

Decision on
The City of Boston's
Fort Point Channel
Phase I Municipal Harbor Plan

October 10, 2002

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I. INTRODUCTION

Today, I am approving, subject to certain conditions, the Phase I Fort Point Downtown Waterfront Municipal Harbor Plan (“MHP” or “the Plan”), which encompasses the planning area identified in **Figure 1**, submitted by the City of Boston through the Boston Redevelopment Authority (BRA), on May 21, 2002.

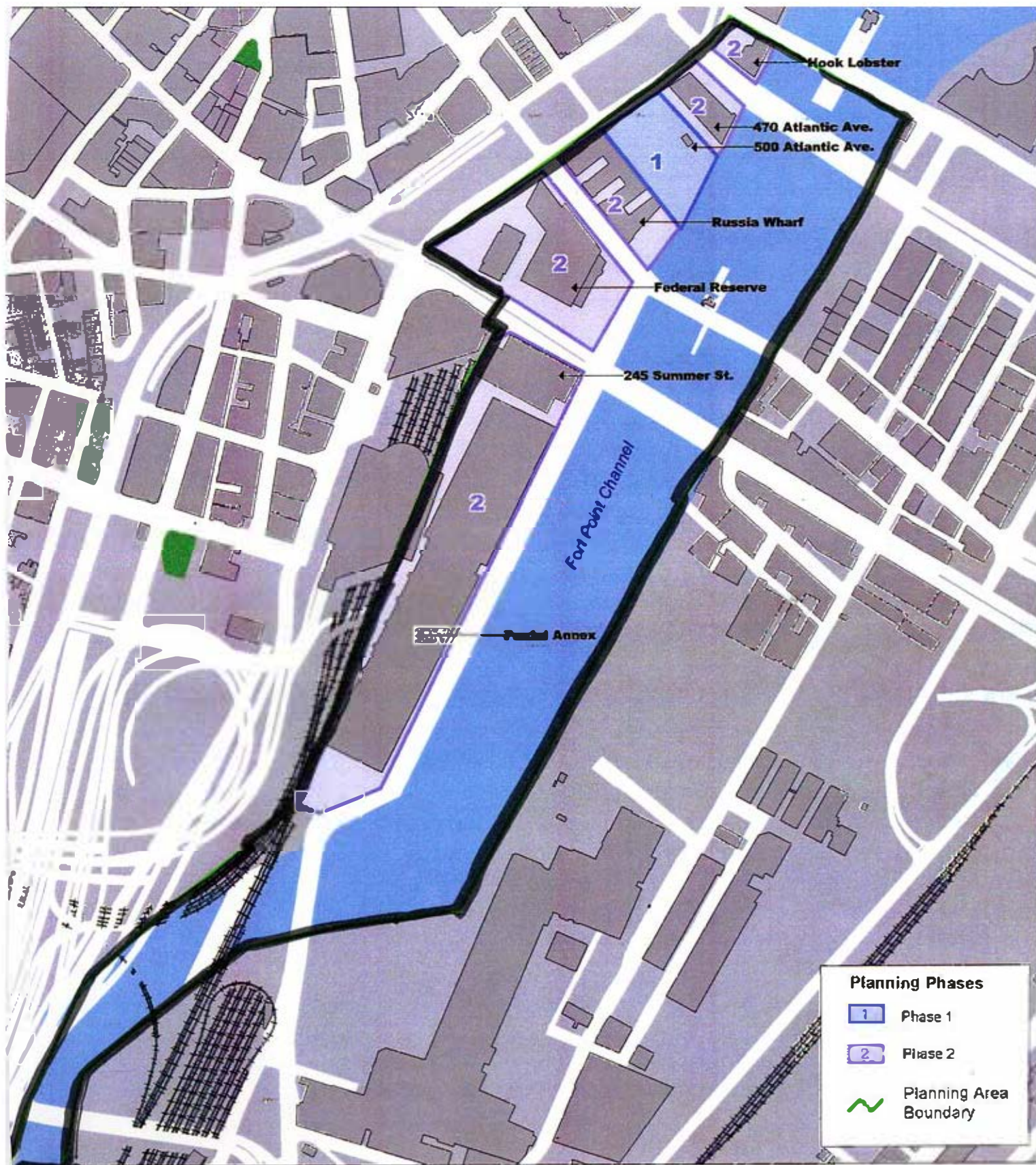
The Plan has been reviewed in accordance with procedures contained in the MHP regulations found at 301 CMR 23.04. Following submittal on May 21, 2002, notice of the Plan’s availability for review was published in the Environmental Monitor on June 8, 2002. This notice date initiated a 30-day public comment period wherein interested parties were invited to send comment letters regarding the Plan to the Massachusetts Office of Coastal Zone Management (CZM). Seven comment letters were received from public agencies, private citizens, and advocacy groups. The required public hearing was held on June 26, 2002 at the Children’s Museum in South Boston where testimony regarding the City’s proposed Plan was taken.

A. Geographic Area

The Fort Point Downtown Waterfront Harbor Planning Area comprises approximately 37.34 acres of land and 44.02 acres of adjacent Fort Point Channel watersheet. Seven parcels of land are included within this harbor planning area. The planning area is bounded by the southern edge of the Old Northern Avenue Bridge to the north, the Fort Point Channel to the east and south. It is bounded on the west by Atlantic Avenue from the Old Northern Avenue Bridge south as far as Summer Street, then along Summer Street easterly to 255 Summer Street (Formally Stone & Webster Building), southerly along the westerly side of the 255 Summer Street Building, the Postal Service facility, and down south to the Dorchester Avenue Bridge. The entire planning area falls within the geographic jurisdiction of the Waterways regulations.

The Phase I area (phasing is discussed below) comprises approximately 2.80 acres of land and wharf on the east side of Atlantic Avenue, between Congress Street and New Northern Avenue and adjacent to the Fort Point Channel, and is referred to as 500 Atlantic Avenue. The entire Phase I Area is comprised of filled or flowed tidelands. Approximately half of the Phase I Area is located on Commonwealth tidelands, and half is located on private tidelands.

The majority of the southern half of the Phase II planning area consists of Commonwealth tidelands, while the northern half of the Phase II planning area is approximately evenly divided between Commonwealth and private tideland areas.



0 500 1000
feet

Figure 1
Planning Area Boundary

B. Phasing

The City's Request for Notice to Proceed (September 14, 2001) proposed a four-phased approach to the development of this MHP in order to consider first those projects within the planning area whose design plans were most advanced. CZM viewed such an approach as "antithetical to the comprehensive approach envisioned by the MHP regulations," and, in the Notice to Proceed (NTP) issued by CZM's Director in November, 2001 for the Fort Point Channel planning area approved a two-phased planning approach designed to: a) allow the substantially developed 500 Atlantic Avenue project to move ahead; and b), respect the City's overall MHP efforts. Specifically, the NTP allowed the 500 Atlantic Avenue site to move ahead of other projects in the harbor planning area in order to facilitate the "wrapping" of the previously approved Central Artery/Tunnel (CA/T) ventilation tower #3—a project that has been in planning for over 10 years. The mixed-use hotel and residential development encompassing the vent tower constitutes visual mitigation for the towers that, with rooftop mechanicals, will rise to 287 feet.

The Phase I planning area comprises approximately 2.8 acres of land and wharf on the east side of Atlantic Avenue, between Congress Street and New Northern Avenue, and adjacent to the Fort Point Channel. While this submission covers only the 500 Atlantic Avenue property with site-specific substitute provisions to the Waterways Regulations, it is intended to establish the planning framework for the entirety of the Fort Point Downtown Municipal Harbor Plan (Phases I and II), which is comprised of approximately 37 acres of land and wharf area. The following parcels will be addressed in a site specific manner in the City's Phase II submission:

- Hook Lobster
- 470 Atlantic Avenue
- Russia Wharf
- Federal Reserve Building
- 245 Summer Street
- US Postal Annex

The following are brief descriptions of each of these projects.

Hook Lobster

This half-acre parcel and the existing one-story wood structure is occupied by the James Hook Lobster Co., a wholesale and retail distributor of fresh seafood. A water-dependent use, Hook Lobster relies on seawater intakes from the Fort Point Channel to supply the on-site lobster tanks with the appropriate amount and temperature of fresh salt water. A destination as well as a truly marine industrial use, this site depends on favorable water quality in the Fort Point Channel for its operations. New development adjacent to the channel must therefore prevent any negative impacts to water quality. The future plans for this site appear to be generally compatible with the Phase I planning

principles, and detailed design plans for Hook Lobster will be discussed in the Phase II MHP Advisory Committee meetings.

470 Atlantic Avenue

This site is located immediately south of the Evelyn Moakley bridge, and immediately north of the 500 Atlantic Avenue site. The fourteen-story office building is located on approximately 55,496 square feet of land and pier, and half of the site is located on pilings. A new segment of Harborwalk on this parcel will connect to the proposed Harborwalk at the adjacent 500 Atlantic Avenue site upon completion of the hotel project. The 470 Atlantic site offers numerous public amenities including historic exhibits, a restaurant, rooftop observatory, and 24-hour publicly accessible restrooms. No substitute provisions, offsets or amplifications are anticipated for this property. This project proponent has agreed, via its Chapter 91 license, to contribute to the Fort Point Watersheet Activation Plan.

Russia Wharf

Russia Wharf, located at 530 Atlantic Avenue and 270-290 Congress Street, includes three existing 7-story buildings located on an approximately 95,000 square foot site. The three buildings comprise a National Register District and are potentially eligible as a Boston Landmark. The buildings are occupied by a mix of commercial and retail uses, and the pier portion of the site is used for parking. The majority of the site is filled tidelands. The CA/T project is completing the Harborwalk along this portion of the Channel as part of the Transitway construction process. As currently proposed, Equity Office Properties, the owners of this site, plan to erect a 22-story office/residential building atop the renovated brick structures. When complete, this development will include ground-floor retail, restaurants, gallery space, and a public waterfront plaza. As I understand the current proposed project, at least one substitute provision (for height) will be requested by the City in its Phase II MHP. In addition to the approval standards at 301 CMR 23.04, the proposed substitute provision(s) must be consistent with the planning principles set forth in the Phase I Fort Point MHP.

Federal Reserve Bank of Boston

This 600-foot office tower is located entirely on filled tidelands and contains approximately 242,305 square feet of land area. The Federal Reserve Bank is in the process of planning and re-landscaping its grounds. A new museum focusing on economic history will be located on the ground floor of the building. Plans for these improvements are preliminary in nature, and the Phase II MHP should ensure compatibility between the planning principles and any changes at the Federal Reserve Bank of Boston.

245 Summer Street

This site consists of a 12-story, 154-foot office building located entirely on filled tidelands, and contains approximately 81,958 square feet of land area. I understand that Pembroke Real Estate (a real estate division of Fidelity) recently purchased the building. The building is currently used for commercial office space. The building is located next to the South Station Intermodal Transportation Center, and includes a covered arcade that connects South Station with the Fort Point Channel. Future plans regarding this parcel are unclear at this time, but according to the MHP, a renovation may include a remodel of the existing structure with no changes to height or footprint. I look forward to a thorough discussion of these plans and specifically proposed ground floor uses of the building during Phase II advisory committee meetings.

US Postal Annex

The U.S. Postal Annex contains several connected buildings on approximately 429,237 square feet of land, all of which is filled tidelands. The Postal Annex buildings are 96 feet high and almost 2,000 feet long. The section of Dorchester Avenue along the waterside of the property is currently not available for public use. The Postal Service has expressed an intention to sell this parcel for redevelopment and move to another location.

South Station, owned and operated by the Massachusetts Bay Transportation Authority (MBTA) is currently running at 99% capacity (July 2, 2002 letter from David Eales, Manager, Realty Asset Management, USPS to Tom Skinner, Director, CZM). A Memorandum of Agreement (MOA) was signed in July of 2000 between the Executive Office of Transportation and Construction (EOTC) and the U.S. Postal Service that will allow for the accommodation of four additional tracks and associated platforms on the Postal Service site as part of its future redevelopment plans. I anticipate discussion of these interrelated projects to occur as part of the Phase II MHP Advisory Committee meetings. As with all sites in the harbor planning area, the Phase II MHP should ensure compatibility with all Phase I planning principles.

The Fort Point Downtown MHP area supports a wide variety of architectural styles and building sizes reflective of the rich history of this once vital maritime center. Although the channel is now crossed by low clearance, fixed-span bridges and is no longer used for commercial shipping purposes, the planning area remains a critical transportation hub. South Station, built in 1899, is a keystone in the state's transportation infrastructure today, serving Boston via the Red Line subway, and southern and western Massachusetts by commuter rail. Due to its proximity to South Station, the financial district, and downtown, the Fort Point Channel area supports a large volume of pedestrian traffic on a daily basis. The two-phased MHP and its associated Watersheet Activation Plan will result in vastly improved pedestrian access to the shores of the channel, and significant activation of this presently underutilized waterfront.

II. REVIEW OF BASIC PLAN ELEMENTS

The Approved Plan was developed through consultations with CZM and the Department of Environmental Protection (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 address 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 but are not limited to:

- 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.

The City and community's goals for the Fort Point Channel have been expressed through the following planning efforts: *South Boston Public Realm Plan (SBPRP)* (BRA, 1999), the *South Boston MHP* (BRA, 2000), and the *Fort Point Channel Watersheet Activation Plan* (BRA, 2002). Section 3.3 of the MHP describes other plans that are relevant to the current planning effort in the Fort Point Channel.

The SBPRP described the Fort Point Channel as an "intimately-scaled, narrow channel similar to a riverfront in the heart of an historic European city with active edges, small-scaled boats and activities in the water, many bridge crossings and a pedestrian scale." The Public Realm Plan also noted that "here, the water is the special place. It is here that the downtown and its commercial waterfront meet the Seaport." The SBPRP envisioned the combined water transport, boat activity and public use forming a dynamic setting for the variety of commercial, retail, office, entertainment and residential buildings of varying sizes on the land areas surrounding the channel.

In order to implement the Public Realm Plan, the City developed an MHP for the South Boston Waterfront in order to take advantage of the flexibility afforded by such a planning process. The resulting South Boston MHP will allow for the development of a waterfront area in keeping with Boston's urban character and mixed-use economy, and will promote public access, open space, and utilization of this prime stretch of shoreline. Although the South Boston MHP sought to address the water area of the Fort Point Channel, the Decision suggested that review of this significant harbor feature would be more appropriately addressed in the context of this MHP. The South Boston MHP did, however, establish a set of "planning objectives" created to relate the Channel to the five main goals of the Public Realm Plan, as follows:

- Promote access to Boston Harbor as a shared natural resource
- Preserve and enhance the industrial port
- Plan the District as a vital, mixed-use area

- Develop the District as an integral part of Boston's economy
- Enhance the South Boston community

The land area abutting the northwest side of the Fort Point Channel was not addressed in the South Boston MHP, and is the subject of this MHP Decision. The Notice to Proceed identified the geographic areas to be defined as the harbor planning area. For each phase, 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.

The City's vision for the Fort Point Downtown waterfront is that of a mixed-use neighborhood of widely varied building designs and uses. This Plan, in conjunction with the City's Watersheet Activation Plan (discussed later in this decision), looks to take full advantage of the destination qualities of the waterfront to bring the public, as well as new residents and businesses to this historic area. To serve anticipated resident and employee demand, water transit has been appropriately recognized as integral to the fabric of this revitalized district. This MHP proposes dramatically improved access to and along the shoreline through the construction of the Harborwalk across several interlinking waterfront properties. Along with potential on-the-water access facilitated by floating docks and "channel walk." I understand that the City is aware that landside encroachments onto the watersheet of the Fort Point Channel will require modifications to existing harborlines.

I am pleased to note that the City's plan for this area respects the current and potential water-dependent uses which occur along the Channel. Recognition of these priority uses and their particular operating requirements is essential to sustaining existing marine-related industry in this area. Further, the MHP planning principles, which provide a framework for both Phases I and II, will help ensure that proposed uses and activities in the water dependent use zone (WDUZ) are promoted. I am also pleased to see that a fully Chapter 91 compliant WDUZ will be maintained at the 500 Atlantic Avenue site, where a water transportation facility serving Boston Harbor will be located.

The record before me indicates that the planning analysis, public participation program, implementation 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).

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

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. CZM's policies address water quality, marine habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management.

I have listed below those CZM Policies and Management Principles that are most relevant to the Phase I Fort Point Channel MHP area.

WATER QUALITY POLICY #1 - Ensure that point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.

WATER QUALITY POLICY #2 - Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.

WATER QUALITY POLICY #3 - Ensure that activities in or affecting the coastal zone conform to applicable state and federal requirements governing subsurface waste discharges.

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

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 program policies, the Program Plan includes Management Principles that 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, redevelopment 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 redevelopment of urban waterfronts. The MHP addresses consistency with each of the applicable CZM Policies in Chapter 9. I have also considered the City's proposed Planning Framework, which will serve as general guidance for development in both phases of the MHP, in the context of CZM's program policies. The Planning Framework seeks to address:

- The orientation and type of public open spaces
- Minimum standards for aggregate open space and water-dependent use zones
- Building heights and massing
- Methods for quantifying impacts of substitute provisions
- Criteria for offsets to ground level adverse impacts of substitute provisions
- Amplifications

These broad headings are supported in the MHP by more specific and in-depth examples of the type of development the City envisions for this area. Using these principles as guidance throughout both the Phase I and Phase II planning efforts, I believe that the City's plan will provide the kind of open space, public access, activation, and water dependent uses envisioned by CZM program policies.

The elements of the City's MHP are also 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(1), 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. One state agency, the Massachusetts Bay Transportation Authority (MBTA), fits this description. Several Central Artery project parcels are located underneath the elevated portions of I-93 immediately adjacent to the 500 Atlantic and Russia Wharf sites. Although not within the harbor planning area of this MHP, I will comment briefly on these parcels because of their proximity to the 500 Atlantic and Russia Wharf sites and the potential for this MHP to enhance the open space configurations that result where elevated portions of the expressway are removed. I have also included a brief description of DEP's Draft Water Transit Policy, as it will apply to developments in both the Phase I and Phase II planning areas.

A. 500 Atlantic Avenue: Compatibility with the Central Artery Project

As a result of the CA/T project, a downtown corridor of approximately 30 acres of surface land from Bulfinch Triangle to Chinatown will be available for reuse. Two tree-lined boulevards and intersecting cross streets are planned for this corridor. Four parcels of this available land abut the harbor planning area. Three of these four are designated for development by the Massachusetts Horticultural Society. Planning for these parcels is ongoing.

I am satisfied that the MHP has demonstrated compatibility with the Central Artery Project's general plans/concepts for the open space parcels located on Atlantic Avenue. I encourage the owners of the 500 Atlantic site to continue to coordinate their open space efforts with the Central Artery Project as part of the Chapter 91 licensing process, in order to enhance these new open space opportunities.

B. Department of Environmental Protection's Water Transportation Policy

DEP has issued a draft water transportation policy that will require certain waterfront development projects to contribute to water transportation infrastructure, operation, and maintenance within Boston's Inner Harbor. Section 3.3.7 of the MHP describes the City's Inner Harbor Water Transportation Plan that identifies a potential network of existing and future water transportation facilities for Boston. 500 Atlantic Avenue was identified in the Water Transportation Plan as a secondary terminal site, and was selected by the CA/T as the location for the water transportation docking facility required as mitigation for construction impacts. This facility will 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/or operating subsidies for water transportation will be a baseline condition of the Chapter 91 licenses issued for this project.

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.

I have reviewed the effect of all plan provisions that relate to the tidelands policy objectives reflected in the Waterways regulations. In particular, Chapter 9 of the MHP discusses how the proposed plan supports the primary state tidelands policy objectives, as set forth in 301 CMR 23.05(2)(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 review focuses on the following six 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 that are reserved primarily as locations for maritime industry or other specific types of water-dependent use, 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 along and to the entire Fort Point Channel waterfront within the harbor planning area, interior facilities of public accommodation (FPAs) on the ground floors of all buildings located on Commonwealth tidelands and within 100 feet of project shorelines, view corridors, a water transportation facility, and the maintenance of a water dependent use zone, I find that the Fort Point

Downtown Phase I 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 will ensure 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(2)(a).

The Phase I MHP includes the general planning framework that will serve to guide the City's harbor planning approach for Phases I and II, and the detailed planning analysis required for the 500 Atlantic Avenue site within the broader context of this planning framework. I have reviewed this planning framework against the state tidelands policy objectives, and I have found it to be generally consistent with the stated policy objectives found at 301 CMR 23.05(2)(a).

A. Evaluation of Plan-wide Amplifications

The MHP regulations (301 CMR 23.05(3)(b)) require me to find that any provision that amplifies a discretionary requirement of the Waterway 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). Though none have been requested in the Phase I MHP, I understand that amplifications will be an integral piece of the City's Phase II MHP for the Fort Point Channel. For this reason, I have included the following discussion regarding the City's Fort Point Channel Watersheet Activation Plan.

In a truly innovative approach to the rehabilitation of an underutilized waterfront resource, the City of Boston, in 2001, formed a collaborative effort whose aim was to develop and position this historically important body of water as a citywide destination. This three-way partnership between the BRA, the Fort Point Channel Working Group, and the Fort Point Channel Abutters Group grew out of the South Boston MHP process and reflects a public-private funding partnership of \$250,000 to date: \$125,000 from the BRA and \$125,000 from the Fort Point Channel Abutters Group. An RFP was prepared and consultant services secured. The draft Watersheet Plan was circulated in January of 2002, and the final Plan was released in May of 2002.

As discussed in section 5.2 of the MHP, the purpose of the Watersheet Plan is to:

- Identify and prioritize year-round land and water public uses that will ensure that Fort Point Channel retains and enhances its role as a special destination.

- Address the needs of water-dependent uses in Fort Point Channel (such as Hook Lobster, Neptune Marine Services, and the Gillette Company).
- Recommend appropriate locations for docks, landings, floating barges, fishing piers, moorings, marinas, boat houses, permanently-moored vessels, water transportation terminals, and water taxi docks, as appropriate. The Plan identifies transient floating structures for programmed activities, entertainment, and public art.
- Recommend landside facilities that will be needed to support the activation of the watershed.
- Recommend programming opportunities for the Fort Point Channel for recreation, education, culture and entertainment.
- Identify points of access to the Fort Point Channel from surrounding areas and neighborhoods by various modes, including vehicular, pedestrian, transit, water transportation, bicycle as well as links to other open spaces, waterfront areas, and destinations

The City envisions implementing the Watersheet Plan in part through offsets required to mitigate adverse impacts associated with requested MHP substitute provisions. The regulations at 301 CMR 23.05(2)(d) allow for substitute provisions to numerical or dimensional standards that are less restrictive than the Waterways requirements provided that “the plan includes other requirements that, considering the balance of effects on an area wide basis, will mitigate, compensate or otherwise offset adverse effects on water-related public interests.” The City intends to use the Watersheet Plan as a source of offsets to potential adverse impacts resulting from development in the Fort Point Channel. While I support this creative approach to the provision of offsets, a nexus between the impacts and the offsets must be established in order for this approach to be acceptable under the regulations. CZM’s Notice to Proceed (NTP) cautioned that “...the offset strategy presented in the MHP should not be developed around the premise that it need only offer a collection of watershed activation benefits, unrelated to the land-side public interests described above. Rather, to properly comply with the approval standards at 301 CMR 23.05(2)(c) and (d), all offsets must relate directly to the tidelands policy objective associated with each substitute provision, and be reasonably proportional to the degree of adverse impact that is revealed through detailed planning analysis.”

The Phase I Fort Point Downtown MHP currently under consideration has identified six Waterways requirements containing discretionary language which the City intends to amplify in the Phase II MHP in order to achieve the goals of the Watersheet Plan. The degree of amplification will vary across individual sites, and will be discussed during the MHP Advisory Committee meetings.

Although the City has not identified specific amplifications for the 500 Atlantic Avenue site, it is my understanding that the project proponent will contribute to the Watersheet Activation Plan. I look forward to evaluating a formalized and detailed

program for implementation of the Watersheet Activation Plan in the City's Fort Point Channel Phase II MHP.

VII. EVALUATION OF REQUESTED SUBSTITUTE PROVISIONS

The MHP proposes two substitute provisions to the Waterways Regulations—one relating to the provision of an appropriate pedestrian access network, or “Harborwalk,”

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

and one proposed for the 500 Atlantic Avenue site which relates to allowable height.

- Height - [310 CMR 9.51(3)(e)]

The framework for my evaluation of these proposed substitute provisions is established in the MHP regulations at 301 CMR 23.05(2)(c) and (d), which was discussed in detail in the November 26, 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(2)(c) (These standards are summarized in Table A). Second, when a substitute provision meeting the subsection (c) standard is proposed, and that substitute provision 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.

A. General Description of the 500 Atlantic Avenue Project

The 500 Atlantic Avenue site contains 122,198 square feet of land, most of which is filled tidelands. The CA/T Project is in the process of placing a 287-foot tall vent structure for the depressed Central Artery on this site. There is an existing agreement between Boston Edison Company (the former owner of the parcel), and the Massachusetts Highway Department for construction of a 20-story mixed-use commercial building on the site with more than 300 parking spaces. The building is designed to surround the ventilation stacks, screening the vent structure from view. Boston Edison filed a DEIR/DPIR for the project on September 30, 1998 and a FEIR/FPIR on April 30, 2001. The structure will house a hotel, and residential units, and will be 239 feet high. The project will also include the creation of significant public amenities, including 61,000 ± square feet of open space (50,000 of which will be located along the waterfront), a public boat landing area, ground floor FPAs, and interior and exterior accessways to the waterfront. The project will comply with the dimensional and numerical requirements of the Waterways regulations in all respects, except for height of the building, for which a substitute provision has been proposed. The 500 Atlantic Avenue site is the proposed location for the water transit terminal to be constructed by the CA/T Project. The City's Water Transportation Plan identifies this site as the location for a secondary terminal serving inner harbor water shuttles and water taxis.

B. Mitigation Associated With the 500 Atlantic Avenue Project

Mitigation measures or responsibilities associated with this site were previously negotiated between various responsible parties, including the Boston Edison Company, DEP, Mass Highway Department (MHD), Massachusetts Turnpike Authority (MTA), CA/T Project and the MBTA. As described in the MHP, these mitigation measures include the following elements:

- Visual screening of the Ventilation Building 3 intake and ventilation structures by a building compatible with the urban design principles of the Phase I Area.
- Public access to the harbor by way of a 40-foot wide passageway on the south side of the Phase I Area parcel abutting the Russia Wharf property, a narrower passageway on the north side of the parcel abutting the Harbor Plaza (470 Atlantic Avenue), and a passageway through the center of the 500 Atlantic Avenue Building.
- Perpetual maintenance responsibility for the reconstructed Atlantic Avenue Wharf. This improvement is being undertaken with the CA/T Project, and is designed to provide both a Chapter 91 compliant water-dependent use zone and full public access along the Fort Point Channel.

- Perpetual maintenance responsibility for the 24-foot wide permanent public walkway along the Fort Point Channel. As above, this improvement is being implemented by the CA/T Project, allowing for the continuation of Harborwalk.
- An extension of the Pearl Street view corridor so that the Fort Point Channel will be visible from Post Office Square.
- Maintenance and upkeep of the water transportation docking facility being developed by the CA/T Project at the southeast corner of the parcel.
- Development of interior, ground level facilities of public accommodation, including restaurants.
- Contribution of a water transit subsidy to encourage the success of the water transportation operations utilizing the site docking facility.

The implementation of these measures will result in important view corridors to and across the Fort Point Channel, the provision of open space, Harborwalk and additional walkways, and a public landing/water transportation facility.

C. Water Dependent Use Zone (WDUZ) Clarification

The City's MHP submittal identified a Chapter 91 compliant WDUZ of 95 feet for the 500 Atlantic Avenue site. Based on more detailed site information, the proponent has confirmed that the width of the WDUZ is actually 97.5 feet from the project shoreline (as defined at 310 CMR 9.02). Since no substitute provision is being requested for the WDUZ, I will look to the Chapter 91 licensing process to ensure that this depth of WDUZ is maintained.

D. Chapter 91 Licensing

Project proponents must submit a Chapter 91 license application to DEP, as described in 310 CMR 9.11. It is my understanding that the Chapter 91 Consolidated Written Determination for the CA/T project addresses to some degree the 500 Atlantic Avenue site—a site that essentially contains three significant and interrelated projects. As described above, the commercial building project has been designed to surround the CA/T Project ventilation stacks and its associated intake structures, providing mitigation for these structures in the form of a visual and aesthetic screen. At the same time, the ventilation building has been designed to structurally support both the ventilation tower and the commercial wrap-around building. Finally, the ventilation tower foundation is being designed and integrated with the MBTA Silver Line Transitway tunnel that will pass beneath the site and the Fort Point Channel.

Each of the projects described above will require (or has required in the case of the vent stacks and the Silver Line tunnel) separate licensing under the DEP Chapter 91

Waterways Licensing Program. However, in recognition of the interrelationships of the three projects on this site, the 1993 Chapter 91 Waterways license for the CA/T Project specifically required the development of a coordinated plan for implementation of certain components of these three projects within the CA/T Project Chapter 91 Waterways licensing process. Referred to as the Joint Plan, this document was completed in March of 1995, and received a conditional letter of approval from DEP in December of 1995. The DEP-required Joint Plan identifies those aspects of Chapter 91 mitigation that can be accomplished jointly, while also recognizing specific characteristics of the three projects that will require consideration under separate applications. As such, certain aspects of the project will fall under the Joint Plan completed in March of 1995, while other aspects of the project will require individual licensing.

E. Proposed Pedestrian Access Network Substitute Provision (310 CMR 9.52(1)(b)(1))

The City has proposed a more restrictive substitute provision requiring an increased minimum Harborwalk width throughout the planning area. My decision regarding this modification 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.

Chapter 7 of the MHP provides guidance regarding the public access network the City envisions for the Fort Point Channel. The MHP proposes to extend the City's Harborwalk along the Channel through the combined construction of a 97.5-foot wide section at 500 Atlantic Avenue, improvements to Harborwalk currently under construction at the neighboring Russia Wharf, and a recently completed Harborwalk segment at 470 Atlantic Avenue. Upon completion of these separate development projects, a continuous walkway along the Fort Point Channel from Congress Street to Northern Avenue, complete with seating, landscaping, fishing piers, public restrooms and landings and art work, will have been created.

To further its Harborwalk goals, the City has proposed, and I am approving, the following substitute provision:

Pedestrian Access Network

- 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 Phase I harbor planning area (500 Atlantic Avenue). 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.

I have determined that the proposed pedestrian access network substitute provision contained in the Fort Point Downtown Waterfront MHP specifies an alternative requirement that will promote with comparable or greater effectiveness the state tidelands policy objective reflected by the minimum requirements of the Waterways Regulations. Specifically, I have determined that the alternative requirement 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 (310 CMR 9.52(1)(b)(1)).

F. Proposed Height Substitute Provision (310 CMR 9.51(3)(e)): 500 Atlantic Avenue

As set forth in DEP's consolidated written determination (W91-1000), mitigation for the CA/T vent stack is being provided in the form of a mixed-use hotel/residential development that will wrap around the vent stacks. The ventilation stacks themselves have been licensed by DEP (Lic. #5337). A height substitute provision is therefore required only for the heights associated with the mixed-use hotel and residential building as proposed.

As described in the MHP, the building will be comprised of three elements: an approximately 239-foot, 20-story high-rise element adjacent to Atlantic Avenue surrounding the CA/T Project Ventilation Building 3 vent tower and intake structures; a 132-foot element stepped toward the Fort Point Channel; and a 63-foot element sloping down to the Fort Point Channel. This proposal is consistent with the MHP's planning framework regarding heights and massing presented in Chapter 4 of the MHP, which references the following goals:

- Vary building heights and massing with the lower elements located towards the water consistent with the variety that exists in the planning area's urban context.
- Locate and design building masses that minimize the adverse shadow and wind impacts on the pedestrian environment and watersheet that also maximizes views to the waterfront and sky at street level.
- Encourage mixed-use development and concentrate density close to the South Station Intermodal Transportation Center consistent with transit-oriented development principles and the planning area's central urban location.
- Respect the goals of preserving and interpreting historic and cultural resources.

- Recognize that existing and planned building heights and massing are constrained by extensive physical public infrastructure in the planning area.

In the absence of an MHP, the Waterways Regulations restrict heights on the 500 Atlantic Avenue site within 100 feet of the high water mark to 55 feet, with height stepping up one foot in elevation for every two feet measured horizontally, yielding an allowable maximum of 194 feet at the southwestern side of the site, and a maximum of 124 feet on the northwestern side of the site along Atlantic Avenue. The requested height substitute provision for the mixed-use commercial building at this site would allow a maximum building height of 239 feet. The height zones proposed by the MHP are described below¹.

The height substitute provision for the 500 Atlantic Avenue Phase I Area includes several height-limiting zones moving landward from the existing high water (HW) line along the 500 Atlantic Avenue site. As proposed, building heights will not exceed 55 feet within 35 feet of the HW line (no buildings proposed), are limited to 63 feet within 70 feet of the HW line, and 132 feet within 79 feet of the HW. Building heights on the 500 Atlantic Avenue site 79 feet or more landward of the HW line will not exceed 239 feet. Mechanical structures and structures associated with the CA/T ventilation tower are not subject to this substitute provision; however, my understanding is that the vent stack will not exceed 287 feet, and that the mechanical structures will not exceed 48 feet. While this narrative describes generally the height zones proposed by the MHP, due to the complexities of design, the diagram attached as Figure 2 more accurately depicts the proposed height zones.

Table A: Proposed 500 Atlantic Avenue Height Zones

| Height Zones | Distance from High Water (HW) | Height Allowed Under MHP Substitute Provision |
|---------------------|--------------------------------------|--|
| Height Zone 1 | 0 (HW) to 35 feet | 55 feet |
| Height Zone 2 | 35 to 70 feet | 63 feet |
| Height Zone 3 | 70 to 79 feet | 132 feet |
| Height Zone 4 | 79 feet or more | 239 feet |

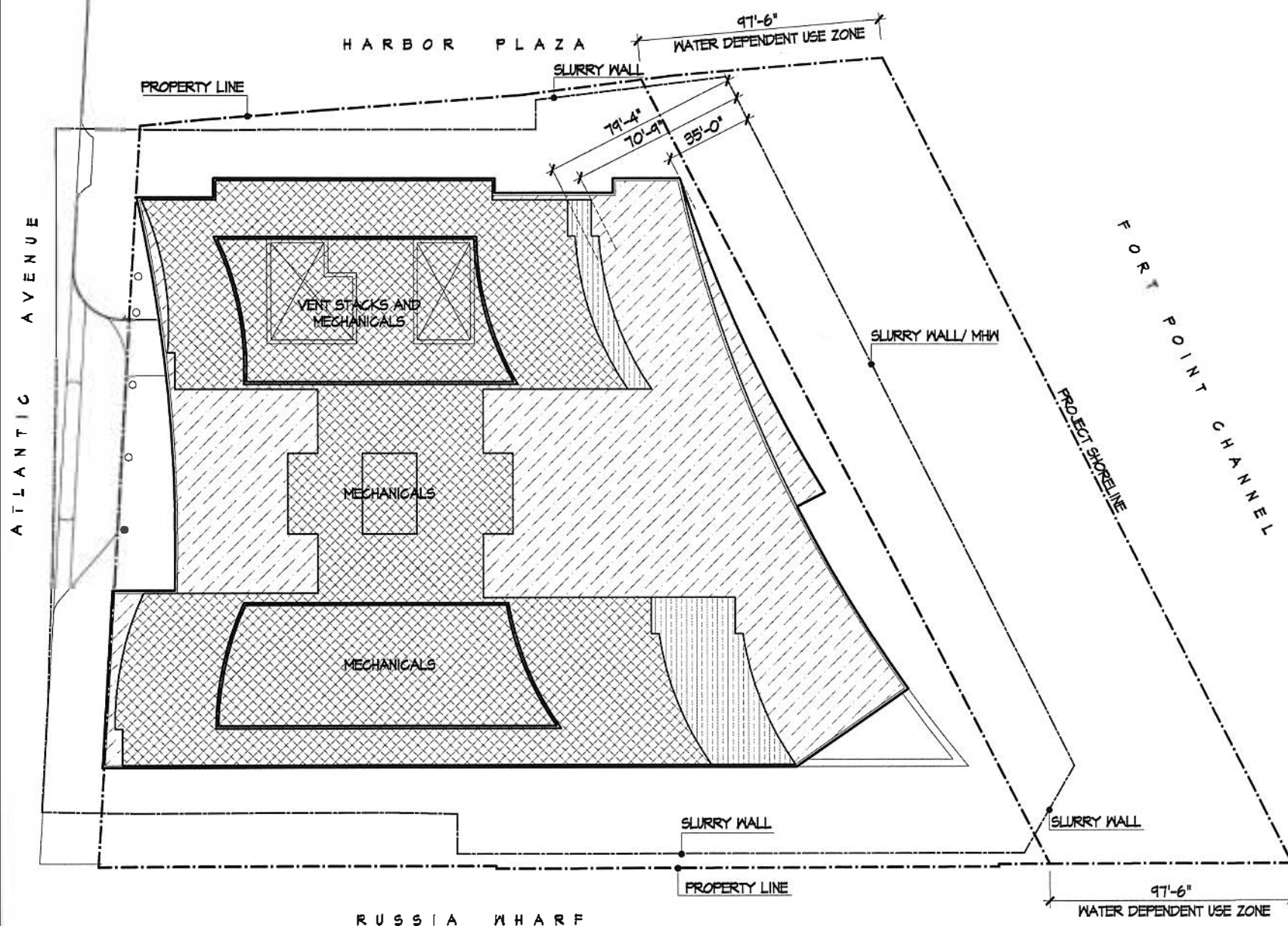
The requested height substitute provision for the hotel/mixed use building is 239 feet². The north tower element screens a 287-foot ventilation stack. In a combined effort to achieve architectural continuity while housing the mechanical equipment for the hotel

¹ It should be noted that these height zones were not included in the original MHP submission. The height zones provided in this MHP decision as “proposed” and “approved height substitute provisions” are based on the diagrams, architectural renderings, and Final Environmental Impact Report figures presented to the Fort Point Channel MHP Advisory Committee for the 500 Atlantic Avenue site. The purpose of the height zones is to clarify where on the site specific heights will be allowed.

² The requested height substitute provision in the MHP submittal was stated as 287 feet in order to account for rooftop mechanicals. The correct maximum height that the City is requesting in this MHP is 239 feet, and refers to the height of occupied floors, not including rooftop mechanicals and vent hood extensions.

500 ATLANTIC AVENUE

LUXURY HOTEL & RESIDENCES
Boston, Massachusetts



- UP TO 63 FT.
- UP TO 132 FT.
- UP TO 239 FT.
(not including
mechanicals
or vent stacks)

Figure 2

HEIGHT ZONES
09.23.02

ELKUS / MANFREDI
ARCHITECTS LLP

530 Atlantic Avenue
Boston, Massachusetts 02210
617. 426.1300

and residences, the south tower element will also reach a height of 287 feet. The height of the mechanical penthouse on the southern tower element appears to be driven in large part by the reduced rooftop area available on the northern tower as a result of the presence of the CA/T ventilation stack. The intake structure housed inside of the lower portions of the southern side of the building also contributes to the need for the substantial height of the mechanical penthouse.

G. Analysis

My analysis of the proposed height substitute provision must determine whether it meets 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 MHP must demonstrate clearly that the proposed provisions “will promote, with comparable or greater effectiveness, the state tidelands policy objectives” [see 301 CMR 23.05(2)(d)].

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 applicable to my evaluation of the proposed height substitute provisions found in the Fort Point Channel MHP given the substantially developed waterfront in this harbor planning area and its relative proximity to the buildings of the adjacent Financial District.

The area surrounding the 500 Atlantic site can be characterized as highly developed. To the west across Atlantic Avenue is the edge of Boston’s financial district; to the north lies the recently renovated 14-story 470 Atlantic building, and to the east lies the Fort Point Channel. Buildings located on the eastern edge of the financial district reach heights between 395 and 600 feet. With the removal of the Central Artery structure at the completion of the “Big Dig” project, substantial new open space will be available directly across the street from the proposed development at 500 Atlantic.

Wind Analysis

I have reviewed the wind analyses for the Chapter 91 and MHP build-out conditions for the 500 Atlantic site as required by the Notice to Proceed. Qualitative in nature, the studies characterize a variety of wind conditions frequently experienced by the region and evaluate ground-level conditions that reflect both build-out scenarios. Based on a review of these analyses, I am pleased to see that the MHP-compliant scenario

should experience ground-level wind conditions that are generally suitable for a variety of ground-level pedestrian activities along the waterfront.

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 the 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 ground-level ambient wind speeds for the 500 Atlantic Avenue project 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 Chapter 91/Article 80 processes to evaluate appropriate design modifications and mitigation features that will ensure that these standards are achieved for this site as it progresses in design. Those measures necessary to achieve this standard shall be included as conditions of all Chapter 91 licenses.

Shadow Analysis

I have also reviewed the comparative shadow 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 500 Atlantic site. The analyses compare projected Chapter 91 and MHP compliant shadow conditions, hourly from 9:00 a.m. to 5:00 p.m., for October 23.

Based on my review of the Chapter 91 baseline and MHP build-out shadow studies, it would appear that only a small increase in shadow over the Chapter 91 baseline condition will be generated by the project, and that these incremental increases will not fall on the Harborwalk, the 61,000 square feet of new open space, the public landing/water transportation facility, or the Fort Point Channel. This nominal increase falls to the north and northwest of the site, with small slivers appearing on the CA/T parcels (slated for re-use as open space), Purchase Street, Northern Avenue, and Pearl Street. When comparing Chapter 91 compliant and MHP buildout shadows for the 500 Atlantic project, only a de-minimus amount of shadow on the CA/T parcel and on Purchase Street results. (Appendix 7-B “500 Atlantic Avenue Wind and Shadow Analysis” Fort Point Channel MHP Phase I). For this reason, I am comfortable that any additional shadow created by the MHP buildout scenario will not result in measurable impacts to the ground level pedestrian environment.

Massing Analysis

The massing analysis performed for the proposed project illustrates a Chapter 91 compliant volume of 7,385,952 cubic feet, and a full MHP buildout of 10,825,192 cubic feet. This increase in volume between the allowable Chapter 91 scenario and the proposed MHP massing is largely attributable to the height substitute provision that accommodates the masking of the stacks. To approve the substitute provision for height, I must find that the proposed building is “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, as appropriate for the harbor in question” (301 CMR 23.05 (2)(c)(5)).

As discussed above, my evaluation of “relatively modest” must be viewed within the context of the particular harbor planning area under consideration. In this particular case, the harbor in question forms the southern edge of the downtown financial district, and is flanked on either side by tall structures such as the 14-story 470 Atlantic building and the 600-foot Federal Reserve Bank of Boston. Buildings located on the eastern edge of the financial district reach heights between 395 and 600 feet. Despite a potential 33% increase in building mass, based on the height characteristics of the surrounding area, and the aesthetic benefits of the mixed-use building as visual mitigation for a licensed infrastructure project, I have concluded that the proposed building is relatively modest in size, as appropriate for the harbor in question.

H. Approved Substitute Provision

Based on these evaluations, I am approving the proposed height substitute provisions for the 500 Atlantic Avenue site, subject to the following conditions:

The height zones will generally adhere to the table below, but will more specifically be governed by Figure 2, labeled “500 Atlantic Avenue: Height Zones” dated 9/23/02, prepared by Elkus/Manfredi Architects Ltd.

Table B: Approved 500 Atlantic Avenue Height Zones

| Height Zones | Distance from High Water Mark (HWM) (as defined at 310 CMR 9.02) | Height Allowed Under MHP Substitute Provision |
|---------------------|---|--|
| Height Zone 1 | 0 (HWM) to 35 feet | 55 feet |
| Height Zone 2 | 35 to 70 feet | 63 feet |
| Height Zone 3 | 70 to 79 feet | 132 feet |
| Height Zone 4 | 79 feet or more | 239 feet |

Figure 2 graphically depicts the above height zones. It should be noted that height zone 4 allows a substitute provision of 239 feet. For Chapter 91 licensing purposes, DEP considers the maximum height of a building to be the cornice line height associated with the maximum “habitable space”, which, as proposed, is 239 feet. Current

plans for 500 Atlantic Avenue depict mechanical rooms on the order of 48 feet. While higher than typical mechanical rooms, the height may be appropriate in this particular case given the interior space taken up by the CA/T infrastructure.

I have determined that the proposed height substitute provision contained in the Fort Point Downtown Waterfront MHP specifies an alternative requirement that will promote with comparable or greater effectiveness the state tidelands policy objective reflected by the minimum requirements of the Waterways Regulations. Specifically, I have determined that the alternative requirement 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 (310 CMR 9.51(3)(e)).

Based on the wind, shadow and massing analyses, as well as a thorough review of the MHP, I concur with the City's conclusion that the pedestrian level environment is not impacted adversely, and therefore I find that no offsets for the approved height substitute provision are required.

VIII. PHASE II MHP ELEMENTS

A. Diagrams

In addition to those items required by the Notice to Proceed, for the Phase II MHP I will expect that diagrams showing the Chapter 91-compliant maximum buildout scenario for the entire waterfront within the planning area, as well as the MHP-compliant maximum buildout scenario for the entire planning area be included in the Phase II MHP. Specifically, these diagrams should show maximum heights, volumes, water dependent use zones, and open space for the six parcels within the Phase II area, for both the Chapter 91 and the MHP compliant scenarios. These diagrams will aid the MHP Advisory Committee, the City of Boston, DEP and CZM in evaluating the impact of the proposed development in the context of existing and proposed development within and adjacent to the harbor planning area. I believe that this approach will facilitate important consideration of the interrelationships between the development proposed for individual parcels, the impacts to the ground level environment, and proposed mitigating measures (offsets).

B. Compliance Document

In order to facilitate the issuance of the Phase II MHP decision, I am requiring that the City include a compliance document as part of the Fort Point Channel Phase II MHP submission. This document should state in a brief, concise way how the proposed substitute provisions (and their associated offsets) or amplifications meet and address the corresponding tidelands policy standards. While I still expect to see a complete discussion in the text of the MHP regarding how the proposed substitute provisions, offsets, and amplifications meet the standards for approval under 301 CMR 23.05, the compliance document should provide a focused distillation of that discussion in a one to two-page summary.

IX. ENFORCABLE IMPLEMENTATION COMMITMENTS

Pursuant to 301 CMR 23.05(4), 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 8 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, the City will utilize its Section 18 Determination and ongoing design review under Article 80 to implement Phase I of the Fort Point Downtown Municipal Harbor Plan. The 500 Atlantic Avenue project was granted two variances (height and FAR) and conditional use permit by the Zoning Board of Appeals on December 20, 2001 and has been conditionally approved by the BRA through the Article 80 Large Project Review process on September 13, 2001.

In my judgment, the groundwork is well established for the effective implementation of the policies and commitments set forth in the Fort Point Downtown 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).

- 1) Prior to the adoption or modification 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 permanent zoning measures have been adopted (see above).

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.

X. 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.

XI. STATEMENT OF APPROVAL

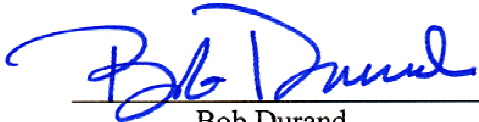
Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the Fort Point Downtown Waterfront District Municipal Harbor Plan. This approval is subject to all requirements, modifications, limitations, qualifications, and conditions set forth in this Decision. This Decision shall take effect immediately upon issuance on October 10, 2002 and shall expire on October 10, 2012.

The approved Fort Point Downtown Waterfront District Municipal Harbor Plan ("Approved Plan") shall be the plan dated May, 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 May 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 are for planning purposes only, in order to estimate the area and nature of filled tidelands in said area, and do 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 October 8, 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



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

JANE M. SWIFT
Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

October 8, 2002

Bob Durand, Secretary
Executive Office of Environmental Affairs
251 Causeway Street, 9th Floor
Boston, MA 02114

Dear Secretary Durand:

The Department of Environmental Protection, Waterways Regulation Program (WRP) has reviewed the City of Boston's Fort Point Waterfront Downtown Municipal Harbor Plan (MHP), Phase 1, dated May, 2002. WRP staff have worked closely with the Fort Point Channel Municipal Harbor Planning Committee and the Massachusetts Office of Coastal Zone Management (CZM) throughout the planning process, and our comments have been adequately addressed and incorporated into the final MHP. The WRP therefore recommends that you approve the Phase 1 MHP and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of the Fort Point Downtown approved MHP in the case of all waterways license applications submitted subsequent to the MHP's effective date. It will apply as well to all pending applications for no public hearing has occurred or where the required public comment period has not expired by the effective date of the MHP.

The WRP looks forward to continuing its work with CZM and the City of Boston in the implementation of this important planning effort.

Should you have any questions in regard to the foregoing, please contact me at (617)292-5615. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Lynch".

Ben Lynch
Acting Program Chief
Waterways Regulation Program

cc: Mayor Thomas Menino
T. Skinner, CZM
M. Gaffney, CZM
L. Langley, Wetlands & Waterways Program Director, DEP
R. McGuinness, Boston Redevelopment Authority
V. Burns, Chair, Harbor Planning Committee
WRP Harbor Planning File