



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
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Public Notice

Notice to Proceed for Salem's Municipal Harbor Plan/Designated Port Area Master Plan Amendment/Renewal in accordance with 301 CMR 23.03

On June 1, 2020, the City of Salem submitted a request for Notice to Proceed for a state approved Municipal Harbor Plan and Designated Port Area Master Plan amendment and renewal for the Salem waterfront. Notice of this request was published in the *Environmental Monitor* on June 10, 2020 and public comments were accepted for a thirty-day period ending on July 10, 2020. On August 10, 2020, CZM issued the following Notice to Proceed for the Salem Harbor MHP/DPA Master Plan amendment and renewal.

Notification Date: August 26, 2020





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August 10, 2020

Seth Lattrell
Department of Planning and Community Development
98 Washington St., 2nd Floor
Salem, MA 01970

RE: Salem Municipal Harbor Plan/Designated Port Area Master Plan Amendment/Renewal

Dear Mr. Lattrell,

Pursuant to 301 CMR 23.03, the Municipal Harbor Plan (“MHP”) Regulations, the City of Salem submitted a Request for Notice to Proceed (“RNTP”) for a state approved MHP and Designated Port Area (DPA) Master Plan amendment and renewal for the Salem waterfront on June 1, 2020. Notice of this request was published in the Environmental Monitor on June 10, 2020 and public comments were accepted for a thirty-day period ending on July 10, 2020. No public comments were received. Based on a review of the City’s request, I am pleased to issue the following Notice to Proceed for the Salem Harbor MHP/DPA Master Plan amendment and renewal.

Overview

The MHP Regulations (301 CMR 23.00) establish a voluntary procedure by which municipalities may obtain approval of MHPs from the Secretary, promoting long-term, comprehensive, municipally-based planning of harbors and other waterways that fully incorporates state policies governing stewardship of trust lands. Additionally, approved plans guide and assist the Massachusetts Department of Environmental Protection (MassDEP) Wetlands and Waterways Division in making regulatory decisions pursuant to MGL Chapter 91 and the Waterways Regulations (310 CMR 9.00) that are responsive to harbor specific conditions and other local and regional circumstances. As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects and developments. Municipal Harbor Plans present communities with an opportunity to adopt a vision that 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. While the City’s plan may embody the vision for the development of its waterfront, the scope of an MHP is generally limited to the modification of certain Chapter 91 standards to fulfill the local planning goals. Project specific issues such as traffic and broader environmental impacts will be described, analyzed, and assessed during any requisite reviews by the Massachusetts Environmental Policy Act Office (MEPA) or the local planning and zoning boards.

I. Municipal Harbor planning area

The harbor planning area identified in the RNTP includes the same areas that were identified in the 2008 Salem Harbor Municipal Harbor Plan and Designated Port Area Master Plan (2008 Plan),



and also includes a new area adjacent to the North River. The harbor planning area extends along the Salem shoreline and adjacent landside areas between Winter Island and Palmer Cove as well as landside areas along the North River from Furlong Park to North Street and across the river to the Crescent Lot at 252 Bridge Street. Generally, the upland boundary of the harbor planning area is defined by the public roadway closest to the water's edge, which for most of the planning area is Derby Street and Fort Avenue. The upland boundary of the North River District is defined by Franklin Street, North Street, and Bridge Street. The overall harbor planning area is divided into six distinct districts (see figure 1). These include:

1. South Commercial Waterfront

This portion of the waterfront is adjacent to and on the waterside of the Point Neighborhood. It includes Pickering Wharf, the South River Basin (defined by Congress, Peabody, Lafayette and Derby Streets), Shetland Park, Palmer Cove Yacht Club and the Palmer Cove Playground out to the public streets immediately surrounding the playground.

2. Tourist Historic Harbor

This district centers around Derby Wharf and includes waterfront historic sites, such as the Salem Maritime National Historic Site to the House of the Seven Gables. Landward, this district extends to Derby Street and the adjacent waterfront neighborhood.

3. North Commercial Waterfront

This district extends from Hawthorne Cove Marina to the edge of the Power Plant property and includes the ferry facilities and commercial marina of the Salem Wharf. The DPA extends into this planning district.

4. Industrial Port

Located at the end of the deep-water channel that leads into Salem Harbor, the Industrial Port encompasses the 42.3-acre Footprint Property, the new Salem Harbor Station, the Deepwater Berth, the South Essex Sewage District Treatment Plant ("SESD"), and the Federal Channel. The DPA comprises most of this district except for the SESD. The Industrial Port is located between the North Commercial Waterfront and the Community Waterfront.

5. Community Waterfront

This area occupies the northernmost portion of Salem Harbor and includes Cat Cove, Winter Island and Smith's Pool. Winter Island is the largest recreational space on the inner harbor and is used for such activities as camping, picnicking, and walking by residents and visitors alike. With its pier and boat ramp, it is also the site of numerous marine related activities mostly supporting recreational boats. The Plummer Home for Boys shares the island with the park within this planning district. The Community Waterfront district borders the SESD treatment plant, the west end of the Salem Willows Park, the Winter Island neighborhood and Juniper Cove.

6. North River/Crescent Lot

This district, which was not included in the 2008 Plan, is comprised of parcels northwest and southwest of the North River, including the Crescent Lot, a 36,600 square foot 97 space parking

lot adjacent to the MBTA Commuter Rail Station, and the lands across the river bounded by North Street and Franklin Street, up to and including Furlong Park.

According to the RNTP, while the Harbor Plan will provide recommendations and guidance for the entire harbor planning area, the focus of this renewal to the 2008 Plan are the Industrial Port district within the Salem DPA and the North River district, including Crescent Lot.

For consideration as you develop your MHP amendment and renewal, I call particular attention to the provisions of 301 CMR 23.04, Review Procedures, and 301 CMR 23.05, Standards for Approval. The MHP should contain a clear and detailed discussion of the relationship between the harbor planning area and land subject to Chapter 91 jurisdiction. Pursuant to 301 CMR 23.02, a harbor planning area should include all areas that are relevant to the functional use and management of the harbor or other waterway segment in question. Functional use refers to those activities that have the potential to promote or impair water dependent activity or public use or enjoyment of waterways or shorelines. At a minimum, the landward boundary of any harbor planning area subject to these regulations shall encompass all filled tidelands subject to the jurisdiction of DEP pursuant to 310 CMR 9.04.

To facilitate review of the MHP and future implementation, the MHP should contain one or more maps that present a well-defined boundary of the proposed harbor planning area and its approximate relationship to Chapter 91 jurisdictional tidelands. Pursuant to 301 CMR 23.03(4) for planning purposes, the MHP should depict the boundaries of such tidelands based on guidance for historic tidelands delineation provided by MassDEP's Waterways Program.

II. Substitution Guidance

A state-approved MHP can allow greater flexibility to the application of certain Waterways requirements in that it may include provisions that substitute for certain Chapter 91 limitations or numerical standards as long as the substitute provisions are at least as effective at meeting the state tidelands policy objectives as those stated in the corresponding Chapter 91 provisions and certain specific conditions are met. When a project conforms to a state-approved MHP, MassDEP will apply the use limitations or numerical standards specified in the MHP as a substitute for the respective limitations or standards contained in 310 CMR 9.00 to the licensing process.

Substitutions as described above will be allowed only if the municipality demonstrates, in the MHP, that the substitution provisions will promote state tidelands objectives with comparable or greater effectiveness than the corresponding Chapter 91 provision. Substitute provisions may be less restrictive than the Chapter 91 requirements only if the plan includes other requirements that adequately offset adverse effects on public-related interests. In determining whether comparable or greater effectiveness is achieved by the offsets in the MHP, the Secretary will consider the following provisions:

- a. The planning analysis and data must be organized to clearly identify the substitute provisions proposed and the relative effects of the less restrictive provisions on the related tidelands policy objectives.

- b. Offsetting measures should be applied within reasonable proximity to the locus of adverse effects to ensure a balance in the distribution of public benefits and potential detriments.

III. MHP Planning Guidance

The MHP amendment and renewal should clearly articulate the goals and recommendations of the 2008 Plan that have been achieved, how the community's goals and objectives for the harbor planning area have changed since the submittal of the 2008 Plan, and any changes in policies that have been established to guide development and other activity, including patterns, phasing, and limits, and other relevant characteristics on the waterfront.

As the North River district is a new addition to the harbor planning area for this renewal, the district's current characteristics, uses, and activities should be clearly defined, and the goals and opportunities for this area should be fully described. Any analysis for substitutions proposed in this district should consider offsets that provide public benefits within the North River district specifically.

The planning process used to inform and develop the MHP should ensure that alternatives and priorities to meet the vision, goals, and objectives of the MHP are developed through the iterative and defensible public participation process. This iterative process should be documented within the MHP including opportunities for public engagement, how alternatives were considered, vetted, and preferred alternatives selected.

One of the goals of the planning process stated in the RNTP is to assess the vulnerability of the overall planning area to coastal flooding and sea level rise, and develop recommendations to address identified priorities through regulatory approaches, such as ordinances and zoning, as well as specific resilience improvements that could be implemented along the waterfront. The most recently available climate change data available at the time of analysis should be used to determine vulnerabilities and analyze appropriate approaches to address them. CZM and EEA can provide technical assistance and data as needed for this task.

IV. DPA Master Plan

The City's RNTP indicates that a substantial focus of the Salem MHP renewal will explore opportunities to redevelop and revitalize the DPA, where the conversion of the Salem Harbor Power Station to Footprint Power has opened up a significant area on the site for redevelopment. The RNTP indicates that the harbor planning process will include a market analysis of the DPA to explore possible uses for the area. The analysis will assess the market demand, viability, and feasibility of a variety of uses. Because requirements for a DPA are specific and differ from the general requirements of both the harbor planning and waterways regulations, the DPA Master Plan should address this area. The master plan should preserve and enhance the capacity of the DPA to accommodate water dependent industrial use and prevent substantial exclusion of those uses by other allowable DPA uses. To meet this standard, the master plan must include several criteria.

To ensure that the water-dependent industrial capacity of the DPA is preserved and enhanced, an extensive amount of the DPA land area close to the water must be reserved for water dependent industrial use. Though temporary uses may be allowed, the master plan must include a provision that

water-dependent industrial use is solicited first before these are permitted. In addition, the master plan should demonstrate that commercial uses will generally be limited to no more than 25 percent of the total DPA land area.

The master plan should also establish reasonable arrangements to prevent use of space/facilities that would significantly discourage present or future water dependent industrial activity, especially on the waterfront. These should include appropriate limits on the parameters of commercial uses to assure compatibility with DPA uses as well as reasonable limits on the types of commercial uses allowed if necessary, to avoid conflict with DPA uses.

The master plan should identify industrial or commercial uses that are allowed under local zoning that the City also wishes to qualify as supporting DPA uses. These uses should be carefully considered to assure that they comply with the provisions of the waterways regulations (310 CMR 9.00).

Finally, the master plan should include a strategy to guide continuing promotion of water dependent industrial use, including, at a minimum, recommendations for capital improvements or other economic/operational benefits to water dependent industrial uses to be provided by supporting uses on a property; recommendations to preserve or enhance transportation infrastructure (channels, truck routes, etc.) for access to properties in the DPA on both land and water side; and commitments to maintain a pattern of development that provides an appropriate buffer between DPA uses and certain community uses to avoid significant operational conflict.

Any changes to these criteria proposed in the DPA Master Plan since the 2008 Plan should be clearly articulated and supported.

V. MHP Renewal

Pursuant to 301 CMR 23.06(2)(a), the MHP should include a discussion recommending the period of time for which the MHP shall be in effect. Approved MHPs expire on the date specified in the Secretary's Approval Decision and must be renewed periodically to ensure continuing use by MassDEP in its licensing decisions.

VI. Public Participation

The RNTP documents the extensive planning work and participation proposed towards the development of this MHP, including a kickoff workshop, at least ten public harbor planning committee meetings, and several public outreach meetings. The MHP should contain a detailed discussion of the harbor planning process, document the public participation, and detail the public input solicited and included in the MHP recommendations and actions.

VII. Compatibility with State Agency Responsibility

The MHP must demonstrate that the municipality has worked with all relevant state agencies maximize compatibility of the harbor plan with the plans or planned activities of all state agencies

owning real property or responsible for the development/implementation of plans or projects in the harbor planning area.

VIII. Implementation Strategy

It is essential that the MHP include enforceable implementation commitments to ensure that all measures will be taken in a timely and coordinated manner to offset the effect of any MHP requirement that is less restrictive than that contained in the Waterways regulations (310 CMR 9.00).

EEA and CZM look forward to working collaboratively with the City in this MHP/DPA master planning process. Pursuant to 301 CMR 23.04 and 301 CMR 23.04, the submission deadline will be August 10, 2022. As you develop the Salem Harbor MHP/DPA Master Plan amendment and renewal, we look forward to consultation with the City to provide guidance to ensure that the process is meaningful, efficient, and productive.

In closing, I extend my sincere thanks to you and your staff for your continuing support for the pro-active management of our coastal resources. I encourage your staff to continue working closely with CZM and our North Shore Regional Coordinator on the development of the amendment and renewal of the Salem Harbor Municipal Harbor Plan/Designated Port Area Master Plan.

Sincerely,

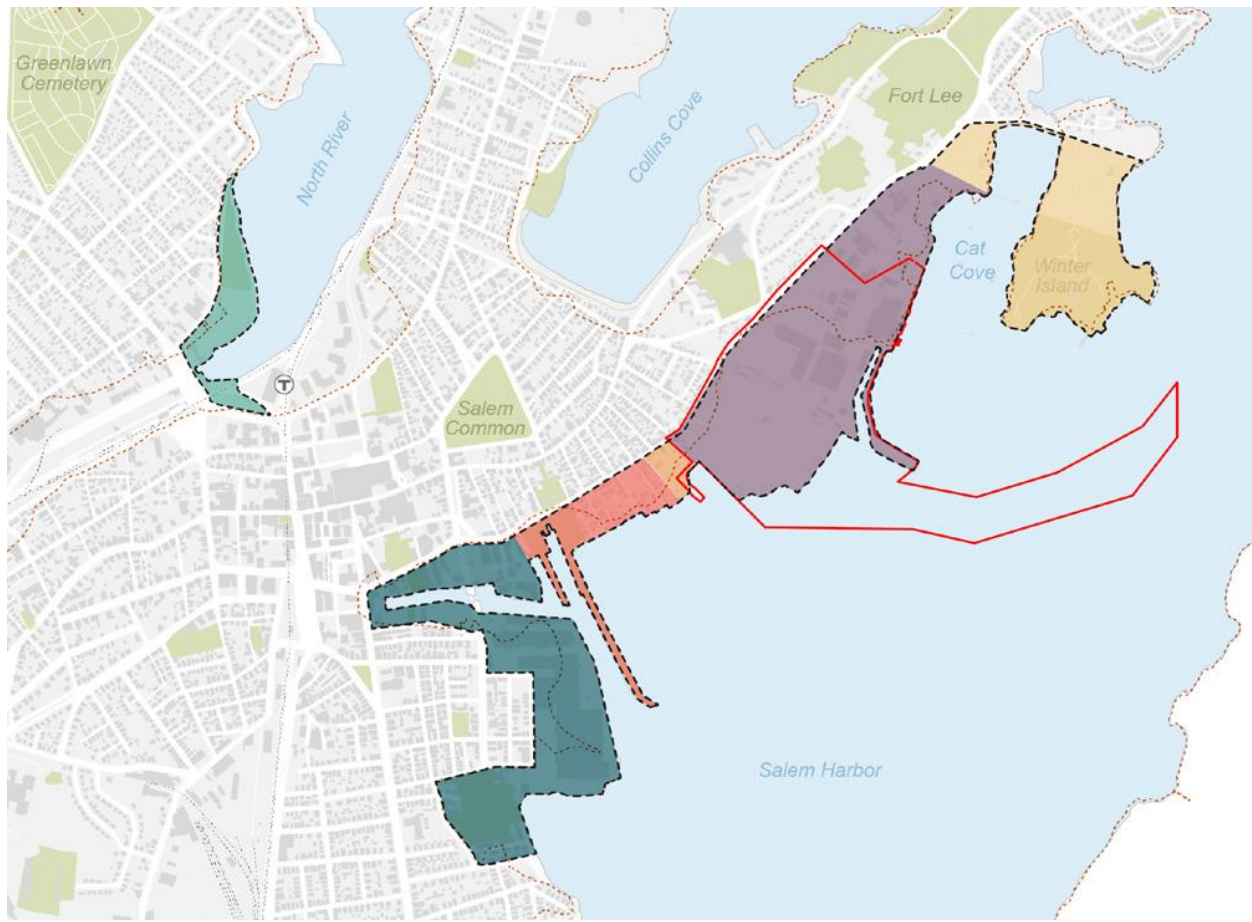


Lisa Berry Engler
Director

Cc:

Tom Daniel, Salem Community Development Director
Daniel Padien, MassDEP Waterways Program Chief

Figure 1.



The Salem Harbor Planning Area is divided into six districts: South Commercial Waterfront, Tourist Historic Harbor, North Commercial Waterfront Industrial Port, Community Waterfront, North River/Crescent Lot.