

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

**November 25, 2020**

**Commonwealth of Massachusetts  
Executive Office of Energy and Environmental Affairs  
Kathleen A. Theoharides, Secretary**



## I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving, subject to the modifications and conditions noted below, a renewal to the City of Lynn's Municipal Harbor Plan and Designated Port Area Master Plan ("Plan") dated September 2010. The original Plan was approved by the Secretary on June 28, 2010. This Decision presents an overview of the Plan and findings on how it complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00. The geographic scope of the Plan is the same as that for the 2010 Plan, except for a minor change in the Northeast corner of the Harbor Planning Area (HPA) where a portion of the boundary has been corrected to conform to the Lynn/Nahant border. The HPA includes approximately 253 acres and 2.5 miles of shoreline, encompassing all properties to the east of the Lynnway between the mouth of the Saugus River on the south and the Lynnway/Nahant Road/Lynn Shore Drive boundary to the north (Figure 1). The Plan builds on and seeks to implement recommendations of prior planning initiatives that cover the area, including the 2019 Waterfront Open Space Master Plan (WOSMP) and the 2019 Revised Waterfront Master Plan (2019 RWMP). Described below, the City defines three goals and six objectives to be achieved through implementation of the Plan and proposes substitute provisions to specific MGL Chapter 91 standards and three amplifications of discretionary language in Chapter 91 to provide licensing guidance to the Department of Environmental Protection (DEP). The Plan supports the application of design criteria as laid out in the 2019 WOSMP for permanently protected open space, and a preference for using nature-based shoreline protection and elevation increases for shoreline protection whenever feasible, consistent with the 2019 WOSMP. The proposed substitutions and amplifications would apply only to projects located in the Municipal Harbor Plan (MHP) focus area, which is the portion of the HPA that extends from the mouth of the Saugus River to the northeasterly border of Lynn Heritage State Park. This focus area includes approximately 241 acres, of which approximately 158 acres are subject to Chapter 91 jurisdiction (Figure 1). My approval of the Plan, with the modifications and conditions contained herein, does not, and should not be construed to serve as an authorization or approval of a specific project. As described below, redevelopment projects identified in the Plan are subject to regulatory and other reviews that have not yet begun.

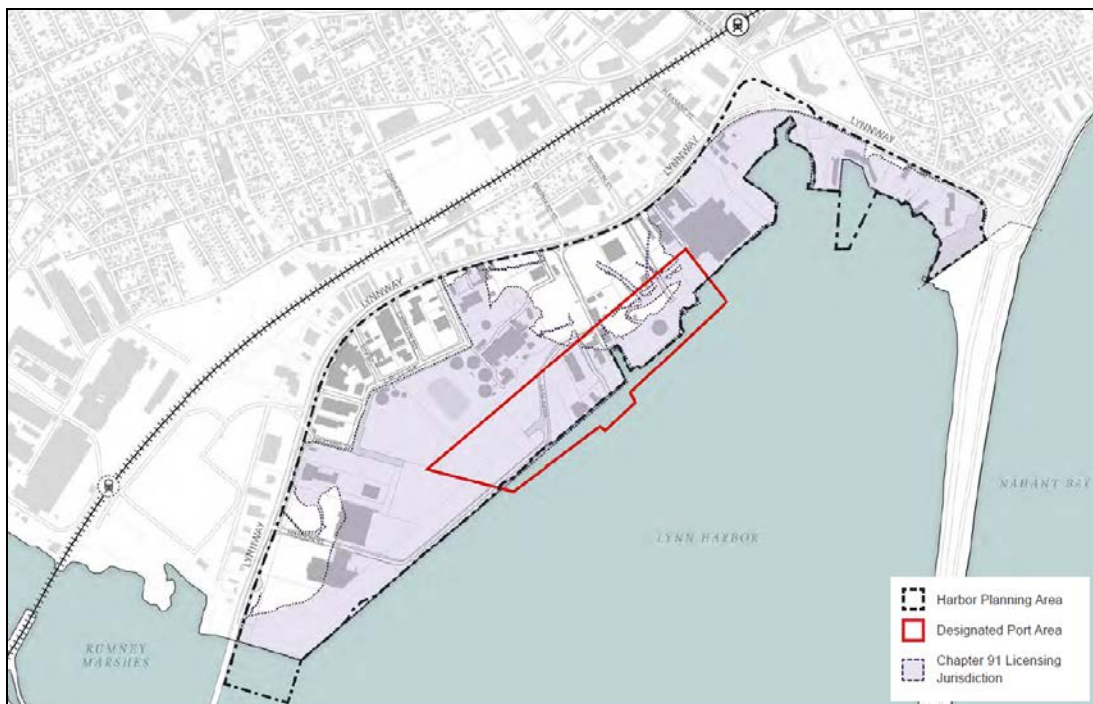
The 2010 Decision on the Lynn MHP and Designated Port Area (DPA) Master Plan was approved for a ten-year period, and included provisions that allowed for building heights greater than baseline Chapter 91 standards offset by a 200' open space/public access requirement along the

waterfront, and allowed for more dense development on project sites as long as a specific ratio of open space was set aside in designated locations for open space identified in the MHP. In December 2016, a Clarification of the 2010 Decision was issued at the City's request allowing development of the "Minco site" at 264-272 and 282R Lynnway, which was specified as a "signature park" open space "sending area" in the 2010 Plan. The Clarification allowed the development to advance as long as the City developed a new comprehensive WOSMP; amended the 2010 Plan to incorporate the findings of the 2019 WOSMP, as well as modifications to the City's goals and objectives for the waterfront since the 2010 Decision; and included specific mechanisms in the amended Plan to implement the 2019 WOSMP through licensing and local zoning. Since 2016, the City has completed both the 2019 WOSMP as well as the 2019 RWMP. The submitted 2020 Plan seeks to implement the results of these efforts, consistent with the 2016 Clarification.

Pursuant to the review procedures at 301 CMR 23.00, in January 2019, the City submitted its Request for a Notice to Proceed, and following a public comment period, the Office of Coastal Zone Management (CZM) issued a Notice to Proceed on April 8, 2019. From March through June 2019, the City held four public meetings to inform the development of the Plan. In June 2019, the City released a draft of the Plan for public review and comment and held a public meeting for discussion. In September 2019, the Lynn City Council approved the Plan in part, but local zoning changes required additional deliberation before the entire Plan was approved in February 2020. The Plan was submitted by the City to EEA on July 10, 2020. CZM published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated August 10, 2020. A public hearing held virtually using Zoom on August 20, 2020 provided an opportunity for oral comments in English or Spanish, and one written comment letter was received during the public comment period which closed on September 9, 2020. The consultation period ended on November 8, 2020. The Municipal Harbor Planning review and consultation process, led by EEA and CZM, included consultation among CZM, DEP, and the City.

In reaching my approval decision, I have taken into account the oral and written testimony submitted by the public, as well as public comments and discussions throughout the waterfront planning processes for this Plan, the 2019 WOSMP, and the 2019 RWMP, as these public planning efforts formed the basis for the goals and objectives laid out in the Plan. One comment letter was received during the public comment period for the Plan, from the Conservation Law Foundation (CLF), which expressed general support for the City's vision as demonstrated in the Plan, particularly those goals that support improved and expanded inclusive public access, public open

space, and consideration of climate change risks. The letter also expressed support in that the Decision ensures the proposed amplifications, substitutions, and open space proposals are consistent with Waterways policy, that the proposed signature waterfront park will not pose health risks to the public, particularly the environmental justice community, and encouraged the City to consider a holistic approach to activating the waterfront for expanded water-dependent recreation. Another issue raised, and consistent with opinions expressed by the public at many of the public meetings, is that the City ensure that public access to the waterfront is inclusive and encourages full utilization of the open space areas by the general public, avoiding a sense of privatization by developments in the MHP focus area.



## II. PLAN CONTENT

As mentioned above, the 2020 Plan is a culmination of a series of three planning efforts over the last two years that together form a cohesive vision and implementation strategy to achieve a successful revitalization program for the HPA on the Lynn waterfront, focused on ensuring high quality public open space on the waterfront.

The Plan provides a clear description of the HPA, which extends from the General Edwards Bridge to the south to the Nahant border to the north, and the primary focus of the planning effort, the MHP focus area, which lies between the General Edwards Bridge and Lynn Heritage State Park. While some local zoning changes have been made to the area between Lynn Heritage State Park and Nahant at the head of the harbor, the Plan does not include direction specific to this area. The Plan provides a brief description of Lynn waterfront history and presents the recent planning efforts, with a discussion of the goals and objectives of each, and a description of the progression from the 2010 MHP and DPA Master Plan, the 2016 Clarification, and the most recent open space and waterfront master planning efforts, *i.e.*, the 2019 WOSMP and the 2019 RWMP.

The Plan also lays out the primary goals and objectives for all three plans, as the implementation of these drive the content of the current Plan. The primary goals of the 2019 WOSMP are to establish a cohesive vision for connected open spaces along the waterfront; safeguard public access to and along the waterfront from the General Edwards Bridge to Nahant; provide open space design guidelines for future development along the waterfront to ensure that open spaces are appealing and accessible to all members of the public; and plan for climate resiliency in all developments. The goals of the 2019 RWMP include creating a flexible planning framework that enables the implementation of the 2019 WOSMP; maximizing the success and impact of activities already under way; creating a mixed-use district for housing, retail, commercial, and industrial uses and providing public access to the waterfront; connecting the downtown and surrounding neighborhoods to the waterfront area; ensuring a balance between new residential development, job creation, and public benefits; cleaning up and developing areas that have been underutilized and in some cases industrial brownfields; and identifying options to buffer conflicting uses. Building off the goals of these plans the City identifies three goals and six objectives in this Plan to ensure implementation:

1. Goal: Provide clear Chapter 91 licensing guidance to DEP that activates the Lynn Waterfront with contemporary, mixed-use development and significant waterfront open space.
  - a. Objective: Eliminate previous (2010) “trade-off” approach with substitute provisions and offsets and use a simplified approach that establishes performance standards for public use and enjoyment.
  - b. Objective: Ensure public benefits are concurrent with each development instead of aggregated for future implementation.
2. Goal: Implement the goals and objectives of the 2010 MHP, the 2019 WOSMP, and the 2019 RWMP to the maximum extent possible.
  - a. Objective: Identify and include enforceable strategies in the 2020 Plan to provide as much of the public open space identified in the 2019 WOSMP as feasible, and ensure that the types of public amenities envisioned in the 2019 WOSMP are provided.
  - b. Objective: Ensure that the Plan provides implementation strategies for the type of uses and activities envisioned in the 2019 RWMP.
  - c. Objective: Provide a strategy for implementing the open space provisions in the 2019 WOSMP that are not enforceable through an MHP.
  - d. Objective: Ensure local zoning is adopted to be consistent with the Plan.
3. Goal: Renew the 2010 Lynn Municipal Harbor Plan and DPA Master Plan for ten years to allow an appropriate time for implementation.

The Plan also reviews the goals and approved provisions of the 2010 MHP and DPA Master Plan, highlighting the changes that are proposed through the 2020 Plan and the reasons for changing the approach, where applicable.

In addition to providing a description of the goals and objectives for these planning efforts, the Plan describes the extensive public outreach provided throughout the processes. Nearly two dozen site visits, public outreach meetings, and public hearings were held throughout the development of these plans, ultimately leading to the development of the 2020 Plan.

The Plan provides a summary and detailed description of the proposed substitutions of minimum use standards and numerical requirements, as well as the amplifications of the discretionary language of the Chapter 91 Waterways (Waterways) regulations that are included in the



Plan, with a justification for the requests and supporting information to demonstrate compliance with the approval standards for each. The proposed substitutions and amplifications are primarily focused on ensuring that the public benefits identified in the planning process are implemented appropriately. The Plan also includes a discussion of zoning changes that were made at the local level to ensure that local decisions are consistent with the requirements of the Waterways regulations, substitutions and amplifications to those requirements, and other elements of the Plan approved by this Decision. These zoning changes were approved by the City prior to submittal of the Plan in July 2020. The Plan includes implementation strategies that can be implemented through Waterways licensing as well as my authority in issuing a public benefits determination under 301 CMR 13.00. The Plan also includes the City's recommendations regarding implementation strategies that are outside the purview of this Decision, including use of conservation restrictions for open space and requests for DPA boundary reviews. These recommendations are not applicable to my review and approval of this Plan, and I am taking no action on these recommendations through this Decision.

The Plan addresses consistency with several state agency plans and projects, including plans by the Department of Conservation and Recreation (DCR) to improve state parks at the northern and southern ends of the MHP focus area. The Massachusetts Department of Transportation (MassDOT) is in the process of planning for the replacement of the General Edwards Bridge, which may impact the layout and public benefits provided by the DCR promenade proposed for the area along the Saugus River at the southern edge of the MHP focus area. If this occurs, an amendment to this Plan may be required to ensure that public benefits are protected by the new layout. The City has also been working with EEA and the Town of Nahant to finalize the Northern Strand bike path, which, along with the Lynn Community Path, will provide a significant public connection to the Lynn waterfront. No immediate conflicts are identified between planned state agency actions or plans and this Plan. The Plan also includes summaries of the City's work with CZM, DCR, EEA, MassDOT, Executive Office of Housing and Economic Development, and DEP in the recent planning efforts for the Lynn waterfront. Discussions of how the Plan is consistent with the relevant Waterways regulations and CZM Coastal Policies are also provided.

The Plan includes Figures to support the narrative and Appendices to provide additional background and detailed information for provisions and requirements of the Plan. Relevant background documents provided in the Appendices include Appendix A, Guidance from the 2019 WOSMP, which provides important guidance specific to open space substitution and amplification

provisions in the Plan; Appendix B, 2019 WOSMP public process survey results, and Appendix C, the 2019 Lynn RWMP and 2020 Lynn MHP public meeting notes, which provide support for the findings and goals of the Plan; and Appendix D, the 2016 Clarification of the 2010 Decision on the Lynn MHP and DPA Master Plan, which supports the Plan's discussion of history and progression of the planning process. Appendix E, Transmittal letter and Administrative Consent Order #00007125, in the matter of Lynn Harbor Park LLC, and Appendix F, the City of Lynn Seawall Redesign and Retrofit Project application for the FY21 CZM Coastal Resilience Grant program, are not applicable to this Decision and should be removed for the final Plan that incorporates this Decision.

Finally, the 2020 Plan includes a DPA Master Plan that details a strategy to preserve and enhance the capacity of the DPA to accommodate water-dependent industry and prevent substantial displacement of these activities by nonwater-dependent uses. The DPA Master Plan proposes implementation measures to ensure that extensive areas are reserved for water-dependent industrial (WDI) uses, identifies preferred and locally allowed uses as supporting uses in the DPA, puts limits on commercial uses to prevent incompatibility with marine industry, and identifies the City's strategy to guide the ongoing promotion of WDI use within the DPA.

### **III. STANDARDS FOR APPROVAL**

As noted previously, my approval today is bounded by the authority and standards as contained in 301 CMR 23.00 et seq. (Review and Approval of MHPs) and is applicable only to those elements of the Waterways regulations that are specifically noted in this Decision. This Decision does not supersede separate regulatory review requirements for any activity.

#### **A. Consistency with CZM Program Policies and Management Principles**

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

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

- Coastal Hazards Policy #2 – Ensure construction in water bodies and contiguous land area will minimize interference with water circulation and sediment transport. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or downcoast areas.
- Coastal Hazards Policy #3 – Ensure that state and federally funded public works projects proposed for location within the coastal zone will:
  - Not exacerbate existing hazards or damage natural buffers or other natural resources.
  - Be reasonably safe from flood and erosion-related damage.
  - Not promote growth and development in hazard-prone or buffer areas, especially in velocity zones and Areas of Critical Environmental Concern.
  - Not be used on Coastal Barrier Resource Units for new or substantial reconstruction of structures in a manner inconsistent with the Coastal Barrier Resource/Improvement Acts.
- Coastal Hazards Policy #4 – Prioritize acquisition of hazardous coastal areas that have high conservation and/or recreation values and relocation of structures out of coastal high-hazard areas, giving due consideration to the effects of coastal hazards at the location to the use and manageability of the area.
- Growth Management Policy #1 – Encourage sustainable development that is consistent with state, regional, and local plans and supports the quality and character of the community.
- Growth Management Policy #3 – Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and financial support for residential, commercial, and industrial development.
- Habitat Policy #1 – Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

- Habitat Policy #2 – Advance the restoration of degraded or former habitats in coastal and marine areas.
- Ports and Harbors Policy #3 – Preserve and enhance the capacity of Designated Port Areas to accommodate WDI uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.
- Ports and Harbors Policy #4 – For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.
- Ports Management Policy #5 – Encourage, through technical and financial assistance, expansion of water-dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access.
- Public Access Policy #1 – Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water's edge, to an extent commensurate with the Commonwealth's interests in flowed and filled tidelands under the Public Trust Doctrine.
- Public Access Policy #2 – Improve public access to existing coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation and trail links (land- or water-based) to other nearby facilities. Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance, and public support facilities. Ensure that the adverse impacts of developments proposed near existing public access and recreation sites are minimized.
- Public Access Policy #3 – Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities, giving highest priority to regions of high need or limited site availability. Provide technical assistance to developers of both public and private recreation facilities and sites that increase public access to the shoreline to ensure that both transportation access and the recreation facilities are compatible with social and environmental characteristics of surrounding communities.

The Plan includes an assessment of how it is consistent with CZM Program Policies, and based on CZM's review, I conclude that it meets the intent of each relevant policy and, as required by 301 CMR 23.05(1), I find the Plan consistent with CZM policies.

## **B. Consistency with Tidelands Policy Objectives**

As required by 301 CMR 23.05(2), I must also find that the Plan is consistent with state tidelands policy objectives and associated regulatory principles set forth in the Waterways regulations of DEP (310 CMR 9.00). As promulgated, the Waterways regulations provide a uniform statewide framework for regulating tidelands projects. MHPs and associated amendments provide cities and towns with an opportunity to propose modifications to these uniform standards through either the amplification of the discretionary requirements of the Waterways regulations and/or the adoption of provisions that, if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00 by DEP. The substitute provisions of MHPs can reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands, and serve as the basis for a DEP waiver of specific use limitations and numerical standards affecting nonwater-dependent use projects, provided that other requirements are in place to mitigate, compensate, or otherwise offset adverse effects on water-related public interests.

The Plan contains guidance that will have a direct bearing on DEP licensing decisions within the HPA. Included in this guidance are provisions that are intended to substitute for certain use limitations and minimum numerical standards in the regulations and others that amplify certain discretionary requirements of 310 CMR 9.00. It is anticipated that DEP will review any specific project proposals submitted for licensure in accordance with all applicable regulations and standards. These provisions are each subject to the approval criteria under 301 CMR 23.05(2), as explained below.

## **C. Evaluation of Requested Substitute Provisions**

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

For the first part, in accordance with 301 CMR 23.05(2)(c), there can be no change to a Waterways requirement unless the Secretary determines that the requested alternative requirements

or limitations ensure that certain conditions—specifically applicable to each minimum use limitation or numerical standard—have been met. The second standard, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitute 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 tidelands-related public interests.

For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a)–(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, any substitute provision to 310 CMR 9.52(1)(b)(1), must ensure that nonwater-dependent projects on any tidelands devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands.

Table 1 at the end of this section contains a summary of the substitute provisions and offsetting measures contained in the Plan, as subject to and modified by this Decision.

#### **Water-Dependent Use Zone (310 CMR 9.51(3)(c))**

To approve any substitute provision to the standards for the Water-Dependent Use Zone (WDUZ) (310 CMR 9.51(3)(c)), I must first determine that the Plan specifies alternative distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for Lynn Harbor (301 CMR 23.05(2)(c)3). Second, within the context of the Plan, the City must demonstrate that the substitution provision meets this objective with comparable or greater effectiveness than the original provision (301 CMR 23.05(2)(d)). My determination relative to whether this provision promotes this tideland policy with comparable or greater effectiveness conducted in accordance with the MHP regulatory guidance at 301 CMR 23.00 is discussed below.

Establishment and maintenance of an adequate and functional WDUZ is critical to ensuring necessary waterfront access for water-dependent uses including public access, and essential for sustaining these uses. To support the City's goals in realizing the open space envisioned in the 2019

WOSMP, the Plan requests a substitution to the WDUZ requirement at 310 CMR 9.51(3)(c) for areas outside of the DPA. Specifically, the Plan requests a substitute provision to increase the width of the WDUZ such that the total WDUZ area shall be equivalent to the area of a 200-foot wide WDUZ. As proposed, the WDUZ width may vary along the site, provided all areas are at least 100 feet wide, and the net total area is equivalent to the area resulting from a 200-foot wide WDUZ for a project site. The City notes that this substitute provision more than doubles the size of the WDUZ required for any new or expanded nonwater-dependent use, and when combined with the DCR parks at each end of the planning focus area, and the proposed signature open space park, significantly improves public access along the shore. The proposed substitution is necessary to implement the vision expressed by the public during the planning processes to provide sufficient space along the water's edge for public access and activation.

As a result of my review, I find that the City has demonstrated that the proposed substitute provision ensures that areas along the edge of the project shoreline will be devoted exclusively to water-dependent use and public access. Second, I find that with the proposed substitute provision will meet this standard with comparable or greater effectiveness than the provisions of 310 CMR 9.51(3)(c). I therefore approve this substitute provision. My approval of this substitution is conditioned that under no circumstances will there be a net loss of WDUZ area on a project site or within the MHP focus area as a result of this provision.

#### **Pedestrian Access Network (310 CMR 9.52(1)(b)(1))**

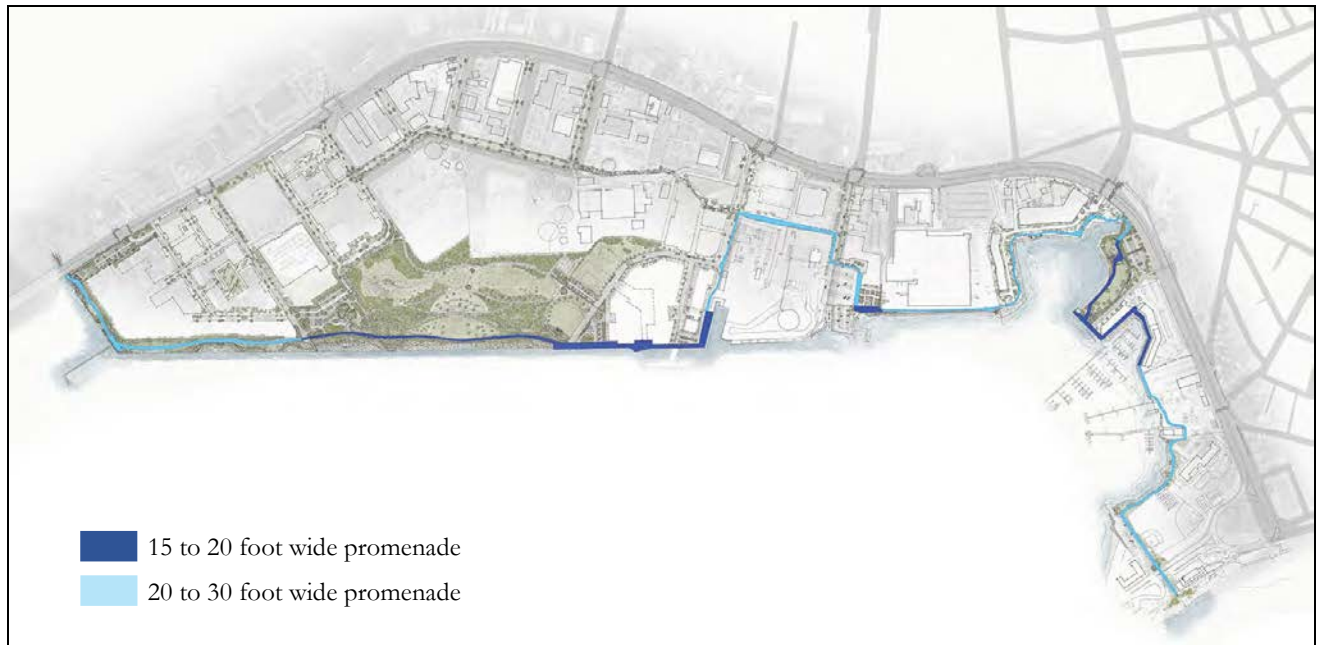
For substitute provisions governing a pedestrian access network, a minimum walkway width other than ten feet may be specified provided that the alternative width is appropriate given, among other things, the size and configuration of the WDUZ and the nature and extent of water-dependent activity and public uses that may be accommodated therein (301 CMR 23.05(2)(c)6). In addition, the proposed substitute provision must meet this objective with comparable or greater effectiveness than the original provision (301 CMR 23.05(2)(d)). My determination relative to whether the proposed substitute provision promotes this tideland policy with comparable or greater effectiveness conducted in accordance with the MHP regulatory guidance is presented below.

The Plan summarizes the findings of the 2019 WOSMP, which was developed with significant public input and supports significant public amenities including a public promenade ranging from 15 to 30 feet wide along the length of the Lynn shoreline, depending on the location (Figure 3). To support the implementation of the promenade as called for in the 2019 WOSMP, the

City requests a substitution to the pedestrian access network requirement at 310 CMR 9.51(1)(b)1. for areas outside of the DPA. This substitute provision for an enhanced pedestrian access network ranging in width from 15 to 30 feet will maintain a reasonable portion of tidelands associated with nonwater-dependent projects for the exercise of public rights on these lands, specifically public access. The City also requested that in some areas where physical constraints require it, the allowable walkway width decrease to eight to ten feet wide. However, for these locations, opportunities to provide widths consistent with the 2019 WOSMP should be employed, including cantilevering over wetland resource areas, as appropriate and, in no case shall the walkway width be less than the Waterways minimum standard of ten feet.

As a result of my review, I find that the City has demonstrated that the proposed substitute provision for pedestrian access network is appropriate given, among other things, the size and configuration of the WDUZ as modified above and the nature and extent of water-dependent activity and public uses that may be accommodated therein, and that this substitution ensures with greater effectiveness compared to the Waterways provision that requires at a minimum walkways and related facilities along the entire length of the WDUZ directly adjacent to the project shoreline and no less than ten feet in width. Further, taken together this substitute provision along with the City's requested substitution to the WDUZ discussed above will help to realize an exceptional public realm along the Lynn Harbor. I therefore approve this substitute provision for a walkway width of 15 to 30 feet as specified in the 2019 WOSMP unless physically constrained. My approval of this substitution is conditioned such that under no circumstances will the walkway width be less than ten feet.





**Figure 3: 2019 Waterfront Open Space Master Plan Promenade Width**

**Table 1. Summary of Substitute Provisions for Lynn Harbor Plan**

<b>Regulatory Provision</b>	<b>Chapter 91 Standard</b>	<b>Proposed Substitution</b>	<b>Approved Substitution</b>	<b>Approved Offsetting Measures</b>
310 CMR 9.51(3)(c): Water-Dependent Use Zone	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.	A minimum WDUZ setback of 100 feet from the project shoreline, with a net total WDUZ area equal to or greater than the area of a 200 feet WDUZ setback.	A minimum WDUZ setback of 100 feet from the shoreline, with a net total WDUZ area equal to or greater than the area of a 200 feet WDUZ setback for the project site.	No offset is required as the substitution increases the WDUZ required under 310 CMR 9.51(3)(c).
310 CMR 9.52(1)(b)1.: Pedestrian Access Network	Requires a pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of: 1. walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width;	Minimum walkway width of 15 to 30 feet outside of the DPA unless the width is physically constrained.	Minimum walkway width of 15 to 30 feet outside of the DPA unless the width is physically constrained.  In no cases will the allowed width be less than 10 feet.  Width shall be consistent with the guidance provided in the 2019 WOSMP included as Appendix A.  All opportunities to provide the appropriate width should be considered, including cantilevering.	No offset is required because in all cases the waterfront promenade will be no less than the waterways minimum numerical standard of 10 feet wide.

#### **D. Evaluation of Proposed Amplification Provisions**

The review and approval of MHP regulations at 301 CMR 23.05(2)(b) require a finding that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of the regulatory principle(s) underlying that requirement. Upon such a finding, DEP is committed to “adhere to the greatest reasonable extent” to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)2. The Plan contains three proposed amplifications. My determination of the relationship of these proposed local amplification provisions to Chapter 91 standards in accordance with the MHP regulatory guidance is discussed below. A summary of the proposed amplification provisions for the 2020 Plan is provided below in Table 2.

##### **Standards to Protect Utilization of Shoreline for Water-dependent Purposes (310 CMR 9.52)**

The standard at 310 CMR 9.52 states that, “[a] nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands.” The City seeks to define this provision more fully by requiring that the provisions of 9.53(2) shall apply to any tidelands areas within the WDUZ outside of the DPA, as expanded by the requested substitution provision for WDUZ. Specifically, this amplification requires that these areas must be designed to maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas, and includes public safety access ways that are consistent with the 2019 WOSMP. These areas shall also include public amenities, such as seating, lighting, trash receptacles, restrooms, and children’s play areas, as appropriate and consistent with the 2019 WOSMP. This amplification is proposed to support implementation of the City’s vision for extensive and high-quality public access on the waterfront, as supported by public input and expressed in detail in the 2019 WOSMP. This provision is consistent with the goal of the underlying regulatory provision to ensure that a reasonable area on the waterfront is devoted to water-dependent uses and public access, and further clarifies the type of public amenities to be provided therein. I find that the proposed amplification compliments the underlying principle of the Waterways regulations within the context of local goals, and I approve the amplification as described above and subject to conditions in Section V.

### **Standards to Protect Pedestrian Access Network (310 CMR 9.52(1)(b))**

The standard at 310 CMR 9.52 (1)(b) states that, “[i]n the event the project site includes a water-dependent use zone, the project shall include a pedestrian access network of a kind and to a degree that is appropriate for the project site...” The Plan specifies that an important City goal is to ensure that the design, materials, and layout for the waterfront promenade within the WDUZ outside of the DPA should be consistent with the guidelines provided in the 2019 WOSMP. The Plan echoes the goals of the 2019 WOSMP to ensure consistency in the design and layout of the open spaces on the Lynn waterfront to promote and create a high-quality public access area. The City also notes that if feasible, public amenities such as a walkway or overlook area should be constructed within the expanded WDUZ on the south side on the South Harbor site within the HPA. The 2019 WOSMP provides guidance for developing a park, promenade, or boardwalk for sensitive areas, with appropriate plantings. The Plan recommends that a site-specific management plan to be required as part of DEP licensing should provide details on the location of walkways, benches, overlooks, and other appropriate public amenities, appropriate for this area. The criteria within the site-specific management plan should further clarify the discretionary language of this provision without contradicting or unreasonably narrowing DEP’s discretion in their interpretation and application. I find that the proposed amplification meets the approval criteria, and I approve the amplification as described above and subject to conditions in Section V.

### **Utilization of Shoreline for Water-Dependent Purposes (310 CMR 9.52(1)(b)2)**

In addition to the amplification for Pedestrian Access Network at 310 CMR 9.52(1)(b) described above, the Plan addresses the more specific provision at 310 CMR 9.52(1)(b)2., which states that, “[i]n the event the project site includes a water-dependent use zone, the project shall include . . . (b) a pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such a network will consist of... 2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.” The Plan identifies multiple lateral access ways to the waterfront from the Lynnway, that should be realized through Plan implementation, and further specifies that, in the event that one or more of the specific accessway locations identified in the Plan cannot be

implemented for public access, alternative access points with an equivalent or greater pedestrian utility and geographic location should be determined. Design and amenity requirements for these lateral accessways are to be as shown and described in the 2019 WOSMP. The Plan states that this amplification is intended to identify preferred locations and design criteria for the lateral accessways in order to provide public access to the Lynn waterfront from the Lynnway, but is not intended to limit DEP's discretion in licensing, or reduce the requirement of the Public Access Network provision. As the proposed amplification does not limit discretion or interpretation of the provision, and is consistent with the underlying provision, I approve this amplification as described above and conditioned in Section V.

**Table 2. Summary of Amplifications**

<b>Regulatory Provision</b>	<b>Summary of Regulatory Standard</b>	<b>2020 Lynn MHP Amplification</b>
310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes	A nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands. In applying this standard, the Department shall take into account any relevant information concerning the capacity of the project site to serve such water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall give particular consideration to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2.	Applies the tidelands standards at 310 CMR 9.53(2) for public use to any tideland areas within the expanded WDUZ outside of the DPA, with specific guidance from the 2019 Waterfront Open Space Master Plan (2019 WOSMP). This amplification requires that these areas are designed to “maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas that also have public amenities that shall include seating, lighting, trash receptacles, restrooms, and children’s play areas, as appropriate” and must be consistent with the 2019 WOSMP.
310 CMR 9.52(1)(b): Pedestrian Access Network	A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a).	Design, materials, and layout for the waterfront promenade within the WDUZ and outside of the DPA shall be consistent with the guidelines provided in the 2019 WOSMP.
310 CMR 9.52(1)(b)2.: Pedestrian Access Network	A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of: 2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.	Specifies locations, with a process for substitute locations, for public access walkways to connect the Lynnway to the project shoreline through the HPA. Design and amenity requirements for these lateral accessways shall be as shown and described in the 2019 WOSMP.

## **E. Open Space Implementation**

The Plan identifies the City’s goal of providing significant public open space on the Lynn waterfront. The Plan states that the 2019 WOSMP, the 2019 RWMP, and the 2020 Plan all focus on the critical elements of a successful revitalization program centered on public waterfront open space. Through these planning efforts, the public has provided considerable input, and the City has

ensured that these separate but related planning efforts have been tightly integrated to guide the design for open space on the waterfront.

The 2010 MHP Decision allowed waterfront building dimensions for greater height and density in exchange for increased public open space, including a 200-foot waterfront setback and a signature waterfront park, consistent with significant public support. In 2016 the City requested and received a Clarification on the 2010 MHP to allow a development project to move forward on the site identified in that Plan for the signature waterfront park, provided the City developed a new waterfront open space plan and developed an amended the 2010 MHP to incorporate the new open space plan goals and ensure its implementation. The Secretary required the City to undertake and complete the development of a new WOSMP, to better define the City's vision for open space along the waterfront and to provide greater detail on feasibility and implementation. This planning effort was required to consider appropriate alternative designs and layouts for the public spaces to be created along the Lynn Harbor waterfront, based on a robust public input and stakeholder engagement process, with details on implementation strategies to ensure the areas identified as open space and other aspects of the plan are realized. Once the open space plan was completed, the Clarification required that the City prepare an amended MHP to incorporate the findings of the WOSMP, as well as all proposed modifications to the City's goals and objectives for the development of the waterfront which have evolved since the 2010 MHP approval, and specify the implementation commitments the City will undertake to ensure the success of the amended plan.

The 2019 WOSMP and the 2019 RWMP together developed, with significant public input, a clear pathway to revitalize the Lynn waterfront with a new, mixed-use neighborhood centered around a new signature waterfront park location and an extensive pedestrian network. Throughout the planning processes, public input emphasized the desire to create an implementable and enforceable plan that would ensure public open space and public benefits for all Lynn residents. In support of this, the Plan includes goals to identify and include enforceable strategies to provide as much of the public open space identified in the 2019 WOSMP as feasible, and ensure that the types of public amenities envisioned in the 2019 WOSMP are realized. In addition, the City seeks to ensure that the type of uses and activities envisioned in the 2019 WOSMP are implemented through the Plan.

To help meet these goals, the Plan includes amplifications to the waterways provisions for Utilization of Shoreline for Water-dependent Purposes (310 CMR 9.52) and Pedestrian Access Network (310 CMR 9.52(1)(b)) to require that any tidelands within the WDUZ outside of the DPA

will be required to comply with the standards at 310 CMR 9.53(2) for public use, with specific guidance from the 2019 WOSMP to expand publicly accessible open space and public amenities for all new nonwater-dependent developments and permanently protected open space within the jurisdictional focus area of the MHP. While this provision is intended to ensure that the 2019 WOSMP standards are applied to both the WDUZ and the protected open space areas, open space is a water-dependent use, and therefore not subject to the requirements of 310 CMR 9.52. While the proposed amplifications for nonwater-dependent projects do not apply to those projects that are water-dependent, such as the signature open space park, the Plan supports and demonstrates the City's intent and strong commitment to adhere to the findings and recommendation of the 2019 WOSMP, with clear indications that the City fully supports implementation of applicable licensing conditions consistent with the 2019 WOSMP for projects within permanently protected open space in the jurisdictional focus area of the Plan. Therefore, I recommend that the licensing for these projects adhere as closely as possible to the design standards of the 2019 WOSMP.

While the Plan, the 2019 WOSMP, and the 2019 RWMP all envision an extensive waterfront promenade throughout the waterfront and a signature park at the landfill site, it is important to note that these are applicable only to areas that are outside of the DPA. The DPA is reserved for WDI uses, uses accessory to WDI uses, supporting uses as identified in the DPA Master Plan, and appropriate temporary uses.

## **F. Engineering and Construction Standards**

In the interest of ensuring that the Plan is responsive to climate change and actively supports efforts to improve coastal resilience within the HPA, an amplification to the Waterways provisions for engineering and construction standards is proposed. Specifically, the City requests to amplify the provision at 310 CMR 9.37(3)(c), which states that, in evaluating coastal or shoreline engineering structures, DEP should require non-structural alternatives where feasible. The City proposes an amplification to prioritize the use of nature-based shoreline approaches and incorporation of increased elevation where appropriate, as indicated in the 2019 WOSMP. While I support each of these approaches to improve resilience, the discretionary language in 310 CMR 9.37(3)(c) that can be amplified by the MHP is “where feasible”. As such, this amplification should include conditions or other factors that would more clearly define where a nature-based approach would be considered feasible within the Lynn HPA. The 2019 WOSMP provides general guidance regarding nature-based shoreline structures but does not include direction for where these structures would be feasible.



Similarly, incorporating additional height to address sea level rise is a critical tool to build coastal resilience, but the discretionary language of this provision does not provide an opportunity to amplify this criterion. However, because the Plan clearly demonstrates the City's commitment to increasing coastal resilience through the implementation of nature-based shoreline approaches, I recommend that the licensing process encourage these engineering and construction approaches to the maximum extent possible.

## **G. 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 WDI 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 shall ensure that extensive amounts of the total DPA area are reserved for WDI 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 WDI uses and ensure that commercial uses mix compatibly and will not alter the predominantly maritime industrial character of the DPA. The Plan must 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 WDI use.

The Lynn DPA includes a ferry terminal site, an energy facility, the Economic Development and Industrial Corporation pier, a lobster processor, and a landfill that is currently undergoing capping. Approximately 17% of the Lynn DPA is currently used for supporting DPA uses, primarily manufacturing. The DPA Master Plan states that the City plans to update this calculation as any change in use occurs in the DPA. As required the City will adhere to the supporting use provision by continuing to ensure that at least 75% of every project site within the DPA is reserved for WDI uses, consistent with the Waterways regulations. The Master Plan also envisions continuing to allow temporary uses as described in 310 CMR 9.02, though none are proposed at this time.

The DPA Master Plan intends to ensure that the needs of WDI uses and facilities will be accommodated and not discouraged by adhering to existing Waterways standards for licensing uses in the DPA and no substitutions are proposed within the DPA. As the Plan envisions a mixed-use waterfront, the DPA Master Plan must include provisions to prevent conflicts between the WDI users of the DPA and adjacent uses. To address this, the City has implemented three changes to

local zoning to align the zoning code more closely with the Plan and allowable DPA uses. These include changing the local DPA zoning area to match the state DPA boundary, as the local DPA zoning previously extended beyond the state boundary. The zoning also minimizes user conflicts by creating a 100-foot buffer zone around the DPA for nonwater-dependent projects. Finally, light manufacturing was added to the allowable DPA supporting uses and to existing allowable uses in the area directly adjacent to the DPA to encourage a broad range of compatible uses. Other uses adjacent to but outside the DPA, such as a wastewater treatment plant, provide additional buffer to reduce conflicting uses. In addition, the proposed waterfront promenade uses a route landward of the DPA to avoid diminishing the capacity of the DPA to accommodate WDI uses.

Local zoning allows for several uses to be licensed as supporting uses in the DPA, to provide direct economic or operational support to the WDI uses. These include convenience retail, fish markets, food service establishments/microbreweries, marine tourism, places of assembly for commercial recreation, and theaters/cinemas with limited seating. The DPA also has transmission lines and a public boat ramp. I note that while “marine tourism” typically means passenger vessels that are WDI uses which are fully compatible with DPA regulatory provisions, recreational boating facilities are not an allowable use in the DPA.

To improve the connection with the waterway in the DPA, the City is pursuing funds to improve pier infrastructure, and working with the United States Army Corps of Engineers as they conduct a feasibility study to extend the existing Federal Navigation Channel along the length of the Lynn waterfront from the DPA to the Saugus River. The City is also pursuing funding to restore ferry service from the Lynn ferry terminal on Blossom Street Extension within the DPA to downtown Boston. A two-year pilot program with seasonal service began in 2014, was restored in 2017, but has since ended. The City is working with MassDOT to release a Request for Proposals to procure a vessel for year-round long-term ferry service.

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).

## **H. Relationship to State Agency Plans**

The Municipal Harbor Planning regulations (301 CMR 23.05(3)) require that the Plan include all feasible measures to achieve compatibility with the plans or planned activities of all state agencies owning real property or otherwise responsible for the implementation or development of

plans or projects within the HPA. MassDOT is beginning to study options for replacement of the General Edwards Bridge, a four-lane structure that carries Route 1A over the Saugus River. Built in the 1930s, the bridge connects Revere and Lynn and serves as a major gateway to the Lynn waterfront. The current alignment of the General Edwards Bridge lies just outside the HPA and forms the southwest border. Although not likely to move forward for several years, MassDOT is considering several options for the replacement structure. One option would use the alignment of the bridge that existed before the current General Edwards Bridge, which is directly adjacent along the east side of the existing structure and would fall partly within the HPA on land owned by DCR. This land is identified in the 2019 WOSMP as public waterfront parking, pathways, and a waterfront pedestrian plaza.

Use of DCR property for a new bridge alignment will likely require significant environmental review as well as legislative approval. If this proposed alignment is selected, open space and public access elements of the Plan could be impacted including a parking area, access to the adjacent DCR fishing pier and the waterfront promenade/pedestrian plaza. If displaced or altered, the proposed waterfront pedestrian plaza would need to be replaced. The City recognizes this potential outcome and suggests possible options for public access that could be provided should this alternative bridge layout move forward, including improvements to pedestrian and bicycle connections across the bridge to open space areas to the south, such as Revere Beach, Belle Isle Marsh, Rumney Marsh, the East Boston Greenway, Deer Island, and Constitution Beach. When plans for the proposed General Edwards Bridge replacement are further developed, the City may request an MHP amendment to ensure the bridge is designed to expand public waterfront access and integrate the Lynn Waterfront with regional open space networks. The City and MassDOT should continue coordination throughout the bridge planning and design phases, to plan for and best minimize impacts to envisioned public open space and identify changes that may require an MHP amendment.

There are several ongoing efforts by state agencies in partnership with the City to create new or improve existing open space adjacent to the HPA including linear paths linking the City with Nahant and upgrades to Lynn Heritage State Park. These initiatives complement the goals and objectives of the MHP.

EEA, in partnership with the City of Lynn and Town of Nahant, is working to complete a two-way separated bike path called the Northern Strand Extension. The project will create a 1.9-mile-long 10-ft wide two-way separated bike path within existing rights-of-way linking the current terminus of Northern Strand path in Lynn with the sea at Nahant Beach. The project is an extension

of the 11.5-mile Northern Strand Trail starting at its southern extent in Everett and running along an abandoned railroad right-of-way through Malden, Revere, Saugus, and terminating in Lynn at Western Avenue.

Separately, the Lynn Community Path is envisioned as a linear park and will continue along the abandoned rail right-of-way from the Northern Strand terminus at Western Avenue approximately 1,600 linear feet to Neptune Street. Construction of the Northern Strand and Lynn Community Path is expected to be completed in fiscal year 2021. On June 26, 2020, EEA submitted a 25% Highway Design package for the Northern Strand Extension to MassDOT for consideration by the Boston Metropolitan Planning Organization for funding through the Transportation Improvement Program. Once completed the Northern Strand Trail and the on-street extension through Lynn will connect areas of cultural, economic, social and natural significance along the multi-community corridor and provide non-motorized transportation and recreational alternative for people of all ages and abilities. Although it will not directly impact the proposed Plan areas, the project once completed will significantly enhance public access to the Lynn waterfront and Lynn HPA.

DCR has been extensively involved in the planning efforts for the Lynn waterfront, particularly working with the City and EEA on the development of the 2019 WOSMP, and the DCR fishing pier at the southern portion of the HPA and Lynn Heritage State Park in the northern end are both undergoing extensive improvements. Both projects are in the permitting phases and the planned improvements are consistent with both the Plan and the 2019 WOSMP. These are expected to be the first key open spaces and promenade sections to be implemented in accordance with the Plan.

DCR is also working with the ongoing Gear Works development on the north side of the Lynnway to adjust intersections at Harding Street and the so-called “jug handle”. More extensive planning will build off recommendations from the Lynn Transit Action Plan currently in development. These improvements will support public access across the Lynnway and to the public open space envisioned in the Plan.

## **I. Implementation Strategy**

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that all measures will be taken in a timely and coordinated manner.

DEP's Chapter 91 licensing process under the Waterways regulations will implement the portions of this plan associated with the amplification and substitution provisions as described above. Through the MEPA review process, project proponents will be required to evaluate alternatives, assess environmental impacts associated with proposed projects, and demonstrate how potential impacts are to be avoided, minimized, and mitigated. The proposed lateral public accessways in Landlocked Tidelands will be implemented through the discretionary provisions for a public benefits determination under 301 CMR 13.00.

The provisions of this Plan will be implemented through regulatory and environmental review provisions, as applicable, and amended zoning provisions approved prior to Plan submittal will ensure that permitted uses are consistent with the approved substitute provisions and amplifications described in the Plan. The Plan further provides additional direction in the application and issuance of Chapter 91 licenses for the HPA. 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 November 25, 2020. As requested by the City of Lynn, the City of Lynn Municipal Harbor Plan and Designated Port Area Master Plan Decision shall expire ten 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. No later than six months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

#### **V. STATEMENT OF APPROVAL**

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the 2020 Lynn Municipal Harbor Plan and Designated Port Area Master Plan according to the terms and obligations contained herein and subject to the following conditions:

1. DEP shall apply a substitute WDUZ minimum standard as described above for all projects outside the DPA but within the MHP focus area as shown on Figure 1. Reconfiguration of the WDUZ is allowed but a minimum WDUZ setback of 100' from the project shoreline is required, with a net total WDUZ area equal to or greater than the area of a 200' WDUZ setback. In no cases shall the WDUZ be separated from the water.
2. DEP shall apply a substitute Pedestrian Access Network minimum standard as described above for all projects within the WDUZ outside of the DPA but within the MHP focus area as shown on Figure 1, to be consistent with the guidance provided in the 2019 WOSMP included in the Plan as Appendix A. Specifically, the waterfront walkway width will range from 15-30 feet depending on the location, unless the width is physically constrained. All opportunities to provide the appropriate width should be considered, including cantilevering as appropriate. In no cases will the allowed width of the waterfront walkway be less than ten feet.
3. DEP shall apply the standards at 310 CMR 9.53(2) for public use to any tideland areas within the WDUZ outside of the DPA but within the MHP focus area as shown on Figure 1, with specific guidance from the 2019 WOSMP, including public safety access ways that are consistent with the standards of the 2019 WOSMP. These areas should be designed to maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas that also have public amenities that shall include seating, lighting, trash receptacles, restrooms, and children's play areas, as appropriate and consistent with the 2019 WOSMP.
4. DEP shall require that the design, materials, and layout for the waterfront walkway/promenade within the WDUZ and outside of the DPA but within the MHP focus area as shown on Figure 1 are consistent to the maximum feasible extent with the guidelines provided in the 2019 WOSMP.
5. DEP shall, where feasible, license lateral public access connections in the locations shown on Figure 7 of the Plan, with design and amenity requirements for these lateral accessways to be as shown and described in the 2019 WOSMP.

6. For portions of the lateral public access connections as described above which are within Landlocked Tidelands, consistency with the design and amenity requirements consistent with the Plan and the 2019 WOSMP will be required through the Secretary's discretionary provisions for a public benefits determination under 301 CMR 13.00.
7. DEP shall, where feasible, require the use of nature-based shoreline protection approaches and incorporation of increased elevation to address future climate-related impacts where appropriate, consistent with guidance from the 2019 WOSMP.
8. DEP shall, where feasible, apply the standards 310 CMR 9.53(2) for public use to any permanently protected open space outside of the DPA, with specific guidance from the 2019 WOSMP, including public safety access ways that are consistent with the standards of the 2019 WOSMP. These areas should be designed to maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas that also have public amenities that shall include seating, lighting, trash receptacles, restrooms, and children's play areas, as appropriate and consistent with the 2019 WOSMP.
9. The City shall prepare a final, approved Lynn Harbor Plan ("Approved Plan") to include:
  - a. The Plan dated July 10, 2020 as amended by this Decision; and
  - b. 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 Community Development Offices, and made available to the public through the City's website and copies at the library. For Chapter 91 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 July 2020, 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.

This Decision and the Approved Plan do not supersede separate regulatory review requirements for any activity.

In a letter dated November 25, 2020 the DEP Waterways Program Chief expressed support for approval of the Plan and stated that in accordance with the provisions of 310 CMR 9.34(2), DEP will require conformance with any applicable provisions of the approved Plan in the case of all Waterways license applications submitted subsequent to the Plan's effective date. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.



*K. Theoharides*

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Kathleen A. Theoharides  
Secretary of Energy and Environmental Affairs

November 25, 2020

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Date



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Kathleen A. Theoharides  
Secretary

Martin Suuberg  
Commissioner

November 25, 2020

Kathleen A. Theoharides, Secretary  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street  
Boston, MA 02114

RE: DEP Recommendation for the Approval of the City of Lynn Municipal Harbor Plan and Designated Port Area Master Plan, dated July 2020

Dear Secretary Theoharides:

The Department of Environmental Protection, Waterways Regulation Program (“the Department”) has reviewed the City of Lynn’s Municipal Harbor Plan and Designated Port Area Master Plan (“the Plan”) dated July 2020. The Department’s staff have worked closely with the Massachusetts Office of Coastal Zone Management (CZM) and representatives of the City of Lynn through the planning process and consultation period. The Department has reviewed the proposed Substitute Provisions and Amplification Provisions as included in the Decision and recommends that you approve these regulatory provisions and make a finding that they are consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

The Department will adopt as binding guidance in all License application review any Substitute Provisions contained in the Secretary’s final Decision on the Plan. The Plan lays out Substitutions that will adequately meet or exceed the protected interests pursuant to 310 CMR 9.00. The Substitutions contained in the Plan will modify the standards pursuant to: 310 CMR 9.51(3)(c), which governs allowable uses and setbacks in the Water-Dependent Use Zone (WDUZ); and 310 CMR 9.52(1)(b)1., which governs the provision of a pedestrian access network. The Plan also lays out amplifications pursuant to 310 CMR 9.52 for utilization of the shoreline for water-dependent purposes; and 310 CMR 9.52(1)(b) and (1)(b)2. for appropriate establishment of a pedestrian access network.

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provision of the approved Plan for all waterways license applications submitted subsequent to the Plan’s effective date and within the geographic

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

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DEP Recommendation for Approval,  
City of Lynn Municipal Harbor Plan and Designated Port Area Master Plan, July 2020  
November 25, 2020

scope of the Plan. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the Decision.

The Department 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 regarding the foregoing, please contact me at [Daniel.Padien@mass.gov](mailto:Daniel.Padien@mass.gov) or (617) 292-5615. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Padien", with a stylized flourish at the end.

Daniel J. Padien  
Program Chief  
Waterways Regulation Program

Cc: James Cowdell, Lynn Economic and Industrial Corporation  
Aaron Clausen, City of Lynn Planning Director  
Lisa Berry Engler, CZM