

HARBORPARK PLAN CITY OF BOSTON MUNICIPAL HARBOR PLAN



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Commonwealth of Massachusetts

**DECISION ON CITY OF BOSTON REQUEST FOR
APPROVAL OF THE BOSTON HARBORPARK PLAN
PURSUANT TO 301 CMR 23.00**

**COMMONWEALTH OF MASSACHUSETTS
Executive Office of Environmental Affairs
Susan F. Tierney, Secretary**

May 22, 1991

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I. INTRODUCTION

In 1984, the Commonwealth of Massachusetts and the City of Boston (City) ushered in a new era of public stewardship over the shores of urban waterways, with two separate but equally significant actions. The Massachusetts General Court enacted major modifications to M.G.L. c. 91, the oldest "public trust" statute in the nation, by adding filled tidelands to the areas where development is subject to state jurisdiction, and by setting forth a number of substantive and procedural requirements for the Department of Environmental Protection (DEP) to incorporate into new regulations for the expanded licensing program. At Boston City Hall, in keeping with the fact that municipalities exercise the lead responsibility to control land use generally, the Boston Redevelopment Authority (BRA) unveiled an ambitious program for waterfront planning -- based on the "Harborpark" concept -- to serve as the basis for a complete overhaul of zoning along the Boston shoreline.

These two initiatives shared another important milestone last October, when new state Waterways regulations (310 CMR 9.00) took effect under ch. 91 and the City published its blueprint for the waterfront rezoning effort -- the Boston Harborpark Plan. The events were related, because the regulations defined a substantive role for such a plan in the application of many of the newly established state licensing requirements, provided that the Secretary of Environmental Affairs approves the plan in accordance with a companion set of regulations developed by the state's office of Coastal Zone Management (CZM). Also adopted during October, these regulations [301 CMR 23.00] established review procedures and specific approval standards to ensure that a municipal harbor plan (MHP) conforms to state environmental policy for the coastal zone, as expressed in CZM policies and guidelines as well as in the Waterways regulations themselves. These events set the stage for the submission of Boston's proposed MHP for waterways licensing purposes, including the revised zoning text for a number of subdistricts in the harbor. The City submitted its Harborpark Plan (Plan) on October 19, 1990.¹

Today, I am approving key portions of the Harborpark Plan pursuant to the MHP regulations. The effect of this Decision is to establish a joint venture of the state and the City, with the former establishing the basic regulatory framework and the latter providing a more detailed plan with harbor-specific guidance for DEP's review of ch. 91 license applications. This will result in DEP decisions that are tailored more effectively to local needs and circumstances, to the benefit of the public-at-large as well as affected property owners. Significant advantages will also accrue to the general development community, in the form of

¹ Except as expressly indicated otherwise, all terms used herein are as defined pursuant to the MHP regulations at 301 CMR 23.00 and/or the Waterways regulations at 310 CMR 9.00.

greater predictability and consistency in the project-specific reviews carried out in the future by each level of government.

In reviewing a proposed MHP such as Boston's, I am authorized by the transition procedures of the MHP regulations to waive the first major step in the review process -- the issuance of a Scope specifying how the CZM Harbor Planning Guidelines shall apply, and the information and analysis necessary to determine whether a proposed plan complies with such guidelines and all other standards for approval. In the present case I have exercised my waiver authority in reviewing the Harborpark Plan as it relates to two major segments of the Boston shoreline: a) the shoreline between the Northern Avenue Bridge and the northern City boundary at Somerville, Everett; and b) the shoreline between Castle Island and the southern City boundary at Milton. For these portions of the Harborpark area, Boston's planning effort is essentially complete, and new zoning articles covering all filled tidelands subject to DEP jurisdiction have been formally adopted by the City.

For the remainder of Boston's shoreline, where the Harborpark planning program is still underway, I have decided that it would be inappropriate to apply the transitional review procedure. Therefore, the following areas are not covered by the Decision set forth herein: East Boston, the Harbor Islands, and the waterfront areas on both sides of the Fort Point Channel and west of the Northern Avenue Bridge -- all areas for which the City has not yet issued comprehensive zoning language for community review; and the Fort Point District and South Boston Designated Port Area -- areas for which I find that presently available planning and zoning materials are not sufficiently advanced, integrated, and/or encompassing of all filled tidelands to warrant my review at this time. When further work is accomplished and information becomes available at a later date, I will consider adding these significant geographic areas to the approved Harborpark Plan in accordance with the amendment procedures of the MHP regulations [301 CMR 23.06 (1)(b)].

The procedure for making substantial additions to an approved plan requires development of a Scope beforehand. In pursuing this approach it will be possible to avoid much of the difficulty the City encountered in developing the first major portions of the Harborpark Plan last year, when the City was the first applicant to go through a process whose evaluation criteria had yet to be applied and interpreted. The exact requirements for complying with the Chapter 91-related standards were not known to the City when it was preparing its plan, since they were promulgated in final form only last June. The City also lacked the benefit of precedent regarding how the CZM Harbor Planning Guidelines would be applied to actual cases. Thus, unavoidably, certain differences in approach manifested themselves in the Harborpark Plan as compared to both the harbor planning and Waterways regulation programs of CZM and DEP. Reconciling

these differences was a task requiring a great deal of cooperation and flexibility on the part of both the state and City, and it resulted in the imposition of a somewhat greater number of conditions and limitations on my approval than I expect will be the case in the future.

This Decision presents my findings and determinations on how the Boston Harborpark Plan satisfied each of the standards that must be met in order to approve a MHP. Pursuant to the MHP regulations, these standards can be summarized as follows:

- 1) the plan must be consistent with all applicable CZM Policies and Harbor Planning Guidelines [301 CMR 23.05 (1)-(2)];
- 2) 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)];
- 3) 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)]; and
- 4) the plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in the Waterways regulations [301 CMR 23.05(5)].

II. COMPLIANCE WITH CZM CONSISTENCY REQUIREMENTS

A. Consistency with CZM Policies

In 1978, EOEA adopted an overall program to manage the Massachusetts coastal zone, in the form of CZM regulations containing 27 broad statements of policy. I find that the proposed Harborpark Plan is consistent with such policies, as required by 301 CMR 23.05(2). The City has documented that the Plan correlates in numerous ways with each of the relevant policy statements. Further evidence to this effect is found throughout the body of the Plan, which is organized according to four primary themes. Fleshed out in detail, these themes are virtually identical to, and in several ways even improve upon, the underlying concepts of the CZM program relating to the management of urbanized ports and harbors. A brief review of these concepts, as reflected in both the CZM policies and the Harborpark Plan, follows.

The CZM program not only stresses the ecological importance of natural areas like barrier beaches and salt marshes, but also recognizes the social and economic significance of commercial ports and other intensively developed harbors. For the latter type of resource area, a major program goal of CZM is to improve the availability and suitability of the shoreline for traditional vessel-related activities, especially deep-water shipping, commercial fishing, and other marine industries that have special physical and operational requirements that are nearly impossible to meet except in certain existing locations. CZM Policy No. 7 identifies twelve places in the state, known as Designated Port Areas (DPAs), where the preemption of maritime commerce by other waterfront use is generally prohibited by state regulation. Furthermore, CZM Policy No. 20 sets forth a CZM commitment to provide and solicit funding for the improvement of the "waterways infrastructure" (docks, piers, bulkheads, channels, and so forth) required not only to maintain shipping and fishing but also to accommodate other activities such as cruise and ferry services and recreational boating. Finally, CZM strongly supports measures to minimize the filling of waterways, even for water-dependent activities, in order to maximize protection of the public's navigation rights as well as the integrity of natural systems.

Another key CZM principle relating to developed harbors is that the urban waterfront is special not only as a place to engage in commerce but also to enjoy a rich heritage of visual, cultural, and historic amenities. Recreation in its many forms attracts more people to the Massachusetts coast than any other use, supporting a multi-billion dollar tourist industry and adding immeasurably to the quality of life for residents and visitors alike. Making the shoreline available for an increasingly greater segment of the population is a central concern of the CZM program, especially in the Boston metropolitan region where demand for coastal recreation opportunities far exceeds the supply. Accordingly, CZM Policy Nos. 21-24 promote increased open space and recreational facilities close to the state's center of population, through public expenditure and any other available means. Within this context, CZM emphasizes increasing visual access to the urban coastscape, a policy that is expressly not limited to natural features but also includes the industrial artifacts of the working waterfront. As Policy No. 20 puts it, views of port operations "are particularly encouraged by CZM, since these activities have significant educational and interest value as integral elements of the coast's visual resources."

The third proposition underlying CZM harbor management policies explicitly favors waterfront revitalization in existing centers of residential, commercial, and industrial development. Such renewal maximizes the efficiency of prior investment in environmental infrastructure, enabling the more urbanized areas to support further growth with relatively less impact on coastal resources. CZM Policy No. 20 encourages the intermingling of private housing with retail shops, restaurants, parks, and other public facilities, because such a mixture of uses "can provide immeasurable opportunities for visual and physical

access to the waterfront." This policy is expressly limited to mixed-use developments that otherwise serve critical public purposes of the CZM program, that is, those that avoid conflict and preemption of maritime activities and advance the recreational/cultural interests of the public (by maintaining open space, adaptively reusing older structures, enhancing views, and so forth). A related constraint is set forth in CZM Policy No. 12, which calls upon proposed developments to respect the preservation intent of and minimize adverse impacts on historic districts and sites.

The Boston Harborpark Plan is built on the same comprehensive goals as CZM's urban waterfront policies. The Plan stresses that the economic rebirth of stagnant waterfront areas through private investment cannot come at the expense of the public's quality of life; as the City puts it, "the Harborpark Plan recognizes Boston Harbor as a unique resource that should be accessible to all residents of the City as a place to live, work, and gather for recreation or the quiet enjoyment of nature." This emphasis on the need for "enlightened" redevelopment is further reflected in one of the four basic goals stated in the Plan, which is to "revitalize Boston's underutilized and dilapidated piers and shoreline by promoting growth through private investment **that is appropriately designed and is a balanced mix of uses that bring vitality to the waterfront and benefits of development that are shared by all of Boston's residents**" (emphasis added).

According to the Harborpark Plan, rejuvenation of the Boston waterfront will have two principal aims: to ensure public access to and enjoyment of an "activated" water's edge; and to preserve and enhance the harbor's maritime industries which require deep-water shipping channels and landside facilities. The Plan has a multitude of features derived from these cornerstone goals, the most noteworthy of which are as follows:

Promoting Public Use and Enjoyment

- * create Harborwalk, a 43-mile continuous waterfront walkway system that will provide 24-hour physical (including handicapped) access to the Boston shoreline, stretching from the Neponset River to Charlestown and East Boston, with extensive connections to the pedestrian networks of adjoining neighborhoods; the public will be well-directed via signage and will have the benefit of all basic amenities such as seating, lighting, landscaping, and works of public art; features of special interest will also be provided, such as fishing piers, observation decks, public boating facilities, beach paths, and grassy areas;
- * create, in conjunction with Harborwalk, an extensive open space/outdoor recreation network totalling over 1500 acres (nearly 50 percent of the waterfront land area), comprising various parks, waterfront setback areas, plazas, and greenspaces provided as a condition of development; this is conceived as the waterfront continuation of the "Emerald Necklace" park system of Olmstead

design, with direct links to that system planned in five strategic areas; again, these public open spaces will be enlivened by cultural facilities such as historic exhibits, outdoor performance areas, kiosks and shops, urban gardens and wilds, waterfront boulevards, and an environmental communication system;

- * ensure that a substantial amount of interior space at the ground level is devoted to facilities of public accommodation, such as cultural facilities and theaters, restaurants and cafes, retail issues, recreational facilities, and hotels; at least 40 percent of the first floor must be devoted to such uses in all the mixed use/commercial districts of the Inner Harbor; in the Downtown subdistrict at least an additional 25 percent must be devoted to cultural uses chosen and designed with particular emphasis on providing public attraction to the water's edge;
- * facilitate the reestablishment of an extensive water transportation system in Boston Harbor by requiring waterfront projects to include appropriate infrastructure such as docks and associated facilities, in accordance with prototype docking standards that have recently been developed in a special consulting study; in all inner harbor subdistricts, zoning requires consideration of the need for terminals and landings for water ferries, water shuttles and taxis, and free public landings; in the Downtown subdistrict (designated as a Water Transportation Priority Area) emphasis is placed on main terminals for commuter, cruise, and ferry boats;
- * establish dimensional limitations so that new waterfront development is appropriately scaled in relation to the pedestrian environment, and require compliance with an extensive list of design guidelines aimed at maximizing the sensitivity of built form to the waterfront context.

Protecting the Working Waterfront

- * establish eight Maritime Economy Reserve (MER) Districts wherein some 660 acres of waterfront land adjoining deep water port facilities is reserved exclusively for shipping and other water-dependent industrial uses; all of the properties zoned MER are contained within state Designated Port Areas, and their continued dedication to port purposes is considered essential to maintaining the competitiveness of New England manufacturers in the international marketplace;
- * establish a series of Waterfront Service Districts to protect small and medium-size water-dependent businesses engaged in activities like vessel maintenance and repair, fueling and provisioning, shipping support, lobstering, and so forth; and establish Waterfront Manufacturing Districts to accommodate general manufacturing and industrial uses, recognizing their synergistic relationship with working waterfront uses; when the amount of land area zoned in these categories (over 300 acres) is added to that zoned as MER, roughly one-third of the Harborpark District is designated as a locus for predominantly water-dependent use;
- * protect the integrity of the waterway for navigation and other water-related public purposes by essentially banning new fill for nonwater-dependent projects and restricting new pile-supported structures, along 90 percent of the waterfront, to water-dependent uses;
- * provide proximate, safe access to working waterfront districts so the public can view maritime industrial activities, an opportunity that not only lends diversity to the pedestrian experience but also engenders understanding of and support for the overall maritime sector of the economy.

These features of Boston's Harborpark Plan are clearly consistent with the broad goals established by CZM for redevelopment of the state's urban waterfronts.

B. Consistency with the Harbor Planning Guidelines

To approve a municipal harbor plan, I also must determine that it is consistent with CZM's Harbor Planning Guidelines (Revised, 1988). Generally, the criteria for such consistency would be defined in the Scope for a plan, where I would specify how to apply these Guidelines to a particular municipality. However, no Scope is available in this case, since my review of Boston's plan has taken place under the transition procedures of the MHP regulations. Therefore, I have evaluated the plan in terms of its consistency with the underlying spirit and intent of these Guidelines. For this level of evaluation, there are two basic issues that need to be considered: plan coverage and plan content.

1) Plan Coverage

Plan coverage involves both the geographic scope of the planning area and the range of issues considered. The Guidelines allow ample discretion on the part of a community in the choice of plan coverage, subject to a clearly stated requirement of "comprehensiveness." To be consistent with this requirement a plan must: define a harbor planning area that encompasses all areas relevant to the effective use and management of the harbor and all filled tidelands subject to DEP jurisdiction; and address all significant and interrelated land- and water-use issues.

The geographic coverage of Boston's Harborpark Plan is clearly comprehensive, insofar as the overall planning area extends from the City's northern to southern borders and includes all filled tidelands subject to DEP jurisdiction, with the exception of a few areas along the Fort Point Channel and within the South Boston Designated Port Area. The water-side of the planning area is also completely encompassed, since the zoning maps of the October 19 Plan delineate boundaries that clearly include the waterway of Boston Harbor seaward to the limits of City jurisdiction.

Although the geographic scope of the overall harbor planning effort meets the requirement of comprehensiveness, the implementation program has yet to be developed for some sub-areas and a variety of planning issues remain to be addressed. The City's October 19 submission did not include zoning text for East Boston, the Harbor Islands, and certain segments of the Fort Point/South Boston planning areas (including the Fan Pier/Pier 4 site). The proposed plan as of that date did include zoning text for the Fort Point Zoning District but, as I noted in the Introduction, it would be premature to review that material

because it is preliminary and needs coordination with yet-to-be-developed zoning revisions for the nearby Designated Port Area. In keeping with the requirement of comprehensiveness, I am requiring that the City submit plan amendments in the future to address all of the above-referenced areas that are presently excluded from the approved Harborpark Plan [See Requirement 1].

The Harborpark Plan addresses a considerable range of significant issues which reflect the objectives of the waterways program: providing public access to the waterfront, revitalizing and activating the waterfront, and preserving water-dependent uses, particularly maritime industrial uses. While the focus of the City's October 19 Plan submission is primarily land-use issues, a number of water-use issues were addressed and the City has voiced a commitment to expand substantially on the range of water-use and other relevant issues in subsequent plan amendments.

The Plan treats the interrelationship between some significant water-use and land-use issues; for example, the siting of Maritime Economy Reserve zoning districts, which reserve land for shipping activities, was based upon deep port criteria. The Plan also includes mooring and harbor safety regulations which address the use of Boston Harbor's water surface. I find that the October 19 Plan's coverage of these issues, when considered in conjunction with the coverage of land-use issues, meets the comprehensiveness requirement as it relates to the scope of issues for an initial phase of plan development. Consistent with the provisions of the regulations concerning phasing, the incorporation of a broader range of issues into the plan will be achieved through the filing of subsequent plan amendments for my review and approval. Requirement 1 of my approval requires such plan amendments.

The following is intended as guidance in developing the scope of the water-side and other issues to be addressed in future phases of plan development.

Various water-dependent activities may compete for the use of the Harbor's waters. Such uses include water passenger transportation, recreational boating, commercial fishing and lobstering, and shipping. To avoid conflict between such existing and potential uses, Boston should study their water-side interactions. On the land side, the City should explore opportunities to preserve and enhance existing water-dependent businesses and to site new water-dependent commercial ventures other than water transportation uses.

The Harborpark Plan cites among its goals certain water quality objectives, including assisting the Massachusetts Water Resource Authority (MWRA) in the development of the combined sewer overflow system now required to clean up area waters. The City should flesh out the details of the actions it plans

to undertake to assist the MWRA both in meeting the specific objective cited and in other aspects of the large-scale harbor clean-up program for which this Authority is responsible.

Many additional water-side plan components can enhance the general harbor planning effort; these include a waterways management plan for the use of the water, and a dredging plan setting goals and priorities for the dredging of public and private channels of the harbor. In subsequent plan amendments Boston also should address issues relating to such natural resources of the harbor planning area as salt marshes, shellfish beds, and tidal flats. Maps and inventories of these natural resources should be included in the planning document covering these issues.

Requirement 1 requires the submission of proposed plan amendments addressing both the geographic areas and water-side issues cited above. This Requirement also requires that any plan amendment address all relevant water-side issues simultaneously with the geographic area it encompasses. While my present approval of the Harborpark Plan is not contingent upon compliance with such requirements, they will serve as important criteria for evaluation of future submissions by the City in connection with its municipal harbor plan.

2) Plan Content

The MHP regulations require every plan to incorporate four basic elements: 1) a statement of goals and objectives and the corresponding applied policies to guide development in terms of its desired sequence, patterns, limits, and other characteristics; (2) an implementation program; (3) planning analysis which takes into consideration technical data, community input, and other information which serves as the basis for evaluating tradeoffs among alternatives and choosing preferred courses of action; and, (4) a review of the public participation program. The interrelationship among these elements should be reflected in the content of the plan.

(a) Goals and Applied Policies

The Harborpark Plan provides a clear and well-elaborated statement of goals, and contains summary expressions of applied policies for each of the major planning sub-areas. In addition, the Plan incorporates a master plan for the Charlestown Navy Yard subdistrict, which consists primarily of land owned or otherwise controlled by the City. This document lays out land use strategies intended to manage growth in this area and documents the planning rationale for these strategies. The details of this master plan provided a useful supplement to the broad policy statements of the Harborpark Plan, in terms of the City's planning decisions

regarding the open space network, housing and transportation issues, and historic preservation. While an equivalent level of specificity may not be appropriate in planning for other Harborpark subareas which are not City-owned, plan amendments in the future should be accompanied by master planning documents to ensure the Harborpark policies as applied to the subareas in question will be as fully articulated as possible.

(b) Implementation Program

The Harborpark Plan's strongest element is its implementation program. Appendix A of the October 19 Plan submission contains an extensive set of regulatory measures, many of which have already been adopted by the City. These measures primarily consist of amendments to Boston's Zoning Code. Representing substantial changes in the Code, these amendments codify the goals and applied policies of the Plan and provide an enforceable means of carrying them out.

(c) Planning Analysis

The Yard's End Master Plan successfully documents the analytical basis for each of its basic elements, its goals, its policies, and its implementation measures. Its treatment of transportation issues is particularly exemplary because of the comprehensiveness of the record it provides of the analysis conducted in addressing these issues. The Boston Inner Harbor Water Dependent Use Report, included as Appendix E of the Plan, is another good example of planning analysis that was undertaken, although its role in leading to recommendations of the Plan is not explained. I recognize that the Plan was developed before guidance was available concerning the emphasis to be placed not only on planning analysis but also on providing a record of such analysis. Still, it would be more useful to the public's ability to understand and support the Plan's recommendations, if a more extensive explanation were provided regarding the connection between analysis and those recommendations. I expect future plan submissions, including proposed amendments to the Boston Harborpark Plan, to ensure that the basis for plan recommendations is as fully documented as possible.

(d) Public Participation Program

Community input is another source of information providing a basis for evaluating the tradeoffs among plan alternatives and the choice of a preferred course of action. The plan provides ample evidence of a strong citizen participation program providing the opportunity for public comment on the Plan. However, the Plan does not identify the significant issues raised through public comment, how the Plan was modified in light of these comments, the implications of these modifications, or, in sum, the effects of the

public participation program. Such information, along with the rationale for zoning language that may have been negotiated to address these concerns, would enable a better understanding of both the intent of a plan and the public role in defining this intent. These results are an important component of a strong public participation program.

In this case, it is evident that the City carried out an extensive public participation program that eventually influenced the Plan in substantial ways. Among the prime examples cited by the BRA in this regard was the relocation of the Aquarium site from the Shipyard Park area to the Yard's End of the Charlestown Navy Yard. Thus, I find the basic plan element concerning the public participation process to be consistent with the Harbor Planning Guidelines. Subsequent plan amendments, however, must provide a review of the public participation program and its effects, consistent with the guidance of this Decision.

III. COMPLIANCE WITH TIDELANDS CONSISTENCY REQUIREMENTS

A. Introduction

Consistency with underlying CZM policies and guidelines is a necessary but not sufficient condition for approval of a municipal harbor plan. I must make a further determination of consistency with the specific objectives and principles of regulation embodied in 310 CMR 9.00, to ensure that harbor plans also serve positively to augment state requirements as applied on a case-by-case basis. The MHP regulations contemplate a two-part evaluation in this regard: a broad review of the effect of all plan provisions that correspond in some way to the substantive elements of the Waterways regulations; and a more focussed review of the implications of so-called "substitute" provisions -- alternative requirements which, if approved in accordance with various stated criteria, can serve as the basis for a DEP waiver of up to seven specific use limitations and numerical standards affecting nonwater-dependent use projects. My findings on these two basic aspects of the Boston Harborpark Plan are set forth below.

B. Evaluation of Non-Substitution Provisions

Chapter VIII of the Harborpark Plan highlights numerous features of the City's zoning program that support the primary state tidelands policy objectives, as set forth in 301 CMR 23.05(3)(a). My examination of the zoning text for the respective subdistricts confirms that a high degree of consistency exists with those objectives. Indeed, there are only a handful of provisions that vary in any sense with the Waterways regulations, apart from those proposed as substitutions. For example:

- * the definition of certain terms under zoning includes elements clearly excluded from the same term under 310 CMR 9.02;
- * in some zoning districts, uses and/or structures categorically restricted by the Waterways regulations are not similarly prohibited by the Plan; these include seaward expansion of existing piers for nonwater-dependent uses and the location of certain non-maritime activities in state Designated Port Areas;
- * the provisions governing affordable housing benefits allow, in certain circumstances, funds provided as a condition of development on Commonwealth tidelands to be spent not only off-site but outside the Harborpark district entirely.

Such points of departure are infrequent and immaterial because the corresponding provisions of the Waterways regulations will supersede in actual licensing situations. Nevertheless, the presence of such items in an approved plan may give rise to confusion on the part of license applicants, who could mistakenly presume that all conflict and inconsistency was removed as a result of the review and approval process. Accordingly, I require that the Plan be revised in a manner that identifies the most significant inconsistencies and clarifies that the zoning provisions in question shall not be construed as superseding any corresponding provision(s) of the Waterways regulations [See Requirement 2]. I also urge the City to consider making technical adjustments in the Harborpark zoning articles to eliminate as much potential for confusion as possible.

The MHP regulations require me to find that any non-substitution provision that amplifies a discretionary requirement of the Waterways regulations will be complementary in effect with the regulatory principle(s) underlying that requirement. Upon such a finding, DEP is committed to "adhere to the greatest reasonable extent" to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). While the Harborpark zoning articles contain many provisions, such as the urban design guidelines articulated for the commercial/mixed use subdistricts, that will have operative significance in the licensing process, DEP has indicated that there are only two segments of the Plan which elaborate upon specific Waterways requirements in the highly particularized manner contemplated by the regulations. These are the prototype docking standards (Plan Appendix K), and the mooring and harbor safety regulations (in Plan Appendix A). I concur with DEP's recommendation that only these documents meet the criteria necessary to attain 310 CMR 9.34(2)(b)(2) status. The only relevant qualification pertains to the mooring regulations, which represent acceptable amplification of 310 CMR 9.37-9.39 but should not be construed to meet the specific standards contained in 310 CMR 9.07, governing issuance of annual harbormaster permits.

As to the remaining Appendices accompanying the Plan and zoning articles, only one can presently be considered to have significant usefulness for the review of Waterways license applications: the Master Plan for Yard's End (Plan Appendix N). This is a key document for interpreting the Charlestown Navy Yard zoning, although the latter would govern if any conflicts were found to exist. By contrast, Plan Appendices B-J and L-M contain a certain amount of material that is either dated, in draft form, or extraneous for licensing purposes. These materials were most helpful as background for the plan evaluation process, but cannot be considered part of an approved plan at the present time. I urge the City to synthesize the most relevant information into discrete guidance documents that can be incorporated into the Plan at a later date, in accordance with the amendment procedure of the MHP regulations. It would be especially helpful to do this with the four appendices (E, F, H, and M) concerning water transportation issues, which contain an

abundance of water-side information and analysis that may only need to be condensed and reformatted in order to serve as a functional addendum to the Plan for Waterways licensing purposes.

C. Evaluation of Substitute Provisions

In Chapter VII of its Harborpark Plan, the City requests a waiver of the use limitations and numerical standards of the Waterways regulations, 310 CMR 9.51(3)(a)-(e) and 9.53(2)(b)-(c), that apply to new and expanded buildings for nonwater-dependent use. Such a waiver has been requested for all subdistricts where these provisions are more restrictive on their face than the corresponding provisions of the Harborpark zoning articles, as well as where there are definitional or other technical inconsistencies that could prejudice the ability of developers to meet both sets of requirements. The substitute requirements contained in the zoning would thus govern such key matters as the expansion and use of piers for facilities of private tenancy, the specification of maximum building dimensions, and the determinations of minimum amounts of indoor and outdoor space to be devoted to facilities of public accommodation.

This approach to substitution is the most comprehensive way to coordinate the respective bodies of state and local regulation. At the same time, it has the disadvantage of making the plan review and approval process unnecessarily complex, in that it does not screen out provisions that will have no practical bearing on future licensing actions. One simplifying distinction that can be made, for example, involves waterfront development projects that have progressed sufficiently far in the environmental review process to have been grandfathered from the present Waterways regulations. Insofar as these projects are not legally bound to comply with the new standards in the first place, the exercise of waiving those standards is irrelevant. Nor does it serve any useful purpose to consider waiving requirements in areas where the proposed zoning alternatives simply reflect preexisting conditions. Where full-build status has already been attained, requirements governing new or expanded buildings will have, again, little or no operative significance in the foreseeable future.

Based on the foregoing, it is appropriate to exclude from this evaluation any substitution provision that does not serve to tailor the new Waterways regulations so they may operate effectively, in concert with Harborpark zoning, to shape prospective waterfront projects to which both systems of regulation apply. This eliminates the need to consider any of the various substitution proposals for the Downtown subdistrict, where the only parcels that could foreseeably accommodate new development are part of the Central Wharf project, which submitted a license application prior to October 4, 1990 and is not subject to the new provisions of 310 CMR 9.00 governing nonwater-dependent use projects. In the remaining subdistricts, moreover, the list of candidates for substitution need not include the requirement for open water replacement

to offset expansion of existing piers or pile-fields for nonwater-dependent purposes. Such expansion is everywhere prohibited by the combination of applicable zoning (which allows lateral extensions only for public access) and the non-waivable Waterways provision which precludes further seaward projections except for water-dependent use.

Having identified these and a number of other instances where there is no apparent need to authorize the waiver of Waterways requirements, I have decided to narrow the scope of evaluation of the Harborpark Plan to consider proposed substitute provisions only for the following combinations of issues and locations:

- Open Space: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.
- Facilities of Public Accommodation at Ground Level: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.
- Setbacks: all subdistricts, except those designated as open space, from the North End to the northern City boundary and from Castle Island to the southern City boundary.
- Height: North End (Sargents Wharf), Charlestown Gateway (Tudor Wharf), Charlestown Navy Yard (Yard's End parcels 4/4A and 6/7).
- Facilities of Private Tenancy Over Water: North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts.

The framework for my evaluation of these proposed substitutes is established in the MHP regulations at 301 CMR 23.05(3)(c) and (d). Subsection (c) requires me to find that a specific criterion has been met in the case of each use limitation or numerical standard of the Waterways regulations proposed to be waived in favor of the alternative requirements of the plan. Subsection (d) sets forth what a municipality must do to demonstrate that the respective criteria have been met, which in essence is to show that the plan "will promote, with comparable or greater effectiveness, the state tidelands policy objectives stated in the corresponding provisions of the waterways regulations." The MHP regulations allow substitute provisions to be less restrictive than the Waterways requirements as applied in individual cases, "provided that the plan includes other requirements which, considering the balance of effects on an area-wide basis, will mitigate, compensate, or otherwise offset adverse effects on water-related public interests."

1) Open Space

The Waterways regulations contain two numerical standards whose effect on the provision of open space is interrelated: 310 CMR 9.51(3)(d), which limits the site coverage of nonwater-dependent buildings to approximately 50 percent, and 310 CMR 9.53(2)(b), which requires that approximately half of a project site on Commonwealth tidelands consist of exterior open spaces for public use and enjoyment. Under the Harborpark zoning articles for the North End and Charlestown Gateway subdistricts, publicly accessible open space is required to be provided on at least 50 percent of the area for any proposed project involving new construction at grade; and in the Charlestown Navy Yard, a similar percentage requirement must be met on an aggregate basis, on the total lot area of all lots in the subdistrict (exclusive of the Historic Monument Area).

The Harborpark requirements reflect definitional differences that in some ways are more restrictive and in other ways less restrictive than the Chapter 91 approach. On the whole, I am satisfied that in practice the net results will be essentially equivalent in terms of the amount of open space that will remain available for water-dependent activity and public recreation. I applaud the City, in fact, for the greater extent to which the Harborpark rules discourage use of waterfront land for roads and surface parking. Regarding implementation commitments, I believe that there is a need only for some technical improvement in the procedure for meeting the 50 percent goal in the Charlestown Navy Yard subdistrict [See Requirement 3].

2) Facilities of Public Accommodation at Ground Level

The Waterways regulations require, in effect, that the ground floor of buildings containing private nonwater-dependent uses be devoted to facilities of public accommodation, in all areas except filled private tidelands located more than 100 feet landward of the project shoreline. Under the Harborpark zoning articles for the North End and Charlestown Gateway subdistricts, any project with more than 10,000 square feet of floor area, regardless of location, must devote at least 40 percent of the ground floor to public facilities. The positioning of such space within buildings is at the discretion of the City. No such minimum requirement is specified for the Charlestown Navy Yard subdistrict, although the Master Plan for Yard's End (Plan Appendix N) identifies a number of locations where indoor space will be programmed for public activity.

The differential effect of these respective requirements depends a great deal on how Commonwealth versus private tidelands are distributed throughout a given subdistrict. For example, based on historic shoreline information provided by DEP, filled private tidelands are more prevalent than filled Commonwealth

tidelands in two of the three subdistricts at hand: the North End and Charlestown Gateway. Throughout these areas, the Harborpark rule is likely to result in a quantity of public interior space which surpasses the minimum obtainable under the Waterways regulations, which do not require the provisions of public facilities on private tidelands. The zoning requirement may also result in a more uniform distribution of public space than would the Waterways rule, given that the geographic configuration of filled Commonwealth tidelands can be highly irregular. For these reasons, I am persuaded that the 40 percent requirement set forth in the Harborpark zoning articles is an effective substitute for the Waterways standard, with respect to projects on filled tidelands within the North End and Charlestown Gateway subdistricts.

The Charlestown Navy Yard subdistrict presents a different situation due to the fact that the immediate waterfront is predominately filled Commonwealth tidelands. In this subdistrict, the City has committed to many public developments, such as the Aquarium project at Yard's End, an adjoining hotel, and a series of special facilities in historic buildings which will serve to memorialize the unique maritime culture of the Yard, America's oldest naval shipyard. Recognizing this ambitious commitment to public uses, I have decided to allow for substitution of the same 40 percent minimum requirement at Yard's End that I found acceptable in the other subdistricts. However, because such requirement is not presently codified in the appropriate zoning article, I include it here as a condition to be applied in the chapter 91 licensing process, with the understanding that DEP will act consistently with its usual practice, in the case of hotels, of utilizing the flexibility in 310 CMR 9.53(2)(c) to credit space devoted to facilities of public accommodation on the second as well as the ground floor [See Requirement 4(a)].

Nonetheless, I am not satisfied that the Harborpark Plan in the North End-to-Navy Yard region provides sufficiently for the location of facilities of public accommodation in ground-level spaces at the immediate waterfront. Therefore, I am specifying additional conditions to increase the amount of such public interior space required on piers, and also within the first 100 feet of the project shoreline except in certain circumstances where good cause exists to place the public facilities elsewhere on the project site [See Requirement 4(b)-(c)]. This latter condition allows flexibility to utilize interior space in a manner that best serves the interests of public use and enjoyment on the waterfront site as a whole. A prime example of the benefit of retaining such flexibility is found in the Yard's End Master Plan, which establishes the Sixteenth Street side of the proposed multi-phased Biomedical Research Building (rather than the more remote shoreline of the Little Mystic Channel) as the principal public thoroughfare leading to the new Aquarium site, and thus the logical priority area for the placement of ground floor public uses.

3) Setbacks

The Waterways regulations establish a "water-dependent use zone" which runs parallel to, and landward of the present shoreline, including the edges of existing piers and wharves, and whose width is proportional to the lot depth or pier dimensions (generally 25 percent is used). In all subdistricts except those designated as open space, the Harborpark Plan creates a similar "Waterfront Yard Area" from which nonwater-dependent buildings are generally excluded. However, rather than sizing this waterfront yard on a percentage basis, the Harborpark Plan sets fixed setback distances -- generally 35 feet along the shoreline and at the ends of piers and 12 feet along the sides of piers.

Since the purpose of the water-dependent use zone is to conserve the capacity of waterfront sites to accommodate water-dependent use, by preventing undue encroachment of nonwater-dependent buildings along the seaward edges of such sites, modification of the numerical standards in the Waterways regulations may occur only in the event 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" [301 C.M.R. 23.05(3)(c)(3)]. In this connection, the required Waterfront Yard Area of the Harborpark Plan is well-designed to accommodate Harborwalk, which will provide continuous pedestrian access to the water's edge throughout large portions of the harbor. For this particular purpose, the minimum setback distances specified in the Plan appear to be quite adequate.

I am concerned, however, that setback requirements also be adequate to preserve the utility and adaptability of the waterfront for a broader range of water-dependent uses. Clearly, the City has emphasized the provision of new facilities for water transportation, and anticipates both transient and permanent dockage along large parts of the harbor shoreline as it is redeveloped. Yet, the various zoning rules as applied to many sizable lots and piers protect only one-third to one-half of the space that would otherwise be reserved by the Waterways regulations along the seaward end of the property, and in many cases even a lesser portion on the sides of piers. The Plan does not attempt to justify this reduction in the context of specific vessel-related programming on an area-wide basis; nor does it contain any generic guidelines or criteria by which determinations of need for additional setback space can be made on a case-by-case basis.

I am also concerned that the Harborpark zoning articles can be read to allow, in certain circumstances, that the Waterfront Yard Area be located on a new pile-supported structure extending into open water by the same distance as is required for the setback. Therefore, nonwater-dependent building construction could take place right at the existing pier or shore edge, effectively reducing the width of the water-dependent use zone to zero. This outcome is not allowable under the substitution criterion stating

that such buildings shall not be constructed "immediately adjacent to a project shoreline" [301 CMR 23.05(3)(c)(3)].² The underlying principle here is that water-dependent use should be allocated a reasonable portion of existing buildable space, because carving setbacks out of the waterway itself is normally detrimental to navigation interests and other public rights.

While the proposed substitute setback requirements depart from the relevant DEP tidelands policy objectives, the City deserves credit for placing numerical limits on the expansion of existing piers in all areas where nonwater-dependent use of such piers may occur, i.e., in the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts. These limits are based on a variety of water-side considerations including proximity to main shipping channels, patterns of existing vessel traffic, and other site-specific navigational factors. This is important for limiting the extent to which open water can be lost indirectly as a result of pressure to maximize the buildable space available for nonwater-dependent purposes.

In recognition of the progress the City has made to comply with the spirit of the waiver criterion, I approve at this time a partial substitution for the Waterways standard for the three subdistricts noted, by accepting the Harborpark method of utilizing the new edges of expanded pile-supported structures as the baseline for measuring setback distance (rather than the project shoreline--see Requirement 5). Otherwise, the Waterways rule shall remain in effect, including the specified percentage and minimum distances from the project shoreline, until the Plan is revised to incorporate a more substantial planning basis for the alternative requirements proposed in the respective zoning subdistricts. I am encouraged that in one important area, the Charlestown Navy Yard, the City is developing precisely the sort of specific vessel-related program that can substantiate appropriate modifications to the waterways rule. For example, the Yard's End Plan calls for a generous 75 foot (average) setback along Pier 11 on the northeastern side of Parcel 5, in order to accommodate the large naval and oceanographic vessels that will be encouraged to tie up near the proposed Aquarium. In contrast, a relatively small space of 20 feet is reserved between the Biomed Center and the Little Mystic Channel, based on a reasonable presumption that the Parcel 6/7 shoreline (which is not a pier or wharf) is not well-suited as a location for many types of water-side facility development due to the narrowness of the channel and its priority status as a fairway for maritime

² In the case of pile-supported structures, the project shoreline as defined in 310 CMR 9.02 is the existing pier edge unless the pier is reconfigured in accordance with the one-for-one on-site replacement standard set forth in 310 CMR 9.51(3)(a), in which case the baseline for measuring setbacks would become the new pier edge.

commerce (being within a Designated Port Area). On this latter parcel the Yard's End Master Plan, now pending MEPA review, could justify a setback of the 20 foot size proposed by the City.

4) Height

The Waterways regulations at 310 CMR 9.51(3)(e) require that the height of new or expanded buildings for nonwater-dependent uses be limited to 55 feet over flowed tidelands and within 100 feet of the high water mark on filled tidelands; for every additional foot of separation from the high water mark on filled tidelands, such height may increase by one-half foot. Within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts, the corresponding height limits set forth in the respective zoning articles exceed these numerical standards in four relevant locations, all on filled tidelands³: Sargents Wharf and Tudor Wharf, where uniform limits of 75 feet are proposed; and Parcels 4/4A and 6/7 in the Navy Yard, where maximum heights range between 90 and 135 feet on the site of the proposed hotel (Parcel 4/4A), and from 125 to 155 feet on the site of the proposed Biomedical Center (Parcel 6/7). In the case of Sargents and Tudor Wharf, the alternative heights are less restrictive than the Waterways standards within a distance of approximately 140 feet of the project shoreline, although the increase allowed is at no point greater than 40 percent. On the Yard's End parcels, by contrast, the zone of lesser restrictiveness extends considerably deeper into each site (from 200-300 feet in each case), and the maximum allowed height averages two to three times that of the ch. 91 numerical standard -- resulting in a substantially greater shift in overall massing toward the seaward edges of these properties.

In accordance with 301 CMR 23.05(3)(c)(5), no waiver of the Waterways height provision may occur unless I find that the alternative limits and other requirements specified in the plan will "ensure that, in general, [new or expanded] buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question." This criterion contemplates that the substitution of local requirements for state height standards should occur only on the basis of a well-reasoned and duly-restrained strategy for controlling the built environment at the waterfront, on an area-wide basis. If a full-build program cannot be judged to be relatively modest in such general planning terms, there is little reason to anticipate a favorable evaluation of the more particular relationship between buildings sizes and the quality of the pedestrian experience.

³ This discussion does not apply to proposed height limits on Pier 5 in the Charlestown Navy Yard, which is on flowed tidelands and thus subject to the terms of Requirement 7.

In this regard, one constructive feature of the Harborpark zoning articles is that the sites where greater height is being allowed represent a very limited portion of the overall subdistrict in which each is located; according to City computations, in fact, those sites represent less than six percent of the aggregate land area within the three subdistricts. Everywhere else, the general rule is to keep all new buildings, as well as many existing ones, at or below the ch. 91 ceilings. This holds true for the Charlestown Navy Yard, especially in the waterfront segment to the south of First Avenue where most existing buildings do not exceed 55 feet and virtually no expansion is allowed. A similar policy of restraint is in effect in the North End and Charlestown Gateway subdistricts, where 55 feet is an absolute limit that does not increase, as the waterways standard does, with distance landward of the high water mark. Also, on each of the sites where waivers are needed from the ch. 91 standard for the seaward side of the lot, the zoning is more restrictive on the landward side.

Taller buildings have been planned by the City only in locations where the additional height is in keeping with the dimensional characteristics of nearby structures. For example, a 75 foot height limit was chosen for Sargents Wharf in order to be consistent with the size of historic buildings in the surrounding area, especially the Pilot House which for many decades has stood at the seaward end of the adjoining property. The same height standard has been specified for the filled portion of Tudor Wharf, so that new buildings will be at once comparable to the large existing structures in the nearby Hoosac Pier area (at 60-70 feet) as well as allowed to rise above the adjacent Washington Avenue Bridge -- the combined effect of which is to reinforce the intended image of this locale as a gateway to Charlestown and its southern waterfront district.

At Yard's End in the Charlestown Navy Yard the circumstances are more complex. Two existing structures in the vicinity of Parcels 4/4A and 6/7 are quite bulky and exceed 100 feet in height, which can be considered comparable to the sizing of the proposed hotel and Biomedical Center. However, these proposed waterfront buildings will be the tallest in the Yard and will be at least twice the size of most nearby structures, which are predominately 55-60 feet in height. This progressive increase in scale with decreasing distance to the water is not an approach I would ordinarily find acceptable, because it is the opposite of the widely accepted proposition that, within a waterfront district, successive buildings generally should "step down" to a considerable degree as the water's edge is approached. In this situation, however, I am persuaded that a number of unusual planning circumstances provide reasonable justification to depart from this general rule. The principal factor is that the locale is a transitional one, bordering on a regime of highly industrialized activity -- the Mystic River Designated Port Area (DPA) -- which contrasts sharply with the residential/commercial use pattern on the western side of Yard's End. In my judgement, the siting of larger commercial buildings at this interface is acceptable, even though the DPA begins with a relatively small

channel rather than as a continuation of the land mass. I am also mindful that consultations are ongoing between the City and the Massachusetts Historical Commission (MHC), the purpose of which is to adjust the heights of different portions of the proposed buildings with an eye toward ensuring compatibility with nearby historic structures. I am confident that this "fine-tuning" process will further serve to prevent excessive massing in the area, and I have provided a means for the building-specific height limits which result from the MHC consultations to be incorporated into this Decision [See Requirement 6].

I conclude that the Harborpark Plan is consistent with the spirit of the criterion for approving substitute height limits, which in the first instance is to define an appropriate relationship between new waterfront development and existing patterns of built form within the surrounding area. I must still determine whether the proposed height substitutes also pass the "comparable or greater effectiveness" test in terms of ensuring that the wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access. The best way for a municipality to show this would be to present generic massing studies, baseline microclimate information, and other data and analyses relevant to the sites in question. Where such material is not available, as in the present case, reliance must be placed on whatever less direct evidence and lines of reasoning can be marshalled in defense of a case-by-case approach to mitigation.

In this regard, the City maintains that Article 31 of the Boston Zoning Code, which requires significant projects to undergo comprehensive development and design review, represents ample capacity to assure that buildings are appropriately scaled and do not have adverse impacts on ground-level uses and pedestrian activity. Basically, this zoning provision vests the BRA with broad discretion to require whatever studies or other information it deems appropriate to evaluate pedestrian-level winds, shading and skydome obstruction, solar glare/heat gain, and other related topics. Pursuant to Article 31, the City's development review regulations include certain protocols and requirements which address such issues at a level of detail that is comparable to -- and in some respects exceeds -- the review requirements of the state MEPA process. However, with the exception of one numerical threshold that sets forth the conditions under which wind-tunnel testing may be required (i.e., building over 150 feet or twice as tall as an adjacent building), neither Article 31 nor the respective Harborpark zoning articles and regulations contain any text intended to shape either the impact evaluation methodology or the process of reaching mitigation decisions. This approach is appropriate, in the City's view, "since microclimate impacts are highly project-specific and are not effectively addressed through a uniform rule."

Without disputing that the mitigation of wind and shadow effects is ultimately a subjective process that is not highly codifiable, I cannot accept the proposition, at the other extreme, that this aspect of design

review has no structure and cannot be characterized in terms more specific than what is presently found in Article 31. The MHP regulations do not authorize me to accept case-by-case methods for offsetting the effects of less restrictive substitution provisions, unless the plan itself "sufficiently defines the parameters within which such process will operate, so that a reasonable assessment of likely effects under varying circumstances can be made." For these reasons, I am requiring the City to develop a set of standards, guidelines, and procedures to serve as a more explicit framework for reaching discretionary decisions about the size and configuration of buildings, relative to the quality of the ground-level environment at and near the water's edge [See Requirement 6]

I am confident that the City can respond effectively to this requirement, in large part simply by articulating a variety of basic principles of sound mitigation practice together with other discernible ingredients that play an instrumental role in the process. By drawing upon its extensive experience in design/development review, the City can undoubtedly identify such things as the factors most often considered, concepts used to determine the applicability of various solution techniques, indicators of need for additional data, and even some intuitive "rules of thumbs" that have evolved with time as BRA staff and consultants have increased their understanding of the microclimate in various waterfront districts.

The City's compliance with the above condition will suffice for purposes of meeting the "comparable or greater effectiveness" test in this case because, with the exception of only one limited area (Yard's End), the proposed waivers do not represent substantial deviation from the numerical standards in the Waterways regulations. Had the overall extent of departure been more extensive, I would not be inclined to rely on case-by-case review as the sole source of mitigation; rather, I would expect empirical information on pedestrian-level effects to be an important determinant in the process of setting height limits under zoning. This expectation will be reflected in future scopes for harbor plan development, and I encourage the City as well as other municipalities to commence with the appropriate planning studies at the earliest possible time.

5) Facilities Of Private Tenancy Over Water

The Waterways regulations prohibit housing, offices, and other private nonwater-dependent development on pile-supported structures over water, as a means of avoiding significant user conflict and design incompatibility with facilities that serve water-related public interests. To lift this prohibition in favor of an alternative provision in a harbor plan, the MHP regulations state that I must find that the plan contains other limitations and requirements "which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order

that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent use." Clearly, substantial use of pier buildings by facilities of private tenancy must be considered a major departure from this regulatory principle, and would thus require offsetting measures be taken to a degree that is similarly extraordinary.

The Harborpark zoning articles for the Charlestown Gateway, Charlestown Navy Yard, and North End subdistricts allow private, nonwater-dependent uses in substantial density to occur on existing piers over flowed Commonwealth tidelands. One such pier (Battery Wharf in the North End) is located within a Housing Priority Overlay Area where residential use is mandatory in at least a two-to-one ratio to other allowable uses in any proposed project. In addition, on one pier (Pier 5 in the Navy Yard) there is no apparent limitation placed on facilities of private tenancy; and on two others (Battery Wharf, and Tudor Wharf in the Gateway subdistrict), such facilities are excluded only to the extent that facilities of public accommodation are required to occupy at least 40 percent of the space on the ground level.

From the City's point of view, there is a compelling reason for certain existing piers to be available for primarily private development that is compatible with the type and density of surrounding land uses. These structures are underutilized and dilapidated to the point that their reclamation for public enjoyment and contemporary water-dependent activity is beyond the fiscal reach of the public sector, especially at a time when government is investing so heavily to improve water quality in Boston Harbor. In the City's view, in order to help rebuild the shoreline and revitalize the waterfront district outside of the working port areas, Boston must look to the private sector to supply the critical mass of investment that will result in full implementation of the Harborpark Plan.

Nevertheless, I am also mindful that the accommodation of local development objectives cannot become the primary purpose for the utilization of state tidelands, and must be kept in balance with the need to protect the interests of the broader public for whom such lands are held in trust by the Commonwealth. The Waterways regulations make it clear that the threat of undue privatization of interior spaces at and near the water's edge is inimical to those interests. In my judgment, the Harborpark Plan needs to focus additional attention on this issue before I can authorize the waiver of 310 CMR 9.51 (3)(a) as it pertains to pile-supported structures. For this to occur, additional measures must be put in place both to limit the density of facilities of private tenancy that may be located on flowed tidelands [See Requirement 7], and to expand the presence of facilities of public accommodation as a means of offsetting the substantial increase in private usage that would otherwise be excluded from the waterfront spaces in question [See Requirement 8].

The centerpiece of this latter strategy -- development of a network of "special public destination facilities" within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts -- is worthy of some elaboration. As a result of the consultation sessions following the public hearing on the Harborpark Plan, the City has made a commitment to serve as the "broker" responsible for the programming of substantial amounts of interior space which enhances the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use. One example of the kind of pedestrian network I am encouraging is already on the drawing board at the Charlestown Navy Yard, whose collection of historic piers, drydocks, and backland buildings lies squarely between the U.S.S. Constitution and the proposed site for the greatly expanded New England Aquarium. The concept under development is to integrate these dramatic anchor attractions with the unique maritime culture of the Yard itself by means of a "double interpretive loop", one branch of which will direct Yard visitors to the Chain Forge and Ropewalk cultural facilities along the spine of First Avenue, and then on to other special facilities of the type I contemplate along a return path traversing Piers 5-8, an area of substantial housing concentration. This is creative thinking on behalf of water-related public interests, and I hope similar concepts can be developed for other waterfront areas where intensive residential use will occur.

6) Determination on Proposed Substitute Provisions

Within the North End, Charlestown Gateway, and Charlestown Navy Yard subdistricts, I have determined that the Harborpark zoning provisions referenced in the foregoing sections specify alternative requirements which, if applied in accordance with the conditions I have set forth in this Decision, will promote with comparable or greater effectiveness the state tidelands policy objectives served by the minimum requirements of the Waterways regulations at 310 CMR 9.51 (3)(b)-(e) and 9.53 (2)(b)-(c). More specifically, I have found that such alternative requirements subject to the conditions stated will ensure that:

- (a) no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes;
- (b) new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline;
- (c) buildings for nonwater-dependent use will be relatively condensed in footprint;

- (d) in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size; and
- (e) nonwater-dependent use projects on Commonwealth tidelands will establish the project site as a year-round locus of public activity.

These findings apply throughout each subdistrict, with the exception of (d) which applies only to the four parcels identified in section (4), above. These findings authorize DEP to waive the relevant use standards and numerical standards of the Waterways regulations, subject to the conditions stated. In accordance with 310 CMR 9.34(2)(6)(1), DEP will apply, as a substitute, the corresponding provisions of the Harborpark Plan as approved pursuant to the terms and conditions of this Decision.

The substitutions I have approved represent alternative minimum standards to those contained in the Waterways regulations, and my 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 MEPA mitigation measures and Waterways licensing requirements will be made.

IV. COMPLIANCE WITH OTHER APPROVAL STANDARDS

A. Relationship to State Agency Plans

As in any major metropolitan area, responsibility for the management of land and water resources in Boston Harbor is shared in complex ways between the City and a number of state agencies, such that intergovernmental cooperation is essential to the success of any significant public planning enterprise. Fortunately, such cooperation has been much in evidence throughout the entire Harborpark Planning process. This is perhaps best demonstrated by the fact that the Harborpark Advisory Committee has included representatives of my office as well as the Executive Office of Economic Affairs.

Massport advises me that its staff have worked closely with the BRA over the past four years to ensure that the Harborpark Plan is generally consistent with plans for its own properties and with the future needs of the Port of Boston. One result attributable in part to this interaction is the City's establishment of Maritime Economy Reserve Zones to preserve deep-water areas for shipping and other water-dependent industrial uses, and the recognition of the critical nature of adequate landside access to the Port's terminals. In a similar vein, the Executive Office of Transportation and Construction (EOTC) has testified that the plan

reflects consideration of the impact of, and in many respects appears to be based upon, the successful completion of many EOTC-agency activities well into the planning process, especially those associated with the Central Artery/Third Harbor Tunnel Project. Finally, the MWRA has expressed appreciation for the City's commitment to assist in the development of the Authority's combined sewer overflow systems, and has stated a reciprocal commitment to work with Boston to accommodate the substantive goals and policies articulated in the Harborpark Plan

All three agencies have also expressed concern that an approval of the Harborpark Plan should not be misconstrued to subject all state projects that fall within the jurisdiction of Chapter 91 to local zoning as well. The written comments from EOTC are most extensive on this matter, and point to a number of both general and specific ways in which Harborpark zoning provisions, formulated with an eye toward controlling private development primarily, are incompatible with certain features of transportation projects proposed on both flowed and filled tidelands. It is clear to me that approval of a municipal harbor plan is not intended to make zoning requirements legally binding on state projects. Therefore, in the interest of avoiding any future misunderstanding on the applicability of the approved Harborpark Plan, this Decision shall not be construed to apply, pursuant to 310 CMR 9.34(2), to any state project or portion thereof that is exempt from zoning requirements by law. Such projects, of course, are expected to make every reasonable effort to comply with the spirit and intent of the Harborpark Plan as reflected in such requirements.

In a strictly legal sense, the above statement is all that is really needed to achieve compatibility between the Harborpark Plan and the project plans of any state agency owning real property within the Harborpark District. I am concerned, however, that reliance on zoning exemptions tends to defeat the purpose of encouraging both municipal and state planners to interact in a manner that will maximize the compatibility of their respective plans, and of producing approved harbor plans that will provide constructive local guidance to DEP staff for the licensing of public as well as private projects. Accordingly, in future phases of plan development in Boston as well as in other coastal communities, I will require enhanced coordination measures leading to the specification of appropriate non-zoning guidelines by which state projects can be most effectively dovetailed with planned uses on surrounding areas of privately-owned property [See Requirement 1(e)].

B. Enforceable Implementation Commitments

In my judgement, the Harborpark Plan will be effectively implemented as a result of commitments that have been codified in zoning and/or the conditions of this Decision, and as such are highly enforceable. Among other things, these commitments will ensure that 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.

V. REQUIREMENTS

Requirement 1 (Subsequent Plan Amendments)

In order to ultimately address land and water issues in a comprehensive manner, the City shall develop proposed amendments to the Harborpark Plan and submit such amendments to the Secretary in accordance with 301 CMR 23.06(1). Generally, in preparing such amendments it will be necessary for the City to carry out the following planning tasks, on its own and with relevant state or federal agencies:

- (a) develop zoning articles and accompanying master plans for all sub-areas of the Harborpark District not covered by this Decision, including East Boston, the Harbor Islands, the waterfront areas on both sides of the Fort Point Channel and west of the Northern Avenue Bridge, the Fort Point District in conjunction with the South Boston Designated Port Area, and all associated water areas within the territorial limits of the City; the sub-area plans shall simultaneously address all relevant water-side as well as land-side issues and, in the case of East Boston, shall be fully coordinated with any plans of the City of Chelsea for the Designated Port Areas along the Chelsea Creek;
- (b) develop applied policies and an implementation program, beyond current zoning, to foster the continuation and growth of existing maritime commercial activities throughout the harbor, including but not limited to fishing and lobstering, tug and pilot boat operations, and passenger excursion businesses; said policies and program shall also address the potential for expanding the geographic area zoned as Maritime Economy Reserve;
- (c) develop a master plan for a public water-transportation system throughout the harbor which identifies terminal locations, assures the availability of docking facilities, and otherwise seeks to expand facilities for moving people economically by water;
- (d) develop applied policies and associated implementation programs addressing all relevant waterway use issues within City jurisdiction, including mechanisms to coordinate with state and federal programs regarding water quality and natural resource protection, dredging and dredged material disposal, and the allocation and management of navigable spaces (for deep draft commercial channels, mooring fields, recreational anchorages, sailing/rowing/sailboarding, and so forth); and

- (e) identify 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 sub-areas specified in (a), above, and develop applied policies and a non-zoning implementation program to guide such activities in a manner compatible therewith to the maximum reasonable extent.

The City shall submit written requests for Scopes for the required plan amendments, and shall set forth in such requests the specific manner and level of detail by which the City proposes to carry out the above referenced planning tasks.

Requirement 2 (Zoning Relationship to 310 CMR 9.00).

The Zoning Appendix to the Harborpark Plan shall be revised to include an introductory statement to the effect that not all zoning provisions are consistent with the substantive provisions of the Waterways regulations, and that no inconsistent zoning provision shall be construed as superseding any corresponding provision of such regulations. Said statement shall be prepared in consultation with DEP, and shall identify at a minimum the following elements of zoning which are explicitly in conflict with the Waterways regulations:

- (a) the definitions of filled tidelands and aquarium;
- (b) the allowance of height for new or expanded buildings in excess of the limits imposed by 310 CMR 9.51 (3)(e) and for which no substitute limit has been approved by this Decision;
- (c) the allowance of further seaward expansion of pile-supported structures for nonwater-dependent purposes;
- (d) the allowance of new fill and pile-supported structures, without 1:1 replacement, for nonwater-dependent uses;
- (e) the allowance for affordable housing requirements to be met through payments in support of such housing outside of the Harborpark District; and
- (f) the allowance of certain uses within Waterfront Manufacturing subdistricts which are categorically restricted by the provisions 310 CMR 9.00 governing Designated Port Areas.

Requirement 3 (Open Space).

At any location in the Charlestown Navy Yard subdistrict for which this Decision authorizes waiver of the numerical standards in 310 CMR 9.51(3)(d) and 9.53(2)(b), DEP shall grant such waiver if and only if a project includes or otherwise provides, on a reasonably concurrent basis, for sufficient public open space to ensure that the total amount of such space as a percentage of the total area of the subdistrict (exclusive of the Historic Monument Area) does not fall below 50 percent. The City shall keep a running tally of the open space percentage, and every Section 18 recommendation on a Waterways license application shall include certification, based on such tally, that the required minimum percentage will be maintained upon completion of the proposed project. The term "open space" as used herein shall be that as defined in Article 42F of the Harborpark District zoning.

Requirement 4 (Ground Floor Facilities of Public Accommodation).

At any location for which this Decision authorizes waiver of the ground floor use standards in 310 CMR 9.51(3)(b) and 9.53(2)(c), DEP shall grant such waiver if and only if a project meets the following requirements, as applicable:

- (a) the percentage of interior space devoted to facilities of public accommodation shall be at least 40 percent of the aggregate footprint of buildings on parcels 4, 4A, 6, and 7 in the Charlestown Navy Yard subdistrict; such public interior space shall be located at the ground level or at an alternative location that would more effectively promote public use and enjoyment of the project site, as provided in 310 CMR 9.53 (2)(c);
- (b) at least 50 percent of the ground floor spaces within all buildings containing nonwater-dependent facilities of private tenancy, on pile-supported structures on flowed tidelands, shall be occupied by facilities of public accommodation, including, to an extent deemed appropriate in accordance with Requirement 8, special public destination facilities;
- (c) for any project where buildings for nonwater-dependent use contain ground floor interior space within 100 feet of a project shoreline, such space shall be devoted to facilities of public accommodation unless an alternative location would promote public use and enjoyment of the project site in a clearly superior manner, is necessary to make ground level space available for upper floor accessory services, or is appropriate to accommodate or avoid detriments to water-dependent use; and

- (d) space devoted to public parking shall not be credited toward meeting the requirements of (a) or (b), above.

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Requirement 5 (Setback for Nonwater-Dependent Buildings)

At any location for which this Decision authorizes waiver of the numerical standards in 310 CMR 9.51(3)(c), DEP shall grant such waiver if and only if the project meets the following alternative requirements for computing minimum setback distances for new or expanded buildings for nonwater-dependent uses on piers and wharves:

- (a) the baseline for purposes of measuring setbacks shall be the seaward edges of any new pile-supported structures added beyond the project shoreline, provided that such addition is subject to numerical limitation under the applicable zoning article and meets the criterion of 310 CMR 9.32(1)(a)(3); otherwise, the baseline shall be the project shoreline as defined in 310 CMR 9.02, which means "the high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles or to be replaced pursuant to 310 CMR 9.32(1)(a)(4), whichever is farther seaward";
- (b) except as otherwise provided in (c), below, the minimum setback distance from the baseline shall be computed in accordance with the percentage rules set forth in 310 CMR 9.51(3)(c); under no circumstances, however, shall the setback distance from the project shoreline be less than 25 feet along the ends of piers and wharves, nor less than ten (10) feet along the sides of such piers and wharves; and
- (c) a reconfiguration of setback distances along the ends and sides of a pier or wharf may occur only if such reconfiguration will promote public use or other water-dependent activity in a clearly superior manner, and if no reduction will occur in the amount of total setback area required on such structure in accordance with the percentage rules set forth in 310 CMR 9.51(3)(b).

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Any other deviation from the minimum setback distance established pursuant to the Waterways regulations may occur only in accordance with a specific plan for vessel-related programming throughout the subdistrict, or with a set of guidelines for the determination of sufficient setback space for various types of water-based activity. Any such plan and/or guidelines shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1) or, in the case of the Charlestown Navy Yard, in the context of further MEPA proceedings on master planning issues as set forth in the Secretary's letter to the Boston Redevelopment Authority dated January 2, 1991.

Requirement 6 (Height of Nonwater-dependent Buildings)

At any location for which this Decision authorizes waiver of the height limits in 310 CMR 9.51(3)(e), DEP shall grant such waiver if and only if a project is subject to a special mitigation program to avoid or minimize adverse wind, shadow, and other impacts on the ground-level environment. Such program shall specify standards, guidelines, and other parameters to serve as a framework for reaching appropriate mitigation decisions; and shall include a procedure for documenting the application of such framework to individual projects, in reasonable detail and in terms of objectives and issues that were identified and their prioritization, the design options considered, and the evaluation of tradeoffs among the design options which led to the choice of specific mitigation measures.

In the case of the North End and Charlestown Gateway subdistricts, the special mitigation program shall be set forth in regulations to be promulgated under the respective Harborpark zoning articles, which shall be submitted for review and approval by the Secretary in accordance with the procedures of 301 CMR 23.06(1). In the case of the Charlestown Navy Yard subdistrict, the special mitigation program shall be incorporated into the Harborpark Plan in the context of further MEPA proceedings, as set forth in the Secretary's letter to the Boston Redevelopment Authority dated January 2, 1991. More specifically, in the case of the proposed hotel and Biomedical Building 1 at Yard's End, the Section 61 finding to be filed prior to the issuance of a ch. 91 license shall be used to describe mitigation parameters appropriate to those projects, and to document the choice of mitigation measures based thereon. For other nonwater-dependent projects in Yard's End, the required mitigation parameters and documentation procedures shall be set forth in the Yard's End Master Plan, to be filed as a Draft Supplemental EIR.

In the Charlestown Navy Yard subdistrict, in the event the zoning height limits presently set forth for the proposed hotel (Parcels 4/4A) and Biomedical Center (Parcels 6/7) are subsequently adjusted downward in accordance with any Memorandum of Agreement pertaining to historic preservation issues, as referenced

in Article 42F-12.2 (Table C), this Decision shall apply for substitution purposes only to the lower heights so established.

Requirement 7 (Facilities of Private Tenancy Over Water—Limits)

At any location for which this Decision authorizes waiver of the use standards in 310 CMR 9.51(3)(b) on flowed tidelands, DEP shall grant such waiver if and only if a project meets the following requirements applicable on pile-supported structures:

- (a) all buildings containing nonwater-dependent facilities of private tenancy shall conform to a height limit of 55 feet, to the setback requirements of Requirement 5(a)-(c), above, and to the site coverage limitations set forth in 310 CMR 9.51(3)(d);
- (b) no more than 50 percent of the ground floor spaces within such buildings may be occupied by facilities of private tenancy, including upper-floor accessory services; and no parking may occur seaward of the high water mark;
- (c) residential uses shall be allowed only on Battery Wharf in the North End and on Pier 5 in the Charlestown Navy Yard, and not then at the ground level; any residential use of the second floor shall be accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior facilities of public accommodation, or water-based public activities as the term is used in 310 CMR 9.53(2)(a); and
- (d) such facilities shall be subject to specific guidelines to avoid conflict and minimize incompatibility with the operation of nearby water-dependent and/or public activities; at a minimum, such guidelines shall address the factors identified in 310 CMR 9.51(1) that may give rise to such adverse effects; such guidelines shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1).

Certification as to whether a project complies with the above requirements, as applicable, shall be submitted by the City as part of its Section 18 recommendation on the Waterways license application.

Requirement 8 (Facilities of Private Tenancy Over Water—Offsets)

At any location for which this Decision authorizes waiver of the use standards in 310 CMR 9.51(3)(b) on flowed tidelands, DEP shall grant such waiver to a project if and only if the Harborpark Plan has been revised to include one or more plan(s), together with appropriate implementation commitments, to develop a network of "special public destination facilities" within interior spaces along or near the Harborwalk, primarily at the ground level. Such plan(s) shall be prepared in consultation with CZM, and shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1). Among other things, the plan(s) shall be developed in accordance with the following provisions:

- (a) in accordance with 310 CMR 9.53(2)(c), the term special public destination facilities shall mean "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, but are not limited to, cultural uses as the term is used in various articles of the Harborpark District Zoning;
- (b) in the choice of special public destination facilities, special consideration shall be given to those which encourage diversity in the pattern of uses and population of users at the waterfront, and special efforts shall be made in this 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;
- (c) within the aggregate of the three subdistricts in question, at least one square foot of gross interior space must be devoted to special public destination facilities for every four square feet of such space licensed under M.G.L. c. 91, subsequent to the date of this Decision, for nonwater-dependent facilities of private tenancy in the following locations: 1) anywhere on pile-supported structures in flowed tidelands; and 2) at the ground level of buildings on filled tidelands within 100' of a project shoreline, except for any segment of such shoreline which abuts a Designated Port Area; this computation shall not take into account space that is devoted to special public destination facilities at present or which has been proposed in a license application submitted prior to the date of this Decision;
- (d) special facility space shall be appropriately distributed among the respective subdistricts, and reasonable arrangements shall be made to locate such space on pile-supported structures in

conjunction with new facilities of private tenancy, taking into account the extent to which other public activities planned for interior building spaces on such structures will help ensure the primacy of public use and enjoyment at the ground level, on a year-round basis; special facility space may also be provided elsewhere in the surrounding area where opportunities exist to offset privatization, particularly at the immediate waterfront and at other sites that have traditionally played a significant role in the maritime culture of the subdistrict;

- (e) special facilities shall be of a condition, size, and type which is appropriate to meet needs identified in any relevant subdistrict plan, and shall be consistent with any guidelines developed for Harborwalk, the proposed "double interpretive loop" in the Navy Yard, and other networks for pedestrian circulation within a given waterfront area;
- (f) development of special facilities shall be concurrent with development of the relevant facilities of private tenancy, where "development" means all aspects of the design, financing, permitting, and environmental review process. "concurrent" means concurrent progress on such general aspects, and as may be more specifically defined in the special facilities plan to be included in the amended Harborpark Plan; and
- (g) the special facilities plan may incorporate such other terms and conditions as the City may propose, in a manner analogous to the specification of public benefit criteria in other City zoning articles such as that pertaining to the Midtown Cultural District.

Certification as to whether the above requirements have been met shall be submitted by the City, as part of its Section 18 recommendation on the relevant Waterway license applications.

Requirement 9 (Preparation of Revised Plan)

In accordance with a good faith commitment to avoid undue delay, the City shall revise and resubmit to the Secretary the Harborpark Plan originally submitted on October 19, 1990, in accordance with the following requirements:

- (a) Chapters VII - IX of said Plan shall be deleted and replaced with a copy of this Decision; the remaining chapters and appendices shall be edited as necessary, pursuant to any guidance provided by CZM, to ensure consistency with the terms and conditions of this Decision;

- (b) Appendix A of the Harborpark Plan shall be revised to exclude Article 42E, map amendments No. 221 and 222, and the City of Boston regulations ch. 1 st. 11 sec. 28-30; to include the revised Article 42F and associated map amendment (as adopted by the Boston Zoning Commission on December 11, 1990); and to include the statement required in Requirement 2 together with a guide to all substitute provisions approved pursuant to this Decision;
- (c) all other Appendices shall be deleted from the Plan, with the exception of Appendices K (Docking Standards) and N (Master Plan for Yard's End, as revised in accordance with Requirements 5 and 6); and
- (d) new Appendix material shall include any document referenced in the Harborpark Plan and Zoning Appendix as of October 19, 1990 but not submitted for review and approval in accordance with 301 CMR 23.00, except for other portions of the Boston Zoning Code and except for documents that are unrelated to the terms and conditions of this Decision and to the Waterways licensing process; any such material shall be subject to the approval of the Secretary in accordance with such review procedures as may be deemed appropriate, including at a minimum publication of notice in the *Environmental Monitor* and solicitation of written public comment.

VI. EXCLUSIONS

For waterways licensing purposes pursuant to 310 CMR 9.34(2), the Approved Harborpark Plan applicable to a proposed project shall not be construed to include the following:

- (a) any zoning provision from which the project is exempt pursuant to sections 42A-4, 42F-4, or other like sections of the Harborpark zoning articles; such sections shall not be construed to exempt the project from any applicable requirement of the Waterways regulations at 310 CMR 9.00;
- (b) any zoning provision from which the project has been granted relief in any form other than a conditional use permit, provided that a determination has been made pursuant to 310 CMR 9.34(2)(a)(2) that the resulting deviation from the plan is de minimus or unrelated to the purposes of M.G.L. c. 91 or of the Waterways regulations;
- (c) any zoning provision which is inconsistent with a corresponding provision or other aspect of the Waterways regulations, as identified in accordance with Requirement 2 or otherwise determined by DEP;

- (d) any subsequent addition, deletion, or other revision to the Harborpark Plan, including but not limited to changes in zoning maps, text, or associated regulations, 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); early notice of intent to propose any such changes shall be submitted to the Secretary, so that a determination of need for plan amendment can be made in a timely fashion; and
- (e) any provision that does not preserve rights held in trust by the Commonwealth for the public to use tidelands for fishing, fowling or navigation.

VII. EFFECTIVE DATE AND TERM OF APPROVAL

Except with respect to portions of the Harborpark Plan or any revision thereto subject to further review and approval by the Secretary, pursuant to any of the foregoing Requirements, this Decision shall take effect upon the date it becomes final in accordance with 301 CMR 23.04(5). The Decision shall expire on May 22, 1996, unless a renewal request is filed prior to that date in accordance with 301 CMR 23.06(2)(a). No later than six months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives. Nothing in the foregoing requirement, however, shall be construed to prejudice the City's right to seek renewal of the Approved Harborpark Plan.

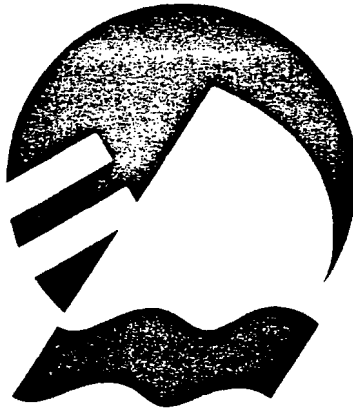
VIII. STATEMENT OF APPROVAL

Based on the information presented 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 Harborpark Plan as the municipal harbor plan for the City of Boston. Such approval is subject to all requirements, limitations, qualifications, and other conditions set forth in this Decision.

Susan F. Tierney, Secretary,
Environmental Affairs

Date

HARBORPARK PLAN CITY OF BOSTON MUNICIPAL HARBOR PLAN



CITY OF BOSTON
Raymond L. Flynn,
Mayor

BOSTON REDEVELOPMENT AUTHORITY

Stephen Coyle,
Director
Clarence J. Jones,
Chairman
Michael F. Donlan,
Co-Vice Chairman
Francis X. O'Brien,
Co-Vice Chairman
James K. Flaherty,
Treasurer
Consuelo Gonzales-Thornell,
Member
Kane Simonian,
Secretary

OCTOBER 1990

NOTE

This document is the draft City of Boston Municipal Harbor Plan (Harborpark Plan) as submitted to the Commonwealth of Massachusetts Departments of Environmental Protection and Coastal Zone Management in October 1990. The decision on this Plan was signed by the Secretary of Environmental Affairs on May 22, 1991. This Plan now will be updated in accordance with the Secretary's decision and issued as a final Plan within six months of the decision.

"But look! Here come more crowds, pacing straight for the water, and seemingly bound for a dive. Strange! Nothing will content them but the extremest limit of the land; loitering under the shady lee of younder warehouses will not suffice. No. They must get just as nigh the water as they possibly can without falling in. And there they stand -- miles of them -- leagues. Inlanders all, they come from lanes and alleys, streets and avenues -- north, east, south, and west. Yet here they all unite. Tell me, does the magnetic virtue of the needles of the compasses of all those ships attract them thither?"

Moby-Dick
Herman Melville, 1851

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ACKNOWLEDGEMENTS

APPENDICES

A. BOSTON ZONING CODE ARTICLES AND TEXT AND MAP AMENDMENTS

Article 27C Harborpark Interim Overlay District
Text Amendment No. 110 Maritime Economy Reserve District
Article 35 Port Norfolk Neighborhood District
Article 42A Harborpark District: North End/Downtown Waterfront and
Dorchester Bay/Neponset River Waterfront
Article 42B Harborpark District: Charlestown Waterfront
Article 42C Waterfront Service District
Article 42D Waterfront Manufacturing
Article 42E Fort Point Waterfront
Article 42F Charlestown Navy Yard

Map Amendments:

No. 218 South Dorchester: Port Norfolk Neighborhood District
No. 220 Charlestown: W-2, I-2, and B-1 area to MER-2
No. 221 East Boston: W-2, M-1, M-2, and I-2 area to MER-2
No. 222 South Boston: W-2 and I-2 area to MER-2
No. 239 Boston Proper: Harborpark District Adopt Maps 1E, 1F
No. 240 South Boston: Harborpark District Adopt Maps 4A, 4B, 4C, 4D
No. 241 North Dorchester: Harborpark District Adopt Maps 5A, 5B
No. 242 South Dorchester: Harborpark District Adopt Map 8B
No. 243 Amend Map 2A, Boston Harbor
No. 245 Charlestown: Harborpark District Adopt Maps 2B, 2C
No. 246 North End/Downtown and Dorchester Bay/Neponset River Waterfront;
Boston Harbor

CITY OF BOSTON MOORING REGULATIONS, 1988.

CITY OF BOSTON HARBOR SAFETY REGULATIONS DRAFT

CITY OF BOSTON CODE STATUTE ORDINANCES REGULATIONS CH. 1 ST.
11 SEC. 28-30

- B. HARBORPARK, A FRAMEWORK FOR PLANNING DISCUSSION; BRA, October 1984.
- C. HARBORPARK, INTERIM DESIGN STANDARDS FOR THE INNER HARBOR; BRA, November 1984.
- D. HARBORPARK, THE GOVERNMENTAL ACTORS: A DIRECTORY OF RESPONSIBILITIES AND CONTACTS; BRA, January 1986.
- E. BOSTON INNER HARBOR WATER DEPENDENT USE REPORT; prepared for BRA, EDIC, BSA, Massport, CZM; by TBHA, October 1986.
- F. WATER TRANSPORTATION IN BOSTON HARBOR: ISSUES AND OPPORTUNITIES; BRA, 1987.
- G. HARBORWALK; BRA, 1987.

- H. BOSTON HARBOR PIER STUDY; prepared for BRA; by Mintz Associates, January 1987.
- I. HARBORPARK UPDATE; BRA, 1987.
- J. HARBORPARK - GENERAL INFORMATION REGARDING THE PROPOSED MARITIME ECONOMY RESERVE ZONES AND OTHER WATERFRONT LOCATIONS; BRA, February 1988.
- K. PROTOTYPE DOCKING STANDARDS FOR BOSTON HARBOR. HARBORPARK; prepared for City of Boston, BRA, BTD, Environment Department; by Childs Engineering Corp., November 1988.
- L. HARBORPARK - A PLAN TO MANAGE GROWTH; BRA, Summer 1989.
- M. HARBORPARK - TRANSPORTATION ANALYSIS FOR THE NORTH END/DOWNTOWN WATERFRONT SUBDISTRICT; prepared for BRA; by Tam's Consultants, Inc., December 1989.
- N. MASTER PLAN FOR THE YARD'S END, CHARLESTOWN NAVY YARD (Draft); BRA, October 1990.

PREFACE

The Harborpark Plan, is the result of over four years of planning by the City in consultation with the Harborpark Advisory Committee, public agencies, and the community. This Plan has been prepared as the Municipal Harbor Plan for the City of Boston in accordance with the provisions of the Waterways Regulations 310 CMR 9.00, Implementing M.G.L. Chapter 91, and the Regulations for Review and Approval of Municipal Harbor Plans 301 CMR 23.00, effective October 12, 1990.

Chapter I of the Harborpark Plan provides the background and context for the planning policies. Chapter II defines the Harborpark Planning Areas and subareas, district, and the general characteristics and qualities of each of these areas. In Chapters III through VI the four comprehensive Harborpark Plan Policies are analyzed. Each policy is discussed in relation to how it balances and promotes policies of Chapter 91 to protect the public's rights in the tidelands, within the context of Boston Harbor. The Chapter 91 policies which are promoted and supported by each policy are identified. Twenty (20) specific City regulations, guidelines which implement the Harborpark policies and correspond to the Chapter 91 policies are identified. Chapter VII defines specific substitutions made by this Plan to certain provisions of Chapter 91 in accordance with 310 CMR Section 9.34(2), and specifies the underlying policy which renders this substitution as appropriate to promoting the policies of Chapter 91 in Boston Harbor. Chapter VIII discusses consistency of the Harborpark Plan with State Waterways Policies under Chapter 91. Chapter IX describes the consistency of the Harborpark Plan with the Massachusetts Department of Coastal Zone Management Policies embodied in the 1978 Coastal Zone Management Plan.

The Harborpark Plan encompasses the City of Boston waterfront area of Boston Harbor from the northern City boundary at Charlestown at Somerville/Everett/Chelsea, to southern City bounding of the Neponset River at Milton. The Plan incorporates the final permanent Harborpark Zoning for the North End Waterfront and Downtown Waterfront, and Dorchester Bay/Neponset River Waterfront, Article 42A (effective April 27, 1990) and the Charlestown Waterfront, Article 42B (effective June 14, 1990). The Charlestown Navy Yard permanent zoning, Article 42F, and Charlestown Navy Yard Master Plan were approved by the Boston Redevelopment Authority (BRA) Board on October 11, 1990 and City of Boston Zoning Commission will hold a hearing on the zoning in November 1990. The Fort Point Waterfront permanent zoning, Article 42E, was reviewed by the BRA Board on October 25, 1990 and a hearing by the Zoning Commission will be held in November 1990. The Harborpark Plan will incorporate the Fort Point Waterfront Zoning (Article 42E) and the Charlestown Navy Yard Zoning (Article 42F) as finally adopted by the Zoning Commission. The Plan does not include, at this time, the permanent zoning for the East Boston Waterfront which will be incorporated by amendment to the Plan in accordance with Section 23.07 of the Regulations for Review and approval of Municipal Harbor Plans (301 CMR 23.00). Planning and revised zoning for the Boston Harbor Islands within the City of Boston is not incorporated in this Plan at this time. These analyses are the next phase of the Harborpark planning process which will begin in 1991.

This Harborpark Plan shall apply to any project which is subject to the Waterways Regulations implementing MGL Chapter 91 as effective on October 4, 1990 or to any other project which elects to be subject to this Plan.

I. FRAMEWORK FOR THE PLAN

CONTEXT FOR PLANNING

For more than 300 years, the destinies of Boston Harbor and the region have been intertwined. The vitality of the waterfront fueled the growth of Boston as a center of international commerce from the eighteenth to the early twentieth century. In the middle of this century many businesses abandoned the waterfront, leaving rotting piers and empty warehouses as symbols of Boston's economic decline.

In the last two decades, as Boston has reemerged as the center of a vibrant New England economy, areas of the waterfront were rediscovered as sites for new offices and luxury housing. However, many of these new developments stand as barriers between the city and the harbor, precluding water-dependent businesses and activities, providing benefits to the residents of the city. Pressures to continue this trend grew stronger as the city's economy boomed in the early 1980s. In response to these conditions, the Harborpark planning process was initiated to ensure that new development on the harbor is managed in a way that protects the waterfront's unique resources and generates private investment. This investment ensures waterfront revitalization that provides public access to the Harbor for all residents. This planning has resulted in the adoption of the Harborpark District Zoning which articulates the Harborpark policies in regulatory form. This City of Boston Municipal Harbor Plan, herein referred to as the Harborpark Plan or the Plan, defines the planning policies and desired balance of uses along the Harbor, and it incorporates the Harborpark Zoning and other City standards and regulations related to the Harbor.

The Harborpark planning process began in 1984 when the Flynn Administration established the Harborpark Advisory Committee (HPAC). This 15-member group, which includes representatives of key Harbor constituencies and waterfront neighborhoods, advises the city on policy and development affecting the Harbor. In March 1987, the city created the Harborpark Interim Planning Overlay District (IPOD). The IPOD defined goals for the Harbor and established temporary zoning controls to assure appropriate growth while a permanent zoning plan was being created for Boston's waterfront. The new permanent zoning ensures that the waterfront, from the Mystic River to the Neponset River, is developed in a way that promotes active and public waterfront uses. In the past five years numerous meetings have taken place between the City and residents, people who work on the harbor, and those who are investing in revitalization of the harbor.

The Municipal Harbor Plan is the instrument for continuing implementation of the City's plan for Boston Harbor, and further coordinating the Plan with the Chapter 91 regulations. The Harborpark Plan recognizes Boston Harbor as a unique resource that should be accessible to all residents of the city as a place to live, work, and gather for recreation or the quiet enjoyment of life and nature. The intent of the Plan is to ensure that there is a balance of such uses on the entire waterfront and that the economic health of the waterfront enhances the quality of life in the City.

The provisions of Boston's Harborpark Plan do not contradict the corresponding provisions of the waterways regulations nor do they significantly alter the substantive nature of the requirements or narrow the range of factors that may be considered. The plan includes provisions which amplify upon discretionary requirements of the waterways regulations and are complementary with the regulatory principles underlying the requirements.

The Plan's policies recognize the potential of the waterfront to provide up to one-third of the 10,000 annual new jobs and contribute to the thousands of new housing units that demographers project will be created in Boston by the turn of the century. Affordable housing programs and the City of Boston job training and employment opportunity programs will ensure that all residents of the city have access to economic opportunities created by this waterfront development.

The rejuvenation of the harbor will also strengthen the economy of the New England region, which has depended historically on the port of Boston, through reserving areas for water-dependent industry. Ensuring that New England manufacturers have access to a deep-water port will make manufacturers competitive in the international marketplace.

A central goal of the Harborpark Plan is to ensure public access to Boston's waterfront for open space, recreational, residential, and industrial/commercial uses. The plan re-establishes the historical ties between Boston residents and a waterfront that has always played a major role in the city's vitality.

New zoning for the Harborpark district creates the primary legal mechanism for implementing the planning policies. The comprehensive primary goals of the underlying Harborpark Zoning are the following:

- o Provide public access to the waterfront's unique opportunities for recreation, economic activities, jobs and housing; promote the public's rights in the waterfront.
- o Revitalize Boston's underutilized and dilapidated shoreline by promoting growth through private investment that is appropriately-designed, and is a balanced mix of uses that bring vitality to the waterfront and public benefits and amenities that are shared by all of Boston residents.
- o Activate the waterfront zone through appropriate urban design active public and cultural uses and water-dependent uses.
- o Protect and enhance the waterfront's maritime-industries which require deep-water shipping channels and land-side facilities on the Harbor.

The goals will be realized through implementation of a ten point planning program with implementation strategies that assures balanced growth on Boston's historic waterfront. The program will:

- o Preserve approximately one-third of the waterfront for open space and recreational opportunities.

- o Create Harborwalk, 43 miles of continuous waterfront walkway that will stretch from the Neponset River to Charlestown and East Boston.
- o Establish Maritime Economy Reserve Districts which preserve deep water areas of the waterfront for shipping and other water-dependent industrial uses.
- o Create and protect approximately 4,000 units of housing existing and planned both on and near the waterfront, with a goal of 25% affordability.
- o Guide the expansion of the downtown economy through appropriately-scaled development on carefully-selected waterfront sites.
- o Promote connection of communities adjacent to Harborpark to the Waterfront, including Charlestown, the Fort Point Channel area, East Boston, the North End, and Dorchester, communities.
- o Reestablish an extensive water transportation system in Boston Harbor and improve transportation access to new waterfront developments without creating adverse impacts on nearby neighborhoods.
- o Establish height limits and design guidelines so that new waterfront development is appropriately scaled and improves visual and physical connections between neighborhoods and the waterfront.
- o Protect and enhance the harbor's natural environment by locating and designing buildings in ways that do not generate excessive winds and shadows, encouraging pedestrian access to the waterfront, and improving the water quality of Boston Harbor.
- o Continue the neighborhood-based review process established by Harborpark for waterfront developments.

IMPLEMENTATION OF PLANNING POLICIES

The components of the Municipal Harbor Plan are being implemented through a combination of public and private initiatives guided by the Harborpark Zoning, Urban Design Guidelines, and Development Review Requirements. The primary focus of the planning effort has been to update the Harbor's more than 20-year old zoning policies. The Harborpark District Zoning sets aside more than 1,000 acres of waterfront land as open space and initially reserves 660 acres for maritime industries in Maritime Economy Reserve Zoning Districts (MER). It includes requirements for 50% open space on new private development and public access along the perimeter on all sides. It creates height, density, and use controls and establishes development and design review guidelines. It also targets areas of the Charlestown Navy Yard and the North End for affordable housing for Boston's residents. The Harborpark Zoning maximizes the potential of zoning to promote positive land use and activation of the waterfront. It links the City's land use controls directly to Chapter 91 regulations by including in the Harborpark Zoning substantive requirements to guide the recommendation to be made by the BRA under Section 18 of M.G.L. Chapter 91 regarding whether a

project serves a proper public purpose and would not be detrimental to the public's rights in the tidelands.

The zoning provides that in making a Section 18 Recommendation, the BRA shall base its determination on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:

- (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent Use on Private or Commonwealth Tidelands;
- (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
- (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;
- (d) interest in the preservation of the historic character of the Project's site;
- (e) interest in industrial and commercial waterborne transportation of goods and persons;
- (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- (g) interest in safe and convenient navigation in Boston Harbor....

Development and urban design review requirements are integral to implementation of the Harborpark Plan and play a primary role in activating the waterfront and guaranteeing that new waterfront development is in character with the existing waterfront and is compatible with nearby residential areas. For example, under the Plan, most new waterfront buildings will be approximately five stories tall, the historic height limits for nearby neighborhoods, or lower. The plan also allows a few seven-to-twelve story buildings on some carefully selected Downtown Waterfront parcels and sites that are not flowed tidelands in the Charlestown Navy Yard and Fort Point Waterfront consistent with the urban character and density of these areas. Such buildings must be designed with environmental sensitivity and must generate significant public benefits such as affordable housing, jobs, and new open space or cultural facilities. The zoning also establishes a Water Transportation Priority Area in the Downtown Waterfront to guarantee that new projects incorporate docks or piers for major shuttles or ferries.

The development review requirements and urban design guidelines apply to most projects over 10,000 square feet and work in concert with the more objective regulatory requirements to maximize the public benefits of a development particularly as it relates to the interests of Chapter 91.

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To ensure a balance in Boston Harbor between maritime industry and other uses, eight Maritime Economy Reserve Districts (MER) have been established on over 660 acres of waterfront land in Charlestown, East Boston and South Boston. Under this zoning designation, key waterfront parcels are reserved solely for maritime-industrial uses, particularly for shipping. The presence of deep water port facilities is very important for the New England economy to ensure that the region's manufacturers can compete in the international marketplace. The Massachusetts Port Authority (Massport), the region's port agency, has participated in and supported the planning process, and the Plan reflects Massport's efforts to address current and future maritime capacity in primary locations in Charlestown, South Boston, and East Boston. The MER supports and refines the Coastal Zone Management policies on Designated Port Areas.

The Harbor planning process also has been developed in conjunction with State and City policies concerning the quality of water in Boston Harbor. The Massachusetts Water Resources Authority has undertaken an extensive program to clean up Boston Harbor by building new sewage treatment facilities, ending the practice of dumping sludge left over from sewage treatment into the harbor, and reducing the amount of toxic chemicals allowed in sewage discharges. This work is supported by the Boston Water and Sewer Commission's ongoing overhaul of the City's antiquated sewer lines. The goal of the clean-up program is to achieve a fishable, swimmable water quality standard for Boston Harbor.

State transportation agencies have also been working with the city to improve water transportation facilities in the harbor. The Massachusetts Port Authority (Massport) and the city's Economic and Development and Industrial Corporation (EDIC), which together own a significant amount of waterfront land, also have committed themselves to implementing key goals of the Harborpark Plan.

The City has worked closely with the Massachusetts Executive Office of Environmental Affairs to ensure that the recently adopted revisions to the Chapter 91 Waterways Regulations and the City's Harbor regulations are compatible and complementary. The City proposes that the Harborpark Plan, incorporating the Harborpark zoning, serves as the management plan for the portion of Boston Harbor within Boston's jurisdiction for the purposes of Chapter 91.

Ultimately these efforts will restore the Harbor as a key resource for the city's social and economic life. Boston has always had one of the world's most attractive harbors. The Harborpark Plan ensures that the city's residents, workers, and visitors will be able to take full advantage of the great natural resources offered by the harbor and the surrounding waterfront.

COMMUNITY PARTICIPATION

The Harborpark Plan has been developed to guide the reemergence of Boston's waterfront as a unique resource that is accessible to all residents of the city to live, work, and enjoy. The Plan has been developed through a neighborhood-based review process to guide the redevelopment of the waterfront within the context of each individual neighborhood: East Boston, Charlestown, North End/Downtown, South Boston/Fort Point Channel, and Dorchester. The most important component

of Boston's Harborpark Plan is the extensive community participation built into its planning process. In order to guarantee this participation, several neighborhood councils and citizen advisory committees have been established to review process and policies and to make formal recommendations on a broad range of issues facing the harbor.

One of the groups fulfilling this role is the Harborpark Advisory Committee (HPAC). Appointed by the Mayor in October, 1984 at the inception of the Harborpark planning process, the HPAC is charged with advising the Mayor and the Boston Redevelopment Authority on waterfront issues. This group of 15 volunteers consists of five representatives of state and city government involved in waterfront planning and development, representatives of five private business and labor concerns located on the harbor, and one community representative from each of the five waterfront neighborhoods:

Neighborhood Representatives

Fred Stefano, East Boston
Steve Spinetto, Charlestown
Emilie Pugliano, North End/Waterfront
Father David Murphy, St. Peter & Paul's Vincent Church, South Boston
Marianne Connolly, Dorchester

Government Representatives

Chair Committee, Lorraine Downey, Director, Environment Department, City of Boston
Alden Raine, Director, Alternate, Debra Hall, Governor's Office of Economic Development, State House/Room 109
John P. DeVillars, Secretary, Alternate, Eugenie Beal, Commonwealth of Massachusetts, Executive Office of Environmental Affairs (1984-September 1989; thereafter At-Large Member)
Richard Dimino, Commissioner, Alternate, Susan Bregman, Transportation, City of Boston
Rebecca Black, Planning Department, City of Boston, Public Facilities Department

At-Large Representatives

Dan Curll, President, The Boston Harbor Associates
Arthur Lane, President, Alternate, Astrid Glynn, Boston Shipping Association, Inc.
James Sullivan, President, Greater Boston Chamber of Commerce
Frederick Nolan, Boston Harbor Cruises
Edward S. Connolly, Business Agent, Local 799, International Longshoremen's Association

In the context of the North End/Downtown waterfront this city-wide group is complemented by neighborhood councils and other similar organizations such as North End/Waterfront Neighborhood Council and its Land Use Subcommittee, the Boston Waterfront Neighborhood Association, and the North End Community Development Corporation.

In Charlestown the Charlestown Neighborhood Council, in East Boston the East Boston Planning and Zoning Advisory Committee, and in Dorchester the Cedar Grove CAC, Clam Point Civic Association, Columbia/Savin Hill Civic Association, Dorchester Allied Neighborhood Association, Dorchester Avenue Planning and Zoning Advisory Committee, and Port Norfolk Neighborhood Council all have contributed to the neighborhood public process.

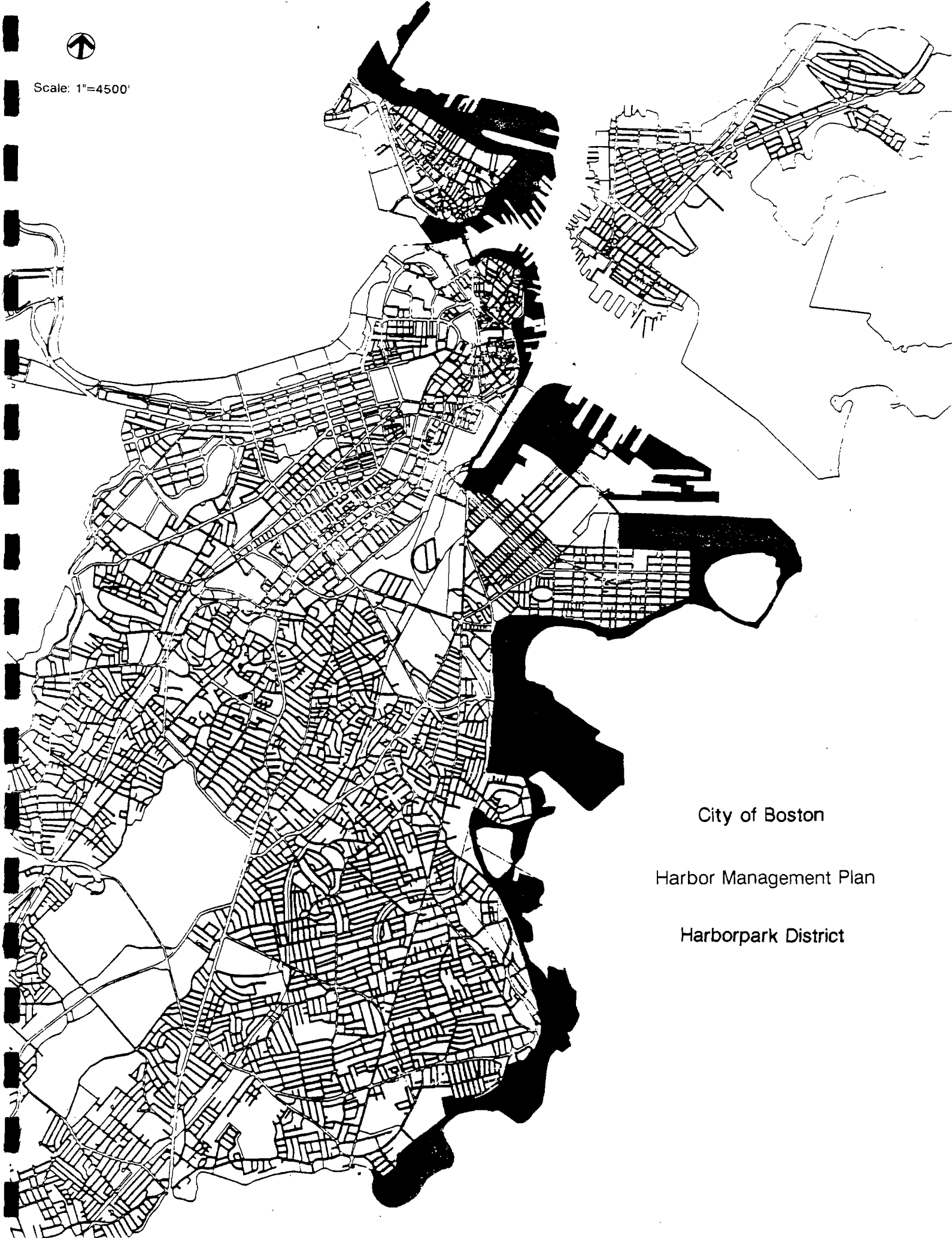
Since the Harborpark IPOD was adopted in 1987, over 200 meetings with the public have been held. The community process has included meetings with the Harborpark Advisory Committee, and with the Harborpark Zoning Working Group in 1988 and 1989. The public participation process has additionally incorporated countless hours of staff time in separate meeting with various community leaders and waterfront residents and representatives. Staff believes that the zoning for the Harborpark District reflects this community input and responds to neighborhood, business, and city concerns. The municipal Harbor Plan has benefited from this process.

Considerable testimony has been presented to the BRA in support of the Harborpark District Zoning by the Harborpark Advisory Committee, the Boston Harbor Association, the Governor's Office of Economic Development, the Department of Environmental Protection, the City of Boston Environment Department, the International Longshoremen's Association, and other local labor representatives. The support was generally based on the recognition of the Zoning as a well balanced set of land use regulations that support public access; open space, affordable housing, maritime jobs, a mixed-use economy and public benefits related to the Harbor and water-dependent cultural uses.

The community review process has resulted in a positive balancing of numerous multiple interests that will benefit all of Boston's residents and visitors and protect the public's rights of access to the tidelands.



Scale: 1"=4500'



City of Boston

Harbor Management Plan

Harborpark District

II. HARBORPARK PLANNING AREAS

The Harbor Planning Area for which the Harborpark Plan was developed was established in 1987 when the City of Boston was geographically divided into major portions for purposes of city-wide rezoning through the IPOD process. The Harborpark planning area generally includes all parcels between the water's edge and the first public way, and was expanded at the time the IPOD was established to have a functional relationship to Harborpark. In addition, areas that needed master planning such as the Charlestown Navy Yard, were added in their entirety.

The Harborpark Plan does not include all property under Chapter 91 jurisdiction as defined in the Chapter 91 regulations of October 4, 1990. However, in reviewing development projects contiguous to the Harborpark District, the BRA will consider and apply Harborpark policies through the development and design review process. The City of Boston and the neighborhood advisory groups which help review development projects have a strong commitment to restoring public access connections to the waterfront and creating a revitalized water's edge with water-dependent uses that are appropriately balanced with residential, commercial and public uses and with transportation access and support uses.

The challenge presented by planning for the Municipal Harbor Plan was one of integrating Boston's land and water resources in a way that enhances the existing character of the waterfront and promotes public access within the context of individual areas of the Harbor. The development of new mixed-use projects, new waterfront housing developments, and public spaces is guided by principles intended to achieve this integration. In each of the waterfront neighborhoods that served as Harborpark planning subareas - the Charlestown Waterfront and Charlestown Navy Yard, the North End Waterfront and adjacent Downtown Waterfront, the Fort Point Waterfront and South Boston Piers, the Dorchester Bay/Neponset River Waterfront and East Boston Waterfront areas, Harborpark planning has recognized the needs and priorities and historic character of the individual neighborhood while respecting the Harbor environment and reinforcing the Chapter 91 policies. Water-dependent uses, open spaces, public amenities, building orientation, height, massing and materials, are all components which should relate to the surrounding urban fabric.

CHARLESTOWN WATERFRONT

Charlestown's link to Boston Harbor is one which actually predates that of the City of Boston itself. Over time the Charlestown waterfront assumed a heavily industrial character, dominated by the 105-acre Charlestown Navy Yard. Today, the Navy Yard is a burgeoning mixed-use community, bounded by the Charlestown residential neighborhood, the Maritime industrial area to the north on Medford Street, and the Boston Historic National Park headquarters to the southwest. The Charlestown neighborhood is anchored by two large parks - one, The Paul Revere Landing Park, located at the mouth of the Charles River, and the John J. Ryan Playground, near the Everett city line.

Objectives for the Charlestown waterfront are to:

- o maximize public access to and activity along the entire waterfront area while preserving the original form and character of area;
- o improve and expand the existing open space areas;
- o soften the impacts between the Medford Street industrial area and abutting residential neighborhoods;
- o enhance pedestrian and open space connections to the North Washington Street Bridge and Charles River waterfront areas;
- o create active recreational and public uses in and around the Little Mystic Channel and create a buffer zone or shield between the Channel and the nearby Mystic terminal; and
- o provide traffic and landscape improvements to the Medford Street corridor.

Charlestown Gateway

Tudor Wharf played an important part in the history of ice trade in New England made famous by Frederick Tudor. The Charlestown Gateway subdistrict of the Charlestown Waterfront includes the Tudor Wharf area and the Hoosac Pier/Constitution road area. Currently this area includes a 265 slip marina with parking and mixed restaurant and office uses. Open space and pedestrian flow are poorly connected to the downtown and to the adjacent National Park Service area and the Charlestown Navy Yard. Development activity is likely to occur on Tudor Wharf in the immediate future which would provide an improved gateway to Charlestown. It would provide important links between the Freedom Trail from the Charlestown Bridge to the USS Constitution and the Charlestown Navy Yard. These links would reduce the walking distance that tourists presently experience and replace the existing City Square, traffic-laden interchange route with a pleasant, visually refreshing pedestrian route through its landscaped public plaza to the USS Constitution on a non-vehicular walkway.

It is anticipated that a direct link to the Paul Revere Landing, via one of the vaults under the Charlestown bridge which would be open to pedestrians, would connect the MDC locks, and on to North Station where public transportation is available.

Charlestown Working Waterfront

To the northwest of the Charlestown Navy Yard and the Little Mystic Channel, the waterfront is primarily industrial in nature. The revised zoning for Charlestown's waterfront also established five working waterfront districts within this area of the Charlestown neighborhood. These subdistricts were created in acknowledgement that the maritime economy in Boston, and Charlestown in particular, need to be protected and expanded where appropriate to continue to meet the employment needs of residents and to service industrial needs reliant on maritime dependent uses. The location of these five subdistricts largely follow historical land use patterns where manufacturing and other maritime dependent

uses are not detrimental to residential uses and are proximate to regional transportation nodes. The five subdistricts are as follows:

- o Charlestown Maritime Economy Reserve Subdistrict
- o Mystic River Waterfront Manufacturing Subdistrict
- o Terminal Street Waterfront Manufacturing Subdistrict
- o Charlestown General Industrial Subdistrict
- o Little Mystic Waterfront Service Subdistrict

The Boston Redevelopment Authority, in conjunction with its planning effort in the Charlestown Navy Yard, has identified the need to construct a new roadway known as the Medford Street Bypass Road between Sullivan Square, and the proposed Gate 6 entrance to the Navy Yard. This proposed route would largely pass through the working waterfront subdistricts of Charlestown and provide opportunity for improved roadway connections for truck transport of materials to and from these subdistricts. It is also expected to relieve traffic congestion in the City Square area of Charlestown. A landscaped buffer zone will be erected between the industrial waterfront districts north of Medford Street and the residences south of Medford Street. The proposal will allow Medford Street which now carries truck traffic to be reconfigured as a neighborhood street which would improve the quality of life for residents abutting Medford Street. Truck, bus and through traffic could largely be diverted from Medford Street onto the new bypass road. It is expected to be built with state construction funds.

Little Mystic Residential Area

In addition to the working waterfront area, the Little Mystic Channel bounds a residential apartment complex and public open space. In this subdistrict, maximum building heights are 45 feet and a maximum FAR of one are allowed. Through the Harborpark Plan, the City hopes to restore and increase recreational activity in this area and provide direct links to the Bunker Hill Monument, the Charlestown Navy Yard and water transportation services.

Open Space and Public Access

The Charlestown Waterfront also includes several open space areas. The J.J. Ryan Playground and William J. Barry Playground are part of the City park system and have been designated under the Harborpark Plan as recreational open space. In obtaining a Chapter 91 Tidelands License for the rehabilitation of the Schraffts' Center, the Flatley Development Company agreed to fund the construction of Harborwalk adjacent to the Ryan Playground. Construction plans for this portion of Harborwalk will provide new opportunities for Charlestown residents to access the water's edge. The Paul Revere Landing is identified as a Parkland Open Space Subdistrict. This property is owned by the MDC and will be fully restored to passive parkland use upon completion of the Central Artery construction project.

CHARLESTOWN NAVY YARD

The 1978 transfer of the Charlestown Navy Yard from the Federal Government to the Boston Redevelopment Authority required that a preservation and reuse plan be adopted. This plan divided the Navy Yard into three sections: the Park

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Parcel which included Piers 3 and 4 and Shipyard Park, the Historic Monument Area which contains many of the original stone and brick buildings, and the New Development Area which included the waterfront area east of First Avenue and Yard's End.

A Program of Preservation and Utilization was developed for the Historic Monument Area and Design Guidelines were established for the New Development Area. In 1984, when the Harborpark planning initiative was undertaken for the entire Boston waterfront, guidelines were established that enhanced the original plan's objective, including providing open access to the waterfront for recreational use, opportunities for the creation of affordable housing, and the creation of job opportunities. The plan also produced other benefits such as improved public transportation, additional tax revenues, and a variety of cultural attractions.

The Harborpark IPOD required the creation of a Master Plan to manage growth in the Charlestown Navy Yard. The resulting Master Plan incorporated into this Municipal Harbor Plan is the product of an extensive community-based planning process. Among its goals are the creation of mixed-income housing, opportunities for new economic ventures, preservation of historic buildings, fostering of open space, and the improvement of local transportation systems.

A land use strategy was developed for the Yard's End section of the Navy Yard that provides for the following:

- o the creation of affordable housing;
- o open public access to the water as well as new open space;
- o mixed use development with balanced growth to insure a diverse economic base and quality of life considerations;
- o emphasis on lower impact economic uses such as research and development; and
- o relocation and expansion of the New England Aquarium.

The Master Plan that emerged achieved the goals set forth by the community, private investors, and City officials. Implementation of the Master Plan will:

- o increase the number of affordable housing units in the Navy Yard to 300 units thereby achieving more than the established 25% goal for affordable units within the Yard;
- o provide economic opportunity through a diverse economic base at Yard's End by developing a research center, a major public educational facility, a hotel/conference center, as well as the creation of new community-owned retail space adjacent to the New Yard's End buildout; and
- o make the Navy Yard's transportation system more efficient by upgrading water transit facilities, constructing a new road to bypass

neighborhood streets, cutting a new gate to better access and circulation in the yard, and building new parking facilities with the Yard.

Open Space/Public Access

The Open Space provisions of the Charlestown Navy Yard Master Plan incorporated the original plan by Loammi Baldwin and Alexander Parris in the early 19th century and the later expansion and transformation through the late 19th and early 20th centuries. The proposed public open space network will reinforce the unique historical character of the Navy Yard while incorporating the larger vision of the Harborwalk system that will connect the Navy Yard to both the Harbor and downtown.

The Harborwalk promenade will connect City Square and adjacent Tudor Wharf to the USS Constitution National Park area then on through Shipyard Park to individual piers and promenades. This will provide a convenient and direct pedestrian walkway between the Freedom Trail and the Navy Yard's perimeter terminating at the proposed new Aquarium at Yard's End.

Through the development of approximately designed streetscapes within the Charlestown Navy Yard, existing street will be tied to large green open spaces that together will provide a continuous green canopy throughout the Yard's public areas. From Shipyard Park to Anchor Park, opening off Flirtation Walk, to Gate 5, a string of open spaces and gardens will create formal entries and outdoor rooms that will reflect the activities of the Navy Yard. The existing water shuttle on Pier 4 will be moved to utilize a new handicapped access docking system.

NORTH END AND DOWNTOWN WATERFRONT

Extending from the Charles River/North Washington Street Bridge to the mouth of the Fort Point Channel, the North End and Downtown Waterfront consists of wharves and piers created in the 1800s to support the demands of Boston's then-booming shipping and trade economy. Many of these historic wharves, with their stately granite and brick buildings, remain today. Other sections of this waterfront area have given way to new construction, the result being an eclectic blend of old and new architectural forms, building sizes and materials along the waterfront edge.

Under the stimulus of an urban renewal plan the abandoned piers and wharves were redeveloped for housing, office and commercial uses. Unfortunately, many of these changes did not benefit the adjoining residential neighborhood. For example, the 1,200 housing units built along the waterfront were primarily built as market rate condominiums priced in excess of what North End residents can afford.

Today many of the wooden piers that once supported the busiest wharves and docks in America are rotting as the result of being allowed to decay through neglect, the structures above them abandoned and deteriorated, thus inhibiting public access to the waterfront. In other sections of the waterfront piers have, over time, disappeared altogether.

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The implementation of the Municipal Harbor Plan will establish guidelines that leverage the economic attractiveness of waterfront development to secure public benefits.

In the North End/Downtown Waterfront, the Harborpark Plan requires a balance of uses. Primarily low scale residential uses are planned adjacent to the North End neighborhood north of the Pilot House, and facilities of public accommodation south. In the area adjoining the mixed-use Faneuil Hall, Custom House and Financial District, a mix of hotel, office and residential use is envisioned.

Although the inner harbor piers are no longer suited to the needs of the 20th century maritime economy, the Harborpark Plan envisions a broad array of other water-dependent uses in the North End/Downtown Waterfront.

The height and massing regulations of the Harborpark Zoning clearly recognize the existing difference in character between the area to the north of Long Wharf and that to the south. Moreover, the regulations are attuned towards reinforcing the area's character and scale through new development that is compatible in height and massing with its surroundings.

Reinstatement of height limits specified in the Harborpark zoning provides for continued growth in the City's mixed-use economy without the adverse impacts of projects such as Harbor Towers. Accordingly, the range of public benefits achieved by the Harborpark Plan includes substantial creation of construction and permanent jobs, housing and jobs linkage payments, and increased City and State tax revenues.

These economic and social benefits that will be realized, in addition to affordable housing and open space, and can be attained within height, massing and land use controls that insure new development will be compatible with the adjoining community.

The primary urban design objectives for the North End/Downtown Waterfront are to:

- o maximize public access to and activity along the entire waterfront area while preserving the original form and character of the area;
- o promote active water-dependent uses such as public landings, commercial boating activities, and water taxi facilities;
- o ensure that newly constructed buildings continue to reflect and blend with the existing historic waterfront architecture;
- o maintain view corridors to the harbor from significant streets in the North End neighborhood; and
- o relate height, scale and massing of new development to the adjacent North End and Downtown Financial District areas.

The Downtown Waterfront

The Downtown Waterfront subarea has been established in order to ensure that development of the downtown waterfront respects the existing characteristics of downtown Boston. Projects proposed in the area from the Fort Point Channel to and including Long Wharf will be required to include business activities that will attract visitors and residents to the waterfront. These include water dependent uses such as water transportation facilities, as well as uses such as restaurants, hotels and cultural facilities. Height limits are consistent with the historic downtown waterfront height limit of 155 feet, first enacted in 1924. The Downtown Waterfront height limits provide for a stepping up moving landward from the 1880 Harbor Line in five zones: no build, 55 feet, 110 feet, 125 feet and 155 feet.

The Downtown Waterfront subarea is adjacent to the Financial District, making it the most appropriate area for economic activity. It is also the one area along the Harbor that is characterized by taller, more dense buildings. The Downtown Waterfront is also targeted as a primary water transportation node on the Inner Harbor.

The North End Waterfront

The North End stretches from the Charlestown Bridge to Long Wharf. The zoning provisions for this area reflect the scale and character of the adjacent North End residential community. It promotes residential and mixed-use developments with substantial amounts of public access to the waterfront. Mixed use projects consisting of commercial, retail, hotel, residential, and water dependent uses will be allowed.

Just as the waterfront has undergone tremendous change in the past 25 years, so too has the North End. In 1964, the area's housing was predominantly rental. Three and four unit rowhouses with the owner residing in one of the units were quite common. Since that time the characteristics of the housing stock have changed dramatically. Rapid condominium conversion and the lack of new affordable housing construction contributed to the steep increase in housing costs and is forcing North End residents to leave the neighborhood.

The Harborpark District Zoning has established a Housing Priority Area in the North End which promotes the construction of affordable housing along the North End to provide opportunities for people at all economic levels to live on the waterfront. Significant progress toward this goal has, in fact, already been accomplished.

Much of the North End is comprised of buildings 55 feet in height. Historic wharf buildings attain heights of 75 feet. Several buildings primarily along Commercial Street range even higher from 90 feet to 110 feet. The Harborpark Zoning District limits new building height to 55 feet in the North End Waterfront, except on Sargents Wharf and Pilot House Extension where heights of 75 feet can be achieved in recognition of their urban design relationship to the historic 75 feet tall Pilot House as well as the goal of constructing 100 units of affordable housing on Sargents Wharf.

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FORT POINT WATERFRONT

The Fort Point Waterfront District is composed almost entirely of formerly flowed tidelands which were filled over several hundred years to house Boston's then burgeoning seaport and related industries. This peninsula shaped district, located to the north of the South Boston residential community, is home to the largest remaining industrial and manufacturing concentration within the city. Overall employment in the Fort Point District exceeds 28,000 jobs in occupations ranging from fishing and fish cutting to law and design to razor blade fabrication.

The largest concentration of water-dependent activities on Boston Harbor are located in the Fort Point Waterfront.

The Fort Point District will soon undergo an historic change as more than one billion dollars of public investment is made in the District's transportation infrastructure. Plans include extending the Massachusetts Turnpike (I-90) through the District via the Seaport Access Road to the Third Harbor Tunnel and to Logan Airport. A new mass-transit line, known as the Transitway, will be constructed to connect the Green, Orange and Red Lines on the Shawmut Peninsula to the World Trade Center and the Boston Marine Industrial Park in the eastern part of the district. The resulting growth in access capacity will enhance the existing economy and provide the opportunity to expand and diversify the area's economy. Economic growth forecasts undertaken by the Central Artery planners predict the construction of more than ten million square feet of mixed office, housing, hotel, retail, and R&D space over the next twenty years.

In June of 1989 the BRA, working in conjunction with the Fort Point Citizens Advisory Committee, produce urban design guidelines for the Piers/New Congress Street area of the Fort Point District. New development is planned which will respect the historic Boston Wharf buildings, the Channel and Harbor, and other distinctive features such as the Boston Fish Pier and the Commonwealth Pier Head House. View corridors to the harbor and water's edge parks, new nodes of public attraction built upon the success of the Children's Museum, continuous, attractive public access, and water-transportation facilities are some of the features of the design guidelines.

The goals for the Fort Point Waterfront are to:

- o protect and enhance the existing water-dependent industries in the district;
- o use zoning and other controls to guarantee expansion space for maritime economy;
- o require continuous public access and appropriate set-back of buildings at water's edge;
- o develop new nodes of public attraction along the Harborwalk;
- o the use of public water transportation as an alternative to private cars; and

- o assist MWRA in the development of the combined sewer overflow system required to clean-up area waters.

DORCHESTER BAY/NEPONSET RIVER WATERFRONT

The stretch of waterfront from the top of Dorchester Bay to the Neponset River basin forms Dorchester's connection to Boston Harbor. Dorchester's waterfront varies widely in character, however, it represents primarily public beaches and attractive open spaces, although the residential neighborhood has been blocked from these amenities by major roadways. The area's unmatched ocean vistas create an opportunity for new development with greater public access.

The principal objectives for Dorchester's waterfront are to:

- o overcome visual and physical restrictions, noise and negative environmental impacts created by transportation infrastructure;
- o generate more intensive use of and visitation to the largely underutilized natural waterfront;
- o protect open space and marshland areas, such as the Neponset River area and adjacent wetlands;
- o soften the impacts of heavy industrial sites on abutting residential areas through open space creation and landscaping;
- o establish pedestrian connections between the interior of South Boston and Castle Island, Pleasure Bay and the L Street bathhouse area;
- o better activate areas such as the Savin Hill/Malibu Beach Area through the inclusion of walkways, public boat landings, yacht club improvements, and upgrading of the public beach; and
- o support appropriate scaled waterfront service businesses in the Dorchester working waterfront.

The natural beach and shoreline areas of Dorchester Bay provide a balance for Boston Harbor between its urban and natural areas. In order to preserve this balance approximately 1,000 acres of the waterfront have been zoned as open space, restricting development far beyond fifty percent open space through total exclusion of any non-open space uses.

Columbia Point Neighborhood

The Dorchester Bay Beaches/Neponset River Subdistrict includes Columbia Point which extends from the Southeast Expressway to the Harbor and from the edge of Savin Hill to Columbus Park in South Boston.

The BRA plans to undertake a comprehensive planning effort at Columbia Point which will lead to a long term masterplan and detailed zoning recommendations for Columbia Point. However, the Harborpark Zoning has established general waterfront setbacks, open space and public access requirements for Columbia

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Point, guaranteeing that it will conform to other waterfront neighborhood standards. Further, all projects over 10,000 square feet are now required under the Harborpark Zoning to undergo design and development review.

Future development is dependent upon the resolution of major infrastructure issues such as roads and traffic, and siting and planning of a Combined Sewer Overflow Abatement Facility to replace the Calf Pasture Pumping Station. Some institutions on Columbia Point also need to complete their own master plans in order for them to be included in the overall masterplan.

Columbia Point is a peninsula comprised of formerly flowed and now filled tidelands of Boston Harbor. Today Columbia Point is the home of several major public and private institutions and public attractions, and Harbor Point, a large redeveloped former public housing project. The John F. Kennedy Memorial Library, UMASS Boston's Harbor Campus, and the Archives of the Commonwealth of Massachusetts occupy the head of the peninsula in three distinctive architectural masses. Morrissey Boulevard, the area's primary arterial roadway, is flanked by several media outlets and other businesses, a private high school, and a major Red Line transit station.

Dorchester Working Waterfront

The Municipal Harbor Plan aims to expand the capacity and productivity of the entire waterfront by promoting a policy of balanced development, which includes zones for maritime-dependent industrial activity, as well as less intensive waterfront manufacturing and service area that support port activities.

Six working waterfront subdistricts are established in the Dorchester Bay/Neponset River Waterfront and one in the Port Norfolk Subdistrict which incorporate this range of activity and are compatible with and appropriate to their surrounding areas. These include:

- o Dorchester Bay Waterfront Service Subdistrict
- o Clam Point Waterfront Service Subdistrict
- o Neponset River Waterfront Manufacturing Subdistrict
- o Cedar Grove Waterfront Manufacturing Subdistrict
- o Neponset Circle Waterfront Manufacturing Subdistrict
- o South Boston Maritime Economy Reserve Subdistrict
- o Port Norfolk Waterfront Service Subdistrict

Residential Subdistricts

In order to provide for residential uses on the waterfront, the Neponset River Residential Subdistrict and the Cedar Grove Residential Subdistrict were established by the Harborpark District Zoning, as well as the residential area of Port Norfolk. These areas are small residential enclaves on the waterfront but provide for connections of the greater residential neighborhood to the shoreline.

Port Norfolk Neighborhood

The Port Norfolk Interim Planning Overlay District became effective on September 3, 1985 and was in the forefront of the then new community planning

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process. As the first neighborhood designated by the City for special study and protection by interim zoning controls its Planning and Zoning Advisory Committee (PZAC), which was appointed by Mayor Flynn in 1985, actively helped to formulate the planning goals and objectives for this unique waterfront neighborhood. Through these efforts the framework for much of the planning and analysis undertaken during the Harborpark Planning process evolved.

The results of the Port Norfolk planning effort are reflected in Article 35 of the Boston Zoning Code which became effective July 15, 1988. That Article reinforced the residential core, and established some 8.11 acres of waterfront land as the first Waterfront Service Subdistrict in the City and was specifically tailored to preserve for water-dependent use (and particularly for establishments that repair, service and sell commercial and pleasure boats) adequate piers, docks and land necessary for the repair, maintenance and sale of such vessels and their parts, for the temporary storage of such vessels, while awaiting servicing or delivery, and for the sale of marine fuel and boating supplies.

Port Norfolk is a small residential community of approximately 275 housing units built on a peninsular in Dorchester Bay.

EAST BOSTON WATERFRONT

The East Boston Waterfront has not been incorporated into this Harborpark Plan, since planning for this area is still underway. However, the planning is being guided by the same Harborpark policies and the East Boston Waterfront is currently under an Interim Planning Overlay District.

The East Boston IPOD established five Special Study Areas in East Boston, covering the entire waterfront. The IPOD process requires that a comprehensive planning study be completed for each Study Area for the purposes of identifying appropriate land uses before any new zoning regulations can be implemented. The Special Study Areas in East Boston are Massport Piers, Maverick Square/Central Square Waterfront, Old Boston East, Eagle Hill Waterfront, and McClellan Highway.

Two residential subdistricts and one mixed-use commercial and residential subdistrict located in the East Boston IPOD abut the Harborpark Special Study Areas. It will be essential during the planning process to coordinate the goals and objectives of the neighborhood as a whole with those of Harborpark. It is recognized that the waterfront is an integral part of the whole neighborhood and each portion of the waterfront should strongly identify with and connect to the abutting residential neighborhood.

Protecting and enhancing existing public open space, height and design standards which maintain the character of residential areas, providing public access and protecting and enhancing the East Boston waterfront's maritime industries are among the Harborpark goals which will be realized through implementation of the Harborpark Plan in these East Boston Special Study Areas. The Plan for East Boston will recognize the potential of the waterfront to provide new jobs and new housing units. Affordable housing programs and job training and employment opportunity programs will ensure access to economic opportunities created by this waterfront development for all residents of Boston.

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III. ENSURING PUBLIC ACCESS TO BOSTON'S WATERFRONT/ PROMOTING THE PUBLIC'S RIGHTS IN THE TIDELANDS

This Chapter III defines the first of the four comprehensive policies of the Harborpark Plan, ensuring public access to the waterfront, and relates this policy to the relevant Chapter 91 policies which it complements and supports, and to the specific Harborpark implementation strategies. Each of Chapters III through VI is composed of four sections: (a) a comprehensive discussion of the Harborpark policy as it is applied to the Harborpark district and promotes the policies of Chapter 91; (b) a statement of the City of Boston Municipal Harbor Plan policy; (c) the Chapter 91 policy or policies to which the Harbor Plan policy relates; and (d) the Harbor Plan strategies which implement these policies.

A. HARBORPARK POLICY

Ensure public access to Boston's waterfront and its unique opportunities for open space, recreation, economic activities, jobs, and housing; promote and protect the public's rights in the tidelands.

A primary goal of the Harborpark Plan is to ensure public access to Boston's waterfront for water-dependent, recreational, residential, and industrial/commercial uses, and in so doing, promote the public's rights in the tidelands of fishing, fowling, and navigation, and derivatives thereof. Improving access between the City and the Harbor can bring new social and economic activity to the Inner Harbor, enhance its connection with Boston's architectural and cultural heritage, strengthen the ties between the waterfront neighborhoods, and support new development that complements the scale and character of the City.

The Harborpark Plan will implement this public access goal primarily through the following strategies:

- o creation of visual and 24-hour physical access to the water's edge, through the Harborpark District Zoning and guided by the Harborwalk Guidelines;
- o creation of active public open space as part of mixed-use and, where appropriate, industrial projects as well as enhanced publicly-owned open space;
- o development of water transportation facilities sited and sized to be used for community, recreational, airport, and commuter access; and
- o creation of affordable housing on and near the waterfront.

The Harborpark policies and implementation strategies can be achieved and enhanced only through a private and public partnership focused on revitalization of the waterfront and investment in the future of Boston Harbor. The early 1970s saw limited signs of development on Boston's waterfront. With the exception of the New England Aquarium and the Marriott Hotel, however, this development came largely in the form of luxury housing and office space. Rather than developing the waterfront for greater public use and enjoyment, the trend in the seventies was to develop a more exclusive waterfront. Had it been allowed to

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continue, Boston's waterfront would have become a privatized community, disconnected from the rest of the city.

In recent years, there have been encouraging signs of rebirth along the water's edge. While commercial development is enhanced by locating along Boston's waterfront, this renewal must benefit the city and its neighborhoods. The challenge is to guarantee that the quality of life for all residents of the City and Commonwealth is improved by this economic growth.

HARBORWALK AND WATERFRONT SETBACKS

The centerpiece of the Municipal Harbor Plan's goal of public access is "Harborwalk" Zoning requirements and guidelines for an ambitious waterfront walkway system have been developed to create continuous public access to and along the entire Harbor. When completed, Harborwalk will make a valuable contribution to Boston's network of parklands, forming an extension of Frederick Law Olmsted's "Emerald Necklace". It will provide a walkway to the water's edge leading to recreational, cultural, and historic attractions, and establish direct connections to public transit including water transportation facilities.

Specific planning and design goals for the 43 mile perimeter of the Harbor are to:

- o Accommodate a wide variety of uses and diversity of users
- o Maximize physical access
- o Maximize visual access
- o Design Harborwalk as a major year-round 24-hour pedestrian connector
- o Design a safe and comfortable waterfront walkway
- o Increase historical/cultural/educational/recreational activities
- o Maintain the historic character of the city

A minimum twelve (12) foot setback of buildings from sides of piers and thirty (30) to fifty (50) foot setbacks from ends of piers and the water's edge will be required by the Harborpark Zoning in order to accommodate Harborwalk. Deeper setbacks are required in the Charlestown Navy Yard along the northeastern edge of Parcel 5 where sixty-five (65) feet minimum and seventy-five (75) feet average setbacks are required. Land owners and developers are being encouraged to provide a public walkway and amenities along the seaward edges of piers and wharves. Harborwalk will be handicapped accessible and have amenities such as seating, lighting, landscaping, and works of public art. Some areas will also include fishing piers, observation decks, water transit terminals, public boat docks or launches. On beaches and other undeveloped areas of the waterfront, the walkway may consist of paths and grassy areas, allowing for uninterrupted enjoyment of nature and the activities of the harbor. At maritime industrial areas, such as port terminals, fishing and lobstering piers, and the U.S. Coast Guard base where direct walkway access may be difficult or unsafe, observation towers or decks are encouraged.

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The first efforts Harborwalk planning efforts have focused on the Inner Harbor, extending from Charlestown to South Boston, along the Little Mystic Channel, Charlestown Navy Yard, the North End/Downtown Waterfront, Fort Point Channel and the Fan Piers. As of October 1990, construction of 10.7 miles (58%) of this area has been completed, 3.3 miles (18%) are under construction or planned, and the remaining 4.6 miles (24%) currently are being reviewed and planned. Public money has implemented the reconstruction of the public access section of Long Wharf, completed in May, 1990. Further public funding is not available to invest in revitalization of the waterfront and public access, as private proceeds in this area Harborwalk will progress as a provision of development.

Harborwalk will provide public access to the Harbor and all areas of the waterfront whether publicly or privately owned. The maintenance of the Harborwalk will be by the public and private owners of the various segments of the walkway system.

Harborwalk Signage Program

The Harborwalk Signage Program, currently in design, is a system of three dimensional graphic and other design elements in the built environment that identifies Harborwalk, directs people to and along Harborwalk and public spaces, orients people to the Harbor and its neighborhoods, and informs and educates people about the Harbor.

When implemented, the Harborwalk Signage Program will create a "graphitecture" that fully expresses the character, quality and vision of the City of Boston, while meeting both its practical and aesthetic needs.

HARBORPARK OPEN SPACE NETWORK

The Harborpark open space network represents a waterfront continuation to the extensive and magnificent 2,000 acre park system designed for Boston by Frederick Law Olmsted in the late 1800s. Olmsted's "Emerald Necklace" provides a continuous urban parkway system which intermingles with urban life, offering opportunities for leisure activities and relaxation.

Five links connect the Harborpark open space network to the Olmsted system: from the North Station area to the Charles River Esplanade; from Paul Revere Landing to the Memorial Drive Promenade; the Walk-to-the-Sea: Waterfront Park to the Boston Common; from Summer Street/Winter Street to the Boston Common; and the direct connection at the Castle Island/Marine Park Area. In addition, the Harborpark open space network will be linked to new parks along Central Artery air-rights when the roadway depression is completed. The park plan for the new surface area will enhance and expand the Harborpark district and provide amenities and horticultural and cultural uses which broaden the appeal of the waterfront public access area for four season enjoyment. Included in plans for the air-rights are expansion of Waterfront Park and addition of another ice skating rink, creation of an indoor botanical garden and outdoor arboretum, gardens and neighborhood parks and housing, and improved pedestrian from the downtown to the waterfront.

The Harborpark open space network also aims to provide benefits on Boston's waterfront through a variety of integrated activities for public enjoyment. Included in this system are parks and recreational facilities, cultural and historic facilities, fishing piers, outdoor performance areas, kiosks and shops, viewing/observation decks, marinas, sailing clubs, public dinghy docks, beaches, urban gardens, urban wilds, waterfront boulevards, sculptures and public artwork, water transportation and an environmental communication system. The open space system will be linked by Harborwalk which, in turn, will be enhanced by amenities along its path.

As water quality in Boston Harbor improves through public works projects, these public areas will be greatly enhanced. The public beaches with which the City of Boston is fortunate to have been endowed no longer will have to be closed during their peak demand period and their potential as a unique natural resource to be protected and enjoyed can be fully realized. Contact with the water in the Inner Harbor once again will become safe, expanding the potential use and enjoyment of the waterfront.

Public Agency Coordination

Portions of the Harborpark open space system are located on properties which are under the jurisdiction of several public entities. Some of these public entities are active as regulatory bodies participating in the enforcement of public open space/recreational resources standards and requirements while others own major waterfront parcels and are active in renovating and/or planning for and creating/maintaining open spaces on Boston's waterfront. The Boston Redevelopment Authority will, therefore, closely coordinate the Harborpark open space system planning and implementation activities with these agencies in order to ensure consistency of open space guidelines and standards as well as continuity and synchronization among the various components of the open space system.

Private Sector Contribution

The Private Sector -- developers proposing projects on the waterfront and property owners in the Harborpark area -- play an active role in all aspects of the planning and implementation of the Harborpark open space system. The private sector contributions include:

- o Planning - proposing ideas for the creation of new open spaces and for making improvements to existing open spaces.
- o Financing - providing financial resources for open space improvements on own property to be developed or for the creation of improvements to open space components in other areas of the Harborpark open space system.
- o Development - constructing the open space elements (including related signage) agreed upon during the project review and approval process.
- o Maintenance - providing short-term (day-to-day upkeep) and long-term (repairs and reconstruction) maintenance for the Harborpark open space elements located on private properties.

- o Security - Providing security for the Harborpark open space elements located on private properties in order to ensure public safety in these areas.

WATER TRANSPORTATION SYSTEM

Situated at the perimeter of the historic Shawmut peninsula and extending northward along the shoreline of Charlestown and extending southward along the shoreline of the Fort Point District, South Boston, Columbia Point, and Dorchester, the Harborpark District is strategically located to provide maximum opportunities for access: For residents, workers, and visitors; for the import and export of freight; for intracity travel, for travel between the suburbs and the city, and for intercity travel with Boston serving as the hub of the New England region.

Boston's seaboard location is its greatest asset. Boston is blessed with one of the finest deep-water harbors in the world and is the nearest American port to Northern and Western Europe. These natural advantages have long made Boston's port a center of life and commerce for generations of residents and businesses. As life focussed around the harbor, Colonial settlers quickly realized that the peninsular geography of Boston was well-suited for water transit. The "Great Ferry" between Charlestown and Boston was established in 1631. Ferry service continued to expand and peaked in the 1880s when 10,000 people per day were transported throughout the Harbor.

However, as subways, streetcars, and, later, automobiles rose in popularity and affordability, the demand for water transportation waned. On January 1, 1953, soon after the completion of the Mystic River Bridge, Mayor John B. Hynes signed legislation legally discontinuing all ferry service in Boston. The dormancy of water transportation in Boston Harbor continued until 1973 when a water shuttle ran for a short time between Hingham and Boston to provide alternative transportation during a highway construction project.

In 1977, service began again with the assistance of Massport, the Department of Public Works (DPW) and the State Legislature. Demand for ridership increased as improvements cut commuting trip time in half and as more daily trips were offered. State subsidies for capital improvements contributed to an increase in ridership to 1,300 daily. In 1985, Massport began a water shuttle between Logan Airport, Rowes Wharf, and Commonwealth Pier. A proliferation of water shuttles throughout Boston waterfront neighborhoods and shoreline suburbs has reactivated the Harbor with hundreds of thousands of users annually.

The varied transportation modes connecting to the Harborpark planning area also are extensive: Commuter rail, light rail, subway, arterial roads, regional highway, and pedestrian walkways. Intermodal passenger facilities are located at North Station and South Station in Downtown Boston as well as at Back Bay Station in the Back Bay; intermodal freight facilities are located at the Moran Container Terminal in Charlestown, located at the mouth of the Mystic River, and at the Conley Container Terminal in South Boston. In addition, Boston is clearly a city that "walks" with the second highest rate of walking as a share of transportation options among cities in the U.S.

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A transportation network, when well planned, can be an important tool of economic development since it provides not only physical connections but also communications and interrelationships between uses (and users) rather than inhibiting and constraining the operations -- and, thereby, the viability -- of each individual use.

Regulatory Issues

As described in Sections 31-5 and 31-6, transportation is one of the five components of development review. In the North End Waterfront Subdistrict and the Downtown Waterfront Subdistrict, only proposed projects with a gross floor area of fifty thousand (50,000) or more square feet are subject to the Transportation Component provisions of Section 31-6. Proposed projects located elsewhere within the Downtown/Northern Avenue Corridor Area must address the Transportation Component as specified in Section 31-4.

By their nature, transportation facilities satisfy the two primary objectives of the Chapter 91 License regulations; to serve a proper public purpose, and to not be detrimental to the public's rights in tidelands. Thus, transportation facilities can qualify for a positive Section 18 Recommendation by the BRA to DEP, and can be granted a Chapter 91 License.

All transportation facilities constructed or altered within the Harborpark District shall comply with the Americans with Disabilities Act (ADA), which was signed into law by the President on July 26, 1990.

The expansion of water transportation has been a major objective of Harborpark District planning. As a result, waterfront developers are now required to include water transportation docks and associated facilities within their projects. This growing infrastructure will support growth in water transportation and support its extension into a greater diversity of uses. The combination of the Harbor Clean-up, implementation of the continuous Harborwalk and mixed-use development throughout the waterfront will bring a wide array of residents, workers, commuters, vacationers, and visitors to the Boston Harbor area. The infusion of public and private investment has shifted the Harbor once again to its role as a center of life and commerce and not just a back lot. Improved opportunities for water transit will assure the continued vitality of the Harbor and maintain Boston's status as a regional capital, an important gateway to Europe and other U.S. trading partners, and an unrivaled recreational resource.

"The perfection of physical comfort is enjoyed, when, on a warm day of summer, one...passes down Boston Harbor on one of its luxurious excursion steamboats. Here, without distressing motion of the deepsea swells, or the blank monotony of a level horizon, the bracing and invigorating air of the ocean is enjoyed to the fullest; while on either side are scores of picturesque and historic localities to attract the attention and give high zest to the journey."

-- M.F. Sweetser, King's Handbook of Boston Harbor, 1982

Jurisdictional Responsibilities

The existing Water Transportation Task Force is a multidisciplinary multiagency group, comprised of the following public sector organizations, which meets monthly to share ideas about the expansion of water transportation in Eastern Massachusetts: Massachusetts Bay Transportation Authority (MBTA), Massachusetts Water Resources Authority (MWRA), Massachusetts Port Authority (Massport), Comm. of Mass. Executive Office of Transportation and Construction (EOTC), Massachusetts Department of Public Works (MDPW), Massachusetts Department of Environmental Protection (DEP), Boston Redevelopment Authority (BRA), City of Boston Transportation Department (BTD), and City of Boston Environment Department. The new Chapter 91 regulations and the City of Boston Municipal Harbor Plan provide formal guidelines for governing waterfront development, including the impacts of water transportation. The regulations strengthen the ability of the Task Force to clarify and focus on issues of compliance of water transit alternatives within specific development proposals and projects.

HARBORPARK WATER TRANSPORTATION

Policies

The Harborpark Plan incorporates four primary policies related to water transportation:

1. Create a water transportation equivalent to land-side comprehensive planning via the Article 31 Transportation Access Plan (TAP) requirement;
2. Assure a viable mitigation measure during reconstruction/construction of major land transportation infrastructure;
3. Improve standards of safety, convenience, and accessibility on the Boston waterfront; and
4. Provide a cost-effective alternative to public land transportation.

Waterborne passenger transportation facilities are specified as a "water-dependent use" in the Harborpark District Zoning and as a "water-dependent use" and "facilities of public accommodation" under Chapter 91 regulations. Under the Harborpark District Zoning, in making a determination of Proper Public Purpose pursuant to Section 18 M.G.L. Chapter 91, the BRA must base its decision on, among other factors, the extent to which a project preserves and enhances the public's interest in industrial and commercial waterborne transportation of goods and persons. In addition, new projects within the Harborpark District must include a water transportation facility commensurate with the scale and use of the project, and the water transportation network will be considered by the City in review of a Transportation Access Plan for a major project within or near the Harborpark District.

AFFORDABLE HOUSING ON THE WATERFRONT

Gaining access to housing on the waterfront for all of Boston's economic sectors is a priority of the Harborpark. However, affordable housing has not been emphasized in the past. Prior to the adoption of the Harborpark interim and permanent zoning, over 1,200 units of luxury housing had been created along the waterfront in the North End and Downtown, while only 60 units of affordable housing had been planned. There are four major housing development areas on the Boston waterfront. The goal of the Harborpark Plan and the Harborpark District Zoning is to achieve 25% affordability within the housing units built in each of these areas. In accordance with Harborpark zoning, housing built on private land must include a minimum of 10% affordable units, while housing constructed on public land must have 25% affordability.

Harbor Point Apartments

The Harbor Point Apartments were created from the demolition and rehabilitation of the old Columbia Point Project. By tearing down 18 original structures, renovating 9, and erecting 46 new buildings, 1,283 rental units were created of which 400 were subsidized for low income tenants. Two hundred and fourteen units were townhouses. The 54 acre site also contained an exercise club/pool house, retail and commercial space, community building, and a health center. When this 1.7 million sq. ft. development was completed in the Spring of 1990, it became the first waterfront housing area to exceed the City's 25% affordability goal.

North End/Downtown Waterfront Housing

The development of housing in the City's downtown area began in the 1960s with the rejuvenation of the Downtown Inner Harbor. Through the implementation of the Waterfront Urban Renewal Plan, underutilized piers, warehouses and waterfront land were converted to the luxury and elderly housing units, cultural facilities, hotel and office uses, and public open space. This rebirth of the downtown waterfront area negatively affected the mixed income aspects of the surrounding neighborhood by creating a tremendous rise in housing costs. The Harborpark District Zoning addresses the need for affordable housing on the harbor.

The new zoning establishes a North End Waterfront Housing Priority Area in which two thirds of any new project must be housing. Twenty-five percent of this new housing must be affordable. Up to 200 units of housing currently are planned for Sargents Wharf in the Housing Priority Area, 50% of which will be affordable.

Charlestown Navy Yard Housing

The Charlestown Navy Yard is being planned as a mixed-use development area that incorporates housing to bring 24-hour life to this area and establish the Navy Yard as a viable community connected to the larger Charlestown neighborhood. The stated goal in the Charlestown Navy Yard is to create 300 affordable housing units out of a total buildout of 1,060 units, thereby exceeding the mandated 25% affordability within the Charlestown Navy Yard.

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Clippership Wharf

The last remaining housing development currently being planned for the Boston Waterfront is to be sited in East Boston on Clippership Wharf. Plans for Clippership are to develop 388 rental units, 20% of which will be affordable. The development will contain seven buildings with units ranging from studios to four-bedrooms. Affordable units will be within all of the buildings. These plans are under review by the East Boston community.

B. CHAPTER 91 POLICIES

1. 310 CMR 9.31(2) Proper Public Purpose Requirement

No license permit shall be issued by the Department for any project on tidelands or Great Ponds, except for water-dependent use projects located entirely on private tidelands, unless said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said tidelands.

2. 310 CMR 9.35: Standards to Preserve Water-Related Public Rights

The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands, Great Ponds and other waterways for lawful purposes; and shall preserve any public rights of access that are associated with such use. In applying this standard the Department shall act in accordance with the provisions of 310 CMR 9.35(2)-(6), and shall give particular consideration to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2...

3. 310 CMR 9.35(2) Public Rights Applicable to All Waterways

Navigation - The project shall not significantly interfere with public rights of navigation which exist in all waterways.

Free Passage Over and Through Water - The project shall not significantly interfere with public rights of free passage over and through the water, which exist in all waterways.

4. 310 CMR 9.35(3) Public Rights Applicable to Tidelands and Great Ponds

Fishing and Fowling - The project shall not significantly interfere with public rights of fishing and fowling which exist in tidelands and Great Ponds.

On-Foot Passage - The project shall not significantly interfere with the public's rights to walk or otherwise pass freely on private tidelands for purposes of fishing, fowling or navigation, or derivatives thereof, and on Commonwealth tidelands and Great Ponds for said purposes and all other lawful activities, including swimming, stalling, and other recreational activities.

5. 310 CMR 9.513 (d)

At least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.

6. 310 CMR 9.51 Conservation of Capacity for Water-Dependent Use

New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone.

C. HARBORPARK PLAN IMPLEMENTATION STRATEGIES

1. Determination of Proper Public Purpose

Boston Zoning Code (BZC) Sections 42A-5.1, 42B-5.1, 42E-5.1 and 42F-5.1 require that the Boston Redevelopment Authority, in making a Section 18 Recommendation regarding whether a project serves a proper public purpose and would not be detrimental to the public's rights in the tidelands, base its recommendations on conformity with the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:

- a. visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent use on Private or Commonwealth Tidelands;
- b. rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
- c. physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;
- d. interest in the preservation of the historic character of the Project's site;
- e. interest in industrial and commercial waterborne transportation of goods and persons;
- f. interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- g. interest in safe and convenient navigation in Boston Harbor, including without limitation:

- (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
- (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
- (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
- (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.

The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- a. To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier, wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures or by other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;
- b. To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety

hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline or transversely across the site to a point on the Project shoreline;

- c. All Open Space areas established pursuant to Sections 42A-6, 42B-6, 42E-6 and 42F-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public twenty-four (24) hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance, or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety and that such barriers are in place no longer than necessary. All such pedestrian access facilities shall be Accessible to physically handicapped persons. Active pedestrian use of such Open Space areas and pedestrian access facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground-level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with the development review provisions of Section 42A-8 or Section 42B-8 shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Section 31-5.3, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42B-6, and to make a Section 18 Recommendation.
- d. Any Project required to provide Public Access Facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:
 - (i) conform to Article 11, Signs, of the code;
 - (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
 - (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of

its access rights and discloses whatever access-related rules and regulations are in effect, if any.

- e. Within any Maritime Economy Reserve Subdistrict, public access shall be required as set forth above, but only to the extent to which it does not significantly interfere with or obstruct the operation of a maritime-dependent industrial use or pose a safety hazard to workers or visitors on the site of such use.

2. Harborwalk: Waterfront Setbacks

BZC Sections 42A-7, 42E-7 and 42F-7 requires (a) thirty-five (35) foot setback of all buildings from the High Tide Line in the Downtown Waterfront Subdistrict, the North End Waterfront, the Dorchester Bay/Neponset River Waterfront, the Charlestown Waterfront, the Charlestown Navy Yard, and the Fort Point Waterfront except for south of Northern Avenue where the required setback is fifteen (15) feet; (b) a twelve (12) foot setback of all buildings from the sides of piers in the entire Harborpark District; (c) a fifty (50) foot setback of all buildings from the ends of piers in the Downtown Waterfront and the Fort Point Waterfront; and (d) a thirty-five (35) foot setback of all buildings from the ends of piers in the North End Waterfront, the Dorchester Bay/Neponset River Waterfront, the Charlestown Waterfront, and the Charlestown Navy Yard.

3. Waterfront Yard Area Regulations

In accordance with Sections 42A-7.2 and .3, 42B-7.2 and 7.3, 42E-7.2 and 7.3, and 42F-7.2 and .3, no portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.

Any building or structure used for a Water-Dependent Use, including without limitation, drydocks, enclosed or covered wet dock sheds, davits, hoists, mast makers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water-Dependent Use.

4. Harborwalk Guidelines

Harborwalk Guidelines, incorporated into this Plan as Appendix F, provide design and construction guidance that works in conjunction with requirements for public access areas to maximize pedestrian use and benefit of the Harborwalk system.

BZC Sections 42A-5.2, 42B-5.2, 42E-5.2, and 42F-5.2 require that the Boston Redevelopment Authority shall not make a positive Section 18

Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof.

5. Fifty Percent Open Space Requirement for New Development

BZC Sections 42A-6, and 42B-6, 42E-6, require that within the Waterfront District any proposed project involving new construction at grade, except a Proposed Project with a gross floor area of two thousand five hundred (2,500) square feet or less used exclusively for one or more Water-Dependent Uses, shall devote to Open Space at least fifty percent (50%) of the Lot Area of such Proposed Project. Within the Charlestown Navy Yard such 50% standard is applied to the entire zoning subdistrict excluding the Historic Monument area. All open space is required to be accessible to handicapped persons. Surface water area may not be included in the open space calculation.

6. Preservation of One-Third of the Waterfront for Public Open Space

BZC Article 42A, 42B and 42F establishes five (5) subdistricts in the Dorchester Bay/Neponset River Waterfront area, two (2) subdistricts in the North End Waterfront, and four (4) subdistricts within the Downtown Waterfront and four subdistricts within the Charlestown Waterfront and Charlestown Navy Yard, which are dedicated entirely to open space.

7. Open Space and Public Access Plan

The Harborpark District Zoning requirement that any project subject to development review under Article 31 submit an Open Space Public Access Plan that includes plans, drawings and other materials necessary for the BRA to make a positive Section 18 recommendation.

8. Water Transportation System

BZC Sections 42A-5.6 42B-5.6, 42E-5.6, and 42F-5.5 require that within the North End Waterfront, Downtown Waterfront, the Charlestown Waterfront, the Charlestown Navy Yard, and the Fort Point Waterfront, the Boston Redevelopment Authority in making its Section 18 Recommendations, shall consider the extent to which provision is made on the Project site for waterborne passenger transportation facilities, including, without limitation, terminals and lands for water ferries, water shuttles, or water taxis, and free public landing, and in the Downtown Waterfront such facilities shall include main terminals and passenger facilities for commuter boats, cruise boats, and ferries, as appropriate to the scale, use, and location of the Project and in accordance with the water transportation guidelines of the Harborpark Plan.

9. Affordable Housing on the Waterfront

BZC Sections 42A-5.3, 42A-5.4 and 42A-5.5 and Sections 42B-5.3, 42B-5.4, and 42B-5.5 requires that within the Harborpark District the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation unless from 10 percent to 25 percent of any housing built in the tidelands is affordable to low and moderate income persons.

Within the North End Waterfront a Housing Priority Overlay Area is established in which two-thirds of the gross floor area of any project must be devoted to housing and 25 percent of the housing must be affordable to low and moderate income persons.

IV. REVITALIZATION OF BOSTON'S UNDERUTILIZED AND DILAPIDATED PIERS AND SHORELINE

This Chapter III defines the second of four comprehensive policies of the Harborpark Plan, revitalization of Boston's underutilized and dilapidated piers and shoreline, and relates this policy to the Chapter 91 policies which it complements and supports, and to the specific Harborpark implementation strategies. As discussed in this chapter, this revitalization can be achieved only through a combination of public and private investment. The public sector must assume the responsibility of water quality, clean-up of Boston Harbor and enforcement of docking, safety and mooring standards and regulations that make the Harbor safe for the public. In the past as well as now we must look to the private sector to help rebuild shoreline and generate water-dependent and water-enhanced facilities and commerce for the public.

A. HARBORPARK PLAN POLICY

Revitalize Boston's underutilized and dilapidated piers and shoreline by promoting growth through private investment that is appropriately designed and is a balanced mix of uses that bring vitality to the waterfront and benefits of development that are shared by all of Boston's residents.

Private investment is necessary to generate the infrastructure, public access network and reclaimed usable open space along the waters edge in the Harbor plan's district.

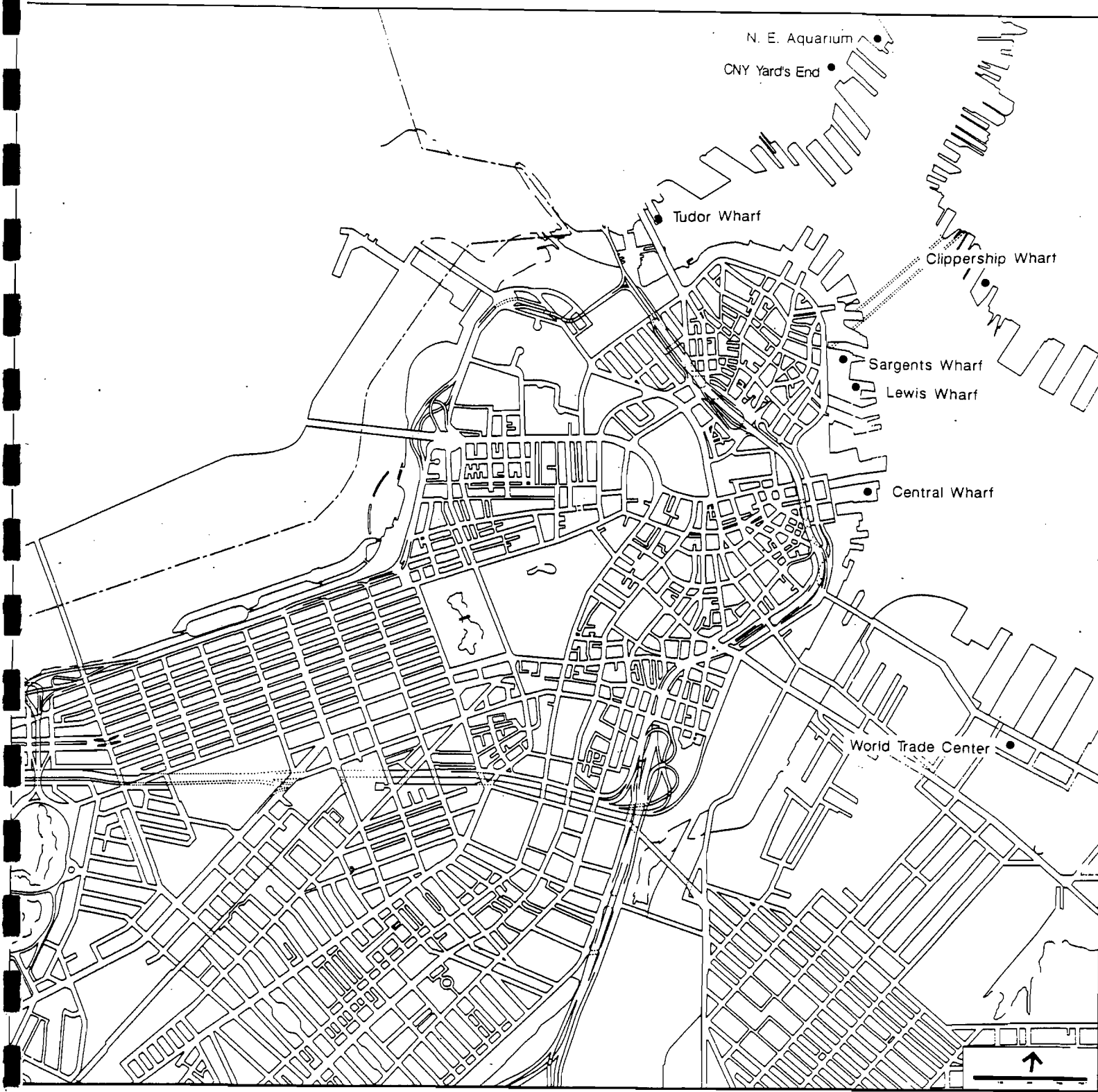
Private wharfing statutes were granted in the colonial period to encourage private wharf structures to extend out into Boston Harbor, thus creating the piers necessary to berth sailing vessels during the complete tidal cycle. By granting these licenses to private concerns, the Colony created intertidal access for all forms of commerce. Currently, the Commonwealth and the City of Boston wishes to use a similar mechanism based on the market economy to encourage the redevelopment of public access as derived from the historic precedent set by these colonial ordinances.

After the decline of the last vestigial remnants of the shipping industry along the downtown waterfront in the 1950s, and the decommissioning of the Charlestown Navy Yard in the 1970s, the pier infrastructure has remained in a decayed and abandoned state. Containerization and technological advancements made consolidation of maritime industrial facilities desirable and more practicable, reducing space needs while retaining capacity. In many areas of the Harbor pile fields and collapsing buildings are now the sole testament to Boston's proud maritime history.

Throughout the 1800s, Clipper Ships brought both commerce and new cultural innovation from the Far East, Australia and Europe on a daily basis to the docks at the heart of the Harborpark District. Central Wharf, Longwharf, Commercial Wharf, Lewis Wharf and Sargents Wharf all served as repositories for goods and maritime industries.

Current Development Proposals

Harborpark District



Along with commerce came the architectural influences and prosperity that created the 1800s "golden age of granite," where private developers built the significant wharf structures that still stand as the historic context for today's redevelopment.

The advent of steam power witnessed the rise of intercoastal trade. The timber and coal that fueled the industrial revolution in points as distant as the Lowell and Lawrence mills all passed through the Port of Boston. Similarly, the leading edge of Paris fashions, and the art and literary avant grade all disembarked at these wharfs.

It is this spirit of cultural innovation that is being continued through redevelopment guided by the implementing policies found in the Harborpark Plan. We look to the redevelopers to fuel the rebirth of this stagnant area of the city as did Thomas Hancock in the 1800s at Hancock and Spears Wharf.

Market sector redevelopment will carry with it the social obligation, carried forward from colonial statute, of the creation of means of public use and enjoyment to an area that has long been inaccessible to the citizens of the Commonwealth.

Through the investment of capital guided through structured project review, as delineated in the City's Article 31 development and design review process, discussed in Chapter V, coupled with the requirements necessary to receive a positive determination by the BRA regarding whether or not a project serves a proper public purpose, this sector of the City is at the beginning of a second golden age, this time of public access, use and enjoyment.

DEVELOPMENT PROJECTS ALONG BOSTON HARBOR

In addition to the buildout of the Yard's End area of the Charlestown Navy Yard, including the New England Aquarium, currently in different stages of review are the following six projects, which will be either completed or begun within the next ten years: Sargents Wharf, Central Wharf, Lewis Wharf, World Trade Center, Tudor Wharf and Clippership Wharf. These projects form a ring of redevelopment activity around the Inner Harbor that will each serve to sponsor revitalization of a sector of the Inner Harbor.

Sargents Wharf: The Boston Redevelopment Authority is presently reviewing six proposals submitted in response to a Request for Proposals for a development of 100 units of affordable housing as well as market rate housing on Sargents Wharf. This parcel, which includes 112,000 square feet of land area and 70,000 square feet of watersheet to the 1880 Harbor Line, is the last remaining publicly owned waterfront site along the downtown inner harbor. Sargents Wharf adjoins Boston's historic North End residential neighborhood and is within walking distance to Quincy Market, Government Center and the Financial District.

In conjunction with its review of the Sargents Wharf proposals, the Boston Redevelopment Authority is also reviewing proposals for redevelopment of the Pilot House Extension, a 13,424 square foot parcel directly across Eastern Avenue from Sargents Wharf. Three of the six proposals submitted for Sargents Wharf

also included redevelopment plans for the Pilot House Extension. In addition, two proposals were submitted solely for the Pilot House Extension parcel.

To ensure full achievement of community goals, the Sargents Wharf Request for Proposals included a Request for Qualifications procedure whereby interest was solicited from neighborhood-based non-profit organizations in participating in the project. In response, the North End Waterfront Community Development Corporation with broad-based membership and support of community social service organizations submitted qualifications and was subsequently designated as the neighborhood-based partner. Upon concluding the review of proposals, a developer will be designated to join with the CDC in completing the development team for the project.

The design and development concept for Sargents Wharf includes the construction of 100 units of affordable housing and approximately 100 units of market rate housing. Ground floor retail space, facilities for water transportation and water-related services are also envisioned. These ground floor uses are crucial in establishing a character that welcomes and encourages public use.

The site is divided into separate building parcels by public pedestrian and vehicular ways that make access to the water's edge open and inviting. The Clark Street visual corridor provides views from Hanover Street in the heart of the North End to the harbor.

Over 2 acres of open space and pedestrian ways will be created. Open spaces from Commercial Street leading to recreational uses on newly constructed piers will draw people to the enjoyment of the waterfront. Continuous public pedestrian access along the entire water's edge will be provided. Building height, massing and character is based on traditional Boston finger pier construction, with brick and granite facade materials.

Central Wharf: The proposed relocation of the New England Aquarium to a new home in the Charlestown Navy Yard affords the opportunity for redevelopment of Central Wharf. Since the Aquarium first opened over 20 years ago the surrounding area has undergone tremendous change. A vibrant mix of residential, hotel, office and retail uses has revitalized once abandoned buildings and derelict piers. In the 1960s, construction of the New England Aquarium helped catalyze the renaissance of Boston's Inner Harbor. Today, redevelopment of Central Wharf will significantly enhance public access at this crossroads of the downtown waterfront.

The deteriorating pier between Long Wharf and Central Wharf will be repaired to complete a missing link at one of the most heavily used locations in the continuous water's edge walkway envisioned along the entire harbor. A major terminal is planned at this emerging hub of the City's expanding water transportation system. New dockage at Central Wharf is critical in adding capacity for future growth in ridership beyond what can be accommodated by fully utilized dockage at Long Wharf and Rowes Wharf. In conjunction with the MBTA's improvements to the Aquarium rapid transit station much improved transfer from boat to subway will be available.

In addition, the development program includes office, hotel and residential uses compatible with the mixed-use character of the surrounding area and over two acres of publicly accessible open space. A number of discrete buildings are planned to define view corridors both across the wharf and from the adjoining Custom House Historic District to the harbor. Such parcelization contributes to a scale akin to historic building patterns rather than the scale typified by the monolithic Long Wharf Marriott.

Building heights for Central Wharf are also guided by historic precedent rather than the adjacent 400 foot tall Harbor Towers. Heights no greater than 55 feet will face the harbor. Facing the city, buildings step up to 155 feet. This corresponds to the height of the tallest buildings in the Custom House District, and just as in that District, not all buildings achieve this height, so too on Central Wharf a variety of building heights is envisioned -- 55 feet, 75 feet, 125 feet, and 155 feet.

A maritime cultural use is also planned for a prominent location at the end of Central Wharf. One such possibility is the Whydah Museum, focusing on the display of treasures salvaged from a pirate ship which went down in heavy seas off Cape Cod in 1717. Interpretive exhibits that weave a tale of 18th century Boston would provide a new dimension for understanding seafaring and social history through the attraction of pirate lore, an especially strong draw for children. Thus, Central Wharf would continue to be a significant public destination for people of all ages.

Lewis Wharf: In the North End Waterfront, the Gunwyn Company is proposing the redevelopment of 9.76 acres of land and water at Lewis Wharf into mixed use development which emphasizes public access and accommodation. Currently, the waterfront portion of the site is in a dangerous and deteriorating condition, and is inaccessible to the public and is a blight on the Harbor.

The primary structure is the 335 room marine inn. Subsidiary uses include a 600 space parking garage, expansion of the present marina and the creation of other water dependent uses. The project also proposes the construction of 57 residential units on Parcel B3-A, the "Pilot House Extension" property, with retail space on the first floor.

The proposed marine inn is a two building complex designed to reflect historic finger pier wharf buildings commonly found along the Boston waterfront. The North Building is proposed to be 55 feet, and the South Building is proposed to be 51 feet. Both buildings conform to Harborpark Zoning for this area.

The Pilot House Extension site was owned by the Boston Redevelopment Authority and was designated to the Gunwyn Company in September 1990. As part of the designation, the Gunwyn Company will contribute \$1.5 million towards creation of affordable housing on Sargents Wharf.

As the primary water dependent use for the project, the Boston Sailing Center will be moved to new facilities within the building on the South Pier. The existing 40 moorings will be used by the Boston Sailing Center and transient visitors and will be provided launch service by the Boston Sailing Center. The existing marina will be upgraded and expanded to a total of 65 slips. A water

taxi and public landing will be constructed along the North pier, to accommodate both private and public forms of water transportation to the site and to the North End.

An extensive program of public access and open space is proposed. This program includes complete pedestrian access to the water's edge, connections to the Harborwalk and over three acres of programmed park space. Along all edges of both the North and South piers, the public will be permitted unlimited perimeter access to enjoy views of the harbor. The walkways are a minimum of 12 feet wide along the edges of the piers. The south side of the North pier includes a 35 foot wide expanded pier and the south side of the South pier will include a 22 foot expanded pier area for public uses.

The project will also complete a critical link in Harborwalk. At present, no direct access to the waterfront is possible. The Lewis Wharf Harborwalk connection will permit pedestrians to walk along the water's edge from Commercial Wharf to Sargents Wharf. The Pilot House Extension will have a passageway through the building, permitting the public to walk from Lewis Wharf to Eastern Avenue and Sargents Wharf.

World Trade Center Expansion: The Boston Redevelopment Authority is presently reviewing a development proposal submitted by the John Drew Company to expand the existing World Trade Center at Commonwealth Pier in the Fort Point District of South Boston through the construction of two office buildings and a hotel on the south side of Northern Avenue flanking the Viaduct from Summer Street. Totalling approximately 950,000 square feet of offices, 50,000 to 100,000 square feet of retail space, and a 350-room hotel, the project is designed to compliment the economic activities of the existing World Trade Center Exhibition/Conference facility and to enhance the Northern Avenue Waterfront.

The Fort Point Waterfront has been the subject of extensive, long term planning by the BRA, working in conjunction with the Fort Point Citizens Advisory Committee and a host of public agencies such as the Boston Transportation Department, the Massachusetts Port Authority, the MBTA, and the State DPW in order to ready this District for the construction of the Seaport Access Road/Third Harbor Tunnel, the extension of the mass-transit system across the Channel from downtown Boston which taken together enable the expansion and diversification of Fort Point's economy. World Trade Center's expansion proposal represents the initial major private investment in a twenty year public/private redevelopment plan developed by the City of Boston and the BRA over the past five years.

The design for World Trade Center, which is still evolving, is based on a general plan for the District presented in March of 1989, and on Urban Design Guidelines published by the BRA in June of that same year. The goals of these guidelines are to protect the existing water-dependent and industrial economies in Fort Point, while creating a publicly active and accessible waterfront, and producing new employment and other public benefits such as affordable housing for residents of the City. The guidelines protect view corridors to the harbor and require the development of attractive and environmentally comfortable public parks and open spaces. Among other benefits, the project will be developing a water-transportation terminal at Northern Avenue on the west side of Commonwealth Pier, a location which has been identified in several studies to be prime for the

extension of the public water-transportation system currently operating on Boston Harbor.

Tudor Wharf: The Charlestown Gateway subdistrict includes the Tudor Wharf area and the Hoosac Pier/Constitution road area. It is within the Tudor Wharf Subdistrict of the Gateway that development activity is most likely to occur in the immediate future.

Developers for Tudor Wharf have already begun the public review process under Article 31 of the Boston Zoning Code to obtain city approvals for a proposed 285,000 commercial office/retail complex to be built in two buildings. Building heights will be 75 feet on land and 55 feet on piers, consistent with the revised zoning. The project will produce approximately 56,000 square feet of new public open space on land now entirely closed to public access and will provide an improved gateway to Charlestown. The proposed project contains important links between the Freedom Trail from the Charlestown Bridge to the USS Constitution and the Charlestown Navy Yard. These links will reduce the walking distance that tourists presently experience and replace the existing City Square, traffic-laden interchange with a pleasant, visually refreshing pedestrian route through its landscaped public plaza to the USS Constitution on a non-vehicular walkway.

The development plans for Tudor Wharf also call for a direct link to the Paul Revere Landing, via one of the vaults under the Charlestown bridge which will be open to pedestrians, connecting them to the MDC locks, and on to North Station where public transportation is available. The passageway under the bridge, in the proposed plan, will include an exhibit gallery, public toilets and possibly storage space for a dinner/cruise boat that may be docked off the pier side of the Tudor Wharf project. The exhibit gallery will be based on the ice trade history made famous by Frederick Tudor and will celebrate the tradition of maritime commerce, particularly important since Charlestown was once the second greatest seaport in the U.S., after Boston.

The development standards established in the Harborpark Zoning which call for 50% open space, 35 foot setbacks from the ends of piers and 12 foot side allowances on piers will all be met in the proposed Tudor Wharf development which will connect to the Harborwalk pedestrian system between the Downtown and Charlestown. In addition, the proposed project also calls for the location of a water taxi terminal to provide water transportation between this site and other locations on the waterfront.

Clippership Wharf: Located on the East Boston waterfront, the Clippership Wharf project is planned to include a mix of residential uses, publicly accessible open space areas, and water-related facilities and activities.

The project site, which is located in a residential and waterfront industrial area, is bounded by Boston Inner Harbor and Massport Pier 1 to the south; by the Lewis Mall and Lewis Street to the east; by the Hodge Boiler works to the west; and by Father Jacobe Road, the Heritage Apartments, Clippership Lane and Sumner Street to the north. The site is vacant and unused, with the exception of the Hines & Smart Lobster Corporation, a lobster wholesaler. The site's existing wooden wharves and seawalls are generally in a dilapidated condition.

Major areas of the pier structures have burned or collapsed, and many pilings are broken or rotted.

Clippership What will result in new construction of seawall and pier facilities, ensuring a safe, durable, accessible, and attractive waterfront environment. By combining a number of marine-related facilities with a network of varied open space areas and pathways, an active, publicly accessible area designed to attract and accommodate pedestrian activity will be created. Through the placement of residential parking underground and the limitation of areas open to automobile circulation, the ground-plane of the project will clearly indicate a priority for pedestrian movement.

Approximately 288 residential units will be constructed within four seven-story buildings oriented perpendicular to the water's edge. Residential buildings will reflect traditional wharf architecture, with exteriors composed primarily of brick, and accented by glass and masonry materials. Twenty percent of the units will be affordable.

The program, mix of uses, and physical design of Clippership Wharf reflects the input and stated priorities of a range of interested parties, including state agencies with jurisdiction over waterfront development, city agencies such as the Boston Redevelopment Authority, and various East Boston community groups and representatives.

Charlestown Navy Yard Yard's End: The Yard's End area of the Charlestown Navy Yard is the major development site for the Navy Yard. Yard's End is well suited to accommodate the medical research, cultural and hotel uses planned between 1990 and 2000. This area includes approximately 12 acres of predominantly vacant land at the periphery of the Historic Monument Area. The few remaining structures date from periods of construction in the 20th century and contribute little historic character. Dry Dock 5, for example, was built as a temporary facility, during World War II, of concrete and sheet steel and is now in derelict condition. The piers to either side are deteriorated and in unsafe condition. Building 114 was ravaged by fire in 1980 and remains a vacant shell.

The following goals and objectives for the Master Plan have been established by the BRA in conjunction with the Charlestown community and private developers within the Yard. Modifications have been made to reflect community input since the introduction of the Master Plan in January regarding the issues of affordable housing, open space, job creation, transportation access, and zoning.

- o Develop market-rate and affordable housing and home ownership opportunities, with a goal of achieving an on-site affordable housing ratio of 25 percent.
- o Produce attractive commercial and retail space to accommodate the expanding Boston economy, and to create a wide range of employment and business opportunities for Charlestown residents.
- o Achieve a balance between residential, open space, commercial/retail, hotel, and waterfront uses.

- o Create a substantial and attractive system of public open spaces, waterfront access, recreational opportunities, and exciting public attractions, for people of all ages and backgrounds to use and enjoy.
- o Realize a maximum amount of public benefits, including construction and permanent jobs, new taxes, and various linkage programs.
- o Rehabilitate and adaptively reuse the Navy Yard's many historically significant structures and elements, while successfully integrating contemporary urban design solutions to refit the Navy Yard for its new life.
- o Manage increased traffic levels to prevent traffic congestion in the Navy Yard and the Charlestown neighborhood.
- o Maximize community participation and input into the planning and decision-making process which will shape the development and character of the Navy Yard.

In the first phase of Yard's End development, it is envisioned that 550,000 square feet of medical research space will be developed at Yard's End. In addition, a 390 room hotel with conference facilities is planned on Parcel 4 of Yard's End. The planned relocation of the Aquarium to Dry Dock 5/Parcel 5 will broaden the economic base to include off-peak activity within the Navy Yard. The total development will be limited to that already completed or underway in the Navy Yard.

As a result of these three projects alone, 2,400 permanent jobs will be created. In accord with the city's resident jobs policy, 50% of these jobs are expected to be held by Boston residents. Furthermore, a key aspect of the Navy Yard Master Plan is a concerted employment strategy to maximize participation of Charlestown residents in new employment opportunities. A goal of 25% of the new jobs created to be filled by Charlestown residents has been established.

New England Aquarium: The New England Aquarium proposed for the Charlestown Navy Yard's Drydock #5 will be unmatched worldwide. In addition to dramatic and technologically advanced display of marine life, including a glass enclosed underwater walk with whales swimming overhead, this new facility will provide for greatly expanded scientific study of the marine environment. Significantly enhanced educational programs for schoolchildren, increased career opportunities in marine-related disciplines for Boston residents, and maintenance of a premier cultural and recreational resource on Boston harbor are among the public benefits arising from this project.

In the 1960s, construction of the Aquarium at Central Wharf led the renaissance of Boston's Inner Harbor. In 1988, the Aquarium accommodated 1.2 million visitors, or double the planned attendance when it opened in 1969. The present facility is strained beyond capacity to handle such demand. Upgrading and expansion of aquatic resources are imperative to maintain the high standards that set the New England Aquarium at the forefront of its field.

The site at Drydock #5 provides an opportunity to construct an aquarium more

than double the present size. It assures continued presence of a pre-eminent waterfront destination to draw people to enjoyment of Boston harbor.

The new aquarium's unique design will be clearly recognizable from land and sea. A glass roof, in the tradition of the 19th century crystal palaces, will vault the whale tank and main exhibitions. The roof will be held up by tall masts recalling images of sailing ships. Active uses at the building's base -- bookstore, food service, and exhibits -- will animate over 2 acres of surrounding public open space.

A major water transit terminal is planned adjacent to the new aquarium. Water shuttle service to downtown is envisioned every 15 minutes. This will help mitigate potential traffic impact on the Charlestown community. It will also contribute towards expanding and strengthening the network of public accessibility throughout the entire waterfront.

HARBORPARK DISTRICT ZONING HEIGHT LIMITS AND USE CONTROLS

The Harborpark District Zoning includes use and height limits for development that are consistent with surrounding areas and historic buildings. Height limits range as follows: from 35 feet in most Dorchester Bay/Neponset River Waterfront; 55 feet in the North End Waterfront (except for 75 feet on Sargents Wharf, Pilot House Extension); a range of 55 feet to 155 feet in the Downtown Waterfront and Charlestown Navy Yard; 55 feet to 75 feet in the Charlestown Waterfront; and 55 feet to 250 feet in the Fort Point Waterfront. In the Harborpark District as a whole, 49 percent of the area has zoning height limits less than 55 feet, 38 percent has zoning height limits equal to 55 feet, and only 13 percent has zoning height limits greater than 55 feet.

WATER QUALITY CLEAN-UP IN BOSTON HARBOR

From the mid-1980s through the 1990s Boston Harbor has been the focus of one of the largest public works projects in New England's history. The clean-up of Boston Harbor represents an effort to redress decades of neglect by construction of a new sewage treatment plant on Deer Island in Boston. When completed this facility will have sufficient capacity to treat waste from the over 2 million residents of Boston and the other 43 cities and towns that make up the Mass Water Resources Authority (MWRA) sewage system.

Since the turn of the century, the rapid growth of suburban areas around Boston has overwhelmed the sewage treatment system with industrial and household waste as well as street runoff. Industries are just beginning to bear the burden of pretreatment of their discharges and we are all becoming more educated on how our use of household chemicals effects the Harbor. The combined efforts of governmental agencies, environmental organizations and individual citizens has given momentum to increasing awareness that Boston Harbor represents an enormous resource which, if properly managed, can be both a major economic engine for Massachusetts and the region as well as a fishable, swimmable recreation area for the metropolitan area.

A key issue in reducing the pollutants that we discharge into the Harbor every day is the problem of Combined Sewer Overflows, sewers that contain both street runoff and raw sewage. Combined sewers overflow and release untreated sewage into the Harbor during heavy rain. The MWRA plans to construct deep storage tunnels at several locations around the Harbor to collect overflows before they are discharged and store the water in large tunnels deep underground. When the storm flows from urban runoff have subsided the stored water will be pumped on to Deer Island for treatment. This is a long and expensive project, but when it is completed, one of the largest sources of pollution to the Harbor will have been eliminated. CSO discharges are the primary reason that most shellfish beds around the Harbor cannot be harvested. Even the bed off of Logan Airport must be closed after rainstorms and is only open to Master Diggers the rest of the time.

The construction of the new treatment plant on Deer Island marks the first significant upgrading of this system in more than two decades. The removal of scum and floating material from the effluent combined with the cessation of sludge discharge directly in the Harbor will mean a significant reduction in the amount of heavy metals and other toxic components of waste water. The sludge will then be recycled into a marketable fertilizer product ending centuries of discharge into Boston Harbor.

After treatment, the waste water itself will be carried through a 24 foot diameter tunnel nine miles straight out to sea and slowly released through 55 difusers. Currently waste water receives minimal treatment and is discharged through pipes just off the end of Deer Island. The back and forth movement of the tides does not carry the effluent out into the open ocean where natural phenomena can break down the nutrients and other pollutants. The deep ocean outfall will disperse the effluent over a 6,600' length of tunnel and allow ocean currents to further dilute and carry away the treated water. It is only when we cease to discharge sludge and untreated waste water directly into the Harbor that the natural cleansing processes of this estuarine environment can begin to undo centuries of neglect.

The completion of the Harbor Clean-up projects will signify the beginning of a growth in recreational and natural resource opportunities in Boston Harbor. In and around the Harbor are shellfish beds which will hopefully become harvestable once water quality in the Harbor improves. The current levels of bacteria and heavy metals make the clams and mussels of Boston Harbor unsafe for consumption. Because several rivers empty into the Harbor there is a continual flushing process taking place. It is hoped that over time the residual contaminants will be flushed out of the Harbor and shellfish will once again be safe.

The fishing industry as well as recreational anglers will also benefit from a clean Harbor. Winter flounder in the harbor suffer from a number of ills attributable to pollution. Harbor fish may also assimilate pollutants into their flesh making it unhealthy to eat on a regular basis. Lower reproductive rates and a stressed environment for eggs and spawn reduce the actual population in the harbor. In addition, anadromus and catadromus fish (species that spend time in both fresh and salt water) must pass through waters that have oxygen levels reduced by algae growth from high nutrient discharge. A clean, well managed Harbor will

allow us to once again harvest fin and shellfish free of dangerous levels of contaminants and in quantities large enough to be commercially viable. Possibly most important is a chance for everyone to assert his/her right to sit on a public pier on a sunny afternoon and catch fish.

The recreational opportunities in Boston Harbor are unlimited, the only real drawback is the current water quality. Numerous public beaches around the Harbor and on the harbor islands are often unsafe for swimming due to pollution. By eliminating CSO discharges and sludge from Deer Island the high levels of bacteria and other contaminants should drop off dramatically. Many of us are fortunate enough to be able to go to outlying beaches during summer but for a large segment of the urban population it is nearly impossible.

Boston area public beaches were an enormous benefit to urban dwellers up until the last half of the 20th century when pollutant levels caused illness and posed a health threat to bathers. Historic photos show thousands of Bostonians flocking to the water in the dog days of summer. Fortunately, we have preserved many of our beaches in East Boston, South Boston and Dorchester and with the end of CSO discharges, all of Boston's residents will be able to gain access to a beach where children can cool off in the surf, rather than open up a fire hydrant and play in the streets. A consistent effort to preserve our natural resources and public recreation opportunities around Boston Harbor will give us a second chance to truly enjoy all of its benefits.

While the cost of the Boston Harbor Clean-up is high and at times the debates over the many difficult issues presented by a project of this magnitude seem ready to tear us apart as neighbors and friends, it is a task that cannot be ignored. When we once again have families and individuals from Charlestown, to Jamaica Plain, children and adults from neighboring towns riding the train to a Boston beach, or catching fish for dinner from Boston Harbor, we will know that it was worth the effort. Although the yardstick by which our success is measured is a mandate of the courts and laws, the final analysis of our efforts will be enjoyment of Boston Harbor by all residents and visitors to our City.

DOCKING STANDARDS

In June of 1987, the Boston Redevelopment Authority, City of Boston Transportation Department, and City of Boston Environmental Department commissioned the Childs Engineering Company to develop prototype docking standards for Boston Harbor. This unique study researched and catalogued the types, sizes, and nature of passenger vessels operating in Boston Harbor and recommended design and construction standards for docking, loading, passenger and servicing facilities to be constructed across the harbor to support the emerging water transportation system. The Childs Engineering Dockage Study design goals include:

- High performance capability
- Long-term durability
- Low maintenance and operations needs
- Attractive and appropriate design
- Barrier-free accessibility

These docking standards will also be utilized in the design of piers and related facilities for recreational vessels. A major goal of Harborpark is the provision of public access to the Waterfront. Public landings, dinghy docks, neighborhood sailing centers, and marinas must conform to these standards.

Prototypical standards have been developed for (1) vessels under thirty feet in length (mostly small outboards and dinghies), (2) vessels under seventy feet in length (mostly water shuttles, and some commuter and cruise boats), and (3) vessels up to two hundred thirteen feet in length. Standards include recommendations for loading floats, piles and supporting structure, ramps, lighting, signage, and shoreside facilities. Additional standards are given for making these facilities suitable for full access.

A major task of the prototypical docking standards study was the evaluation of solutions to the problem of barrier free access for docking structures. Providing for "full and equal" and independent access for the loading and off-loading of handicapped persons has been problematic, given the 14 foot tidal fluctuations in Boston Harbor. The Childs Engineering Corporation dock study recommends the use of a full access floating ramp and a full access float, elevator that are able to function within the tidal fluctuations in Boston Harbor, allowing barrier-free access. Existing laws provide a framework which outlines minimum standards for providing handicapped accessibility to programs, activities, services and facilities.

This study was completed in December, 1988. The study has been distributed to waterfront developers and boat operators across the harbor, to assist them in designing and constructing their facilities, and to ensure a high level of quality, consistency, and function for all water transit docks along the waterfront.

As Boston continues to rediscover water transportation as an attractive and efficient means of transportation, more routes will be activated, and the infrastructure and planning for the system's continued success and growth will be ensured through the various efforts under the Municipal Harbor Plan.

BOSTON HARBOR SAFETY AND MOORING REGULATIONS

The issue of congestion on Boston Harbor has been a topic of discussion among mariners for well over a century.

Boston Harbor was at one time the country's busiest port. And what was once the harbormaster's daily task of "causing all masters of vessels to cockbill their yards and rig in their jib booms so as not to annoy vessels going in or out of adjoining docks" has been replaced with the modern day problems associated with liquid nitrogen gas (L.N.G.) super tankers, jet skis, and wind surfers.

The day to day activities on the waters of Boston Harbor are overseen by the Boston Police Harbormaster. Because of Boston's unique status among ports in the Commonwealth, the office of the Harbormaster was created by a special act of the Massachusetts Legislature in 1837.

Building upon this legislation, the Boston City Council also enacted ordinances regulating the movement and anchoring of vessels in Boston Harbor in 1968. The ordinances as defined in the City of Boston Code Ch. 1 St. 11 Sec. 28-30 describe

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the powers and duties of the Harbormaster and his assistants, as well as his authorities and jurisdictions.

It is the duty of the harbormaster to enforce the execution of city ordinances as well as all other laws of the Commonwealth relating in any way to the harbor and to prosecute all violations of such laws and ordinances.

The recent boom in recreational boating in Boston Harbor combined with the commercial and industrial traffic associated with the MDPW's Central Artery Project and the MWRA's harbor clean-up has led the City to review its harbor management practices and to propose new regulations governing the use of Boston Harbor by commercial and recreational vessels.

It is the intent of these regulations to provide for the orderly, equitable, and efficient use of appropriate and designated areas of Boston Harbor for the mooring, anchoring and navigation of vessels. Their purpose is to standardize mooring practices so as to utilize the limited areas of the harbor while at the same time implementing uniform safety practices.

Mooring Regulations

On May 18, 1989, pursuant to G.L. Ch. 91 Sec. 10A, The City of Boston (Code, St. 11, 55.28-30) promulgated a comprehensive set of mooring regulations for Boston Harbor. These regulations apply in all parts of Boston Harbor which are under the jurisdiction of the Boston Harbormaster as set forth in Ch. 329 of the Acts of 1961.

Areas subject to jurisdiction include Dorchester Bay, the Inner Harbor, the Islands and the Mystic River. Anyone wishing to moor or anchor vessels or floats in the waters of Boston Harbor must first secure a mooring permit from the Harbormaster.

Mooring permits are issued on a first come first served basis and must be renewed at the end of each calendar year.

Harbor Safety Regulations

The City of Boston is in the process of reviewing harbor regulations from other cities and towns in the Commonwealth with the intent of promulgating a set of safety regulations for Boston Harbor by January 1, 1991.

The regulations will place a limit on wakes and vessel speed. Vessels will be limited to 10 knots in the Inner Harbor and to headway speed within 300 feet of designated mooring areas. The regulations will also restrict the placement of lobster pots in the main shipping channels and establish standards for the type of equipment used by lobstermen.

After a series of planned public hearings, these regulations will be promulgated by the Boston Harbormaster. The City has targeted January 1, 1991 as the date for which these regulations will become effective.

B. CHAPTER 91 POLICIES

1. Basic Goal: Support public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the waterfront.
2. 310 CMR 9.39(1)(a) Design Standards for Marinas: Any project that includes a new marina, or any expansion thereof ten or more berths greater than the number of berths existing on the effective date of these regulations, shall comply with the design requirements of this section.
3. 310 CMR 9.51: (1) If the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which reasonably can be expected to locate on or near the project site.

C. MUNICIPAL HARBOR PLAN IMPLEMENTATION STRATEGIES

1. Determination of Proper Public Purpose

BZC Sections 42A-5(f), 42B-5(f), 42E-5(f) and 42F-5(f) require that the Boston Redevelopment Authority, in making Section 18 Recommendation regarding a Project located within the Charlestown Waterfront, the Charlestown Navy Yard, the North End Waterfront, the Downtown Waterfront, the Fort Point Waterfront, or the Dorchester Bay/Neponset River Waterfront, shall determine whether a Project serves a proper public purpose and would not be detrimental to the public's rights in the tidelands based on the extent to which the Project reasonably and appropriately preserves and enhances the public's interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access.

2. Article 31 Development Review Requirements

BZC Articles 42A, 42B, 42E and 42F provide use controls, height limits, dimensional controls and required uses for the Charlestown Waterfront, the Charlestown Navy Yard, the North End Waterfront, the Downtown Waterfront, the Fort Point Waterfront and the Dorchester Bay/Neponset River Waterfront geographic areas that balance the objectives of waterfront access, public open space, water transportation, facilities of public accommodation, cultural facilities, water dependent uses, and affordable housing with viable economic growth necessary to provide these public amenities.

3. Docking Standards

Appendix J to the Plan includes Prototype Dock Standards for Boston Harbor which are incorporated into the Harborpark Plan as guidelines.

4. City of Boston, Boston Harbor Safety and Mooring Regulations

Appendix A to this Plan includes the City of Boston Draft Harbor Safety Regulations which are currently under legal review prior to adoption.

5. City of Boston Mooring Regulations

Appendix A to the Plan includes the City of Boston Mooring Regulations adopted by The Boston Harbormaster in 1988.

V. ACTIVATION OF THE WATERFRONT ZONE

This Chapter V defines the third of the four comprehensive policies of the Harborpark or Municipal Harbor Plan; activation of the waterfront zone, and relates this policy to the Chapter 91 policies which it complements, and to the specific Harborpark implementation strategies.

A. HARBORPARK PLAN POLICY

Activate Boston's waterfront zone through appropriate urban design and implementation of water-dependent uses.

Development Review Requirements (BZC Article 31) and Harborpark Urban Design Guidelines and Recommendations work in conjunction with the objective Harborpark Zoning requirements and Chapter 91 Section 18 Recommendations to assure that the goals and objectives of Chapter 91 and the Harborpark planning policies are met. They promote creative and site specific application of objective requirements that maximize the public's interests in the Tidelands.

In addition, requirements for public access and open space, water transportation facilities, facilities of public accommodation, cultural uses in the Downtown Waterfront, and enhancement of the pedestrian environment, and prohibition in the Downtown on residential uses on the first floor, fill and on pier expansion promote active use by the public of the waterfront.

Development Review Requirements

As the City's planning and development agency, the Boston Redevelopment Authority (BRA) functions as a coordinator for development projects and has direct responsibility for reviewing development proposals. The BRA's review authority covers a wide range of projects. The BRA reviews proposals for their overall viability and expected benefits to the City. Review criteria may vary depending on location, type, and size of the project. Design criteria include specifications for building height, massing, materials, and other guidelines to preserve Boston's history and character. Environmental concerns which are assessed include a project's impacts on sunlight, daylight, wind, groundwater, and air and water quality, both during construction and upon completion. Effects on surrounding neighborhoods, displacement, and community participation are also considered in the review process. Transportation review is concerned with the impacts of additional traffic, parking and loading, and examines proposed changes to rights-of-way or physical changes, encroachments on public space, curb cuts, and requirements of the Boston Air Pollution Control Commission, if applicable. Review criteria are included in the Zoning Code and planning documents.

Projects vary in size and complexity; therefore not all requirements are appropriate to all projects. For example, requests for zoning actions to construct a three-unit dwelling require a review quite different than that for a multi-story commercial project. The extent of the review is defined at an initial meeting between the developer and BRA staff.

Before construction on any project commences, a building permit must be obtained from ISD which is responsible for enforcing the Zoning Code, the Massachusetts State Building Code, and other laws and ordinances relating to building construction and occupancy.

The Massachusetts Environmental Policy Act (MEPA) requires a state review of certain projects to evaluate their environmental impacts. The City of Boston has adopted provisions in its Article 31 Development Review Requirements that coordinate the City's Project Impact Report scoping and publication process and timing with the State's Environmental Impact Report review process. The development and design review requirements under Article 31 exceed the MEPA requirements in considering the issues embodied in the Chapter 91 standards.

Elements for which environmental studies and mitigation measures may be required include the following.

1. Wind. Information may be required which indicates the pedestrian-level wind impact of the Proposed Project. Wind tunnel or other appropriate means of testing may be required for any Proposed Project over one hundred fifty feet (150') in height, or any Proposed Project at least twice as tall as any adjacent building.
2. Shadow. Information may be required which indicates the shadow impact of the Proposed Project, with particular emphasis on sidewalks, plazas, and other public open spaces. Shadow analyses may be required for build and no-build scenarios.
3. Daylight. Information may be required which indicates the percentage of skydome obstructed for build and no-build scenarios.
4. Solar Glare. An analysis of the solar glare impact and solar heat gain may be required.
5. Air Quality. An evaluation of the impact on local air quality from additional traffic and from any garage exhaust system may be required. For residential projects, an evaluation of ambient air quality may be required to determine conformance with the National Ambient Air Quality Standards established by the Environmental Protection Agency of the United States.
6. Water Quality. An evaluation of the impact of the Proposed Project on the water quality of Boston Harbor or other affected water bodies may be required.
7. Flood Hazard Districts/Wetlands. A graphic or narrative description of the Proposed Project's location with respect to flood hazard districts or wetlands may be required.
8. Groundwater. An analysis of the impact of construction on groundwater levels and resulting effects on surrounding structures, wooden piles, and foundations may be required.

9. Geotechnical Impact. An analysis of sub-soil conditions, the potential for ground movement and settlement during construction, and the impact on adjacent buildings and utility lines may be required, as well as a description of foundation construction methodology.
10. Solid and Hazardous Wastes. A description of any known toxic or hazardous wastes on or buried in the Proposed Project's site may be required, pursuant to the requirements of M.G.L. Chapter 21C. A description of waste generation by the Proposed Project, including hazardous wastes, may be required.
11. Noise. A noise impact analysis to determine compliance with applicable city, state, and federal regulations may be required. For residential projects, an evaluation of ambient noise levels may be required to determine conformance with the Design Noise Levels established by the Department of Housing and Urban Development of the United States.
12. Construction Impact. A description of the Proposed Project's construction impact on public safety from noise, dust, and pollutant emissions, waste generation and disposal, and staging areas, may be required.
13. Rodent Control. An analysis of the Proposed Project's construction impact on any city or state rodent control programs, and a description of how construction activities comply with any city or state regulatory requirements controlling the rodent population, may be required.

Wind and sunlight, the first two environmental elements listed above, are critical components in determining the quality of the public spaces along the waterfront are how these spaces are activated. These components also are highly specific to the particular site, massing, height and surrounding context of a development proposal. The technical analyses must be conducted on a project by project basis to determine environmental impact. The analyses also inform the development on placement of open space and other public amenities in terms of maximizing their benefit to the pedestrian. Under varying sets of conditions, the impacts of a 155-foot building can vary significantly and range from positive to negative effects on the pedestrian environment. For a more complete discussion, refer to Appendix O, Pedestrian Level Wind Studies for Boston, Massachusetts, January 1985.

To evaluate the quality and appropriateness of a proposal based on objectives stated in plans, guidelines, and regulations governing development in Boston, the Boston Redevelopment Authority conducts a four-stage review process. This review is conducted by BRA staff from its design, development, planning, transportation, environmental, zoning, and engineering departments. The staff is assisted on a project by project basis by citizen advisory groups, the Boston Civic Design Commission, professional associations, and other constituencies. The time-frame for development review and the sequence of phasing may vary depending on the complexity of the project.

Concurrent with the design review of a project and prior to project approval, developers may be required to formulate (1) an access plan which outlines how

adverse traffic impacts will be mitigated; (2) an affirmative housing plan; and (3) an employment plan.

The Harborpark District Zoning also requires that under the Article 31 Urban Design Component of a project review and analysis must be made of the extent to which the project enhances the pedestrian environment. Elements through which pedestrian spaces can be activated and enhanced include, among other things, connections to public transit, public art, street furniture, lighting signage, and landscaping. It is this component of the urban design review that comprehensive links the elements of the ground plane together to provide for quality, active pedestrian access and spaces.

Similar to the Pedestrian Environment Enhancement Component, the Tidelands Component of the Harborpark District Zoning requires that in the Draft Impact Report for a project, the applicant submit a Tidelands Component which includes plans, drawings or other materials to demonstrate to the BRA that all of the Tidelands provisions of the Harborpark District Zoning are met.

Urban Review Guidelines

Article 31, Development Review Procedures were adopted for the Harborpark District Zoning. Article 31 procedures require extensive design and environmental review by the Boston Redevelopment Authority through a public process. These requirements will be applied to any proposed project of 10,000 or more square feet of new space or 10,000 square feet of rehabilitated space. All projects subject to the provisions of Article 31 Development Review Requirements shall satisfy requirements relating to five development review components: Transportation, environmental protection, architectural design, historic resources and infrastructure systems.

The review and analysis of proposed projects subject to Article 31 review must be in accordance with the urban design guidelines set forth in the Harborpark District Zoning. To receive an Adequacy Determination by the BRA, the Final Project Impact Report for Article 31 of any applicant must also comply with these urban design guidelines. The guidelines seek to assure that the ground level environment is conducive to public access to the Harbor, and that while the generation of private investment ensures waterfront revitalization is promoted, waterfront's unique resources are protected.

The Harborpark District Zoning Urban Design Guidelines applicable to all projects outside of the Fort Point District are listed below. Within the Fort Point District many of these guidelines apply. However, because of the distinct historic building fabric of the interior of this District, alternate and additional design guidelines are in effect in the Fort Point District Zoning and Master Plan.

- (a) New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
- (b) Buildings and spaces shall direct views and pedestrian movements towards the water.

- (c) Buildings on Piers shall be sited so as to reinforce the geometry of the Pier; and buildings near the water's edge shall not be massed so as to create a continuous wall along the water's edge.
- (d) Inland buildings shall reinforce the city street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross-streets.
- (e) Buildings shall be sited to provide view and access corridors towards the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
- (f) Building elements on a site shall generally step down in height towards the water's edge.
- (g) Open areas and buildings at or near the ends of piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.
- (h) Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the City.
- (i) Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
- (j) Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.
- (k) Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures and ornament and decorative elements appropriate to the urban and historical waterfront context are encouraged.
- (l) Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
- (m) In addition to the foregoing, design features of a Proposed Project shall take into consideration the characteristics of the site and its location in the Harborpark District and provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures. New development shall be consistent with design guidelines established in the Harborpark District Plan.

In addition, the development review process and Article 31 work in conjunction with the Harborpark Zoning standards, including regulations for setbacks, water dependent uses, public access areas, reserving 40% of the gross floor area of the first story for Facilities of Public Accommodation, reserving 25% of the gross floor area of the first floor for Cultural Uses, and open space which is inviting to the public.

Facilities of Public Accommodation

The Harborpark Plan recognizes that it is not adequate in terms of activating the waterfront to allow or prohibit certain uses on the waterfront through zoning controls. Certain uses must be required in order to ensure that revitalization of the waterfront is focused on public use. The Harborpark zoning therefore requires that within the North End Waterfront, Downtown Waterfront, Fort Point Waterfront, Charlestown Gateway, at least forty percent (40%) of the first floor of any project be devoted to facilities of public accommodation as defined under Chapter 91. These uses, including, but not limited, cultural facilities and theaters, restaurants and cafes, retail issues, recreational facilities, hotels and motels, and ferry terminals and other public transit facilities will attract the public to the waterfront and provide points of interest along Harborwalk.

In the maritime industrial and manufacturing zoning subdistrict of the Harborpark District this requirement for facilities of public accommodation is not required since the intended use of these areas is not public, but port related. Within the Dorchester Bay/Neponset River Waterfront this requirement is generally not applicable since the majority of this area is zoned for open space. The small residential zoning district along the Little Mystic Channel in Charlestown and Cedar Grove area of the Neponset River also are appropriate sites for this requirement since they are zoned for low scale, low density housing and comprise less than 3 percent of the Harborpark District.

Rebuilding of the infrastructure along the Harbor as discussed in Chapters III and IV, when accompanied by public uses, enhances and supports the public's rights in the tidelands. The development and design review process determines on a site by site, project by project, a balance of such facilities of public accommodation along the Harbor. The uses are analyzed in terms of their appropriateness to the given location and surrounding environment. The Water Transportation System is based in part on the location and balance of these public uses along the Harbor.

Provision for Cultural Uses in the Downtown Waterfront Subdistrict.

In the Downtown Waterfront where the Harborpark Zoning permits more intensive development on the Harbor due to the location, in addition to facilities of public accommodation, additional Cultural Uses are required. With respect to a project located in the Downtown Waterfront Subdistrict involving the construction, alteration requiring a building permit, or change of use of 10,000 square feet or more of gross floor area on the first story of a building, not less than 25% of the gross floor area of the first story of the building is reserved, designed, and finished for one or more Cultural Uses or a commensurate level of public attraction is attained through the provision of one or more Cultural Uses elsewhere on the lot. Cultural Uses must be located and designed with particular

emphasis on providing public attraction to the water's edge. The development and design review process assures that this objective will be met.

Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures.

The Harborpark policy with respect to filling in the Harbor and use of floating structures for non-water dependent uses is very restrictive. In making a Section 18 Recommendation with respect to a water-dependent use Project involving new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. This does not prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). This also does not prohibit or limit the use of new fill the purpose of which is to accommodate mechanical or structural elements of the Project that enter the seabed, such as, elevator shafts, ventilation shafts, utility conduits, piles, or the like, provided that such fill is limited to that reasonably required under the circumstances and provided that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by the Boston Zoning Code.

No floating structure, other than a vessel, may be used or arranged or designed to be used except for a Water-Dependent Use.

Restrictions on Pier Expansion

The Harborpark Plan and Zoning restrictions on pier expansion support the Chapter 91 policy intended to protect the utility and adaptability of sites for water-dependent purposes. The restrictions on pier expansion for non-water dependent uses are stringent in 90 percent of the waterfront. Within the Fort Point Waterfront and the Dorchester Bay/Neponset River Waterfront no pier expansion is permitted for other than publicly accessible open space or other water-dependent use. Within the Charlestown Waterfront and the Charlestown Navy Yard no pier may be expanded beyond the Pierhead Line.

Within the North End Waterfront, lateral expansion of piers is permitted only for public access, and is limited to twelve feet on either side. Expansion of the ends of piers is permitted up to but not beyond the 1880 Harbor Line for a non-water dependent use. However, only two piers in the North End Waterfront are landward of the 1880 Harbor Line -- Lewis Wharf and Commercial Wharf -- and these piers are within approximately four to eight feet of the Line, making expansion potential and impact minimal.

The Downtown Waterfront is the only subarea where more than minimal expansion for non-water dependent uses is permitted. Within the context of an urban port, adjacency of the Downtown Waterfront to the financial district, and need to allow for mixed commercial development on the Harbor, this expansion potential is logical. The potential to expand is limited, however. No pier may extend more

than fifty feet beyond the 1880 Harbor Line, and any extension beyond this Line must be used exclusively for publicly accessible open space or water-dependent facilities of public accommodation. The sides of piers may be expanded provided that such expansion does not prevent safe and convenient navigation between piers. Compensating for pier expansion in this area is the requirement that any new development in the Downtown Waterfront include a major water transit facility as discussed below.

In addition, any project subject to Waterways Regulations under Chapter 91, effective on October 4, 1990 is required by this Plan to provide one-to-one replacement of water surface, repair and improvements to existing seawalls or other harbor improvements designed to increase open water area, as discussed in Chapter VII, part 1 "On-Site Open Water Replacement for Pier Extensions" (310 C.M. R.9.51(3)(a))."

Water Transportation Facility Requirement.

To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Charlestown Waterfront, the Charlestown Navy Yard, the North End Waterfront, the Downtown Waterfront, or the Fort Point Waterfront Subdistrict, unless water transportation facility requirements are met. In making a Section 18 Recommendation, the extent to which provision is made on the Project site for waterborne passenger transportation facilities is considered in the context of the project location relative to the surrounding neighborhood and uses, and to the water transportation system needs as a whole. This includes terminals and landings for water ferries, water shuttles, or water taxis, and free public landings, and in the Downtown Waterfront Subdistrict, such facilities shall also include main terminals and passenger facilities for commuter boats, cruise boats, and ferries as appropriate to the scale, use, and location of the Project and in accordance with the water transportation guidelines of the Harborpark District Plan.

B. CHAPTER 91 POLICIES

1. 310 CMR 9.31(2). Proper Public Purpose Requirement

No license or permit shall be used by the Department for any project on tidelands or Great Ponds, except for water-dependent use projects located entirely on private tidelands, unless said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said tidelands.

2. 310 CMR 9.35(5). Management of Areas Accessible to the Public

Any project that includes tidelands or Great Ponds accessible to the public, in accordance with any of the above provisions, shall provide for long-term management of such area which achieves effective public use and enjoyment while minimizing conflict with the legitimate interests including protection of private property and natural resources.

3. 310 CMR 9.51: Conservation of Capacity for Water-Dependent Use

310 CMR 9.51 (1). If the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which reasonably can be expected to locate on or near the project site.

310 CMR 9.51 (2). If the project includes new structures or spaces for nonwater-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site. Aspects of built form that may give rise to design incompatibility.

4. 310 CMR 9.53: Activation of Commonwealth Tidelands for Public Use

310 CMR 9.53 (2). 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.

- (a) in the event the project site includes a water-dependent use zone, at least one facility utilizing the shoreline in accordance with the provisions of 310 CMR 9.52(1)(e) must also promote water-based public activity; such facilities include but are not limited to ferries, cruise ships, water shuttles, public landings, and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers;
- (b) the project shall include exterior open spaces for active or passive public recreation, examples of which are parks, plazas, and observation areas: such open spaces shall be located at or near the water to the maximum reasonable extent, unless otherwise deemed appropriate by the Department, and shall include related pedestrian amenities such as lighting and seating facilities, restrooms and trash receptacles, children's play areas, and safety ladders along shoreline walkways, as appropriate;
- (c) the project shall devote interior space to facilities of public accommodation, other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use; such public interior space shall be located at the ground level of all buildings containing nonwater-dependent facilities of private tenancy, unless the Department determines that an alternative location would more effectively promote public use and enjoyment of the project site or is appropriate to make ground level space available for water-dependent use or upper floor accessory services.

C. HARBORPARK PLAN IMPLEMENTATION STRATEGIES

1. Development Review Requirements: Article 31

Boston Zoning Code (BZC) Sections 42A-8, 42B-8, 42E-8, and 42F-8 require that any Proposed Project within the Harborpark District (a) to erect a building or structure having a gross floor area of ten thousand (10,000) or more square feet; (b) to enlarge or erect a building or a structure so as to increase its gross floor area by ten thousand (10,000) or more square feet; (c) to establish or change the uses of fifty thousand (50,000) or more square feet of gross floor area; or (d) involving the construction, demolition, or alteration of any Pier or the alteration of any shoreline, which construction, demolition, or alteration affects one thousand (1,000) or more square feet of Lot Area shall be subject to the provisions of Article 31 of this Code, Development Review Requirements, provided that a Proposed Project for an allowed maritime-dependent industrial use located within a maritime economy reserve subdistrict and subject to review by the Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts under the Massachusetts Environmental Protection Act and its implementing regulations shall not be subject to the requirements of Article 31.

The scope of review of a Proposed Project within the Harborpark District subject to the provisions of Article 31 shall be as set forth in Section 31-5, modified as set forth below:

- (a) Only Proposed Projects with a gross floor area of fifty thousand (50,000) or more square feet shall be subject to the Transportation Component provisions of Section 31-6.
- (b) Notwithstanding any contrary provision of Sections 31-5 through 31-10, review and analysis of a Proposed Project pursuant to this Section 42F-8 shall include review and analysis of those additional matters identified in Subsections 2 through 4 of this Section 42F-8, and appropriate design and mitigation measures may be required by the Boston Redevelopment Authority in connection therewith.

2. Urban Design Guidelines

Review and analysis of a Proposed Project pursuant to Section 31-8, Urban Design Component, shall include review and analysis of such Proposed Project in accordance with the urban design guidelines set forth in this Subsection 2. The issuance of an Adequacy Determination by the Boston Redevelopment Authority approving the Applicant's Final Project Impact Report pursuant to Subsection 31-5.6 shall constitute the Boston Redevelopment Authority's determination of compliance with this Subsection 2, subject to any conditions as may be expressly set forth in said Adequacy Determination.

3. Pedestrian Environment Enhancement

Enhancement of Pedestrian Environment. Review and analysis of a Proposed Project, pursuant to Section 31-8, Urban Design Component, shall also

include review and analysis of the extent to which the Proposed Project promotes and enhances the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, signage, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.

4. Tidelands Component

The Boston Redevelopment Authority shall require, in its Scoping Determination issued pursuant to Section 31-5 with respect to any Proposed Project located within the Harborpark District and requiring a Chapter 91 License, an additional development review component to be known as the "Tidelands Component." The Boston Redevelopment Authority shall require the Applicant to include in the Draft Project Impact Report, submitted for the Proposed Project pursuant to Section 31-5.3, an analysis of the Proposed Project together with such plans, drawings, and specifications as are necessary for the Boston Redevelopment Authority to determine that the Proposed Project complies with the standards and requirements set forth in Sections 42A-5, 42B-5, 42E-5 and 42F-5 (Tidelands Regulations) of the Harborpark District Zoning.

5. Restrictions on Fill and Floating Structures

BZC Sections 42A-5.8, 42B-5.7, 42E-5.7 and 42F-5.7 restrict new fill in Boston Harbor, and prohibit uses other than a water-dependent use on floating structures.

6. Restrictions on Pier Expansion

BZC Sections 42A-5.9, 5.10 and 5.11; 42B-5.8; 42E-5.8; and 42F-5.8 restrict pier expansion in the Harborpark District.

VI. PROMOTING THE WORKING WATERFRONT

This Chapter V defines the fourth of the four comprehensive policies of the Harborpark Plan, promoting the working waterfront, and relates this policy to the Chapter 91 policies which it complements and supports, and to specific Harborpark implementation strategies. Through reserving waterfront land and piers for deep water shipping activities and support facilities, the traditional vitality of Boston Harbor will be continued to the economic benefit of the City and its residents.

A. HARBORPARK PLAN POLICY

Protect and enhance the waterfront's maritime industries which require deep-water shipping channels and land-side facilities on the Harbor.

Throughout its history Boston Harbor has served the City, the region and the United States, in war and in peace, through a series of seaport activities and industrial and manufacturing uses. In the post WWII period, basic changes in the New England economy, along with technological advances in ocean cargo handling caused both a decline in the need for services devoted to these uses and a reduction in the waterfront lands required to provide them. In addition, the U.S. Naval Bases in Charlestown and South Boston have been closed and the properties have been sold to the City of Boston and the Boston Redevelopment Authority. Finally, the ship repair and construction industry, which has been in long term decline throughout the U.S., have significantly contracted, but now stabilized within the harbor.

The result of these factors, taken together, has been that a substantial volume of waterfront property has become vacant or lain underutilized for more than a decade. Massport has participated in and supported the City's planning process resulting in the establishment of maritime-industrial reserve areas which reflect Massport's view of current and future port capacity needs.

Research into the historic pattern of what we now call "water-dependent uses" on Boston's waterfronts reveals a consistent practice of converting these properties to upland uses during cyclical declines in maritime activities. When the cycle would swing back to demand for piers, wharves, and backlands for maritime use, the response was typically to wharf out or landfill further into the Harbor. City policy directs that this pattern must now be broken in order to protect the natural health of the harbor.

Planning research also reveals that most upland uses, with the general exception of industrial types, are intolerant of the necessary noise, bustle, odors, etc. which are unavoidable when operating a working, productive, and competitive seaport. Housing, many types of general office, some retail, other uses, and even some water-recreation facilities encroach on working waterfronts, constrain their vital inland transportation connections, and ultimately drive out the maritime economy. It is also true that most of these non-water-dependent land uses are more profitable than the water-dependent ones which they would replace, a further incentive to property owners to "gentrify" working waterfront properties.

Conversely, the provision of proximate, but safe, access for the public to view the working waterfront engenders support for these industries. Encouraging the public to directly observe the waterfront at work generates citizen support for the overall maritime economy.

Urban waterfronts, such as Boston's, are complex and diverse mechanisms. Successful urban waterfronts are those which are planned, managed, controlled, and operated with a fine grain approach, and through a host of restraints and incentives. The City of Boston and the Boston Redevelopment Authority, in conjunction with its waterfront neighborhoods, and with the support of the maritime private sector and cooperating federal and state agencies, has been fully engaged since the onset of the Harborpark Program in crafting a framework for the protection and enhancement of its working waterfronts and implementing the necessary controls and supports to produce continued vitality in this sector. Our Municipal Harbor Plan is an expression and product of that effort.

OBJECTIVES

The Working Waterfront element of the Boston Municipal Harbor Plan is designed to seek several objectives in pursuit of an active and dynamic waterfront.

1. To protect and enhance opportunities for water-dependent industrial uses.
2. To protect and enhance landside transportation access.
3. To protect the Harbor's watershed, channels, and turning basins for vessel operations.
4. To protect the existing maritime based economy and to provide it with "breathing room" and space to grow.
5. To provide facilities for safe public access to or near working waterfront facilities.

MODERNIZED ZONING CONTROLS - WATERFRONT PROTECTION

The primary and most effective means to secure protection and enhancement of the working waterfront on Boston Harbor is to alter and modernize land use controls to provide for the operations, access, and other physical requirements of water-dependent activities, and to prevent the development of land uses which have a history of encroaching upon or displacing land uses which require direct access to land at the water's edge.

The Commonwealth of Massachusetts and the City of Boston have pursued similar efforts to revise and update their respective land use controls. Through the DEP/CZM process the mechanism of Designated Port Areas responds to today's challenges of protecting maritime industry. The BRA, through Harborpark planning process, developed and implemented new zoning mechanisms to protect the working waterfront.

The three major zoning changes, text and map amendments, have been adopted which address distinct categories of land use and water-dependency or

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compatibility with water-dependent uses. The first of these, the Maritime Economy Reserve District (MER), is designed to provide rigorous protection for specific, essentially heavy industrial water-dependent uses; the second, the Waterfront Service District, is intended to provide protection for small sized, mixed water-related and water-dependent uses; and the third category, Waterfront Manufacturing District (WM), recognizes the synergistic relationship between general manufacturing and industrial uses and the working waterfronts on the harbor.

While complete copies of the referenced zoning amendments can be found in Appendix A, a brief description of each of these new categories and their attendant objectives and safeguards follows.

MARITIME ECONOMY RESERVE

The twelve (12) Designated Port Areas were established throughout the Commonwealth of Massachusetts as a component of the Massachusetts Coastal Zone Management Program. The DPA is a segment of urban waterfront exhibiting the following characteristics:

- o navigable channels of 20 foot depth or more at mean low water;
- o tidelands and associated lands abutting such channels which are suited to accommodate maritime dependent industrial uses;
- o the availability of well developed road and rail links leading to major truck and arterial routes; and
- o the availability of water and sewer services capable of supporting maritime dependent industrial uses.

The purpose of this designation is to ensure that these areas of special physical and operational requirements of uses dependent on access to navigable channels are not impaired by other development. Boston Harbor contains DPAs in Charlestown, South Boston, and East Boston.

In 1989, the Boston Redevelopment Authority and the Boston Zoning Commission, with the support of the Harborpark Advisory Committee and the waterfront businesses, amended the Boston Zoning Code to create the Maritime Economy Reserve District (MER) zoning category and map it onto Boston's Waterfront. The result of this rezoning is that over 660 acres, or over 25% of land on the Boston waterfront, including East Boston, has been dedicated to water-dependent industrial uses and protected from displacement by conflicting upland uses. All of the properties rezoned MER are contained within Designated Port Areas which was one of the City's criteria of establishing a MER. The MER districts do not completely encompass all of the DPAs since conditions have changed since the establishment of the DPAs in 1928 which make it appropriate to re-evaluate these sites. However, the districts strengthens, refines, and expands the state policy. While the DPAs permit a proportion of non-maritime industrial uses, the MER permitted uses are limited to maritime industrial uses.

The specific objectives of the Maritime Economy Reserve are:

1. Preserve for maritime dependent industrial use, and particularly for the ocean borne carriage of goods and passengers, adequate piers, wharves and land necessary for vessels and their support facilities in Boston Harbor.
2. Foster and promote a maritime economy within the City of Boston.
3. Protect against encroachment of uses that threaten the continued viability of maritime operations in Boston.
4. Designate sites for maritime dependent industrial uses along the waterfront consistent with applicable state policy and the unique needs of the maritime industry for waterfront property.

MER District Allowed Uses

The language of MER is highly restrictive regarding land uses allowed as-of-right. Any uses not listed below would require a variance from the Zoning Board of Appeal or a zoning change from the Boston Zoning Commission. No variances from the MER have been granted, nor zoning changes made since the passage of this amendment in October of 1989. The following include those uses which are permitted in a MER:

1. Maritime terminals and related structures for the transfer between ship and shore of passengers and goods transported in waterborne commerce.
2. Wharves, piers, docks, processing and storage facilities for the commercial fishing industry.
3. Facilities associated with marina terminals for the storage of goods transported in waterborne commerce.
4. Dry docks and other facilities related to the construction, serving, storage, maintenance or repair of vessels and other marine structures.
5. Other docks, wharves, berths, dolphins, or mooring facilities for two boats, barges, dredges, ferries, commuter boats, water buses, water-taxis, or other vessels engaged in waterborne commerce, port operations, or marine construction.

WATERFRONT SERVICE DISTRICT

On April 27, 1990 the Boston Zoning Commission amended the Code to create the Waterfront Service District or "WS" zone. The objectives of this action were:

1. To preserve for water-dependent commercial use, adequate piers, docks, and land necessary for the repair, maintenance, and sale of commercial and recreational vessels.
2. To provide appropriate areas for the sale of marine fuel and boating supplies.

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3. To protect the encroachment of uses that threaten the continued economic viability of these specialized operations in Boston.
4. To designate sites along the waterfront for other water-dependent commercial uses such as tug boats and lobster boats, to support the unique needs of these uses for waterfront property.
5. To support through allied and supporting uses the maritime dependent industrial use of Boston Harbor.

Allowed Uses in WS Districts

Allowed uses within a WS zone range from boat ramp through boat carpentry shops to aquaculture facilities, in other words the entire range of uses which allow small and medium size water-dependent business to produce goods and provide services necessary to the effective integrated function of Boston's maritime economy.

WATERFRONT MANUFACTURING DISTRICT

On April 27, 1990, the Boston Zoning Commission amended the Code to create the Waterfront Manufacturing District or "WM" zone. The objectives of this action were:

1. To protect the working waterfront and preserve areas for manufacturing uses and waterfront service uses.
2. To support maritime industrial uses through promotion of related manufacturing uses.
3. To protect against the encroachment of uses that threaten the continued economic viability of these specialized operations.
4. To promote uses which integrate activities, uses, and physical connections between the harbor and its surrounding neighborhoods.

Allowed uses are the full range of manufacturing while forbidden uses are ones that would set up significant conflicts with manufacturing and industrial operations and proximate water-dependent activities.

WORKING WATERFRONTS BY NEIGHBORHOOD

Working Waterfront activities within the City of Boston are distributed throughout the five neighborhoods lying on the foreshores of Boston Harbor. Modifications to the Boston Zoning Code protect existing operations, by reflecting in land use controls the active areas, and provide room to grow, through reserving proximate vacant lands for these purposes and reinforcing the zoning other abutting properties which are in sympathetic industrial or manufacturing use.

It is important to note that the Massachusetts Port Authority, by far the largest property owner on the Boston waterfront and the agency most centrally

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responsible for the operation and planning of the working port, not only owns many of the rezoned properties but also controls sites abutting or proximate to large MER zoned areas and has given its full support to the MER plan.

Harborpark District Zoning maps identify the boundaries reserving a total of 804.6 acres of the Boston waterfront for water-dependent industrial uses and support uses on a neighborhood by neighborhood basis.

Dorchester

Much of the Dorchester waterfront has long been committed to recreational uses due to its beachfronts on the shallow Dorchester Bay. Alterations in the pattern of land use have also occurred as a result of the construction of the Southeast Expressway which cut the Dorchester neighborhood off from its waterfront.

One site on Dorchester Bay houses the Boston Gas liquified natural gas terminal, although this product has for many years been piped to the facility rather than delivered by ship. Therefore, this site has been rezoned as a WS district for future use.

A further portion of Dorchester, in the Port Norfolk neighborhood, has been zoned "Waterfront Service." The WS control was originally created to protect the operation of a series of existing small vessel water-dependent uses at this location, from encroachment by upland uses while allowing such upland uses as would be complementary and would not displace the marina economy. 8.5 acres of the Dorchester waterfront have been rezoned WS, and 6.7 acres have been zoned WM.

Fort Point/South Boston

The most diverse portion of Boston's working waterfront is housed in the Fort Point District of the South Boston Neighborhood. Through shipment of international cargoes in petroleum products, building materials, automobiles and trucks, and general products ranging from Russian vodka to computers to rags, the regions center of the fish business, an active ship repair industry, and cruise and excursion vessel facilities, combine to utilize much of the district's 900 acres, create a diverse employment base for city residents, and provide a wide range of maritime services.

In order to protect the land uses which support the maritime economy, approximately 451 acres have been rezoned MER within the Fort Point/South Boston District.

Charlestown

The Charlestown neighborhood hosts substantial and diversified port operations including the Moran Container Terminal, a gypsum terminal, and a series of active and inactive warehouse properties. Opposite these port facilities, across the Mystic River in the City of Everett, are further water-dependent industrial facilities such as the Edison Everett Power Station, the Distrigas Terminal and a frozen fish terminal.

132.9 acres have been rezoned MER, 6.4 acres WS, and 29 acres WM in Charlestown. In addition, planning for the relocated New England Aquarium call for significant improvement of the haul provision of the freight railroad right-of-way in this area.

East Boston

The East Boston neighborhood hosts numerous working waterfront land uses ranging from major petroleum terminals on the Chelsea Creek and harbor, through ship repair and marine construction facilities at General Ship and the former Bethlehem Yard, to small vessel repair, storage, and ship service operations. Opposite a portion of the East Boston waterfront is the Chelsea waterfront which houses a series of similar marine industrial uses, maintaining the character of the Chelsea Creek as a vibrant part of Boston Harbor's working waterfronts.

While planning and rezoning for the East Boston neighborhood has not been completed, 83.2 acres of its waterfront already have been zoned MER.

B. CHAPTER 91 POLICIES

1. 310 CMR 9.36: Standards to Project Water-Dependent Uses

(1) General. The project shall preserve the availability and suitability of tidelands, Great Ponds, and other waterways 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. In applying this standard the Department shall act in accordance with the provisions of 310 CMR 9.36(2)-(5), and shall give particular consideration to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2.

2. 310 CMR 9.36

(5) The project shall not include fill or structures for nonwater-dependent or water-dependent, non-industrial uses which preempt water-dependent-industrial use with a Designated Port Areas (DPA).

C. HARBORPARK PLAN IMPLEMENTATION STRATEGIES

1. BZC Text Amendment No. 110, effective August 30, 1988, established the Maritime Economy Reserve District mapped on 667 acres in Charlestown, South Boston, and East Boston through Map Amendments Numbers 220, 221 and 222 respectively.
2. BZC Article 42C, effective April 27, 1990, established the Waterfront Service District mapped in the Charlestown Waterfront and Dorchester Bay/Neponset River Waterfront respectively through Map Amendment Number 245 and 246 respectively.
3. BZC Article 42D, effective April 27, 1990, established the Waterfront Manufacturing District mapped in the Charlestown Waterfront and

Dorchester Bay/Neponset River Waterfront through Map Amendment
Number 245, 242 and 246, respectively.

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VII. COORDINATION OF CHAPTER 91 REGULATIONS WITH THE HARBORPARK PLAN: SPECIFIC SUBSTITUTION REQUIREMENTS

Among the new features of the new waterways regulations is the opportunity provided for municipalities to submit a "municipal harbor plan" for review and approval by state authorities. Boston's Harborpark Plan has been prepared and submitted as the Municipal Harbor Plan for the City.

Municipal harbor plans offer a vehicle for encouraging comprehensive land-use and environmental planning for harbors by municipalities. From the perspective of municipalities, they offer the advantage of helping coordinate conflicting or inconsistent state and municipal land-use regulations as they affect tidelands area.

Some inconsistency between state and municipal land-use policies in tidelands when applied on a parcel-by-parcel basis is probably inevitable because, for logistical reasons, the state cannot undertake the kind of district-by-district and parcel-by-parcel analysis that underlies most municipal zoning. The State's substantive land-use requirements apply generally to all parcels along the Massachusetts coastline -- including parcels in natural beach areas and in crowded urban harbors.

Zoning, on the other hand, distinguishes among districts and parcels and imposes different requirements depending on location. Thus, while overall state and municipal objectives for a harbor may be similar, their specific regulations as they affect a particular parcel may be in conflict. For example, a tidelands height limit applicable to the entire Massachusetts coastline may not be necessary or appropriate to achieve tidelands policies when applied to parcels in Boston's most densely developed urban districts.

Regulatory Coordination

Coordination between municipal and state regulations is achieved through deference that state waterways and coastal zone management authorities are required to give the provisions of a state-approved municipal harbor plan, as described in 310 C.M.R. 9.34 (b). In reviewing a project in compliance with an approved municipal harbor plan, the Department of Environmental Protection is required to apply the use limitations and numerical standards of the approved municipal harbor plan in substitution for certain designated provisions of the Chapter 91 regulations. Those provisions are discussed below. In general, the Department is required to "adhere to the greatest reasonable extent" to guidance in the municipal harbor plan in making discretionary decisions under the regulations and to determine that the project complies with Coastal Zone Management policies, barring an unforeseeable conflict with those policies.

Boston Municipal Harbor Plan

The City of Boston has been preparing elements of its municipal harbor plan for over six years, since the establishment of the Harborpark Advisory Committee in 1984. The preparation of these elements has paralleled the preparation of the new Chapter 91 regulations and representatives of the State Department of

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Environmental Protection and Coastal Zone Management Office have been actively consulted throughout in the process.

Specific Provisions of the Chapter 91 Regulations for Which Substitution of Municipal Harbor Plan Requirements is Sought

The City of Boston hereby requests that the use limitations and numerical standards specified in the Harborpark Plan be substituted for the respective limitations and standards contained in the following provisions of the Chapter 91 regulations.

1. On-site open water replacement for pier extensions (310 C.M.R. 9.51(3)(a)).
 2. Restrictions on Non-Water-Dependent Facilities of Private Tenancy (310 C.M.R. 9.51(3)(b)).
 3. Dimensions of Water Dependent Use Zone (310 C.M.R. 9.51(3)(c)).
 4. Calculation of required open space (310 C.M.R. 9.51(3)(d)).
 5. Height limits (310 C.M.R. 9.51(3)(e)).
 6. Devotion of open space to public recreation (310 C.M.R. 9.53(2)(b)).
 7. Requirement of Interior Facilities of Public Accommodation (310 C.M.R. 9.53(2)(c)).
1. On-Site Open Water Replacement for Pier Extensions (310 C.M.R. 9.51(3)(a)).

The Chapter 91 regulations require that any extension of a pile-supported structure for non-water-dependent use beyond the footprint of an existing, previously authorized pile-supported structure or pile field must be compensated for through the restoration of open water elsewhere on the site by the removal of fill, pile-supported structures, or pile fields on a 1:1 square foot basis.

The Harborpark Plan prohibits pier extensions for non-water-dependent purposes throughout most of the Boston waterfront. For these areas, therefore, the issue of replacement of open water does not arise.

In the Downtown Waterfront, North End Waterfront, Charlestown Gateway Subdistrict, and Charlestown Navy Yard (essentially the Boston waterfront between the Fort Point Channel and Little Mystic Channel), limited pier extensions beyond historic footprints are permitted and the issue of replacement must be addressed.

The Chapter 91 (310 C.M.R. 9.51(3)(a)) regulations provide that the Department shall waive the on-site replacement requirement for projects conforming to a municipal harbor plan which:

specifies alternative replacement requirements which ensure no net loss of open water will occur for non-water dependent purposes, in order to maintain or improve the overall capacity of the state's waterways to

accommodate public use in the exercise of water-related rights, as appropriate for the harbor in question.

The Harborpark Plan allows limited pier extensions beyond historic footprints in the four subareas identified above, if the developer commits to making reasonable compensating improvements to the harbor that increase the amount of open water usable by vessels and for other water-related purposes.

Such reasonable compensating improvements include, but are not limited to:

- a. removal of existing previously authorized fill, pile supported structures, or pile fields on a 1:1 square foot basis either on-site or off-site within Boston Harbor.
- b. repairs or improvements to existing seawalls and other structures designed to increase the open water area that is safely and conveniently navigable by vessels or increase or improve dockage opportunities.
- c. other harbor improvements designed to increase the open water area safely and conveniently navigable by vessels or to increase the amount of open water usable by vessels or for other water-related purposes

The underlying policy of maintaining or improving "the overall capacity of the state's waterways to accommodate public use in the exercise of water-related rights...." (310 C.M.R. 9.51 (3)) is well-served by the Harborpark Plan.

Except in the most urban districts, the Harborpark Zoning is more restrictive than the Chapter 91 regulations because it does not permit pier extensions for non-water dependent purposes, regardless of whether compensating actions are taken elsewhere.

Within the Downtown Waterfront, North End Waterfront, Charlestown Gateway, and Charlestown Navy Yard, specific geographic restrictions are placed on pier extensions that reflect the historic use of the Boston Waterfront. No pier extensions for non-water-dependent purposes are allowed beyond the historic 1880 Harbor Line (which is landward of the currently applicable Pierhead Line) and even extensions beyond this line for water-dependent purposes are limited to 100 feet in the Downtown Waterfront and 12 feet in the North End. In the North End Waterfront, only two piers do not already extend to the 1880 Harbor Line, and they are within four to eight feet of the line, making expansion potential for non-water dependent use minimal. Lateral extensions are limited as necessary to prevent interference with navigation between piers. In the Charlestown Gateway and Charlestown Navy Yard, pier extensions are limited to the current Pierhead Line. Lateral expansion of piers in the North End Waterfront are limited to twelve feet on either side for publicly accessible open spaces to accommodate Harborwalk.

The Harborpark Plan recognizes that the usability of the open water area in a busy, multi-use harbor is dependent on a number of factors including the removal of obstructions, but also including repairs and improvements to seawalls and the harbor structures that affect the ability of vessels to navigate, dock, and

otherwise make use of the harbor. The Harborpark Plan is expressly conceived so that off-site compensation for open water loss due to pier extensions may include a variety of such compensating measures to give planners the maximum flexibility in achieving real and needed improvements to the usability of open water in the harbor.

2. Restrictions on Non-Water Dependent Facilities of Private Tenancy (310 C.M.R. 9.51(3)(b)).

The new Chapter 91 regulations prohibit so-called "facilities of private tenancy" that are non-water dependent on any story on piers and at ground level on fill within 100 feet of the project shoreline. Facilities of private tenancy are described in the regulations as facilities for which the advantages of use do not accrue to the public at large. This requirement prohibits the location of offices and housing on piers (except piers more than 200 feet wide).

Boston's waterfront is unique in Massachusetts as the largest traditional commercial waterfront in the Commonwealth. Since the Great Depression the waterfront has been in decline. Decaying and dangerous wharf and pier conditions have made public access to large sections of the waterfront impossible. To address these conditions and achieve the objectives of full public access to the waterfront and active pedestrian and water-related use of the harbor edge, Boston has developed the strategy of leveraging the recovery of the waterfront for active public use through private development. Such unique features as Harborwalk could not be achieved without such privately-sponsored redevelopment.

This strategy acknowledges the traditional mix of private commerce and public activity that has characterized the urban waterfront historically. The effective prohibition of facilities of private tenancy on piers and the imposition of a 100-foot setback for such facilities would make impossible mixed-use projects on piers or near the waterfront, potentially frustrating the City of Boston's strategy for restoring an active waterfront.

The Chapter 91 regulations (310 C.M.R. 9.15(3)(b)) allow the private tenancy restriction to be waived for projects conforming to a Municipal Harbor Plan which:

specifies alternative limitations and other requirements which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for non-water-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question.

The Harborpark Plan allows facilities of private tenancy on piers and within 100 feet of the shoreline on fill. However, it contains numerous provisions designed to assure access by the public to the waterfront and active public use of the waterfront area, consistent with state waterways policies:

- o The Plan includes Harborwalk, a continuous path that will allow and encourage public access to the waterfront, including nearly all of the

downtown and Charlestown harbor frontage. Completion of Harborwalk will be an extraordinary achievement for an existing urban harbor where public pedestrian access rights have not historically been generally respected. The Harborpark District Zoning contains provisions designed to ensure that each new project includes Harborwalk along its waterfront edges and provides for easy access from public ways to the waterfront.

- o The zoning for the Downtown Waterfront, North End Waterfront, Charlestown Gateway, and Fort Point Waterfront require that any project with a floor area of over 10,000 square feet involving new construction or substantial renovation on the ground floor, devote at least 40 percent of the ground floor area to facilities of public accommodation. This requirement applies to the entire project site within the Harborpark District -- not merely to these areas located on Commonwealth Tidelands as in the case with the Chapter 91 requirement.
- o Within the Downtown Waterfront, the zoning requires that 25 percent of the ground floor area be devoted to cultural uses in addition to the 40 percent facility of public accommodation requirement. Again, this requirement applies to the entire project site.
- o Within the Downtown Waterfront, North End Waterfront, Charlestown Gateway, Charlestown Navy Yard, and the Fort Point Waterfront seaward of Northern Avenue, a 50-percent public open space requirement is imposed, helping assure public use of the site, including the waterfront edge.
- o The zoning requires generally that active pedestrian use be encouraged of all public access facilities and open space areas through such means as appropriate ground level uses and pedestrian amenities. These requirements are implemented through the City's design review process under Article 31 of the Boston Zoning Code.
- o Within the Downtown Waterfront and North End Waterfront, Charlestown Gateway, Charlestown Navy Yard, and the Fort Point Waterfront, the zoning requires that provision be made for water transportation facilities, ranging from water taxis to commuter boats, helping assure pedestrian activity and public access.
- o With the Downtown Waterfront, residential uses are prohibited on the ground floor on piers.

Taken together, these regulations and policies describe an active urban public waterfront, knit together by Harborwalk and animated by mixed-use private development that welcomes and accommodates the public.

3. Water-Dependent Use Zone (310 C.M.R. 9.51 (c)).

The Chapter 91 regulations establish a "water-dependent use zone" along the waterfront edges of a project. Within this zone, no non-water-dependent buildings are permitted.

The Harborpark zoning contains a similar concept, referred to as the "waterfront yard area." Within the waterfront yard area, no buildings of any kind are permitted, except necessary structures for safety and public amenities as described. Thus, the waterfront yard area is more restrictive than the water-dependent-use zone as to permitted uses. One of the key purposes of the waterfront yard area is the accommodation of Harborwalk.

The similarities between the Chapter 91 and Boston municipal Harbor Plan requirements are more pronounced than their differences.

The landward boundaries of the water-dependent use zone and the waterfront yard area are defined somewhat differently as indicated in the following table and it is this difference that provides the need for substitution.

	Required Setback (excluding piers)	Required Setback (sides of piers)	Required Setback (ends of piers)
Chapter 91 Water-Dependent Use Zone	25% of weighted average distance from high water mark to landmark lot line but no less than 25 feet nor more than 100 feet	15% of distance edge to edge but no more than 50 feet nor less than 10 feet	25% of distance from edge of pier to base, but no more than 100 feet nor less than 25 feet
Harborpark Zoning Waterfront Yard Area			
Charlestown Waterfront	35'	12'	35'
Charlestown Navy Yard	35'*	12'**	35'
Downtown Waterfront	35'	12'	50'
North End Waterfront	35'	12'	35'
Fort Point Waterfront	35'	12'	50'
Dorchester Bay/ Neponset River Waterfront	35'	12'	35'

* Twenty foot setback along northeastern edge of Parcels 6 and 7.

** Minimum 65 foot, average 75 foot setback required along the northeastern edge of Parcel 5.

The Chapter 91 regulations (310 C.M.R. 9.51 (c)) allow for a waiver of the water-dependent use zone requirement for projects conforming to a municipal harbor plan which:

specifies alternative setback distances and other requirements which ensure that new buildings for non-water-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 activity and public access associated therewith, as appropriate for the harbor in question. In addition to the required waterfront yard area, each project over 10,000 square feet is subject to Development Review Requirements under BZC Article 31 and to Design Review by the BRA in order to ensure that, as indicated in 310 CMR 9.51(3)(c), the conditions for waiver are met.

As is clear from the above table, the provisions of the Chapter 91 regulations and Municipal Harbor Plan regulations are comparable. The fact that Harborwalk is specifically provided for in the Municipal Harbor Plan illustrates how the Plan goes beyond the regulatory requirements by including substantive planning concepts that assure and encourage public access to the waterfront.

4. Open Space Calculation (310 C.M.R. 9.51 (d)).

The new Chapter 91 regulations require that one square foot of open space be provided for each square foot of tidelands occupied by the footprints of buildings containing non-water dependent uses.

The Municipal Harbor Plan includes 50-percent open space requirement whose objectives are identical to those of the Chapter 91 regulations. However, technical differences between the two rules are sufficient to require a waiver of the state rule to avoid prejudicing projects by inconsistent requirements. The most significant technical differences are:

- o For ease of implementation, the Harborpark 50-percent open space requirement is measured relative to lot area, not tidelands area. Thus, the Harborpark requirement is more inclusive.
- o The Harborpark zoning carefully describes what is and is not open space. The rules are designed to maximize public use of waterfront sites while providing clear guidance to project architects. No such detailed guidelines are included in the Chapter 91 regulations.
- o The Harborpark open space requirement is applicable only to new construction. The Chapter 91 regulations also require that renovation and reuse projects provide open space to "the maximum reasonable extent." The Chapter 91 regulations do not make clear how a renovation project, not involving new construction, could increase the amount of open space otherwise provided.

The Chapter 91 regulations allow for a waiver of the open space requirement for projects conforming to a municipal harbor plan which:

specifies alternative site coverage ratios and other requirements which ensure that, in general, buildings for non-water-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.

A substitution is appropriate with respect to the Boston Municipal Harbor Plan because the substantive objectives of the two regulatory schemes are essentially identical with only technical differences differentiating them.

5. Height Limits. (310 C.M.R. 9.51(3)(e)).

The new Chapter 91 regulations impose uniform height limits for the Massachusetts coast. The basic height limit is 55 feet on piers and within the

area up to 100 feet landward of the high water mark. Further landward, six inches of height is added for each additional foot of separation from the high water mark.

The Harborpark Plan imposes height limits that vary with location. In the Downtown Waterfront, adjacent to the Financial District, and at Yard's End in the Charlestown Navy Yard, up to 155 feet in zoning height are permitted on piers and within 100 feet of the high water mark, consistent with Boston's historic 1924 zoning of the waterfront. In the Fort Point Waterfront, zoning height limits range from 55 feet stepped back from the water to 250 feet. Elsewhere in the Harborpark District, the height limits are generally more restrictive than the Chapter 91 regulations. In the North End, except at the Pilot House Extension and Sargents Wharf sites, there is an absolute 55 foot height limit that does not increase with separation from the high water mark. (On the Pilot House Extension and Sargents Wharf the height limit is 75 feet.) This 75 foot height limit is consistent with the existing historic Pilot House building and appropriate to the urban design character of the area. Throughout most of Dorchester Bay/Neponset River Waterfront height limits of 35 feet are applicable.

Where height limits included in the Harborpark Plan exceed 55 feet they remain contextual with urban surroundings. The Downtown Waterfront, where buildings on piers are allowed gradually to step up from 55 feet to 155 feet, is adjacent to the most densely developed urban area in the Commonwealth. The Pilot house Extension site is landward of a 75 foot historic building. The Charlestown Navy Yard already includes new and historic buildings of comparable height to the heights proposed in the Harborpark Plan and all are dwarfed by the nearby Tobin Bridge structure. Larger commercial buildings are restricted to the Yard's End area of the Navy Yard, away from the lower scale residential and historic buildings of the Historic Monument Area.

On the whole, within the Harborpark District, 49 percent of the area is zoned for heights less than 55 feet, 38 percent of the area is zoned for benefits equal to 55 feet, and only 13 percent of the area is zoned for heights greater than 55 feet.

The Chapter 91 regulations (310 C.M.R. 9.51(e)) provide that the stated height limits shall be waived for a project conforming to a municipal harbor plan which:

specifies alternative height limits and other requirements which ensure that, in general, such buildings for non-water-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.

To assure that buildings are appropriately scaled and do not impose wind, shadow, or other conditions that would adversely affect ground level uses and pedestrian activity, significant projects are required to undergo comprehensive development and design review under Article 31 of the Zoning Code. In contrast to the general rule applicable elsewhere in the City, which requires Article 31 review for projects in excess of 50,000 square feet of floor area, within Harborpark projects of 10,000 square feet and up must be reviewed under Article

31.. This approach is appropriate since microclimate impacts are highly project-specific and are not effectively addressed through a uniform rule.

6. Devotion of Open Space Areas to Public Recreation (310 C.M.R. 9.53(2)(b)).

The new Chapter 91 regulations require that all Commonwealth tidelands areas on fill or piers and not under buildings be devoted to active or passive public recreation, except areas that the Department determines are necessary to accommodate water-dependent uses, public ways and parking.

The Harborpark Zoning seeks to achieve the same objectives as the Chapter 91 regulations, but in a manner that differs technically from the Chapter 91 approach. In addition, the Harborpark 50 percent open space requirement applies in both Commonwealth and private tidelands. The Harborpark Plan requires that all open space established for the purposes of satisfying the 50-percent open space requirement be publicly accessible 24-hours per day. The Harborpark District Zoning also requires submission of an Open Space and Public Access Plan for any project subject to Article 31 that ensures the quality of such spaces for the public.

The operational differences between the two rules are minor. The Chapter 91 rule would require that, essentially, all Commonwealth tideland areas not covered by buildings or water be devoted to public recreation, water-dependent cases, or roads and parking. In contrast, the Harborpark rule does not require that a project reserve more than 50-percent of the lot area as publicly accessible open space. Thus, if a developer voluntarily elected to decrease the lot coverage of the project, and reduce perceived density, so that the 50-percent open space requirement was exceeded, the project would not be penalized by a rule disallowing the use of the additional open space for other than public recreation. Further, under the Harborpark scheme, roads and parking and water-dependent uses not accessible to the public cannot be counted as open space for the purposes of the 50-percent requirement. Thus, the Harborpark rule discourages use of waterfront land for roads and surface parking.

The Chapter 91 regulations (310 C.M.R. 9.53(2)(b)) provide the public recreation requirement can be waived for a project conforming to a municipal harbor plan which:

specifies alternative requirements for public outdoor recreation facilities that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner.

A waiver is justified to prevent the technical inconsistencies between the rules from prejudicing a project.

7. Interior Facilities of Public Accommodation(310 C.M.R.9.53).

The new Chapter 91 regulations require that a non-water dependent project devote the ground floors of buildings entirely to facilities of public accommodation, unless the Department determines that an alternative location would more effectively promote the use of the project site or that ground floor area is needed for water-dependent uses or accessory services to upper floor uses.

As discussed above in connection with facilities of private tenancy, Boston's waterfront presents a unique situation and the City of Boston has developed a strategy for restoring the waterfront to active public use that addresses this uniqueness. The City is employing a strategy of using the economic leverage of private development to reclaim its waterfront for active public use.

The Municipal Harbor Plan is designed to provide a practical means of achieving the objectives of the facility of public accommodation requirement -- namely to "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." (310 C.M.R. 9.53 (2))

The Chapter 91 regulations (310 CMR 9.53(2)(c)(2)) allow for a waiver of the facility of public accommodation requirement for projects conforming to a Municipal Harbor Plan which:

specifies alternative requirements for interior facilities of public accommodation that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner.

The Harborpark Plan includes the following relevant provisions that achieve these objectives:

- o The Plan includes Harborwalk, a continuous path that will allow and encourage public access to the waterfront, including nearly all of the downtown harbor frontage. Completion of Harborwalk will be an extraordinary achievement for an existing urban harbor where public pedestrian access rights have not historically been generally respected. The Harborpark District Zoning contains provisions designed to ensure that each new project includes Harborwalk along its waterfront edges and provides for easy access from public ways to the waterfront.
- o The zoning for the Downtown Waterfront, North End Waterfront, and Charlestown Gateway and the Fort Point Waterfront require that any project with a floor area of over 10,000 square feet involving new construction or substantial renovation on the ground floor, devote at least 40 percent of the ground floor area to facilities of public accommodation. This requirement applies to the entire project site within the Harborpark District -- not merely to those areas located in Commonwealth Tidelands, as is the case with the Chapter 91 regulations.
- o Within the Downtown Waterfront, the zoning requires that 25 percent of the ground floor area be devoted to cultural uses in addition to the

40 percent facility of public accommodation requirement. Again, this requirement applies to the entire project site.

- o Within the Downtown Waterfront, North End Waterfront, Charlestown Gateway, and Charlestown Navy Yard, and the Fort Point Waterfront seaward of North Avenue, a 50-percent public open space requirement is imposed, helping assure public use of the site, including the waterfront edge.
- o The zoning requires generally that active pedestrian use be encouraged of all public access facilities and open space areas through such means as appropriate ground level uses and pedestrian amenities. These requirements are implemented through the City's design review process under Article 31 of the Boston Zoning Code.
- o Within the Downtown Waterfront and North End Waterfront, Charlestown Gateway, and Charlestown Navy Yard the zoning requires that provisions be made for water transportation facilities, ranging from water taxis to commuter boats, helping assure pedestrian activity and public access.
- o With the Downtown Waterfront, residential uses are prohibited on the ground floor on piers.

Taken together, these regulations and policies describe an active urban public waterfront, knit together by Harborwalk and animated by mixed-use private development that welcomes and accommodates the public.

VIII. THE CONSISTENCY OF THE PLAN WITH STATE WATERWAYS POLICIES

The Harborpark Plan has been developed in close cooperation with the staffs of the Department of Environmental Protection (DEP) and the Office of Coastal Zone Management (CZM). The general goals and objectives of the Harborpark Plan are in close alignment with the goals and objectives of state waterways and coastal zone management policies. This is both appropriate and necessary since an approved municipal harbor plan becomes an instrument of both city and state policy.

Standards for approval of a municipal harbor plan are set forth at 301 C.M.R. 23.05. In general, these standards require overall consistency with the Harbor Planning Guidelines of CZM, with the CZM Policies (set forth at 301 C.M.R. 20.99), and with state tidelands policy objectives, as set forth primarily in the state waterways regulations (310 C.M.R. 9.00 *et. seq.*) and summarized in the municipal harbor plan approval regulations at 301 C.M.R. 23.05(3)(1).

Harbor Planning Guidelines have not yet been issued by CZM. Consistency with CZM Policies is addressed in Chapter IX. This Chapter VIII focuses on the consistency of the Harborpark Plan with state tidelands policy objectives.

The municipal harbor plan approval regulations identify 10 primary state tidelands policy objectives. The manner in which the Harborpark Plan is consistent with each of these objectives is discussed below. This discussion is not intended to substitute for detailed provisions of the actual Plan, as set forth in Chapters I through VII, in the Harborpark District Zoning and in the accompanying regulatory and planning materials. Rather the discussion is intended to offer a "roadmap" to the most important and relevant provisions of the Plan in connection with each tidelands policy objective.

POLICY OBJECTIVE 1

To ensure that development of all tidelands complies with other applicable environmental regulatory programs of the Commonwealth, and is especially protective of aquatic resources within coastal Areas of Critical Environmental Concern, as provided in 310 C.M.R. 9.32(1)(e) and 9.33.

The policies and regulations of the Harborpark Plan are designed to assure compliance with the state's environmental laws and programs. As part of its development review process under Article 31 of the Boston Zoning Code, the Boston Redevelopment Authority requires that projects with a floor area in excess of 10,000 square feet or which alter piers or shoreline and affect more than 1000 square feet of lot areas prepare a Project Impact Report that addresses environmental and urban design impacts. Development review under Article 31 is described in Chapter V of the Plan. This review has been designed to complement, but not substitute the state's environmental review process under the Massachusetts Environmental Policy Act (MEPA). Review under Article 31 includes an "Environmental Component" (described in Section 31-7 of the Boston Zoning Code) which requires a developer to address in a Project Impact Report the following potential environmental impacts: wind, shadow, daylight, solar

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glare, air quality, water quality, geotechnical impacts, and solid and hazardous wastes. A "transportation component" (described in Section 31-6 of the Boston Zoning Code) addresses traffic, parking, and public transportation impacts. Developers typically combine the Project Impact Report, required under Article 31 with the Environmental Impact Report required under MEPA, and BRA planners coordinate with the environmental staff at the state's MEPA office in reviewing the combined document. Other agencies, such as the Boston Transportation Department, the Boston Water and Sewer Commission, the Massachusetts Water Resources Authority, and the Massachusetts Bay Transportation Authority routinely participate in project review. This environmental review is in addition to review by the Department of Environmental Protection and the Coastal Zone Management Office under Chapter 91.

While the Harbor Planning Area does not include an "Area of Critical Environmental Concern," other aspects of the Harborpark Plan help preserve the natural environments. Most notably, the preservation of over 1000 acres of the Harbor Planning Area as undeveloped open space, including large beach areas and wetlands in the Dorchester/Neponset River Waterfront, helps protect the natural environment. The preservation of open space is discussed in Chapter III of the Plan.

POLICY OBJECTIVE 2

To preserve any rights held by the Commonwealth in trust for the public to use tidelands for lawful purposes, and to preserve any public rights of access that are associated with such use, as provided in 310 C.M.R. 9.35.

While the City must govern activities occurring in the waterfront area through conventional regulatory authority under the police power, and does not share the Commonwealth's proprietary rights in tidelands, the Harborpark District Zoning has been designed to allow the City to coordinate with the Commonwealth's efforts to preserve such rights held in trust. Section 18 of Chapter 91 of the General Laws requires the planning board of a municipality in which a project is located to submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the project would serve a proper public purpose and would not be detrimental to the public's rights in tidelands. The Boston Redevelopment Authority serves as the planning board for the City of Boston. The Harborpark Zoning sets forth detailed standards for making this recommendation, thus assuring that even waterways policies founded on the public trust doctrine are effectively integrated into the city's project review process. The standards for making a Section 18 recommendation are set forth in Sections 42A-5, 42B-5, 42E-5, and 42F-5 of the Boston Zoning Code and are described in Chapter III of this Plan.

POLICY OBJECTIVE 3

To preserve 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 C.M.R. 9.32 (1)(b) and 9.36.

The Harborpark Plan establishes three types of zoning districts to accommodate maritime industry. The Maritime Economy Reserve (MER) District is designed to preserve port areas devoted to deep water shipping and other marine heavy industry. The Waterfront Services (WS) District protects smaller marine industries, such as boatyards and repair facilities. The Waterfront Manufacturing (WM) District protects the working waterfront, including a full range of manufacturing and water-dependent activities. These districts are described in detail in Chapter VI. More than 25 percent of the Harbor Planning Area is reserved under the Harborpark Plan for marine and related industrial uses. This approach takes a step beyond the Chapter 91 requirements, which must be applied on a project-by-project basis, by setting aside over a quarter of the harbor for marine and related industrial uses.

Harborpark Plan is fully consistent with the judicious application of the requirements of 310 C.M.R. 9.36 to preserve viable water-dependent uses in the context of development projects. An example of the effective use of this principle is the preservation and expansion of the Boston Sailing Center in the context of the Lewis Wharf development.

POLICY OBJECTIVE 4

To ensure that all licensed fill and structures are structurally sound and otherwise designed and built in a manner consistent with public health and safety and with responsible environmental engineering practice, especially in coastal high hazard zones and other areas subject to flooding or sea-level rise, as provided in 310 C.M.R. 9.37.

While working drawings are reviewed by BRA planners as part of development review under Article 31, the city does not have the primary responsibility for assuring the structural soundness of buildings. Issues of building integrity are regulated by the state building code and plan review is undertaken by state inspectors. Plans for buildings in flood zones are reviewed by the Federal Emergency Management Agency (FEMA). Nothing in the Harborpark Plan is inconsistent with the effective implementation of Policy Objective 4 by these authorities.

POLICY OBJECTIVE 5

To ensure patronage of public recreational boating facilities by the general public and to prevent undue privatization in the patronage of private recreational boating facilities, as provided in 310 C.M.R. 9.38; and to ensure that fair and equitable methods are employed in the assignment of moorings to the general public by harbormasters, as provided in 310 C.M.R. 9.07.

The Harborpark Plan does not address the operation of public and private recreational boating facilities. The City's new mooring regulations, described in Chapter IV of the Plan and set forth in full in Appendix A provide for a fair, equitable, and efficient method of allocating mooring space in Boston Harbor.

POLICY OBJECTIVE 6

To ensure that marinas, boatyards, and boat launching ramps are developed in a manner that is consistent with sound engineering and design principles, and include such pumpout facilities and other mitigation measures as are appropriate to avoid or minimize adverse impacts on water quality, physical processes, marine productivity, and public health, as provided in 310 C.M.R. 9.39.

As noted under Policy Objective 4 above, state authorities have the primary responsibility for assuring the structural integrity of buildings and other structures. However, dockage engineering standards developed by Childs Engineering, have been incorporated in the Harborpark Plan as guidelines to help ensure that dockage facilities in Boston Harbor conform to consistent and sound engineering standards and provide barrier-free access to vessels for handicapped persons. These guidelines are discussed in Chapter IV of the Plan.

The City's development review process under Article 31 requires an environmental review of any project with a floor area in excess of 10,000 feet or which involves pier construction or shoreline alteration affecting more than 1,000 square feet of lot area. As noted in connection with Policy Objective 1, city and state project reviews are coordinated and the city will defer to the state with regard to detailed engineering requirements for marinas, docks, and other facilities to assure the preservation of water quality. Nothing in the Harborpark Plan is inconsistent with the effective implementation of such requirements.

POLICY OBJECTIVE 7

To ensure that dredging and disposal of dredged material is conducted in a manner that avoids unnecessary disturbance of submerged lands and otherwise avoids or minimizes adverse effects on water quality, physical processes, marine productivity, and public health, as provided in 310 C.M.R. 9.40.

The Harborpark Plan does not address dredging and disposal of dredged material. Nothing in the Harborpark is inconsistent with the effective implementation of Policy Objective 7.

POLICY OBJECTIVE 8

To ensure that non-water-dependent use projects do not unreasonably diminish the capacity of any tidelands to accommodate water-dependent use, as provided in 310 C.M.R. 9.51.

The Harborpark Plan interprets this requirement as not being intended to prohibit the development of permanent, nonwater-dependent uses in the Harbor Planning Area. As described in Chapter IV, the City is pursuing a strategy of reclaiming abandoned and blighted areas of the urban waterfront for public use through balanced private development undertaken pursuant to strict guidelines assuring public access and active public use. City, state, and federal funds are not available to rebuild and reactivate the waterfront. This strategy implies that redevelopment urban sites will contain a mix of uses -- including public access, open space, and water-dependent uses on the one hand and private, non-water dependent uses on the other. The development review challenge for each project

is to assure that private uses, such as offices or housing, are not permitted to interfere with the fundamental objective of an open and accessible waterfront actively used by the broadest possible cross-section of Boston residents and visitors. The Harborpark Plan has been developed in anticipation of close coordination between city and state project reviewers in achieving these objectives.

These comments relate to primarily development projects planned for the revitalization of the core urban waterfront from the Fort Point area to the Charlestown Navy Yard. Such projects anticipated within the next ten years, and described in Chapter IV, occupy less than two percent of the total Harbor Planning Area. By way of comparison, one third of the Harbor Planning Area has been reserved as public open space and over one quarter for maritime and related industrial uses.

The provisions of 301 C.M.R. 9.51(3) establish "minimum conditions" for compliance with the requirement that capacity be conserved for water-dependent uses. These conditions address open water replacement, restrictions on facilities of private tenancy, water-dependent use zones, open space requirements and height limits. These conditions are subject to substitution by provisions of the state-approved municipal harbor plan, pursuant to 301 C.M.R. 9.34(2)(b). The substitutions entailed in the Harborpark Plan are addressed separately in Chapter VII.

POLICY OBJECTIVE 9

To ensure that 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 C.M.R. 9.52.

The Harborpark Plan requires that at least 50 percent of any development site in the core area from the Fort Point Channel to the Little Mystic Channel devote at least fifty percent of the project site to publicly accessible open space. In addition, the Harborpark Plan contains numerous provisions designed to encourage the active public use of waterfront parks, esplanades, boardwalks, and other open spaces. The primary provisions for achieving this goal are outlined under Policy Objective 10 below. The Harborpark Plan also includes provisions applicable within the core area requiring the provisions of water transportation facilities in connection with new development projects. Throughout the Harbor Planning Area, piers may be extended for water-dependent uses, including waterfront open space, creating an incentive to place water-dependent uses at the immediate water's edge. Further substantial portions of the waterfront are limited to water-dependent uses in the form either of open space or marine industrial uses.

The provisions of 301 C.M.R. 9.52, which set forth Policy Objective 9, include the requirement that the Department "give particular consideration to applicable guidance specified in a municipal harbor plan...." While the Harborpark Plan is and is intended to be consistent with Policy Objective 9, injudicious application of this objective to impose substantial uneconomic uses on waterfront projects, threatening their viability, could undermine the Harborpark strategy of using carefully controlled private development as a vehicle to reactivate the urban waterfront and reclaim it for public use. The Harborpark Plan should help guide the application of Policy Objective 9 to produce successful projects that include

appropriate water-dependment uses and make the maximum possible contribution to the reactivation of the waterfront.

POLICY OBJECTIVE 10

To ensure that nonwater-dependent use projects on Commonwealth tidelands, except in Designated Port Areas, 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 C.M.R. 9.53.

Chapter IV of this Plan describes the Harborpark strategy of using carefully controlled private development to reclaim for public use and reactivate blighted areas of the urban waterfront. In the absence of significant available city, state, or federal money for this purpose, the alternative to this strategy is the prospect that decaying piers and waterfront areas will continue to exclude the public and pose public safety hazards to neighbors, mariners, and others who use and visit the waterfront.

The key to the success of this Harborpark strategy is guiding successful development that opens and activates the waterfront and includes appropriate water-dependent uses. Provisions of the Harborpark Plan that help ensure that new development promotes the public use and enjoyment of waterfront areas include the following:

- o Harborwalk, a continuous path along the water's edge that will allow and encourage public access along the entire waterfront, harborwalk cannot be completed, or successfully maintained, without the active cooperation of private property owners along Harborwalk's path. The Harborpark Plan, including the Harborpark District Zoning and the Harborwalk Guidelines, is designed to help secure that cooperation.
- o The zoning for the Fort Point Waterfront, Downtown Waterfront, North End Waterfront, and Charlestown Gateway, require that any project with a floor area of over 10,000 square feet involving new construction of substantial renovation on the ground floor, devote at least 40 percent of the ground floor area to facilities of public accommodation. This requirement applies to the entire project site within the Harborpark District--not merely to those areas located in Commonwealth Tidelands, as is the case with the Chapter 91 regulations.
- o Within the Downtown Waterfront, the zoning requires that 25 percent of the ground floor area be devoted to cultural uses in addition to the 40 percent facility of public accommodation requirement. Again, this requirement applies to the entire project site.
- o Within the Downtown Waterfront, North End Waterfront, Charlestown Gateway, Charlestown Navy Yard, and the Fort Point Waterfront seaward of Northern Avenue, a 50-percent public open space requirement is imposed, helping assure public use of the site, including the waterfront edge.

- o The zoning requires generally that active pedestrian use be encouraged of all public access facilities and open space areas through such means as appropriate ground level uses and pedestrian amenities. These requirements are implemented through the City's design review process under Article 31 of the Boston Zoning Code.
- o Within the Fort Point Waterfront, Downtown Waterfront, North End Waterfront, Charlestown Gateway, and Charlestown Navy Yard the zoning requires that provisions be made for water transportation facilities, ranging from water taxis to commuter boats, helping assure pedestrian activity and public access.
- o Within the Downtown Waterfront, residential uses are prohibited on the ground floor on piers.

In sum, the Harborpark Plan is consistent with the fundamental policy objectives of the Commonwealth's waterways program and laws. It offers an effective vehicle for coordinating the waterfront regulatory activities of Boston and the Commonwealth. Most importantly, the Plan presents a practical and achievable means to continue the transformation of Boston's waterfront into a resource for all citizens that provides public access, revitalizes piers and shoreland, activates the waterfront zone, and ensures an effective working waterfront.

IX. CONSISTENCY WITH COASTAL ZONE MANAGEMENT POLICIES

The Boston Harborpark Plan has been developed to be consistent with CZM policies, as well as Chapter 91 standards for use of tidelands, in order to facilitate consistency determinations that CZM must make to DEP or federal permitting agencies for projects in the coastal zone. Proposed projects that are found to be consistent with an approved municipal harbor plan can then be presumed to be consistent with CZM policies.

The following summarizes each CZM regulatory policy and describes why the plan is consistent with the policy or notes whether the policy is not applicable to the land or water area regulated under the Harborpark Plan.

POLICY 1

Protect ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contributions to marine productivity and value as natural habitats and storm buffers.

The ecologically significant resource areas included in the Harborpark Plan are the South Boston and Dorchester beaches that have been subject to intensive recreational use over many years and thus have undergone varying amounts of alteration. Since they are in public ownership and zoned for open space, they are protected from development and do provide some value as natural habitat and storm buffers. In addition, the marshes surrounding the Neponset River are protected as wetlands. The current levels of bacteria and heavy metals in Boston Harbor makes clams and mussels unsafe for consumption. It is anticipated that with the future elimination of CSOs and clean-up of Boston Harbor shellfish beds will once again become safe for consumption.

POLICY 2

Protect complexes of marine resource areas of unique productivity (Areas for Preservation or Restoration (APRs)/Areas of Critical Environmental Concern (ACECs); ensure that activities in or impacting such complexes are designed and carried out to minimize adverse effects on marine productivity, habitat values, water quality, and storm buffering of the entire complex.

None of these marine resource areas of unique productivity exist in the area covered by the Harborpark Plan.

POLICY 3

Support attainment of the coastal zone through coordination with existing water quality planning and management agencies. Ensure that all activities endorsed by CZM in its policies are consistent with federal and state effluent limitations and water quality standards.

The Massachusetts Water Resources Authority is the regional agency charged with improving water quality in Boston Harbor. The Harborpark Plan incorporates a development review process for new projects to ensure that they do not degrade water quality during construction or operation and, where appropriate, that they work with the Boston Water & Sewer Commission's ongoing overhaul of antiquated sewer lines.

POLICY 4

Condition construction in water bodies and contiguous land areas to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity. 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.

The Harborpark Plan includes a development review process for development projects that addresses construction impact mitigation.

POLICY 5

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

The Harborpark plan does not address dredging and dredged materials disposal in detail. This matter is one in which the City of Boston's (Environment Dept.) is working in close cooperation with state and federal authorities to address strategic regional issues such as dredging/deepening the federal navigational channel in the Harbor as well as finding a suitable site or sites for disposal of contaminated dredged materials so that some long-delayed marina dredging projects can occur.

POLICY 6

Accommodate offshore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation.

Not applicable.

POLICY 7

Encourage the location of maritime commerce and development in segments of urban waterfronts designated as port areas. Within these areas, prevent the exclusion of maritime dependent industrial uses that require the use of lands subject to tidelands licenses.

The Harborpark Plan has established eight Maritime Economy Reserve Districts (MER) on over 660 acres of waterfront land in Charlestown, East Boston and

South Boston. The MER zoning supports and refines CZM policies on Designated Port Areas.

POLICY 8

For coastally dependent energy facilities, consider siting in alternative coastal locations. For non-coastally dependent energy facilities, consider siting in areas outside of the coastal zone. Weight the environmental and safety impacts of locating proposed energy facilities at alternative sites.

The Harborpark Plan includes development review process that would require the alternatives siting analysis described in this policy.

POLICY 9

- a. Accommodate exploration, development and production of offshore oil and gas resources while minimizing impacts on the marine environment, especially on fisheries, water quality and wildlife, and on the recreational values of the coast, and minimizing conflicts with other maritime-dependent uses of coastal waters or lands. Encourage maritime-dependent facilities serving supply, support or transfer functions to locate in existing developed ports.
- b. Evaluate indigenous or alternative sources of energy (coal, wind, solar and tidal power) and offshore mining to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, and wildlife, and on the recreational values of the coast.

Not applicable.

POLICY 10

All development must conform to existing applicable state and federal requirements governing sub-surface waste discharges, sources of air and water pollution and protection of inland wetlands.

The Harborpark Plan does not address this directly other than to require development projects to obtain applicable federal and state permits before issuing development approval.

POLICY 11

Protect designated scenic rivers in the coastal zone. Support designation of areas for preservation or restoration as "sign free areas".

Not applicable.

POLICY 12

Review proposed developments in or near designated or registered historic districts or sites to ensure that federal, state, and private actions requiring a state permit respect their preservation intent and minimize potential adverse impacts.

The Harborpark Plan includes a Development Review process for development projects that addresses impacts to historic districts. The City's development review process also requires that a project be reviewed by the Massachusetts Historical Commission and Boston Landmarks Commission when it is within the jurisdiction of these agencies.

POLICY 13

Review developments proposed near existing public recreation sites in order to minimize their adverse impacts.

Enhancing public recreation opportunities at the waterfront is one of the central policy goals of the Harborpark Plan.

The Harborpark Plan includes a development review process for development projects that addresses impacts to open space and recreation facilities.

The Harborpark Plan is consistent with many of CZM's non-regulatory policies (#14-27), insofar as the development review; design review and zoning work together to shape projects that are environmentally sound and:

- o ensure public access to public and private development sites;
- o revitalize Boston's underutilized or dilapidated piers;
- o activate the waterfront with recreation, open space, cultural facilities and water transportation; and
- o protect the maritime economy by protective zoning of areas with current or potential value for water-dependent use.

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MUNICIPAL HARBOR PLAN

The development of the Municipal Harbor Plan and the companion zoning law has been a collaborative effort. The City would like to thank the following individuals and organizations who have contributed to the process.

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