

**DECISION ON THE CITY OF BOSTON'S  
REQUEST FOR APPROVAL  
OF THE  
SOUTH BOSTON MUNICIPAL HARBOR PLAN AMENDMENT  
PURSUANT TO 301 CMR 23.00**

**October 22, 2009**

**Commonwealth of Massachusetts  
Executive Office of Energy and Environmental Affairs  
Ian A. Bowles, Secretary**

## **I. INTRODUCTION**

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving, subject to the conditions noted below, the amendment to the City of Boston's South Boston Waterfront District Municipal Harbor Plan ("Plan") dated May 2009. The original South Boston Waterfront District Municipal Harbor Plan was approved on December 6, 2000. This Decision on the amendment to the original 2000 Plan presents a synopsis of Plan content, together with determinations on how the Plan amendment complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00.

Pursuant to the review procedures at 301 CMR 23.00, the Plan was submitted in May 2009. Following a review for completeness, the Massachusetts Office of Coastal Zone Management (CZM) published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated May 20, 2009. Oral testimony was accepted during a public hearing held in the City of Boston on June 1, 2009, and seven written comment letters were received prior to the close of the public comment period on June 19, 2009. The review and consultation process led by CZM, included consultation between staff of CZM, the Waterways Regulation Program of the Department of Environmental Protection (MassDEP), and the Boston Redevelopment Authority (BRA). In reaching my approval decision I have taken into account the oral and written testimony submitted by the public during the public comment period.

The Plan 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 commend the efforts of the members of the Municipal Harbor Planning Advisory Committee, elected officials, community residents, and all others who volunteered their time and effort over the course of many meetings.

## II. PLAN CONTENT

The Municipal Harbor Planning Regulations (301 CMR 23.00) establish a voluntary process under which cities and towns may develop and submit Municipal Harbor Plans (MHP) to the EEA Secretary for approval. These plans serve to promote and implement a community's planning vision for their waterfront and to inform and guide state agency decisions necessary to implement such a vision. Approved MHPs provide licensing guidance to MassDEP in making decisions pursuant to MGL c. 91 and the Waterways Regulations (310 CMR 9.00). The approved harbor plans may establish alternative numerical and dimensional requirements (e.g., substitute provisions) to the requirements specified by the Waterways Regulations—such as increased building heights and footprints, modifications to interior and exterior public space requirements, and the location and amount and scale of public and private facilities—provided that adverse effects to public rights along the waterfront are mitigated with appropriate offsetting measures.

The geographic area covered by the Plan includes a significant portion of the Fort Point Channel waterfront, totaling approximately 13 acres of land. The planning area (see Figure 1) is bounded by the Fort Point Channel to the west, “A” Street to the east, the P&G/Gillette South Boston Manufacturing Center to the south, and Necco Court to the north. Currently, this area is generally vacant of any structures and is used temporarily for parking. Historically, these lands consisted of shallow waters and tidal flats. For this reason, these lands are considered Commonwealth Tidelands for the purposes of Chapter 91 licensing.

In 2000, the Secretary of Environmental Affairs approved the City's South Boston Waterfront District Municipal Harbor Plan. The Secretary's 2000 Decision conditioned the approval upon the completion of a more detailed master planning effort for the Fort Point Industrial District and the area now known as the “100 Acres”. The Decision required the City to consider issues including preservation of industry, transportation measures, public access, pedestrian links, and compatibility of new development with the existing water-dependent uses and the historic character of the Fort Point neighborhood. In 2006, the City completed the Fort Point District 100 Acres Master Plan (“Master Plan”). The Master Plan was the result of several years of community process and input. The Master Plan provides an overall land use plan for the district; recommends appropriate building heights and density; provides new open spaces and pedestrian connections; identifies P&G/Gillette as a critical water-dependent industrial use and provides appropriate buffering measures; and improves truck connections with direct access from A Street to the South

Boston Bypass/Haul Road. I commend the City on their extensive master planning effort. I believe that it lays out a comprehensive vision for the Fort Point District and adequately addresses the conditions included in the Secretary's 2000 Decision.

Following the completion of the Master Plan, the City prepared this MHP amendment to incorporate the findings of the Master Plan and to address the conditions noted in the Secretary's 2000 Decision. The Plan focuses on jurisdictional tidelands and proposes several substitute provisions, offsetting measures and amplifications that modify specific requirements of the Waterways regulations in a way that the City believes is appropriate for this area of Boston Harbor. The Plan seeks flexibility from the Chapter 91 standards to widen the public access network, reconfigure the Water-Dependent Use Zone, allow additional building height, and to amplify discretionary provisions related to utilization of the shoreline and activation of Commonwealth tidelands for public use.

The 100 Acres Master Plan, which focuses on a broader geographic area, encompasses not only jurisdictional tidelands but landlocked tidelands as well. Pursuant to 301 CMR 13.00, the Secretary must make a public benefit determination for projects on landlocked tidelands that are required to file an Environmental Impact Report. In a project filing, a proponent must take measures to avoid, minimize, or mitigate any adverse impact on the public's right to access, use and enjoy tidelands protected by Chapter 91. The Secretary must then make a determination of the proposed public benefits by reviewing the purpose and effect of the proposed project and its effects on the public's use and enjoyment of these tidelands. The Master Plan, which includes extensive public open spaces, pedestrian connections, bike paths, and other public amenities, can serve as a useful source of planning guidance for future public benefit determinations on landlocked tidelands in the Fort Point District.



Figure 1. South Boston Planning Area

### **III. STANDARDS FOR APPROVAL**

The Plan contains the City's planning vision and other specifics to guide use and development of the South Boston planning area. It should be noted, however, that while these elements are commendable and important to the planning area, my approval today is bounded by the authority and standards as contained in 301 CMR 23.00 et seq. (Review and Approval of Municipal Harbor Plans) and is applicable only to those discretionary elements of the Chapter 91 Waterways regulations that are specifically noted in this Decision. This Decision does not supersede separate regulatory review requirements for any activity.

#### **A. Consistency with CZM Program Policies and Management Principles**

The federally-approved CZM Program Plan establishes 20 enforceable program policies and 9 management principles which embody coastal policy for the Commonwealth of Massachusetts. The following is a brief summary of the Policies and Management Principles applicable to the Plan 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.
- Habitat Policy #2 – Restore degraded or former wetland resources in coastal areas and ensure that activities in coastal areas do not further wetland degradation but instead take advantage of opportunities to engage in wetland restoration.
- 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.
- Coastal Hazards Policy #1 – Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.
- Coastal Hazards Policy #2 – Ensure construction in water bodies and contiguous land area will minimize interference with water circulation and sediment transport. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or downcoast areas.

- 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 Policy #1 – Ensure that developments proposed near existing public recreation sites minimize their adverse effects.
- Public Access Management Principal #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.
- Public Access Management Principal #2 – Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance, and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.
- Public Access Management Principal #3 – Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.
- Public Access Management Principal #4 – Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or limited site availability. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.
- Energy Management Principle #1 – Encourage energy conservation and the use of alternative sources such as solar and wind power in order to assist in meeting the energy needs of the Commonwealth.

Based on review of the documentation provided by the City and the assessment of CZM, I conclude that it meets the intent of each relevant policy and, as required by 301 CMR 23.05(2), I find the Plan consistent with CZM policies.

## **B. Consistency with Tidelands Policy Objectives**

As required by 301 CMR 23.05(3), I must also find that the Plan is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Chapter 91 Waterways regulations of MassDEP (310 CMR 9.00). As promulgated, the Waterways regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans and associated amendments present communities with an opportunity to propose modifications to these uniform standards through the amplification of the discretionary requirements of the Waterways regulations or through the adoption of provisions that, if approved, are intended to

substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. The substitute provisions of Municipal Harbor Plans, in effect, can serve as the basis for a MassDEP waiver of specific use limitations and numerical standards affecting nonwater-dependent use projects, and thereby reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands.

The Plan contains clear guidance that will have a direct bearing on MassDEP licensing decisions within the harbor planning area. Included in this guidance are:

- provisions that are intended to substitute for certain minimum use limitation and numerical standards in the regulations; and
- provisions that amplify upon certain discretionary requirements of the Waterways regulations.

These provisions are each subject to the approval criteria under 301.CMR 23.05(3)(b)-(e), and as explained below, I find that all such criteria have been met.

### **Evaluation of Requested Substitute Provisions**

The general framework for evaluating all proposed substitute provisions to the Waterways requirements is established in the Municipal Harbor Plan regulations at 301 CMR 23.05(2)(c) and 301 CMR 23.05(2)(d). The regulations, in effect, set forth a two part standard that must be applied individually to each proposed substitution in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

For the first part, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of a Waterways requirement unless the Secretary determines that the requested alternative requirements or limitations ensure that certain conditions—specifically applicable to each minimum use limitation or numerical standard—have been met. The second standard, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitute provision will promote, with comparable or greater effectiveness, the appropriate state tidelands policy objective.

A municipality may propose alternative use limitations or numerical standards that are less restrictive than the Waterways requirements as applied in individual cases, provided that the plan includes other requirements that, considering the balance of effects on an area-wide basis, will mitigate, compensate for, or otherwise offset adverse effects on water-related public interests.



For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a)–(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must 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.

Table 1 contains a summary of the substitute provisions approved through this decision; Table 2 contains a summary of the amplifications approved through this decision.

### **Analysis of Requested Substitute Provisions**

#### **Water-Dependent Use Zone**

To approve any substitute provision to the standard at 310 CMR 9.51(3)(c), I must first determine that the Plan specifies alternate 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 this area of Boston Harbor. Second, within the context of its Plan, the City must demonstrate that the substitute provision will meet this standard with comparable or greater effectiveness. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness is conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan proposes a substitution to the Water-Dependent Use Zone requirement at 310 CMR 9.51(3)(c). The City proposes to reconfigure the Water-Dependent Use Zone to provide a setback of 110 feet—an area wider than the required Water-Dependent Use Zone—along the majority of the planning area except at a small portion of the waterfront adjacent to 60 Necco Court, where the setback will be 18 feet. The Plan states that the reconfiguration will allow for the development of a new structure at 60 Necco Court that is compatible with the historic scale and character of adjacent structures. The Plan also states that the proposed reconfiguration will provide an alignment and organization that will enable the siting of public parks and open spaces in locations

that provide direct continuity with signature open spaces that will connect the waterfront to the neighborhood. Further, the Plan indicates that the total land area of the Water-Dependent Use Zone will be approximately 96,800 square feet—slightly greater than the area that would be required by the standard at 310 CMR 9.51(3)(c).

As a result of my review, I find that the City has demonstrated that the proposed substitute provision ensures that sufficient space along the water’s edge will be devoted exclusively to water-dependent use and public access, and I therefore approve this substitute provision and associated offsetting measure. I am requiring that under no circumstances will there be a net loss of Water-Dependent Use Zone area as a result of reconfiguration.

#### Building Height

To approve any substitute provision to the height standard at 310 CMR 9.51(3)(e), I must first determine that the Plan specifies 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 applicable location on Boston Harbor. The approval regulations focus on how a building’s mass will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. Within this context, I must apply the “comparable or greater effectiveness” test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) that would allow non water-dependent buildings ranging in height from 80 feet to 180 feet. The heights reflected in the Plan incorporate the findings from the Master Plan. During the master planning process, I understand that the City performed an extensive analysis of the various conditions that affected proposed building heights including compatibility with existing historic structures, transition from surrounding areas, and development limitations related to the Central Artery/Tunnel I-90 tunnel. The Master Plan recommends heights that provide a gradual transition from the traditional South Boston neighborhood and the Fort Point Historic District in order to respect the scale of

each of these areas. Additionally, I note that heights were limited to 100 feet over the Central Artery/Tunnel I-90 tunnel box due to structural weight-bearing constraints. Although the proposed building heights are greater in some areas than what would generally be allowed, the overall buildable volume is less than what would be allowed under strict conformance with the Waterways regulations (1.9 million square feet vs. 3.7 million square feet).

Based on my review of the Plan, it appears that the proposed heights are generally consistent with those allowed under the Waterways regulations except at certain locations as noted in the Plan. It appears that there will be limited additional net new shadow and pedestrian-level winds attributable to the increased heights associated with the proposed substitute provision that would impact ground-level conditions or impair public use and enjoyment of the waterfront and its adjacent watershed. The Plan indicates that any resulting net new shadow will be offset at a 1:2 ratio, with 1 square foot of public open space being provided for every 2 square feet of net new shadow. Figure 2 shows the location of the proposed public open spaces and pedestrian networks. Wind impacts will be mitigated through building design review to ensure there are no negative impacts on ground-level conditions. I believe that this substitute provision, coupled with the proposed offsetting measures, will not impair water-dependent activity and public access to the waterfront, and will appropriately serve to meet the objectives of 310 CMR 9.51(3)(e).



Figure 2. Proposed public open spaces and pedestrian networks

### Utilization of Shoreline for Water-Dependent Purposes

To approve any substitute provision to the standard at 310 CMR 9.52(1)(b)(1), I must first determine that the alternative minimum width for the pedestrian access network, specified in the Plan is appropriate given 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. Within this context, I must apply the “comparable or greater effectiveness” test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan proposes a substitution to the standard for Utilization of the Shoreline for Water-Dependent Purpose which requires a pedestrian access network with walkways of no less than 10 feet in width along the entire shoreline. The proposed substitution would require a dedicated 18 foot clear public pedestrian accessway in any area where the Water-Dependent Use Zone is at least 100 feet wide. At locations where the Water-Dependent Use Zone is less than 100 feet, such as 60 Necco Court, the public accessway would be a minimum of 12 feet clear.

The City of Boston’s Harborwalk system is essential to improving public access along the waterfront, and the City considers it a critical aspect of this Plan. This substitute provision provides a minimum width of 18 feet clear in most locations, and 12 feet clear at 60 Necco Court. Based on consultations with the City, I am confident that these setbacks would provide adequate area to accommodate a generous Harborwalk and the South Bay Harbor Trail, a bike trail that connects the Roxbury neighborhood to the South Boston waterfront, along a significant portion of the Fort Point Channel waterfront. Based on these factors, I believe this substitute provision directly benefits the public through enhanced public access and water-dependent uses that may be accommodated along the Harborwalk, and therefore approve this substitute provision with no further requirement for offset.

**Table 1 — Summary of Substitute Provisions**

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Substitution</b>	<b>Offsetting Measures</b>
310 CMR 9.51(3)(c): Water-Dependent Use Zone setbacks	<p>“New or expanded buildings for nonwater-dependent use...shall not be located within a water-dependent use zone”.</p> <p>The WDUZ in the MHP area includes a setback for non-water dependent uses that would vary from 80 to 100 feet, depending upon location and characteristics of projects that may be proposed.</p>	An alternative WDUZ will be established that generally increases the minimum setback to 110 feet from the project shoreline, except for that portion of the planning area between the Fort Point Channel and 60 Necco Court which will have a setback of 18 feet.	The reconfigured WDUZ will provide at least the same land area as would occur under the standard provisions. The WDUZ is larger throughout most of the planning area and will enhance public access and enjoyment of this area of the waterfront. No net loss of WDUZ will occur.
310 CMR 9.52(1)(b)(1): Utilization of Shoreline for Water-Dependent Purposes	“...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 a municipal harbor plan, shall be no less than ten feet in width...”	<p>The minimum width will be widened to 18 feet clear in areas where the WDUZ is at least 100 feet wide and 12 feet clear along the remainder of the shoreline.</p> <p>These enhancements shall replace the existing standard of ten (10) feet.</p>	The substitution directly benefits the public through enhanced access (open 24 hours/7 days per week); no offsetting public benefit is required.
310 CMR 9.51(3)(e): Height Standards and Related Impacts on Public Use or Access	For new or expanded non water-dependent use buildings, the height shall not exceed 55 feet within 100 feet of the high water mark nor increase by more than one-half foot for every additional foot beyond 100 feet.	Allow non water-dependent buildings ranging in height from 80 feet to 180 feet.	The substitution results in a required offset for net new shadow. The proposed offset is additional public open space. This offset is permitted on a 1:2 ratio of additional open space to net new shadow.

### **Analysis of Requested Amplification Provisions**

The Municipal Harbor Plan 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, MassDEP 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 Plan contains two provisions that will have significance to the Chapter 91 licensing process as an amplification, pursuant to 301 CMR 23.05(2)(b).

Activation of Commonwealth Tidelands for Public Use [310 CMR 9.53]

The Waterways Regulations at 310 CMR 9.53 require nonwater-dependent projects located on Commonwealth tidelands to promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth and to ensure that private advantages of use are not primary but merely incidental to the achievement of public purposes. The Plan proposes to amplify this provision by directing MassDEP during the Chapter 91 licensing process to incorporate the following interior and exterior public amenities described in the Fort Point Channel Watersheet Activation Plan (FPCWAP): locations to support and provide services associated with boat landings; storage space for seasonal or year-round needs for water-based activities; restaurants or active uses that attract people to the waterfront; interpretive or wayfinding activities; rental locations for kayaks or small boats; changing rooms for the South Bay Harbor Trail network; and other watersheet or public access network amenities. The Plan also indicates that any management plan, submitted in accordance with 310 CMR 9.53(2)(d), shall include measures to ensure that all water-based activities are consistent with the FPCWAP. Further, the Plan provides additional guidance to MassDEP by indicating that public benefits that can reasonably be provided onsite that are either not appropriate or sufficient may be provided elsewhere along the Fort Point Channel so long as it consistent with the FPCWAP. I believe that this provision will enhance the public's experience along the Fort Point Channel, and I approve this amplification as proposed.

Utilization of the Project Shoreline: Pedestrian Network [310 CMR 9.51]

The Waterways Regulations at 310 CMR 9.51 require a facility that promotes active use of the project shoreline and a pedestrian network of a kind and to a degree that is appropriate for project sites. The Plan proposes to amplify this provision by requiring a boating dock facility and pedestrian network as envisioned in the FPCWAP. I believe that this provision will serve to activate the Fort Point Channel watersheet and will improve public access to and along the waterfront, and therefore I approve this amplification as proposed.

**Table 2 — Summary of Amplifications**

Regulatory Provision	Chapter 91 Standard	Amplification
310 CMR 9.52 Utilization of the Project Shoreline: Pedestrian Network	"A facility that promotes active use of the project shoreline, and requires the provision of a pedestrian network of a kind and to a degree appropriate for the project site.	The amplification of these requirements directs the implementation of these regulations to the provision of the boating dock facility and pedestrian network envisioned in the Fort Point Channel Watersheet Activation Plan.

Regulatory Provision	Chapter 91 Standard	Amplification
		Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor, and will follow guidance provided in Section 9 and Appendix 1 of the Plan.
310 CMR 9.53 Activation of Commonwealth Tidelands for Public Use	Nonwater-dependent use projects located on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth and that ensures that private advantages of use are not primary merely incidental to the achievement of public purposes.	The amplification of this requirement will provide public benefits recommended by the Fort Point Channel Watersheet Activation Plan in the WDUZ and adjacent watersheet to promote public uses and enjoyment of Commonwealth tidelands.

### C. Implementation Strategies

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. The provisions of this Plan will be implemented through the recently adopted amendments to the underlying zoning (Planned Development Area 69). These zoning changes will permit the uses contemplated for the area and will allow building heights, setbacks, and open spaces that are consistent with the approved substitute provisions, offsetting measures and amplifications described in the Plan. The Plan also provides guidance related to the implementation of the FPCWAP. Specifically, it provides additional direction in the application and issuance of Chapter 91 licenses for the redevelopment of sites and the provision of public benefits in the planning area.

The Plan indicates that the development of projects within the planning area are likely to be phased in order to provide the infrastructure of structured parking, streets and utilities in an orderly a manner so that adequate infrastructure is in place as needed for the new uses that are anticipated to occur here. I understand the rationale of this approach, and encourage MassDEP to consider using a Consolidated Written Determination (CWD) to license projects in the planning area. A CWD

allows for the issuance of separate licenses for individual projects or phases so long as they are consistent with the CWD. The conditions of the CWD will establish enforceable commitments to achieve compliance with the Waterways regulations and the terms of this Plan, while allowing for flexibility during the licensing of individual projects or phases.

I note that the Plan also references the Fort Point Channel Operations Board (“Operations Board”). This entity was created to provide input and oversight in the implementation of the FPCWAP. With appointees from the City, a designee of the Secretary of Energy and Environmental Affairs, and a representative of the Fort Point Channel, the Operations Board is intended to oversee operations and expenditures from the legally established fund or escrow account created with contributions through the municipal harbor plans for the Fort Point Channel area. I support the role of the Operations Board in the Fort Point Channel and look forward to its active participation in the implementation of elements outlined in the FPCWAP and the Plan.

Based on the information provided in the Plan and as discussed above, I believe that no further implementation commitments on the part of the City are necessary, and I find that this approval standard has been met.



#### **IV. EFFECTIVE DATE AND TERM OF APPROVAL**

This Decision shall take effect immediately upon issuance on October 22, 2009. As requested by the City of Boston, the Decision shall expire 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 (recognizing that the term of approval is now 10 years). This Decision also serves to extend the original expiration date of the South Boston Waterfront District Municipal Harbor Plan for a period of one (1) year, with a new expiration date of December 6, 2011. No later than 6 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.

## **V. 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 South Boston Waterfront District Municipal Harbor Plan Amendment subject to the provisions contained in this Decision and the following condition listed here:

1. In its issuance of a Consolidated Written Determination and subsequent licenses, MassDEP shall make every reasonable effort to ensure that the offsets and public benefits (e.g., open space, parks and other public realm improvements) approved under this Plan are developed concomitantly with specific parcels. To be eligible for a Consolidated Written Determination—which allows for multiple licenses to be issued independently for phases of a project—MassDEP must find that the licenses can be sequenced or conditioned in a manner which ensures that overall public benefits will exceed public detriments as each portion of the project is completed. I anticipate that a final phasing plan which details the timing and linkages of individual building development and provision of specific public benefits will be a necessary component of a complete application for a Consolidated Written Determination.

For Chapter 91 Waterways licensing purposes pursuant to 310 CMR 9.34(2), the Approved Plan shall not be construed to include any of the following:

1. Any subsequent addition, deletion, or other revision to the final Approved Plan, 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 MassDEP 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 Plan document as submitted, that have not been approved explicitly by this Approval Decision.
4. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by MassDEP to be inconsistent with the waterways regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

In a letter dated September 1, 2009, the MassDEP Waterways Program Chief has expressed support for approval of the Plan and stated that in accordance with the provisions of 310 CMR 9.34(2) the Department will require conformance with any applicable provisions of the approved Plan in the case of all waterways license applications submitted subsequent to the Plan's effective

date. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.

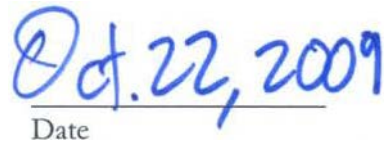
The City shall prepare a final, approved South Boston Waterfront District Municipal Harbor Plan Amendment ("Approved Plan") to include:

- a. The plan dated May 2009;
- b. Materials submitted during the consultation session; and
- c. This approval Decision.

Copies of the final Approved Plan shall be provided to CZM and MassDEP's Waterways Program, kept on file at the Boston Redevelopment Authority, and made available to the public through City's website and/or copies at the public library.



Ian A. Bowles  
Secretary of Energy and Environmental Affairs

  
Date



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September 1, 2009

Ian Bowles, Secretary  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street  
Boston, MA 02114

**RE: DEP Recommendation for the Approval of the City of Boston's South Boston Municipal Harbor Plan Amendment("Plan") for the Fort Point District 100 Acres, dated May, 2009.**


Dear Secretary Bowles:

The Department of Environmental Protection, Waterways Regulation Program (WRP) has reviewed the City of Boston's South Boston Municipal Harbor Plan Amendment for the Fort Point District 100 Acres (MHP), dated May, 2009. WRP staff have worked closely with 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 amendment. The WRP, therefore, recommends that you approve the MHP and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

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

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 for your consideration.

Sincerely,  


Ben Lynch  
Program Chief  
Waterways Regulation Program  
Mass DEP

cc: Mayor Thomas Menino  
Deerin Babb-Brott, CZM Director  
Bradford Washburn, CZM  
L. Langley, Wetlands & Waterways Program Director, DEP  
R. McGuinness, Boston Redevelopment Authority  
WRP Harbor Planning File