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

PART I: 6-26 NEW STREET

December 17, 2008

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

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving, subject to the conditions noted below, portions of the amendment to the City of Boston's East Boston Waterfront District Municipal Harbor Plan ("Plan") dated May 2008. The original East Boston Municipal Harbor Plan was approved on July 15, 2002. This Decision on the amendment to the original 2002 Plan presents a synopsis of Plan content, together with a determinations on how the Plan amendment complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00.

This decision involves the balancing of private interests and public rights in tidelands, and I must look to balance local development goals and objectives with my responsibilities as trustee to protect and promote the public trust rights in these tidelands. Upon the City's request, I have agreed to issue my Decision in two separate phases for three separate sub-areas under consideration in this Plan amendment. This phased approach includes today's Part I of the Plan amendment Decision for the 6-26 New Street planning sub-area and allows the consultation process to continue for the 125 Sumner Street and 102-148 Border Street ("Boston East") planning sub-areas. At the completion of the extended consultation session for 125 Sumner Street and Boston East, I intend to issue Part II of the Plan amendment Decision.

Pursuant to the review procedures at 301 CMR 23.00, the Plan was submitted in May 2008. Following a review for completeness, the Massachusetts Office of Coastal Zone Management (CZM) published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated June 11, 2008. Oral testimony was accepted during a public hearing held in the City of Boston on June 23, 2008, and six written comment letters were received prior to the close of the public comment period on July 11, 2008. The review and consultation process led by CZM, included consultation between staff of CZM, the Waterways Regulation Program of the Department of Environmental Protection (MassDEP), and the Boston Redevelopment Authority (BRA). In reaching my approval decision I have taken into account the oral and written testimony submitted by the public during the public comment period.

The Plan amendment for the East Boston Waterfront District reflects significant effort on the part of the City and many members of the public who participated in the public process. I would like to commend the efforts of the members of the Municipal Harbor Planning Advisory Committee who volunteered their time and effort over the course of many meetings over the past several months.

II. PLAN CONTENT

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

In 2002, the Secretary of Environmental Affairs approved the City's East Boston Waterfront District Municipal Harbor Plan. The Secretary's 2002 Decision approved substitute provisions related to setbacks, Facilities of Public Accommodation, and building height for two specific properties at that time – Hodge Boiler Works and Clippership Wharf. The City anticipated that the 2002 Plan would cover all properties within the planning area and would include a Designated Port Area (DPA) Master Plan. However, in the Secretary's 2002 Decision, it was determined that a DPA Boundary Review would be required before further planning for the properties within the DPA could proceed. CZM initiated the DPA Boundary review in December 2001 and allowed the planning to go forward for Hodge Boiler Works and Clippership Wharf with the understanding that site-specific substitutions, offsets, or amplifications related to the Waterways Regulations for other properties in the planning area would be addressed in a forthcoming amendment to the approved Plan. The DPA Boundary Review was completed in April 2003. As a result, the City's 2008 Plan amendment addresses site-specific substitutions and offsets for three specific parcels in the planning area: 6-26 New Street (Phase I), 102-148 Border Street (Boston East) and 125 Sumner Street (Phase II).

The 6-26 New Street project site is located in East Boston on a 3.93 acre site, of which approximately 2 acres is watersheet. The project site is bound by New Street to the east, LoPresti Park to the south, Boston Harbor to the west, and the Boston Towing and Transportation property to the north. The project site is comprised of Land Under Ocean with two dilapidated pile fields, filled tidelands, and upland that currently includes an existing complex of four concrete buildings and two solid-fill wharves.

The proposed project consists of the redevelopment of an existing 9-story building, the construction of a new 6-story building, and a small parking garage. The existing 9-story building will be redeveloped with additional building height consisting of 179 residential units. The new 6-story building will contain either 59 residential units or 106 hotel or extended stay units and approximately 8,000 square feet of facility of public accommodation space on the waterside of the building's ground floor. The project will also include a small marina with water taxi service, public open space, dredging, public access to and along Boston Harbor, and improvements to the navigability of the Designated Port Area watersheet area on the site.

Figure 1. East Boston Planning Area

III. STANDARDS FOR APPROVAL

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

A. Consistency with CZM Program Policies and Management Principles

The Federally-approved CZM Program Plan establishes 20 enforceable program policies and 9 management principles which embody coastal policy for the Commonwealth of Massachusetts. The following is a brief summary of the Policies and Management Principles applicable to the renewal Plan area:

- Water Quality Policy #1 – Ensure that point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.

- Water Quality Policy #2 – Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.

- Water Quality Policy #3 – Ensure that activities in or affecting the coastal zone conform to applicable state and federal requirements governing subsurface waste discharges.

- Habitat Policy #1 – Protect coastal resource areas including salt marshes, shellfish beds, dunes, beaches, barrier beaches, salt ponds, eelgrass beds, and fresh water wetlands for their important role as natural habitats.

- Habitat Policy #2 – Restore degraded or former wetland resources in coastal areas and ensure that activities in coastal areas do not further wetland degradation but instead take advantage of opportunities to engage in wetland restoration.

- Protected Areas Policy #3 – Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.

- Coastal Hazards Policy #1 – Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.

- Coastal Hazards Policy #2 – Ensure construction in water bodies and contiguous land area will minimize interference with water circulation and sediment transport. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or downcoast areas.

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

- Ports Policy #3 – Preserve and enhance the capacity of Designated Port Areas (DPAs) to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.

- Ports Management Principle #1 – Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access.

- Public Access Policy #1 – Ensure that developments proposed near existing public recreation sites minimize their adverse effects.

- Public Access Management Principal #1 – Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

- Public Access Management Principal #2 – Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance, and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.

- Public Access Management Principal #3 – Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.

- Public Access Management Principal #4 – Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or limited site availability. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.

The aforementioned policies are relevant to the major issues identified in the plan: waterfront revitalization; public access; and conserving the site's capacity to accommodate maritime-industrial uses along the DPA watersheet. Based on review of the documentation provided by the City and the assessment of CZM, I conclude that it meets the intent of each relevant policy statement and, as required by 301 CMR 23.05(2), I find the Plan consistent with CZM policies.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(3), I must also find that the Plan is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Chapter 91 Waterways Regulations of MassDEP (310 CMR 9.00). As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans

and associated amendments present communities with an opportunity to propose modifications to these uniform standards through the amplification of the discretionary requirements of the Waterways Regulations or through the adoption of provisions that, if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. The substitution provisions of Municipal Harbor Plans, in effect, can serve as the basis for a MassDEP waiver of specific use limitations and numerical standards affecting nonwater-dependent use projects, and thereby reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands.

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

- provisions that are intended to substitute for certain minimum numerical standards in the regulations;
- provisions that amplify upon certain discretionary requirements of the waterways regulations; and
- provisions that ensure regulatory compliance for the lands and waters within the East Boston DPA.

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

Evaluation of Requested Substitute Provisions: 6-26 New Street

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

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

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

For substitution provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a)–(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of

the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53.

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

Table 1 — Summary of Substitute Provisions for 6-26 New Street

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(b): Setbacks for Nonwater-dependent Facilities of Private Tenancy	"nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.."	Up to approximately 1,200 square feet of interior and exterior non-water dependent Facilities of Private Tenancy will be allowed to be located within 100 feet of the project shoreline, but not less than 70 feet from the project shoreline.	At least an equivalent area of Facilities of Public Accommodation (FPA) will be provided adjacent to other FPA space on the site, expanding the location of FPAs beyond 100 feet of the project shoreline.
310 CMR 9.52(1)(b)(1): Utilization of Shoreline for Water-Dependent Purposes	"…walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width…"	The minimum width will be widened to 12 feet (10 feet clear). These enhancements shall replace the existing standard of 10 feet.	The substitution directly benefits the public through enhanced access (open 24 hours/7 days per week); no offsetting public benefit is required.
310 CMR 9.51(3)(e): Height Standards and Related Impacts on Public Use or Access	For new or expanded non water-dependent use buildings, the height shall not exceed 55 feet within 100 feet of the high water mark nor increase by more than one-half foot for every additional foot beyond 100 feet.	Allow non water-dependent buildings up to a height of 70 feet within 100 feet landward of the high water mark in locations as generally indicated in the plans diagrams. Appurtenant to the nine-story building redevelopment project, façade treatments, fenestration, and exterior or enclosed balconies will be allowed up to the top of the existing structure and shall be considered part of the building footprint.	Based on the wind and shadow analysis there will be no new impacts; no offsetting measures would be required.

Table 2 — Summary of Amplifications

Regulatory Provision	Standard Requiring Amplification	Amplification
310 CMR 9.53(2)(b) Activation of Commonwealth Tidelands for Public Use	"the project shall include exterior open space for active or passive 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..."	The location of the open space features that serve to activate the public open space on the site may be distributed within both Commonwealth and private tidelands in a manner that will enhance interest, access, and use. Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor, and will follow guidance provided in Section 9 and Appendix 1 of the Plan Amendment.

Analysis of Requested Substitute Provisions

Setbacks for Nonwater-dependent Facilities of Private Tenancy

To approve any substitute provision to the Chapter 91 standard at 310 CMR 9.51(3)(b), I must first determine that the Plan specifies appropriate alternative locations and other requirements to offset the proposed siting of non-water dependent Facilities of Private Tenancy within 100 feet of the project shoreline. Next, within the context of its Plan, the City must demonstrate that the substitution provision will meet this standard with comparable or greater effectiveness. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness is conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan proposes a substitution to the Setbacks for nonwater-dependent Facilities of Private Tenancy requirement at 310 CMR 9.51(3)(b). At the 6-26 New Street site, the City proposes to allow up to approximately 1,200 square feet of interior and exterior non-water dependent Facilities of Private Tenancy located within 100 feet of the project shoreline, but not less than 70 feet from the project shoreline. The proposed offsetting measure provides an equivalent area of Facilities of Public Accommodation adjacent to other Facilities of Public Accommodation space on the site, expanding the location of public facilities beyond 100 feet of the project shoreline.

The Plan indicates that the redistribution of the Facilities of Public Accommodation would allow a limited amount of Facilities of Private Tenancy at the southwest corner of the proposed new parking structure, a small portion of the northwest corner of the redeveloped existing building, and adjacent exterior space. As shown in Figure 7-1 of the Plan, the redistributed Facilities of Public Accommodation will be located adjacent to the other proposed Facilities of Public Accommodation on the site.

As a result of my review, I find that the City has demonstrated that the proposed substitute provision will sufficiently offset the presence of private facilities within 100 feet of the project

shoreline. By relocating and aggregating the proposed Facilities of Public Accommodation on the site, the offsetting measure will serve to enhance the destination value of these public facilities and increase public accessibility to and enjoyment of the site.

Building Height

To approve any substitute provision to the height standard at 310 CMR 9.51(3)(e), I must first determine that the Plan specifies alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the applicable location on Boston Harbor. The approval regulations focus on how a building's mass will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. Within this context, I must apply the "comparable or greater effectiveness" test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) that would allow non water-dependent buildings up to a height of 69 feet within 100 feet landward of the high water mark. It should be noted that during the consultation session the City modified this substitute provision and subsequently requested that heights up to 70 feet be considered. The additional one (1) foot in building height was to allow for slight design considerations that were not known at the time of the original plan submission. The Plan also requests that façade treatments, fenestration, and exterior or closed balconies be allowed on the existing nine-story building above the 55 foot height limit.

Based on my review of the Plan, it appears that the proposed heights are consistent with those allowed under the Waterways Regulations except at two locations as noted in the Plan. The two areas where additional height is requested include the northerly portion of the site and near the southwest corner of the proposed new building. It appears that there will be little net new shadow or additional pedestrian-level winds attributable to the increased heights associated with the proposed substitute provision that would impact ground-level conditions or impair public use and enjoyment of the waterfront and its adjacent watersheet. I therefore conclude that the proposed substitute height provision will not impair water-dependent activity and public access to the waterfront, and will appropriately serve to meet the objectives of 310 CMR 9.51(3)(e).

Utilization of Shoreline for Water-Dependent Purposes

To approve any substitute provision to the standard at 310 CMR 9.52(1)(b)(1), I must first determine that the alternative minimum width for the pedestrian access network, specified in the Plan is appropriate given the size and configuration of the Water-Dependent Use Zone and the nature and extent of water-dependent activity and public uses that may be accommodated therein. Within this context, I must apply the "comparable or greater effectiveness" test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with

comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

The Plan proposes a substitution of the standards for Utilization of the Shoreline for Water-Dependent Purpose which requires a pedestrian access network with walkways to be no less than 10 feet in width along the entire shoreline. The proposed substitution would require a dedicated 12 foot wide public pedestrian accessway along the entire site. A minimum of 10 feet of this walkway along the waterway must be an unobstructed pedestrian pathway.

The City of Boston's Harborwalk system is essential to improving public access along the waterfront, and the City considers it a critical aspect of this Plan. This substitute provision provides a minimum width of 12 feet (10 feet clear) and directly benefits the public through enhanced access and water-dependent uses that may be accommodated along the Harborwalk, therefore I approve this substitution with no further requirement for offset.

Analysis of Requested Amplification Provisions

The Municipal Harbor Plan regulations (301 CMR 23.05(2)(b)) require me to find that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of the regulatory principle(s) underlying that requirement. Upon such a finding, MassDEP is committed to "adhere to the greatest reasonable extent" to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). The Plan contains one provision that will have significance to the Chapter 91 licensing process as an amplification, pursuant to 301 CMR 23.05(2)(b).

Activation of Commonwealth Tidelands for Public Use [310 CMR 9.53(2)(b)]

The Plan recognizes that public open space located on Commonwealth Tidelands is somewhat constrained and limited to only portions of piers and wharves on the project site. The proposed amplification proposes to allow the redistribution of open space activation features within both Commonwealth and private tidelands. The intent of this provision is to provide guidance to MassDEP so that when licensing this project public access design components may be incorporated throughout the entire waterfront of the site. I believe that this provision will enhance the ground-level pedestrian experience and will serve to improve public access along this portion of the waterfront, and I approve this amplification as proposed.

Designated Port Area Compliance

Because portions of the site are within the East Boston Designated Port Area, the Plan was reviewed to confirm its consistency with the Chapter 91 DPA requirements and the 2003 Designated Port Area Boundary Decision. Specifically, I must find that the Plan preserves and enhances the capacity of the DPA to accommodate water-dependent industrial use and prevents substantial exclusion of such use by any other use eligible for licensing in the DPA pursuant to 310 CMR 9.32. My determination relative to whether or not the Plan is consistent with these requirements is discussed in detail below.

The 2003 Designation Decision removed the land area of the New Street site from the DPA, leaving only the northerly portion of the watersheet in the DPA. The Designation Decision

included commitments by the property owner to implement several on-site infrastructure improvements, including:

- Removal or restoration of all on-site piles (both DPA and non-DPA watersheet areas);
- Site-wide reconstruction of all deteriorated sections of the bulkhead; and
- Inclusion of a permanent vehicular access route from New or Sumner Street to the DPA and Water-Dependent Use Zone in the design of any future project that will be included in any future Chapter 91 license review process.

The 2003 DPA Designation Decision also required one of the following options be implemented to upgrade the existing infrastructure as part of the redevelopment of the site:

- Construction of a permanent pile supported pier in the DPA;
- Installation of a floating docks capable of berthing vessels of a type and size common to marine industrial use; or
- Restoration of the DPA portion of the site to a level that will allow the area to be accessible for vessel berthing at the existing neighboring dock.

In order to comply with these requirements the Plan commits to the following site improvements:

- Removal of all pile fields (DPA and non-DPA).
- Repair of seawalls and adjacent surfaces (completed in 2007).
- Provision of a permanent vehicle access route from New or Sumner Street to the DPA and Water-Dependent Use Zone. Vehicular access will be provided through a 14-foot high passageway through the proposed mid-rise building.
- Provision of language in lease forms or deeds indicating the existence of nearby water-dependent industrial facilities and uses with operational characteristics as enumerated in 310 CMR 9.51(1).
- Two-level parking structure to physically buffer the new mixed-use buildings from the adjacent DPA, and construction techniques (such as double-glazed windows) to minimize noise.
- A docking facility will be provided in the non-DPA watersheet which will serve water taxi service and other allowable uses.
- Site improvements which will improve the ability of the DPA area to be accessible to vessels berthing at the existing neighboring dock.

Based on the information provided in the Plan as discussed above, I find that the Plan is consistent with the requirements of Designated Port Area and the conditions as described in the 2003 DPA Designation Decision with the following condition. Through the Chapter 91 licensing of the redevelopment of the 6-26 New Street site, MassDEP shall seek to ensure that sufficient watersheet along the northern property line remains clear of obstructions so that the adjacent water-dependent industry, Boston Transportation and Towing, can berth and maneuver commercial vessels on both sides of its existing pier.

C. Implementation Strategy

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. The Plan provides an entire section that identifies actions required for its effective implementation. Specifically, it provides additional direction in the application and issuance of Chapter 91 licenses for the redevelopment sites in the planning area. The Plan recommends that future offsite public benefits associated with the Chapter 91 licensing process, including any benefits for extended-term licenses, be directed toward implementation of provisions and elements contained in the Boston Inner Harbor Passenger Water Transportation Plan, the Port of Boston Economic Development Plan, or improvements to public access and public open space along the East Boston waterfront, including LoPresti Park. The Plan also recommends guidance on appropriate historic interpretive elements that could be incorporated during the Chapter 91 licensing process. The conditions relating to the substitute provisions that I have included in this Decision will be effectively implemented in the course of Chapter 91 licensing of the proposed development at 6-26 New Street. The provisions of this Plan will also be implemented through the recently adopted amendments to the underlying zoning (East Boston Neighborhood District - Article 53). These zoning changes will permit the uses contemplated for the site and will allow building heights that are consistent with the approved height substitute provision. Accordingly, no further implementation commitments on the part of the City are necessary, and I find that this approval standard has been met.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on December 17, 2008. As requested by the City of Boston, the Decision shall expire 10 years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06 (recognizing that the term of approval is now 10 years). No later than 6 months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

V. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the portion of the East Boston Waterfront District Municipal Harbor Plan Amendment pertaining to the 6-26 New Street planning sub-area subject to the following conditions:

1. MassDEP should incorporate as a condition of any Chapter 91 license the location of all redistributed Facilities of Public Accommodation to be provided in substantial accordance with Figure 7-1 of the Plan.
2. MassDEP should incorporate as a condition of any Chapter 91 license the provision of sufficient watersheet within the Designated Port Area and along the northern property line clear of obstructions so that the adjacent water-dependent industry, Boston Transportation and Towing, can berth and maneuver commercial vessels on both sides of its existing pier.
3. MassDEP should incorporate as a condition of any Chapter 91 license the commitment to complete the following site improvements:
   - Removal of existing pile fields;
   - Repair of seawalls and adjacent surfaces;
   - Provision of a permanent vehicle access route from New or Sumner Street to the Designated Port Area and Water-Dependent Use Zone as described in the Plan;
   - Provision of language in lease forms or deeds indicating the existence of nearby water-dependent industrial facilities and uses with operational characteristics as enumerated in 310 CMR 9.51(1);
   - A docking facility in the non-DPA watersheet which will serve water taxi service and other allowable uses; and
   - Site improvements which will improve the ability of the Designated Port Area to be accessible to vessels berthing at the existing neighboring dock.

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

1. Any subsequent addition, deletion, or other revision to the final Approved Plan, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1);
2. Any determination, express or implied, as to geographic areas or activities subject to licensing jurisdiction under M.G.L. Chapter 91 and the Waterways regulations; in particular, the approximate locations of the historic high and low water marks for the harbor planning area has been provided by MassDEP for planning purposes only, in order to estimate the area and nature of filled tidelands in said area, and does not constitute a formal ruling of jurisdiction for any given parcel.
3. Any proposed modifications to the Waterways Regulations, express or implied in the Plan document as submitted, that have not been approved explicitly by this Approval Decision.
4. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by MassDEP to be inconsistent with the waterways regulations at

310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

In a letter dated December 16, 2008, the MassDEP Waterways Program Chief has expressed support for approval of the Plan and stated that in accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of the approved Plan in the case of all waterways license applications submitted subsequent to the Plan's effective date. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.

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

a. The plan dated May 2008;

b. Materials submitted during the consultation session; and

c. This approval Decision.

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

Ian A. Bowles
Secretary of Energy and Environmental Affairs

12/17/08
Date

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December 16, 2008

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

RE: Draft Decision on Part 1: 6-26 New Street parcel
East Boston Waterfront District Municipal Harbor Plan Amendment, dated May 2008,

Dear Secretary Bowles:

The Department of Environmental Protection, Waterways Regulation Program (MassDEP) has reviewed the Amendment to the City of Boston's East Boston Waterfront District Municipal Harbor Plan ("Plan") dated May 2008, the revised and updated information submitted during the consultation session, and the draft decision to approve Part 1 of the Plan for the 6-26 New Street parcel. MassDEP has worked closely with the Boston Redevelopment Authority (BRA) and the Massachusetts Office of Coastal Zone Management (CZM) throughout the planning process and our comments have been adequately addressed and incorporated into the draft decision. The MassDEP, therefore, makes its finding that the Plan, as it relates to the 6-26 New Street parcel, is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

In accordance with the provisions of 310 CMR 9.34(2), the MassDEP will require conformance with any applicable use limitations or dimensional standards embodied in the decision and the Plan in the case of all waterways license applications submitted subsequent to the effective date of the Plan. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.

The MassDEP will also adhere to the greatest reasonable extent to the applicable guidance specified in the decision and the Plan which amplifies any discretionary requirements of 310 CMR 9.00, in accordance with the criteria specified in 310 CMR 23.00 and the associated guidelines of CZM.

The MassDEP will continue to work closely with CZM and the BRA in the development and implementation of municipal harbor plans throughout the City.

If I can be of further assistance, do not hesitate to contact me at (617)292-5615. Thank you for your consideration.

Sincerely,

Ben Lynch
Program Chief
Waterways Regulation Program
Mass DEP

Cc: Honorable Mayor Thomas M. Menino
John F. Palmieri, Director, BRA
Richard McGuinness, Director Waterfront Planning, BRA
Deerin Babb-Brott, Assistant Secretary for Oceans and Coastal Zone Management, MCZM
Bruce Carlisle, Assistant Director, MCZM
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WRP Harbor Planning File