COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
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Decision On The City Of Boston's North Station Amendment To The Boston Municipal Harbor Plan Pursuant To 301 CMR 23.00

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Commonwealth of Massachusetts
Executive Office of Environmental Affairs , Bob Durand, Secretary

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CONTENTS

I. INTRODUCTION 1

II. PLAN CONTENT 1

III. COMPLIANCE WITH APPROVAL STANDARDS 3

IV. STATEMENT OF APPROVAL 11

I. INTRODUCTION

Today, I am approving a limited geographic amendment to the Boston Harbor Municipal Harbor Plan dated March 1999, which encompasses the planning area identified in Figure-1 and discussed more fully within the Amendment. My approval decision is governed by the Municipal Harbor Planning (MHP) Regulations at 301 CMR 23.00. Pursuant to the review procedures contained therein, the subject plan was noticed in the Environmental Monitor on March 23, 1999 and written comments were accepted during a 30-day period. During this comment period, a public hearing was held in the City of Boston on April 14, 1999, and oral comments were accepted. Two written comment letters were received prior to the close of the comment period. These included comments from The Boston Harbor Association (TBHA) and counsel for the owners of the Hoffman Building Property and Lovejoy Wharf. In addition, the review process included consultation between staff of the Massachusetts Coastal Zone Management Office (MCZM), the Waterways Regulation Program of the Department of Environmental Protection (DEP) and the Metropolitan District Commission (MDC.)

The limited geographic amendment (Amendment) was developed through consultations with MCZM and it was reviewed under the procedures of 301 CMR 23.04. I do not generally support application of the MHP process to a discrete geographic area. I am, however, persuaded that in the case of the 226 Causeway Street amendment area, its proximity to the Boston Harbor MHP North End and Charlestown Gateway sub-districts represents a logical and minor extension of the harbor planning area previously established by the City of Boston. Further, this Amendment coincides with efforts by the Central Artery and the MDC to finalize planning for this area. This decision presents my findings and determinations on how the Amendment satisfies each of the standards for MHP approval found at 301 CMR 23.05.

II. PLAN CONTENT

The 12.3-acre Amendment Area (see Figure-1) consists of two privately-owned parcels, approximately 1.6 acres of MDC-owned open space, 4.5 acres of water sheet and portions of the Charles River dam and the elevated Central Artery. One privately owned parcel adjoins Boston Harbor and is occupied by a building (commonly referred to as the Hoffman Building) and Lovejoy Wharf. A second privately owned parcel, located at 226 Causeway Street, is located on filled tidelands landward of the Hoffman Building parcel and, although now vacant, was occupied

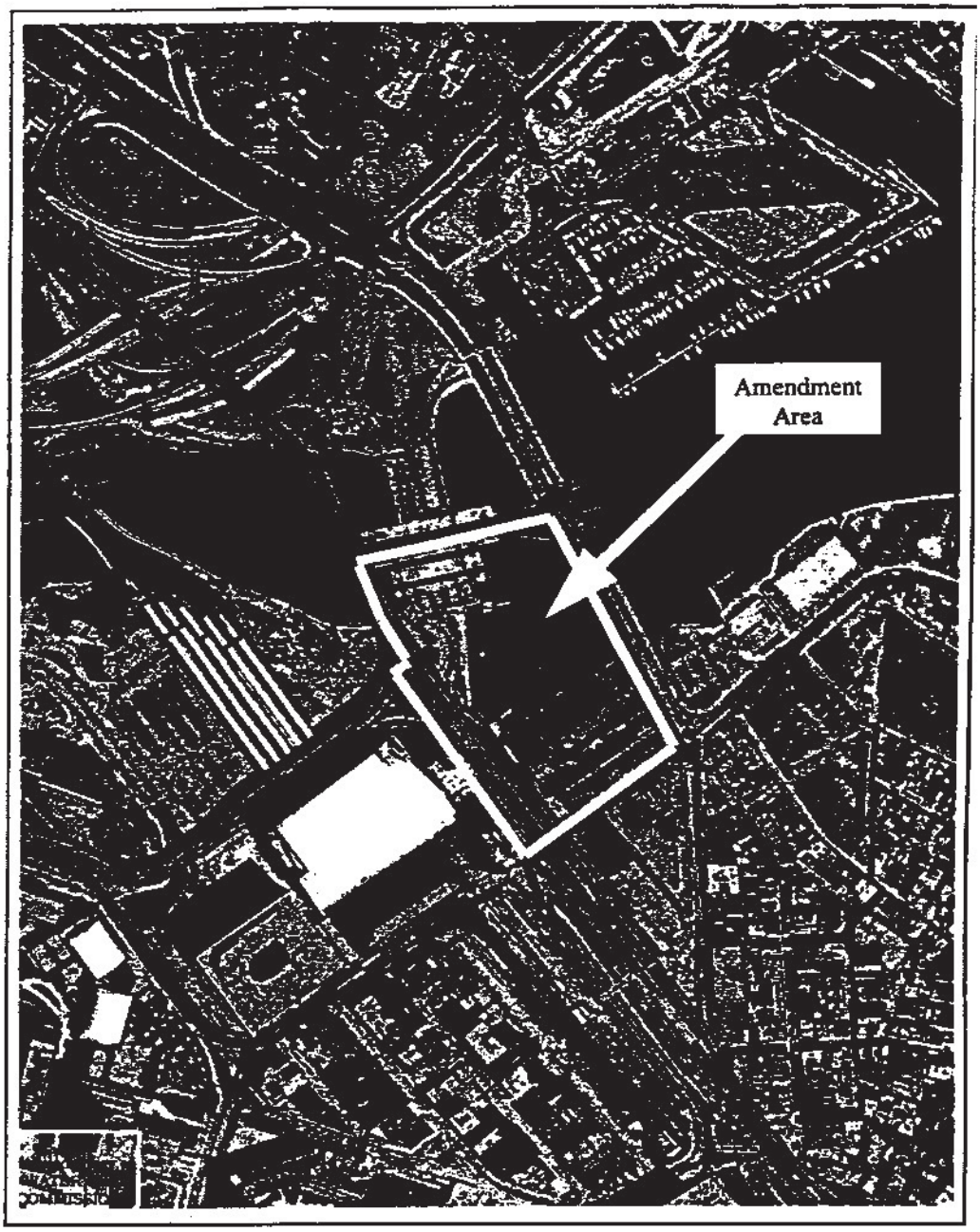

Figure – 1
Harbor Planning Boundary

formerly by the Stop & Shop Bakery.

The Amendment proposed by the Boston Redevelopment Authority (BRA) requests that the Secretary of the Executive Office of Environmental Affairs (EOEA) approve, as a substitute to the height provisions of the Waterways Regulations [310 CMR 9.51(3)(e)], a maximum building height of 155 feet for the 226 Causeway Street parcel. This height is consistent with the maximum height allowable under the City of Boston Zoning Code for this District and is the only substitute provision requested in this Amendment.

Located landward of the "water-dependent use zone," as defined in the Waterways Regulations, the re-development of the 226 Causeway Street parcel complements the on-going efforts of the City of Boston to revitalize the North Station area. The goals of this effort are set forth in Article 39 of the Boston Zoning Code, which serves as the comprehensive plan for the North Station Economic Development Area (EDA), and seeks to:

1. Direct growth away from congested areas and toward transit-accessible underutilized sites;
2. Create a mixed-use district which includes office, retail, research and development, biomedical, institutional, residential and sports facility and entertainment uses;
3. Create a functionally and architecturally unified district that is compatible with the North End and the Bulfinch Triangle; and
4. Create vistas and access to the Charles River and recreation space along the Charles River.

Within the context of the these goals, the Amendment provides a framework for moving forward with the re-vitalization of a dormant North Station parcel while preserving and enhancing public access to the waterfront. With a developer identified by the BRA, the Amendment focuses its attention on the redevelopment of the 226 Causeway Street property, which has been unoccupied for at least ten years. As proposed, the existing building will be renovated and, with a substitution that allows a maximum height of 155 feet, increased by six additional stories. The renovation will create new residential and retail space that contributes to the revitalization of, and is compatible with the City's vision for, the North Station area.

The Amendment, and specifically the 226 Causeway Street proposal, complements the City's open space and recreational goals with the development and maintenance of new parkland and the improvement of physical and visual access to the harbor. In addition to landscaped enhancements to existing pedestrian paths to the Charles River and the waterfront, and in keeping with the City's long-term goals to create a continuous waterfront walkway system that provides public access to and along the harbor, development in the Amendment area will be consistent with the Harborwalk requirements set forth in the City's Approved Plan.

As required through their Chapter 91 authorization for the new Charles River Crossing, the Massachusetts Highway Department (MHD) will fund MDC plans to expand and improve over 40 acres of parklands along both banks of the Charles River. These measures will include a harborwalk

extended from the North End and MDC property, under the North Washington Street Bridge and across Lovejoy Wharf to the Charles River Basin Park system at Paul Revere Park South. The existing pedestrian access to the new Paul Revere Park North will remain over the Charles River dam and locks while a second walkway under the North Washington Street Bridge will facilitate access to Tudor Wharf. Pedestrian access to the waterfront will be provided along an improved and newly landscaped Beverly Street and through Portal Park which, as discussed below, the proponent for the 226 Causeway Street development has agreed to maintain for the term of its Chapter 91 license.

III. COMPLIANCE WITH APPROVAL STANDARDS

A. Consistency with the MCZM Harbor Planning Guidelines

Typically, the criteria for consistency with Massachusetts Coastal Zone Management's (MCZM's) Harbor Planning Guidelines (Revised, 1988) are defined within the Scope of a Municipal Harbor Plan. Because the Amendment does not involve the addition of significant geographic area or subject matter to the Approved Plan, a formal Scope, pursuant to 301 CMR 23.03, was not required. In lieu of a Scope, direction and guidance concerning information necessary for the review of this Amendment was provided by MCZM at meetings with the BRA. The elements of the submittal were further defined in a letter from MCZM to the BRA, dated May 28, 1998. In addition, the Amendment was developed with full public participation. Pursuant to the regulations at 301 CMR 23.04(3), a thirty-day public comment period was held and a public hearing was held on April 14, 1999, at which time oral comments were accepted.

The record before me indicates that the planning analysis and public participation programs were carried out in a manner that complies adequately and properly with the spirit of these coordination efforts and the letter of May 28, 1998. Accordingly, I have determined that the Amendment is consistent with the intent of the MCZM Harbor Planning Guidelines as required by 301 CMR 23.05(1).

B. Consistency with MCZM Program Policies and Management Principles

In 1978, EOEA adopted an overall program to manage the Massachusetts coastal zone based on 27 statements of policy. In March 1997, MCZM revised these policies as set forth at 301 CMR 21.98. I find that the Amendment is consistent with such policies, as required by 301 CMR 23.05(2). The Program Policies and Management Principles applicable to the Amendment area include:

Ports Management Principle #1:

> Encourage, through technical and financial assistance, expansion of water-dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access

Public Access Management Principle #1:

Improve public access to coastal recreational facilities and alleviate auto traffic to coastal recreation facilities through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

Public Access Management Principle #3:

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

Growth Management Principle #1:

Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources

Growth Management Principle #3:

Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and federal and state financial support for residential, commercial and industrial development

The aforementioned policies were cited as relevant to the major issues identified in the Amendment: waterfront revitalization and public access. Upon review of Amendment sections which were cited in supporting documentation provided by the City, there is ample evidence that the Amendment embraces fully the spirit and intent of these Program Policies and Management Principles.

C. Consistency with Tidelands Policy Objectives

a. Introduction

As required by 301 CMR 23.05(3), I find the plan is consistent with state tidelands policy objectives and associated regulatory principles, as set forth in the state waterways regulations of DEP (310 CMR 9.00) and seeks to promote responsible stewardship of public rights in these trust lands. As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans and associated amendments give communities an opportunity to adopt a vision which modifies these uniform standards through the amplification of the discretionary requirements of the Waterways Regulations or through the adoption of provisions which, if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. The substitution provisions of approved MHPs, in effect, can serve as the basis for a DEP waiver of up to seven specific use limitations and numerical standards affecting nonwater-dependent use projects, and thereby reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands.

The Amendment as submitted does not include provisions that amplify the discretionary requirements of 301 CMR 9.00. For the existing building at 226 Causeway Street, however, the Amendment does request a waiver from 310 CMR 9.51(3)(e) which governs the height of new or expanded buildings for nonwater-dependent use. The Waterways Regulations at 310 CMR 9.51(3)(e) require that the height of new or expanded buildings for nonwater-dependent uses be limited to 55 feet over flowed tidelands and within 100 feet of the high water mark on filled tidelands. This height may be increased by one-half foot for every additional foot of separation from the high water mark on filled tidelands,

The 226 Causeway Street building is located on filled private tidelands. The proposed building will consist of a combination of residential and commercial uses and associated parking that pursuant to 310 CMR 9.12 are considered nonwater-dependent uses. As discussed in the Amendment, given the Causeway Street parcel's proximity to the high water mark, the height restrictions of the Waterways Regulations would limit the building height to 80 feet along Lovejoy Place and to 135 feet along Causeway Street. For this parcel only, the City of Boston has requested approval of a substitute provision to the height limitations at 310 CMR 9.51(3)(e) that allows a maximum building height of 155 feet to the top of the highest occupied floor.

b. Standards for Evaluation of Substitute Provision

The framework for evaluating this proposed substitute provision is established in the Municipal Harbor Plan Regulations at 301 CMR 23.05(3)(c)(5) and 23.05(3)(d). In accordance with 301 CMR 23.05(3)(c)(5), there can be no waiver of the Waterways height provision unless it is determined that the Amendment specifies alternative requirements which will ensure that, in general, "new or expanded 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."

Subsection (d) further requires that this determination be based on a demonstration "by the municipality that the substitute provisions set forth in the plan will promote, with comparable or greater effectiveness, the state tidelands policy objectives stated in the corresponding provisions of 310 CMR 9.00." The determination of whether "comparable or greater effectiveness has been achieved" will be evaluated in accordance with the following provisions:

1. The planning analysis and data must clearly identify the substitute provisions proposed and establish the nature and extent of differential effects any of the less restrictive requirements might have with respect to the tidelands policy objectives; generally, the level of analysis will depend on the degree to which the waterways requirements are relaxed, the significance of the benefits associated with the offsetting measures, and other factors such as the characteristics of the built environment of the subject area; and

2. ...offsetting measures should be applied within reasonable proximity of the subject site, in order to avoid or minimize inequity in the distribution of public benefits and detriments.

In its letter dated May 28, 1998, MCZM provided written guidance to the City which requested that the amendment also address "...present and future development conditions...specifying the desired connection of pedestrian accessways to the Harborwalk on either side of the dam and bridge, the build-out of facilities for public water transportation, the programming of ground floor interior spaces for facilities of public accommodation, and the construction/maintenance of exterior public open spaces. Furthermore, the analysis of the proposed height substitution for the 226 Causeway Street property should include a detailed analysis of wind, shadow, and other effects of the proposed building expansion on the ground-level environment, with a comparison of such impacts to those which would be associated with the massing and upper-level building configurations that are permissible within the c. 91 height limits presently in effect. The analysis should also establish the extent to which the gross volume of the proposed building expansion exceeds that which would be allowable under the existing Waterways Regulations, and should identify the measures proposed to mitigate, compensate, [or] otherwise offset such exceedance."

c. Approval Analysis

As discussed above, the Amendment seeks approval of a substitution provision for the numerical standard governing the height of new or expanded buildings for non-water dependent use as specified in 310 CMR 9.51(3)(e). This proposed height substitution provision applies only to the expansion of the existing building located at 226 Causeway Street, where the proponent seeks a maximum height of 155 feet to the top of the highest occupied floor.

I conclude that the Amendment is consistent with the spirit of the criterion for approving substitute height limits and defines adequately an appropriate relationship between proposed development in the amendment area and that existing in the North End. I am approving this substitute provision based on a careful review of the planning analysis and supporting data presented with the Amendment that addresses the applicable standards and MCZM guidance noted above. A detailed analysis of this decision follows.

Pursuant to 301 CMR 23.05(c)5, I have determined that the alternative height limit of 155 feet for the 226 Causeway Street building represents a modest size increase over that which could be built under the Waterways Regulations and is compatible with the existing highly urbanized nature of the North End. I believe this characterization is further supported by the fact that, when viewed from Causeway Street, the visual impact attendant to the proposed height substitution will exceed that allowable under Chapter 91 height by only twenty feet. Potential height impacts to the waterfront are further minimized since the Hoffman building separates the 226 Causeway Street site from the shoreline. Further, based on the analysis and data submitted by the proponent, it does not appear that wind and shadow impacts on the ground-level environment associated with the proposed height increase will impair water-dependent activities nor public access likely to occur in the

Amendment area. Specifically, I have made this determination based on the following information contained in the plan:

1. An analysis which compares the shadow impacts of the proposed 155 foot tall building to those resulting from a structure conforming to the Waterways height standards. Based on the data as submitted, the proposed 155 foot high building appears to add no new shadow impact on Lovejoy Wharf nor affect the shadowing of the proposed Paul Revere Park South. Further, new shadow impacts to the MDC tennis courts, Portal Park, and an area of sidewalk along the east side of the North Washington Street Bridge appear to be small and insignificant (given the time of year and hour of the day) when compared to the Chapter 91 alternative.

2. An analysis that compares the wind impacts of the 155 foot tall building to the Chapter 91 alternative. Based on the empirical data as submitted, it appears that there will be no significant deterioration in wind conditions experienced on the ground level surrounding the site. Although the analysis does indicate that doorways along North Washington Street and Causeway Street will experience increased wind speeds during periods of easterly storm winds, all areas will be comfortable for the anticipated ground level public use and access. Furthermore, it is my understanding that the proponent has committed to providing canopies to mitigate these effects.

Pursuant to 301 CMR 23.05(d), I have also determined that the City of Boston has demonstrated that the single substitute provision requested in the Amendment will promote, with comparable or greater effectiveness, the state tidelands policy objectives as expressed in 310 CMR 9.00. The MHP regulations may allow substitute provisions to the numerical standards that are less restrictive than those of the Waterways Regulations provided that the Amendment includes other requirements that will offset adverse effects on water-related public interests. These other requirements must mitigate, compensate or otherwise offset adverse effects on water-related public interests.

Acknowledging the proposed height substitution, I understand that the 226 Causeway Street proponent has finalized an agreement to provide offsetting measures within the immediate proximity of the site. In addition, based on flexibility within the Harbor Planning Regulations, the City has proposed offsets that are out-of-kind, in order to provide offsets that, when taken as a whole, qualitatively offset any detrimental impacts of additional height. Based on the limited wind and shadow impact to the ground level environment, the nature of the North End built environment and the City of Boston's vision for this area, I find that this agreement serves to promote the objectives of the Commonwealth's tideland policy. Specifically, I refer to a Memorandum of Understanding (MOU) between the developer of 226 Causeway Street and the MDC. Pursuant to this MOU, the developer has committed to maintaining Portal Park, when it is constructed, for the term of the Chapter 91 license. This park will become a major gateway space and the entryway to the over 40

acres of parkland along the banks of the new Lower Charles River Basin planned in conjunction with the CA/T project. Development of these parklands has been funded by the CA/T Project as part of their Chapter 91 authorization for the depressed Central Artery and new Charles River Crossing. Recognizing that a completion date for Portal Park is a number of years after anticipated completion date of project, the project proponent has also agreed to conduct spring and fall clean-up of the nearby MDC Prince Street Park for a period of 10 years, minimizing temporal inequities in offset implementation that could result from the delayed park construction. The Prince Street Park commitment will be activated six (6) months after a final Certificate of Occupancy for the building has been issued.

Further, I also note that other public benefits including: Facilities of Public Accommodation encompassing 13,000 square feet of the building's ground floor (a commitment above and beyond the Waterways Regulations); and provisions for the sale of tickets for ferry/water transportation in the building lobby will be incorporated into the project. My review of the analysis provided leads me to conclude that, taken together, the proposed out-of-kind offsetting measures and public benefits agreed to by the proponent are proportionate with the degree in which the Waterways requirements would be relaxed by the proposed substitute height provision.

It is also my understanding that through the City of Boston's Development Review Process, the developer has committed to providing additional landscaping and planting along 226 Causeway Street to enhance pedestrian paths to the Charles River and the waterfront.

It is also my understanding that the developer and has agreed with the City to restrict 10% (24) of the Causeway Street residential units as affordable housing for a period of 20 years, of which 14 units will be reserved for elderly tenants. With respect to units reserved for elderly tenants, the proponent has committed to the city that any elderly tenant occupying a unit designated as an elderly unit during the 20-year period commencing with the issuance of a Certificate of Occupancy may continue to occupy the subsidized units indefinitely. While they are not direct offsets to the proposed substitute height provision, I believe that these measures benefit the North End neighborhood and will contribute to the revitalization of this area, one of the major goals emphasized in this Amendment.

Finally, based on my review of this submittal, I conclude that the Amendment provides adequately the information requested by MCZM in its guidance letter, discussed in detail above. I make this determination based on the following:

1. Adequate information was provided addressing both the present and future, as currently envisioned, development scenarios for this area. Further, the City's goals and vision for the renovation of the North End neighborhood are supported strongly by the discussion of Boston zoning requirements currently in place to guide future development in this and adjacent areas.

2. A key component of all Boston waterfront planning, the Amendment

substantially promotes the connection of pedestrian accessways and the continuation of Harborwalk. As discussed in detail above, Harborwalk will be extended from the North End to Paul Revere Park South. In addition to maintaining the existing pedestrian access over the Charles River dam and locks to Paul Revere Park North, a second walkway will be provided to Tudor Wharf. I continue to strongly support and encourage the City's goal to provide continuous access to the Boston waterfront and its on-going Harborwalk efforts.

3. The City has expressed its desire to locate a passenger water transportation service within the watersheet of the Amendment area. In response to this plan, the proponent for the 226 Causeway Street project has incorporated provisions for the sale of ferry/water transportation tickets into the proposed plans for the building lobby. I applaud the City's plans to pursue locating water transportation facilities within the Amendment area and understand that any finalization of plans must wait until issues surrounding Lovejoy Wharf, discussed below, have been resolved.

4. A discussion of programming for ground floor interior spaces for Facilities of Public Accomodation (FPAs) was presented in a general manner. From the information provided, I understand that 13,000 sq. ft. of the ground floor of 226 Causeway Street will be devoted to FPAs. Recognizing that, as discussed in section D, outstanding issues persist with Lovejoy Wharf, I am persuaded that detailed and appropriate FPA programming determinations can be finalized during the Chapter 91 permitting process.

5. The wind and shadow analysis and accompanying data indicate that impacts to the ground level environment which would result from both the height allowed under Chapter 91 and that proposed as a substitution appear to be minimal and do not require further analysis.

6. I have reviewed the massing analysis provided by the proponent, estimating that the gross volume of the proposed building expansion exceeds that allowable under the existing Waterways Regulations by approximately 36%. Based on this information and the results of the wind and shadow analysis, discussed above, I have concluded that ground level impacts to the surrounding areas associated with any additional envelope volume will be minimal and do not require further analysis.

7. As discussed in more detail above, the project proponent and the MDC have entered into a MOU for the maintenance of MDC's Portal and Prince Street Parks. Portal Park will be fully maintained by the 226 Causeway Street proponent for a term coinciding with the Chapter 91 license, activated six

months after receipt of a final Certificate of Occupancy. Further, the proponent has committed to spring and fall clean up of Prince Street Park, adjacent to the amendment area for a period of ten years. Finally, the proponent has agreed to actively participate with the MDC to ensure on-going and responsible stewardship of the Prince Street Park.

D. Relationship to State Agency Plans

The geographic scope of the Amendment includes two areas that have been, or are currently, the focus of Commonwealth planning initiatives. The first, a portion of the elevated Central Artery located within the Amendment area, will be the location of the proposed open space referred to as Portal Park. Occupying a portion of the current Beverly Street adjacent to the 226 Causeway Street building, the Portal Park area has been acquired by the Massachusetts Highway Department and will become MDC-owned parkland at the completion of the CA/T project. Forming the east side gateway to the Charles River Basin Park system, the developer of 226 Causeway Street has committed to the on-going maintenance of Portal Park as discussed above.

A second state planning focus within the Amendment continues to include a long-term vision for the Hoffman Building, Lovejoy Wharf and its adjacent watersheet. In its 1995 master plan for the Charles River Basin, the MDC anticipated acquiring Lovejoy Wharf as the site for an MBTA dock from which water ferry and shuttle service would be provided. Since this time, however, acquisition plans have been dropped. As a result of a Chapter 91 enforcement order, DEP has been in discussions with the owner of Lovejoy Wharf concerning provisions for Harborwalk access across the Wharf. This access will ensure a continuous access system from the North End MDC park, beneath the North Washington Street Bridge, across Lovejoy Wharf and into the MDC's Charles River Basin Park system. I am confident that the goals for continuing the Harborwalk, identifying a location for passenger water transportation service within the watersheet of the Amendment area, and programming of appropriate ground floor FPA's at the Hoffman Building can be accomplished through the continued and close coordination between the BRA, the CA/T project, and EOEA agencies with the resolution of outstanding enforcement issues.

E. Enforceable Implementation Commitments

Important elements of the City's Zoning Code and associated regulatory framework adopted prior to the development of this plan serve to implement the policies of this Amendment, with particular emphasis placed on continuing the Harborwalk. These existing laws and regulations constitute implementation measures that the City will continue to have responsibility for enforcing, independent of the state waterways licensing process. With the exception of the substitute height provision for the 226 Causeway Street property, all other regulatory standards shall be implemented in full through DEP's licensing of activities on tidelands as expressed in the Waterways Regulations (310 CMR 9.00.)

IV. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.05, I hereby approve this Limited Geographic Amendment to the Boston Harbor Municipal Harbor Plan as submitted by the City of Boston. This Decision shall take effect immediately upon issuance.

Bound copies of the Approved Amendment, which shall include this Decision as a final attachment, shall be kept on file by the Boston Redevelopment Authority (BRA) and at the DEP/Waterways and MCZM offices in Boston.

Bob Durand
Secretary of Environmental Affairs

7/29/99
Date