

DECISION ON THE CITY OF LYNN'S
REQUEST FOR APPROVAL
OF THE
LYNN MUNICIPAL HARBOR PLAN
AND
DESIGNATED PORT AREA MASTER PLAN
PURSUANT TO 301 CMR 23.00

June 28, 2010
Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Ian A. Bowles, Secretary

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving the City of Lynn's Municipal Harbor Plan ("Plan") dated December 2009. This Decision presents a synopsis of the Plan's content and my determinations on how the Plan complies with the standards for approval set forth in the Review and Approval of Municipal Harbor Plan regulations at 301 CMR 23.00 *et seq.*

The Municipal Harbor Planning regulations establish a voluntary process under which cities and towns may develop and submit Municipal Harbor Plans to the EEA Secretary for approval. These plans serve to promote and implement a community's planning vision for their waterfront and to inform and guide state agency decisions necessary to implement such a vision. Specifically, approved Municipal Harbor Plans can provide licensing guidance to Massachusetts Department of Environmental Protection (DEP) in making decisions pursuant to MGL Chapter 91: The Massachusetts Public Waterfront Act ("Chapter 91") and the Waterways Regulations (310 CMR 9.00 *et seq.*). Approved harbor plans may include "substitute provisions" that establish certain numerical and dimensional requirements alternative to those stipulated in the Waterways Regulations, and may also specify provisions that "amplify" any of the discretionary requirements of the regulations.

Pursuant to the review procedures contained at 301 CMR 23.00 *et seq.*, the Plan, including a section outlining its compliance with the approval standards, was submitted in January 2010. Following a review for completeness, a notice of public hearing and 30-day opportunity to comment was published in the *Environmental Monitor* dated February 10, 2010. Oral testimony was accepted during a public hearing held in the City of Lynn on February 24, 2010, and three comment letters were received prior to the close of the public comment period on March 12, 2010. The review process was led on my behalf by the Massachusetts Office of Coastal Zone Management (CZM) and included formal consultation between CZM, DEP's Waterways Program, the City of Lynn ("City"), and Sasaki Associates, Inc. (as consultants for the City). The Plan review followed the administrative procedures set forth at 301 CMR 23.04 and in accordance with the standards in 301 CMR 23.05.

The Municipal Harbor Plan is an important step towards the City's realization of many of the goals of its 2007 Lynn Waterfront Master Plan—itsself the culmination of a larger visioning and

planning effort to transform the underutilized waterfront into a vibrant mixed-use district. Together, these plans are intended to reposition the waterfront area into a prominent component of the City's future. The development of these plans reflects a significant effort and I would like to commend the City, its Economic Development and Industrial Commission, Waterfront Steering Committee, property owners, and members of the public who participated in the process of plan development for their time and effort toward development of both the Waterfront Master Plan and this Municipal Harbor Plan.

I would like to recognize the City for the robust and thoughtful planning reflected in the Municipal Harbor Plan, including the master planning that led to this document. Through such work, the City has created a viable program for re-development of a prime and underutilized waterfront area that will both serve as a new destination for the City as well as support a vibrant community with a mix of residential, retail, parks and marinas and public access. In addition, the proposed development program successfully addresses significant challenges posed by electric and wastewater infrastructure, and preserves and enhances water-dependent industrial uses in the existing Designated Port Area by integrating berthing and landside support for commercial fishing within the overall mix. In addressing these challenges, I note the success of the City's master planning process as providing a solid foundation for the participation of the Executive Office of Housing and Development, National Grid, and General Electric in the South Harbor power corridor relocation. This project to move the poles and power lines off the coastline to the opposite side of the Lynnway opens a 100-acre swath of coastline for new development. The Commonwealth's \$2.5 million grant towards the project is a testament to the state's support of the City's vision and a jump-start for future private investment for a new waterfront.

I am aware that during the recent master planning process, a significant amount of public input was encouraged and incorporated into the final document, and, as a result, the harbor planning process did not elicit significant comment from the public. At the public hearing and in written comments, thoughtful perspective and concerns were raised in regards to such issues as assuring appropriate distribution and attention to open space and access, and there was broad support for the Plan's strategies. In reaching my approval decision, I have carefully considered the oral and written testimony submitted during the public comment period; I have also accounted for the circumstances, challenges, and opportunities of the planning areas, including the Designated Port

Area (DPA), local economic and development conditions, and the social and cultural characteristics of the neighborhood.

In my approval today, I find that the final Lynn Municipal Harbor Plan—in concert with the conditions established in this decision—serve to promote and protect the water dependent uses along the waterfront and core water-dependent industrial composition of the DPA, while providing for the local goals of improved public access and integration of the waterfront with the urban fabric of downtown Lynn. On balance, I am confident that it will function as a clear and effective framework for achieving the City’s goals in harmony with state policy governing stewardship of tidelands, including those located within a DPA.

II. PLAN CONTENT

A. Overview

The Plan lays out the vision and strategy for achieving the City’s objectives of open space and revitalization for the waterfront, while encouraging and expanding compatible marine industries and limited supporting uses within the DPA. Current and proposed conditions of land use in the Harbor Planning Area are described for each of the three planning zones, and the Plan lays out strategies for achieving them in each of the zones. The Plan addresses compliance with CZM policies and state tidelands policy, and includes a DPA Master Plan and an implementation approach to assure that the Plan’s objectives are met.

One of the Plan’s primary goals is to enhance the connection between the Lynn downtown area and its waterfront, with specific focus on improving public access and ensuring that future development functions as an extension of, and not a departure from, the existing urban environment. By providing clear guidelines for development decisions on the waterfront, the Plan aims to create neighborhoods and open spaces that maximize the benefits of the waterfront for the City as a whole.

As shown in Figure 1 in the Attachment to this document, the Harbor Planning Area encompasses approximately 257 acres of the Lynn waterfront, including all properties located to the east of the Lynnway (Route 1A) between the mouth of the Saugus River to the south, the

Lynnway/Nahant Road/Lynn Shore Drive rotary to the north, and the Lynnway to the west. The area is bordered to the east by Lynn Harbor, and includes the City's entire harbor frontage.

The Plan lays out a series of objectives that were developed during the public process for both the Waterfront Master Plan and the Municipal Harbor Plan. A major theme of these objectives is to redevelop the waterfront in such a way as to ensure that physical and visual connections to the larger City are maintained and enhanced, and that the waterfront functions as an extension of, rather than a departure from, the existing urban fabric of the community. The Plan visualizes mixed-use neighborhoods that maximize the waterfront benefits of water views and land/water interface and incorporate energy conservation as a function of carefully considered building layout and design. Open space is a key objective of the Plan as well. Creation of a unified series of public spaces along a waterfront promenade and the creation of a signature park for staging community events and celebrations are central to the Plan. Finally, the Plan aims to coordinate the goals of the City with those of the Commonwealth in protecting collective public trust interests in tidelands.

B. General Recommendations

To account for differing land use objectives and characteristics within the Harbor Planning Area and throughout the waterfront, the Plan looks at three distinct but integral zoning districts: the Gateway Zone, the Marine Park Industry Center Zone, and the Downtown Waterfront Zone.

The Gateway Zone extends from the General Edwards Bridge over the Saugus River at the southwest end of the Harbor Planning Area northeast to the Carolyn Road/Lynnway intersection, and serves as the gateway to the City from the south. Under the City's vision, this zone will be a mixed-use neighborhood with lower residential buildings along the waterfront, transitioning to higher buildings along the Lynnway. Public uses such as retail and restaurant will occupy ground floor spaces. Waterfronts in the Gateway Zone will be reserved for such water-dependent uses as recreational marinas and a public pedestrian promenade.

The Marine Park Industry Center Zone extends from the Carolyn Road/Lynnway intersection to approximately Blossom Street, and includes all of the Lynn Harbor Designated Port Area (DPA). This zone currently includes the existing wastewater treatment plant, a power plant and electrical substation, a liquefied natural gas (LNG) storage tank, and a portion of the capped

municipal landfill. The Plan treats this zone as primarily a working waterfront district, capable of supporting both the existing industrial uses and a range of additional marine industrial and DPA supporting uses. These additional uses, which include a commercial fishing marina, boat building/repair, and passenger vessel pier and terminal, among others, are clearly defined in the Plan. As is appropriate for a DPA, the entire waterfront in this zone will be reserved for water-dependent marine industrial uses, and the pedestrian promenade is proposed to go around this area outside the boundary of the DPA.

The Downtown Waterfront Zone extends from the northern end of the Marine Park Industry Zone boundary to the northern end of the Harbor Planning Area. The City's goal for this area is to capitalize on its proximity to and connection with the downtown and existing features such as the Clockwork Tower Business Center and Seaport Landing. The main focus of this zone is a Waterfront Signature Park proposed where the downtown meets the waterfront, to be used for public open space activities such as festivals. Uses within this district are proposed to be mixed-use similar to those within the Gateway Zone, with lower building heights as appropriate for the location. Public access is a priority here, and the City proposes to utilize the entire waterfront for a continuous pedestrian promenade, with watershed activation to include a boat basin.

In order to meet the objectives above and to address specific building height and open space goals for the waterfront, the Plan recommends two substitutions from the Chapter 91 Waterways regulations (310 CMR 9.00 *et seq.*) as alternative standards for approval during state licensing procedures: a height substitution and an open space substitution. Offsets for these revised standards are proposed to ensure that they are consistent with and further state tidelands policy.

The Plan also describes implementation commitments to advance its objectives. The City has already amended its Zoning Ordinance to include the waterfront zoning districts as described above, and additional amendments are proposed to recognize special sub-sections for both tidelands and DPA overlays, to identify marine-industrial and supporting uses for the DPA, and to address dimensional requirements associated with the proposed substitutions, as described above.

Finally, the Plan includes a Designated Port Area Master Plan that sets out a strategy to preserve and enhance the capacity of the DPA to accommodate water-dependent industry and

prevent displacement of these activities by other nonwater-dependent uses. The DPA Master Plan proposes implementation measures to ensure that an extensive area is reserved for water-dependent industrial uses, recommends specific uses to be categorized as supporting uses in the DPA, specifies types of marine industry preferred by the City for the DPA, and identifies the City's strategy to guide the ongoing promotion of water-dependent industrial use within the DPA.

III. STANDARDS FOR APPROVAL

The Plan contains the City's planning vision and other specifics to guide use and development of the harbor planning area. It is important to note that while this approval represents a general endorsement of the City's Plan and associated recommendations, my approval is bounded by the authority and standards as contained in Review and Approval of Municipal Harbor Plans rules at 301 CMR 23.00 *et seq.* and is applicable only to those discretionary elements of the Chapter 91 Waterways regulations that are specifically noted in this Decision. Other elements of the Plan provide important contextual guidance but do not serve as binding for state agency actions. Moreover, this Decision does not supersede separate regulatory review requirements for any project or activity contained in the Plan.

A. Consistency with CZM Program Policies and Management Principles

The federally-approved CZM Program Plan establishes 20 enforceable program policies and 9 management principles which convey the formal coastal program policy of the Commonwealth. The policies and management principles applicable to the Plan are briefly summarized here:

- Water Quality Policy #1: Ensure that point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.
- Water Quality Policy #2: Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.
- Habitat Policy #1: Protect coastal resource areas including salt marshes, shellfish beds, dunes, beaches, barrier beaches, salt ponds, eelgrass beds, and fresh water wetlands for their important role as natural habitats.
- Protected Areas Policy #3: Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.

- Coastal Hazards Policy #1: Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under ocean.
- Coastal Hazard Policy #2: Ensure construction in water bodies and contiguous land areas will minimize interference with water circulation and sediment transport.
- Coastal Hazard Policy #3: Ensure that state and federally funded public works projects proposed for location within the coastal zone will not exacerbate existing hazards, be reasonably safe from flood and erosion related damage, not promote growth and development in hazard-prone or buffer areas, not be used on Coastal Barrier Resource Units in a manner inconsistent with the Coastal Barrier Resource/Improvement Acts.
- Ports Policy #3: Preserve and enhance the capacity of Designated Port Areas (DPAs) to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.
- Public Access Policy #1: Ensure that the adverse impacts of developments proposed near existing public recreation sites are minimized.
- Energy Policy #1: For coastally-dependent energy facilities, assess siting in alternative coastal locations. For non-coastally-dependent energy facilities, assess siting in areas outside of the coastal zone.

The aforementioned policies are relevant to the major objectives identified in the Plan: waterfront revitalization; public access; and infrastructure investment and transportation links. The Plan presents evidence of its accord with these policies and management principles, and, as required by 301 CMR 23.05(1), CZM has affirmed its consistency. In its assessment, CZM noted that the Plan has dedicated extensive area to water-dependent public access along the waterfront and that it has sought to protect and expand water-dependent industry in support of a working waterfront within the DPA.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(2), I also must find that the Plan is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Waterways Regulations of DEP (310 CMR 9.00 et seq.). As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans present communities with the opportunity to integrate their local planning goals into state Chapter 91 licensing decisions by proposing modifications to the Chapter 91 regulatory standards through

either: 1) the amplification of the discretionary requirements of the Waterways Regulations; or 2) the adoption of provisions that—if approved—are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00 *et seq.* The approved substitution provisions of Municipal Harbor Plans, in effect, allow DEP to waive specific Chapter 91 use limitations and numerical standards affecting projects in tidelands, in favor of the modified provisions specified in an approved Municipal Harbor Plan.

In Section 6 of the Plan and in supplemental information submitted during the consultation period, numeric substitutions are proposed that are intended to be binding guidance within the DEP's Chapter 91 licensing decisions within the Harbor Planning Area. Included in this proposed guidance are:

- Two provisions for substitutions of certain specific minimum numerical standards in the regulations (open space and building heights); and
- Specific provisions that comprise a Master Plan for the lands and waters within the Lynn Harbor DPA.

These provisions are subject to specific approval criteria under 301 CMR 23.05(2)(c) through 301 CMR 23.05(2)(e). The analysis of the proposed provisions is explained below.

Evaluation of Proposed Substitute Provisions

The framework for evaluating all proposed substitution provisions to the Chapter 91 Waterways requirements is established in the Municipal Harbor Plan Regulations at 301 CMR 23.05(2)(c) and 301 CMR 23.05(2)(d). In effect, the regulations set forth a two-part analysis that must be applied individually to each proposed substitution in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

Applying the first part of the analysis, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of a Chapter 91 regulatory requirement unless the Secretary determines that the requested alternative requirements or limitations ensure that certain conditions—applicable to each minimum use limitation or numerical standard—have been met. Part two of the analysis, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitution provision will promote—with comparable or greater effectiveness—the appropriate state tidelands policy objective.

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

For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a) through CMR 9.51(3)(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses.

Open Space

The City has proposed a substitution within a local Tidelands Overlay District—coincident with Chapter 91 jurisdictional area—that allows project sites to be developed at greater densities if offset by greater areas of open space located within the areas specifically identified in the Plan. To approve any substitution provision to 310 CMR 9.51(3)(d), I must first determine that the Plan specifies alternative site coverage ratios and other requirements that ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint so that areas 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 Lynn Harbor. Second, within the context of its Plan, the City must demonstrate that the substitution provision will meet Chapter 91 open space objectives with comparable or greater effectiveness. My determination relative to whether or not this provision promotes this tideland policy with comparable or greater effectiveness is conducted in accordance with the regulatory guidance is discussed below.

The existing Waterways standard at 310 CMR 9.51(3)(d) requires that at least one square foot of the project site at ground level (exclusive of areas lying seaward of the project shoreline) shall be preserved as open space for every square foot of buildings containing non water-dependent use on the project site (in tidelands). A major objective of the Plan is to improve public access and create meaningful public spaces, including several large municipal parks, and a continuous public promenade along Lynn Harbor (see Figure 2 in Attachment A), as well as to promote development consistent with the vision of the City’s Waterfront Master Plan. The substitution submitted seeks to further these goals by allowing significantly denser development of a project site within tidelands, provided these increased nonwater-dependent uses are offset by areas of open space greater than

required under the Chapter 91 rules and located in areas specified in the Plan. Specifically, the Plan requires that for these sites:

1. The sites with increased nonwater-dependent use densities and the open space areas must both be located within tidelands.
2. The sites used for the enhanced open space areas must be located within areas delineated as “Parks and Promenades” in Figure 9 of the Plan.
3. The ratio of open space area to developed/building area must be at least 1.3 to 1.
4. The open space must be provided in a contiguous area of at least 0.25 acres in size.
5. The enhanced open space must be maintained as green, “park-like” space (i.e., grass and/or landscaped areas; mowed, kept, and maintained; free of trash, paved surfaces, and debris; not used for any purpose other than open space.).

As a result of my review, and with the conditions articulated at the end of this Decision, I find that the proposed substitute provision as defined establishes open space at ratios that will be greater than those occupied by buildings / development and will be highly accessible to accommodate water-dependent activity and public access. I also determine that the substitution has been sufficiently offset by requirements for alternative open space preservation criteria that achieve enhanced effectiveness of water-dependent use, so that the proposed substitute provision promotes the state’s tidelands policy objective as appropriate for Lynn Harbor.

Building Height

As described below and summarized in, the Plan proposes a building height substitution only for that portion of the Gateway District that is on the Lynn Harbor waterfront. To approve any substitution provision to 310 CMR 9.51(3)(e), I must first determine that the Plan specifies alternative height limits and other requirements that ensure, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access, as appropriate for Lynn Harbor. Second, within the context of its Plan, the City must demonstrate that the substitution provision will, with comparable or greater effectiveness, meet this objective. My determination relative to whether or not this provision promotes this tideland policy with comparable or greater effectiveness is conducted in accordance with the MHP regulatory guidance is discussed below.

The waterways regulations at 310 CMR 9.51(3)(e) establish a height limit ratio for new or expanded nonwater-dependent use buildings in tidelands, that holds heights to 55 feet within the first 100 feet landward of the high water mark and allows no more than one-half foot in additional height for each additional foot of separation away from the high water mark. Under their Municipal Harbor Plan and Waterfront Master Plan, the City has articulated a vision for the Gateway District as a mixed-use neighborhood with lower buildings along the waterfront, transitioning to higher buildings along the Lynnway. Public uses such as retail and restaurant will occupy ground floor spaces while upper floors would be devoted to residences. The waterfront itself is to be reserved for a public esplanade as well as other water-dependent uses like recreational boating facilities. In order to advance this municipal blueprint, the City's has proposed a substitute provision that would allow for heights somewhat greater than permissible under the Chapter 91 standards by increasing the ratio of building height to distance of separation from the high water mark. Starting at locations 200 feet from the high water mark, heights are not exceed 55 feet and then may increase no more than one and one-half foot in additional height for each additional foot of separation away from the 200 foot line to a maximum height of 240 feet. To offset the additional height in this area, the City has proposed a prohibition on all new or expanded buildings for nonwater-dependent buildings in tidelands within 200 feet landward of the high water mark.

In the review of the comprehensive wind and shadow analysis included in the Plan, it is clear that the impacts on the public ground-level experience from the proposed heights in the limited areas of the Gateway District are negligible. I am also convinced that the benefits of barring nonwater-dependent uses from a wide waterfront area and reserving this space for an enhanced public promenade and recreational activities considerably outweigh any adverse effects of relatively minor increases in building heights. As a result of my review, and with the conditions articulated at the end of this Decision, I find that the proposed substitute provision has been clearly defined, the alternative height limits are modest in size, the provision has been sufficiently offset and promotes Chapter 91 tideland policy with comparable or greater effectiveness as appropriate for Lynn Harbor.

Evaluation of DPA Master Plan

Because the Plan is intended to serve, in part, as a Master Plan for the DPA, the approval criteria at 301 CMR 23.05(2)(e) requires a finding that the Plan preserves and enhances the capacity of the DPA to accommodate water-dependent industrial use and prevents substantial exclusion of

such use by any other use eligible for licensing in the DPA pursuant to 310 CMR 9.32. Specifically, the Plan must ensure that extensive amounts of the total DPA area are reserved for water-dependent industrial uses and that commercial uses will not, as a general rule, occupy more than 25% of the DPA land area. The Plan must also set forth reasonable limits on commercial uses that would significantly discourage present or future water-dependent industrial uses and ensure that commercial uses mix compatibly and will not alter the predominantly maritime industrial character of the DPA. The Plan should also identify industrial and commercial uses allowable under local zoning that will qualify as a supporting DPA use, and identify a strategy for the ongoing promotion of water-dependent industrial use.

The Lynn DPA encompasses approximately 49 acres in the central portion of the Lynn Waterfront (Figure 1). Current uses include a mix of predominantly industrial and marine industrial uses, including an LNG storage facility, the EDIC-owned pier, several industrial/warehouse buildings, and the recently renovated Blossom Street waterfront facility and boat ramp. The Lynn DPA also includes a portion of the capped municipal land fill.

While the Lynn MHP lays out a plan for significant mixed use and improved public access for much of the waterfront, the DPA Master Plan clearly commits to assuring that the lands within the DPA will be reserved for uses consistent with the DPA-use policies of CZM and the relevant provisions of the Massachusetts Waterways Regulations (310 CMR 9.00). The Master Plan specifies limited marine industrial uses that are to be allowed within the Lynn DPA, including commercial passenger vessel operations; commercial fishing and fish processing operations; boat yard (including storage/dry dock); boat construction, maintenance and repair; and marine terminal. The DPA Master Plan further specifies 5 uses that may be allowed as supporting DPA uses within the Lynn DPA. These include a fish market; convenience retail store; marine tourism facilities; public boat ramp; and food service with limited seating. The City believes that these uses, to be limited to no more than 25% of a project site, will be compatible with and complimentary to the primary marine industrial uses within the DPA.

The DPA Master Plan further recognizes that land use outside of but immediately adjacent to the DPA should be compatible with the marine industrial uses of the DPA in order to provide a buffer to the DPA uses. To address this concern, the Marine Park Industry Center Zone, including

lands within and adjacent to the DPA, is zoned to be primarily a working waterfront district capable of supporting a range of marine industrial uses as described above within the DPA, as well as compatible uses adjacent to it. Some of these adjacent uses exist already, such as the waste water treatment plant, power plant and electrical substation. Other uses that may serve as buffers just outside the DPA in this area include office buildings with ground floor retail. Residential uses would be allowed in the Marine Park Industry Center Zone (outside the DPA) only if sufficient buffers are retained between industrial and residential buildings. Finally, to assure that the water dependent use zone within the DPA is reserved for water-dependent industrial use consistent with CZM policies and MA Waterways regulations (310 CMR 9.00), the pedestrian promenade planned for the entire length of Lynn Harbor is to be located outside of the DPA to accommodate public access while minimizing conflict with industrial uses.

The City's proposal is to use revised municipal zoning and special permit standards to implement limited uses in the DPA as described in the DPA Master Plan. Such proposed changes would limit the allowed marine industrial and supporting DPA uses (i.e., industrial or commercial uses that provide direct economic or operational support to water-dependent industry in the DPA) in the Lynn DPA District to those specified above and in the DPA Master Plan.

Based on the information provided in the Plan as discussed above and subject to the conditions at the end of this Decision, I find that the DPA Master Plan components of the Plan are consistent with the requirements of 301 CMR 23.05(2)(e).

C. Relationship to State Agency Plans

The Massachusetts Department of Conservation and Recreation (DCR) owns several parcels within and adjacent to the Lynn harbor planning area. These include the Lynnway/Carroll Parkway, the Lynn Heritage State Park, and the Willis Fishing Pier located at the mouth of the Saugus River. During development of the Municipal Harbor Plan and the Waterfront Master Plan, the City worked with DCR to assure that the Plan is compatible with DCR's plans and projects. The Lynn Plan contains two recommendations that are intended to enhance the State's existing public access features. The first of these recommendations is a plan to expand the waterfront promenade, currently limited to the Lynn Heritage State Park Waterfront Park, to the majority of the waterfront. In addition, improvements to the Willis Fishing Pier and the surrounding area are intended to make

the facility more accessible to the broader public. The size and siting of the Lynn Signature Waterfront Park, as depicted in Figures 5 and 8 of the Lynn Plan will require a realignment of the Lynnway/Carroll Parkway. The Department of Transportation (DOT) is scheduled to take ownership of the Carroll Parkway portion of the Lynnway from DCR sometime in 2010, but details of this change have not been finalized. As, DOT does not yet have control of the roadway, it is therefore premature for that agency to evaluate Plan compatibility with its own plans at this time. However, as the City has indicated that it will continue to work cooperatively with the state agencies towards achieving the goals of the Lynn MHP, and subject to the conditions at the end of this Decision, I find that compatibility with state agency plans has been satisfactorily addressed.

D. Implementation Strategy

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. The provisions of this Plan will be implemented through proposed amendments to the City of Lynn Zoning Ordinance and special permit standards. The amended zoning provisions will assure that permitted uses are consistent with the approved substitute provisions and offsetting measures described in the plan. These local rule revisions will also apply limitations on preferred supporting DPA uses, while ensuring that an extensive amount of the total DPA land area in close proximity to the water will be reserved for water-dependent industrial uses consistent with the City's vision for this portion of the waterfront. Accordingly, I find that this approval standard is met subject to the condition detailed below which requires local enactment of the implementation commitments.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on June 28, 2010. As requested by the City, the Decision shall expire ten (10) years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06 (recognizing that the term of approval is now ten years). No later than six months prior to such expiration date, in addition to a notice to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

V. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the December 2009 Plan as the Municipal Harbor Plan for the City of Lynn, subject to the following conditions:

1. DEP shall not license any project seeking substitution of Chapter 91 open space and building height standards as defined in the Plan and subject to this approval until the necessary amendments to the City of Lynn Zoning Ordinance and special permit standards laid out in the Lynn Municipal Harbor Plan have been enacted through the City's established governance process. As described below, the Plan shall be updated to reflect the final local code and standards accepted.
2. In the application of the open space substitution for the Chapter 91 standards at 310 CMR 9.51(3)(d), DEP shall:
 - Apply a substitute ratio of open space to combined non-water dependent building footprint of at least 1.3 to 1 only when a clear showing has been made that the all parcels combined to meet the substitution are located within filled tidelands;
 - Ensure that sites used for the enhanced open space areas are located within areas delineated as "Parks and Promenades" in Figure 9 of the Plan;
 - Ascertain that the open space provided is in a contiguous area of at least 0.25 acres in size;
 - Include license conditions that require the enhanced open space to be maintained as green, "park-like" space (i.e., grass and/or landscaped areas; mowed, kept, and maintained; free of trash, paved surfaces, and debris; not used for any purpose other than open space; and
 - Require reasonable arrangements to assure that improvement of reserved open space to parks and promenades as depicted in Figure 9 of the Lynn Municipal Harbor Plan proceeds concurrent with the associated development on tidelands.
3. In the application of the building height substitution for the Chapter 91 standards at 310 CMR 9.51(3)(e), DEP shall:
 - Limit the substitution to projects in the WF-1 District as shown on Figure 2 in the Lynn Municipal Harbor Plan;

- Require that new or expanded buildings are set back, in their entirety, at least 200 feet from the high water mark of Lynn Harbor; and
 - Ensure heights of no more than 55' at the 200 foot distance and then limit increase to no more than one and one-half foot of height per foot of separation from the 200 foot line from the high water mark to a maximum height of 240 feet.
4. Prior to issuance of any license for the Waterfront Signature Park involving realignment of the Lynnway/Carroll Parkway DEP should confirm that local and state plans involving this site have been coordinated to the maximum extent feasible.
5. The City shall prepare a final, approved Lynn Municipal Harbor Plan (“Approved Plan”) to include:
- The Plan, including the statement of compliance, dated December 2009, as amended during the consultation period and by the City’s enactment of local zoning and any special permit code; and
 - This Approval Decision.

Copies of the final, approved plan shall be provided to CZM and DEP’s Waterways Program, kept on file at the City Clerk and EDIC Offices, and made available to the public through the City’s website and copies at the library. For waterways licensing purposes, the Approved Plan shall not be construed to include any of the following:

1. Except as described above, any subsequent addition, deletion, or other revision to the submitted plan dated December 2009, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1); and
2. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by DEP to be inconsistent with the waterways regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

By letter from the Waterways Program Chief in Attachment B, DEP has expressed support for approval of the Plan and stated that the Plan will become operational for waterways licensing for all applications upon the effective date of Plan approval and in accordance with the conditions above. Subsequent to Plan approval, a determination of conformance with the Plan will be required for all proposed projects in accordance with 310 CMR 9.34(2).



Ian A. Bowles
Secretary of Energy and Environmental Affairs

6/28/10

Date

Attachment A: Figures

Figure 1. Lynn Harbor Planning Area and DPA



Figure 2. Public Open Spaces: Parks and Promenades



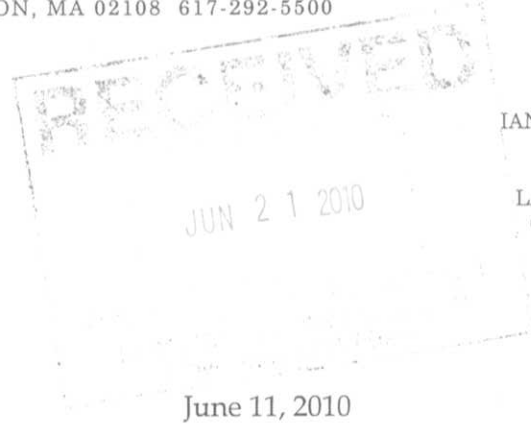
Attachment B: Letter from DEP Waterways Chief



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor



IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

June 11, 2010

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

RE: DEP Recommendation for the Approval of the Lynn Municipal Harbor Plan and Designated Port Area Master Plan Renewal, dated June, 2010.

Dear Secretary Bowles:

The Department of Environmental Protection, Waterways Regulation Program (MassDEP) has reviewed the City of Lynn Harbor Plan and Designated Port Area Master Plan Renewal ("Plan"), dated June 2010. WRP staff members have worked closely with the Massachusetts Office of Coastal Zone Management (CZM) and representatives of the City of Lynn throughout the planning process and our comments have been adequately addressed and incorporated into the final Plan. The WRP, therefore, recommends that you approve the Plan and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

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

MassDEP will adopt as binding guidance in all License application review the two Substitute Provisions contained in the Approved Plan. The first, which modifies a standard pursuant to 310 CMR 9.51(3)(e), allows for buildings of slightly greater height in appropriate and limited areas of the planning area; the second, which modifies a standard pursuant to 310 CMR 9.51(3)(d), provides for limited allowance of increased building site coverage in designated, circumscribed areas of the planning area, and will be offset by the provision of correspondingly increased open space in appropriate tidelands sections of the planning area .

The MassDEP looks forward to continuing its work with CZM and the representatives of the City of Lynn in the implementation of this important planning effort. Should you have any questions in regard to the foregoing, please contact me at (617)292-5615. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Lynch", with a long horizontal flourish extending to the right.

Ben Lynch
Program Chief
Waterways Regulation Program

Cc: Mayor Judith Flanagan Kennedy, City of Lynn
James Marsh, Director, City of Lynn Office of Economic & Community Development
James R. Perry, City of Lynn Harbormaster
Deerin Babb-Brott, Director, CZM
Bruce Carlisle, Assistant Director, CZM
Kathryn Glenn, North Coast Regional Coordinator, CZM
Alex Strycky, MassDEP
WRP MHP files