



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

OFFICE OF COASTAL ZONE MANAGEMENT

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October 3, 2013

Peter Meade, Director
Boston Redevelopment Authority
One City Hall Square
Boston MA 02201

Dear Mr. Meade:

Pursuant to 301 CMR 23.03, the Municipal Harbor Plan (“MHP”) Regulations, the City of Boston submitted a Request for Notice to Proceed (“RNTP”) for a state approved MHP for the Downtown Waterfront District in August 2013. Notice of this request was published in the *Environmental Monitor* on August 7, 2013 and public comments were accepted for a thirty-day period ending on September 6, 2013, during which time my office received two (2) comment letters from interested parties, copies of which were forwarded to the City of Boston and by request to any interested parties. All procedural requirements of 301 CMR 23.03 have, therefore, been met. Based on a review of the City’s request, I am pleased to issue the following Notice to Proceed for the City of Boston Downtown Waterfront District Municipal Harbor Plan.

Overview

The MHP Regulations (301 CMR 23.00) establish a voluntary procedure by which municipalities may obtain approval of MHPs from the Secretary, promoting long-term, comprehensive, municipally-based planning of harbors and other waterways that fully incorporates state policies governing stewardship of trust lands. Additionally, approved plans guide and assist the Massachusetts Department of Environmental Protection (MassDEP) Wetlands and Waterways Division in making regulatory decisions pursuant to MGL Chapter 91 and the Waterways Regulations (310 CMR 9.00) that are responsive to harbor specific conditions and other local and regional circumstances. As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects and developments. Municipal Harbor Plans 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, which if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. While the City’s plan may embody the vision for the development of its waterfront, the scope of an MHP is generally limited to the modification of certain Chapter 91 standards to fulfill the local planning goals. Project specific issues such as traffic and broader environmental impacts will be described, analyzed, and assessed during any requisite MEPA review.

I. Municipal Harbor Planning Area

The harbor planning area identified in the RNTP includes approximately 42.1 acres of watershed and landside area bounded by the Rose Kennedy Greenway to the west, Christopher Columbus Park to the north, the Evelyn Moakley Bridge to the South, and Boston Harbor to the east. The harbor planning area is comprised of over twenty six parcels including, Hook Lobster, The United States Coast Guard Building, the Atlantic Building, the Rowes Wharf Condominium and Boston Harbor Hotel, the Harbor Towers Condominium, the Boston Harbor Garage, the New England Aquarium, the Eaton Vance Building, and the Marriot Long Wharf Hotel.

According to the RNTP, approximately half of the planning area is comprised of flowed Commonwealth tidelands and the other half is comprised of filled tidelands, all subject to Chapter 91 jurisdiction. Pursuant to 301 CMR 23.02, the harbor planning area includes all areas that are relevant to the functional use and management of the waterway segment in question. Functional use refers to those activities that have the potential to promote or impair water-dependent activity or public use or enjoyment of waterways or shorelines. The MHP should contain a clear and detailed discussion of the relationship between the harbor planning area and land subject to Chapter 91 jurisdiction. To place the proposed harbor planning area in the context of adjacent land uses and other development activities, the MHP should include high quality images and maps that:

- For planning purposes, delineate the extent of Commonwealth and Private Tidelands in the harbor planning area. The methodology and sources used should be discussed in the MHP. The RNTP provides an approximate breakdown of the area that is flowed and filled tidelands, and Commonwealth and Private tidelands. The chart and map should be finalized in the MHP as high quality, easily readable graphics that provide context to the planning area.
- On a parcel-specific basis, identify properties and ownership of parcels within the harbor planning area, and significant parcels adjacent to the planning area in such a way that defines the relationship of the parcels to the harbor planning area.
- For planning purposes, delineate the Magenta Zone in reference to the planning area. The MHP should also include a description of the Magenta Zone to provide regulatory context for projects within the planning area.

As outlined in the RNTP, the MHP should also include a discussion of past local planning efforts such as the Greenway District Planning Study and the Harborpark Plan, and how the harbor planning area fits within the context of these plans. As the planning area consists of one of the most historically rich stretches of waterfront in Boston, as noted in the comment letter received from the City of Boston Environmental and Energy Services, the MHP should include a list of historic resources in the planning area. Any potential impacts to these historic resources should be discussed in the MHP.

II. Public Participation

The RNTP documented the planning and public participation that has already been completed toward the development of this MHP as part of several local planning efforts, the master planning for the Greenway District Study Guidelines and most recently the public workshops held

earlier this year to guide the City in developing a Waterfront Activation and Public Realm Plan. The master planning process and the public realm planning have engaged the community in a dialogue about leveraging the public benefits created by the Greenway, and how this section of Boston's waterfront could be updated to include better access to and along the water's edge. The City of Boston should continue the momentum of public engagement through this MHP process.

As stated in the RNTP, the public participation program includes monthly meetings of the Advisory Committee, which are open to the public. The City has conducted five Advisory Committee Meetings thus far, providing background information and the planning context for the planning area. In order to be as accommodating as possible, I recommend that the City hold Advisory Committee meetings and other public meetings at varied times during the day during the process, providing multiple opportunities for the public to attend. The MHP should document this process in detail in order to demonstrate early and continuing public interaction and input on the development of the plan.

The RNTP included a list of members of the Advisory Committee that will aid the City of Boston in the development of the MHP. The Advisory Committee includes a number of representatives from the Downtown neighborhood as well as designees from government agencies, waterfront interests, and other waterfront neighborhoods in Boston. As demonstrated in the five Advisory Committee meetings held thus far, I am certain that the members of the Advisory Committee will provide both a wide range of input into the process and carefully considered recommendations to the City regarding the MHP.

III. Substitution Guidance

For consideration as you develop your MHP, I call particular attention to the provisions of 301 CMR 23.05, Standards for Approval. A state-approved MHP can allow greater flexibility to the application of certain Waterways requirements in that it may include provisions that substitute for certain Chapter 91 limitations or numerical standards as long as the substitution provisions are at least as effective at meeting the state tidelands policy objectives as those stated in the corresponding Chapter 91 provisions and certain specific conditions are met. When a project conforms to a state-approved MHP, MassDEP will apply the use limitations or numerical standards specified in the municipal harbor plan as a substitute for the respective limitations or standards contained in 310 CMR 9.00 during the licensing process.

Substitute provisions may include alternative use limitations or numerical standards that are less or more restrictive than the Waterways requirements provided that, considering the balance of effects on an area-wide basis, they are accompanied by related measures that will mitigate, compensate for, or otherwise offset adverse impacts on tidelands policy objectives in a manner that is of comparable or greater effectiveness than that afforded through the strict application of the Waterways standards. When assessing adverse impacts, therefore, the analysis and discussion should address directly those impacts to water-dependent activities, public access, and public use and enjoyment of the waterfront. Adverse impacts must be evaluated with consideration given to the character of the anticipated use at the ground level.

Amplifications are provisions that expand upon the discretionary requirements of the Waterways Regulations to meet the local planning goals. Amplifications included in the MHP must be shown to be complimentary in effect with the underlying regulatory principle(s).

In its RNTP, the City of Boston has identified the following standards that may require amplifications or substitute provisions to the Waterways Regulations for the implementation of the local vision for the area:

- Height (310 CMR 9.51(3)(e))
- Facilities of Public Tenancy (“FPT”) and Facilities of Public Accommodation (“FPA”) (310 CMR 9.51(3)(b) and 310 CMR 9.53(2)(c))
- New Pile Supported Structures (310 CMR 9.51(3))
- Water Dependent Use Zone (“WDUZ”)(310 CMR 9.51(3)(c))
- Utilization of Shoreline for Water Dependent Uses (310 CMR 9.52)
- Lot Coverage and Open Space (310 CMR 9.51(3)(d) and 310 CMR 9.53(2)(b))
- Activation of Commonwealth Tidelands (310 CMR 9.53(2))

The MHP should discuss how appropriate approval standards are met and provide an analysis and discussion addressing adverse impacts and corresponding offsets for each substitute provision or amplification. In determining whether comparable or greater effectiveness is achieved by the proposed offsetting measures in the MHP, the Secretary will consider the following:

- a. The planning analysis and data must be organized to clearly identify the amplifications and substitute provisions proposed and the relative effects of the less restrictive provisions on the related tidelands policy objectives.
- b. Offsetting measures should be applied within reasonable proximity to the locus of adverse effects to ensure a balance in the distribution of public benefits and potential detriments.

Offsets are required in the MHP Regulations to mitigate or compensate on both a parcel-by-parcel and area-wide basis for the adverse effects of substitute provisions on water-related public interests. The development of offsets must be commensurate with the degree of adversity to public access, pedestrian level activities, and water-dependent use, employing an approach that is either quantitative, such as one unit of replacement for one unit lost, or qualitative, such as a package of varying types of improvements that address the quality of the water-related public interests. The latter strategy can provide greater opportunity to develop a package of offsets either on-site, or in close proximity thereto when the site where the impacts are felt cannot accommodate corresponding offsets, taking into consideration opportunities along the waterfront that will promote the destination value of the waterfront or open space and access to the waterfront. Special attention to implementation measures is required when considering off-site offsets within the harbor planning area. Should the City find through the MHP process that offsets should be implemented outside of the planning area, in areas adjacent to the planning area, the City should provide a detailed discussion of why the offsets are more appropriate in these areas.

If special permit, site review or design review processes are proposed to be used to establish particulars of offsetting mitigation on a case-by-case basis, the MHP must sufficiently define the parameters of such a process so that a reasonable assessment of the possible effects of these offsets under varying circumstances can be made during the Secretary’s review.

A. Height

Pursuant to 301 CMR 23.05(c)(5), an MHP may provide alternative building height standards to that specified at 310 CMR 9.51(3)(e). The MHP should specify alternative height standards and other requirements which will 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.

To assist in assessing the alternative standard's compliance with this charge, the plan should include a conceptual analysis comparing a Chapter 91-compliant alternative to an alternative incorporating the proposed height substitution. This comparison should focus on massing, pedestrian-level winds, and shadows and should be presented in a manner that is easy to read and clearly identifies the differences between the two conditions. The MHP should include a massing analysis comparing the gross volume associated with the proposed building heights to that achievable under the Waterways Regulations. Based on the results of this analysis, a mitigation approach should be defined to address any adverse effects of the substitute height standard through the use of offsets.

B. Facilities of Private Tenancy and Facilities of Public Accommodation

Pursuant to 301 CMR 23.05(c)(2), the MHP must specify alternative limitations of facilities of private tenancy from the standards found in the Waterways Regulations at 310 CMR 9.51(3)(b) and other requirements which ensure that there is no significant privatization of the waterfront areas immediately adjacent to the WDUZ. The MHP must quantify the proposed FPT/FPA relationship and demonstrate that the substitute provision will, with comparable or greater effectiveness, ensure that waterfront areas immediately adjacent to the WDUZ are generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the WDUZ.

Further, pursuant to 301 CMR 23.05(c)(7), when projects are located on Commonwealth Tidelands, the MHP must specify additional requirements for interior FPAs that will establish the project site as a year-round locus of public activity. The MHP should include an analysis of how the project site will provide interior public space commensurate to the quantity/quality that would be required under 310 CMR 9.53.

C. New Pile Supported Structures

Pursuant to 301 CMR 23.05(c)(1), the MHP must specify alternative replacement requirements for pile-supported structures that extend beyond the footprint of existing previously authorized pile supported structures that ensure that no net loss of open water will occur for nonwater-dependent purposes in order to maintain or improve the overall capacity of the waterway to accommodate public use. The MHP should include an analysis and graphics showing that no net loss of open water results from any alternative placement of pile supported structures.

D. Water Dependent Use Zone

Pursuant to 301 CMR 23.05(c)(3), the MHP must specify alternative setback distances from the water dependent use zone standard in 310 CMR 9.51(3)(c) and other requirements that ensure

that new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline. In addition, the MHP must demonstrate through appropriate analysis that the substitute provision will, with comparable or greater effectiveness, devote sufficient space along the water's edge to water-dependent use and public access. The MHP should include an analysis that quantifies the difference between the area of any reconfigured WDUZ and that resulting for a strict application of the standards found in the Waterways regulations.

E. Utilization of Shoreline for Water Dependent Uses

Pursuant to 301 CMR 23.05(c)(6), the MHP may specify a minimum walkway other than ten feet for the pedestrian access network, provided that the alternative width 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. The MHP should include an analysis of the existing pedestrian access network or "HARBORWALK" in the planning area and how an alternative width would fit into the context of the larger network.

F. Lot Coverage and Open Space

Pursuant to 301 CMR 23.05(c)(4), the MHP must specify alternative lot coverage ratios from the standards found in the Waterways Regulations at 310 CMR 9.51(3)(d) and 310 CMR 9.53(2)(b)) and other requirements which ensure that buildings for nonwater-dependent use will be relatively condensed in footprint. The MHP must quantify any difference in the amount of open space area to be provided and that required under strict application of the Waterways standards, and demonstrate that the substitute provision will, with comparable or greater effectiveness, reserve sufficient open space to accommodate water-dependent activity and public access in a manner that is commensurate with the area occupied by buildings.

Pursuant to 301CMR 23.05(c)(7), where projects are located on Commonwealth Tidelands, the MHP must specify additional requirements for public recreational facilities that will establish the project site as a year-round locus of public activity. The MHP must demonstrate that public use and enjoyment of these tidelands will be promoted to a degree that is fully commensurate with the standards in 310 CMR 9.53. The MHP should identify clearly the measures proposed to mitigate or compensate for the adverse impacts associated with any modification to the open space requirements found at 310 CMR 9.51(3)(d) and 310 CMR 9.53(2)(b)).

G. Activation of Commonwealth Tidelands

Pursuant to 310 CMR 9.53, nonwater-dependent projects located 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 and that ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes. According to the RNTP, the City is preparing a Downtown Waterfront Activation and Public Realm Plan for the MHP planning area, similar to the Fort Point Channel Watersheet Activation Plan. The RNTP states that the Downtown Waterfront Activation and Public Realm Plan will identify and provide a menu of public benefits within the MHP planning area including water-dependent uses, year-round all-hour public uses, open space, and public programming. As stated in the comment letter from The Boston Harbor Association, creative ways to activate the planning area are encouraged as a part of the planning effort and MHP.

Pursuant to 301 CMR 23.05(2)(b), should the City consider amplifications to the Waterways Regulations, similar to amplifications found in previous MHPs and based on the Fort Point Channel Watersheet Activation Plan, the provisions must be complimentary in effect with the regulatory principle(s) underlying the discretionary requirement. The MHP should demonstrate that amplifications are complimentary with the Waterways principles and provide clear guidance regarding the implementation of any amplifications associated with the activation of Commonwealth Tidelands on the landside and watersheet within the planning area.

V. Climate Adaptation Strategies

Municipal Harbor Plans reflect the long term vision of the local community, and promote the public use of tidelands with a balance of substitutions, offsets, and amplifications. MHPs should reflect careful analysis and planning for the long term provision of public benefits along the water with consideration of the potential impacts of climate change and sea level rise. The MHP should contain guidance on climate adaptation strategies to ensure the long term effectiveness of public benefits on tidelands.

With a major planning objective of creating a resilient waterfront, the RNTP reflects the City's commitment to studying adaptation strategies and providing practical, appropriate strategies in the MHP to help prepare waterfront properties for climate change and sea level rise. All of the public comments received on the RNTP reinforce the importance of the inclusion of this topic in the MHP.

VI. MHP Renewal

Pursuant to 301 CMR 23.06(2)(a), the MHP should include a discussion recommending the period of time for which the MHP shall be in effect. Approved MHPs expire on the date specified in the Secretary's Approval Decision and must be renewed periodically to ensure continuing use by MassDEP in its licensing decisions.

VII. Compatibility with State Agency Responsibility

The MHP must demonstrate that the municipality has worked with all relevant state agencies to maximize compatibility of the harbor plan with the plans or planned activities of all state agencies owning real property or responsible for the development/implementation of plans or projects in the harbor planning area.

VIII. Implementation Strategy

It is essential that the MHP include enforceable implementation commitments to ensure that all measures will be taken in a timely and coordinated manner to offset the effect of any MHP requirement that is less restrictive than that contained in the Waterways Regulations (310 CMR 9.00). As stated above, special attention to implementation strategy is necessary when considering area-wide offsets. The MHP should include details pertaining to how any off-site benefits will be implemented.

To further identify opportunities for plan implementation and to ensure that plan guidance is developed to an appropriate level of specificity, CZM encourages continued consultation with CZM and MassDEP staff as appropriate.

In closing, my office looks forward to working with you, members of your staff, and the Advisory Committee, and I encourage you and your staff to continue to work closely with CZM's Boston Harbor Regional Coordinator, Valerie Gingrich, as you develop the City of Boston Downtown Waterfront District MHP.

Sincerely

A handwritten signature in black ink, appearing to read 'Bruce K. Carlisle', with a long horizontal line extending to the right.

Bruce K. Carlisle
Director

Cc: Ben Lynch, MassDEP Waterways
Andrea Langhauser, MassDEP Waterways
Richard McGuinness, BRA
Chris Busch, BRA