waterfront. Specifically, through the preservation of critical open space corridors, this plan will link existing East Boston open space areas such as LoPresti and Piers Parks, resulting in an active and accessible "public rim" along the East Boston waterfront and into the interior sections through the emerging East Boston Greenway.

Public Access

In its fundamental sense, public coastal access refers to the ability of people to reach the shore. Experience has shown, however, that coastal access can mean different things to different people. For many it can mean beaches, shoreline paths, boardwalks, picnic areas, or unobstructed views. For still others, it can mean accessibility to boats, marinas, and visitor parking lots with signs and information. Believing firmly that the public has a right to access, use and enjoy the waterfront, it is critical that existing mechanisms, such as the formal Chapter 91 Licensing process and the planning process associated with MHPs, promote public access. The success of the City of Boston and its implementation of Harborwalk is a prominent example of the reward associated with such approaches. I believe that the implementation of many of the public benefits associated with this MHP will also further these access interests and contribute to the creation of yet another urban waterfront that is truly accessible.

In light of the public comments received, and my priorities and responsibilities as Secretary, I note the extensive access-related public benefits (in an area characterized currently by few or any such benefits) that will be provided as a result of this MHP. In terms of pedestrian access, approximately 11,000 linear feet of new Harborwalk will be implemented within the MHP planning area, and a total of approximately 20,000 linear feet—nearly 4 miles—will result when combined with the Harborwalk segments being implemented by Massport at Pier 1, and Piers Parks I and II. These significant stretches of Harborwalk along the East Boston and Inner

Harbor waterfronts will include an extensive system of walkways connecting shoreline walkways with interior public ways. Through attention to the design and placement of proposed development, view corridors, pedestrian ways, and streets will create direct links to the water's edge, providing not only physical access but also visual access. On a cumulative basis, in excess of 5 acres of new, publicly accessible space will be created as a result of designated open space and ground floor public space.

Visual access is an important component of any MHP. I appreciate that the City and the developers of Clippership Wharf recognize the opportunity presented by the site's visual proximity to downtown Boston and its Marginal Street alignment with both the USS Constitution and the Bunker Hill Monument. When facing west on Marginal Street, the new Clippership Wharf development will frame both of these national symbols in a way that not only provides a magnificent view, but will also draw people to the western edge of the site, thereby activating the waterfront. The Hodge Boiler Works property will also afford sweeping views of Boston and Charlestown waterfronts, and has committed to preserving these views through the appropriate placement of open space areas.

In conjunction with DEP's recently released Draft Water Transportation Policy, I am also pleased to note that a water transportation facility and dock is proposed for the extension of Lewis Mall, providing East Boston with a water connection to other areas of the Harbor. The waterside end of Lewis Mall is a prime location for water transportation for several reasons—it is located within easy walking distance of the MBTA's Maverick 'T' Station (less than 1/5 mile), it will serve several new residential developments in East Boston with convenient transportation, and it will be one more amenity along the East Boston waterfront ensuring that the public is drawn to the shore. The availability of water transit service, in addition to activating and improving accessibility to the East Boston waterfront, contributes to the goals of DEP's Draft Policy, which seeks to capitalize on the transportation potential of the Harbor's presently underutilized waterways. I am pleased to note that the implementation of such facilities is also responsive to the findings of my Transportation Summit held in September of 2000, in which exploiting the full potential of water transportation was identified as one component of a broad strategy to help confront the inner City transportation challenges.

Activation of the Water's Edge for Public Use and Enjoyment

Public activation of waterfronts along which nonwater-dependent use projects are proposed requires a well-crafted planning strategy ensuring that:

- Substantial area is available for water-dependent activity, public access, and public use and enjoyment of the water's edge.
- The ground level environment is conducive to such activities.
- Interior and exterior public spaces are designed to encourage public activity on a year-round basis.

For this reason, when deviating from the requirements of the Waterways Regulations, an MHP must implement appropriate site-specific benefits that contribute to the overall planning goals for the harbor planning area while providing specific and enforceable conditions to DEP

that can be incorporated into future Chapter 91 licensing decisions. I am more than satisfied that this MHP focuses on these critical components sufficiently to ensure that public use and enjoyment of this waterfront is promoted.

In reviewing the plan, I am pleased to see that final development of the area will, in addition to required first-floor FPA uses such as restaurants, shops and retail stores integrated with the water's edge, include sites for a cultural use on Clippership Wharf and provisions for a variety of water-dependent uses and activities, such as recreational boating and fishing. Further, as discussed above, approximately 60% of the harbor planning area under consideration at this time will be dedicated to public open space, providing the public with both physical and visual access to the waterfront in all seasons. Enhanced by its location on a busy harbor, I am convinced that the interior and exterior amenities associated with the development of this presently under-developed area will help transform it into a vibrant and popular year-round public destination.

Revitalizing and Re-energizing The East Boston Waterfront, A Valuable Common Resource

Presently, much of the East Boston Waterfront consists of land that is generally inaccessible to the public and largely underutilized in terms of its economic potential. Rich in maritime industrial history and in close proximity to the downtown area, the airport, and the deep-water port, the possibilities for the East Boston Waterfront are vast and exciting.

One component of the larger East Boston Master Planning process, the MHP offers a unique opportunity to support public and private efforts to revitalize the East Boston waterfront in a manner that takes advantage of existing infrastructure. This infrastructure is conducive to smaller types of maritime industry which are so critical to the Port of Boston. To be successful, however, the plan must respect the highly urbanized and industrial nature typical of much of the surrounding waterfront and its location in the Commonwealth's largest and busiest seaport. I believe that this MHP, its substitute provisions, and the conditions of my decision establish a responsible and responsive framework under which the rejuvenation of the East Boston waterfront can proceed in a manner that will allow future Chapter 91 licensing decisions to reflect the local vision for this waterfront. I anticipate the upcoming Amendment and DPA Master Plan for the remainder of the waterfront to reflect similar goals in order that appropriate balances between competing public and private interests is achieved in a manner that provides predictability and consistency at all levels of regulatory review for the development community while ensuring that such development benefits the public-at-large.

In the sections that follow, I will discuss in detail the standards for plan approval, my evaluation of the plan, and my analysis of the proposed substitute provisions. Further, I will specify those conditions (beyond those required by the City and Chapter 91) that are necessary to ensure that public benefits are a primary focus of this MHP, creating an exciting, diverse and sustainable East Boston Waterfront that will be treasured by this and future generations.

The Municipal Harbor Plan Advisory Committee and The Review Process

The East Boston municipal harbor planning process began formally with the appointment of members to the Municipal Harbor Planning Advisory Committee (MHPAC) and the submission by the Boston Redevelopment Authority (BRA) of a Request for Notice to Proceed in December of 2000. Following a detailed review of the Request, a Notice to Proceed for the East Boston Waterfront District Municipal Harbor Plan was issued on March 12, 2001. With this document as a guide, the MHPAC met weekly or bi-weekly to discuss the development of the MHP. In early December of 2001, the BRA began issuing Draft MHP chapters for initial public review and comment.

Following the review procedures contained in 301 CMR 23.00, the East Boston Waterfront District Municipal Harbor Plan (the Plan) was submitted to the Executive Office of Environmental Affairs (EOEA) on March 12, 2002 and noticed in the Environmental Monitor on March 23, 2002. A thirty-day public comment period was initiated on March 23, 2002 and closed on April 22, 2002. During the comment period, a public hearing was held at the Harborside Community Center in East Boston on April 3, 2002. Written comments were accepted throughout the thirty-day public comment period. In addition, the review process, led by the Massachusetts Office of Coastal Zone Management (CZM), included consultation with staff of the Department of Environmental Protection (DEP), the BRA, and the MHPAC.

During the comment period, I received 17 comment letters in addition to valuable comments received during the public hearing on the proposed MHP. These comments were from elected officials, state, and local agencies, and numerous interested members of the public. The majority of the letters and comments I received were highly complimentary of the proposed plan and displayed an overall excitement with regard to the revitalization of the East Boston waterfront. Several comment letters expressed concern regarding the MHP's discussion of the proposed infrastructure improvements at Logan International Airport, as well as reference to potential demand management tools ("peak period pricing"). I believe that issues pertaining to Logan Airport would be more appropriately addressed by the FAA than by this decision on the East Boston MHP. Similarly, concerns regarding the surveying, preservation, and maintenance of granite seawalls along the waterfront can be, I believe, more appropriately addressed in the Chapter 91/MEPA/Article 80 process. Several other comments and comment letters not addressed in this section have been incorporated directly into the text of this Decision.

A. Geographic Area

The MHP, as submitted, has been developed in conjunction with the City's comprehensive master planning process for East Boston as found in the April 2000 *East Boston Master Plan* (EBMP). While the EBMP encompassed the lower Chelsea Creek, Massport properties, and the East Boston waterfront, this MHP addresses only the Inner Harbor shore of the East Boston waterfront. This MHP does not encompass any Massport properties; however, Massport was an active participant in this planning process. Figure 1 depicts the planning area.

The boundary of the harbor planning area for this MHP has been defined as generally extending from Jeffries Point to the Chelsea Creek entrance to Boston Harbor. It is important to note that this East Boston MHP submission only addresses substitutions and amplifications for two specific parcels at this time. The Notice to Proceed issued on March 12, 2001, envisioned an MHP that would cover all properties within the planning area and would include a DPA Master Plan. However, it was determined that a DPA Boundary Review would be required before further planning for properties within the East Boston DPA could be performed. CZM initiated the DPA Boundary Review in December, 2001. In order for planning on the Clippership Wharf and Hodge Boiler Works sites to continue, CZM recommended to the City of Boston that an amendment to the MHP at the conclusion of the DPA Boundary Review would be a viable means of moving the process forward. The City has agreed to pursue this approach.

As a result of this divergence from the originally anticipated process, site-specific substitutions and amplifications to properties within the MHP planning area along New and Border Streets will be addressed in an amendment to this MHP, if needed. As mentioned above, CZM is currently preparing a Designated Port Area (DPA) boundary review in East Boston which may affect the regulatory status of these parcels. A more detailed discussion of CZM's DPA boundary review process can be found in Section II.A, under "Goals and Applied Policies." My understanding, based on discussions with the City, is that if the decision is made that substitutions to the Waterways regulations are needed for sites along New or Border Streets, the MHPAC will reconvene in order to draft and submit an MHP amendment once the final East Boston DPA Boundary Review is complete. Such an amendment would need to address the proposed substitutions, offsets, or amplifications in a site-specific manner, and in the level of detail outlined in the original Notice to Proceed for the East Boston MHP. A DPA Master Plan may be submitted as part of the MHP amendment for the purpose of carefully considering and planning the uses within the DPA. The timely completion of these documents, should they be needed, is integral to achieving the overall goals of the East Boston Municipal Harbor Plan.

II. REVIEW OF BASIC PLAN ELEMENTS

The Approved Plan was developed through consultations with CZM and DEP and was reviewed under procedures set forth at 301 CMR 23.04. Pursuant to 301 CMR 23.04(1), the content of the MHP must contain text that addresses the basic elements of a Municipal Harbor Plan as defined in the Municipal Harbor Planning Regulations (301 CMR 23.02) and as further required by the Notice to Proceed. These elements include:

- A description of the community's general goals, objectives, and applied policies that will guide development in the harbor planning area;
- A description of the proposed implementation program, in accordance with the applied policies;
- A discussion of the planning analysis that resulted in the proposed plan; and
- A review of the public participation process that contributed to plan development.

Based on the discussion below, I find that the Plan's content incorporates the basic plan elements in a manner that complies sufficiently with the MHP requirements at 301 CMR 23.04(1).

A. Goals and Applied Policies

The City and Community's goals for the East Boston waterfront were expressed in the East Boston Master Plan, which provides the framework for this MHP effort. A summary of the EBMP can be found in Chapter 4 of the MHP. While the EBMP was concerned with planning for the whole of East Boston, significant attention was focused on the approximately 59 acres of Inner Harbor waterfront that make up this MHP area. The master plan recognizes the unique location, rich history, magnificent views, and development and recreational potential of this stretch of waterfront, and through this MHP I believe that this potential can be realized.

The EBMP envisions the transformation of the East Boston waterfront is based, in part, upon the following goals:

- Preserve and promote water-dependent industrial uses;
- Preserve and promote water-dependent uses where appropriate;
- Provide full and appropriate utilization of the Inner Harbor waterfront;
- Maintain and improve the quality of life and the public's enjoyment of the waterfront;
- Preserve, protect, and enhance public access to and use of the waterfront;
- Diversify water and land transportation linkages; and
- Support compatible economic development consistent with Chapter 91 principles.

As noted above in Section I.A, "Geographic Area," CZM is currently conducting a review of the East Boston Designated Port Area (DPA). According to Commonwealth of Massachusetts regulations governing DPAs, these areas are:

“geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water.”

The purpose of the review is to evaluate the subject lands and waters for conformance with the Designation Standards found at 301 CMR 25.04, and to determine whether changes to the current DPA boundary are necessary in order to preserve and enhance the capacity of the DPA to accommodate water-dependent industrial uses. The land area under review begins at the intersection of New and Sumner Streets and encompasses the area between the waterfront and Border Street. The northern boundary of the review area is the Shore Plaza apartment complex near the intersection of Border and Condor Streets. A final boundary review decision regarding this area is expected in the summer of 2002.

MHP Vision for the East Boston Waterfront

The City’s vision for the East Boston waterfront is captured in the discussion of MHP goals and priorities contained in Chapters 7 and 8 and can be summarized as follows:

- Implement the goals of the East Boston Master Plan to visually and physically enhance the East Boston Waterfront.
- Promote the Water-Dependent Industrial uses in the DPA and in the East Boston Inner Harbor water-dependent use zones that exist along other parts of the waterfront.
- Expand the mix of uses in the waterfront area to include additional residential, retail/commercial and cultural uses.
- Establish an active pedestrian connection between Lewis Street and Central Square waterfront areas/ferry terminal sites including Maverick Square and Central Square neighborhood shopping districts, and the Meridian Street commercial spine.
- Reestablish water transportation as a viable means of commuting to Boston and around the Harbor area.
- Establish and activate the proposed network of existing and new parks, plazas, walkways and shopping streets, and integrate them with the proposed Waterfront Way and Harborwalk.
- Provide interior public space in the ground floor of buildings on Commonwealth tidelands such as cultural facilities, museums, cafés, art galleries, shops, community spaces, etc., that will attract the public to the water.
- Provide affordable housing units on sites in the East Boston Waterfront and East Boston neighborhood.

As stated in the MHP, a major policy goal of the City is to promote the use of water transportation as an alternative to vehicular transportation both for work trips as well as excursion trips. *The Boston Inner Harbor Passenger Water Transportation Plan* (“Water Transportation Plan”) describes in detail where new terminals should be located and existing terminals expanded to ensure increased patronage of ferries. On the East Boston Inner Harbor,

the recommended sites are Logan South/Airport Terminal, Lewis Mall, and Liberty Plaza. Water taxi stops are incorporated at these terminals but may also occur elsewhere along the East Boston Waterfront.

Increased traffic resulting from the new development in this area has been raised as an issue of concern. While traffic mitigation measures and the realignment of certain streets may begin to address this issue, they alone will not solve the problem. Water transportation access will be key to the success of a newly rejuvenated East Boston waterfront. Section 6.2 of the MHP describes the City's Water Transportation Plan which identifies a potential network of existing and future water transportation facilities harborwide—two of them within this municipal harbor plan area. These facilities would serve regional commuter boats, local scheduled and water-taxi services, and excursion boats. I expect that specific and enforceable commitments to provide docks, land-side support facilities, and operating subsidies for water transportation will be a baseline condition (and not an offset) of the Chapter 91 licenses issued for all major projects within the harbor planning area. DEP is currently drafting a water transportation policy which will provide the framework and formulas for these commitments. Such commitments should be executed in a coordinated fashion to implement the goals of the City's water transportation plan.

The potential use of floating structures or barges as a means of watersheet activation is suggested in the MHP. While some use of non-permanently moored vessels may be an appropriate way to encourage public use of the waterfront, great care must be taken to ensure that such structures do not interfere with the active shipping channel located immediately adjacent to the East Boston waterfront. I would urge the City to consult with the Army Corps of Engineers, Massport, terminal operators, CZM, DEP and other relevant agencies and users prior to siting such a facility.

The City seeks to accomplish its vision for the East Boston Waterfront in part through the use of provisions intended to substitute for certain numerical standards and use limitations that apply to nonwater-dependent use projects under the Waterways Regulations. The substitute provisions proposed by the City establish maximum development envelopes that will provide predictability to both project proponents and the public in future project review processes. Consequently, a major focus of this plan concerns the planning rationale for the use of substitute provisions, and a discussion of the policies that will guide the review of individual projects as detailed designs evolve.

III. STANDARDS FOR MHP APPROVAL

The plan must contain supporting documentation that establishes how it complies with the standards of approval set forth at 301 CMR 23.05. These approval standards can be summarized as follows:

- The plan must be consistent with all applicable policies of CZM [301 CMR 23.05 (1)];
- 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 (3)];
- 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(2)]; and
- 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 (4)].

The following sections present my findings and determinations on how the Plan, as conditioned, satisfies each of these standards for approval.

IV. APPLICATION OF APPROVAL STANDARDS: CZM POLICIES

The Notice to Proceed identified the geographic area to be defined as the harbor planning area, as well as the broader harbor-wide context for the East Boston plan. It established the content and level of detail that I expected in the plan, including the nature and extent of the planning effort and the information and analysis required for evaluation of compliance with the standards for approval.

Chapters 3, 4, and 5 of the City's plan as submitted provide an overview of this harbor plan in the context of extensive planning efforts - past, present and future - within East Boston and the broader City. These efforts include the *Comprehensive Planning Initiative*, *East Boston Greenway Access*, *Inner Harbor Passenger Water Transportation Plan*, *East Boston: A Plan to Manage Growth*, the *Port of Boston Economic Development Plan*, the *East Boston Master Plan* and several others. I am pleased to note the degree to which this MHP builds upon the efforts and findings of these previous planning efforts.

The record before me indicates that the planning analysis, public participation program, and development of the MHP were carried out in a manner that complies adequately and properly with the Notice to Proceed. Accordingly, I have determined that the Plan meets the requirements of 301 CMR 23.05(1).

A. Consistency with CZM Policies and Principles

The federally approved Massachusetts CZM Program Plan is based on program policies that articulate the Commonwealth's priorities for the management of its coastal resources and uses. These policies reflect the national interests expressed by the Congress in the Coastal Zone Management Act (CZMA) and they are enforceable under Massachusetts statutes and regulations that parallel the interests of the CZMA. CZM's policies address water quality, marine habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management.

Projects proposed in, or affecting the coastal zone that require a federal action, usually in the form of a federal permit, must be found to be consistent with CZM's program policies before the federal permit can be issued—this process is CZM's federal consistency review. Federal consistency review procedures can be found at 301 CMR 21.00. Guidance on the federal consistency application process can be found at CZM's web site at: www.mass.gov/czm/fcr.htm.

There are currently two development projects proposed under the East Boston MHP—Clippership Wharf and Hodge Boiler Works. CZM policies in addition to those listed below may apply once design plans for both sites become final. I have listed below those CZM Policies and Management Principles most likely to apply to the East Boston MHP area.

PORTS POLICY #1 - Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health.

PORTS POLICY #3 - Preserve and enhance the capacity of Designated Port Areas (DPAs) to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.

PROTECTED AREAS POLICY #3 - Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.

PUBLIC ACCESS POLICY #1 - Ensure that the adverse impacts of developments proposed near existing public recreation sites are minimized.

In addition to policies enforceable under state statute, the Program Plan includes Management Principles that, while not enforceable under current state law, provide guidance regarding the preferred management of coastal resources and uses.

PORTS MANAGEMENT PRINCIPLE #1 - Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access.

PUBLIC ACCESS MANAGEMENT PRINCIPLE #1 - Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

GROWTH MANAGEMENT PRINCIPLE #1 - Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character.

These policies and principles seek to promote and maintain public access, encourage the expansion of water-dependent uses and activities in developed ports and harbors and to encourage the responsible re-development of urban waterfronts.

The MHP addresses consistency with each of the applicable CZM Policies in Chapter 11. The elements of the City's MHP are consistent with the broader goals established by CZM for the redevelopment of the Commonwealth's urban waterfronts. Upon review of the documentation provided by the City, I conclude that it meets the intent of each relevant policy statement and, as required by 301 CMR 23.05(2), I find the Plan consistent with CZM policies.

V. APPLICATION OF APPROVAL STANDARDS: COMPATIBILITY WITH STATE AGENCY PLANS OR PLANNED ACTIVITIES

Pursuant to 301 CMR 23.05(3), the plan must include all feasible measures to achieve compatibility with the plans or 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. There are no state agencies owning property within the harbor planning area, however, several projects on adjacent properties may impact, or be impacted by this MHP. I have specifically focused on the MHP's compatibility with Massport's Pier 1 development and the MBTA's Blue Line Service Improvements, both of which are addressed in the MHP. I have also referenced the Boston Housing Authority's "Maverick Gardens" reconstruction project, as it is immediately adjacent to the planning area. I am pleased to say that the MHP is compatible with, and is in many cases complemented by these projects.

Pier 1, Pier 5 and "The Shipyard"

Massport properties in East Boston are not part of this MHP. However, as an immediate neighbor to the proposed new development in East Boston, Massport has been an active participant in the MHP process with a representative on the MHPAC. A Memorandum of Understanding (MOU) for the development of Pier 1 primarily as residential housing was signed on February 15, 2002. The MHP discusses in sufficient detail the important public access connections between the Pier 1 project, Clippership Wharf, the Greenway, Harborwalk, and Piers Park I & II. Both Clippership Wharf and the Pier 1 development will undergo appropriate City review and state permitting prior to implementation in order to ensure that this new development will be integrated into the existing East Boston community.

As described in section 5.3.3, Massport is proposing to develop this former shipping pier with approximately 600 residential units, while continuing the existing maritime industrial and related mixed-uses. Pier 3 will be the site of the second phase of the East Boston Piers Park, and Pier 5 will be developed as an extension of the existing recreational Marina. The Shipyard will receive substantial rehabilitation through funding provided by the residential development at Pier 1. Industrial waterfront land and infrastructure is extremely important in the East Boston MHP area, and the rehabilitation of the Shipyard will have positive impacts on the marine industry region-wide. An Environmental Notification Form (ENF) certificate for this project was issued on December 14, 2001.

I am satisfied that the MHP has demonstrated its compatibility with Massport's planning for the Pier 1 development, as required under 301 CMR 23.05(3).

MBTA Blue Line Service

The Maverick Station modernization includes the reconstruction of the main head house and the emergency head house at Lewis mall, which may be converted into a second station entry point if ridership increases—a distinct possibility given the amount of new residential development proposed for this area. MBTA is also in the process of modernizing the Blue Line to accommodate longer six-car trains.

The MHP, as conditioned, has demonstrated its compatibility with the MBTA's planning for the Blue Line project, as required under 301 CMR 23.05(3).

Maverick Gardens

Maverick Gardens is a public housing project located adjacent to the waterfront between Havre and New Streets and Maverick and Sumner Streets (across the street from the proposed Clippership Wharf development). The Boston Housing Authority operates this development and has recently been awarded grant funding to reconstruct these residential units. The objective of the reconstruction includes the reduction of the density of buildings and a more complete integration of the project into the existing East Boston community by the introduction of through streets linking the site into the existing street network. This critical redevelopment located in the immediate MHP area will complement and reinforce the efforts of the MHP to revitalize the East Boston waterfront.

City of Boston's "Back Streets" Program

The City's "Back Streets" program is intended to support the growth of Boston's industrial and light-industrial businesses through the preservation of appropriate working space, and has as a guiding principle a "no net loss of industrial space" provision. The program intends to help Boston's industrial companies find, train and develop workers, to make Boston an attractive, hospitable place to do business, and to bring new and existing resources to Back Streets (industrial) businesses. Referenced in the March 2001 Notice to Proceed and officially launched in November of 2001, the Back Streets program provides individual businesses and small districts with a range of comprehensive industrial planning services. The Back Streets Planning effort will develop a City Wide Industrial Policy and expand regional industrial planning activities. The Back Streets Program also offers language training, career centers, educational assistance, and a back-up loan program. This program may provide valuable assistance to many of the marine-industrial businesses located in the East Boston DPA.

VI. APPLICATION OF APPROVAL STANDARDS: CONSISTENCY WITH STATE TIDELANDS POLICY OBJECTIVES

The MHP must be consistent with the primary state tidelands policy objectives and associated regulatory principles as articulated in the Waterways Regulations (310 CMR 9.00). The foundation for this determination is set forth in the MHP Regulations and is applied generally in two parts.

First, I have broadly reviewed the effect of all plan provisions that relate to the tidelands policy objectives reflected in the Waterways regulations. In particular, Chapter 8 of the MHP highlights features of the City's Plan and current regulatory program that support the primary state tidelands policy objectives, as set forth in 301 CMR 23.05(3)(a). My examination of the Plan confirms that a sufficiently high degree of consistency exists between the plan and those state policy objectives.

301 CMR 23.05(2)(a) identifies ten primary state tidelands policy objectives and regulatory principles with which the Plan must be consistent. Several objectives, including those related to other environmental regulatory programs and the licensing of coastal engineering structures, will be more appropriately considered within the context of the MEPA review and Chapter 91 licensing processes when designs for projects within the harbor planning area have matured.

My general review focused on the consistency of the harbor plan with the following five state tidelands policies. These policies protect the public's rights in tidelands by ensuring that:

- Those rights held by the Commonwealth in trust for the public to use tidelands for lawful purposes, and to preserve any public rights of access that are associated with such use, as provided in 310 CMR 9.35, are preserved (301 CMR 23.05 (2)(a)(2))
- The availability and suitability of tidelands that are in use for water-dependent purposes, or which are reserved primarily as locations for maritime industry or other specific types of water-dependent use, as provided in 310 CMR 9.32(1)(b) and 9.36, are preserved. (301 CMR 23.05(2)(a)(3))
- Nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent-uses, as provided in 310 CMR 9.51. (301 CMR 23.05(2)(a)(8))
- Nonwater-dependent use projects on any tidelands devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in said lands, as provided in 310 CMR 9.52 (301 CMR 23.05(2)(a)(9))
- Nonwater-dependent use projects on Commonwealth Tidelands, except in Designated Port Areas (DPAs), promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53. (301 CMR 23.05(2)(a)(10)).

Through the provision of public access walkways, interior and exterior facilities of public accommodation, and the maintenance of a water dependent use zone, I find that the East Boston MHP promotes public use and enjoyment of Commonwealth Tidelands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and I find that the MHP ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes.

Subject to the conditions and requirements that I have stated in the following sections, I find the Plan to be broadly consistent with the state tidelands policy objectives and regulatory principles set forth in the Waterways Regulations, pursuant to 310 CMR 23.05(3)(a).

A. Evaluation of Plan-Wide Amplifications and More Restrictive Provisions

The MHP regulations (301 CMR 23.05(2)(b)) require me to find that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of 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). The MHP, and Chapter 91 specifically, contains many provisions that will have operative significance in the Chapter 91 licensing process, pursuant to 301 CMR 23.05(2)(b)&(c).

In the MHP, the City requested several amplifications that do not meet the regulatory criteria to be considered amplifications under the Waterways Regulations. Most amplifications were proposed to regulation 310 CMR 9.51, “Conservation of Capacity for Water-Dependent Use,” the general purpose of which is to ensure that non-water dependent use projects located on tidelands do not unreasonably diminish the capacity of such lands to accommodate water-dependent use. Proposed language referring to a public activity structure, historic markers, developer funded planning efforts, public activity “elements,” pedestrian pathways and design review cannot be considered amplifications as they are either required elements, or they simply do not provide specific guidance to DEP for licensing purposes. These important items can and should be included in the development plans for these sites, but are more appropriately included in the City’s Article 80 process or the actual Chapter 91 licensing process.

Chapters 7 and 8 provide useful guidance that will assist DEP with licensing decisions within the harbor planning area. For example, the Urban Design Guidelines and Universal Access Design Standards will assist DEP in determining whether licensing applications contain sufficient design detail to assure compliance with the City’s vision for the harbor planning area. These chapters also provide direction to DEP with regard to the open space configuration, preferred Harborwalk and “Waterfront Way” locations, programming and activation of public spaces, historic and educational programming, and watersheet activation.

I am confident that design details will be addressed adequately through the combined reviews of MEPA and the Chapter 91 licensing processes, with project decisions being informed through public comment and appropriate consultation with municipal agencies. DEP is in agreement with this approach and will require detailed information on the application of the

above design standards as part of any license application for nonwater-dependent use projects in the harbor planning area.

B. General Approach to Determinations on Substitute Provisions

The MHP proposes one area-wide substitution and a series of site-specific substitutions. The area-wide substitution relates to the provision of an appropriate pedestrian access network, or “Harborwalk.”

- Pedestrian Access Network-[310 CMR 9.52(1)(b)(1)]

Several substitute provisions are proposed for the Hodge Boiler Works and Clippership Wharf parcels. These substitute provisions fall into four categories:

- Facilities of Private Tenancy - [310 CMR 9.51(3)b)]
- Water Dependent Use Zone - [310 CMR 9.51(3)(c)]
- Height - [310 CMR 9.51(3)(e)]
- Facilities of Public Accommodation (Clippership Wharf only) – [310 CMR 9.53(2)(c)]

The framework for my evaluation of these proposed substitute provisions is established in the MHP regulations at 301 CMR 23.05(3)(c) and (d), which was discussed in detail in the March 12, 2001 Notice to Proceed. In general, to approve a substitute provision, I must determine that the MHP specifies alternative requirements that will promote, with comparable or greater effectiveness, the state tidelands policy objectives expressed in the corresponding provisions of the Waterways Regulations. In order to make this determination, each proposed substitute provision requires the following analysis.

First, I must find that the substitute provision satisfies the specific standard for that category set forth in 301 CMR 23.05(3)(c). (These standards are summarized in Table A). Should a substitute provision as proposed fail to meet the standard in subsection (c), it may be modified through conditions in the MHP Decision or disallowed.

Second, when a proposed substitute provision that meets the subsection (c) standard, and that would be less restrictive than the corresponding Waterways requirement, subsection (d) requires that the MHP include “other requirements that, considering the balance of effects on an area-wide basis, will mitigate, compensate, or otherwise offset any adverse effects on water-related public interests” (301 CMR 23.05(2)(d)). Collectively referred to as offsets, these additional measures should be applied within reasonable proximity of the locus of adverse effects that need to be offset, in order to avoid or minimize inequity in the distribution of public benefits and detriments. 301 CMR 23.05(2)(d) requires that the analysis and data of the plan be organized in a manner that clearly identifies the substitute provisions proposed. The plan must establish the nature and extent of the differential effects that the substitute provision will have with respect to the tidelands policy objectives in question.

Offsets can be quantitative or qualitative, but they must be sufficiently specific to provide certainty in Chapter 91 licensing. So long as the focus of the enhancements is on the quality of

the ground-level experience, the range of approvable offsets can be quite broad. The above framework for evaluating each of the proposed substitute provisions is summarized in Table A. To avoid needless repetition of approval standards, the table lists the five Waterways Requirements for which substitute provisions are proposed, a summary of the Waterways requirement, and the corresponding subsection (c) approval standard of the MHP Regulations.

Summary of Waterways Regulations and MHP Approval Standards
Table A

Waterways Regulation for which Substitute Provision Proposed.	Corresponding Waterways Dimensional or Numerical Requirement	Corresponding MHP Approval Standards 301 CMR 23.05(2)(c) and (d) The proposed substitute provision must, with comparable or greater effectiveness,...
Facilities of Private Tenancy 310 CMR 9.51(3)(b)	Shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of a project shoreline	Specify alternative limitations and other requirements that 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 activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question.
Facilities of Public Accommodation 310 CMR 9.53(2)(c)	The project shall devote interior space to facilities of public accommodation, other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront...(by) providing innovative amenities for public use; such public interior space shall be located at the ground level of all buildings containing nonwater-dependent facilities of private tenancy on Commonwealth Tidelands	Specify alternative requirements for interior facilities of public accommodation that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner

Setback Requirements (Water-Dependent Use Zone) 310 CMR 9.51(3)(c)	Width of Water-Dependent Use Zone to be determined as follows: <ol style="list-style-type: none"> 1. Along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but not less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet. 	Specify alternative setback distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order 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.
Height 310 CMR 9.51(3)(e)	Nonwater-dependent use building heights restricted to 55 feet within 100 feet of the high water mark. Heights can increase one half foot for each additional foot over 100 feet that building is setback from high water mark.	Specify alternative height limits and other requirements that 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.
Pedestrian Access Network (310 CMR 9.52(1)(b)(1))	Walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in an MHP, shall be no less than ten feet in width	Specify a minimum walkway width other than ten feet, provided that the alternative width is appropriate given, among other things, the size and configuration of the water-dependent use zone and the nature and extent of water dependent activity and public uses that may be accommodated therein.

C. Determination on Proposed Substitute Provisions

As described in more detail in the following sections, I have determined that the proposed substitute provisions contained in the East Boston Waterfront MHP specify alternative requirements that, subject to the conditions specified herein, will promote with comparable or greater effectiveness the state tidelands policy objectives reflected by the minimum requirements of the Waterways Regulations. Specifically, I have determined that the alternative requirements and conditions will ensure that:

- Walkway widths are appropriate given the size and configuration of the WDUZ and the nature and extent of the water-dependent activity and public uses that may be accommodated therein.
- No significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent use purposes.
- New or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline.

- In general, new or expanded buildings for nonwater-dependent use will be relatively modest in size.
- For the specific case of Clippership Wharf, nonwater-dependent use projects on Commonwealth Tidelands will establish the project as a year-round locus of public activity.

Project proponents must submit a Chapter 91 license application to DEP, as described in 310 CMR 9.11. To facilitate an assessment of the nature of Chapter 91 jurisdiction (i.e., filled Commonwealth v. filled private tidelands) for the harbor planning area, the approximate location of the Historic Low Water Mark was estimated based on the plan entitled: Boston (Mass.) City Council. Harbor Committee 1852. Map of Boston Harbor showing Commissioner's lines, Wharves etc. prepared by order of the Harbor Committee of the City Council of 1852, under the direction of E.S. Chesbrough, City Engineer. Given the level of accuracy associated with the planning nature of the MHP process, this Decision does not constitute a formal ruling (one that for nonwater-dependent use projects is issued by DEP in the context of a Written Determination) on Chapter 91 jurisdiction for parcels within the harbor planning area. As discussed earlier, the location of the historic high and low water marks shall, therefore, be determined by DEP as part of the Chapter 91 licensing process.

Projects within the area governed by the East Boston MHP must conform to the approved MHP, as required by 310 CMR 9.34(2). Unless an alternate requirement is specified in the approved MHP, project proponents must also meet all applicable substantive standards of the Waterways Regulations. DEP will substitute as licensing requirements the limitations or numerical standards as specified in the MHP for certain standards prescribed in the regulations at 310 CMR 9.51(3) (a) through (e), 9.52(1)(b)(1), and 9.53(2)(b) and (c). Offsets for any adverse impacts from the substitutions as identified in the MHP will also be expressed as enforceable conditions of the Chapter 91 license.

When numerical limitations in the MHP, including those that define “building envelopes,” are expressed as maximum or minimum amounts, these limitations will substitute for the maximum or minimum limits identified in the regulations. This approach is particularly appropriate for the Hodge Boiler Works site, given its very preliminary design stage. In the case of the Clippership Wharf development, where design has progressed to a more advanced stage, substitute provisions and corresponding offsets are identified specifically in the MHP and DEP shall apply these specific measures as modified by the conditions of this Decision as the presumptive standards for licensing.

VII. EVALUATION OF REQUESTED SUBSTITUTE PROVISIONS: HODGE BOILER WORKS AND CLIPPERSHIP WHARF

To implement the planning vision described in the Master Plan and the MHP, the City has proposed several departures from the baseline numerical or dimensional requirements of the Waterways Regulations for the Hodge Boiler Works and Clippership Wharf sites. These departures, or substitute provisions, allow greater building heights near the waterfront although generally reduced heights across each site, flexibility in the location of FPAs and FPTs, and a reorganization of the water-dependent use zone. A wider Harborwalk will be required throughout the MHP area. My decision regarding these modifications must generally ensure that the capacity of the affected tidelands to accommodate water-dependent uses is not unreasonably diminished and more specifically that the corresponding MHP approval standard for each substitute provision is satisfied.

A. General Description of the Hodge Boiler Works and Clippership Wharf Projects

The completed East Boston Master Plan and this MHP, recognizing its unique location within Boston Harbor, construct a vision for the revitalization of the East Boston Waterfront District based on a combination of new mixed-use development, increased open space, enhanced public access, and other measures that will serve to activate the waterfront. Much of the land in the harbor planning area is currently underutilized or vacant and support of public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the water, is a goal that is also shared by the Waterways Regulations (310 CMR 9.01(2)(c)) and the MHP process.

Two development projects have been included the first phase of the East Boston MHP process. As discussed in Section I above, an Amendment dealing with the DPA portion of the harbor planning area will follow upon conclusion of CZM's Boundary Review study. The Clippership Wharf project is advanced in design sufficiently to identify specific substitute provisions and offsets that will be incorporated into final project plans while development plans for the Hodge Boiler Works site are in the initial phase and proposed substitute provisions and offsets are, therefore, general in nature creating a planning envelope for potential site development.

The Clippership Wharf site consists of approximately 13.0 acres of upland and watersheet and is comprised of approximately 5.2 acres of flowed Commonwealth Tidelands, 1.6 acres of filled Commonwealth Tidelands, and 6.2 acres of filled Private Tidelands. The existing vacant site, abutting the Hodge Boiler Works site to the west and Massport property to the east, includes approximately 7.8 acres of upland characterized largely by impervious surfaces, broken concrete, urban fill, and approximately 3.3 acres of open watersheet and 1.3 acres of deteriorating pile field. Based on information included in the MHP, the Boston Zoning Commission has designated the property as a Planned Development Area (PDA) Overlay District with the underlying District established as Waterfront Residential. Current zoning requirements allow multi-family residential uses while retail and service uses are allowed conditionally or are forbidden.

From the information provided with the ENF submitted to MEPA in July 2001, I understand that the proposed project will consist of four primarily residential buildings and one parking garage. As proposed, the residential buildings (ranging in height from 65 feet to 86 feet) will support approximately 400 residential condominium units. A portion of the ground floor space in four of the five structures will be devoted to artist live/work space and commercial and retail uses. Parking for the development will be accommodated in a proposed 455-space parking garage and in 50 on-street spaces. Approximately 5 acres of open space will be reserved in the form of public walkways, parks, gardens and plazas. Finally, with the removal of the existing deteriorating pile field, approximately 1.3 acres of watersheet will be restored and activated to support public water transportation, recreation, and other water-dependent activities.

The Hodge Boiler Works site, located immediately to the west of Clippership Wharf and to the east of LoPresti Park, consists of approximately 3.3 acres of upland and watersheet. Based on the approximate location of the historic high and low water marks provided in the MHP, the filled portion of the property, approximately 1.5 acres, consists entirely of Private Tidelands. Site conditions are characterized by the existing 68-foot tall shop building, a one to two-story office building, deteriorating finger piers, and a project shoreline that is generally undefined.

The property is currently zoned as Waterfront Manufacturing by the City, with building heights limited to 55 feet and residential uses prohibited. Allowable uses within the Waterfront Manufacturing Subdistrict include manufacturing, restaurants, wholesale businesses, trade uses, waterfront terminals and services, and maritime dependent uses. Conditional uses include community uses, trade and professional schools, certain industrial uses (including artists' mixed use), warehousing, and motor and rail terminals.

Although no project is currently proposed for the site, I believe that establishing a building or planning "envelope," as the City has in this MHP, is precisely the approach envisioned by the MHP process. In this manner, the City can establish maximum, or minimum, numerical and dimensional requirements (e.g., height limits) for the site, or for groups of sites, that in effect create a building envelope with appropriate offsets as necessary, ensuring that local harbor planning goals are articulated within the context of state tidelands policy objectives, while simultaneously providing landowners and/or developers with the flexibility and certainty needed to move forward with individual projects.

The substitute provisions proposed for both sites are in most respects similar, differing largely as a result of the design stage and, in the case of Clippership Wharf, due to the presence of filled Commonwealth Tidelands. I have, therefore, organized my evaluation of each proposed substitute provision around the corresponding MHP approval standard and, where necessary, noting any differences in site-specific proposals, offsetting measures, approval conditions, or requirements.

B. Substitute Provisions

Proposed Pedestrian Access Network Substitution (310 CMR 9.52(1)(b)(1)): Plan-Wide

Chapter 8 of the MHP provides guidance regarding the public access network the City envisions for East Boston. While state waterways regulations mandate a minimum 10-foot walkway on sites containing a WDUZ, the City of Boston's minimum standard for Harborwalk is 12 feet (10 feet clear), with some areas requiring an even greater width. Below is the proposed, and approved, substitute provision for Harborwalk.

1. Pedestrian Access Network: Plan-wide

- **State Waterways Regulation**
310 CMR 9.52(1)(b)(1), "Utilization of Shoreline for Water Dependent Purposes": At a minimum, the pedestrian access network shall be no less than ten feet in width.
- **City Provision**
Pursuant to the City's Harborwalk standards, at a minimum, property owners must provide a 12-foot wide (10 feet clear of obstruction) pedestrian access network walkway. This width shall be increased, where appropriate, based on the size of the parcel and the development.

This Harborwalk standard should be uniformly applied as a more restrictive provision throughout the harbor planning area. All nonwater-dependent use projects licensed by DEP shall provide walkways that, at a minimum, are 12 feet wide, with 10 feet clear of obstruction. In areas within the East Boston MHP that are also inside of a DPA, point access to the water via an "Inland Harborwalk" may be incorporated in order to provide access to those areas where existing or future water-dependent industrial uses preclude full lateral shoreline public access due to public safety concerns.

Proposed Height Substitute Provisions (310 CMR 9.51(3)(e)): Hodge Boiler Works and Clippership Wharf

The City of Boston in its previous MHPs and Amendments has traditionally proposed height substitute provisions allowing building heights in excess of the Waterways requirements to achieve the planning goals envisioned for and consistent with differing geographic areas of the harbor. Reflective of an approach that respects the adjacent built environment, the City has proposed substitute height provisions for the Hodge Boiler Works and Clippership Wharf sites that, on a site-wide basis, reduce the maximum allowable building height from that allowable under the Waterways regulations.

As described in the MHP, this approach to height is aimed at achieving several Urban Design goals sought by the City including:

- The creation of building blocks compatible in scale and character with the waterfront and adjacent neighborhoods (MHP, p.33, s.4.3.7).
- The creation of a cohesive character to the new waterfront neighborhood extension, ensuring that new buildings have a scale and mass that fit with the existing East Boston context (MHP, p.121 & 129).
- The creation of building edges that respect the neighborhood scale in terms of height and/or architectural detailing of the street wall MHP, p. 121 & 129).
- The design of building shapes that resembles the block-like character of the East Boston waterfront historic industrial buildings (MHP, p. 121 & 129).
- The establishment of buildings heights that step up moving back from the waterfront, maintaining the traditional form of Boston's waterfront neighborhoods. (MHP, p. 122 and 131, proposed height substitute provisions crafted to maintain Chapter 91 building envelope slope).

On the Hodge Boiler Works site, the Waterways Regulations restrict heights within 100 feet of the high water mark to 55 feet, with height stepping up at a 2:1 slope to a maximum of 160 feet along Sumner Street. Similarly for Clippership Wharf, Chapter 91 would allow heights that begin at 55 feet along the waterfront, stepping up to a 170-foot maximum along portions of Marginal Street. The City and the MHP Advisory Committee, responding to community input and recognizing that these heights would be out of character with surrounding neighborhoods, proposed generally lower building heights (subject to site-specific requirements) setting site-wide maximums of 80 feet. Within 100 feet of the project shoreline at Hodge Boiler Works, and within 100 feet of the wharf ends at Clippership Wharf, heights shall not exceed 65 feet, and should maintain the Chapter 91 profile and transition from 65 feet to 80 feet at a slope of 2:1. In areas where FPAs with floor-to-floor heights approaching 19 feet will be located, the City proposes that additional heights up to 86 feet be allowed. Areas where 86-foot heights will be allowed will also be required to slope up at the 2:1 ratio. For both the Hodge and Clippership projects, along Sumner Street, heights will begin at 65 feet and shall rise to the site-wide maximum of 80 feet (excepting ground floor FPA areas where 86 feet will be allowed) in a manner to be determined by the City of Boston's Article 80 process.

The following is a summary of the proposed height substitute provisions under the MHP.

Hodge Boiler Works: Proposed Height Substitute Provision (310 CMR 9.51(3)(e))

- Establish a general height limit of 80-feet throughout the site, subject to the following conditions:
 - Maximum heights of 65 feet along Sumner Street. Maximum height of 65 feet within 100 feet of the shoreline, with heights increasing to the interior of the site at a slope of 2:1.
 - For those portions of buildings located outside the 65-foot height limit along Sumner Street and more than 100 feet from the shoreline, allow building heights to increase to 86 feet when necessary to accommodate ground floor FPAs approaching 19 feet in ceiling height.

Clippership Wharf: Proposed Height Substitute Provision (310 CMR 9.51(3)(e))

- Establish a general height limit of 80-feet throughout the site, subject to the following conditions:
 - Maximum heights of 65 feet along Sumner Street. Maximum height of 65 feet within 100 feet of the wharf ends, heights increasing to the interior of the site at a slope of 2:1.
 - For those portions of buildings located along Lewis Street seaward of Marginal Street, allow building heights to increase to 86 feet when necessary to accommodate ground floor FPAs.

Analysis

As summarized in Table A, my analysis of the proposed height substitute provisions must determine whether or not they meet the approval standard set forth at 301 CMR 23.05(2)(c)(5): “the plan must specify alternative height limits and other requirements which 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.”

I must also determine whether the proposed offsets and other mitigation measures, if necessary, are proportional to the adverse effects attributable to the height substitute provisions. Under the regulations, the burden is on the municipality to show that the proposed provisions “will promote, with comparable or greater effectiveness, the state tidelands policy objectives.” 301 CMR 23.05(2)(d).

This section of the Decision discusses the Hodge Boiler Works and Clippership Wharf project sites together, because of the similarities in the nature of each proposed height substitute provision. However, for clarity of subsequent permitting, my determinations on each proposed substitution are stated on a project-by-project basis.

Where appropriate, previous Boston Harbor plan decisions have looked to the characteristics of the built environment and the nature of the area of the harbor in question to assess whether proposed building heights were relatively modest in size. This approach is clearly applicable to my evaluation of the proposed height substitute provisions, given the built nature of the East Boston waterfront and the harbor planning area.

With the exception of LoPresti Park, the area surrounding the Clippership Wharf and Hodge Boiler Works sites is characterized generally by multi-story development exhibiting a variety of building heights. To the west and adjacent to LoPresti Park, three existing buildings on the New Street Properties range in height from 3 to 5 to 9 stories. The Maverick Garden area to the north, across Sumner Street, currently consists of multiple three-story buildings. This housing project is scheduled to be re-built pending grant funding and, although final heights have yet to be determined, I understand that Boston Housing Authority guidelines have designated two areas that might accommodate building heights of up to 70 feet. To the east of Hodge and the north of

Clippership, the Clippership Apartments, which I understand may also be redeveloped to include buildings 70 feet tall, currently range up to two stories, while the existing Heritage Apartments include 3, 5, and 6-story buildings. At the relatively higher elevations across Sumner Street, numerous small individual structures ranging from two to three stories in height continue back towards Maverick Square.

Finally, in conjunction with the recently signed Massport/DEP MOU, new residential development is being proposed for Pier 1 and its adjacent uplands, across Lewis Mall from Clippership Wharf. Buildings heights for this project will be governed by the height provisions of the MOU that limit the height of buildings over flowed tidelands to 55' and those within 100' of the high water mark to 60'. Buildings located on the remainder of the upland portion of the site are capped at a maximum height of 75 feet.

Massing Analysis

As required in the Notice to Proceed, the BRA has submitted a massing analysis for each site comparing the gross volume associated with MHP building heights with that attainable under the Waterways Regulations. Based on this analysis, it would appear that the proposed MHP height substitute provisions will result in massing figures that are on the order of 65% (Clippership) to 90% (Hodge) of those achievable through strict conformance with the Waterways Regulations. This approach to MHP building heights also responds to guidance provided in the Notice to Proceed in which I requested that the City of Boston consider input during the extensive public participation process carefully, ensuring that general design principles, particularly as they relate to building height, reflect the built environment of the surrounding East Boston community. The community desire for relatively modest heights was expressed directly during the many meetings of the MHPAC in which residents generally favored building heights of no more than five to seven stories.

When viewed in the context of the existing and proposed development proximate to the sites described above, the proposed height substitute provisions will result in buildings that are clearly relatively modest in size. I would note, however, that while this approach yields an overall reduction in total massing for both sites individually (and obviously together) it also has the concomitant effect of shifting building mass seaward where, pursuant to the Waterways Regulations, all buildings within 100 feet of the high water mark must be no greater than 55 feet in height. To ensure that any shift in mass towards the waterfront will result in ground-level conditions that are conducive to pedestrian-level activities along the waterfront, I will, therefore, require strict minimum setbacks from the high water mark for height, which I will discuss at the end of this section, and minimum building setback dimensions to the project shoreline, which I will discuss in my evaluation of the MHP Water-Dependent Use Zone (WDUZ) provisions.

Wind Analysis

I have reviewed the wind analyses provided for the Chapter 91 and MHP build-out conditions for the Hodge and Clippership sites as required by the Notice to Proceed. Although qualitative in nature, the studies characterize a variety of wind conditions frequently experienced by the region and evaluated ground-level conditions based on the requisite build-out scenarios.

Based on a review of these analyses, I was pleased to see that the MHP compliant scenario will experience favorable ground-level wind conditions that are generally suitable for a variety of ground-level pedestrian activities along the waterfront because of the orientation of the East Boston waterfront relative to typical seasonal wind patterns for the Boston region.

With the exception of less frequent storm events (which would also coincide with periods of low pedestrian activity), none of the projected wind conditions at selected locations on either site appear to fall within Category 5 (Dangerous and Unacceptable) levels for the MHP compliant scenario. I understand that the projected wind conditions for the MHP compliant scenario meet current BRA wind standards for new projects and that Category 4 (Uncomfortable for Walking) winds will be established as the threshold for acceptable wind conditions within the harbor planning area. I do not find, therefore, that the level of adverse wind impacts predicted under the MHP compliant wind analysis will require additional offsets.

As with previous MHP decisions, I am requiring that for the Hodge Boiler Works and Clippership Wharf projects, ground-level ambient wind speeds should not exceed City “pedestrian safety/comfort wind standards” for assessing the relative wind comfort of pedestrians (as they may be revised in the future). I will look to the MEPA/Chapter 91/Article 80 processes to evaluate appropriate design modifications and mitigation features that will ensure that these standards are achieved for the two sites as they progress in design. Those measures determined through the MEPA process as necessary to achieve this standard, shall be included as conditions of all Chapter 91 licenses.

Shadow Analysis

I have also reviewed the comparative shadow impacts analyses, submitted in accordance with the height substitute provision guidance of the Notice to Proceed, depicting Chapter 91 baseline and MHP build-out conditions for the Hodge and Clippership sites. As with previous Boston MHPs, the analyses compare projected Chapter 91 and MHP compliant shadow conditions, hourly from 9:00 a.m. to 5:00 p.m., based on the movement of the sun on October 23.

My review of the Chapter 91 baseline and MHP build-out shadow studies indicates that, for both scenarios, only the waterfront area immediately to the west of the Hodge site, including the northwest corner of LoPresti Park, will be subjected to periods of shadow. This period of shadow appears to occur in the earlier morning hours, leaving the park in sunshine shortly after 10:00 a.m. Indeed, due to the orientation of the waterfront with respect to the sun’s path, in general, it would appear that ground-level conditions along this stretch of East Boston waterfront should be conducive to pedestrian activity for the majority of this “shoulder” season day. For this reason, I am comfortable that any adverse impacts resulting from shadow can be offset satisfactorily in the manner set in the MHP, which requires that an additional square foot of public open space be provided within the project site for every two (2) square feet of net shadow impact created by the project within Chapter 91 jurisdiction.

Approved Substitute Provisions

Based on this evaluation, I am approving the proposed height substitute provisions for the Hodge Boiler Works and Clippership Wharf sites. These substitutions will be subject to the conditions listed below as arranged for Hodge Boiler Works, Clippership Wharf, and those conditions which apply to both sites.

Hodge Boiler Works

- For the Hodge Boiler Works site, with the minor exception below, all buildings located along Sumner Street shall be no taller than 65 feet in height, and shall slope upward at an angle to be determined by the City of Boston's Article 80 process. All buildings within 100 feet of the high water mark shall be no taller than 65 feet in height. Landward of this zone (i.e., beyond 100 feet from the high water mark) building height(s) may increase at the ratio of one (1) vertical foot in height for every two additional (2) horizontal feet from the 100 foot line up to a maximum of 80 feet for the entire site. For continuity between the local and state permitting processes, heights shall be measured in accordance with the Boston Zoning Code, which I understand to be very similar to the requirements of the Waterways Regulations.

I recognize that application of this requirement to the existing shoreline geometry in the area where the Hodge site abuts LoPresti Park will result in an awkward upper level building configuration with little or no improvement to the pedestrian-level environment along the waterfront or within the adjacent park. I am requiring, therefore, a minimum building setback of 40 feet from this corner with a final building setback determined by DEP during the Chapter 91 licensing process (this requirement is also discussed in my evaluation of the WDUZ for the Hodge Boiler Works site, later in this Decision). For this area of the site only, buildings may be located at the minimum building setback from the high water mark with heights starting at 65 feet and increasing to a maximum of 80 feet at a slope of 2:1, provided the building(s) are otherwise in conformance with the requirements describing the 100-foot height setback from the high water mark discussed above. I believe that this exception also provides consistency with the height provisions approved on the adjacent Clippership Wharf site discussed in the following section.

Clippership Wharf

- For the Clippership Wharf site, all buildings located along Sumner Street and within 100 feet of the high water mark at the wharf ends shall be no taller than 65 feet in height. As with the Hodge site, heights shall be measured in accordance with the Boston Zoning Code. Landward of the wharf ends building height(s) may increase at the ratio of one (1) vertical foot in height for every two additional (2) horizontal feet from the 100 foot line up to a maximum of 80 feet for the entire site. The rate at which the height may increase from 65 feet at Sumner Street to a site-wide maximum of 80 feet shall be determined during the City of Boston's Article 80 process.

As discussed above, the adoption of a site-wide maximum allowable building height, while typically resulting in a reduction of massing can also have the unintended effect of shifting building mass to the waterfront. For this reason, I am approving this height substitute provision, subject to the following setback conditions.

- All buildings shall be set back a minimum of 100 feet from the high water mark along the solid fill wharf ends (which I understand will constitute the development shoreline once the existing deteriorated pile field has been removed). From the 100-foot wharf end setback line, building heights may increase landward at a slope of 2:1.
- All buildings shall have minimum setbacks of 45 feet on the western side of the project (referred to as the “westerly wharf”), 40 feet on the eastern side of the westerly (wider) wharf (so-called “cove” side), and 30 feet on the western side of the easterly (narrower) wharf. These setbacks shall be measured from the mean high water mark along the solid fill wharf sides, and from a line created on each side of the cove by extending the mean high water line 100 feet landward of the wharf base. For these shorelines only, the 65-foot height limit and 2:1 slope shall not apply.
- Given the shoreline geometry, I recognize these uniform setbacks are in some areas more, and in some areas less than those that would result from a strict application of Chapter 91 WDUZ calculations. To ensure, however, that building mass is not allowed to crowd the waterfront, potentially diminishing the pedestrian experience, and to provide a spatially seamless and more welcoming WDUZ, I will accommodate these minimum setbacks by allowing a reconfiguration of the WDUZ, in much the same manner that has been proposed for the Hodge site, as discussed in the following section.

Hodge Boiler Works and Clippership Wharf

- The City has requested that a maximum building height of 86 feet be allowed to accommodate ground floor FPAs with floor to ceiling heights in excess of those typically incorporated into contemporary development (on the order of 19 feet). While I am not persuaded of the need for such an allowance for most FPAs, based on the orientation of both sites and the resulting minimal impact to the ground-level environment associated with both wind and shadow, I am conditionally approving the City’s site-specific height request for both the Hodge and Clippership sites, subject to a final determination in the Article 80/MEPA/Chapter 91 Licensing processes evaluating whether or not such an increase is warranted to accommodate final building designs and provided that buildings do not project through the 2:1 slopes measured as described above. The stated intention for allowing this additional height (up to 86 feet) over ground floor FPAs is to provide a direct benefit to the FPA space, as opposed to allowing additional height in general. Therefore, as part of this condition, those building areas where an 86 foot height is allowed due to the presence of ground floor FPAs shall not be allowed to construct more floors than would be constructed in any other area of the building at 80 feet in height. For example, if

areas of the building subject to the 80-foot limit result in 7 floors, areas of the building with a maximum height of 86 feet must also result in 7 floors.

- Finally, this decision recognizes that any area of net shadow impact to be offset will not be determined until such time as final building designs have been completed. I am requiring, therefore, that this area calculation be determined during the MEPA process and used by DEP in the Chapter 91 licensing process for final offset specification. Future Chapter 91 licenses must include clear and enforceable conditions ensuring that offsets will be provided in a timely fashion, commensurate with the accrual of project-related private benefits. For the purposes of this Decision, the net shadow impact shall be calculated and offset as provided in the MHP.

Subject to these conditions (and the minimum setback distances discussed in the following section), I find that the proposed height substitute provisions for the Hodge Boiler Works and Clippership Wharf sites 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.”

Proposed Water Dependent Use Zone (WDUZ) Substitute Provision (310 CMR 9.51(3)(c)): Hodge Boiler Works

The Waterways Regulations establish uniform dimensional requirements for a “water-dependent use zone” (WDUZ), to ensure that sufficient space along the water’s edge will be available to accommodate water-dependent activity and public access. On the Hodge Boiler Works site, baseline calculations under the Waterways Regulations, with the exception of a common shoreline corner shared with LoPresti Park, would result in a WDUZ that generally parallels the waterfront, approximately 90 to 100 feet from the water’s edge. The MHP proposes modifications to the Chapter 91 compliant WDUZ configuration, in which reductions in the setback on some parts of the side would be offset by increased setbacks in other areas, resulting in a total WDUZ area that is equal to or greater than the total area required under the Regulations. The City’s proposed WDUZ substitute provision for the Hodge Boiler Works site can be summarized as follows.

Hodge Boiler Works: Proposed WDUZ Substitute Provision (310 CMR 9.51(3)(c))

- Allow a reconfiguring of the WDUZ such that:
 - The total area of the reconfigured WDUZ shall be greater than or equal to the area of the Chapter 91 compliant WDUZ.
 - In areas where buildings with FPTs are proposed, the WDUZ shall be no less than 75% of that required under the regulations, with a minimum of 35 feet.
 - The minimum depth of the WDUZ shall be 25 feet in the area of the proposed London Street extension to allow for a nonwater-dependent use public activity structure.

Analysis

In the case of the Hodge Boiler Works site, I support the City's use of the MHP process to modify the Chapter 91 baseline condition for the WDUZ to one that offers the flexibility and utility to promote public use of and activity along the waterfront more effectively. From the information provided with the MHP, I note that two areas (one mirroring the proposed London Street extension and one paralleling the waterfront) have been identified as "Critical Open Space Areas." While lacking the dimensional specificity that I would prefer in order to ensure that the open space areas are implemented, I applaud the City's goals of ensuring that the public will not only have access along the waterfront over the proposed Harborwalk, but also visual and physical access laterally to the waterfront. The final design and implementation of these public access features can only be enhanced through a carefully reconfigured and geometrically compatible WDUZ. Based on my review, I have concluded that with appropriate minimum setback distances, the WDUZ can be reconfigured in a manner that will more effectively activate the waterfront.

Clippership Wharf

In the case of Clippership Wharf, no similar substitute provision allowing flexibility in WDUZ geometry was requested by the City. DEP has commented to CZM that the Chapter 91 baseline WDUZ depicted in the MHP for the Clippership Wharf site is calculated in a manner different than that used in the Chapter 91 licensing process. Specifically, the MHP calculations were made by characterizing the easterly and westerly projecting land forms of the Clippership site as a "wharf side" for its entire length (reflecting the historic wharf shape).

310 CMR 9.51(3)(c)(1),(2) & (3) set forth distinct and specific methodologies for the calculation of WDUZs along project shorelines, wharves and piers. While "wharf" and "pier" are not defined in 310 CMR 9.00, DEP has interpreted these terms as referring to projecting, narrowly configured structures (either filled wharves or pile-supported piers) characterized by multiple sides or containing "edges immediately opposite." Where site geometry or configuration does not include a base and opposing edges (sides), the methodology used for calculating a WDUZ is that for a project shoreline as described at 310 CMR 9.51(3)(c)1. Based on this interpretation, the methodologies set forth at 310 CMR 9.51(3)(c)(2) & (3) for the calculation of the Chapter 91 WDUZ should be used only for that portion of the Clippership land currently exhibiting a base and opposing sides. The remainder of the eastern and western site edges comprise a "project shoreline" with a corresponding Chapter 91 WDUZ calculated in accordance with the methodology set forth at 310 CMR 9.51(3)(c)(1).

Acknowledging DEP's interpretation of 310 CMR 9.51(3)(c)(1), (2) & (3), while at the same time approving the intent of the MHP, I am imposing certain conditions associated with the height substitution. In order to accommodate the setback condition associated with the height substitution, I must allow for a reconfiguration of the WDUZ for the Clippership Wharf site. The combined effect of these conditions will allow for a WDUZ configuration that accommodates building locations on the Clippership Wharf site as reflected in the MHP and the ENF previously submitted to MEPA. As discussed above, because my approval of the proposed height substitute provision for this site would allow a shifting of building mass towards the

water, attention to the pedestrian-level environment is critical – particularly in those areas for which strict conformance with the Waterways dimensional standards result in a narrow WDUZ such as along the sides of narrow piers and at the ends of short piers.

The project shoreline for this site consists of upland shoreline and two short wharves, separated by watersheet. When the Waterways dimensional requirements are applied strictly to project shorelines, wharf ends and sides, such as those that comprise Clippership Wharf, the resulting WDUZ can take the geometric form of a series of discrete, and indeed confusing, public areas defined by abrupt changes in width and general direction. Further, when viewed in the context of the proposed height substitution, the geometry of the wharves and shoreline is such that in some areas buildings with increased height could be sited relatively close to the waterfront while in other areas buildings of the same height would be located disproportionately farther from the water's edge. For these reasons, I believe that allowing for a reconfigured WDUZ approach, with minimum building setbacks established to address potential height impacts related to a seaward shift in massing, will provide sufficient design flexibility to develop a WDUZ of a vastly improved geometry that will promote and encourage public waterfront activity and potential water-dependent uses more effectively than one constructed in strict conformance with the Waterways Regulations.

Therefore, for the Hodge and Clippership sites, I am allowing the WDUZ to be reconfigured dimensionally provided that, for all cases, the total area of the reconfigured WDUZ shall be greater than or equal to the area of the Chapter 91 compliant WDUZ for each site, subject to the following conditions:

- The area of the Chapter 91 compliant WDUZ shall be determined as part of the Chapter 91 Licensing process for each site.
- Based on the planning level of detail submitted with the MHP, it would appear that the existing piers and pile fields located on the Hodge and Clippership sites are in poor condition. Indeed, the development of the Clippership site includes removal of these structures and restoration of the watersheet. The structures located over flowed tidelands on the Hodge site appear to be in a similar state of disrepair. I am requiring, therefore, that the WDUZ for both sites shall be measured from the project shoreline as defined by the high water mark along upland shorelines and filled wharves, unless otherwise supported by an appropriate level of documentation during the Chapter 91 Licensing process.
- On the Hodge Boiler Works site, to integrate with Critical Open Space Area “B” (Figure 9-7 of the MHP), the minimum setback dimension shall be 75 feet from the project shoreline, except for the shoreline corner in common with LoPresti Park where it shall be a minimum of 40 feet, and for the specific case to accommodate a nonwater-dependent use public activity structure at the London Street extension where it shall be 25 feet.
- On the Clippership Wharf site, public parking will be allowed in the WDUZ on the western pier parallel to and landward of the public way in order to encourage public use of the site and the WDUZ. Two-hour public parking shall be enforced in order to discourage residential and/or commuter parking.
- On the Clippership Wharf site, the minimum setback dimensions shall be as follows:

- As depicted in the MHP and the ENF, a minimum of 100 feet along the high water mark with the exception of that area immediately to the southwest of the Boston Housing Authority's "Heritage Apartments" where it shall be a minimum of 25 feet, as required by the Waterways Regulations.
- A minimum of 100 feet from the high water mark along the solid fill wharf ends.
- Minimum setbacks of 45 feet on the western side of the westerly (wider) wharf, 40 feet on the eastern side of the westerly (wider) wharf (cove-side), and 30 feet on the western side of the easterly (narrower) wharf. These setbacks shall be measured from the high water mark along the solid fill wharf sides and from the high water mark continued from the wharf sides landward of the wharf base (generally the northeast-southwest oriented shorelines of the wharves projected landward).

Subject to these modifications, conditions, and minimum setback specifications, I am persuaded that the reconfiguration of the WDUZs for both the Hodge Boiler Works and Clippership Wharf sites will, with comparable or greater effectiveness, ensure that new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to the project shoreline in order that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access, as appropriate for the harbor in question. The approval standards are, therefore, met and that, having determined that the reconfigured WDUZ will not result in adverse impacts, no offsetting measures are required.

Proposed Substitute Provisions for Facilities of Private Tenancy (FPTs) (310 CMR 9.51(3)(b)): Hodge Boiler Works and Clippership Wharf & Proposed Substitute Provision for Facilities of Public Accommodation (FPAs) (310 CMR 9.53(2)(c)): Clippership Wharf

The Waterways Regulations prohibit siting nonwater-dependent facilities of private tenancy in all pile-supported structures over flowed tidelands and on the ground floor of any structure within 100 feet of the project shoreline. This requirement may be modified through the MHP process provided that communities specify alternative limitations and requirements that will maintain waterfront areas immediately adjacent to the WDUZ generally free of privatizing uses that conflict with, preempt, or discourage water-dependent activity or public use and enjoyment of the WDUZ.

Further, when located on Commonwealth Tidelands, such as a portion of Clippership Wharf, nonwater-dependent use projects must devote interior space at the ground level to facilities of public accommodation, other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use. The area of FPAs must be greater than or equal to the amount of square footage of all Commonwealth Tidelands on the project site within the footprint of buildings containing FPTs. In order to approve a substitute provision for this requirement I must determine that the MHP specifies alternative requirements for interior FPAs that will, in a comparable and highly effective manner, establish the project site as a year-round locus of public activity.

The FPT/FPA related substitute provisions proposed for Hodge Boiler Works and Clippership Wharf would allow FPAs to be re-located to alternative locations other than those required by strict conformance with the Waterways Regulations. Notwithstanding the higher public benefit standard associated with the portion of Clippership Wharf located on Commonwealth Tidelands, the substitute provisions for both sites are similar. For this reason I will evaluate proposed MHP FPA/FPT modifications in the general context of the combined sites, noting specific approval conditions for each site to ensure that compliance with appropriate approval standards is achieved.

Hodge Boiler Works: Proposed FPT Substitute Provision (310 CMR 9.51(3)(b))

1. Allow re-organization of FPAs, subject to the following conditions:
 - The total area of FPAs to be provided on-site shall equal the area resulting from a WDUZ constructed in strict conformance with 310 CMR 9.51(3)(b).
 - Some FPAs may be reallocated along Critical Open Space Area B and within a freestanding public activity structure.
 - Some FPAs will be located within 100 feet of the project shoreline adjacent to LoPresti Park.
2. No offsetting measures were proposed.

Clippership Wharf: Proposed FPT Substitute Provision (310 CMR 9.51(3)(b)) & Proposed FPA Substitute Provision (310 CMR 9.53(2)(c))

Two FPA/FPT related substitute provisions are proposed for the Clippership Wharf site.

1. Allow FPTs to occupy a portion of the ground floors of nonwater-dependent structures located within 100 feet of the project shoreline and on Commonwealth Tidelands, subject to the following conditions.
 - Ground floor FPT space in the area seaward of Marginal Street to be restricted to artist live/work space.
 - Workspace associated with resident artists shall be open to the public at least twice a year.
 - The total area of ground-level FPT space within areas of the site that would otherwise be required to be FPA shall not exceed 10,500 SF.
 - The following offsetting measures were proposed:
 - **Offset 2.1:** Additional WDUZ area on Commonwealth Tidelands along the western side of the site with outdoor arts programming related to the FPA space to be located at the end of the wharf. Offset ratio = 1 square foot (SF) of allowable FPT use to 2 SF of additional WDUZ area.
 - **Offset 2.2:** Provision of an “arts related” ground floor FPA space at the harbor-most end of the building on the westerly wharf of no less than 2000 SF. The space shall be provided at no cost for rental and fit-out to the occupants for the life of the Chapter 91 license (occupants shall be determined

in consultation with the BRA). Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA.

- **Offset 2.3:** On Private Tidelands more than 100 feet from the project shoreline, provision of a minimum of 1,000 SF of FPA space in buildings facing the water on the western side of the site. Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA use.
- **Offset 2.4:** Provision of no less than 1,000 SF of environmental/arts education FPA use, a portion of which may be used for a maritime museum, on the western side of the project. This space shall be provided at no cost for rental and fit-out to the occupants for the life of the Chapter 91 license (occupants shall be determined in consultation with the BRA). Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA use.
- **Offset 2.5:** Provision of no less than 1,000 SF of community FPA space at no cost for rental and fit-out to the occupants for the life of Chapter 91 license. This space may be combined with the FPA spaces provided in offsets 2.2 and 2.4. Offset ratio = 1 SF of allowable FPT use to 1 SF of free community FPA use if it is located on the western side of the site, and at a ratio of 2 SF of allowable FPT use to 3 SF of free community FPA use if it is not located on the western side of the site.
- **Offset 2.6:** On Private Tidelands more than 100 feet from the project shoreline, provision of FPA space in buildings facing Lewis Mall/Street or on the seaward side of Marginal Street. Offset ratio= 1 SF of allowable FPT use to 2 SF of FPA use.

2. Permit FPTs to occupy the ground-level of nonwater-dependent use structures that will be located within 100 feet of the existing high water shoreline but in excess of 100 feet from the edge of the former pile field to be removed.

- Square footage of FPTs to be offset at a ratio of 2 SF of watershed restoration (i.e., removal of deteriorating pile field) for every 1 SF of FPT space within 100 feet of the high water mark shoreline.

Analysis: Hodge Boiler Works

From the information provided with the MHP, the upland portion of the Hodge site appears to be located entirely on Private Tidelands, requiring that FPAs be located on the ground floor of all structures within 100 feet of the project shoreline. To approve a substitute provision that allows for the relocation of required FPAs from this area, I must determine that the MHP specifies alternative limitations and requirements that will maintain waterfront areas immediately adjacent to the WDUZ generally free of privatizing uses that conflict with, preempt, or discourage water-dependent activity or public use and enjoyment of the WDUZ.

As discussed above in my approval of a reconfigured WDUZ for this site, the MHP has designated a portion of the site coincident with the WDUZ as a Critical Open Space Area (Area B, Figure 9-7 of the MHP). Forming one waterfront edge of a cove adjacent to the westerly side of the Clippership site, the MHP highlights the significance of this waterfront area in terms of

physical and visual pedestrian access to the adjacent LoPresti Park. I agree with this characterization by the City and, although the MHP provides only general limitations and specifications, I am approving a substitute provision allowing for the re-organization of FPAs on the Hodge site, subject to the conditions below, that will ensure the area along this critical length of waterfront will be generally free of privatizing uses that conflict with, preempt, or discourage water-dependent activity or public use and enjoyment of the WDUZ.

Based on this evaluation, I am approving the following substitute provision to the requirements of 310 CMR 9.51(3)(b) allowing for a re-organization of FPA/FPT space on the Hodge Boiler works site, subject to the stated conditions and offsets.

Approved Substitute Provision:

FPTs may occupy a portion of the ground floors of nonwater-dependent structures located within 100 feet of the project shoreline (as determined by DEP during Chapter 91 licensing), subject to the following conditions:

- The total square footage of ground floor FPA space provided shall be greater than or equal to the amount of interior space where FPT would otherwise be prohibited by the Waterways regulations.
- Where FPA space is relocated from those areas required under strict conformance with the Waterways Regulations, I will look to the MEPA/Chapter 91 licensing/Article 80 processes to ensure that the alternative location promotes public use and enjoyment of the project site in a more effective manner.
- At least 50% of the FPA square footage must be provided at the ground level of any nonwater-dependent use structure located within 100 feet of the project shoreline adjacent to LoPresti Park. The remaining FPA space may be located at an alternative location(s) that serve to promote public use and enjoyment of the project site with particular attention focused along the LoPresti Park Open Space Connection.
- Although I support the placement of a free standing public activity structure adjacent to the reconfigured WDUZ, as a nonwater-dependent use structure with FPA requirements, in no case shall its FPA square footage be used to offset the square footage required for other nonwater-dependent use structures located within 100 feet of the project shoreline.

I am confident that this substitute provision, and the associated conditions, set forth above will, with comparable or greater effectiveness, ensure that waterfront areas immediately adjacent to the Hodge Boiler Works WDUZ remain generally free of privatizing uses that might conflict with, preempt, or discourage water-dependent activity or public use and enjoyment.

Analysis: Clippership Wharf

From the information provided in the MHP, the upland portion of the Clippership Wharf site appears to consist of Private and Commonwealth Tidelands. For that portion of the site located on Private Tidelands, therefore, my evaluation of the proposed modifications to the Waterways FPA requirements is identical to the Hodge Boiler Works analysis in which I must determine that the MHP specifies alternative limitations and requirements that will maintain waterfront areas immediately adjacent to the WDUZ generally free of privatizing uses that conflict with, preempt, or discourage water-dependent activity or public use and enjoyment of the WDUZ. Where the proposed modifications allow for the re-location of FPA space from the ground-level of nonwater-dependent use buildings located on Commonwealth Tidelands, I must further determine that the MHP specifies alternative requirements for interior FPAs that will, in a comparable and highly effective manner, establish the project site as a year-round locus of public activity

As discussed in the MHP, in public comment letters, and at numerous MHPAC meetings that members of my staff attended, the western side of the Clippership Wharf project site has the potential to be an area of significant public pedestrian activity within this East Boston harbor planning area. As discussed above, the geographic orientation of this portion of the waterfront within Boston Harbor contributes to favorable wind and shadow conditions at the ground level for much of the year for a variety of built scenarios. The geographic orientation of this site, in addition to providing a favorable ground level environment, provides a unique and spectacular view of the USS Constitution and the Bunker Hill Monument. This magnificent view corridor, located on Marginal Street, is referenced in Figure 9-8 of the MHP, “Concept for Open Space-Clippership Wharf.” I consider the Marginal Street view corridor to be an important component of Clippership Wharf’s activation strategy. The framing of these national monuments by the newly constructed residences, open spaces, and FPAs will draw pedestrians to the western edge of the site—an area where the most activation is needed. I believe that a well-crafted FPA strategy, along with the water transportation dock and facility proposed for the seaward extension of Lewis Street, the series of well-planned waterfront open space areas, the view corridor described above, and the Harborwalk connection to LoPresti Park, will serve to make this historic waterfront area one that draws public activity for much of the year.

For these reasons, any proposed FPT/FPA-related substitute provisions must be subject to a rigorous evaluation that will ensure that privatization of the waterfront, and in particular the western side of the Clippership site, is not an unintended consequence. While I applaud the City’s efforts in crafting offsetting measures designed to mitigate potential privatizing effects associated with the re-location of FPA space, I believe that additional, and more specific, measures are required to ensure that the approval standards for such a re-location, as it may relate to Private or Commonwealth Tidelands, are achieved.

I have considered carefully proposed substitute provision #2, under which the requisite “FPT Setback Zone” would be measured from the edge of the deteriorated pile slated for removal. While generally favoring the restoration of watersheet characterized by deteriorated pile fields and wharves whose licensed uses are no longer viable along the contemporary urban waterfront in question, I have concluded, that while laudable, such a restoration (as an offset)

does not contribute directly to MHP approval standards seeking to ensure that new development achieves interior and exterior public activation of the waterfront. Indeed, this specific case, which would allow an increase in FPT space proximate to the waterfront, may contribute to an increase in privatization along the crucial western side of the site.

Although the determination of the controlling features from which the “FPT Setback Zone” (and the WDUZ) is more appropriately resolved in the context of a Chapter 91 licensing process when detailed dimensional information is available, recognizing that the existing wharf structure will be removed, I have concluded that in order to satisfy the appropriate MHP standards, the appropriate control for measuring this “FPT Setback Zone” shall be the existing high water mark around the filled wharf structure and along the shoreline. This method is also consistent with my determinations related to the proposed height substitute provisions and WDUZs above. For this reason, I have combined the requested substitute provisions and refined the proposed offsets to reflect the requirements of the approval standards and the nature of public comment received by my office in a manner that I believe will achieve the City’s goals, while meeting the approval standards upon which I must base my determination.

Based on this evaluation, I am approving the following substitute provision to the combined requirements of 310 CMR 9.51(3)(b) and 310 CMR 9.53(2)(c) allowing for a re-organization of FPA/FPT space on the Clippership Wharf site, subject to the stated conditions and offsets.

Approved Substitute Provision:

FPTs may occupy a portion of the ground floors of nonwater-dependent structures located on Private Tidelands within 100 feet of the project shoreline (measured from the high water shoreline) and on Commonwealth Tidelands, subject to the following conditions and offsetting measures.

- The total square footage of ground floor FPA space provided shall be greater than or equal to the amount of interior space where FPT would otherwise be prohibited by the Waterways regulations.
- Where FPA space is relocated from those areas required under strict conformance with the Waterways Regulations, I will look to the MEPA/Chapter 91 licensing/Article 80 processes to ensure that the alternative location promotes public use and enjoyment of the project site in a more effective manner.
- All ground floor FPT space seaward of Marginal Street, and located in areas that the Waterways Regulations otherwise reserve for FPAs, shall be programmed exclusively as artist live/work space. The BRA shall annually certify to the Department of Environmental Protection that this use conforms to the City’s Artist Live/Work Program. Workspace associated with resident artists shall be open for public viewing at least twice per year. The mechanism for informing the public of these “open houses” shall be determined in the Chapter 91 licensing process.
- The total area of ground-level FPT space within areas of the site that would otherwise be required to be FPA shall not exceed 12,500 SF.
- The following offsetting measures shall be provided:

- **Offset 2.1:** A minimum of 6,000 SF of additional WDUZ area shall be provided along the western side of the site with outdoor programming related to the FPA space to be located at the end of the wharf. Additional WDUZ area – consisting of both Private and/or Commonwealth Tidelands shall be calculated as the difference in square footage between the Waterways compliant WDUZ and the final MHP compliant WDUZ. Such additional WDUZ area shall be located at the end and/or westerly side of the western wharf. This area shall also include such amenities such as benches, lighting, fishing stations, fishing pole rental and fish cleaning stations. Offset ratio = 1 square foot (SF) of allowable FPT use to 2 SF of additional WDUZ area.
- **Offset 2.2:** A minimum of 2,000 SF of “arts related” ground floor FPA space at the harbor-most end of the building on the westerly wharf (building #2 as generally depicted on figure 4-9 of the Clippership Wharf ENF). The space shall be provided at no cost for rental and fit-out to the occupants for the life of the Chapter 91 license, and occupants shall be determined in consultation with the BRA. Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA.
- **Offset 2.3:** On Private Tidelands, a minimum of 1,000 SF of FPA space in buildings facing the water on the western side of the site (building #4 or #5 as generally depicted on figure 4-9 of the Clippership Wharf ENF) more than 100 feet from the project shoreline. Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA space.
- **Offset 2.4:** On Private or Commonwealth Tidelands, a minimum of 1,000 SF of environmental/arts education FPA space, a portion of which may be used for a maritime museum, on the western side of the project (building #2 as generally depicted on figure 4-9 of the Clippership Wharf ENF). This space shall be provided at no cost for rental and fit-out to the occupants for the life of the Chapter 91 license (occupants shall be determined in consultation with the BRA). Offset ratio = 1 SF of allowable FPT use to 1 SF of FPA use.
- **Offset 2.5:** On Private or Commonwealth Tidelands, a minimum of 1,000 SF of community FPA space located on the western side of the site at no cost for rental and fit-out to the occupants for the life of Chapter 91 license. This space may be aggregated with the FPA spaces provided in offsets 2.2 and 2.4. Offset ratio=1 SF of allowable FPT use to 1 SF of free community FPA space if it is located on the western side of the site, and at a ratio of 1 SF of allowable FPT use to 2 SF of free community FPA use if it is not located on the western side of the site.
- **Offset 2.6:** On Private Tidelands, a minimum of 5,000 SF of FPA space in buildings facing Lewis Mall/Street only. Offset ratio=1 SF of allowable FPT use to 2 SF of FPA use.

As modified, and subject to the conditions and offsets set forth above, I find that the proposed FPA/FPT substitute provision for Clippership Wharf will, with comparable or greater effectiveness, ensure that waterfront areas immediately adjacent to the Hodge Boiler Works WDUZ remain generally free of privatizing uses that might conflict with, preempt, or discourage water-dependent activity or public use and enjoyment and establish the project as a year-round

locus of public activity. I would like to note that the ratios used above for determining the required FPA space were developed in accordance with the guiding MHP language which states that requirements should be developed which are “appropriate for the harbor in question.” In this particular case, the reallocating of FPA space from the ground floor of the western side of the site to Lewis Mall/Street serves to activate an important connection from Maverick Square down to the shoreline. Future harbor planning efforts will no doubt encounter different conditions which will require a different approach to offset formulas.

VIII. ENFORCEABLE IMPLEMENTATION COMMITMENTS

Pursuant to 301 CMR 23.05(5), the plan must include enforceable implementation commitments that will ensure that all measures to offset the effect of any plan requirement less restrictive than the corresponding requirement of the Waterways Regulations will be taken in a timely and coordinated manner. Chapter 10 provides a general discussion of future zoning measures that the City will pursue to ensure effective implementation of this plan.

I understand that once this MHP has been approved, amendments establishing permanent zoning may need to be approved to codify the use and dimensional requirements within the harbor planning area, in accordance with the principles of the *East Boston Master Plan* (MHP p. 30-31). In addition, this zoning amendment will include general Standards and Guidelines for the Watersheet, Urban Design Guidelines, and Universal Design Guidelines (MHP, Chapter 8). A zoning amendment, which itself is subject to a public process, must be approved by the BRA and the Zoning Commission prior to final authorization by the Mayor.

Another form of permanent zoning is a Planned Development Area (PDA). PDAs, established through the use of overlay districts, provide greater flexibility in exchange for additional project development controls. From the MHP, I understand that the Clippership Wharf site lies within an existing PDA that may require modification in order to conform to the specific provisions of the MHP and this Approval decision.

In my judgment, the groundwork is well established for the effective implementation of the policies and commitments set forth in the East Boston Waterfront MHP, as modified by the conditions of this Decision. The MHP Regulations at 301 CMR 23.04(6) require that for an approved plan to become effective for the purposes of 310 CMR 9.00 (the Waterways Regulations), I must determine that the City has met all relevant conditions of the approval decision, including but not limited to those related to the implementation of any ordinances/bylaws, regulations, capital improvements, programmatic initiatives, or organizational measures. When such implementation requires adoption or other formal action by a municipal body, the Secretary shall make this determination only if the Executive Secretary to the Boston Zoning Commission has certified in writing that all such actions have been taken and has submitted copies of the enactments in question to the Secretary. As with previous MHPs dependent on future codification of significant policies and commitments, I am comfortable approving this MHP subject to the conditions below in accordance with 301 CMR 23.04(6). (*See, e.g.,* discussion of amplifications, Municipal Harbor Plan Decision for the town of Chatham (1994) at pages 12 – 16.):

- 1) Prior to the adoption or modification of PDAs or other forms of permanent zoning, the City shall submit a final draft of all bylaws, ordinances, regulations, etc., relevant to the implementation of this MHP and the conditions of this Decision, to the Secretary for review;
- 2) Upon adoption of the bylaws, ordinances, and regulations, the City shall provide the Secretary with a written certification from the Executive Secretary to the Boston

Zoning Commission that such action has been taken, along with copies of the relevant enactment; and

- 3) In no case shall the provisions of this plan, as they relate to substitute provisions or other modifications of the Waterways Requirements (310 CMR 9.00), be applied by DEP to projects located in the harbor planning area, until such time as appropriate PDAs or other permanent zoning measures have been adopted.

In this manner, I am confident that, in addition to meeting the requirements of 301 CMR 23.04(6), any inconsistencies between City zoning, the Approved Plan and its conditions, and the Waterways Regulations (in which case the Waterways regulations would be applied strictly) can be avoided.

IX. EFFECTIVE DATE AND TERM OF APPROVAL

Except with respect to any portions of the Plan or any revisions thereto subject to further review and approval by the Secretary pursuant to any of the foregoing requirements and conditions, this Decision shall take effect as discussed above, in accordance with 301 CMR 23.04(6). The Decision shall expire ten (10) years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06. 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 Plan.

X. 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 East Boston Waterfront District Municipal Harbor Plan. This approval is subject to all requirements, modifications, limitations, qualifications, and conditions set forth in this Decision. This Decision shall take effect immediately upon issuance on July 15, 2002 and shall expire on July 15, 2012.

The approved East Boston Waterfront District Municipal Harbor Plan (“Approved Plan”) shall be the plan dated March, 2002 and the conditions of this Approval Decision. For Waterways licensing purposes pursuant to 310 CMR 9.34(2), 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 March 2002, 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, express or implied, as to geographic areas or activities subject to licensing jurisdiction under M.G.L. Chapter 91 and the Waterways regulations; in particular, the approximate locations of the historic high and low water marks for the harbor planning area has been provided by DEP for planning purposes only, in order to estimate the area and nature of filled tidelands in said area, and does not constitute a formal ruling of jurisdiction for any given parcel.
3. Any proposed modifications to the Waterways Regulations, express or implied in the MHP document as submitted, not approved explicitly by this Approval Decision.
4. Any provision which, as applied to the project-specific circumstances of an individual Chapter 91 license application, is determined by DEP to be inconsistent with the Waterways Regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

Bound copies of the Approved Plan incorporating this Approval Decision as an attachment shall be kept on file by the Boston City Clerk, the Boston Redevelopment Authority (BRA), the Boston office of CZM, and the Boston office of DEP/Waterways.

By letter from the Acting Program Chief of the Waterways Regulations Program, dated July 12 , 2002, 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.

Bob Durand
Secretary of Environmental Affairs

Date