

**DECISION ON THE CITY OF BOSTON'S
REQUEST FOR RENEWAL
OF THE
FORT POINT DOWNTOWN WATERFRONT PHASE 1 MUNICIPAL HARBOR PLAN
PURSUANT TO 301 CMR 23.00**

February 12, 2013

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Richard K Sullivan Jr., Secretary**

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (“EEA”), I am issuing this decision approving a renewal of the City of Boston’s Fort Point Downtown Waterfront Phase 1 Municipal Harbor Plan (“Plan”) dated May 2002 (“Decision”). This Decision presents a synopsis of Plan content, and incorporates the analysis and findings on how the Plan complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00 and the previous decision dated October 10, 2002.

The Municipal Harbor Planning Regulations 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 the Waterways Regulation Program of the Massachusetts Department of Environmental Protection (“MassDEP”) in making decisions pursuant to M.G.L. 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.

Pursuant to the review procedures at 301 CMR 23.00, the request for renewal was submitted in October 2012. Following a review for completeness, the Massachusetts Office of Coastal Zone Management (“CZM”) published a notice of public hearing and a 30-day opportunity to comment in the *Environmental Monitor* dated October 22, 2012. Oral testimony was accepted during a public hearing held in the City of Boston on November 1, 2012, and two written comment letters were received before the close of the public comment period on November 23, 2012. An additional comment letter was received on December 20, 2012. The substance of all three comment letters focused on implementation of the Plan as described in Section III of this Decision. The review and consultation process led by CZM, included consultation between staff of CZM, MassDEP, and the Boston Redevelopment Authority (“BRA”). In reaching my approval decision, I have taken into account the oral and written testimony submitted during the public comment period.

II. PLAN CONTENT

The geographic area covered by the Fort Point Downtown Waterfront Phase 1 MHP (“Plan”) includes 500 Atlantic Avenue, totaling approximately 2.8 acres of land. The Fort Point Downtown Waterfront Harbor Planning Area consists of approximately 37 acres of land from the Old Northern Avenue Bridge to the US Postal Service facility, and 44 acres of adjacent Fort Point Channel Watersheet (see Figure 1). The Phase 1 planning area, 500 Atlantic Avenue, is comprised of filled or flowed tidelands, with approximately half of the area located on Commonwealth tidelands and half on private tidelands.

The Plan was previously approved by the Secretary of Environmental Affairs in 2002. The Plan allowed for additional building height in order to provide screening of the ventilation tower built on the site for the Central Artery/Tunnel (“CA/T”) project. The Plan provided for the wrapping of the ventilation tower with a new building that would help to implement the City’s vision for a mixed use waterfront neighborhood of widely varied building designs and uses. The Plan dramatically improved access to and along the shoreline, with a requirement of a wider Harborwalk and the introduction of on-water access by a network of floating docks. The Plan provided a planning framework for Phases 1 and 2 that ensures uses and activities in the Water Dependent Use Zone (“WDUZ”) are promoted. The Plan required a fully compliant WDUZ at the 500 Atlantic Avenue site where a water transportation facility serving inner harbor water shuttles and water taxis would be built by the CA/T project as mitigation.

III. STANDARDS FOR APPROVAL

The Plan contains the City's planning vision and other specifics to guide use and development of the Fort Point Downtown Waterfront Phase 1 planning area. It should be noted, however, that while these elements are commendable and important to the planning area, the 2002 approval and this renewal are subject to the authority and standards as contained in 301 CMR 23.00 et seq. (Review and Approval of Municipal Harbor Plans). Furthermore, the 2002 approval and this renewal apply 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

Pursuant to 301 CMR 23.05, all municipal harbor plans must be consistent with all CZM Policies. The federally-approved CZM Program Plan establishes these enforceable program policies and 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 the Plan 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

Municipal Harbor Plans and associated amendments present communities with an opportunity to propose modifications to the 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.

As required by 301 CMR 23.05(3), the provisions of the Plan were analyzed and found to be consistent with state tidelands policy objectives and associated regulatory principles set forth in the Chapter 91 Waterways regulations. Table 1 contains a summary of the substitute provisions approved in 2002 and renewed through this decision; Table 2 contains a summary of the amplifications approved in 2002 and renewed through this decision.

Table 1 — Summary of Substitute Provisions

| Regulatory Provision | Chapter 91 Standard | Substitution |
|---|--|--|
| 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 a maximum building height of 239 feet, with heights of 55 feet within 35 feet of the shoreline, 63 feet within 70 feet, 132 feet within 79 feet, and 239 feet beyond 79 feet from the shoreline. |

Table 2 — Summary of Amplifications

| Regulatory Provision | Chapter 91 Standard | Amplification |
|---|--|---|
| 310 CMR 9.52 Utilization of the Project Shoreline: Pedestrian Access Network | At a minimum, the pedestrian access network shall be no less than ten feet in width. | 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. |

C. Implementation

On November 3, 2003, MassDEP issued a Chapter 91 license for the 500 Atlantic Avenue site. This license was issued for a term of 99 years and authorized the construction of a mixed use hotel project with ground floor facilities of public accommodation, upper floor residential units, open space, water taxi dock and Harborwalk. I am pleased that the project has been constructed and not only serves as a screen for the ventilation tower, but provides restaurants and public facilities on the ground floor, exterior open space that is activated with regular programming, a water transportation kiosk, and generous Harborwalk that provides a seamless connection to the adjacent

properties. I am confident that the Chapter 91 license will provide on-going assurance that the public benefits required on the site are maintained.¹

As envisioned in the City's Fort Point Channel Watersheet Activation Plan, a water transportation terminal has been planned for the 500 Atlantic Avenue site, and was required as mitigation in separate commitments for the CA/T Project.² I am pleased that this long planned public benefit will be realized in the near term, as MassDOT has announced that it will complete the dock in 2013. This water transportation terminal will provide tremendous opportunities for linking inner harbor neighborhoods by water and providing additional options for commuters. I look forward to the completion of the water transportation terminal as it will provide critical ADA access and a watersheet connection between the adjacent docks at Atlantic Wharf and Independence Wharf as envisioned in the City's Watersheet Activation Plan as "Channel Walk".³

The ticket kiosk that was constructed on the 500 Atlantic Avenue site will continue to serve the public by providing support for the water transportation terminal as required in the site's Chapter 91 license. Additionally, water transportation service from the site will benefit from the water transportation subsidies that have been required by MassDEP through the Chapter 91 licensing process.

The City has indicated that as sea level rises and adaptation planning continues, municipal harbor plans may be an appropriate vehicle to address climate preparedness and adaptation. Comment letters from The Boston Harbor Association and the Boston Environment Department also support climate preparedness and adaptation strategies being part of future MHPs. I agree, and as the City and the Commonwealth develop recommendations and strategies to address sea level rise, I urge the City to include these measures in future harbor planning efforts and renewals.

¹ See MassDEP waterways license #9825 issued on November 3, 2003 to Intell Boston Harbor LLC

² See MassDEP waterways license 5065 issued on June 6, 1996 to the Massachusetts Highway Department.

³ A comment letter from the 500 Atlantic Avenue Primary Condominium expressed concern about obligations regarding the future maintenance of the water transportation dock. I understand that these obligations are included as conditions of a valid Chapter 91 License and are not affected by this renewal.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on February 12, 2013. 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. 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.

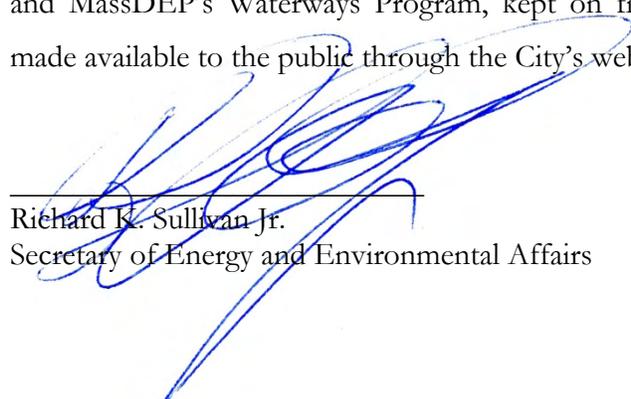
V. STATEMENT OF APPROVAL

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 renewal of the Fort Point Downtown Waterfront District Phase 1 Municipal Harbor Plan. For future 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 February 6, 2013, 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 add this Decision to the final Approved Plan, and it 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 the City's website and/or copies at the public library.



Richard K. Sullivan Jr.
Secretary of Energy and Environmental Affairs

2/12/13
Date



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

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DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

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Commissioner

February 6, 2013

Richard K. Sullivan, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: February, 2013 City of Boston Fort Point Downtown Waterfront Phase 1 Municipal Harbor Plan (MHP) Renewal ("Renewal")

Dear Secretary Sullivan:

The Department of Environmental Protection, Waterways Regulation Program (WRP) has reviewed the City of Boston's Fort Point Downtown Waterfront Phase 1 Municipal Harbor Plan (MHP) Renewal ("Renewal") dated February, 2013. WRP staff has worked closely with the Boston Redevelopment Authority's leadership, 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 Plan. Accordingly, the WRP recommends that you approve the Plan Renewal 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 Plan 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 which 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,

Ben Lynch
Program Chief
Waterways Regulation Program

cc: Bruce Carlisle, CZM Director
Brad Washburn, Assistant Director, CZM
Valerie Gingrich, CZM Boston Regional Coordinator
Lealdon Langley, Wetlands & Waterways Program Director, DEP
Richard McGuinness, BRA Senior Waterfront Planner
WRP Harbor Planning File

Handwritten signature or initials