

Decision On
The City Of Boston's
Fort Point Downtown Waterfront
Phase 2
Municipal Harbor Plan

March 8, 2004

Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Ellen Roy Herzfelder, Secretary

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I. INTRODUCTION

Today, I am approving, subject to certain conditions, a portion of the Fort Point Downtown Waterfront Municipal Harbor Plan Phase 2 (the “Plan”) submitted in September, 2004. My approval decision (“Approval Decision”) is governed by the Municipal Harbor Planning regulations at 301 CMR 23.00 (the “MHP Regulations”).

The Fort Point Channel area forms the critical link between the Downtown Financial District and the South Boston waterfront. This area has a rich history dating back to 1837, when the Fort Point Channel was laid out and its first granite seawalls were constructed. In prior planning documents, the City articulated goals for developing the Fort Point Channel area as a lively location with mixed uses and substantial year-round public activity. This area also presents unique opportunities for development due to its proximity to South Station, a major transportation terminal.

Pursuant to the review procedures contained in the MHP Regulations, a Municipal Harbor Plan (“MHP”) Amendment was noticed in the *Environmental Monitor* on September 9, 2003, and written comment letters were accepted during a 30-day period that closed on October 9, 2003. During this comment period, I held a public hearing in the City of Boston on September 23, 2003 and accepted testimony at the hearing. The review process led by Massachusetts Coastal Zone Management (“CZM”) included consultation between staff of the Waterways Program of the Department of Environmental Protection (“DEP”) and the Boston Redevelopment Authority (“BRA”). At the request of the BRA, the consultation session was extended until February 14, 2004, in order to develop additional information necessary to ensure plan compliance with the requirements set forth in the Notice to Proceed issued November 26, 2001 (the “NTP”), the approval Decision for Phase 1,¹ and the plan content requirements of the MHP Regulations. The plan was reviewed under procedures set forth at 301 CMR 23.04.

The MHP process allows municipalities to undertake a comprehensive planning effort that will serve to inform and guide EOEPA agency actions affecting the implementation of waterway management programs at the local level. Specifically, approved plans should be of direct assistance to DEP, as trustee of the public’s rights in tidelands, to formulate Mass. Gen. Laws ch. 91 (“Chapter 91”) decisions that are responsive to municipal objectives and priorities, harbor-specific conditions, and other local and regional circumstances.

This Approval Decision includes my findings and determinations relative to each of the standards for MHP approval at 301 CMR 23.05, and where necessary, specifies conditions, including limiting the spatial extent of my approval, to ensure that final planning efforts for the Fort Point Channel area achieve a comprehensive planning context for this unique urban resource.

¹ See *Decision on The City of Boston’s Fort Point Channel Phase I Municipal Harbor Plan*, Section VIII, Phase II MHP Elements, Executive Office of Environmental Affairs, October 10, 2002, p. 27.

A. Background

As described in the Plan, the harbor planning area for both Phases 1 and 2 of the Fort Point Downtown Waterfront Harbor Plan was defined to include approximately 82 acres of land and watershed located adjacent to the City's densely developed Financial District. Consistent with guidance provided in the NTP, the Fort Point Channel planning area includes seven individual parcels: 1) Hook Lobster; 2) 500 Atlantic Avenue; 3) 470 Atlantic Avenue; 4) Russia Wharf; 5) the Federal Reserve Building; 6) 245 Summer Street; and 7) the United States Postal Service Annex. It is bounded to the north by the southerly edge of the Old Northern Avenue Bridge; to the west by Atlantic Avenue, Summer Street, and the westerly line of the Postal Services Facility to the Dorchester Avenue Bridge; and to the east by the Fort Point Channel. This boundary is depicted generally in Figure – 1.

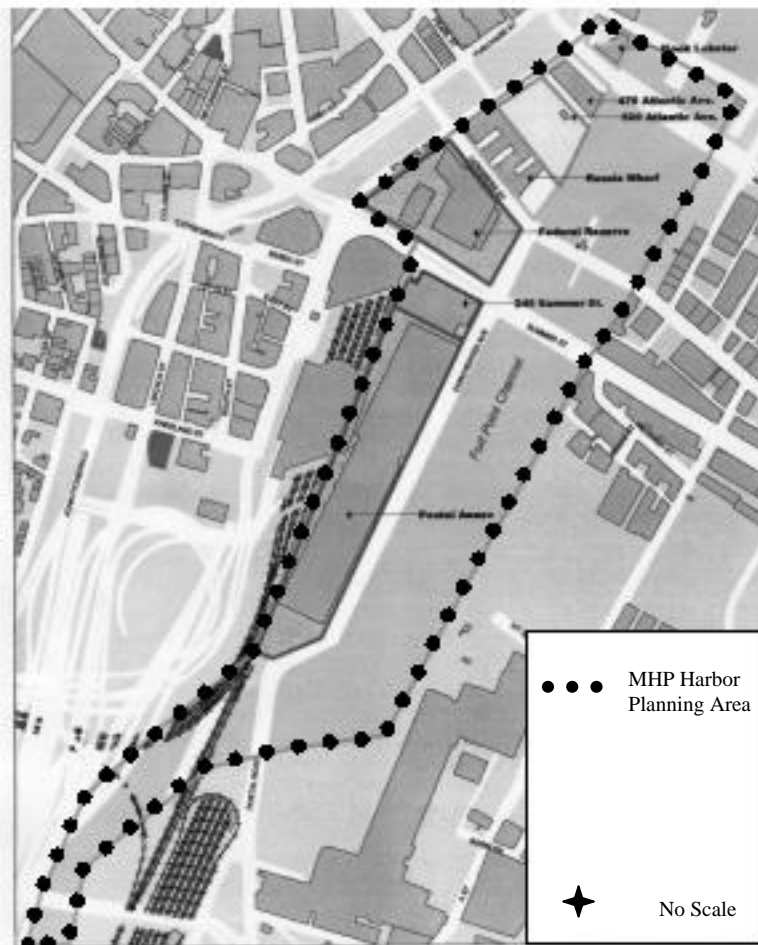


Figure – 1
MHP Harbor Planning Area

The Phase 1 and 2 planning area is made up of approximately 38 acres of filled tidelands and pile-supported structures, of which approximately 65% is occupied by existing and licensed structures. Preliminary analysis indicates that Commonwealth Tidelands comprise approximately 80% of this non-watersheet harbor planning area with the remaining 44 ± acres of the planning area made up of the open watersheet of the Fort Point Channel. This area has been the focus of significant public process resulting in the development of the City's impressive *Fort Point Channel Watersheet Activation Plan* (the "FPCWAP"), a planning document prepared in partnership with the Fort Point Channel Abutters Group and the Fort Point Channel Working Group that establishes an overall vision for the watersheet as well as a series of infrastructure improvements and program recommendations.

Recognizing the unique circumstances presented by the progress of the Central Artery/Tunnel (CA/T) project, the NTP issued by CZM in November, 2001 was developed to facilitate a two-phased approach to the City's Fort Point Channel harbor planning efforts, provided that these efforts were guided by a comprehensive framework of planning principles and goals applicable to the entire planning area. As set forth in the NTP, Phase 1 focused on 500 Atlantic Avenue, a site for which planning had advanced significantly in conjunction with the proposed CA/T ventilation tower to be constructed on a portion of the property. Approval of the Phase 1 Fort Point Channel Downtown MHP (the "Phase 1 Plan") was issued in October, 2002 and included a height substitute provision for 500 Atlantic Avenue, endorsement of the planning framework and principles articulated by the City for the entire Fort Point Channel planning area, and additional guidance for the Phase 2 completion of the remainder of Fort Point Channel planning area.

B. Portion of the Phase 2 Planning Area Subject to this Approval Decision

As discussed in detail by the NTP, the application of the MHP process to parcels on an individual basis is not an approach that, notwithstanding certain extenuating or unique conditions, has been supported by previous MHP decisions. Rather, these decisions have encouraged broad-based planning where geography or subject matter argue logically and strongly for a more encompassing planning context. Nevertheless, the focus of the Plan currently under review is limited primarily to the Russia Wharf development, with the principal planning context being the City's efforts to activate the watersheet of the Fort Point Channel. Planning for the remaining Phase 2 area has not advanced to the level that was anticipated by the NTP, as discussed below.

The Plan does not provide a vision or planning analysis for the area south of the Summer Street Bridge; an area consisting of the United States Postal Service Annex and 245 Summer Street. These parcels together comprise more than half the land area in the overall Fort Point Channel Harbor planning area. The United States Postal Service Annex site alone encompasses more than sixteen acres of waterfront land in close proximity to South Station. Further, the City clearly anticipates that significant redevelopment will occur in the future. The City has, at various times in the past, indicated that more dense development and greater building heights are appropriate for this area. Despite such projections, however, the Plan contains no projected use program or build-out for these parcels, nor presents the sort of detailed planning analysis the NTP required for the balance of the Phase 2 planning area. The Plan does not utilize the flexibility the NTP offered, which would allow for the planning analysis to be preliminary in nature and would accept

illustrative development scenarios in the absence of design details for specific parcels (a more conceptual approach, modeled after that employed for the Fort Point North and South Historical Districts in the South Boston Waterfront MHP).

Moreover, a decision at this time on the United States Postal Service Annex and 245 Summer Street sites runs the risk of inappropriately segmenting water-side and land-side planning, especially in this instance where the former has received so much attention through the development of the *FPCWAP* and yielded such exciting results. As the NTP indicated, “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 interests described above ... all offsets must relate directly to the tidelands policy objectives associated with each substitute provision, and be reasonably proportional to the degree of adverse impact that is revealed through detailed planning analysis.” Where there are no proposed substitutions to be analyzed on at least a conceptual level, there is no basis to judge whether there is a satisfactory linkage, or reasonable proportion, between water-side offsets and land-side impacts.

By way of contrast, the submitted Plan largely brings to completion the Phase 2 planning process as it relates to the area bounded generally by Atlantic Avenue, the Old Northern Avenue Bridge, and the Summer Street Bridge. This area includes the following parcels:

- Hook Lobster
- 470 Atlantic Avenue (has current Chapter 91 License)
- 500 Atlantic Avenue (subject of Phase 1 Approval Decision)
- Russia Wharf
- The Federal Reserve Building.

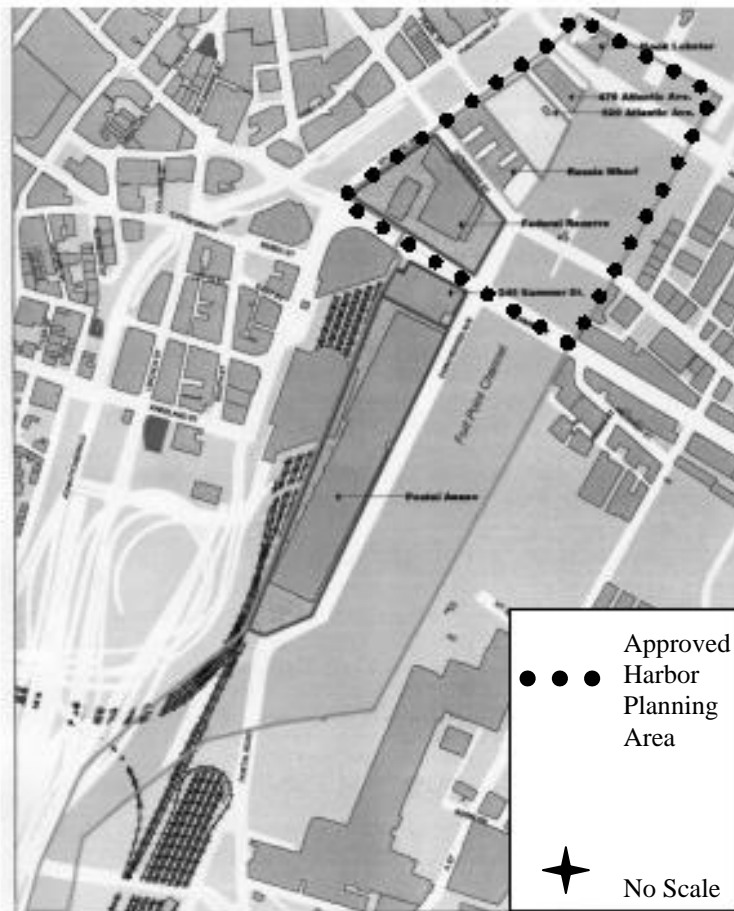
This is an area for which a level of planning commensurate with the requirements of the MHP Regulations has, for the most part, been completed. With the exception of Hook Lobster, an existing licensed water-dependent use that forms the northerly edge of the planning area and for which no new development is currently proposed within the Plan, the use program and physical buildout of these parcels has largely been determined. Indeed, Chapter 91 licenses have been issued for 470 Atlantic Avenue² and 500 Atlantic Avenue,³ thereby allowing redevelopment to proceed. Finally, Russia Wharf, which has a current Chapter 91 license for its present configuration,⁴ is the primary focus of this Plan and is seeking substitutions for certain provisions to the DEP waterways regulations at 310 CMR 9.00 (the “Waterways Regulations”) to facilitate its redevelopment proposal.

² License No. 8959, issued on August 10, 2001

³ License No. 9825 was issued on November 3, 2003 in accordance with applicable provisions of the Secretary’s Approval of the Fort Point Downtown Waterfront, Phase 1 MHP.

⁴ License No. 7735 was issued on July 29, 1999.

Accordingly, this Approval Decision will focus on and approve solely that portion of the Phase 2 planning area located to the north of the Summer Street Bridge, as shown in Figure 2.⁵ The planning area framed by the Old Northern Avenue and Summer Street Bridges includes approximately 32 acres of land/watersheet and consists of approximately 64% Commonwealth Tidelands and approximately 7.3 acres of filled tideland or flowed tidelands occupied by pile-supported structures. With the exception of a significant portion of the Federal Reserve parcel (to which the Landlocked Tidelands provisions of the Waterways Regulations apply),⁶ the entire area is subject to Chapter 91 jurisdiction. Existing and/or licensed buildings occupy approximately 55% of the developable area with existing heights ranging from less than 50 feet at Hook Lobster, to approximately 170 feet at 470 Atlantic Avenue, to 239 feet at 500 Atlantic Avenue, and to 614 feet at the Federal Reserve Building. The area is immediately adjacent to the Downtown Financial District that is a built form characterized by high density and significant building height.



Adapted from: Fort Point Downtown Waterfront MHP

Figure – 2
Limits of Approved Harbor Planning Area

⁵ This area is defined by the area within Chapter 91 jurisdiction bounded by the southerly edge of the Old Northern Avenue Bridge to the north, Atlantic Avenue to the west, the centerline of the Summer Street Bridge to the south, and the shore of the Fort Point Channel to the east.

⁶ See 310 CMR 9.02 (definition of “Landlocked Tidelands”).

Another factor that suggests I defer review of the Phase 2 planning area south of Summer Street is that, as I understand from the City's Fort Point Downtown Waterfront MHP Phase 2 Supplement, dated January, 2004 (the "City Supplement"), the City will undertake a comprehensive master planning process for the United States Postal Service Annex and 245 Summer Street that, among other things, will address the implications of proposed future South Station track expansion. A letter from the Massachusetts Bay Transportation Authority ("MBTA") indicates that the Executive Office of Transportation and Construction ("EOTC") and United States Postal Service ("USPS") have entered into an agreement to work towards expansion of the South Station Transportation Center ("SSTC") transit service capacity through the accommodation of four additional rail tracks and associated platforms on the Postal Services Facility site as part of their future redevelopment plans.⁷

In view of the integral relationship between both the United States Postal Service Annex and the 245 Summer Street sites along the waterfront with the redevelopment of the entire South Station property (including construction of the proposed "air rights" building and track expansion), I believe it is more appropriate for me to defer to the BRA's larger area-wide planning process that encompasses the waterfront district as an integral element, thereby avoiding segmenting the waterside and landside components of this area. In effect, I am persuaded that, while this approach effectively constitutes an additional phasing of the planning process contrary to the letter of the NTP, it is justified in the interest of developing a carefully integrated master plan for this vital downtown area between Atlantic Avenue and the Fort Point Channel.

I encourage the City to work cooperatively with USPS, EOTC and the MBTA, as well as the owner of 245 Summer Street, on this comprehensive master planning effort. Accordingly, I will not commence further review of the Fort Point Channel area south of Summer Street until the City completes a comprehensive master planning effort for this combined United States Postal Service Annex/245 Summer Street and South Station area, in coordination with USPS, EOTC and the MBTA, other affected landowners and stakeholders. Such a master plan should discuss how new development contemplated throughout the area will accommodate not only track expansion but also state policy objectives for Commonwealth Tidelands. The master plan should also implement the following objectives.

- Public access to high-quality waterfront open space along the Fort Point Channel and not concentrated at the southerly end.
- Pedestrian links to the waterfront from inland open space areas.
- Preparation of a detailed network plan describing the location and programming of all interior ground-level public space (Facilities of Public Accommodation, or "FPAs"). Reflective of the significant Commonwealth Tideland area, and to ensure year-round public activation of this area, I will expect that at least 25% of the

⁷ See MBTA Letter to Secretary of Executive Office of Environmental Affairs, dated December 8, 2003, p. 1. See also Fort Point Downtown MHP, Phase 2, September, 2003, Section 3.3.17, entitled MBTA and USPS South Station Track Expansion Memorandum of Agreement, dated July, 2000.

required FPA space to consist of Special Public Destination Facilities (“SPDFs”) as this term is defined in Section III.C below.

When further work is accomplished and information is developed to a more appropriate planning level that integrates and encompasses a vision for this important area of filled tidelands as anticipated by the NTP, I will consider adding this significant geographic area to the Approved Plan in accordance with the amendment procedures of the MHP Regulations at 301 CMR 23.06, subject to the guidance and requirements set forth in the original NTP, the Phase 1 Decision and the additional guidance set forth in this Approval Decision.

II. REVIEW OF BASIC PLAN ELEMENTS

This limited plan approval was developed through consultations with CZM and DEP and was reviewed under procedures set forth at 301 CMR 23.04. Pursuant to 301 CMR 23.04(1), the content of the MHP must contain text that addresses the basic elements of a MHP as defined in the MHP Regulations at 301 CMR 23.02 and as further required by the NTP. These elements include the following:

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

Based on the discussion and the supplemental analysis conducted for the approved planning area as described below, I find that the Plan’s content incorporates the basic plan elements in a manner that complies adequately with the MHP requirements at 301 CMR 23.04(1).

A. Goals, Objectives and Applied Policies

After receiving the NTP in 2001, the BRA began the planning process for the Fort Point Channel formally with the preparation and submission of the Phase I Plan, which was approved by the Secretary on October 10, 2002. In response to the NTP, the Phase 1 Plan began a two-phased approach for a planning area encompassing seven parcels of land and the Fort Point Channel watershed. The Phase 1 Plan served to provide specific recommendations for the 500 Atlantic Avenue parcel while setting the planning framework that will guide the future buildout of the planning area in a manner responsive to the community’s vision and consistent with the policy objectives of the state’s tidelands policy. Phase 2 builds on the Phase 1 Plan, further integrating the area-wide planning framework and the City’s *FPCWAP* while providing specific recommendations for the re-development of the Russia Wharf site.

Chapter 4 of the Plan for Phase 2 identifies the City's broad goals for the Fort Point Channel planning effort and the manner in which these goals promote the planning principles established in the Phase 1 Plan as the framework for future development throughout the entire Phase 1 and 2 planning area. The Phase 2 planning area is largely developed with existing structures that, in many instances, fall short of current numerical and dimensional Waterways Regulations requirements for height and interior and exterior public open space. The goals and objectives of the Plan, therefore, focus on the promotion and enhancement of both interior and exterior ground level public space throughout the Phase 2 planning area.

These goals are presented in the context of a general long-range vision for the adjacent Fort Point Channel watershed as expressed in the *FPCWAP*, a plan developed through a collaborative and public planning effort undertaken by the City. The *FPCWAP* capitalizes on the unique possibilities afforded by the Fort Point Channel and its watershed to connect the evolving South Boston waterfront with the established Downtown area through the careful design and programming of ground-level public space. The Plan, therefore, is part of a broader effort to implement a vision that will make the Fort Point Channel Downtown waterfront an active public destination throughout the year. Through the adoption of planning goals expressed in the *FPCWAP*, it seeks to further those principles, consistent with the NTP and Phase 1 Decision, the Waterways Regulations and the MHP Regulations.

As discussed in Chapter 4, the Plan and the *FPCWAP* envision a transformation of the Fort Point Channel waterfront, based upon the following goals.

- The maintenance of significant public open space in proximity to the water.
- The preservation and, where possible, maintenance of view corridors, pedestrian ways and public streets that physically and visually connect inland open space and neighborhoods to the waterfront.
- The design of open space that encourages lively public access and use and discourages privatization.
- The siting and programming of new and expanded water-dependent, civic, commercial, hotel and retail uses that will complement public open space by attracting and maintaining substantial year-round public activity.

The City also looks to the *FPCWAP* to help achieve its vision for the Fort Point Channel waterfront as a source of amplifications for some of the many discretionary requirements of the Waterways Regulations, and as a possible source of offsets for those provisions intended to substitute for certain numerical standards and use limitations applicable to nonwater-dependent use projects under the Waterways Regulations. As discussed below, the *FPCWAP* will provide helpful guidance to DEP in applying its discretion in future licensing decisions in the planning area to ensure that an appropriate level and quality of watershed activation measures are provided.

Offsets, however, must relate directly to the impacts of a proposed substitute provision and be justified with an appropriate level of analysis that addresses individual approval standards. Recognizing this plan contains substitute provision requests for Russia Wharf only, the utility of the *FPCWAP* as a source of offsets for any future amendment must be evaluated in the context of specific proposed substitute provisions and supporting analysis provided the City.

Chapters 5, 7, 9, and 11 contain more detailed discussions of the City’s comprehensive policies related to the built environment, including design standards for Harborwalk, standards and guidelines for activating the watersheet, and design guidelines that address features such as building scale and character, sustainability, and universal accessibility. These policies, although not critical to my evaluation of this plan, contribute further to the City’s articulation of its vision for the Fort Point Channel waterfront.

B. Implementation Program

Chapters 11 and 12 provide a general discussion of the actions necessary to adopt appropriate zoning measures that will implement plan policies and guide and regulate private development. From the information provided in the Plan, it appears that the Russia Wharf development is located within the Downtown Interim Planning Overlay District (“Downtown IPOD”), in which maximum building heights are currently restricted to 125 feet. With the approval of the Plan, therefore, the City must still address underlying existing zoning restrictions before the Russia Wharf development project can proceed. I understand that the issue of zoning will be addressed through a separate zoning process codifying those dimensional requirements approved as substitute provisions. Such codifications may take the form of an application for a Planned Development Area and/or changes to the planning area’s underlying zoning. The City will follow a public process to implement these various zoning amendments, as provided in the Boston Zoning Code and Enabling Act.

The development and implementation of a regulatory framework in the form of appropriate zoning provisions is fundamental to ensuring that public access and rights to the waterfront are promoted in accordance with the policies of the Plan approval. As discussed in detail later in this Approval Decision, 301 CMR 23.04(6) of the MHP Regulations requires the City to certify that relevant permanent zoning measures have been adopted, prior to the approved substitute provisions in this plan taking effect with respect to any projects seeking Chapter 91 licenses.

C. Planning Analysis

Recognizing the potential for significant area-wide ground-level environmental impacts associated with the existing nature of the built environment and the proposed substitute provisions, the NTP clearly described the type and degree of analysis required in the Plan. Specifically, the NTP required that the City evaluate and assess the pedestrian-level impacts of substitute provisions on water-dependent activities and public access. Where adverse impacts were identified, the NTP indicated that the analysis was to evaluate impacts upon the character of the anticipated ground-

level uses and identify appropriate offsets and other mitigation measures. The NTP identified the core tidelands policy objectives relating to planning for ground-level spaces as follows:

- providing sufficient space immediately adjacent to the water for public access and water-dependent activities;
- providing extensive upland open space that further promotes public use and enjoyment of the waterfront and other water-dependent activities; and
- maintaining a physical environment (e.g., appropriately located and programmed interior public space in the form of FPAs as defined in the Waterways Regulations) that is conducive to pedestrian activity at and near the waterfront.

As it pertains to the 5 parcel area that is the subject to this Approval Decision,⁸ the information accompanying the Plan, the supplemental information requested by CZM and DEP, and the *FPCWAP* provide adequate planning analysis that is responsive to guidance provided in the NTP. Furthermore, as discussed in Section III.C below, the planning information supplied in the Plan and related sources allowed CZM to conduct a build-out analysis comparing planned development described in the Plan with Chapter 91 compliant and/or existing conditions scenarios for the approved planning area. Informed by the results of this area-wide build-out analysis, I find that the Plan with its supporting information complies adequately with the requirements set forth in the NTP and required elements of an MHP set forth at 301 CMR 23.04(1).

D. Public Participation

Chapter 2 discusses the public participation program that contributed to the development of Phase 2 of the Fort Point Downtown Waterfront MHP. In July, 1999, Mayor Menino appointed members to the Municipal Harbor Plan Advisory Committee (MHPAC) to assist with the development of planning goals and MHPs for several areas of the City, including the South Boston and East Boston waterfronts. Consisting of representatives from the City's waterfront neighborhoods, advocacy groups, elected officials, educational institutions, and commercial interests, the MHPAC has continued in its advisory role to the BRA, assisting with the development of the phased Fort Point Downtown Waterfront MHP.

On December 4, 2002, the MHPAC held its first meeting for Phase 2. It continued to meet almost every other week until the end of July, 2003. The meetings were open to the public and well attended, and provided a public forum for the consideration and discussion of various planning goals and objectives for the Fort Point Channel area. Representatives for each of the seven parcels comprising the Phase 1 and 2 planning area and the MBTA for South Station were invited to meetings to discuss parcel-specific development plans. Finally, the BRA continued to meet with the Fort Point Channel Working Group, a group that evolved out of the *FPCWAP* process, the Harborwalk Committee and other groups with special interests in the Fort Point Channel.

⁸ See Figure-2.

Of particular note was the Fort Point Channel Working Group, a group that emerged out of the MHP process for the South Boston Waterfront to address the challenging task of investigating measures to activate the Fort Point Channel. The work of this group culminated with the development of the *FPCWAP*, a plan that seeks to increase public access to and public use of the Channel area.⁹ I applaud the efforts of those who participated in this process and the creation of a plan that has the potential for making the Fort Point Channel one of the premiere public waterfront destinations in the City.

The Plan was submitted to me in September, 2003. Based on the record before me, I am convinced that the public participation program has been an inclusive process, one that has informed this Approval Decision and identified those areas critical to the implementation of an MHP that will be beneficial to public and private interests alike.

III. COMPLIANCE WITH APPROVAL STANDARDS

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 (2));
- 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 (4));
- 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(3)); 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 (5)).

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

⁹ After a lengthy development process, including several public drafts, that included significant time and effort of the volunteer Fort Point Channel Working Group, the City issued the *FPCWAP* in May, 2002.

A. Consistency with CZM Program Policies and Management Principles

In 1978, EOEA adopted an overall program to manage the Massachusetts coastal zone, based on 27 broad statements of policy. In March 1997, CZM revised these statements, as set forth at 301 CMR 21.98, and they now form the basis for the Commonwealth's environmental policy for the coastal zone. The CZM Program Plan also includes a series of policy principles that provide guidance for the management of activities in the coastal zone. The Program Policies and Management Principles applicable to this planning area include:

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 Hazard Policy #2:

Ensure construction in water bodies and contiguous land areas 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 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.

Public Access Management Principle #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 Principle #3:

Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.

Public Access Management Principle #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.

The aforementioned policies are cited as relevant to the major issues identified in the Plan: waterfront re-development, public access and activation, and historic preservation. There is ample evidence that the Plan, as conditioned in Section V and approved herein, is consistent with these Program Policies and Management Principles, as required by 301 CMR 23.05(2).

I note that concerns have been raised about whether the Russia Wharf project complies with the requirements of the Massachusetts Historic Commission (“MHC”) regulations at 950 CMR 71.00. I anticipate that such concerns will be resolved through the regulatory process before MHC, and that information about the resolution of these historic preservation issues will be provided to DEP prior to the close of the public comment period for the Chapter 91 licensing process for this project. To emphasize this expectation, I have included a condition related to the Russia Wharf project and compliance with MHC regulations in Section V.

B. Compatibility With State Agency Plans Or Planned Activities

Pursuant to 301 CMR 23.05(4), 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. In making this determination, I am guided by the regulations to ensure that the City and all relevant state agencies have consulted and made every reasonable effort to maximize the compatibility of their planning efforts.

As with previous MHP decisions, I read this provision broadly to cover also the activities of state agencies on adjacent properties, where activities within the planning area could have effects upon the state agency properties or plans. In this case, I have specifically focused on the Plan’s compatibility with the MBTA’s Silver Line project, and Massport’s aviation planning for Logan Airport, both of which are addressed generally in the Plan (see Sections 10.8 and 5.1, respectively). With regard to the area located to the south of the Summer Street Bridge outside of the approved portion of the Plan, I have set forth conditions that I will expect to be addressed in any subsequent plan amendment. In this manner, I have concluded that the approved portion of the Plan is consistent with state agency activities.

1. MBTA South Boston Piers/Fort Point Channel Transitway

During the South Boston Waterfront MHP process, public transit access was identified as critical to the successful redevelopment of the South Boston Waterfront. Indeed, much of the

public comment at the September, 2000 South Boston Transportation Summit focused on the importance of the MBTA's new Silver Line project (Transitway), and on the need for intermodal connections between transit stops and water transportation.

When completed, the Transitway, a 1.5-mile underground tunnel section, will provide a direct transit link between the Boylston Green Line station and the new World Trade Center station, connecting the westerly or downtown side of the Fort Point Channel, the Federal Courthouse, and the emerging development of the South Boston Piers area with new and improved public transportation. The tunnel being constructed below the Fort Point Channel also crosses under property of Russia Wharf and 500 Atlantic Avenue. Transitway construction on the Russia Wharf site is facilitated by an easement for the transitway tunnel, secured from MA-Russia Wharf, L.L.C., an affiliate of Equity Office Properties Trust – owners of the property – and a license allowing for the MBTA to reconstruct and use Tufts Wharf for construction access for the transitway project. As part of the mitigation required for the CA/T Project, a continuous Harborwalk from Summer Street to the Evelyn Moakley Bridge will be constructed upon completion of the project.

On the easterly side of the Fort Point Channel, approximately 33,000 SF of land located on Sleeper Street, and taken by the MBTA for construction staging purposes, will be conveyed to the BRA and converted to a public park, referred to as Children's Wharf Park. The design of the park is being coordinated with the open space plans of the Children's Museum, which will be responsible for development, programming, and maintenance. Section 3.3.13 of the Plan describes the MBTA's Transitway project generally and demonstrates the compatibility of the Plan with it, as required under 301 CMR 23.05(4).

2. Logan Airport

The flightpath for Runway 9/27 at Massport's Logan Airport is proximate to the Russia Wharf project site, which is located approximately a mile and a half from the end of the runway. The Federal Aviation Administration (FAA) has defined a set of maximum building heights within the flightpath under the Terminal Instrument Procedures (TERPS) regulations, in order to minimize safety and operational interference with aircraft takeoffs and landings. Similar to the situation encountered by the approval process for the South Boston Waterfront MHP, and specifically the proposed Fan Pier and Pier 4 developments, the maximum building height proposed for the Russia Wharf development in the Plan may violate the contours defined by TERPS standards. From the South Boston Waterfront MHP approval process, I understand that neither Massport nor the FAA have permitting authority over building heights within the flight paths. I also understand, however, that when a building within the flightpath exceeds the maximum heights set forth in the TERPs limits, airplane pilots may, at their discretion and under certain circumstances, refuse to use an effected runway in favor of another.

As discussed in the South Boston Waterfront MHP Approval Decision, in addition to potential safety and operational concerns, I am concerned about the potential environmental impacts of such potential changes in runway use. During the MEPA review process for the Logan Airside Improvements Planning Project (EOEA #10458), significant comment was received that expressed concern regarding existing noise and air pollution impacts of airplane travel over urban

neighborhoods in Boston and other local communities. If the use of Runway 9/27 were constrained, scheduled flights could be reallocated to other runways, potentially increasing the traffic over areas in East Boston, Chelsea, and Winthrop that are already heavily burdened by the airport. This would directly interfere with Massport's attempts to allocate airplane travel over different neighborhoods in an equitable and predictable manner.

For this reason, I am conditioning this approval in a manner similar to the South Boston MHP approval, as follows. For any structure that would project into the TERPS limits, DEP must receive a written affirmation from the FAA, prior to the close of the public comment period for Chapter 91 licensing, that it does not foresee any adverse effects on the operations of current Runway 9/27 in a manner that would increase flights over other neighborhoods. The FAA should consult with Massport prior to any such affirmation. Depending on the outcome of the FAA review, this could have the effect of reducing the maximum substitute height provision for the Russia Wharf project. The Plan, as so conditioned, has demonstrated its compatibility with Massport's planning for Logan Airport, as required under 301 CMR 23.05(4).

3. U.S. Postal Service/MBTA South Station Track Expansion

Further planning is needed to accommodate future rail expansion at South Station in the context of the potential re-development of the Postal Services Site. As discussed in Section I.B, the level of planning for the area south of the Summer Street Bridge, including the United States Postal Service Annex adjacent to South Station, has not progressed as anticipated by the NTP or the Phase 1 Decision. As a result, this area has not been included within the planning area approved by this Approval Decision. This area was identified in the NTP, the City's Phase 1 Plan and the Plan for Phase 2, and a letter to me from the Massachusetts Bay Transportation Authority (MBTA) dated December 8, 2003, as critical to the future viability of the SSTC and its ability to meet increasing City, state, and regional transportation demands.

There has been recent public discussion of the possibility that USPS will remain at its current location and perform substantial renovations of the United States Postal Service Annex. As an alternative to renovating and modernizing its existing facility, the USPS is considering relocation of its General Mail Facility, an alternative that would pave the way for redevelopment of the United States Postal Service Annex site while facilitating rail expansion of the SSTC. From the Plan, I understand that the USPS has begun a preliminary master planning process to evaluate a potential re-development scenario for this site based on the following principles:

- re-opening of Dorchester Avenue for public pedestrian use and access;
- creation of a direct visual and pedestrian connection between Dewey Square, South Station, and the Fort Point Channel;
- extension of the Harborwalk along United States Postal Service Annex property;
- activation of the Fort Point Channel with access for boats and other recreational uses;
- promotion of mixed-use, high-density development to activate the landside of the Channel;

- design and integration of cross-Channel pedestrian connections; and
- accommodation of a four-rail SSTC track expansion with associated platforms.¹⁰

The MBTA's letter indicates that EOTC and USPS have entered into an agreement to work towards expansion of SSTC transit service capacity through the accommodation of four additional rail tracks and associated platforms on the United States Postal Service Annex site as part of their future redevelopment plans.¹¹ The Plan, however, does not propose any substitute provisions for the United States Postal Service Annex site and indicates that a comprehensive plan for this area will be developed at some future time.

As discussed in detail in a previous MHP approval decision,¹² issues of district-wide transportation planning, such as those associated with the contemplated SSTC track expansion, generally arise in MHP approvals only as a general matter of consistency with CZM Policies. I do, however, support comments received from the MBTA that a comprehensive master plan, setting forth how new private development contemplated for this portion of the harbor planning area will accommodate not only track expansion plans but also state policy objectives for Commonwealth Tidelands, is needed. Although the NTP requested that the City be responsive to EOTC's transportation planning interests,¹³ the Plan defers the detailed discussion of USPS development plans to an undefined time in the future, should substitute provisions to the numerical and/or dimensional requirements of the Waterways regulations be desired.¹⁴

Recognizing that planning for this critical area is complex, I encourage the City to complete comprehensive master planning for this area, in coordination with EOTC, MBTA, USPS and other affected landowners and stakeholders, in accordance with the guidance for future planning provided in Section I.B herein.

C. Consistency With State Tidelands Policy Objectives

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

First, I have broadly reviewed the effect of all plan provisions that relate to the tidelands policy objectives reflected in the Waterways Regulations. In particular, Chapter 8 highlights features of the Plan, the *FPCWAP*, and the current regulatory program that support the primary state tidelands policy objectives, as required by 301 CMR 23.05(2). My examination of the Plan confirms that a sufficiently high degree of consistency exists between the Plan and those state policy objectives.

¹⁰ See the Plan, p.90.

¹¹ See MBTA Letter to Secretary of the Executive Office of Environmental Affairs, dated December 8, 2003, p.1. See also Fort Point Downtown MHP, Phase 2, September, 2003, Section 3.3.17 entitled *MBTA and USPS South Station Track Expansion Memorandum of Agreement, July 2000*.

¹² See *Decision on the City of Boston's South Boston Waterfront District MHP*, dated December 6, 2000. p.61

¹³ See *NTP for the Fort Point Downtown Waterfront District Municipal Harbor Plan*, November 26, 2001. p.10.

¹⁴ See Plan, pp. 89-90; see also *City Supplement*, Section 10.3.6.

301 CMR 23.05(3)(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, will be more appropriately considered within the context of the MEPA review of specific projects.

My general review sought to evaluate and confirm the consistency of the Plan with the following five state tidelands policies. These policies protect the public's rights in tidelands by ensuring the following:

- preservation of those rights held by the Commonwealth in trust for the public to use tidelands for lawful purposes, including rights of access associated with such use, as provided in 310 CMR 9.35 (301 CMR 23.05(2)(a)(2));
- the availability and suitability of tidelands that are in use for water-dependent purposes, or which are reserved primarily as locations for maritime industry or other specific types of water-dependent use, as provided in 310 CMR 9.32(1)(b) and 9.36, are preserved (301 CMR 23.05(2)(a)(3));
- nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent-uses, as provided in 310 CMR 9.51 (301 CMR 23.05(2)(a)(8));
- nonwater-dependent use projects on any tidelands devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in said lands, as provided in 310 CMR 9.52 (301 CMR 23.05(2)(a)(9)); and
- 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)).

Thus, these state tidelands policies seek to ensure that water-dependent activities and public access are protected. Recognizing the potential for significant area-wide ground level environmental impacts associated with the existing nature of the built environment and the proposed substitute provisions, the NTP clearly required the City to evaluate and assess the pedestrian-level impacts of substitute provisions on water-dependent activities and on public access. Where adverse impacts were identified, the analysis was to evaluate the impacts upon the anticipated ground-level uses and identify appropriate offsets and other mitigation measures.

Based on the numeric and spatial information submitted in support of the Plan review process, and additional information available in the form of existing Chapter 91 licenses and MassGIS spatial data sets, CZM conducted a build-out analysis comparing planned development described in the Plan with Chapter 91 compliant scenarios for the approved planning area in the absence of any substitutions. Specifically, this analysis compared aggregate FPAs, building footprint, water dependent use zone (WDUZ) and open space areas achievable under the Plan for the planning area (the "After Plan"), with aggregate FPAs, building footprint, WDUZ, and open

space areas required for compliance with the Waterways Regulations (the “Before Plan”). In this manner, it was possible to construct an analysis assessing impacts to the public ground-level environment as measured by the total area of ground level public space.¹⁵

Recognizing that the orientation of the planning area relative to the Channel and adjacent tall buildings of the Financial District results in minimal additional wind and shadow impacts to the ground level environment, an analysis was also conducted to assess the effects of increased massing (measured as a volume in cubic feet) associated with increased height. For the purposes of this comparison, the total massing of the After Plan scenario was estimated and compared to similar estimates for a Chapter 91 compliant scenario (i.e., the Before Plan).

The results of this aggregate build-out analysis for the subject planning area consisting of the Hook Lobster, 470 Atlantic Avenue, 500 Atlantic Avenue, Russia Wharf, and the Federal Reserve sites are summarized in Table – A.

Table - A
Comparison of Aggregate Build-Out Scenarios
 (Estimates based on information available from the Plan, existing licenses and MassGIS)

	WDUZ -Setback Area- (SF)	Total Open Space (SF)	Exterior Public Open Space (SF)	Interior Ground- level FPAs (SF)	Total Ground- level Public Space (SF)	Massing - Height - (CF)
Before Plan	75,500	158,500	101,500	61,000	162,500	20,860,000
After Plan	104,000	143,500	143,500	101,000	244,500	30,207,000
Delta (%)	+ 38 %	- 10 %	+ 41 %	+ 66 %	+ 50 %	+ 45 %

Analysis of the study area indicates that After Plan conditions will result in an increase of massing on the order of 45% over that experienced under Before Plan conditions. As anticipated, this increase in total volume is the direct result of expanded heights placed upon existing buildings with footprints occupying more than half of the site area of individual parcels, a built environment mirroring that of the adjacent Downtown Financial District. Reflective of these relatively large,

¹⁵ For the purposes of this analysis, the area of ground level public space for the After Plan scenario was calculated as the sum of the exterior public open space and interior ground level public space resulting from the application of proposed substitute provisions, existing licensing conditions, and existing conditions, as appropriate, within the planning area. The ground level public space for the Chapter 91 scenario was calculated as the sum of the exterior public open space and interior ground level public space resulting from the strict application of the numerical and dimensional requirements, of the Waterways regulations. Both calculations were based on the location of Private and Commonwealth Tidelands as illustrated on Figure 1–3 of the Plan.

existing building footprints, the analysis further indicates that total exterior open space is at a premium within the study area, with individual parcel contributions on the order of 40% of the planning area, or 10 % less than would be required under the Waterways Regulations. The After Plan scenario, however, increases the portion of this open space that is publicly accessible by approximately 40% in comparison to the Before Plan scenario. Due in part to the spatial orientation of Commonwealth and private tidelands, this deficiency in total open space outside is counterbalanced by the increase in exterior publicly accessible open space when the After Plan and Chapter 91 license conditions are applied to individual parcels.

As discussed above, in response to demand for commercial space along the waterfront, early development of the Fort Point Channel area resulted in relatively large building footprints that resulted in minimized exterior open space. The vision for the planning area set forth in the Plan, and already being implemented through the existing Chapter 91 licenses for 470 and 500 Atlantic Avenue, maintains these existing footprints and, based on the area-wide analysis, will continue to leave only 40% ± of the planning area available in the form of exterior open space. Further, through a series of height substitute provisions, massing for this 7-acre area will be increased by almost 60%. With more than half of the planning area composed of filled and/or flowed Commonwealth Tidelands, these constraints also emphasize the need to focus on the ground level environment, both interior and exterior, to promote an accessible and vibrant waterfront that serves as a locus of public activity throughout the year.

When considering interior ground-level FPAs, this analysis indicates that the After Plan scenario will result in an increase in the amount of interior ground-level FPAs by an estimated two-thirds more than that yielded by strict application of the Waterways Regulations. Taken together, this analysis shows that the After Plan scenario results in an increase of almost 50% of the amount of total ground-level public space (including interior and exterior space), compared to the Before Plan scenario. As discussed below, given the uniquely developed nature of the planning area, I am satisfied that such tradeoff between interior ground-level FPAs and exterior public open space will provide requisite public benefits, provided that a portion of this increased interior ground-level FPAs is devoted to SPDFs.¹⁶ Working hand-in-hand with measures to activate the adjoining watershed, these SPDFs will serve to make the Fort Point Channel waterfront an enjoyable, particularly public destination on a year-round basis.

I applaud the efforts of the City and individual project proponents, therefore, to the degree that additional public exterior open space and interior FPA space has been provided to mitigate against the potential for limited availability of exterior open space to privatize the waterfront. For

¹⁶ A Special Public Destination Facility or SPDF is a term that has evolved over the years out of the Boston Harbor planning process and has been defined as "...facilities [of public accommodation] that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use: such facilities may include cultural uses... in the choice of [SPDFs], special consideration shall be given to those which[sp] encourage diversity in the pattern of uses and population of users at the waterfront, and special efforts shall be made in the regard to solicit creative use concepts from the planning and advocacy community at-large: in the choice of facility operators, special consideration shall be given to public or non-profit organizations that otherwise would be unable to afford market rates for waterfront space..." See e.g., *Decision on City of Boston Request for Approval of the Boston Harbor Park Plan Pursuant to 301 CMR 23.00.*, May 22, 1991, p.35.

example, I note that over 80% of the interior ground level of the proposed Russia Wharf has been allocated for FPA use, including what appears to be an exciting café/entertainment club and future cultural space to be located close to the waterfront. Further, through existing Chapter 91 license conditions, significant portions of the ground floors of 500 Atlantic Avenue and of 470 Atlantic Avenue (approximately 21,000 SF) will be devoted to interior FPAs.¹⁷ Indeed, Special Condition #4 of the 470 Atlantic Avenue license requires that this space be designed and programmed in a manner that will promote the destination value of the waterfront by serving significant community needs, by attracting a broad range of people, or by providing innovative public amenities.

SPDFs will help encourage the activation of the Fort Point Channel waterfront, and further the goals articulated in the *FPCWAP* for public use of this waterfront area. Recognizing the importance of interior public space to the on-going activation of the Fort Point Channel waterfront,¹⁸ I have decided to condition my Approval Decision in order to ensure that the total area of high quality, year-round interior SPDF space to be located at the ground floor of buildings within the five-parcel area in question will be comprise a substantial portion of the FPA space contained in such buildings.¹⁹ In this regard I have focused on two particular locations, both of which represent an important “crossroads” between the Fort Point Channel waterfront and the streetscapes connecting with the surrounding City fabric. These are the Hook Lobster parcel, located at the westerly end of Old North Avenue Bridge, which is the major pedestrian gateway between Downtown and the Federal Courthouse and South Boston waterfront beyond; and the Russia Wharf parcel, which lies at a similarly important juncture with Congress Street, closer to the mid-point of the harbor planning area.

Finally, although not the specific subject of this approval, when planning for the United States Postal Service Annex and 245 Summer Street parcels has advanced to a level suitable to support an MHP Amendment to complete the Fort Point Channel MHP effort, I will expect that at least 25% of proposed interior FPA space on these parcels be dedicated to year-round SPDFs with an appropriate focus on location, uses and programming. To ensure that critical space has been optimized, I will, therefore, expect any such Amendment to include a detailed plan of FPAs and SPDFs for the entire Fort Point Channel, illustrating the manner in which proposed interior space will be integrated with existing space and the *FPCWAP* to form a seamless and active public ground level. This planning for interior public space should be the result of a planning process that includes the expertise residing within MHPAC, a group that represents broad civic and cultural interests along waterfront area and citywide. This planning effort should also be used to inform the comprehensive master planning effort that will be undertaken by the City, USPS, and the MBTA to accommodate the proposed track expansion, a planning effort that should be also be incorporated in the MHP Amendment.

¹⁷ The entire ground floors of these buildings are interior FPAs, exclusive of allowable Upper Floor Accessory Services, as defined at 301 CMR 9.02.

¹⁸ The *FPCWAP*, for example, envisioned a “Restaurant Row” along the Fort Point Channel side of 470 Atlantic Avenue, 500 Atlantic Avenue, and Russia Wharf to enliven the waterfront.

¹⁹ It should be noted that such conditions will operate in tandem with the existing license conditions for 470 Atlantic Avenue. See Special Condition #4 of Chapter 91 License #8959, issued August 10, 2001.

Such future commitments to SPDFs and SPDF planning, together with the interior FPA commitments set forth in the licenses issued recently for 470 and 500 Atlantic Avenue, will ensure that the Plan will promote public use and enjoyment of Commonwealth Tidelands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and that ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes.²⁰

D. Evaluation of Plan-wide Amplifications and Substitutions

I have also conducted a review of all plan requirements that are intended to expand on any of the discretionary requirements of the Waterways Regulations (“amplifications”), and of those requirements intended to substitute for the specific use limitations and numerical standards of the Waterways Regulations for nonwater-dependent use projects (“substitute provisions”). My evaluation of these plan elements as they apply generally to the 5-parcel area in question is contained herein, whereas those specific to Russia Wharf are reviewed in greater detail in Section IV.

The MHP Regulations at 301 CMR 23.05(3)(b) require me to find that any provision that amplifies a discretionary requirement of the Waterways Regulations will be complementary in effect with the regulatory principle(s) underlying that requirement. For proposed substitutions, the standards for approval are set forth in 301 CMR 23.05(3)(c) and vary according to which minimum use limitation or numerical standards is involved. The Plan, and Chapter 8 of the City’s Supplement specifically, proposes several general amplifications and one general substitution that will have operative significance in the Chapter 91 licensing process.

The specific provisions of the Plan discussed below are approved as amplifications and substitutions applicable throughout the portion of the Phase 2 harbor planning area subject to this Approval Decision. Where my approval is qualified, I identify the specific conditions of my approval and the basis for them.

1. General Substitutions

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

This Harborwalk standard should be uniformly applied as a more restrictive provision throughout the harbor planning area. All nonwater-dependent use projects licensed by DEP shall provide walkways that, at a minimum, are 12 feet wide, with 10 feet clear of obstruction.

²⁰ 310 CMR 9.53.

2. General Amplifications

- State Waterways Regulation –
310 CMR 9.53(2)(a) and (c). (Activation of Commonwealth Tidelands for Public Use):
The project shall attract and maintain *substantial* public activity on the site on a year-round basis, through the provision of water-related public benefits *of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances* (emphasis added).
- City Provision --
Where the project site of a nonwater-dependent use project located on Commonwealth Tidelands within the harbor planning area includes a water-dependent use zone, DEP shall look to the *FPCWAP* for guidance in specifying appropriate water-dependent use facilities and water-related activities required for compliance with the provisions at 310 CMR 9.53(2)(a), (c) – (e) and with DEP’s Draft Water Transportation Policy.²¹

I support the City’s efforts to implement many of the water-related benefits identified on the *FPCWAP* and encourage its use by DEP as general guidance to rely upon, where appropriate, as a source of water-related public benefits from which to satisfy requirements for Commonwealth Tidelands and DEP’s Draft Water Transportation Policy for nonwater-dependent use projects located in the harbor planning area. More specifically, I am approving three amplifications specified in Section 8.2.4 of the City Supplement. I have summarized these amplifications in Table – B along with additional detail (in bold), where necessary, to ensure clarity.

²¹ See City Supplement, dated January 2004, Section 8.2, *Amplifications*, for a detailed discussion of the City’s *FPCWAP* amplification provisions, p. 1 – 5.

**Table – B
Approved Amplifications**

Waterway s Regulation 310...	Discretionary Requirement	Approved Amplification
9.53(2)(a)	When there is a water-dependent use zone, the project must include at least one facility that promotes water-based public activity.	The project shall provide at least one facility recommended by the FPCWAP that promotes water-based public activity in the WDUZ, or provide a monetary contribution for implementation of the <i>FPCWAP</i> .
9.53(2)(c)	The project shall devote interior space to facilities of public accommodation, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative public amenities.	The project shall devote interior space to facilities of public accommodation, with special consideration given to facilities that enhance the year-round destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative public amenities in accordance with the provisions set forth this Approval Decision in Section III.C and Section V
9.53 (2)(d)	The project shall include a management plan for all on-site facilities offering water-related benefits to the public, to ensure that the quantity and quality of such benefits will be sustained effectively	In addition to the specified requirements of 9.53(2)(d) , the project shall include a management plan for water-based activities that ensures coordination with other water-based activities and prevents interference with water transportation services, and that is consistent with the <i>FPCWAP</i>

The City also seeks to amplify 310 CMR 9.53(2)(e) regarding the location of requisite public benefits offsite should on-site benefits prove inappropriate or insufficient. To the extent that an approved monetary contribution is expended at an offsite location in accordance with the amplification approved above, no additional amplification is necessary. Beyond that scenario, the proposed amplification is too broad to provide DEP with the type of guidance necessary to make such decisions. For this reason, DEP will continue to consider such requests on a case-by-case basis, seeking input from the City as appropriate.

In applying the above amplifications, DEP shall consult with the City on a case-by-case basis concerning the appropriate allocation of water-related public benefits to be provided in the form of water transportation services and facilities in accordance with DEP’s Draft Water Transportation Policy and those of the *FPCWAP*.²² In no case, however, shall DEP be bound by the

²² As discussed in the NTP, water transportation facilities should be considered as baseline Chapter 91 licensing conditions, and will only be eligible for limited credit as offsets when they are above and beyond Chapter 91 baseline

City's allocation ratio for individual or future license decisions. Preference will be given by DEP to *FPCWAP* improvements that do not require change to with the existing Harborlines. Only *FPCWAP* improvements that are eligible for licensing seaward of existing Harborlines shall be considered as an amplification.

Because my approval is limited to the planning area north of the Summer St. Bridge, these amplifications apply strictly only to those parcels located within this area. I would, however, encourage DEP to rely on the *FPCWAP* for guidance should new projects south of the Summer Street Bridge emerge that require a Chapter 91 license prior to the completion of the MHP for this area. As discussed above, the *FPCWAP* may be considered as a future source of potential offsets, should the City propose substitute provisions in an Amendment to this Plan for the area south of the Summer Street Bridge. Absent a detailed planning analysis for specifically identified modifications, however, I can draw no conclusions at this time regarding those features of the *FPCWAP* that may warrant future consideration as offsets.

IV. EVALUATION OF REQUESTED SUBSTITUTE PROVISIONS: RUSSIA WHARF

A. General Approach to Substitute Provisions

The Plan proposes three substitute provisions specific to the Russia Wharf development. These substitute provisions to the Waterways Regulations are as follows:

- setback requirements (Water-Dependent Use Zone) - 310 CMR 9.51(3)(c),
- open space/lot coverage - 310 CMR 9.51(3)(d), and
- 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(3)(c) and (d). In general, to approve a substitute provision, I must determine that the Plan specifies alternative requirements that will promote, with comparable or greater effectiveness, the state tidelands policy objectives expressed in the corresponding provisions of the Waterways Regulations. In order to make this determination, each proposed substitute provision requires the following analysis.

First, I must find that the substitute provision satisfies the specific standard for that category set forth in 301 CMR 23.05(3)(c). These standards are summarized in Table C. Second, when there is a proposed substitute provision that meets the subsection (c) standard, and that would be

requirements. NTP, p. 8. I note, however, that the Plan provides that Russia Wharf has proposed public benefits valued at \$ 1,900,000 intended to comply with the baseline watershed activation requirements, including the following: 1) a fund for water transit service at 500 Atlantic Avenue and/or support for transporting Boston school children for access to the Harbor Islands; 2) water taxi slips and other slips for boating use; 3) continuous provision of free public touch-and-go docking; 4) continuous provision of a docking for dinghies and small craft; and 5) civic space for the Friends of Fort Point Channel, or if not used by this group, another non-profit organization. DEP will review and consider these proposed public benefits during the Chapter 91 licensing process for the project. During the Chapter 91 licensing process, DEP shall determine whether these proposed public benefits comply with DEP's Draft Water Transportation Policy and are consistent with the goals of the *FPCWAP*.

less restrictive than the corresponding requirement of the Waterways Regulations, subsection (d) requires that a 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(3)(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(3)(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.

As discussed in the NTP, the level of analysis of adverse effects, or impacts, is dependent on the degree to which the Waterways Regulations are relaxed, the significance of benefits associated with proposed offsetting measures, and other relevant circumstances, such as the characteristics of the built environment in the area in question. These circumstances might include, for example, the scale and density of existing structures, the degree of urbanization of the area in question, and the relationship between proposed development activities and the adjoining waterfront or watershed.

Table - C
Summary of Specific Substitute Provisions and MHP Approval Standards

Waterways Regulation for which Substitute Provision Is Proposed.	Corresponding MHP Approval Standards 301 CMR 23.05(2)(c) and (d) The proposed substitute provision must, with comparable or greater effectiveness,...
<p style="text-align: center;">Setback Requirements (Water-Dependent Use Zone) 310 CMR 9.51(3)(c)</p>	<ul style="list-style-type: none"> • specify alternative setback distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, • in order that, sufficient space along the water’s edge will be devoted exclusively to water-dependent use and public access associated therewith, as appropriate for the harbor in question.
<p style="text-align: center;">Open Space (Lot Coverage) 310 CMR 9.51(3)(d)</p>	<ul style="list-style-type: none"> • specify alternative site coverage ratios and other requirements, that ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, • in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question.
<p style="text-align: center;">Height 310 CMR 9.51(3)(e)</p>	<ul style="list-style-type: none"> • specify alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, • in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question.

Offsets can be quantitative or qualitative, but they must be sufficiently specific to provide certainty in Chapter 91 licensing. So long as the focus of the enhancements is on the quality of the pedestrian ground-level experience, the range of approvable offsets can be quite broad.²³ As discussed above, the City's vision for the Fort Point Channel waterfront relies heavily on the use of amplifications and offsets to support implementation of watersheet activation measures set forth in the *FPCWAP*. Recognizing this approach, and in response to the significant public comment I have heard, my review of the proposed substitute provisions pays particular attention to how the proposed offsets will achieve ground-level conditions that promote use and enjoyment of the waterfront.

B. Determination on Proposed Substitute Provisions

As described in more detail in the following sections, I have determined that the proposed substitute provisions contained in the Plan specify alternative requirements that, subject to the additional conditions specified herein, will promote with comparable or greater effectiveness the state tidelands policy objectives reflected by the minimum requirements of the Waterways Regulations at 310 CMR 9.51(3)(c)-(e) and 9.53(2)(b). Specifically, I have determined that the alternative requirements and conditions will ensure the following.

- No significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent use purposes.
- New or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline.
- Buildings for nonwater-dependent use will be relatively condensed in footprint.
- In general, new or expanded buildings for nonwater-dependent use will be relatively modest in size.
- Nonwater-dependent use projects on Commonwealth Tidelands will include features that will establish the sites as year-round locus of public activity.

Each project proponent must submit a Chapter 91 license application to DEP, as described in 310 CMR 9.11, that conforms to the Plan as approved, as required by 310 CMR 9.34(2). Unless an alternate requirement is specified in the Plan as approved, the project proponent must also meet all applicable substantive standards of the Waterways Regulations. DEP will substitute as licensing requirements the limitations or numerical standards specified in the Plan for certain standards prescribed in the regulations at 310 CMR 9.51(3)(c) through (e), 9.52(1)(b)(1)). All offsetting measures for the substitute provisions identified in an approved MHP will also be expressed as enforceable conditions of the Chapter 91 license.

When numerical limitations in an MHP are expressed as maximum or minimum amounts, these limitations will substitute for the maximum or minimum limits derived from strict application of the Waterways Regulations. Where substitute provisions and corresponding offsets are identified

²³ See, *Notice to Proceed (NTP) for the Fort Point Downtown Waterfront District Municipal Harbor Plan*, dated November 26, 2001, p.10 – 18.

specifically in an MHP to compensate for any adverse impacts, DEP will apply these specific substitute provisions and offsets as the appropriate standards for licensing. The substitutions I have approved represent alternative minimum standards to those contained in the Waterways Regulations, and this Approval Decision shall not be construed as an endorsement of any specific limitation or requirement as applied to individual cases. Rather, it should be taken as establishing the overall “envelope” within which case-by-case determinations of appropriate Chapter 91 licensing requirements will be made.

The project-specific information available for Russia Wharf and the developed nature of the approved planning area support a focused analysis of the building height, open space, and setback substitute provisions, the resulting impacts, and the specific public benefits that will serve as offsets for the proposed Russia Wharf project. As discussed below, I have found that the offsets stipulated in the Plan, with the additional conditions of this Approval, will serve to mitigate any adverse effects to the public ground-level environment associated with the mass and configuration of buildings proposed. DEP will specify the offsets required in the Plan, therefore, as enforceable conditions for the licensing of the Russia Wharf project. Additional detail on the offsets, as well as that information necessary to satisfy the Chapter 91 requirements in 310 CMR 9.00, must be presented in the Chapter 91 license application.

The provision of public water-related facilities, including support for water transportation, is required by the Waterways Regulations unless specifically addressed by the Plan and this Approval Decision. The Chapter 91 license application will provide sufficient detail on all public amenities and be conditioned, as necessary, to ensure full and enforceable activation of the waterfront. Finally, pursuant to 301 CMR 23.04(6), the approved plan is not effective for the purposes of licensing the Russia Wharf project under 310 CMR 9.00, until such time as the City has enacted all necessary and relevant zoning bylaws and regulations required for the project and, as discussed in Section V below, submitted copies to me for final review.

C. General Description of Russia Wharf Project

As described in Chapter 11 of the Plan, the Russia Wharf project consists of approximately 2.2 acres of land and water located along the Fort Point Channel at the corner of Atlantic Avenue and Congress Street in close proximity to the Financial District, South Station, and the emerging open space areas of the CA/T Project. Consisting of approximately 2 acres of filled tidelands and flowed tidelands occupied by pile-supported structures, the site was occupied originally by three buildings constructed between 1897 and 1898 known as the Russia Building (530 Atlantic Avenue), the Graphics Arts Building (270 Congress Street), and the Tufts Building (286 Congress Street). In the early 1980s, lobbies were constructed within the original narrow service alleyways, the buildings connected and converted to office use. The buildings are listed in the *State Registry of Historic Places* and as a historic district in the *National Register of Historic Places*. As discussed above, a portion of the MBTA South Boston Piers/Fort Point Channel Silver Line Transitway project’s tunnel system will be located under the existing buildings. Today, the ground level of the site is occupied by a restaurant and retail uses, while the adjacent waterside pier is used for parking and as a staging area for ongoing area infrastructure projects.

D. Discussion of Specific Substitute Provisions

1. Context

With age and configuration of the existing buildings combining to make the historic structures obsolete for many contemporary uses, the developer, MA-Russia Wharf, L.L.C., an affiliate of Equity Office Properties Trust, is seeking to renovate the site as a mixed-use development. This project is currently in the FEIR stage of MEPA review, EOE no. 12821. As described in the Plan, this project seeks to renovate the historic structures in a manner that will accommodate contemporary needs within the framework of planning principles established in Phase 1. In this context, the proposed development will include these elements:

- restoration of the Russia Building into loft-style residential units;
- incorporation and preservation of historically significant elements of the Graphic Arts and Tufts Buildings into a 300-suite hotel;
- construction of a 22-story, 500,000 SF office building, above portions of the Graphics Arts and Tufts Buildings;
- development of a 512-space underground parking garage; and
- improvement of public access to and along the Fort Point Channel, including the construction of a waterfront plaza and the enhancement of sidewalks and streetscape along Atlantic Avenue and Congress Street.²⁴

The substitute provisions requested by the City to implement this development scenario, my analysis of the planned condition and associated offsets, and additional conditions that support my approval are discussed below. I have adopted an approach that describes each substitute provision proposed, summarizes potential impacts focusing on the ground-level environment, and evaluates the manner in which the Plan as it relates to Russia Wharf complies with the standards for approval at 301 CMR 23.05(2)(c) and (d).

2. Proposed Water Dependent Use Zone (Setback) Substitute Provision: 310 CMR 9.51(3)(c)

The Waterways Regulations establish uniform dimensional requirements for a “water-dependent use zone” (WDUZ), to ensure that sufficient space along the water’s edge will be available to accommodate water-dependent activity and public access. As discussed above, much of the Russia Wharf site is occupied by existing buildings constructed in the 1890s, the most seaward of which, intrudes slightly into the WDUZ that would be established by the Waterways Regulations at 310 CMR 9.51(3)(c). Since the proposed Russia Wharf project seeks to retain the façades of the existing building for historic preservation purposes, a substitution is necessary because redevelopment of the site is otherwise so extensive that it ordinarily would trigger a requirement for additional setback of the facade structures – a highly impractical measure, the detriments of which from a historical preservation perspective outweigh any minimal gains in WDUZ space.

²⁴ See *MHP*, Section 10.3.3, *Russia Wharf*, p.88 and Chapter 11, *The Russia Wharf Development Project*, pp. 91–99.

Accordingly, the City has proposed a substitute provision that slightly reduces the WDUZ, in order to leave the position of the Tufts Building façades undisturbed. As proposed, such a provision would result in a reduction in WDUZ area of 2,700 SF from that achieved under the dimensional requirements of the Waterways Regulations, a decrease of approximately 13%. While acknowledging that open space along the water's edge is a priority of Chapter 91, I am persuaded that, for this specific case, preservation of an historic structure represents an equally desirable goal. Further, as discussed below in the context of the proposed height substitute provision, all of the interior space that is proposed to be located in the previous WDUZ will be programmed as either FPA or SPDF. Accordingly, I have concluded that, despite a reduction in WDUZ area of 2,700 SF, buildings for nonwater-dependent use will not be constructed immediately adjacent to a project shoreline and that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access and, therefore, subject to the applicable conditions set forth in Section V below, the approval standard has been satisfied.

3. Proposed Open Space (Lot Coverage) Substitute Provision: 310 CMR 9.51(3)(d)

The Waterways Regulations at 310 CMR 9.51(3)(d) contain a dimensional limit on the site coverage of nonwater-dependent buildings so that, except in the case of projects involving only the renovation or reuse of existing buildings, at least 50% of the project site consists of exterior open space. This requirement can be modified through the MHP process, provided that the Plan contains alternative requirements that will ensure building footprints are relatively condensed in order that sufficient exterior open space is available to accommodate water-dependent activity and public access.

As discussed in the Plan, existing building footprints at the Russia Wharf site occupy approximately 65,130 SF of the project site, leaving approximately 21,058 SF available as open space (25 % \pm of the project site.),²⁵ the orientation and treatment of which contributes only incrementally to the public's use and enjoyment of the waterfront. Ordinarily, a complete redevelopment of the project site would provide the opportunity to remedy these detriments to water-related public interests, especially on the portion consisting of Commonwealth tidelands where, pursuant to 310 CMR 9.53(2)(b), all spaces not within the footprint of buildings must be devoted either to water-dependent uses or to public recreation and access. In this case, although the site is being extensively redeveloped to allow for a substantial density increase through the addition of a high-rise tower and near-complete replacement of the Graphic Arts and Tufts buildings, a significant portion of the built form of the existing structures (including the Russia Building in its entirety) is being retained to preserve the historic lower-level architecture to the greatest practicable extent. Accordingly, in the Plan the City has proposed a substitute provision modifying the lot coverage requirements of 310 CMR 9.51(3)(d) that will allow for retention (with slight alterations involving a trivial net expansion of 58 SF) of the existing building footprints, resulting in approximately half of the total open space amount that would be required through strict application of the Waterways Regulations of a site no longer burdened by existing buildings.

²⁵ See MHP, Section 11.4.4 *Building Dimensions*, pp. 100 – 101.

This slight increase in lot coverage is partially offset by the fact that the proposed project will result in the conversion of more than 4,000 SF of existing open space used for on-site parking to open space that is publicly accessible and useable adjacent to the waterfront. In addition, the proposed design will restore Nelson Court as a visible and accessible public amenity and widen the sidewalk along Congress Street to provide a primary pedestrian link to the Fort Point Channel. In addition, the City has secured commitments from the Russia Wharf development to fund four significant enhancements to public open spaces in the immediate vicinity of the project site, the total value of which is estimated at approximately \$ 1,125,000 million. These include a secondary ramping system from Russia Wharf/Congress Street to the Channel Walk West as identified in the FPCWP; the design, purchase, and installation of a new lighting system for the Congress Street Bridge as part of the City's "Illuminating Boston: the Diamond Necklace" Program; improvements to an 8-foot expansion of the Congress Street sidewalk; and provision of interpretive signage and exhibits consistent with BRA's Historic Piers Network Plan.

Based on this combination of on-site and off-site measures to offset the detriments of the proposed site coverage substitution, as presented in the Plan, I am persuaded that despite the lack of open space area, buildings for nonwater-dependent use will be relatively condensed in footprint and an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access. I have concluded, therefore, subject to the applicable conditions set forth in Section V below, that the approval standard has been satisfied.

4. Proposed Height Substitute Provision: 310 CMR 9.51(3)(e)

The substitute height provision proposed for the Russia Wharf site represents the most significant departure from the Waterways numerical standards of the three substitute provisions requested by the City in the Plan. As proposed, this substitute provision sets a maximum allowable height to the roof of the highest occupied floor of 395 feet. By way of context, the Russia Wharf development is located adjacent to the Downtown Financial District, an area characterized by building heights in excess of 400 feet, and between the Federal Reserve Building (614 feet tall) and 500 Atlantic Avenue (a proposed 239 foot building surrounding the 287 foot tall CA/T vent stacks) along the Fort Point Channel. High-rise elements of the new development will be set back a considerable distance from the water's edge, to reduce impacts to the pedestrian activity and water-dependent uses associated with at the proposed waterfront public plaza.

Strict conformance with 310 CMR 9.513)(e) would result in a proposed development that could achieve a maximum height of approximately 207 feet along Atlantic Avenue. In terms of overall massing, comparison to a theoretical Chapter 91 compliant height expansion of the existing buildings reveals that the proposed development results in an increase of nearly 6 million CF, or approximately double that which could be achieved under the baseline Chapter 91 scenario. In the context of the aggregate analysis presented earlier for the five-parcel area, this increase represents nearly two-thirds of the excess massing that will occur when the study area is built out.²⁶

²⁶ Note that in Section III.B.2 above relative to the proposed heights, I have already required on separate grounds that, prior to this substitute provision taking effect for Chapter 91 licensing purposes, DEP be provided with written affirmations from the FAA stating that no adverse effects on the operations of Runway 9/27 are foreseen. Should this not

I have reviewed the wind analysis provided in the Plan for the existing conditions and build-out scenarios. The study characterizes a variety of wind conditions common for this region for each of the four seasons and evaluates ground-level conditions for the different build-out scenarios. I am pleased to note that at no location proximate to or within the site do wind conditions appear to fall within Category 5 (Dangerous and Unacceptable) levels, although it does appear that anticipated winds at several discrete locations will exceed Category 3 (Comfortable for Walking) levels for the After Plan scenario. I understand that projected wind conditions for this scenario meet current BRA wind standards, with Category 4 (Uncomfortable for Walking) levels established as the maximum acceptable level for new projects within the harbor planning area. Consistent with previous MHP decisions for Boston, I am requiring that ground-level ambient wind speeds for the Russia Wharf project not exceed City “pedestrian safety/comfort wind standards” for assessing the relative wind comfort of pedestrians. I will look to the Chapter 91/Article 80 processes to evaluate appropriate design modifications and mitigation features that may be necessary to ensure that these standards are achieved for this site as it proceeds to final design. Any subsequent measures identified as necessary to achieve this standard shall be included as conditions of the Chapter 91 license.

I have also reviewed the comparative shadow analysis, submitted in accordance with the height substitute provision guidance of the NTP, depicting Before Plan and After Plan conditions for the Russia Wharf site. The analysis compares the shadow conditions of both scenarios, hourly from 9:00 a.m. to 5:00 p.m. for the “shoulder seasons,” represented by October 23. Based on my review of this study, it appears that due to the site’s orientation relative to the sun and to the surrounding built environment, characterized by tall buildings, only a negligible amount of net new shadow will be generated by the planned project. Significantly, there appears to be little or no net new shadow attributable to the project that will impact ground-level conditions adversely or impair public use and enjoyment of the waterfront and its adjacent watershed throughout most of the year.

Certain comments submitted in the MEPA process have raised concerns that the proposed height and configuration of the Russia Wharf project may cause adverse air quality impacts on the adjacent 500 Atlantic Avenue site. It is my understanding that such impacts, if any, on the ground level environment will be evaluated and addressed, if necessary, through MEPA and other subsequent applicable permitting processes.

Apart from the mitigation of wind effects, the Plan as it relates to the Russia Wharf height substitution includes a number of provisions to improve the quality of the ground-level pedestrian experience, both on and off the project site. First and foremost is a commitment on the part of the developer to devote the overwhelming majority of ground-floor interior spaces on the project site to FPAs, representing a nearly three-fold increase (amounting to about 25,000 extra SF) over what is required for compliance with the Waterways Regulations. Among other things, the proposed FPAs include a waterfront restaurant (reinforcing the concept in the *FPCWAP* of a “Restaurant Row” along Fort Point Channel); a café/entertainment facility (“Jazz/Blues Club”) located where the waterfront plaza meets the Congress Street Bridge; and a mix of cultural/civic/retail uses along Congress Street between the bridge and historic Nelson Court. In addition, a \$ 1,000,000 contribution will be made to the City, half of which will support implementation of the *FPCWAP*

be the case, a potential reduction in the maximum height limit on the Russia Wharf site may be required in order to preserve compatibility of new development with the flight path from Runway 9/27 at Logan Airport

with the other half to be used for the design enhancement and long-term maintenance of new public open space to be located across the Fort Point Channel from Russia Wharf, to be known as Children's Wharf Park.

The ambitious goals of the *FPCWAP* related to watershed activation, therefore, emphasize the need for a similar level of activation for the proximate ground floor environment. To ensure that landside ground level public programming complements the high quality of programming identified for the watershed, I am requiring that two of the facilities identified in the Plan as FPAs be dedicated to SPDF space; this represents the square footage represented by the café/entertainment facility and the cultural/civil space as described by Figure 11-11 of the Plan (totaling 6,000 to 7,000 SF) be dedicated to SPDF space. I am confident that with careful attention to programmatic detail in the Chapter 91 licensing process (e.g., the augmentation of facility operations with amenities such as master musician lessons for area youth, free public concerts along the waterfront, or periodic blues festivals during the year), that the space now designated as a SPDF ensures that the goals of both the Plan and the *FPCWAP* will be achieved.

All things considered, I am persuaded that the expanded buildings for nonwater-dependent use will be relatively modest in size and that wind, shadow and other conditions of the ground-level environment will be conducive to water-dependent activity and public access, use and enjoyment of the waterfront. I have concluded, therefore, subject to the applicable conditions set forth in Section V below, the approval standard has been satisfied.

V. CONDITIONS OF APPROVAL

Pursuant to the MHP Regulations at 301 CMR 23.04(4)(a), my approval of the Plan for the planning area covered by this Approval Decision is subject to the following conditions.

1. FPAs and SPDFs will help activate the Fort Point Channel waterfront, and further the goals articulated in the *FPCWAP* for public use of this waterfront area. Recognizing the importance of ground level public space (exterior and interior) to the on-going activation of the Fort Point Channel waterfront, I am, therefore, requiring the following:

a) The Russia Wharf project shall include interior SPDFs at the ground level, in the total amount of 6,000 to 7,000 SF. Of this amount, 4,500 to 5,000 SF shall be located in the position of the café/entertainment facility as proposed in Figure 11-11 of the Plan, or elsewhere along the side of the Tufts building facing the Fort Point Channel; and 1,500 to 2,000 SF of interior SPDF space shall be located along Congress Street, between Nelson Court and the Congress Street Bridge.

b) The square footage devoted to interior FPAs shall not decrease from that set forth in the current Chapter 91 licenses for 470 and 500 Atlantic Avenue, respectively, and as set forth in the Chapter 91 license to be issued, consistent with the Plan as approved, for Russia Wharf. Further, all exterior open spaces on the respective sites shall be devoted to public use, as discussed in the Plan, and shall include pedestrian amenities such as interpretive and

wayfinding signage, landscaping, binoculars, lighting, benches, restrooms, “mutt mitt” stations, and trash receptacles.

c) Any specific ground floor use proposed for licensing as a SPDF within the approved planning area covered by this Approval Decision shall be subject to the review and approval of DEP, with concurrence by CZM, prior to the issuance of a Chapter 91 license. In addition, any subsequent material change in ground floor programming of a SPDF shall be subject to such prior approval and concurrence.

d) Should Hook Lobster - an existing water-dependent use located largely over flowed tidelands – seek at some time in the future voluntarily discontinue its water dependent use and pursue development in the form of a nonwater dependent use project, the entire interior ground level, less an area equal to that allowed by the Waterways Regulations for Upper Level Accessory Use (310 CMR 9.02), shall be occupied by an FPA(s) meeting the standards for a SPDF, as defined in this and other Boston Harbor MHP decisions.²⁷

2. Clearly, the off-site measures funded by the Russia Wharf development, as summarized in Table-E below, will help to enhance the quality of public pedestrian space that is planned for the Fort Point Channel. To ensure that such measures are implemented in a timely and coordinated manner, I am approving these offsets subject to the following conditions:

a) the Chapter 91 license application shall include a schedule, developed in conjunction with and affirmed by the BRA, setting forth completion dates for all offsetting measures to be implemented by the applicant;

b) all monetary contributions shall be made to a fund designated by the BRA and established legally for the purposes of planning, programming, designing, constructing, and maintaining identified open space and watershed activation elements of the Fort Point Channel. The Fort Point Channel Operations Board (“FPCOB”), a three member board including a designee of the BRA, a designee of the Secretary of Environmental Affairs, and a representative of an abutters group, will oversee operation and expenditures from the fund. To ensure that offset contributions that will be held in escrow and managed by the FPCOB are implemented in a timely manner, said Board shall be created, sitting members identified, and have held at least one public organizing meeting prior to the issuance of a Chapter 91 license; and

c) payment of all monetary contributions associated with the above offsets shall be made no later than the issuance of a Certificate of Occupancy for any portion of this project.

²⁷ Nothing in this Decision should be interpreted to imply that a change in use of the Hook Lobster site from a water-dependent to a nonwater-dependent use is preferable; rather, the Waterways Regulations at 310 CMR 9.36(4) prohibit displacement of existing water-dependent uses.

Table – E
Schedule of Off-site Offsets and Implementation Contributions

Offsetting Measure to be Provided	Monetary Value
Interpretive signage and exhibits consistent with the BRA’s Historic Piers Network Plan	Approximately \$150,000
Secondary ramping system from Russia Wharf/Congress Street to the Channel Walk West as identified on the <i>FPCWAP</i>	Approximately \$225,000
Monetary contribution toward design enhancement and/or long-term maintenance of new public open space to be located on the easterly side of the Fort Point Channel, referred to as the Children’s Wharf Park	\$500,000
Design, purchase, and installation of new lighting for the Congress Street Bridge as part of the City’s “Illuminating Boston: The Diamond Necklace” Program, with an estimated value of approximately \$ 400,000. In addition, Russia Wharf will maintain this lighting in good repair and working condition for a period of time concurrent with the length of time of the Chapter 91 license issued for the project.	Approximately \$400,000
Monetary contribution toward watershed activation in the context of the <i>FPCWAP</i> , including support for programming, events, and capital improvements. This offset is in addition to any requirements related to the amplifications in Section III.D.	\$500,000
Public realm improvements to the 8-foot expansion of the Congress Street sidewalk	Approximately \$350,000

3. Based on the forgoing discussion, including the potential adverse impacts to public pedestrian-useable space arising from the existing conditions and proposed substitute provisions, I am imposing the following additional conditions regarding required height offsets for the Russia Wharf project.

(a) To ensure that building mass is set back from the water’s edge as depicted on the development schematics contained in the Plan, the elevation of the existing Tufts Building roof (estimated to be 91’) shall be maintained for a horizontal distance of 15 feet landward of the present mean high water line (as depicted this also represents the existing seaward edge of the building). Building height(s) may then increase at the rate of 4.5 vertical feet for each additional foot landward of the present mean high water line to a maximum height of

395' at the top of the roof of the highest occupied floor. As reported in the Plan, the final gross floor area for the new development shall be a maximum of approximately 942,000 SF plus or minus a final design allowance of 1%.

(b) Prior to the height substitute for Russia Wharf taking effect for Chapter 91 licensing purposes, DEP must be provided with written affirmation from the FAA stating that no adverse effects on the operations of Runway 9/27 are foreseen. Should this not be the case, a potential reduction in the maximum height limit on the Russia Wharf site may be required in order to preserve compatibility of new development with the flight path from Runway 9/27 at Logan Airport.

(c) MA-Russia Wharf, L.L.C., an affiliate of Equity Office Properties Trust, must submit evidence of the project's compliance with Massachusetts Historic Commission ("MHC") regulations at 950 CMR 71.00, and of MHC's concurrence that such compliance has been achieved, to my office and also to the DEP Waterways Program.

VI. ENFORCEABLE IMPLEMENTATION COMMITMENTS

Pursuant to 301 CMR 23.05(5), the plan must include enforceable implementation commitments that will ensure that all measures to offset the effect of any plan requirement less restrictive than the corresponding requirement of the Waterways Regulations will be taken in a timely and coordinated manner. Chapters 11 and 12 provide a general discussion of future zoning measures that the City may pursue to ensure effective implementation of this plan.

I understand that once the Plan has been approved, an amendment modifying existing zoning may be drafted to codify the use and dimensional requirements for the Russia Wharf site in accordance with the approved principles of the Plan. A zoning amendment, which itself is subject to a public process, must be approved through the process set forth in the Boston Zoning Code and Enabling Act. Alternatively, another form of permanent zoning, PDAs, may be pursued. PDAs, established through the use of overlay districts, provide greater flexibility (*e.g.*, greater heights) in exchange for additional project development controls.

From the information provided, it appears that the groundwork is established for the effective implementation of the commitments set forth for the Russia Wharf site in the Plan, as modified by the conditions of this Approval Decision. Until such time as existing zoning is modified and permanent zoning adopted, development on the Russia Wharf site will be controlled through the use of the existing Downtown Interim Planning Overlay District (IPOD), with maximum heights restricted to 125 feet.

The MHP Regulations at 301 CMR 23.04(6) require that for an approved plan to become effective for the purposes of 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

municipal clerk 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 the Plan subject to the conditions below in accordance with 301 CMR 23.04(6).²⁸

- 1) Upon adoption of the bylaws, ordinances, and regulations, the City shall provide the Secretary with a written certification from the City Clerk that such action has been taken, along with copies of the relevant enactment.
- 2) In no case shall the provisions of this plan, as they relate to substitute provisions or other modifications of the Waterways Regulations, be applied by DEP to projects located in the harbor planning area, until such time as appropriate PDAs or other permanent zoning measures have been adopted.

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

VII. 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 Approval Decision shall take effect as discussed above, in accordance with 301 CMR 23.04(6). As requested by the City of Boston, this Approval 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 Plan as approved.

²⁸ See, e.g., discussion of amplifications, Municipal Harbor Plan Decision for the town of Chatham (1994) at pages 12 – 16. See also, Decision on the City of Boston's South Boston Waterfront District Municipal Harbor Plan, December 6, 2000, p. 62, 63.

VIII. STATEMENT OF APPROVAL

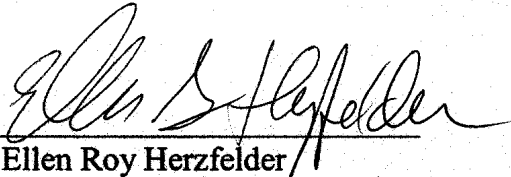
Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the Fort Point Downtown Waterfront Municipal Harbor Plan Phase 2. This approval is subject to all requirements, modifications, limitations, qualifications, and conditions set forth in this Approval Decision.

The approved Fort Point Downtown Waterfront Municipal Harbor Plan Phase 2 (“Approved Plan”) shall be the plan dated September, 2003; the City’s Supplemental information dated January, 2004; 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 September, 2003, or the City Supplement dated January, 2004, 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)l.
2. Any determination by DEP, express or implied, as to geographic areas or activities subject to licensing jurisdiction under Chapter 91 and the Waterways Regulations; in particular, the approximate location of the historic high and low water marks for the harbor planning area is to be used for planning purposes only, in order to estimate the extent and nature of filled tidelands in said area and does not constitute a formal ruling of jurisdiction for any given parcel.
3. 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.
4. Any determination by DEP or other permitting agency of EOE, express or implied, as to the conformance of any project with applicable regulations of such agencies, which retain full discretion to modify or condition any relevant aspect of the project to achieve compliance with such regulations, or to withhold approval for lack of compliance.

By letter from the Acting Program Chief of the DEP Waterways Program, dated March 8, 2004, DEP has stated that the Plan as approved will become operational for Chapter 91 licensing purposes for all applications for which the effective date of the Plan approval occurs prior to the close of the Chapter 91 public comment period. A determination of conformance with the Plan as approved will be required for all proposed projects in accordance with the provisions of 310 CMR 9.34(2).

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.



Ellen Roy Herzfelder
Secretary of Environmental Affairs

March 8, 2004

Date