

**DECISION ON THE CITY OF BOSTON REQUEST
FOR APPROVAL OF THE
LOVEJOY WHARF
MUNICIPAL HARBOR PLAN AMENDMENT
PURSUANT TO 301 CMR 23.00**

October 12, 2006

**Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Robert W. Golledge, Jr., Secretary**

I. INTRODUCTION

I am pleased to approve the Lovejoy Wharf Amendment to the Boston Municipal Harbor Plan (MHPA) dated March 2006. This Decision presents a synopsis of plan content, together with my determinations on how the proposed amendment complies with the standards for approval set forth in the municipal harbor planning (MHP) regulations at 301 CMR 23.00.

The MHPA has been reviewed in accordance with procedures contained in the MHP regulations at 301 CMR 23.04, beginning with advance consultation to obtain submittal guidance on content and format from the Massachusetts Coastal Zone Management (CZM) Office. The MHPA was submitted on March 31, 2006 and, following a review for completeness, CZM published a notice of public hearing and 30-day opportunity to comment in the Environmental Monitor dated April 10, 2006. A public hearing was held in Boston on April 26, 2006 and the public comment period closed on May 10, 2006. In reaching my approval decision, I have taken into account all oral and written testimony submitted by the public, together with supplemental information provided by the City of Boston (City) in the course of the subsequent consultation period.

The geographic area subject to this decision is limited to the privately owned Lovejoy Wharf property (identified further herein), which at present contains two buildings built in the early 1900s and occupy approximately 45,000 square feet (sf) at ground level. The 131 Beverly Street building, located on the westerly portion of the site, is a nine-story, approximately 100-foot tall building with a waterfront facade extending to approximately 115 feet. Immediately adjacent to the east is the 160 North Washington Street building, which stands approximately 115 feet tall with a waterfront facade that extends to approximately 122 feet. The two buildings are in various stages of deterioration and are located adjacent to an existing pile-supported wharf structure, of which approximately one-third is used for surface parking and the remainder is fenced-off due to its deteriorated condition.

The City's basic objective in seeking this amendment to the harbor plan for the North Station waterfront area, as approved by the Secretary on July 29, 1999, is to facilitate redevelopment of the property in question through modification of certain dimensional restrictions applicable to the project under M.G.L. c.91 and implementing regulations at 310 CMR 9.00 (Waterways regulations) of the Department of Environmental Protection (MassDEP). In particular, the City seeks to bring the MassDEP numerical standards governing building height into closer alignment with the height limits applicable to the project under City zoning, as previously established for this and other parcels in the North Station Economic Development Area zone in 1989.

II. PLAN CONTENT

The Lovejoy Wharf MHPA serves to complete the planning and regulatory framework for the build-out of the North Station portion of Boston's harbor planning area, a 12.3-acre sub-area consisting of two privately owned parcels, approximately 1.6 acres of open space owned by Massachusetts Department of Conservation and Recreation (DCR), 4.5 acres of water sheet, and

portions of the Charles River Dam and the Zakim Bridge. The planning boundary was established in July of 1999 in the form of a limited geographic amendment to the Boston Municipal Harbor Plan, the focus of which was twofold: to incorporate into the MHP the City's goals for revitalization of the North Station Economic Development Area (EDA) more broadly; and, as an initial implementation measure, to modify a single dimensional requirement of state law (the building height limits applicable to the project under 310 CMR 9.00) to accommodate vertical expansion of an existing building on the landward parcel located at 226 Causeway Street.¹

In this MHPA, the City is focusing on the adjoining waterfront parcel, commonly known as the Lovejoy Wharf site, which encompasses 91,387 sf of filled and flowed tidelands and is occupied by two existing buildings and a dilapidated pile-supported wharf. According to the City, redevelopment planning for this site is a more complicated endeavor requiring not only similar modifications to the height-related provisions of the c.91 regulations, but also to those governing building site coverage and setback from the project shoreline.

With its position along the Harborwalk and immediately adjacent to the (future) Paul Revere Park South to the west and the Freedom Trail to the east, the site lies squarely at "a critical juncture of water-oriented paths...the missing link along the water where the Charles River Basin meets the Boston Inner Harbor." And with its proximity to the flow of transit riders at North Station and visitors to the Rose Kennedy Greenway, the parcel will be a major crossroads for future pedestrian and water-based traffic.

The redevelopment program contemplated by the MHPA for this uniquely situated parcel calls for three major constructed improvements. First, the historic wharf of approximately 36,600 sf will be entirely reconstructed for pedestrian and vessel-related activity, with no vehicular use or habitable structures except for a new two-level "Pavilion" building that will occupy approximately 5,819 sf at the easterly end of the wharf and immediately adjacent to the Charlestown Bridge. Second, the existing 122-foot tall historic building at 160 North Washington Street will receive a much-needed renovation, adding two floors to a maximum height of 155 feet with a reduced upper-level footprint.² Third, the dilapidated 115-foot tall building at 131 Beverly Street will be replaced in its entirety by a contemporary, architectural landmark on a slightly smaller footprint, with similar overall shape and volume but with a 14-story element on the westerly half and a 10-story element on the easterly half (reaching maximum heights of 155 feet and approximately 115 feet, respectively). According to the MHPA, the gross square footage of habitable structures resulting from the combined buildout of 160 Washington Street and 131 Beverly Street will be 430,642 sf, which represents an overall decrease of approximately 24,303 sf compared to existing conditions.³

¹ Decision on the City of Boston's North Station Amendment to the Boston Municipal Harbor Plan Pursuant to 301 CMR 23.00, July 29, 1999.

² Heights, calculated according to Article 39 of Boston zoning code, are to highest occupied floor and thus exclude rooftop structures and mechanical equipment

³ MHPA, at p. 39.

In terms of site usage, the buildings are programmed predominantly for private residential use and associated accessory parking, with at least 75% of the ground (wharf) level and a substantial portion of the second floor (at the North Washington Street level) will be occupied by commercial/retail uses totaling approximately 45,000 sf. Of this amount an estimated 34,000 sf is anticipated to qualify as Facilities of Public Accommodation as defined by 310 CMR 9.02, including a full-service restaurant opening directly onto the wharf from 160 Washington Street, together with all interior space within the adjoining two-level Pavilion structure.⁴ At the same time, the MHPA voices a commitment to ensure that virtually all exterior spaces on the project site will be utilized for public use and enjoyment, with the reconstructed wharf being the centerpiece. In this regard the MHPA indicates that the proposed project will:

- Provide a full-perimeter Harborwalk, together with new landscaped areas and seasonal programming for community events;
- Create new pedestrian connections to DCR's planned parklands in the vicinity of Beverly Street, to the Harborwalk Extension ("Lovejoy Wharf Walkway") that leads under the Charlestown Bridge, and to North Washington Street via a stairway descending from an open public terrace atop the Pavilion building at bridge level; and
- Activate the watershed by providing a floating dock at the edge of the wharf for water taxis and other transient vessel operations, and by providing substantial funding for "water transportation infrastructure and subsidies to promote water transportation at the project site."

Taken together, these key elements of the public realm on the project site are intended to make it a major waterfront destination in its own right, in keeping with its unique "crossroads" location.

As background, the MHPA includes separate chapters that review the larger planning context for the Lovejoy Wharf project (Chapter 3); provide a detailed description of the project as currently proposed, including a full complement of schematic site plans and building sections, elevations, and floor plans, coupled with extensive discussion of the anticipated use program (Chapter 4); and describe the open space and public access principles/guidance the City follows in its permitting process to ensure quality development at this and other harborfront sites (Chapter 6). The document also discusses how the proposed amendment relates to the standards for approval of a MHP, with particular reference to substitute dimensional requirements (Chapter 5 and Appendices A-C) and to consistency with CZM Policies (Chapter 7).

The extensive material contained in the proposed MHPA has been helpful, however, I note that at times both the MHPA and comment letters blur the relationship between MHP approval and other state regulatory review, including the Chapter 91 Waterways (c.91) licensing process and the Massachusetts Environmental Protection Act (MEPA) review process. These processes are separate, with differing review criteria and standards. To clarify, it is important to point out that my approval is properly construed to extend only to regulatory requirements specifically identified and approved in the MHP decision as a substitute provision, amplification, or other binding guidance to which a project must conform pursuant to 310 CMR 9.34(2). Absent such express stipulations, an MHP approval decision leaves it to the respective permitting processes to evaluate and finalize such project details as the appropriate sizing of rooftop

⁴ The MHPA earmarks the location for a visitor center/viewing room, public restrooms and an alcove, and a nonprofit civic/cultural tenant to help establish an active programming presence at the site.

mechanicals, the interior layout of ground-floor uses, the landscape design of exterior public spaces, impacts on air quality and traffic, and so forth.⁵

Based on these considerations, the only content of this MHPA that I determine to be binding are the proposed substitute provisions and associated offsetting benefits, as modified herein. Accordingly, all other plan content shall be regarded as background material for MassDEP licensing purposes, and thus subject to change in the due course of further MEPA and c.91 review. Specifically, the license term and mitigation proposed to comply with c.91 regulations are outside the scope of my review of the MHP.

III. CONSISTENCY WITH STATE TIDELANDS POLICY OBJECTIVES

A. Criteria for Evaluation

Pursuant to the plan approval regulations, the MHPA must be consistent with state tidelands policy objectives and associated regulatory principles as set forth in the MassDEP Waterways Regulations (310 CMR 9.00). This requirement is normally applied in two parts, beginning with a broad review of plan provisions that relate to the primary tidelands policy objectives listed in 301 CMR 23.05(2)(a). Such provisions are contained primarily in Chapters 4 and 6, and my examination of this documentation has revealed, in general terms, that no significant inconsistency exists between the substantive content of the plan and the state policy objectives in question.

I have also conducted a more focused review of Chapter 5 and Appendices A-C of the MHPA, which contain the regulatory requirements intended to substitute for the minimum use limitations or numerical standards of the Waterways Regulations applicable to nonwater-dependent use projects ("substitute provisions"). To approve a substitute provision within the framework established by the MHP regulations [at 301 CMR 23.05(3)(c)-(d)], I must determine that it satisfies the substantive criterion for waiver of the waterways requirement in question, "based on a demonstration by the municipality that the substitute provisions set forth in the plan will promote, with comparable or greater effectiveness, the state policy objectives stated in the corresponding provisions of 310 CMR 9.00." This does not preclude a proposed substitute provision from being less restrictive than the Waterways requirements as applied in individual cases, but in that event the plan must include "other requirements that, considering the balance of effects on and areawide basis, will mitigate, compensate, or otherwise offset adverse effects on water-related public interests."

These other requirements, collectively referred to as "offsets," generally must be applied within reasonable proximity of the locus of adverse effects that need to be offset, to avoid or

⁵ As the Secretary stated in the original 1991 Decision on the Boston Harborpark Plan, approved substitutions represent alternative minimum standards to those contained in the Waterways Regulations, and the approval "cannot be construed as an endorsement of any specific limitation or requirement as applied to individual cases." "Rather," the decision continued, "it should be taken as establishing the overall *envelope* within which case-by-case determinations of appropriate MEPA mitigation measures and Waterways licensing requirements will be made." 1991 decision, at p 27; see also plan approval regulations at 310 CMR 23.05(3)(c).

minimize inequity in the distribution of public benefits and detriments. Beyond this, offsets can be quantitative or qualitative as long as they are sufficiently specific to provide certainty in Chapter 91 licensing, and as long as the focus is on the encouragement of effective public use and enjoyment of waterfront spaces and facilities, which is the common thread running through all seven of the use limitations and numerical standards for which substitute provisions may be approved in a MHP. Accordingly, the range of approvable offsets can be quite broad, with the final determination resting in part on such factors as “the nature and extent of differential effects any less restrictive will have relative to the tidelands policy objectives in question . . . and other relevant circumstances such as the characteristics of the built environment in the area in question” [301 CMR 23.05(2)(d)(1)]. Such circumstances might include, for example, the scale and massing of existing and proposed structures, the degree of urbanization of the area in question, and the relationship between proposed development activities and the adjoining waterfront or watershed.

Specific to the Lovejoy Wharf project, the MHPA proposes substitute provisions for the following four minimum numerical standards of the Waterways Regulations:

- Pedestrian access network - 310 CMR 9.52(1)(b)(1)
- Setback (Water-Dependent Use Zone) - 310 CMR 9.51(3)(c)
- Open space/site coverage - 310 CMR 9.51(3)(d)
- Height - 310 CMR 9.51(3)(e)

These proposed substitute provisions and the corresponding substantive criteria for approval are summarized in Table 1.

Table - 1
Summary of Specific Substitute Provisions and MHP Approval Standards

Waterways Regulation for which Substitute Provision Proposed	Corresponding MHP Approval Standards 301 CMR 23.05(2)(c) and (d) The proposed substitute provision must, with comparable or greater effectiveness...
Setback Requirements (Water-Dependent Use Zone) 310 CMR 9.51(3)(c)	Specify alternative setback 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 the harbor in question.
Open Space (Lot Coverage) 310 CMR 9.51(3)(d)	Specify alternative site coverage ratios and other requirements, that ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question.
Height 310 CMR 9.51(3)(e)	Specify alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question.
Pedestrian Access Network 310 CMR 9.52(1)(b)1 (Harborwalk)	Specify a minimum pedestrian access network width requirement, other than 10 feet, that is appropriate given, among other things, the size and configuration of the water-dependent use zone; the capacity of the project site to serve water-dependent purposes; and the nature and extent of water-dependent activity and public uses that may be accommodated, in order that a reasonable portion of tidelands is devoted to water-dependent use, including public access in the exercise of public rights in such lands.

My detailed evaluations of each of these proposed substitutions are presented separately below.

B. Evaluation of Proposed Walkway Width Substitute Provision

- State Waterways Regulation:
310 CMR 9.52(1)(b)1. (Utilization of Shoreline for Water-Dependent Purpose): At a minimum, the pedestrian access network shall be no less than ten feet in width.
- City Provision:
At a minimum, the Lovejoy Wharf property owners shall provide a 12-foot wide (clear of obstruction) pedestrian access network walkway.

Consistent with the City's minimum width standard for Harborwalk for Boston Harbor, MassDEP shall apply the City's more restrictive provision during the licensing process.

C. Evaluation of Proposed Setback Substitute Provision

The waterways regulations establish uniform dimensional requirements for a "water-dependent use zone" (WDUZ), to ensure that sufficient space along the water's edge will be available to accommodate water-dependent activity and public access. On the Lovejoy Wharf site, the baseline requirement under the regulations would result in a WDUZ that is generally 56 feet wide, extending landward from the seaward edge of the wharf. The MHP proposes to modify the minimum setback requirements of the Waterways Regulations in such a way that reductions in the setback on some parts of the site will be offset by increased setbacks in other areas. The reconfigured WDUZ will result in a total area that is on the order of 5% greater than the baseline condition resulting from strict application of the dimensional requirements of the Regulations.

As set forth in the MHP, with the exception of a discrete area along the existing North Washington Street Bridge, the redeveloped buildings will be setback a minimum of 76 feet from the seaward edge of the wharf. This setback is reduced to 15 feet to accommodate the construction of a seaward projecting Pavilion building on the easterly portion of the site, adjacent to the northwesterly facing wall of the existing 161 Washington Street building. In addition to an upper level public viewing platform, the Pavilion will provide foot access via interior and exterior stairways and handicapped access via elevator from the North Washington Street Bridge to the reconstructed wharf.

As reconfigured in the MHPA, the WDUZ will become appropriately narrower along the portion of Lovejoy Wharf that is adjacent to the new Harborwalk connection as it emerges from under the Charlestown Bridge, which—as a practical matter—has already made that segment of the project shoreline no longer useable for purposes of vessel navigation. On the other hand, the expanded portion of the WDUZ will continue to support a variety of vessel-related uses proposed along the water's edge, including provisions for public water transportation. Recognizing that the modified setbacks are being implemented concurrently with a substitute provision that allows increased building heights, attention to the capacity to accommodate users of water-dependent facilities and other pedestrians is critical, and sufficient space must be provided along the water's edge to accommodate such public access. I am persuaded, therefore, that the setback—along 75% of the waterfront—exceeds that required for strict conformance with the Waterways

Regulations by a minimum of 20 feet, and therefore the reconfigured WDUZ will—with comparable or greater effectiveness—devote sufficient space along the water's edge to water-dependent use and public access.

Based on this analysis, I am approving the substitute provision as proposed subject to the following clarifications:

- With the exception of the area adjacent to the proposed Pavilion, the minimum setback from the seaward edge of the wharf shall be 76 feet for all buildings and structures.
- Along the seaward face of the Pavilion, the setback may be reduced to a minimum of 15 feet. The location and footprint of this structure shall conform generally with the layout depicted on Figure 5-1 of the MHPA.
- In no case shall the area of the reconfigured WDUZ be less than the area that would be obtained with a WDUZ configured in strict conformance with the dimensional requirement (approximately 24,640 sf).

D. Evaluation of Proposed Open Space/Site Coverage Substitute Provision

The Waterways Regulations at 310 CMR 9.51(3)(d) limit the site coverage of nonwater-dependent buildings so that, except in the case of projects involving only the renovation or reuse of existing buildings, at least 50% of the project site remains exterior open space. This requirement can be modified through the MHP process, provided that the Plan contains alternative requirements that will ensure building footprints are relatively condensed in order that sufficient exterior open space is available to accommodate water-dependent activity and public access.

As discussed in the City's MHPA, existing building footprints occupy approximately 44,978 sf (49%) of the 91,387 sf Lovejoy Wharf site. While a portion of this area is located within Lovejoy Place, an existing private way, the majority of the existing open space is located on the wharf to the north of the buildings. Presently, pedestrian access to this area is obstructed physically by the Charlestown Bridge immediately to the east and generally limited by the presence of a parking lot and fence located on the deteriorating and unsafe wharf.

The Lovejoy Wharf project as proposed in the MHPA will result in a 2,029 sf reduction to the combined footprint of the 131 Beverly Street and 160 North Washington Street buildings. Largely to facilitate pedestrian access from the adjacent upper-level Charlestown Bridge down to the wharf area, however, the City's Plan proposes the construction of a two-story pavilion structure with a ground-level footprint of 5,819 sf. This additional site coverage results in a deficit (3,075 sf) in the amount of exterior public open space area provided under the proposed MHPA build-out scenario (47% of the project site). To offset any adverse impacts associated with this reduction in exterior open space, the city has incorporated several measures into the design of the Pavilion to ensure that sufficient open space is available to accommodate water-dependent activity and public access and to promote public activity on the site. These offsetting measures include, among other things, the provision of a 4,429 sf upper-level public terrace, interior and exterior public stairways and an elevator to provide universal access from the bridge

to the lower Harborwalk/wharf area, public restrooms, and ground-level, rent-free space for a visitor center or other public use to be operated in conjunction with a nonprofit organization.

To approve the proposed substitute site coverage provision, I must determine that, in general, the Amendment specifies alternative limitations and other requirements that will ensure that nonwater-dependent buildings will be relatively condensed in footprint. I must also determine that the substitute provision will maintain waterfront areas generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the waterfront, and that the alternative limitations and other requirements adequately mitigate, compensate, or otherwise offset any adverse effects associated with a reduction in the amount of exterior public open space area to achieve state tidelands policy objectives in a way that is comparable or greater than that achieved by strict application of the requirements at 310 CMR 9.51(3)(d).

As discussed above, existing building footprints on the Lovejoy Wharf site that currently occupy approximately 44,978 sf (49%) of the project site will be reduced to approximately 42,949 sf or 47% of the project site through the redevelopment and renovation process. In the absence of the proposed two-story Pavilion building, therefore, the amount of exterior open space available to the public under the MHPA build-out scenario would clearly exceed the minimum requirements of the Waterways regulations. Although construction of the Pavilion does reduce the amount of ground-level exterior open space by a minor amount (approximately 2,000sf) this deficit is arguably offset by the provision of 4,400+ sf of exterior public space to be located on the upper level terrace of the Pavilion. Ordinarily, the use of such upper level space to meet a tidelands policy objective for the ground-level environment would not be appropriate; however, I am persuaded that such a design feature is warranted for this unique location.

First, because of the site's orientation with respect to existing Charlestown Bridge, access to the Lovejoy Wharf waterfront is presently precluded from North Washington Street (which connects Boston proper to Charlestown) and only possible by Beverly Street to the west or by crossing North Washington Street and using the new Harborwalk section to double back under the bridge. Construction of the proposed Pavilion structure, however, will facilitate universal and direct access to the wharf and the adjacent waterfront. Further, I am persuaded that in addition to providing an upper-level area from which to view the harbor and locks, the public nature of such a structure will also promote activation of the relatively isolated and discrete waterfront area of Lovejoy Wharf. Finally, I note that the combination of a generous WDUZ setback along the waterfront to the west of the proposed Pavilion and the concentration of upper- and ground-level open space area on the seaward or wharf side of the building maintains building footprints that are relatively condensed in size.

Based on this combination of planning elements and offsets, I am persuaded that despite the slight deficit in ground-level open space area allowed by the proposed site coverage substitution that buildings for nonwater-dependent use will be relatively condensed in footprint and an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access. I have concluded, therefore, that the approval standard has been satisfied subject to the following clarification:

- All exterior space not within the footprint of the buildings (42,949 sf) or the Pavilion (5,819 sf) shall remain as open space.
- All open space seaward of the buildings shall be for pedestrian use only.

E. Evaluation of Proposed Height Substitute Provision

The Waterways Regulations at 310 CMR 9.51(3)(e) provide that new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark, and beyond that distance that no more than one-half foot of additional height shall be allowable for every additional foot of landward separation from the high water mark. This requirement can be modified through the MHP process, provided that the MHP contains “alternative height limits and other requirements which ensure that, in general, such buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question.”

The substitute height provision contained in the proposed MHPA represents the most significant departure from the Waterways numerical standards of the four substitute provisions requested by the City. The proposed alternative height limit does not allow new or expanded buildings for nonwater-dependent use (other than the proposed Pavilion structure) to be located on the pile-supported portion of the site, whereas the Waterways Regulations would allow such new construction to approximately extend 30 feet seaward of the mean high water. However, within the footprint of both the existing buildings at 160 Washington Street and 131 Beverly Street, the alternative height limits proposed for the respective building expansion and replacement -- which vary from approximately 115 feet to 155 feet as shown in Figures 4-13/14/15/16, 4-20/20A, and 4-22/22A of the MHPA -- rise substantially above that which the Waterways Regulations would permit in the absence of an MHP. Although maximum building heights of 155 feet are consistent with City's zoning requirements, strict conformance with the numerical standards of the Waterways Regulations would result in a maximum building height of approximately 55 feet everywhere except the southwesterly corner of the site, where a height of approximately 70 feet would be attainable.

From the City's perspective, the massing of the proposed project represents a substantial improvement over existing conditions, in which the two warehouse-style buildings at 160 Washington Street and 131 Beverly Street appear as one massive, straight-walled structure. In contrast, the proposed redevelopment scheme is intended to present three distinct massing elements. On the easterly side of the site, the 160 North Washington Street will appear as a historically rehabilitated building, with the integrity of the waterfront facade maintained by setting back the addition of two floors at the top by approximately 20-30 feet from the edge. At the westerly end, the stated goal is to use “modern materials and lively architectural expression that form a major gateway to the City from the North.” To that end, the design of the replacement building at 131 Beverly Street at its southwest corner emphasizes height (the tallest element would be 185 feet at the top of the screened mechanical penthouse) and a building façade whose appearance is one that “emphasizes motion and movement” as a means of drawing further visual attention to the structure. The middle element, a hybrid of both traditional and

modern design, is designed at somewhat lower scale and with a slightly recessed footprint to distinguish it as a transitional element in the overall massing scheme.

I conclude that this massing scheme is consistent with the spirit of the “modest in size” criterion for approving substitute height limits, which is, in part, to define an appropriate relationship between new waterfront development and existing patterns of built form within the surrounding area. The area in the vicinity of the 2.1-acre Lovejoy Wharf site is characterized generally by dense multi-story development exhibiting a variety of building heights. Indeed, the site is immediately surrounded by prominent and, in some cases, towering structures: the TD Banknorth Garden and the recently completed 10-lane Zakim Bridge to the west; the recently renovated 156-foot tall Strada 234 Building to the south; and the 100-year old Charlestown Bridge to the east. This conspicuous structural presence creates an opportunity to enhance the sense of entry into the city by maintaining and improving the large-scale massing at Lovejoy Wharf. I regard this as a legitimate objective of urban design, and in my opinion the way it will be achieved pursuant to the MHPA is appropriate.

How the building's mass is experienced from afar is not the primary concern of the harbor plan approval regulations, which focus instead on how it will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. In that regard I must also apply the test of “comparable or greater effectiveness” to determine whether the proposed substitute provisions and associated offsetting measures will “ensure that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent use and public access associated therewith.” The MHP regulations place the burden of proof squarely on the municipality to demonstrate that this standard has been met, and require such demonstrations to be grounded in an alternatives analysis that compares conditions at the ground level for development allowable under the MHP substitute height provision with those for development compliant with the baseline c.91 height limits.

Such analysis as it relates to wind and shadow effects has been provided in Appendices A and B of the MHPA. In the case of wind, the analyses provided is qualitative in nature, and is sufficient to characterize a variety of wind conditions that typify the site and to evaluate changes resulting from alternative build-out scenarios. Based on a review of this information, I am pleased to note that the MHP build-out scenario will result in ground-level wind conditions that are generally suitable for a variety of ground-level pedestrian activities along the waterfront. Indeed, with the exception of less frequent storm events, such as northeasters (which would also coincide with periods of low pedestrian activity), projected wind conditions at selected locations appear to fall within or below Category 3 (Comfortable for Walking) levels for the MHP scenario. Further, I understand that the projected wind conditions for this scenario also meet established Boston Redevelopment Authority (BRA) wind standards for new projects. As with all previous MHP decisions I will look to the MEPA/Chapter 91/Article 80 processes to ensure that ground-level ambient wind speeds for the final project design will not exceed City “pedestrian safety/comfort wind standards” for assessing the relative wind comfort of pedestrians.⁶

⁶ Any design modifications and mitigation features determined through the MEPA process as necessary to achieve this standard, shall be included as conditions of the Chapter 91 license to ensure that these standards are achieved.

I have also reviewed the comparative shadow analyses provided in the MHP and in response to subsequent CZM requests for additional information. These scenarios were developed in accordance with previously established methods for evaluating height substitute provisions in the harbor planning process and depict shadow conditions for existing, Chapter 91, and MHPA build-out conditions for the Lovejoy Wharf site. As with previous Boston MHPs, the analyses compare projected shadow conditions, hourly from 9:00 a.m. to 5:00 p.m., for the “shoulder seasons,” represented by October 23. Based on my review of this information, it appears that increases in net new shadow to the ground-level pedestrian environment, including the wharf, will be minimal due to the site’s northerly orientation and its relationship to surrounding buildings and structures. Significantly, there appears to be little net new shadow attributable to the increased heights associated with the proposed substitute provision that, by itself, would impact ground-level conditions adversely or impair public use and enjoyment of the waterfront and its adjacent watershed. Based on this evaluation, I have concluded that, subject to the conditions stated in Section V below, the proposed substitute height provision will not serve to aggravate wind and shadow conditions at the ground level to an extent that would impair water-dependent activity and public access to the waterfront.

To compensate for adverse effects on water-related public interests of Commonwealth tidelands associated with the waiver from the height and stepped-back standards of the waterways regulations and to provide for water-related public benefits of a kind and to a degree that is appropriate for the site, the City proposed a menu of offsetting benefits for the height substitute provision (to be provided by the Lovejoy development).

While the proposed height offsets were clearly developed in a good faith effort to be consistent with the principles of the MHP process, some of those proposed do not fully integrate with current facilities, plans, and efforts, and others are more appropriately considered during the c.91 licensing process.

I evaluated the proposed offsets and instead of accepting them as proposed, I am requiring instead that the proposed development project carry out two elements in support of the existing public water transportation facility, in addition to the transient vessel use dock proposed. The existing water transportation dock and shoreside facility was developed and operated by the Commonwealth as part of the Central Artery and Tunnel (CA/T) mitigation measures. This redevelopment project provides an excellent opportunity to continue to support this water transportation facility. Therefore, I am requiring that an operational subsidy of \$150,000 per year be provided for a period of 5 years (to initiate upon the receipt of occupancy permit) and that the project proponent provide maintenance of the dock and shoreside facility for a period of 10 years. The maintenance will be subject to DCR oversight in accordance with a Memorandum of Agreement (MOA) to be executed with the project applicant and will initiate upon the signing of the MOA.

F. Determination on Proposed Substitute Provisions

Subject to the conditions and requirements that I have stated in these sections, I find the MHPA to be broadly consistent with the state tidelands policy objectives and regulatory

principles set forth in the Waterways Regulations, pursuant to 310 CMR 23.05(3)(a). Further, as described in more detail in the following sections, I have determined that the proposed substitute provisions contained in the MHPA specify alternative requirements that, subject to the additional conditions specified herein, will promote with comparable or greater effectiveness the state tidelands policy objectives reflected by the minimum requirements of the Waterways Regulations at 310 CMR 9.51(3)(c)-(e) and 310 CMR 9.52(1)(b)1.

Specifically, I have determined that the alternative requirements and conditions will ensure the following.

- New or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline.
- Buildings for nonwater-dependent use will be relatively condensed in footprint. In general, new or expanded buildings for nonwater-dependent use will be relatively modest in size.
- The minimum width of the pedestrian access network will support site-related water-dependent activities and public access.

The project proponent must submit a c.91 license application to MassDEP, as described in 310 CMR 9.11, that conforms to the Plan as approved, as required by 310 CMR 9.34(2). Unless an alternate requirement is specified in the MHPA as approved, the project proponent must also meet all applicable substantive standards of the Waterways Regulations. MassDEP will substitute as licensing requirements the limitations or numerical standards specified in the Plan for certain standards prescribed in the regulations at 310 CMR 9.51(3)(c) through (e), 9.52(1)(b)(1)). All offsetting measures for the substitute provisions identified in the approved MHPA will also be expressed as enforceable conditions of the c.91 license.

When numerical limitations in an MHP are expressed as maximum or minimum amounts, these limitations will substitute for the maximum or minimum limits derived from strict application of the Waterways Regulations. Where substitute provisions and corresponding offsets are identified specifically in an MHP to compensate for any adverse impacts, MassDEP will apply these specific substitute provisions and offsets as the appropriate standards for licensing. The substitute provisions that I have approved represent alternative minimum standards to those contained in the Waterways Regulations, and this Approval Decision shall not be construed as an endorsement of any specific limitation or requirement as applied to individual cases.

IV. COMPLIANCE WITH OTHER APPROVAL STANDARDS

A. Consistency With CZM Policies

Pursuant to 301 CMR 23.05(1), the MHPA must be consistent with all applicable CZM Policies as defined in 301 CMR 21.98: Policy Appendix. Based on the record before me, including but not limited to the information contained in Chapter 7 of the MHPA, I find that this approval standard has been met. As stated above in Section II, however, this determination applies only to the alternative numerical standards and associated offsets that I have approved as

substitute provisions for c.91 licensing purposes, and shall not be construed to apply in any other respect to the proposed redevelopment project at Lovejoy Wharf. Pursuant to 310 CMR 9.54, such project will require a separate determination of consistency from MassDEP acting in consultation with CZM pursuant to 310 CMR 9.13(2).

B. Compatibility With State Agency Plans and Planned Activities

Pursuant to 301 CMR 23.05(3), the MHPA must 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 of plans of projects within the planning area. DCR is a property owner within the area in question and is also responsible for the implementation for plans and projects relating to development of public open spaces parklands and a water transit facility, both on and in the vicinity of Lovejoy Wharf. Based on a letter submitted by DCR on October 4, 2006 (Attachment), I find that this approval standard has been met subject to the recommended compatibility-related measures stipulated therein, which I hereby adopt as conditions of this Decision.

C. Enforceable Implementation Commitments

Pursuant to 301 CMR 23.05(4), the MHPA must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. I am confident that the conditions relating to substitute provisions that I have included in this Decision will be effectively enforced in the course of further MEPA and c.91 review of the proposed development at the Lovejoy Wharf, together with the MOA to be executed between DCR and the project applicant. Accordingly, no further implementation commitments on the part of the City are necessary and I find that this approval standard has been met.

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 Lovejoy Wharf Amendment to the Boston Municipal Harbor Plan (MHPA). This Approval Decision is subject to any qualifications, limitations, or other conditions stated herein and to the general exclusions noted below, and shall take effect immediately upon issuance on October 12, 2006 or on such later date as may be applicable pursuant to 301 CMR 23.04(5). This Approval Decision shall expire ten years after the effective date, unless a renewal request is filed by the City prior to that date in accordance with 301 CMR 23.06(2)(a).

For waterways licensing purposes, the Approved MHPA shall not be construed to include any of the following:

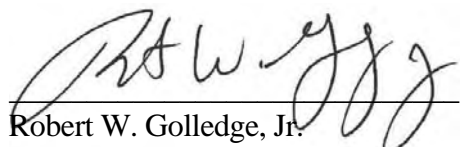
- (1) Any subsequent addition, deletion, or other revision to the submitted plan dated March 2006, except as may be authorized in writing by the Secretary as a

Secretary's Decision on Lovejoy Wharf Municipal Harbor Plan Amendment

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 determination by MassDEP, express or implied, as to geographic areas or activities subject to licensing jurisdiction under M.G.L. c.91 and the Waterways Regulations; in particular, the approximate locations of the historic high and low water marks indicated for the Lovejoy Wharf property are for planning purposes only, and do not constitute a formal ruling on either the extent or nature of filled tidelands on said property;
- (3) Any provision which, as applied to the project-specific circumstances of an individual c.91 license application, is determined by MassDEP to be inconsistent with the waterways regulations at 310 CMR 9.00 or, based upon consultation with CZM, with any applicable qualification, limitation, or condition stated in this Approval Decision; and
- (4) Any determination by MassDEP or other permitting agency of EOE, express or implied, as to the conformance of a proposed project at Lovejoy Wharf with applicable regulations of such agencies, which retain full discretion to modify or condition any relevant aspect of the project to achieve compliance with such regulations, or to withhold approval for lack of compliance.

By letter from the Program Chief of the Waterways Regulation Program dated October 4, 2006 (Attachment), MassDEP has stated that the Approved MHPA will become operational for waterways licensing purposes in the case of any application for which the effective date of plan approval occurs prior to the close of the public comment period. As further stated in said letter, a determination of conformance with the Approved MHPA will be required for any proposed project at Lovejoy Wharf, in accordance with the provisions of 310 CMR 9.34(2).


Robert W. Golledge, Jr.
Secretary of Environmental Affairs

October 12, 2006
Date



October 4, 2006

Susan Snow-Cotter
Office of Coastal Zone Management
251 Causeway Street
Boston, MA 02114

Re: Lovejoy Wharf Municipal Harbor Plan Amendment

Dear Susan:

Representatives of DCR and CZM have met several times during the Consultation Session period. Recognizing that the MHP is a planning document and that final design details can be addressed during the MEPA FEIR and Chapter 91 Licensing processes, DCR believes that the Plan, as conditioned is compatible with DCR-CA/T plans for adjacent parcels. The parcel of land now owned by the Mass. Highway Department and bounded by the Zakim Bridge, the DCR property on the south bank of the Charles River, the west façade of 131 Beverly Street, and a line extending from the southwest corner of 131 Beverly Street to the Zakim Bridge is to be transferred to DCR as part of the mitigation requirements for the construction of the Charles River Crossing of the Central Artery/Tunnel Project. A portion along the east edge of this parcel will be used to provide emergency vehicle access along the south bank of the river as well as vehicular access to the Charles River Dam and Pumping Station and to the State Police facility on the dam. The shared roadway will also provide limited public vehicular access to 131 Beverly Street.

The primary use of the parcel (and the majority of the parcel area) is to provide a pedestrian connection from the Rose Kennedy Greenway and Portal Park to the New Charles River Basin. The design of this parcel is the responsibility of the DCR-CA/T consultant for the Postmainline Parks and Pedestrian Bridges contract (also referred to as the 29F contract). The design for this parcel should include bollards, paving, signage and other visual cues indicating the limited vehicular access to this parcel. DCR-CA/T will look to the MEPA and Chapter 91 Licensing processes to ensure that vehicular access requirements to the Charles River Dam and State Police facility are provided within the twenty-foot right-of-way on the easternmost portion of Beverly Street, to the maximum extent possible.

Sincerely,



Karst Hoogeboom

Deputy Commissioner for Planning and Engineering

COMMONWEALTH OF MASSACHUSETTS · EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston MA 02114-2119
617-626-1250 617-626-1351 Fax
www.mass.gov/dcr

Mitt Romney
Governor

Kerry Healey
Lt. Governor

Robert W. Gollidge, Jr., Secretary
Executive Office of Environmental Affairs

Stephen H. Burrington, Commissioner
Department of Conservation & Recreation



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

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.
Secretary

ARLEEN O'DONNELL
Commissioner

October 4, 2006

Robert W. Golledge, Jr., Secretary
Executive Office of Environmental Affairs
100 Cambridge Street, 9th Floor
Boston MA 02108

Dear Secretary Golledge:

The Department of Environmental Protection, Waterways Regulation Program (MassDEP) has reviewed the City of Boston's Municipal Harbor Plan Amendment for Lovejoy Wharf dated March 2006 and participated in the consultation session with CZM and the Boston Redevelopment Authority. Our comments have been adequately addressed and incorporated into the final amendment. The MassDEP, therefore, recommends that you approve the MHPA amendment and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of the approved Lovejoy MHP amendment in the review of waterways license applications submitted subsequent to the amendment's effective date.

Should you have any questions in regard to the foregoing, please contact me at (617)292-5615. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Lynch".

Ben Lynch
Program Chief
Waterways Regulation Program

cc: Mayor Thomas Menino
L. Langley, Wetlands & Waterways Program Director, DEP
B. Carlsie, MCZM
D. Ducsik, CZM
R. McGuinness, Boston Redevelopment Authority

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

MassDEP on the World Wide Web: <http://www.mass.gov/dep>

Printed on Recycled Paper