



NORTH END / WATERFRONT RESIDENTS ASSOCIATION

July 8, 2021

Daniel J. Padien
Waterways Program Chief
Massachusetts Department of Environmental Protection
1 Winter Street, 5th Floor
Boston, MA 02108

Subject: Objection to including the Downtown Waterfront District Municipal Harbor Plan in the Proposed Amendment of 310 CMR 9.00

Dear Mr. Padien:

The North End/Waterfront Residents Association (NEWRA) requests that the Department of Environmental Protection (“DEP”) remove the City of Boston Downtown Waterfront District Municipal Harbor Plan (the “Downtown Waterfront MHP” or “MHP”) as an “Approved Municipal Harbor Plan” from the proposed amendment to the Massachusetts Waterways Regulations, 310 CMR 9.00. The amendment proposed by DEP would modify provisions of the regulations related to Municipal Harbor Planning, effectively providing, without further DEP or public review, approval of the Downtown Waterfront MHP and other MHPs. It is NEWRA’s position that reinstating the Downtown Waterfront MHP that was invalidated by recent Suffolk Superior Court ruling would revalidate and add to a series of significant errors and omissions in the Secretary’s original approval and in the conduct of the Boston Planning and Development Agency’s (BPDA) MHP planning process.

While DEP had issued a letter concurring with the Downtown Waterfront MHP, we respectfully contend that this MHP and the associated BPDA planning process were deficient in facilitating community-based waterfront planning, preserving and protecting the public’s rights in tidelands, mitigating or offsetting the impacts of substitute standards, and improving the public realm with consistent and uniform design standards across the planning area.

We outline, below, specific reasons for seeking removal of the Downtown Waterfront MHP from the proposed amendment to the regulations. They mirror concerns we raised in our more detailed comments on the Environmental Notification Form for the Harbor Garage redevelopment project dated October 2, 2020. Many of those comments related to deficiencies with the Downtown Waterfront MHP and our concerns about the potential adverse impacts of the Harbor Garage project.

- 1. Officers and other members of NEWRA attended the MHP planning meetings held by the BPDA. We concluded that the planning process was conducted by the BPDA with**

the sole end game of ensuring the construction of building towers that were proposed at or near the water's edge at the Harbor Garage and Hook Wharf sites, all other planning objectives being secondary or neglected. The proposed tower heights violated Chapter 91 regulations as well as the City of Boston's then-recently adopted Greenway District Development Guidelines and Zoning that were established through a community process.

2. **Reassessment of building height, density and programming is needed.** A 600-foot building constructed close to the water's edge and within a narrow but important and highly active public waterfront area is inappropriate. A 600-foot building and its mostly private uses (a vertical privatization of the waterfront) will heavily burden the Downtown Waterfront District that is now primarily home to cultural, recreational and water based public facilities and programming. The MHP inadequately addresses the potential impacts to the public realm and public experience. During the two June 6 virtual hearings conducted by the DEP on the regulatory amendment, there was overwhelming opposition to the Downtown Waterfront MHP on substantive grounds related to the 600-foot tower proposed at the Harbor Garage site (located 90 feet from the shoreline), and the 305-foot tower at the Hook Wharf site (located directly at the water's edge).
3. **The MHP's offsets for substitute provisions for building height are inadequate and unacceptable.** The "approved" offsets for substitution of Chapter 91 height limits at the Harbor Garage site rely on and direct an agreement to be signed by the developer, the New England Aquarium and the City. We understand that the Aquarium has serious objections to the Harbor Garage project, and we believe such objections put into question whether the height substitution is appropriate and will be adequately offset to mitigate impacts. Such objection has been voiced by other important stakeholders and continues to be NEWRA's position.
4. **MHP Process Inadequacies must be corrected.** In his decision approving the MHP "in part," Secretary Beaton expressed concerns with stakeholder interactions during the MHP planning process and encouraged the BPDA "to evaluate how the role of and interaction with the Advisory Committee and the incorporation of stakeholder input can be improved in future (MHP) processes." Accordingly, the Secretary ordered that "The BPDA shall develop Design and Use Standards for the entire downtown planning area to coincide with and inform the MEPA and Article 80 processes for the proposed projects at the Harbor Garage site and the Hook Wharf site, whichever process is initiated first." It was inappropriate to relegate the establishment of Design and Use Standards to the MEPA and Article 80 processes. The MHP should not have been approved with deficiencies in the community and stakeholder process, and the Design and Use Standards should have been included with the MHP.

In its comment letter on the Harbor Garage ENF, NEWRA requested that the MEPA process be suspended until Design and Use Standards were developed and approved, or if not possible, that the Secretary's decision on the ENF and the scope for the DEIR include 1) the background and purpose of the Design and Use Standards as expressed

and as intended by Secretary Beaton in the MHP approval, 2) a scope framework and minimum scope requirements necessary to achieve the intended purpose, 3) a requirement that the full scope of the Standards be developed by the BPDA through a community process at the outset of Standards development, and 4) rules for the BPDA's public process to ensure that the deficiencies in the MHP public process would not be repeated. The Secretary's decision on the ENF did not include this information and requirements, and NEWRA finds, as it expected, that the BPDA's process to date to develop the Standards is short and narrowly sighted and sorely unresponsive.

5. **The MHP did not address conformance with other relevant planning objectives and goals**, including those established through community processes with the City of Boston Municipal Harbor Plan (1991), Inner Harbor Passenger Water Transportation Plan (2000), Fort Point Channel Watersheet Activation Plan (2002), City of Boston Open Space Plan 2015-2021, and Greenway District Planning Study Use and Development Guidelines and Overflow District Zoning code.
6. **The MHP does not demonstrate how projects within the Downtown Waterfront District will promote and ensure social justice through environmental and economic equity.** This is another deficiency related in part to the absence of Design and Use Standards. We request that DEP determine through a wide community process whether the MHP promotes equity, which NEWRA contends is a critical "proper public purpose."
7. **The MHP lacks a comprehensive Climate Resiliency Plan, which has also become a critical "proper public purpose."** The Wharf District Council has established a Climate Resiliency Task Force to create a conceptual district wide protection and resiliency plan, coordinated with city and state regulators and amongst the property owners in the District. Through this initiative, the Task Force is charged with producing a workable vision for an integrated barrier that will form a baseline for subsequent detailed planning, thereby allowing property owners to plan with confidence that their individual improvements are consistent with the district-wide approach.
8. **In addition, we understand that there may have been procedural defects in the adoption of the Downtown Waterfront MHP which prevent re-approval through the regulatory procedure now proposed.** The possible violations include:
 - a) The period of time during which an MHP may be submitted for approval under 301 CMR 23.04 had expired long before the Downtown Waterfront MHP was submitted.
 - b) The Downtown Waterfront MHP Advisory Committee, as the Harbor Planning Group, should have participated under 301 CMR 23.04(3)(c) in the nine months of post comment-period private consultations which the BPDA had with state agencies.
 - c) The consultation sessions should have been open under the Massachusetts Open Meeting Law not only to the Advisory Committee members but to the public as well.

Thank you for your consideration of the important issues discussed above. It is our hope that, at the additional public hearings to be held on July 27, DEP will announce that the City of Boston Downtown Waterfront District Municipal Harbor Plan has been withdrawn from the proposed regulatory amendment now being proposed.

Yours truly,

A handwritten signature in black ink, appearing to read 'Cheryl Delgreco', with a long horizontal stroke extending to the right.

Cheryl Delgreco
President, NEWRA

cc: Acting Mayor Kim Janey
Senator Joseph Boncore
Representative Aaron Michlewitz
City Councilor Lydia Edwards
City Councilor Edward Flynn
At-Large City Councilors Annissa Essaibi George, Michael Flaherty,
Julia Mejia and Michele Wu
Lisa Hy, Mayor's Office of Neighborhood Services
John Romano, Mayor's Office of Neighborhood Services
Jody Faller, President, North End/Waterfront Neighborhood Council
Susanne Lavoie, Executive Director, Wharf District Council