

## 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.

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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.

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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

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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.

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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.

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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.

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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.

|   | <u>Required<br/>Setback<br/>(excluding<br/>piers)</u>   | <u>Required<br/>Setback<br/>(sides of<br/>piers)</u>                                    | <u>Required<br/>Setback<br/>(ends of<br/>piers)</u>   |
|---|---|---|---|
| Chapter 91<br>Water-Dependent<br>Use Zone             | 25% of weighted<br>average distance<br>from high water<br>mark to landmark<br>lot line but no<br>less than 25 feet<br>nor more than 100<br>feet | 15% of distance<br>edge to edge but<br>no more than 50<br>feet nor less<br>than 10 feet | 25% of distance<br>from edge of<br>pier to base,<br>but no more than<br>100 feet nor less<br>than 25 feet |
| <b>Harborpark Zoning<br/>Waterfront Yard<br/>Area</b> |   |   |   |
| 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/<br>Neponset River<br>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

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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 uses, 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

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.

**ACKNOWLEDGEMENTS****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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