

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

May 17, 2023

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Rebecca L. Tepper, 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 of the City of Salem's (City) Municipal Harbor Plan and Designated Port Area (DPA) Master Plan dated January 2008 (2008 Plan). The 2008 Plan was approved by the Secretary on June 24, 2008. This Decision presents an overview of the 2023 Renewal, including the supplemental information submitted on March 31, 2023, findings on how it complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00, and concurrence by MassDEP of the Substitutions and Offsets as specified herein.

As a general approach, the Municipal Harbor Plan process is meant to take a broad view that incorporates local goals and objectives for a harbor and translates them into a plan and implementable strategy for a specific region of the harbor in question. Depending on municipal priorities, timing of proposed developments, geographic constraints, and other factors, the process manifests itself in different ways, focusing on different areas and extents for the plans—from an entire harbor to a district or neighborhood and, in some cases, a smaller subset of parcels. The plans also vary in their scopes, sometimes laying out detailed development standards and other times looking to establish general building maximums to allow for flexibility in future developments.

The geographic scope of the Harbor Planning Area (HPA) for the proposed 2023 Salem Harbor Plan Renewal and DPA Master Plan (2023 Renewal) is largely the same as that for the 2008 Plan, except where geographic coverage expands to the North River, as described below. The 2023 Renewal HPA is divided into six districts as shown in Figure 1, encompassing the Salem shoreline and adjacent landside areas between Winter Island and Palmer Cove, as well as the additional area adjacent to the North River. The upland boundary from Winter Island to Palmer Cove is defined by the public roadway closest to the water's edge, which for most of the planning area is Derby Street and Fort Avenue. The upland boundary along the North River is defined by Franklin Street, North Street, and Bridge Street. The 2023 Renewal builds on prior planning initiatives for the area that have been completed since the 2008 Plan, including the Salem Winter Island Park Master Plan and Summary (2011); the Salem Public Art Master Plan (2013); the Open Space and Recreation Plan Update (2015); the Historic Preservation Plan Update (2015); the Salem For All Ages: An Age-Friendly Action Plan (2016); the Salem Climate Change Vulnerability Assessment and Action Plan (2016); Salem Bicycle Master Plan (2018); the Imagine Salem Report (2018); the Hazard Mitigation Plan Update (2020); and the Resilient Together (2021) Plan.

The 2023 Renewal identifies strategies and guidelines to achieve four objectives, including: (i) the promotion of a welcoming, accessible, climate-resilient waterfront that continues to be a mainstay of the local economy; (ii) continuing to build on the successes of the previous Salem Municipal Harbor Plan; (iii) incorporating a portion of the North River into the overall Salem waterfront plan and promoting appropriate development near and public access to and along the North River; and (iv) relevant to the DPA, structuring the Salem DPA Master Plan to promote renewable offshore energy, enhance its use by passenger vessels, allow supporting DPA uses in appropriate locations throughout the Salem DPA, and supporting community benefits consistent with the DPA.

The planning process, led by the Salem Planning Department and guided by the 14-member Salem Harbor Planning Committee (SHPC), occurred over two years from August 2020 through December 2022. SHPC members represented a variety of interests including the environment, the local community, local industry, and the City. The process included economic analysis, research, outreach, and engagement with residents and other community stakeholders. As part of the planning process and as a critical source of public engagement, the City hosted a total of 12 public meetings and public SHPC meetings and a maintained a website which hosted planning documents and outreach materials.

The 2023 Renewal draws heavily on the 2008 Plan in that it proposes to continue the policy and regulatory framework previously proposed and approved in 2008 with minor updates. The 2023 Renewal provides a summary and detailed description of four previously approved substitutions to minimum use standards and numerical requirements of the Chapter 91 Waterways (Waterways) regulations (310 CMR 9.00), with a justification and supporting information to demonstrate compliance with the approval standards for each substitution. The substitutions are all within the South Commercial Waterfront planning area and are primarily focused on ensuring that the public benefits identified in the planning process are implemented appropriately. Specifically, the Plan proposes two substitute provisions specific to height and the Water-Dependent Use Zone (WDUZ) width at the Waterfront Complex site at 23 Congress Street at Pickering Wharf, one substitute provision relative to height specific to sub-area A of the South Commercial Waterfront, and one substitution relating to the Harborwalk width along the South River in the South Commercial Waterfront. The 2023 Renewal discontinues an alternative site coverage ratio for the DPA in the 2008 Plan and will proceed with the DPA Supporting Use provisions as set forth in the Waterways regulations.

My approval of the 2023 Renewal, with the terms and conditions contained herein, does not, and should not be construed to serve as an authorization or approval of any specific project. As described below, redevelopment projects proposed within the planning area will be subject to required federal, state, and local regulatory processes, as applicable.

Pursuant to the review procedures at 301 CMR 23.00, the City submitted its Request for a Notice to Proceed in June 2020, and following a public comment period, the Office of Coastal Zone Management (CZM) issued a Notice to Proceed on August 10, 2020. From 2020 to 2022, the City convened 3 public meetings and 9 SHPC meetings, all of which were open to the public, to inform the development of the 2023 Renewal. The 2023 Renewal was submitted by the City to EEA on January 4, 2023. CZM published notice of a public hearing and a 30-day opportunity to comment in the *Environmental Monitor* dated January 25, 2023, and an opportunity for a second scheduled public hearing was published in the *Environmental Monitor* on February 8, 2023. Public hearings were held virtually on February 7 and February 16. The notices for these public hearings were published in both English and Spanish. Simultaneous Spanish interpretation of the presentations and information was provided during the hearings and provided an opportunity for participants to make oral comments in English or Spanish. Two oral comments were received during the public hearings, and three written comment letters were received during the public comment period which closed on February 24, 2023. The review and consultation process, led by CZM, also included consultation among CZM, Massachusetts Department of Environmental Protection (MassDEP), and the City. Supplemental information to clarify two of the substitute provisions was submitted by the City on March 31, 2023. The consultation period ended on April 26, 2023.

In reaching my decision, I have considered the oral and written testimony submitted by the public, as well as public comments and discussions throughout the waterfront planning process, as the public planning effort formed the basis for the goals and objectives laid out in the 2023 Renewal. Three comment letters and two oral comments were received during the public comment period. Comments included praise for the City's approach to the planning process and expressed concern for an overall lack of focus on important overarching issues, such as climate change concerns, Environmental Justice considerations, and appropriate public benefit offsets for proposed substitute provisions to Waterways regulations.

Commenters praised the City's process for including extensive community outreach and collaboration, and for providing a balance between local residential and business needs, city-wide opportunities, and the value of the Port of Salem as a regional economic driver and asset. Public

comments also highlighted the 2023 Renewal's efforts to expand on previous successful strategies to redevelop sections of Salem's waterfront with significantly improved public access, and the renewed focus on the development of the DPA for water-dependent industrial (WDI) use and renewable energy, and specifically for offshore wind opportunities.

Several commenters expressed concern that the 2023 Renewal does not focus enough on climate change resiliency or action planning and should include more specific information regarding strategies to address topics such as increased urban heat island effects or flooding associated with sea level rise. The Salem Tree Commission offered specific guidance to preserve existing tree corridors and improve the use of tree plantings in landscaping and buffers wherever possible as a strategy to reduce heat island effects now and into the future. For the implementation of the 2023 Renewal, the City should continue to work closely with the Salem Tree Commission to ensure that these important concerns are addressed. Commenters also stated that the 2023 Renewal addresses current and potential flooding issues throughout the document, but in general does not achieve the City's initial goal to assess the vulnerability of the overall planning area to coastal flooding and sea level rise and provide recommendations to address identified priorities through regulatory approaches and specific resilience improvements as stated in the Request for a Notice to Proceed. Given the importance of this goal, the City should undertake a thorough climate change assessment and action plan for the HPA covered under this 2023 Renewal to provide a cohesive strategy to address the risks associated with climate change in this vulnerable portion of the City.

While comments expressed support for aspects of the proposed 2023 Renewal that incorporate equity, such as the affordable housing aspects of proposed developments at Crescent Lot and Lafayette Street and collaborative climate resilience planning along the South Commercial waterfront, one comment suggests that the 2023 Renewal should focus more specifically on the environmental justice population, which makes up a significant portion of the HPA. In working on a more comprehensive assessment and action plan to address climate change resiliency, the City should demonstrate an additional focus on equity and environmental justice concerns in the planning process and the resulting decisions.

Lastly, one commenter expressed concern that the 2023 Renewal does not demonstrate that the proposed height substitution offset for the South Commercial planning area provides adequate public benefit to justify the change. I address this concern in my Evaluation of the Requested Substitute Provisions section in this document.

Figure 1. Salem Harbor Planning Area

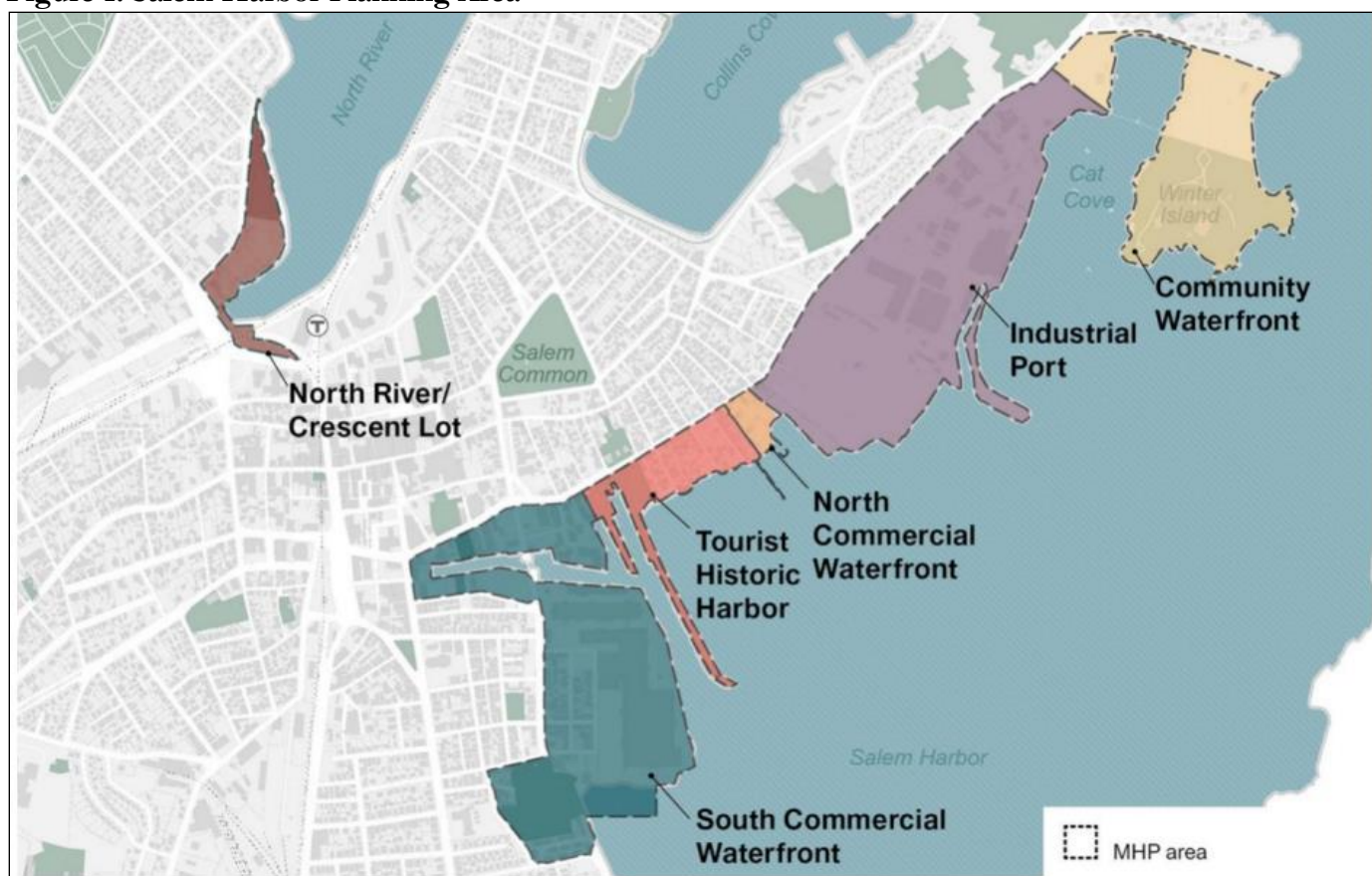


Figure 2. Salem Designated Port Area



II. PLAN CONTENT

The 2023 Renewal provides a clear description of the HPA, which includes the Salem shoreline and adjacent landside areas between Palmer Cove and Winter Island, as well as an area adjacent to the North River. The upland boundary from Palmer Cove to Winter Island is defined by the public roadway closest to the water's edge, which for most of the planning area is Derby Street and Fort Avenue. The upland boundary along the North River is defined by Franklin Street, North Street, and Bridge Street. The 2023 Renewal HPA includes six distinct waterfront planning areas, including the South Commercial Waterfront, the Tourist Historic Harbor, the North Commercial Waterfront, the Industrial Port, the Community Waterfront, and the North River/Crescent Lot planning area. Planning and discussion for each of these separate planning areas are organized into separate chapters in the 2023 Renewal. The North River/Crescent Lot area is the only planning area in the 2023 Renewal that was not also included in the 2008 Plan. The South Commercial Waterfront is adjacent to and on the waterside of the Point Neighborhood and includes Pickering Wharf, the South River Basin (defined by Congress, Peabody, Lafayette, and Derby Streets), Shetland Park, Palmer Cove Yacht Club, and the Palmer Cove Playground out to the public streets immediately surrounding the playground. The Tourist Historic Harbor centers around Derby Wharf and includes waterfront historic sites such as the Salem Maritime National Historic Site and House of the Seven Gables. This district extends landward to Derby Street and the adjacent waterfront neighborhood. The North Commercial Waterfront extends from Hawthorne Cove Marina to the edge of the Industrial Port district and includes the ferry facilities and commercial marina of the Salem Wharf. A portion of this planning district is within the Salem Harbor DPA (Figure 2). The Industrial Port is between the North Commercial Waterfront and the Community Waterfront, and adjacent to the deep-water federal navigation channel that leads into Salem Harbor. It includes the 42-acre "Lot 2", the new Salem Harbor Station, the Deepwater Berth, the South Essex Sewage District Treatment Plant (SESD), and the Federal Channel. The entire Industrial Port district, except for the SESD, is within the Salem Harbor DPA. The Community Waterfront occupies the northernmost portion of Salem Harbor and includes Cat Cove, Winter Island, and Smith Pool. Winter Island is the largest recreational space on the inner harbor and is used for such activities as camping, picnicking, and walking, and is also the location of the Plummer Youth Promise program. The public pier and boat ramp provide opportunities for numerous marine-related activities, mostly supporting recreational boats. The Community Waterfront is bordered by the SESD, the west end of Salem Willows Park, the Winter Island neighborhood, and Juniper Cove. The North River/Crescent Lot area is the only planning area

in the 2023 Renewal that was not included in the 2008 Plan. It includes the parcels northwest and southwest of the North River, including the Crescent Lot, an approximately one-acre 97-space parking lot adjacent to the MBTA Commuter Rail Station, and the lands across the river bounded by North Street and Franklin Street, up to and including Furlong Park. While the 2023 Renewal provides recommendations and guidance for the entire HPA, the primary focus of the planning process was on recommendations for the Industrial Port, the North River/Crescent Lot, and the South Commercial Waterfront. The 2023 Renewal also provides a brief description of the history of the Salem HPA and presents a synopsis of the extensive planning efforts that have helped shape the waterfront priorities since the 2008 Plan.

The 2023 Renewal includes the goals and objectives of the plan, changes since the 2008 Plan, economic research, developments in offshore wind opportunities, and a description of the public engagement component of the process. The main goal of the renewal is to leverage Salem's past waterfront successes and establish a shared vision for the future of Salem Harbor that is consistent with the guiding principles of Imagine Salem, a community visioning process previously undertaken by the City to determine what Salem will look and feel like for the City's 400th anniversary in 2026. The 2023 Renewal seeks to protect and enhance the economic, environmental, historic, and cultural resources related to Salem Harbor and the North River, and to achieve a balance between the residential and business needs of the adjacent neighborhoods, opportunities for the entire city, and the value of the Port of Salem as a regional economic resource. The 2023 Renewal guides the future use of key development areas in Salem, particularly along the North River, the South River Basin, and within the Industrial Port planning areas.

The North River/Crescent Lot area has experienced significant change since the development of the 2008 Plan, including recent residential, civic, and commercial development and a new MBTA commuter rail station and parking garage built in 2014. The proposed 2023 Renewal provides guidance to the development of the Crescent Lot and lays the groundwork for improved pedestrian green space connecting Furlong Park, upstream areas of the North River, and the northern end of Downtown Salem.

The 2023 Renewal details the improvement and development goals from the 2008 Plan for the South Commercial Waterfront area that have been successfully implemented, as well as those that are still in process and supported by this renewal. These include the completion of key sections of the Harborwalk, Charlotte Forten Park, and Peabody Street Park; the redevelopment of several underutilized buildings; and the installation of dinghy docks for local recreational boaters, visiting

vessels, and kayaks at the Congress Street Pier and Charlotte Forten Park. The City is also advancing phased improvements to Palmer Cove Park, with the first phase recently completed and the second phase kicking off soon. Additionally, there are a series of projects currently proposed or under development within the planning area on Lafayette, Congress, and Derby Streets that the 2023 Renewal seeks to support. Some of these ongoing projects are subject to substitution provisions that were approved in the 2008 Decision, and the City proposes to continue four of these provisions, with updates, as part of the 2023 Renewal.

The 2023 Renewal includes the community vision for how the Salem Industrial Port area can be redeveloped to provide Salem with an opportunity to continue a leadership position in maritime trade and industry. Since the approval of the 2008 Plan, use of this area has significantly changed. When the 2008 Plan was developed, the operation of the Salem Harbor Generating Station, which received fuel by ship to the waterfront wharves, was expected to continue operation as the primary WDI use of the Salem DPA. However, the Salem Harbor Generating Station was brought offline in 2014 and replaced with the Salem Harbor Station, a natural gas plant that came online in 2018 and which required only 23 acres of the 65-acre site. As a result, the remaining approximately 42 acres of land became available for development and use. Based on significant research and public outreach regarding economic opportunities for this portion of the waterfront, the 2023 Renewal supports the rapidly expanding offshore wind industry consistent with the goals and objectives of the City and surrounding neighborhoods.

The 2023 Renewal continues the vision developed in the 2008 Plan for the remaining planning areas, including most of the substitute provisions for the South River Basin area that were developed to tailor certain Chapter 91 Waterways provisions to Salem's unique environment. The 2023 Renewal describes the progress that has been made in each planning area since the 2008 Plan, identifies future planning efforts, and considers possible sources of funding to implement public improvements.

The City conducted a vigorous outreach and engagement process led by the Salem Planning Department and the SHPC. The outreach and engagement process, despite necessary restrictions to address Covid-19 concerns, successfully provided opportunities for active discussions through social media, site visits, video conferencing, and interactive mapping tools. A project website was developed to provide accessible information to the public, including events, agendas, and information on how to get involved. During the planning period, the city held twelve public meetings to inform the development of the 2023 Renewal. The process resulted in input from hundreds of residents, businesses, nonprofits, academic institutions, and state and federal partners.

The 2023 Renewal provides a summary and detailed description of the proposed substitutions of minimum use standards and numerical requirements that are included in the Renewal, with a justification for the requests and supporting information to demonstrate compliance with the approval standards for each. As further described below, the proposed substitutions are primarily focused on ensuring that the public benefits identified in the planning process for the South Commercial Waterfront planning area are implemented appropriately.

The 2023 Renewal addresses consistency with state agency plans and projects within the HPA, including cooperative planning with the Massachusetts Bay Transportation Authority (MBTA) for improved pedestrian access to the Salem Commuter Rail Station to address potential rights-of-way issues. Consistent with the Massachusetts Clean Energy Center's (MassCEC) focus on ensuring the economic development opportunities of the offshore wind energy industry, the City engaged with MassCEC early in the planning process and continued to collaborate throughout the development of the 2023 Renewal to ensure that the Renewal, and the included 2023 DPA Master Plan, appropriately support the joint goal of offshore wind development in the City's Industrial Port. Improvements in the Industrial Port and proposed improvements to public access throughout the HPA are consistent with the goals of the Massachusetts Seaport Economic Council to cultivate job creation and economic growth in the maritime sector. No potential conflicts are identified between planned state agency actions or plans and this 2023 Renewal. A clear presentation of how the 2023 Renewal is consistent with the relevant Waterways regulations and CZM Coastal Policies is also provided.

The 2023 Renewal includes Figures to support the narrative and the City's Request for a Notice to Proceed is included as Appendix A to provide additional background for the City's goals and objectives for the development of the 2023 Renewal. Additional supplemental information to support and clarify two of the proposed substitution provisions was submitted during the consultation period for the 2023 Renewal review and should be provided as an attachment in any subsequent publication of the 2023 Renewal.

Finally, the 2023 Renewal includes a DPA Master Plan that details a strategy to preserve and enhance the capacity of the DPA to accommodate water-dependent industries and prevent substantial displacement of these activities by non-water-dependent uses. The DPA Master Plan proposes implementation measures to ensure that extensive areas are reserved for WDI uses, identifies preferred and locally allowed uses as supporting uses in the DPA, puts limits on commercial uses to prevent incompatibility with the marine industry, and identifies the City's strategy to guide the ongoing promotion of WDI use within the DPA. An alternative coverage ratio for DPA Supporting Uses that

was approved by the 2008 Decision is no longer needed to meet the vision for the Salem DPA, and the City is requesting to discontinue that provision with the 2023 Renewal.

III. STANDARDS FOR APPROVAL

As noted previously, my approval today is bounded by the authority and standards as contained in 301 CMR 23.00 (Review and Approval of MHPs). 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 that embody coastal policy for the Commonwealth of Massachusetts. The following is a summary of the Policies and Management Principles applicable to the HPA:

- Coastal Hazards Policy #2 – Ensure construction in water bodies and the 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 the 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.
- 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. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.

- Energy Policy #2 – Encourage energy conservation and the use of renewable sources such as solar and wind power to assist in meeting the energy needs of the Commonwealth.
- 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 #2 – Ensure that state and federally-funded infrastructure projects in the coastal zone primarily serve existing developed areas, assigning the highest priority to projects that meet the needs of urban and community development centers.
- 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.
- Ports and Harbors Policy #1 – Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity, and public health and take full advantage of opportunities for beneficial re-use.
- Ports and Harbors Policy #2 – Obtain the widest possible public benefit from channel dredging and ensure that Designated Port Areas and developed harbors are given the highest priority in the allocation of resources.
- 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 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 and Harbors 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.
- Protected Areas Policy #3 -- Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.

- 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 the capacity of existing recreation areas by facilitating multiple uses 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 the 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 the social and environmental characteristics of surrounding communities.
- Water Quality Policy #1 – Ensure that point-source discharges and withdrawals in or affecting the coastal zone do not compromise water quality standards and protect designated uses and other interests.
- Water Quality Policy #2 – Ensure the implementation of nonpoint source pollution controls to promote the attainment of water quality standards and protect designated uses and other interests.
- Water Quality Policy #3 – Ensure that subsurface waste discharges conform to applicable standards, including the siting, construction, and maintenance requirements for on-site wastewater disposal systems, water quality standards, established Total Maximum Daily Load limits, and prohibitions on facilities in high-hazard areas.

The 2023 Renewal includes an assessment of how it is consistent with CZM Program Policies and Management Principles, 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 2023 Renewal is consistent with state tidelands policy objectives and associated regulatory principles set forth in the Waterways regulations of MassDEP (310 CMR 9.00). As promulgated, the Waterways regulations provide a uniform statewide framework for regulating tideland 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 MassDEP. 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, when adopted into the Waterways regulations by MassDEP, waive or modify 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 2023 Renewal contains guidance that, if adopted by MassDEP, will have a direct bearing on MassDEP 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 at 310 CMR 9.00. It is anticipated that MassDEP will make an independent determination of whether to adopt these provisions in the Waterways regulations and 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 concerning 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 objectives as stated in the Waterways regulations. 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 uses, 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 2023 Renewal, as subject to and modified by this Decision.

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

The establishment and maintenance of an adequate and functional WDUZ are critical to ensuring necessary waterfront access for water-dependent uses including public access, and essential for sustaining these uses. To approve any substitute provision to the WDUZ standards in the Waterways regulations (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 so that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for Salem Harbor (301 CMR 23.05(2)(c)3). Second, the City must demonstrate that the substitution provision meets the objective of ensuring sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access with comparable or greater effectiveness than the original standards set forth at 310 CMR 9.51(c)(3) (301 CMR 23.05(2)(d)).

The establishment and maintenance of an adequate and functional WDUZ are 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 to continue to improve and activate the Harborwalk along the South Commercial waterfront, the 2023 Renewal requests a substitution to the WDUZ requirement at 310 CMR 9.51(3)(c) for the location of the Waterfront Complex at Pickering

Wharf (23 Congress Street). Specifically, the 2023 Renewal requests a substitute provision to allow the WDUZ to be a minimum width of no less than 10 feet rather than 25 feet to implement the vision expressed by the public during the planning processes to allow for seasonal outdoor dining, which was originally expressed in the 2008 Plan and is continued as a goal in the 2023 Renewal. Supplemental information provided during the consultation period of the review clarifies that the reduction of the WDUZ is to a minimum width of 10 feet, to allow for outdoor seating in the landward 10 feet of the 20-foot-wide Harborwalk. This was a goal of the 2008 Plan, but that Plan incorrectly identified the minimum WDUZ substitution as 20 feet based on the width of the full Harborwalk.

The 2008 Plan included several locations for a substitution of the WDUZ standard where the WDUZ would be reconfigured to provide important view corridors along the South Commercial waterfront. In these instances, no net loss of the WDUZ area was proposed or allowed. The projects proposed for this substitution have been implemented, and the substitution is no longer proposed for these areas. However, on the Waterfront Complex parcel on Pickering Wharf, which has not yet been completed, reconfiguration of the WDUZ area would not be sufficient to offset the reduced area on the waterfront. To offset the effects associated with the decreased WDUZ and to ensure that non-water-dependent uses do not unreasonably diminish the capacity of site-related tidelands to accommodate water-dependent use, the 2023 Renewal proposes continuation of the substitution with qualitative improvements in lieu of a quantitative offset, designed to significantly enhance the public's use and enjoyment of this section of waterfront. Pickering Wharf provides an important destination along the Salem waterfront and improved public access along the water's edge and serves as a critical bridge between the South River Basin and Salem's outer harbor and the Salem National Maritime Historic Site. However, the portion of the existing Harborwalk proposed for improvements, shown on Figure 3, is currently narrow (approximately 5 feet in some areas), unlit, and in poor structural condition. As a result of the current Harborwalk condition, there would be more public benefit realized by completing infrastructure upgrades along portions of Pickering Wharf than with a redistribution of part of the WDUZ on the project site itself. The specific qualitative improvements were identified as offsets as a result of extensive public discussion during public HPC meetings for the 2008 MHP process. They were specifically identified as improvements that would significantly enhance the public's use and enjoyment of this section of waterfront by providing important public access improvements to address inadequate access and safety issues along the existing public walkway adjacent to the proposed Waterfront Complex. Continuation of these qualitative offsets will ensure

that the vision identified for this section of Pickering Wharf can be implemented. These qualitative improvements will be completed during the construction of the proposed Waterfront Complex:

1. Upgrading and maintenance of an off-site portion of the existing public walkway around Pickering Wharf as shown in Figure 3. The improvements will include widening the walkway to a full, clear 10 feet and adding other enhancements to make it consistent with the current Salem Harborwalk design standards, including appropriate lighting to allow for the walk's safe use at night; and
2. Creation/construction and maintenance of an appealing "gateway" entrance to the Harborwalk which will directly connect to Congress Street to more effectively attract the public onto the Harborwalk beside the waterfront.

Allowing these offsets for the reduction in WDUZ on this site will improve the overall public access to the entire section of the waterfront on Pickering Wharf as described above. By improving an existing sub-standard and underutilized area of the Harborwalk off-site and highlighting the public access through the construction of the "gateway" at Congress Street, the offset will effectively enhance the public's use and enjoyment of the waterfront in this location.

As a result of my review, I find that the proposed substitute provision in the Plan includes alternative distances and other requirements that ensure that new or expanded buildings for nonwater-dependent use at the Waterfront Complex will not be constructed immediately adjacent to the shoreline so that sufficient areas along the edge of the shoreline at and adjacent to the Waterfront Complex site at Pickering Wharf will be devoted exclusively to water-dependent use, including public access. Second, I find that the City has demonstrated that the proposed offsets will ensure that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access in this location with comparable or greater effectiveness than the provisions of 310 CMR 9.51(3)(c). Therefore, I approve this substitute provision and the corresponding offset measure. My approval of this substitution is conditioned such that the provision will not be approved without concurrent implementation and requirements for ongoing maintenance of the proposed offsets, including upgrades to the Harborwalk to widen it to a clear 10 feet and provide enhancements consistent with existing design standards, including appropriate lighting, and to create a "gateway" entrance to the Harborwalk at the Congress Street Bridge, with appropriate requirements for ongoing maintenance of these improvements.

Building Height 310 CMR 9.51(3)(e)

The 2023 Renewal continues two substitutions to building height requirements. To approve any substitution provision to the height standard at 310 CMR 9.51(3)(e), I must first determine that the 2023 Renewal specifies alternative height limits and other requirements that ensure that, in general, new or expanded buildings for non-water-dependent use will be relatively modest in size, so that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the applicable location on Salem Harbor (301 CMR 25.05(c)5.). This standard focuses on how a building's mass will be experienced at the pedestrian level and on public open spaces on the project site, especially along the waterfront and key pathways leading thereto. I must also determine that the City has demonstrated that its substitute height standard and offsetting measures satisfy the "comparable or greater effectiveness" test in the context of this standard.

The 2023 Renewal requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) for building height in Sub-area A within the South Commercial Waterfront District (Figure 4). Specifically, the 2023 Renewal would allow non-water-dependent buildings up to a maximum of 70 feet in this area, consistent with Salem's municipal zoning for this area, rather than the Waterways requirement of 55 feet within 100 feet of the high-water mark nor increase by more than one-half foot for every additional foot beyond 100 feet. For the fifteen-foot increase in height, the primary concern for the ground-level environment is increased shadow. For projects within this Sub-area, the additional height will be offset with a requirement for additional dedicated public open space on the site proportional to the amount of new shadow created as a result of the added height. The offset area requirement will be calculated by determining the net new shadow cast at the ground level by the additional building mass during full sun conditions that would occur on the site on October 23rd between the hours of 9 a.m. and 3 p.m. The additional open space required will equal half the calculated new building shadow. No more than half of the open space set aside for this offset may be used for parking.

The 2023 Renewal also requests a substitution for building height for the proposed Waterfront Complex on Pickering Wharf. The 2023 Renewal would allow a maximum building height of 70 feet on this site, consistent with Salem's municipal zoning for this site, and provides that alternative offsets would be required (Figure 4):

1. The addition of a ground-level covered public space in a “turret” proposed as a design element on the southwest corner of the new building in the new Harborwalk “gateway” area adjacent to Congress Street;
2. The addition of landscaping and new design elements along the Congress Street end of the proposed hotel building to further improve the appearance of the planned Harborwalk gateway and separate and screen the gateway from the building’s loading docks and/or service areas; and
3. The construction of an observation platform is incorporated as part of the Harborwalk on the southeast corner of Pickering Wharf.

Based on my review of the 2023 Renewal, it appears that increases in net new shadow to the ground-level pedestrian environment along the waterfront, resulting from the proposed height increase within Sub-area A of the South Commercial Waterfront District and the Waterfront Complex from a maximum of 55 feet to a maximum of 70 feet, will be minimal due to the area’s orientation relative to the waterfront. Because the buildings will cast shadows to the west and north, away from the waterfront, there will be little net new shadow attributable to the increased heights associated with the proposed substitute provisions that would impact ground-level conditions or impair public use and enjoyment of the waterfront and its adjacent watershed, and the offsets will ensure that ground-level conditions remain conducive to such use and enjoyment. I therefore conclude that the proposed substitute height provision will not impair water-dependent activity and public access to the waterfront and that the City has demonstrated that the substitute height standard and offsetting measures appropriately serve to meet the objectives of 310 CMR 9.51(3)(e) with comparable or greater effectiveness for both locations.

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

The 2023 Renewal continues a substitution to the provisions of the Waterways regulations related to the width of the pedestrian access network in the South Commercial Waterfront District. Substitute provisions governing a pedestrian access network, a minimum walkway width other than 10 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 City has

demonstrated that this proposed substitute provision promotes this tideland policy with comparable or greater effectiveness is presented below.

The 2023 Renewal proposes a substitution of the standards for Utilization of the Shoreline for Water-Dependent Purpose which requires a pedestrian access network with walkways to be no less than 10 feet in width along the shoreline of the South River. The proposed substitution would require a dedicated 20-foot-wide public accessway along the entire shoreline of the South River within the South Commercial Waterfront District. A minimum of 10 feet of this walkway along the waterway must be an unobstructed pathway, but the inland 10 feet of this accessway could be used for landscaping and accessory amenities that would enhance the general public's waterfront experience. These amenities may include seasonal outdoor restaurant and food service seating as long as the Salem Licensing Board approves an outdoor café permit (Common Victualler License), and the Salem Board of Health approves a food permit consistent with the permitting of seasonal outdoor dining facilities on public sidewalks/ways throughout the City of Salem. No nonwater-dependent buildings, vehicles, or utility infrastructure (e.g., dumpsters, HVAC units, loading platforms) will be allowed in the public accessway unless they directly support water-dependent use(s). These access requirements would be in addition to the standards for public access to the waterfront required under Chapter 91. The 2023 Renewal states that this harbor walkway is essential to improving access along the water's edge, and the City considers it a critical aspect of their goals for the South Commercial Waterfront District.

As a result of my review, I find that the City has demonstrated that the proposed substitute provision for the 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 be directly adjacent to the project shoreline and no less than 10 feet in width. Further, taken together with the City's requested substitution to the WDUZ discussed above, this substitute provision will help to realize an exceptional public realm along the Salem Harbor. I therefore approve this substitute provision for a dedicated 20-foot wide public accessway along the entire shoreline of the South River within the South Commercial Waterfront District, with the conditions that a minimum of 10 feet of this walkway along the waterway must be an unobstructed pathway, the inland 10 feet of this accessway could be used for landscaping and accessory amenities that would enhance the general public's waterfront experience, and seasonal outdoor restaurant and food service seating may be allowed in the inland 10 feet if the Salem Licensing

Board approves an outdoor café permit (Common Victualler License), and the Salem Board of Health approves a food permit consistent with the permitting of seasonal outdoor dining facilities on public sidewalks/ways throughout the City of Salem. As this substitute provision promotes the pedestrian access network tidelands policy with is comparable or greater effectiveness as the 10-foot minimum width, all new development, redevelopment, or existing development requiring licensing through Chapter 91 within the South Commercial Waterfront District proposed by the 2023 Renewal shall comply with this requirement.

Table 1. Summary of Substitute Provisions for 2023 Salem Municipal Harbor Plan and DPA Master Plan Renewal.

Regulatory Provision	Applicable Location	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measure(s)
310 CMR 9.51(3)(c): Water Dependent Use Zone	Waterfront Complex site at Pickering Wharf (23 Congress Street, Figure 3)	The width of the WDUZ is the lesser of 100 feet or 25% of property depth from the present high-water mark, but no less than 25 feet.	The minimum width of WDUZ will be no less than 10 feet.	Upgrade and maintain an off-site portion of Pickering Wharf, including widening it to a clear 10 feet, enhancing it to make it consistent with existing design standards, and providing appropriate lighting. Create and maintain a “gateway” entrance to the Harborwalk at Congress Street Bridge.
310 CMR 9.51(3)(e): Building Height Commercial	Sub-Area A South Commercial Waterfront District, other than Waterfront Complex site at Pickering Wharf (23 Congress Street) (Figure 4)	For new or expanded non-water-dependent use buildings, the height shall not exceed 55 feet within 100 feet of the high-water mark nor increase by more than one-half foot for every additional foot beyond 100 feet.	Allow non-water-dependent buildings up to a height of 70 feet to be consistent with the City of Salem Zoning requirements.	Additional public open space on the site will be calculated by determining the new shadow cast at the ground level by the additional building mass during full sun conditions on October 23 rd between 9 a.m. and 3 p.m. No more than half the additional open space may be used for parking.
310 CMR 9.51(3)(e):	Waterfront Complex site at	For new or expanded non -	Allow non-water-dependent buildings up to	Addition of ground-level public space in a “turret”

Regulatory Provision	Applicable Location	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measure(s)
Building Height	Pickering Wharf (23 Congress Street, Figure 3)	water-dependent use buildings, the height shall not exceed 55 feet within 100 feet of the high-water mark nor increase by more than one-half foot for every additional foot beyond 100 feet.	a height of 70 feet to be consistent with the City of Salem Zoning requirements.	<p>portion of the new Harborwalk gateway adjacent to Congress Street. Additional landscaping and design elements to improve the appearance and to screen the gateway from the building's loading/service areas.</p> <p>Construction of an observation platform on the southeast corner of Pickering Wharf.</p>
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water Dependent Purposes	South Commercial Waterfront District (Figure 4)	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 provided in a municipal harbor plan, shall be no less than 10 feet in width.	<p>Require a dedicated 20-foot-wide public walkway around the South River, of which a minimum of 10 feet adjacent to the water shall be an unobstructed pathway. The inland 10 feet may be used for landscaping and accessory amenities to enhance the general public's waterfront experience. These amenities may include seasonal outdoor restaurant and food service seating as long as:</p> <p>--The Salem Licensing Board approves an outdoor café permit (Common Victualler License); and</p> <p>--The Salem Board of Health approves a food permit consistent with the permitting of seasonal outdoor dining facilities on public sidewalks/ways throughout the City of Salem.</p>	The minimum standard will be 20 feet, of which a minimum of 10 feet shall be an unobstructed pathway. The substitution directly benefits the public through enhanced access. No additional offsetting benefit is required.

Figure 3: Plan of Proposed Waterfront Complex at 23 Congress Street and Location of Offsetting Improvements

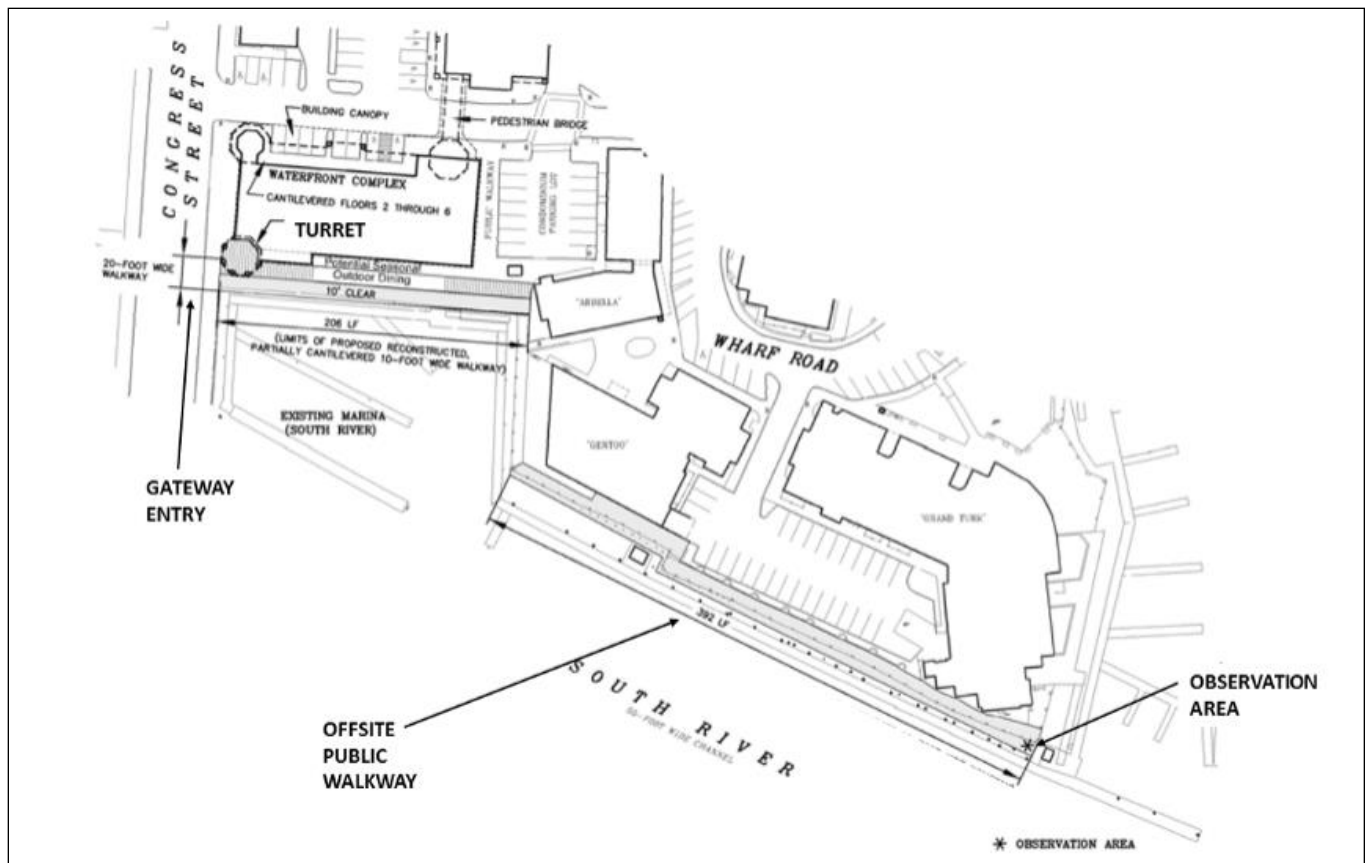


Figure 4: South Commercial Waterfront District and Sub-areas A and B



D. Evaluation of Proposed Amplification Provisions

Approval of MHP regulations pursuant to 301 CMR 23.05(2)(b) requires 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 adopting an amplification after CZM makes such a finding, MassDEP 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 City does not propose any amplifications to discretionary requirements of the Waterways regulations in the 2023 Renewal. Projects within Chapter 91 jurisdictional areas in the HPA will continue to meet the standards of these provisions as they are currently required to by the Waterways regulations.

E. Evaluation of the DPA Master Plan

The Salem DPA includes the majority of the Industrial Port district and a portion of the North Commercial Waterfront District. The area within the Salem DPA is primarily made up of the Salem Wharf ferry terminal, constructed since the approval of the 2008 Plan, the 23-acre site of the Salem Harbor Station gas plant (which is a nonwater-dependent use operating under a variance), and the 42-acre waterfront site surrounding the gas plant. The DPA also includes a deepwater channel and a

substantially developed industrial waterfront. A few small, existing residential parcels are included in the DPA area.

The DPA is primarily located on land subject to Chapter 91 jurisdiction but also includes approximately 9 acres of land that is not subject to Chapter 91 jurisdiction (Figure 5). This non-jurisdictional area is required to be used in compliance with the Salem DPA Master Plan, as it may be amended, pursuant to a Grant of Restriction and Easement (Grant) required by the Final Decision of the Commonwealth of Massachusetts Energy Facilities Siting Board (2/25/2014) for the Salem Harbor Station and recorded in the South Essex Registry of Deeds at book 33809, page 533. The Grant was required to mitigate the occupation of filled tidelands within a DPA by the Salem Harbor Station, which is a nonwater-dependent use (Waterways File # W13-3886-N, Decision on Variance Request and Written Determination in the Matter of Footprint Power Salem Harbor Development LP dated November 1, 2013). The Grant lists allowable uses and acknowledges that any amendment to the DPA Master Plan approved by EEA and in compliance with the provisions of 301 CMR 23.00 and 310 CMR 9.12(2)(b) will modify those allowed uses. Allowed uses may include nonwater-dependent industrial uses, provided they meet the referenced regulatory standards for use in a DPA. The restriction is flagged within the City's permitting system, which directs the Building Inspector to consult with the City's Planning Department and MassDEP, to review for consistency with the DPA Master Plan before local permit issuance. A copy of the 2023 Salem DPA Master Plan shall be attached to the Grant and referenced in any building permit subject to the Grant issued after the approval of the 2023 Salem MHP and DPA Master Plan.

The 2023 Renewal reviews the substantial changes to the Salem DPA that have occurred since approval of the 2008 Plan. These changes most notably include completion of the ferry terminal and promising efforts to develop the DPA for WDI use related to the offshore wind industry. Early in the planning process for the renewal of the 2008 Plan, the Salem Harbor Port Authority (Port Authority) engaged MassCEC in a discussion around the suitability of the Port of Salem to support the offshore wind industry. Through this early engagement, it became clear that the physical characteristics of Salem positioned it uniquely to support this developing industry because it provides sufficient upland area, a deep-water federally maintained navigation channel, and no air draft or width limitations. These physical characteristics make the Industrial Port waterfront ideally suited for the marshaling of both fixed bottom offshore wind turbines, like those proposed to be deployed in the approved lease areas south of Cape Cod, and future floating offshore wind turbines planned for lease areas to be designated in the Gulf of Maine. In the early phases of the development of the DPA Master Plan, the economic

possibilities for offshore wind were not yet evident. The announcement in March 2021 of a nationwide goal of 30 gigawatts of offshore wind by 2030 resulted in renewed opportunities for the Salem Industrial Port in the offshore wind industry, and significant and enthusiastic local involvement through the harbor planning process resulted in broad public and state support for focusing the redevelopment of the Industrial Port on offshore wind support activities. As discussed in the 2023 Renewal, “the City collaborated with Footprint Power on the release of a Request for Expressions of Interest (REI) to assess interest in [the 42-acre property surrounding Salem Harbor Station] for offshore wind-related uses. The REI precipitated a partnership between the City and Crowley to create a public-private partnership aimed at establishing Salem Harbor as the state’s second major offshore wind port. Through this partnership, Crowley, the nation’s largest civilian employer of US mariners, is anticipated to be the long-term operator of the port and will lease the property for turbine assembly, staging, and deployment to offshore installation areas.” This project has received significant funding from the Commonwealth, and H.3045 (2023, § 31) includes authorization for the Massachusetts Clean Energy Technology Center (MassCEC) to establish the offshore wind terminal at the site and lease the site for that use.

Because the 2023 Renewal includes a DPA Master Plan, the approval criteria at 301 CMR 23.05(2)(e) require me to find that the Master 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 2023 Renewal must:

1. Ensure that extensive amounts of the total DPA area in close proximity to the water are reserved for WDI uses and that commercial uses and associated accessory uses will not, as a general rule, occupy more than 25% of the total DPA land area;
2. 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;
3. Identify industrial and commercial uses allowable under local zoning that will qualify as supporting DPA uses;
4. Identify strategies for the ongoing promotion of WDI use, including recommendations for capital improvements or other economic or operational benefits to be provided by supporting DPA uses, recommendations to preserve or enhance for transportation facilities for WDI use, and measures to prevent conflicts between WDI use and adjacent neighborhoods; and

5. Satisfy additional criteria if proposing new recreational boating facilities with nine or fewer slips (not applicable to this 2023 Renewal).

The 2023 Renewal allows commercial uses and accessory uses to occur within the DPA provided they are qualified DPA Supporting Uses and do not exceed 25% of a project site or of the DPA as a whole. The 2023 Renewal differs from the 2008 Plan in this respect: the 2008 Plan incorporated an alternative site coverage ratio that required 100% of the filled tidelands in the DPA to be reserved for WDI uses and accessory uses thereto. The 2023 DPA Master Plan removes this alternative site coverage ratio and instead adopts the standards for licensing uses in the DPA as set forth in the Waterways regulations, which allow up to 25% of a project site to be used for DPA Supporting Uses. The 2023 DPA Master Plan supports any qualifying commercial or industrial use that meets local zoning to be licensed as a supporting use in the DPA, provided that it provides direct economic or operational support to WDI uses in the DPA. Qualifying supporting uses include, but are not limited to, small-scale commercial, retail, and accessory uses thereto; research and development; and any other zoning-compliant uses that fully comply with the definition of DPA Supporting Uses at 310 CMR 9.02. The 2023 Renewal also supports any Temporary Uses that are consistent with the definition at 310 CMR 9.02. While the Master Plan could allow up to 25% DPA Supporting Uses, the expected coverage by these uses is expected to be substantially less. Currently, there are no commercial uses within the Salem DPA, and the 2023 DPA Master Plan includes calculations to demonstrate that, at most, 15.3% of the total DPA land area of the Salem DPA could be used for commercial uses and accessory uses thereto under full build-out. The 2023 Salem DPA Master Plan also requires that Supporting Uses must be located away from the waterfront and on landward edges of the DPA to the extent reasonable. Through this change, the City intends to ensure that the needs of WDI uses and facilities will be accommodated and not discouraged while ensuring that extensive amounts of the DPA area are preserved for WDI use.

The 2023 Renewal includes measures to limit commercial uses that may discourage or do not mix compatibly with WDI use. Supporting and temporary uses are limited to those allowable under the Waterways regulations. In addition, the Plan includes a conceptual plan of the area indicating the type, location, density, scale, duration, and operation of commercial uses within the DPA. In addition, while the DPA Master Plan supports public access including seasonal public access where appropriate, it confirms the Waterways standards that any structures or public amenities shall be installed in a manner where they can be removed with relative ease to facilitate WDI use. No permanent structures

or hindrances to discourage or preempt the transition of the project site to Water-Dependent-Industrial will be allowed. As detailed above, the DPA Master Plan also provides Design Principles to be implemented locally through adoption by the Salem Port Authority, which encourages additional community benefits by requiring that projects incorporate community noise abatement, visual protections, public access, and climate resiliency where possible, consistent with Waterways requirements.

The 2023 Renewal also includes a description of the City's efforts to improve, promote, and market the Salem DPA for water-dependent industrial use. Many of these efforts are ongoing and the Salem intends to continue to work collaboratively with the state and property owner to ensure that all applicable conditions are satisfied in a fair and timely manner. The Plan indicates that port development coordination is led by the Salem Harbor Port Authority, which is directed to develop a strategic plan or mission statement that incorporates the DPA Master Plan Guiding principles. The Master Plan also recommends continued work to develop offshore wind, including by resolving ownership of the 42-acre site formerly occupied by the power station. The Master Plan also considers the importance of maintaining the federally maintained channel to the harbor and the potential need for roadway and utility upgrades associated with the proposed offshore wind facility in the DPA.

While the 2023 Renewal supports primarily WDI use of the DPA waterfront, the DPA Master Plan must include provisions to prevent conflicts between the WDI users of the DPA and the adjacent neighborhood. To address this, the City DPA Master Plan incorporates several Design Principles to guide activities and development within the DPA to the extent practicable. The Design Principles were developed through extensive public input during the harbor planning process. These include:

1. Climate resiliency: To the extent consistent with WDI use operational requirements, the Salem DPA shall be redeveloped to provide resilience against flooding and where possible protection which can extend to adjacent neighborhoods.
2. Carbon footprint: port operations shall follow best management practices to decrease their carbon footprint, including consideration of plug-in/cold-ironing options for docked vessels.
3. Multiple uses: where possible, DPA infrastructure shall be designed to allow for multiple uses, such as flood control berms and public access, subject to the operational requirements of the DPA. All DPA uses, and supporting DPA uses in particular, shall be located and designed with the intent of providing visual buffers and noise attenuation between the DPA and the Derby Street neighborhood.

4. Minimize conflicts with residential neighborhoods: Salem DPA developments and activities should minimize impacts on adjacent residential neighborhoods to the extent practicable through the location of supporting DPA uses, screenings, plantings, traffic circulation plans, etc. Depending on the amount of supporting DPA uses that can be accommodated, structures shall be located and designed to minimize DPA noise impacts and light pollution and provide some visual screening from the Derby Street neighborhood. Landscaping and tree plantings may also be used for DPA screening along Derby Street, particularly in the Salem DPA outside Chapter 91 licensing jurisdiction. Depending on the type of WDI uses that are developed (e.g., offshore wind energy) and consistent with the City of Salem's ecotourism efforts, some visual corridors will be protected where feasible to allow visitors and residents to observe activities related to the construction and operation of clean energy sources.

Based on the information provided in the 2023 Renewal as discussed above and subject to the conditions at the end of this Decision, I find that the DPA Master Plan components of the 2023 Renewal are consistent with the requirements of 301 CMR 23.05(2)(e).

F. Relationship to State Agency Plans

The Municipal Harbor Planning regulations (301 CMR 23.05(3)) require that the 2023 Renewal 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. The 2023 Renewal describes cooperative planning with the Massachusetts Bay Transportation Authority (MBTA) for improved pedestrian access to the Salem Commuter Rail Station to ensure that the City's work is compatible with the MBTA rights-of-way in the Crescent Lot/North River planning area, and addresses consistency with the MassCEC's offshore wind energy goals through a collaborative planning process to ensure that the 2023 Renewal appropriately supports the joint goal of offshore wind development in the City's Industrial Port. In addition, improvements in the Industrial Port and proposed improvements to public access throughout the HPA are consistent with the goals of the Massachusetts Seaport Economic Council to cultivate job creation and economic growth in the maritime sector. Improvements in the Industrial Port and proposed improvements to public access throughout the HPA are consistent with the goals of the Massachusetts Seaport Economic Council to cultivate job creation and economic growth in the maritime sector. No potential conflicts are identified between planned state agency actions or plans

and this 2023 Renewal. The City should continue working with the MBTA, MassCEC, and the Seaport Economic Council as needed.

G. Implementation Strategy

Pursuant to 301 CMR 23.05(4), the 2023 Renewal must include enforceable implementation commitments to ensure that 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.

MassDEP's Chapter 91 licensing process under the Waterways regulations will implement the portions of this plan associated with the substitution provisions as described above. The provisions of this 2023 Renewal will be implemented through regulatory and environmental review provisions, as applicable, to ensure that uses are consistent with the approved substitute provisions described in the 2023 Renewal. The 2023 Renewal further provides additional direction for ensuring that proposed uses in the 9 acres subject to the 2015 Grant of Restriction and Easement meet the requirements and intent of that document, and in the application and issuance of Chapter 91 licenses for the HPA. Accordingly, I find that this approval standard is met subject to the conditions detailed below.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect upon issuance of final amendments by MassDEP to incorporate the substitutions described in this Decision into the Waterways regulations. As requested by the City of Salem, the City of Salem Municipal Harbor Plan and Designated Port Area Master Plan Decision shall expire ten years from this effective date unless a renewal request is filed before that date in accordance with the procedural provisions of 301 CMR 23.06. No later than six months before the 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 its 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 2023 Salem Municipal Harbor Plan and Designated Port Area Master Plan and

supplemental information according to the terms and obligations contained herein and subject to the following conditions:

1. For the waterfront complex site at Pickering Wharf, the following offsets for the reduced 10-foot WDUZ shall be completed before a Certificate of Occupancy is issued for the project:
 - a. Upgrading and maintenance of an off-site portion of the existing public walkway around Pickering Wharf from the southwest corner of the existing restaurant at 76 Wharf Street extending easterly to the southern corner of the existing restaurant at 89 Wharf Street. The improvements will include widening the walkway to a full, clear 10 feet and adding other enhancements to make it consistent with Salem Harborwalk design standards, including appropriate lighting to allow for the walk's use at night; and
 - b. Creation/construction and maintenance of an appealing "gateway" entrance to the Harborwalk which will directly connect to Congress Street to more effectively attract the public onto the public accessway beside the waterfront;
2. Within the South Commercial Waterfront District, MassDEP shall require a dedicated 20-foot-wide public accessway along the entire shoreline of the South River. A minimum of 10 feet of this walkway along the waterway must be an unobstructed pathway, but the inland 10 feet of this accessway could be used for landscaping and accessory amenities that would enhance the general public's waterfront experience. These amenities may include seasonal outdoor restaurant and food service seating as long as:
 - a. The Salem Licensing Board approves an outdoor café permit (Common Victualler License); and
 - b. The Salem Board of Health approves a food permit consistent with the permitting of seasonal outdoor dining facilities on public sidewalks/ways throughout the City of Salem; and
 - c. The seating area reserves visibility of the seating area from the 10-foot clear portion of the Harborwalk, and from the seating area to the water so that the activity there contributes to the public activity of the waterfront and is not concealed; and
 - d. The seating area is demarcated with planters, bollards, rope, or other barriers to prevent encroachment on the 10-foot Harborwalk, with the barrier at a height and spacing that preserves visual accessibility to and from the café; and

- e. The area is designed so that patrons may enter and exit directly from the 10-foot clear portion of the Harborwalk to the dining area, to ensure that public accessibility, both physical and perceptual, is maintained.

Nonwater-dependent buildings, vehicles, or utility infrastructure (e.g., dumpsters, HVAC units, loading platforms) are not allowed in the public accessway unless they directly support water-dependent use(s).

3. In Sub-area A within the South Commercial Waterfront District, non-water-dependent buildings may be constructed up to a maximum of 70 feet high, provided the additional height is offset with a requirement for additional dedicated public open space on the parcel calculated by determining the new shadow cast at the ground level by the additional building mass during full sun conditions that would occur on the site on October 23rd between the hours of 9 a.m. and 3 p.m. The additional open space required will equal half the calculated new building shadow. No more than half of the open space set aside for this offset may be used for parking.
4. For the proposed Waterfront Complex at Pickering Wharf, the non-water-dependent building may be constructed up to a maximum of 70 feet high, provided the following offsets are completed before a Certificate of Occupancy is issued:
 - a. The addition of a ground-level covered public space (turret) proposed as a design element on the southwest corner of the new building in the new Harborwalk “gateway” area adjacent to Congress Street; and
 - b. The addition of landscaping and new design elements along the Congress Street end of the proposed hotel building to further improve the appearance of the planned Harborwalk gateway and to separate and screen the gateway from the building’s loading docks and/or service areas; and
 - c. The construction of an observation platform is incorporated as part of the Harborwalk on the southeast corner of Pickering Wharf.
5. A copy of this Decision will be attached to the recorded Grant of Restriction and Easement (Footprint Power to the City of Salem dated January 16, 2015) and referenced in any building permit subject to the Grant issued after the approval of the 2023 Renewal. WDI uses are allowed consistent with 310 CMR 9.00 within the referenced approximately 9 acres. Other uses allowable under local zoning may also be approved within the above-described approximately 9-acre area, provided they do not exceed a combined total of 25% of the area (approximately 2.37 acres) and any such use complies with all applicable standards of 310 CMR

9.00, including but not limited to 310 CMR 9.32 and 310 CMR 9.36. Before performing or permitting any use in, on, above, or below the approximately nine-acre area, in addition to any requisite local permitting, written notice of the proposed use shall be provided to MassDEP by the project proponent. Said notice shall include a surveyed site plan that delineates and quantifies the proposed use area, documentation of how the use complies with the above-referenced regulatory standards, and an accounting of all existing and proposed use types within the approximately nine-acre area. In the absence of a letter of compliance from MassDEP, a building permit shall not be issued. In the event MassDEP determines the project does not comply, the project proponent may resubmit a revised proposal to MassDEP for a new review.

6. The City shall prepare a final, approved Salem Harbor Plan (Approved Plan) to include:
 - a. The 2023 Renewal dated January 2023 as amended by this Decision;
 - b. This Approval Decision; and
 - c. Supplemental information submitted March 31, 2023.

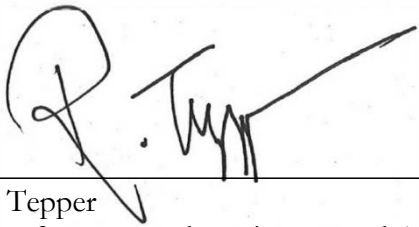
Copies of the final, Approved Plan shall be provided to CZM and MassDEP's Waterways Program, kept on file at the City Clerk and Planning and Community Development Offices, and made available to the public through the City's website and copies at the library. For Chapter 91 Waterways licensing purposes, the Approved Plan shall not be construed to include any of the following:

1. Any subsequent addition, deletion, or other revision to the final Approved Plan, 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);
2. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by MassDEP 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 May 12, 2023, the MassDEP Waterways Program Chief expressed support for approval of the substitute provisions in the 2023 Renewal and stated that in accordance with the

provisions of 310 CMR 9.34(2), MassDEP will require conformance with any applicable provisions of the Approved Plan in the case of all Waterways license applications submitted after the 2023 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.

A handwritten signature in black ink, appearing to read 'R. Tepper', is written over a horizontal line.

Rebecca Tepper
Secretary of Energy and Environmental Affairs

5/17/2023

Date



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

May 12, 2023

Rebecca L. Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02114

RE: Massachusetts Department of Environmental Protection Approval of Substitute Provisions
and Recommendation for the Approval of the Secretary's Decision on the City of Salem
Municipal Harbor Plan

Dear Secretary Tepper,

The Department of Environmental Protection, Waterways Regulation Program ("the Department") has reviewed the City of Salem's Proposed Municipal Harbor Plan and Designated Port Area Master Plan ("the Plan") dated January 2023 and supplemental information submitted on March 31, 2023. The Department's staff have worked closely with the Massachusetts Office of Coastal Zone Management (CZM) and representatives of the City of Salem throughout the planning process and consultation period. The Department has reviewed the proposed Secretary's Decision ("Decision") on the Substitute Provisions and has determined that the Substitute Provisions and Offsets as specified in the Decision will adequately meet or exceed the protected interests pursuant to M.G.L. Chapter 91 and 310 CMR 9.00. The Department approves the substitute regulatory provisions, and recommends that you also approve these substitute regulatory provisions and make a finding that they are consistent with state tidelands policy objectives in accordance with 301 CMR 23.05.

The Substitute Provisions included in the Decision will modify the numerical standards for 310 CMR 9.51(3)(c) which governs the dimensions of a Water-Dependent Use Zone, 310 CMR 9.51(3)(e) which governs the height of new or expanded buildings for nonwater-dependent use, and 310 CMR 9.52(1)(b)1. which governs the location and size of pedestrian walkways. In accordance with the provisions of 310 CMR 9.34(2), the Department will apply the use limitations or numerical standards specified in the municipal harbor plan as a substitute for the respective limitations or standards, adhere to the greatest reasonable extent to applicable guidance specified in the municipal harbor plan which amplifies any discretionary requirements of 310 CMR 9.00, and determine whether the requirement of 310 CMR 9.54 has been met, if applicable, for all waterways license applications submitted subsequent to the Decision's effective date and within the geographic scope of the Plan. The Plan 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 Salem in the implementation of this important planning effort. If you have any questions regarding the foregoing, please contact me at Daniel.Padien@mass.gov or (857) 329-3574. Thank you for your consideration.

Sincerely,

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

Daniel J. Padien
Program Chief
Waterways Regulation Program