

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

June 24, 2008

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Ian A. Bowles, Secretary**

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving, subject to the conditions noted below, the City of Salem request dated January 30, 2008 to renew their Municipal Harbor Plan (“Plan”). The original Plan was approved by the Secretary on November 9, 2000. This Decision on the renewal to the original 2000 Plan presents a synopsis of Plan content, together with my determinations on how the renewal Plan complies with the standards for approval set forth in the Municipal Harbor Planning (MHP) regulations at 301 CMR 23.00.

Pursuant to the review procedures contained therein, the Plan renewal, along with a separate document addressing compliance with the plan approval statement (“Compliance Statement”) was submitted on January 30, 2008. Following a review for completeness, CZM published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated February 6, 2008. Oral testimony was accepted during a public hearing held in the City of Salem on February 12, 2008, and four written comment letters were received prior to the close of the public comment period on March 7, 2008. The review process led by Massachusetts Coastal Zone Management (CZM), included consultation between staff of CZM, the Waterways Regulation Program of the Department of Environmental Protection (MassDEP), and the City of Salem. The Plan renewal was reviewed under procedures set forth at 301 CMR 23.04. In reaching my approval decision I have taken into account the oral and written testimony submitted by the public during these respective comment periods.

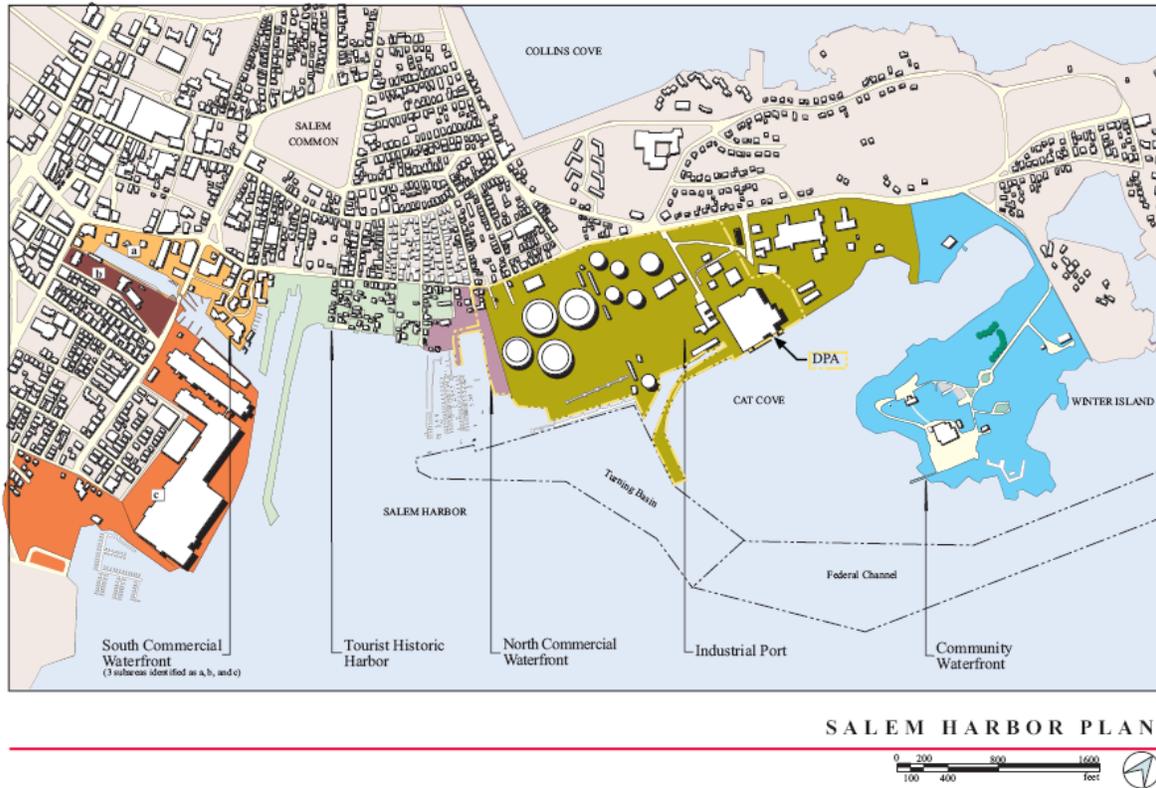
As shown below in Figure 1, the harbor planning area includes the shoreline and adjacent landside areas between Winter Island and Palmer Cove. For most of the planning area, the upland boundary is generally defined by the public roadway closest to the water’s edge. For this renewal, the southwest part of the planning area has been expanded slightly from the area used in the 2000 Plan to encompass the filled tidelands in this area. As was the case with the 2000 Plan, the overall planning area is divided into five districts, including:

- South Commercial Waterfront — includes Pickering Wharf, the South River Basin, Shetland Park, Palmer Cove Yacht Club and the Palmer Cove Playground. This district has been further divided into three sub-areas:
 - South Commercial Waterfront “A” — Pickering Wharf and the areas to the north and west of the South River Basin;
 - South Commercial Waterfront “B” — the south side of the South River Basin; and
 - South Commercial Waterfront “C” — Shetland Park and Palmer Cove.
- Tourist Historic Harbor — includes Derby Wharf, the Salem Maritime national Historic Site and other nearby waterfront historic sites, extending to Derby Street and the adjacent neighborhood.
- North Commercial Waterfront — extends from Hawthorne Cove Marina to the edge of the power plant, including the parcels within the Designated Port Area (DPA) which will be the site of the proposed construction of the new Salem Wharf project.
- Industrial Port — includes Dominion Energy Salem Station Power Plant, the former Northeast Petroleum fuel oil distribution facility, the South Essex Sewage District Treatment

Plant (SESD), and the Federal Channel. Except for the SESD, this entire district is within the DPA.

- Community Waterfront — includes Cat Cove, Smith’s Pool and Winter Island, which is the largest recreational space on the inner harbor.

Figure 1: PLANNING AREAS



In addition to its focus on these five planning districts, the Plan considers the relationship between the overall harbor planning area and the surrounding harbor and its community context, to ensure proper coordination between Plan recommendations and other issues and initiatives that are linked to the harbor.

The Salem Harbor Plan renewal reinforces and builds upon the City’s original vision statement for the future of Salem Harbor as a “vibrant seaport”, affording a high quality of life for residents while maximizing the public benefits inherent in this unique resource:

“[The vision of this Plan is to]...reclaim Salem’s identity as a vibrant seaport, which makes use of its waterfront for a variety of commercial and recreational waterside activities, and has high quality landside facilities necessary to support these activities at an environmentally beneficial and economically sustainable level. Such waterside activities and landside facilities should preserve the City’s distinguishing historic character and ultimately enhance the quality of life in the City for residents, visitors and businesses.”

This vision is consistent with the primary objectives of urban waterfront planning and regulation in the Commonwealth, which are to ensure that the shoreline is used primarily for water-dependent purposes and to provide public access for the use and enjoyment of water-dependent facilities. I consider this Plan to be a solid example of how municipal objectives and priorities can be pursued in harmony with state policy governing stewardship of tidelands, including those located within a Designated Port Area (DPA).

II. PLAN CONTENT

The Salem Harbor Plan renewal outlines a comprehensive strategy for protecting and enhancing the economic, environmental, historic and cultural resources of Salem Harbor in an effort to balance the residential and business needs of the adjacent neighborhoods, opportunities for the entire City, and the potential of the waterfront as a regional public resource. Though the City continues to find value in the guidance and vision for future development of many of the recommendations of the 2000 Plan, some adjustments were considered necessary to address economic, port security, community changes, and development needs that have occurred since the implementation of that Plan. The renewal groups the Plan's 64 core recommendations into seven general themes, including Infrastructure; Public Access; Activation of the Harbor's Edge and Watersheet; Governance; Transportation and Marine Commerce; New Revenues; and Environmental Resources. This approach allows easy comparison of similar recommendations and in many cases demonstrates how individual initiatives may support common themes. These recommendations are also discussed in detail in the Planning Recommendations chapter. The Plan also highlights eight broad goals, with associated objectives, which underlie the rationale for the Plan's recommendations and guided the development of the Plan. Finally, the Plan's individual chapters address the framework for the planning effort, the implementation strategy, the regulatory environment, and future planning.

Dredging to maintain safe navigation continues to be a main theme in the renewal Plan. As in the previous version, this Plan finds that dredging is a central need to achieve a reinvigorated harbor that can accommodate a broad variety of recreational, commercial, and industrial vessels. As such, the Plan calls for dredging of the Salem Wharf/Hawthorne Cove area to create a fully functional wharf facility to support expanded commercial vessel operations, recommends that the City continue to pursue the possibility of dredging in the South River area to allow access by small boats to activate the South River Basin, and calls for near-shore dredging at several key public and private locations. It should be noted that, although the Plan calls for significant dredging in a number of locations within the planning area, approval of this Plan does not supersede the separate regulatory review requirements for these activities.

On the landside, public access to and along the waterfront continues to be a main goal of the Plan. The renewal continues to support the creation of the "Salem Harbor Walk", a continuous walkway along the harbor's edge from Winter Island to Palmer Cove. The City is currently in the process of completing a City and Seaport Bond funded portion of the harbor walk along the west end and south side of the South River Basin, and the Plan recommends that the City ensure that additional harbor walk sections are completed as part of private development through Chapter 91 licensing. In conjunction with the creation of the harbor walk, the Plan includes numerous recommendations to improve public access to and awareness of the waterfront as a district. These include the creation of access ways and view corridors linking the downtown area to the water's edge, creation of symbolic waterfront "gateways" in strategic locations, improved access to the shore

from the water, the development of a comprehensive “path finding” informational signage system, and improved vehicular access and parking. Finally, the Plan includes significant recommendations to improve public use of the extensive facilities at Winter Island.

Transportation and marine commerce continue to be a major focus in the renewal Plan. In addition to the existing Salem Ferry connecting Salem and Boston, the Plan recommends that the City explore other regional ferry connection opportunities, cruise ships, excursion boats, harbor tour boats and a water shuttle/water taxi service. The planned addition of the Salem Wharf project will support a variety of commercial water-dependent uses such as these and others. The Plan further supports the continuation of marine-industrial uses within the DPA, and recommends that any plans for this area include flexibility for future dock space for commercial fishing vessels. Finally, the Plan recommends the development of an overall transportation strategy to address parking needs, optimal traffic circulation, and alternative transportation options, including links to both land and water-based public transit.

Another key theme of the Plan is the activation of the harbor’s edge and watersheet, which the Plan proposes to do through the support and promotion of a number of initiatives designed to improve the public’s connection to the Salem waterfront. These initiatives include support of the National Park Service (NPS) efforts to construct new exhibits and improve its accommodations for visiting historic and recreational vessels; development of a “Distributed Salem Maritime History Museum”; celebrations to promote Salem’s maritime heritage and neighborhood cultural identity; and increased and improved public amenities and water dependent activities on the waterfront.

The Plan recognizes that optimal implementation of its recommendations will require significant coordination, and lays out a governance strategy to assure that the Plan’s goals can be achieved. The strategy includes a recommendation for continued staffing of a Harbor Coordinator to implement and, as necessary update, the Harbor Plan, with the intent of renewing the Plan a minimum of once every ten years. The Plan also recommends the continuation of the Harbor Plan Implementation Committee, to be charged with tracking and encouraging implementation of the recommendations, reviewing waterfront development proposals for consistency with the Plan, and participation in the Plan renewal process. In addition, the Plan recommends that Development and Management Entities be created for Salem Wharf and Winter Island. In light of current security issues, the Plan also recommends a Port Security Task Force to develop/update a Port Security Plan. Finally, the Plan recommends that the tourist and business entities work together to maximize the public benefits associated with tourism along the waterfront.

The Plan also recognizes that new revenues will be necessary to achieve many of the goals and recommendations, and lays out a strategy that includes both estimated costs and potential funding sources to meet the costs. In addition to proposed new revenue streams that may be gained through improvements to tourism and expanded recreational services, the Plan explores a number of public funding programs with potential relevance to the implementation of the Salem Harbor Plan. In addition to these sources, the Plan recommends the creation of a Waterfront Enterprise fund, as authorized in MGL Chapter 44 Section 53 F1/2, to support marine uses and public access on the waterfront consistent with the Plan. In 2004, the City established a Watersheet Activation Fund for the purpose of planning, programming, designing, constructing and/or maintaining watersheet activation elements specific to the South River. The proposed fund would provide funding for these purposes throughout the planning area.

Finally, the Plan supports the recognition of Salem Harbor as an environmental resource, and recommends throughout measures that will improve and enhance the environmental quality of this important resource. Specific recommendations for the improvement and protection of the environment of Salem Harbor include recommendations to encourage and support eco-friendly forms of transportation, and the support of decreased environmental impact through the long-term goal of alternative forms of energy within the DPA.

III. COMPLIANCE WITH APPROVAL STANDARDS

The Salem Harbor Plan renewal contains numerous local visionary planning aspects to guide planning and development within the harbor planning area. It should be noted, however, that although these elements are laudable and important to the Plan as a whole, my approval today of the Plan renewal is bounded by the authority and standards as contained in 301 CMR 23.00 et seq. (Review and Approval of Municipal Harbor Plans) and is applicable only to those discretionary elements of the Chapter 91 regulations that are specifically noted in this Decision. This Decision does not supersede any of the separate regulatory review and authorization requirements for any activity.

A. Consistency with MCZM Program Policies and Management Principles

The Federally-approved CZM Program Plan establishes 20 enforceable program policies and 9 management principles which embody coastal policy for the Commonwealth of Massachusetts. The following is a brief summary of the Policies and Management Principles applicable to the renewal Plan area:

- Water Quality Policy #1 — Ensure that point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.
- Water Quality Policy #2 — Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.
- Habitat Policy #1 — Protect coastal resource areas including salt marshes, shellfish beds, dunes, beaches, barrier beaches, salt ponds, eelgrass beds, and fresh water wetlands for their important role as natural habitats.
- Protected Areas Policy #3 — Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.
- Ports Policy #1 — Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health.
- Ports Policy #2 — Obtain the widest possible public benefit from channel dredging, ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds. Ensure that this dredging is consistent with marine environment policies.
- Ports Policy #3 — Preserve and enhance the capacity of Designated Port Areas (DPAs) to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.
- Ports Management Principle #1 — 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.

The aforementioned policies are relevant to the major issues identified in the renewal: waterfront revitalization; public access; historic preservation; and environmental excellence. I find that the Plan renewal documentation (see pp. 27-29, Appendix C, and Statement of Compliance) demonstrates consistency with the spirit and intent of these Program Policies and Management Principles, as required by 301 CMR 23.05(2). Of particular note in this renewal is that the Plan again not only supports the continuation of existing marine industrial uses in the DPA, but also proposes significant new uses and an expansion of marine industrial uses with the proposed Salem Port Expansion project.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(3), I also find that the Plan renewal is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Waterways Regulations of MassDEP (310 CMR 9.00). As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans and associated Amendments present communities with an opportunity to adopt a vision that modifies these uniform standards through the amplification of the discretionary requirements of the Waterways Regulations or through the adoption of provisions that, if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. The substitution provisions of MHPs, in effect, can serve as the basis for a MassDEP waiver of specific use limitations and numerical standards affecting nonwater-dependent use projects, and thereby reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands.

The Plan sections relating to 301 CMR 23.05(3) have been effectively summarized in the Regulatory Environment section of the Plan and the Statement of Compliance submitted with the Plan. The Plan contains clear guidance that will have a direct bearing on MassDEP licensing decisions within the harbor planning area. Included in this guidance are:

- provisions that amplify upon certain discretionary requirements of the waterways regulations;
- provisions that are intended to substitute for certain minimum numerical standards in the regulations; and
- provisions that together comprise a master plan for the lands and waters within the Salem DPA.

These provisions are each subject to particular approval criteria under 301.CMR 23.05(3)(b)-(e), and as further explained below, I find that all such criteria have been met.

1. Standards for the Evaluation of Substitute Provisions

The general framework for evaluating all proposed substitution 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 in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

For the first part, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of 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 substitution provision will promote, with comparable or greater effectiveness, the appropriate state tidelands policy objective.

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

For substitution 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, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53.

Table 1 contains a summary of the substitute provisions approved through this decision; Table 2 contains a summary of the amplifications approved through this decision contained below.

Table 1 — Summary of Substitute Provisions

Regulatory Provision	Applicable Location	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(c): Water Dependent Use Zone (WDUZ)	Sub-Area A South Commercial Waterfront District	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.	Minimum width of WDUZ along the waterfront will be no less than 20 feet; remaining WDUZ area required by Chapter 91 calculation can be redistributed to create pedestrian/view corridors.	No net loss of WDUZ. Creation of two permanent pedestrian access corridors and one permanent view corridor linking the downtown area of Salem to the waterfront.
310 CMR 9.51(3)(c): Water Dependent Use Zone	Waterfront Complex site at Pickering Wharf	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.	Minimum width of WDUZ will be no less than 20 feet.	Upgrade and maintain an off-site portion of Pickering Wharf, including widening 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.

Table 1 — Summary of Substitute Provisions (continued)

Regulatory Provision	Applicable Location	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(e): Building Height Commercial	Sub-Area A South Waterfront District	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 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): Building Height	Waterfront Complex site at Pickering Wharf	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.	Addition of ground-level public space in a “turret” portion of the new Harborwalk gateway adjacent to Congress Street. Additional landscaping and design elements to improve appearance and to screen gateway from the buildings loading/service areas. Construction of an observation platform on the southeast corner of Pickering Wharf.
310 CMR 9.52(1)(b)(1): Utilization of Shoreline for Water Dependent Purposes	South River waterfront	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.	Require a dedicated 20-foot wide public walkway around the South River, of which a minimum of 10 feet shall be unobstructed pathway. The inland 10 feet will be used for landscaping and accessory amenities to enhance the general public’s waterfront experience.	Minimum standard will be 20 feet. The substitution directly benefits the public through enhanced access. No additional offsetting benefit required.

Table 2 — Summary of Amplifications

Regulatory Provision	Applicable Location	Standard Requiring Amplification	Amplification
310 CMR 9.02 Supporting Commercial Uses	Industrial Port District of DPA	Amount of supporting Designated Port Area (DPA) uses on filled tidelands within a DPA shall not exceed 25% of the area of the project site.	Only water-dependent industrial uses and temporary uses will be allowed in this portion of the DPA.

2. Analysis of Requested Substitute Provisions

Water Dependent Use Zone [310 CMR 9.51(3)(c)]

To approve any substitute provision to 310 CMR 9.51(3)(c), I must first determine that the Plan specifies alternative distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water’s edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for Salem Harbor. Second, within the context of its Plan, the City must demonstrate that the substitution provision will, with comparable or greater effectiveness, meet this objective. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness is conducted in accordance with the MHP regulatory guidance discussed in detail below.

In Sub-area A within the South Commercial Waterfront District, the Plan proposes a substitution to the Water Dependent Use Zone (WDUZ) requirement at 310 CMR 9.51(3)(c). Within this Sub-area, the City proposes a minimum width of 20 feet for the WDUZ along the waterfront. As an offset for the narrower WDUZ, the Plan calls for the creation of several unobstructed access and view corridors connecting the Harborwalk around the South River to the adjacent streets. Specific locations were chosen for these corridors to align, where feasible, with streets that will extend the views of the waterfront to the downtown retail center, popular visitor attractions and the surrounding residential neighborhoods. Although the width of the WDUZ along the waterfront has been reduced, redistribution of the WDUZ area will create connections with the flow of urban activity from the surrounding area, effectively complimenting the water-dependent uses in the WDUZ with improved waterfront access and much-needed physical and visual connections.

Only three opportunities for this substitution are recognized in the Plan. Two of these, located to the east and west of 289 Derby Street, will require that the reconfigured WDUZ area be used to create permanent view/pedestrian access corridors 20 feet wide connecting Derby Street to the South River. Within this area, there shall be no parking or motorized vehicle traffic allowed, with the exception of emergency response vehicles.

The third opportunity for reconfiguration of the WDUZ exists at 311 Derby Street. Because the depth of the WDUZ as calculated under Chapter 91 regulations is relatively shallow at this location, reconfiguration of the WDUZ would not yield enough area to create a pedestrian corridor. In addition, the publicly-owned Harborwalk gateway already exists adjacent to this site. However,

there is an opportunity to create a significant public benefit with a view corridor in this location, which would allow visual contact with the South River Basin from as far inland as Charter Street. The Plan will allow a reduction of WDUZ width along the waterfront to 20 feet, as long as the developer provides a 20 foot wide view corridor across from Central Street down to the water's edge. Although allowed within this view corridor, parking will not be allowed in the portion of the view corridor that is created as a result of WDUZ reconfiguration.

Where these corridors will be created on shared boundaries, the City will need to work closely with the developers and MassDEP to assure that the area of WDUZ and reconfigured WDUZ space equals or exceeds the WDUZ area as calculated under Chapter 91 regulations. Under no circumstances will there be a net loss of WDUZ area as a result of reconfiguration.

On one parcel on Pickering Wharf (within Sub-area A), reconfiguring 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 nonwater-dependent uses do not unreasonably diminish the capacity of site-related tidelands to accommodate water dependent use, the Plan proposes qualitative improvements in lieu of a quantitative offset, designed to significantly enhance the public's use and enjoyment of this section of waterfront. These qualitative improvements will be completed during the construction of the proposed waterfront complex, and include the following:

1. Upgrading and maintenance of an off-site portion of the existing public walkway around Pickering Wharf from the southwest corner of the existing Finz Restaurant at 76 Wharf Street extending easterly to the southern corner of the existing Victoria Station Restaurant at 89 Wharf Street. The improvements will include widening the walkway to a full, clear ten feet and adding other enhancements to make it consistent with 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 public accessway 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 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 am comfortable that the City has demonstrated that the proposed substitute provision will, in the context of the goals and site constraints associated with Sub-area A and the Pickering Wharf site, sufficiently offset the reduced WDUZ in this area, and ensure with comparable or greater effectiveness, that sufficient public benefit will be provided to enhance water-dependent use and public access associated therewith as appropriate for this waterfront Sub-area of Salem Harbor.

Building Height [310 CMR 9.51(3)(e)]

To approve any substitute provision to 310 CMR 9.51(3)(e), I must first determine that the Plan specifies 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 applicable location on Salem Harbor. The harbor plan approval regulations focus on how a building's mass will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. Within this context, I must apply the "comparable or greater effectiveness" test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness will be conducted in accordance with the MHP regulatory guidance discussed in detail below.

The Plan before me also 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. Specifically, the Plan would allow nonwater-dependent buildings up to a maximum of 70 feet in this area, consistent with Salem's Municipal zoning for this area. For most parcels within this Sub-area, the additional height will be offset with a requirement for additional dedicated public open space on the parcel 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 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. While parking is allowed in open space areas under Chapter 91 regulations, in this case no more than half of the open space set aside for this offset may be used for parking.

For the proposed Waterfront Complex on Pickering Wharf, the Plan recommends that alternative offsets be required. These include:

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 incorporated as part of the Harborwalk on the southeast corner of Pickering Wharf.

Based on my review of the Plan, 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 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. It appears that there will be little net new shadow attributable to the increased heights associated with the proposed substitute provision that would impact ground-level conditions or impair public use and enjoyment of the waterfront and its adjacent watershed. I therefore conclude that the proposed substitute height provision will not impair water-dependent activity and public access to the

waterfront, and that the offsets proposed in the Plan will appropriately serve to meet the objectives of 310 CMR 9.51(3)(e).

Utilization of Shoreline for Water-Dependent Purposes [9.52(1)(b)(1)]

To approve any substitute provision to 310 CMR 9.52(1)(b)(1), I must first determine that the alternative minimum width for the pedestrian access network, specified in the Plan is appropriate given the size and configuration of the WDUZ and the nature and extent of water-dependent activity and public uses that may be accommodated therein. Within this context, I must apply the “comparable or greater effectiveness” test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness will be conducted in accordance with the MHP regulatory guidance discussed in detail below.

As was the case with the 2000 Harbor Plan, the renewal Plan 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 entire shoreline of the South River. The proposed substitution would require a dedicated 20 foot wide public pedestrian accessway along the entire shoreline of the South River. A minimum of 10 feet of this walkway along the waterway must be an unobstructed pedestrian pathway. The Plan proposes that the landward 10 feet of this accessway could be used for landscaping and accessory amenities that would enhance the general public’s waterfront experience. 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 Plan states that this harbor walkway is essential to improving access along the water’s edge, and the City considers it a critical aspect of this Plan. Because the provision provides a minimum width standard of 20 feet and directly benefits the public through enhanced access and water-dependent uses that may be accommodated along the Harborwalk, I approve this substitution with no further requirement for offset. All new development, redevelopment, or existing development requiring Chapter 91 licensing within the area proposed by the Plan shall comply with this requirement.

3. Analysis of Requested Amplification Provisions

The MHP regulations (301 CMR 23.05(2)(b)) require me to find that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of the regulatory principle(s) underlying that requirement. Upon such a finding, 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 renewal Plan contains one provision that will have significance to the Chapter 91 licensing process as an amplification, pursuant to 301 CMR 23.05(2)(b).

Supporting Commercial Uses [310 CMR 9.32(1)(b) and 9.02]

The Plan states that the entire land area of the Industrial Port District has long been and is currently used for water-dependent industry. The Plan’s recommendations for the Industrial Port maintain the current levels of water-dependent industrial uses, as the vast majority of the land area

of the DPA is within Chapter 91 jurisdiction. Although the Plan suggests that it is unlikely that the current uses of Dominion Energy's Salem Station Power Plant site will be discontinued within the 10 year duration of this Plan, the City chose to include provisions that would guide MassDEP licensing decisions in that event. The Plan recommends that only the following uses be eligible for licensing in the Industrial Port District: water-dependent industry, marine industrial parks, and temporary uses as defined in the Waterways Regulations. Any proposed new use(s) for this site beyond energy production, marine industry, and temporary uses as defined in 310 CMR 9.02 will require a renewal or amendment to this Harbor Plan. I find that the proposed amplification does compliment the underlying principle of this provision, and I approve the amplification as described in the Plan.

The Plan also states that in the long-term, the City supports the Industrial Port District for use for viable alternative sources of energy including possibly wind and solar. The City is aware that these uses are currently not allowed under Chapter 91 regulation, but prefers to keep this provision, though not binding, in the Plan for future reference.

4. DPA Master Plan

Because the Salem Harbor Plan is intended to be, in part, a master plan for the DPA, I must find that the Plan is consistent with DPA approval criteria at 301 CMR 23.05(2)(e). Specifically, I must find that the DPA Master Plan preserves and enhances the capacity of the DPA to accommodate water-dependent industrial use, and prevents substantial exclusion of such use by any other use eligible for licensing in the DPA pursuant to 310 CMR 9.32. The master plan should also identify industrial and commercial uses allowable under local zoning that will qualify as a supporting DPA use, and identify a strategy for the ongoing promotion of water-dependent industrial use.

Currently, the entire land area of the DPA is used for water-dependent industrial use, and the City continues to be steadfast in its intent to preserve and enhance this irreplaceable working waterfront. The Plan, like the 2000 version, voices a long-term commitment to maritime use at the power plant site, and to maintaining the industrial character of the entire site. In the event of any unforeseen discontinuation of the current uses, the Plan supports only projects that are entirely or predominantly maritime industrial. Accordingly, in the vocabulary of the waterways regulations at 310 CMR 9.02, the only uses that will now be eligible for a Chapter 91 license on this site are Water-dependent Industrial Uses (with accessory uses), Marine Industrial Parks, and Temporary Uses.

In the Salem Wharf area of the DPA, the Plan encourages new types of water-dependent industrial uses of the port, particularly through the proposed construction of the Salem Port Expansion project. This project is planned to support cruise ship berthing, as well as berthing for ferries, water taxis, and commercial vessels. This new wharf will physically expand the upland portion of the DPA, and the proposed dredging will extend the existing turning basin for vessels bound for the power plant, and provide additional navigable water and berthing space for commercial vessels within the DPA. In keeping with the Plan's philosophy of preserving a strong working character throughout the DPA, the proposed Salem Port Expansion program will support entirely water-dependent DPA uses.

Further, the Plan limits the scope of uses that may qualify for a project as a supporting DPA use to include only boat yards, business offices (as adaptive reuse of existing buildings), general storage and warehousing, retail and service, restaurants, and off-street parking, and sets forth a

strategy to assure the ongoing promotion of water dependent industrial use within the DPA, consistent with 301 CMR 23.05(2)(e).

Based on the information provided in the Plan as discussed above, I find that the DPA master plan as set forth in the Plan is consistent with the requirements of 301 CMR 23.05(2)(e).

C. Relationship to State Agency Plans

Real property in the harbor planning area owned by state agencies consist of two existing facilities, including a boat ramp on Winter Island held by the Massachusetts Public Access Board and the Northeastern Massachusetts Aquaculture Center of Salem State College. The renewal Plan continues to support ongoing use of these facilities, and in the absence of any contrary indication, I presume that no incompatibility exists with agency plans for continued operation.

D. Implementation Strategy

As was the case with the 2000 Plan, the 2008 Plan renewal devotes an entire chapter to identifying actions that will be required for effective implementation. A summary matrix organizes these actions, together with organizational responsibilities, according to the recommendations for each geographic area covered by the Plan. Also included is a discussion of the roles of specific departments and committees within City government, along with more specific discussions of economic development strategy. Finally, the Plan lays out a phasing strategy, estimates proposed costs, and explores a number of public funding programs that may provide resources needed for implementation of the actions proposed in the plan

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on June 24, 2008. As requested by the City of Salem, the Decision shall expire 10 years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06 (recognizing that the term of approval is now 10 years). No later than 6 months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

V. STATEMENT OF APPROVAL

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

1. In Sub-area A within the South Commercial Waterfront District, the WDUZ may be reduced to a minimum of 20 feet, only if the area of reduction is redistributed to create pedestrian and/or view access corridors as described in III.B.2. above. Under no circumstances will a redistribution of the WDUZ result in a net loss of area on the site. Parking will not be allowed

in a reconfigured of the WDUZ. In all cases, the required pedestrian or view corridor shall be completed before a Certificate of Occupancy is issued for the project.

2. For the waterfront complex site at Pickering Wharf, the following offsets for reduced 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 Finz Restaurant at 76 Wharf Street extending easterly to the southern corner of the existing Victoria Station 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 safe 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;
3. In Sub-area A within the South Commercial Waterfront District, nonwater-dependent buildings may be constructed up to a maximum of 70 feet, 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 9am and 3pm. 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 on Pickering Wharf, the non-water dependent building may be constructed up to a maximum of 70 feet, 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 incorporated as part of the Harborwalk on the southeast corner of Pickering Wharf.
5. For properties adjacent to the South River, a dedicated 20 foot wide public accessway is required. The walkway shall include a minimum of 10 feet of unobstructed pedestrian pathway. The landward 10 feet of this accessway may be used for landscaping and accessory amenities that will enhance the general public's waterfront experience. No nonwater-dependent buildings, vehicles or utility infrastructure (e.g. dumpsters, HVAC units, loading platforms) shall be allowed in the public pedestrian accessway unless it directly supports a water-dependent use(s).
6. The City shall prepare a final, approved Salem Harbor Plan ("Approved Plan") to include:
 - a. The plan dated January 2008;
 - b. The Statement of Compliance (dated January 30, 2008);

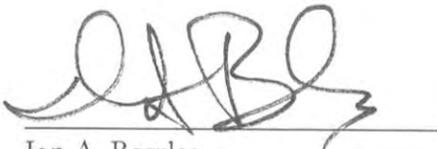
- c. Materials submitted during the consultation session; and
- d. This Approval Decision.

Copies of the final, approved plan shall be provided to CZM and MassDEP's Waterways Program, kept on file at the City Clerks and the Department of Planning and Development, and made available to the public through city's website and/or copies at the public library.

For 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); and
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.

In a letter dated June 12, 2008, the DEP Waterways Program Chief has expressed support for approval of the renewal Plan and stated that in accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of the approved MHP in the case of all waterways license applications submitted subsequent to the MHP 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 MHP renewal.



Ian A. Bowles
Secretary of Energy and Environmental Affairs

6/24/08
Date



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

DEVAL L. PATRICK
 Governor

TIMOTHY P. MURRAY
 Lieutenant Governor

IAN A. BOWLES
 Secretary

LAURIE BURT
 Commissioner

June 12, 2008

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

RECEIVED
 2008 JUN 18 A 10 50

RE: DEP Recommendation for the Approval of the the City of Salem Municipal Harbor Plan Renewal ("Plan"), dated January, 2008.

Dear Secretary Bowles:

The Department of Environmental Protection, Waterways Regulation Program (WRP) has reviewed the City of Salem's Municipal Harbor Plan Renewal (MHP), dated January, 2008. The original MHP was approved by the Secretary on November 9, 2000. WRP staff have worked closely with the Massachusetts Office of Coastal Zone Management (CZM) throughout the planning process, and our comments have been adequately addressed and incorporated into the final MHP renewal. The WRP, therefore, recommends that you approve the MHP 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 MHP in the case of all waterways license applications submitted subsequent to the MHP 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 MHP renewal.

The WRP looks forward to continuing its work with CZM and the City of Salem in the implementation of this important planning effort.

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

Sincerely

A handwritten signature in black ink, appearing to read "Ben Lynch", with a stylized, cursive script.

Ben Lynch
Program Chief
Waterways Regulation Program
Mass DEP

cc: Mayor Kimberly Driscoll
Leslie-Ann McGee, CZM Director
Kathryn Glenn, CZM
L. Langley, Wetlands & Waterways Program Director, DEP
Alex Strysky, Wetlands & Waterways Program, DEP
WRP Harbor Planning File