



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

March 22, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Towle Riverwalk Condominiums
PROJECT MUNICIPALITY : Newburyport
PROJECT WATERSHED : Merrimack
EOEA NUMBER : 13933
PROJECT PROPONENT : **First Republic** Corporation of America
DATE NOTICED IN MONITOR : December 23, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

The project consists of construction of fifteen units of housing and associated infrastructure on Merrimac Street in Newburyport. The project is located on a 7.6-acre parcel of land that includes a historic mill complex (redeveloped as a medical office building) and a 269-space parking lot. Six units will be constructed in three buildings along the existing northwest access drive (two of which will be located within the renovated Benjamin Choate – William Morss House). Nine units will be constructed in four buildings on the eastern edge of the site, over the existing parking lot. The displaced parking will be relocated to the northern area of the site.

The site is bordered by the Merrimack River to the east and north, Cashman Park to the south and existing businesses and residences to the west and northwest. The site contains a redeveloped mill building at 260 Merrimack Street (formerly the Towle Manufacturing

Company/Merrimack Arms Manufacturing Company) and the Benjamin Choate – William Morss House and Carriage House at 268-270 Merrimac Street. Both of these properties are listed in the National Register of Historic Places and located within the Newburyport Historic District. The site contains filled tidelands and rare species habitat. According to the Natural Heritage and Endangered Species Program (NHESP), the site is located within actual habitat of the Bald Eagle (*Haliaeetus leucocephalus*) and immediately adjacent to the actual habitat of the Shortnose Sturgeon (*Acipenser brevirostrum*) and Atlantic Sturgeon (*Acipenser oxyrinchus*). All three species are state-listed as “Endangered” and protected pursuant to the provisions of the MA Endangered Species Act (MESA) (M.G.L. c.131A) and its implementing regulations (321 CMR 10.00). The site has been regulated under the Massachusetts Contingency Plan (MCP) and is classified as a Class A-3 RAO.

The project is undergoing MEPA review pursuant to Section 11.03 (2)(b)(2), (3)(b)(5) and (10)(b)(1) because it requires a state permit and may result in a take of a rare species, consists of new non-water dependent use of tidelands¹ and it may include demolition of all or any exterior part of any Historic Structure listed in or located in any historic District listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth. The project requires a Chapter 91 License from the Department of Environmental Protection (MassDEP) and review by the Massachusetts Historical Commission (MHC). It may require a Conservation and Management Permit from NHESP. Also, it requires an Order of Conditions from the Newburyport Conservation Commission and a Site Plan Special Permit from the Newburyport Planning Board.

The project proponent is not seeking state funding, therefore MEPA jurisdiction is limited to the subject matter of required permits. In this case, the subject matter of the required state permits (i.e., the Chapter 91 License) is sufficiently broad to confer MEPA jurisdiction over virtually all of the potential environmental impacts of the project.

Potential environmental impacts are associated with the creation of 1.4 acres of new impervious surfaces, non-water dependent use of 8,200 sf of tidelands, generation of 88 new average daily vehicle trips (adt), use of an additional 4,290 gallons per day of water and generation of an additional 4,290 gpd of wastewater. Efforts to avoid, minimize and mitigate impacts are described in the ENF and in supplemental information submitted on February 26, 2007. These measures include: establishing a 100-foot buffer between the salt marsh and the development; improving the stormwater management system to include a stormwater forebay and water quality swale; improving the existing public walkway including creation of a public seating area on a small bluff overlooking and adjacent to the river; establishing a conservation restriction to preserve an unobstructed view corridor from Merrimac Street to the river; constructing a public sidewalk from Merrimac Street to the river; and establishing a historic preservation restriction on the Benjamin Choate – William Morss House. In addition, the project includes measures required to address compliance with the Order of Conditions for the previous

¹ Since the filing of the ENF, the proponent conducted additional research, based on direction from MassDEP, regarding the extent of filled tidelands on the site. Based on a revised map provided to MassDEP for review by the project consultant, it appears that the extent of filled tidelands associated with the project is 8,200 square feet (not 1.5 acres as noted in the ENF); therefore the project does not exceed the mandatory EIR threshold for impacts to filled tidelands (301 CMR 11.03 (3)(a)(5)).

redevelopment of the site including landscaping the walkway and re-vegetating the site adjacent to the salt marsh and 1,000 sf of wetlands replication to address previous unauthorized fill of salt marsh associated with the construction of the original walkway.

Chapter 91/Tidelands

Comments from the MassDEP Waterways Regulatory Program indicate that the project appears to be consistent with regulatory standards. Subsequent permitting submissions, including revised site plans, should include a detailed analysis of the project's consistency with regulatory standards for non-water dependent use of the site and should include more information and details on the walkway, including proposed signage, and connections to adjacent properties. The proponent and MassDEP should address any outstanding issues regarding public access requirements related to previous licensing of the property and the adjacent North End Boat Club.

Rare Species/Wildlife Habitat

NHESP comments note that the Merrimac River provides feeding, breeding, migration, and nesting for Bald Eagles, Shortnose and Atlantic Sturgeon. Bald Eagles overwinter and nest along the river. Both sturgeon species spawn in the spring and early summer in flowing water over rocky substrates and each utilize a gradient of saline and freshwater for their lifecycles. The project is subject to NHESP review, which will determine whether or not the proposed project will result in the "take" of state-listed rare species.

NHESP comments acknowledge the proponent's willingness to address concerns regarding water quality and minimizing the impact of public access on rare species habitat. The proponent has indicated that it will naturalize the public viewing/seating area, provide interpretive signage regarding rare species habitat and create more vegetative complexity along the shoreline to provide improved habitat. The revised plans illustrating these commitments should be submitted to the NHESP with the Notice of Intent (NOI). NHESP has indicated that, based on a review of the materials submitted thus far and preliminary discussions with the proponent, it anticipates the avoidance of a "take" of state-listed species.

Stormwater from the site will be discharged and treated through existing City of Newburyport stormwater drainage lines and outfalls at the project site, as well as improvements proposed as part of this plan, including a sediment forebay and water quality swale. The Newburyport Conservation Commission will review the stormwater management plan for consistency with the DEP Stormwater Management Policy (and particularly with the standards for critical areas). Because of the project's status under the MCP, the proponent is not proposing any additional measures to promote infiltration on the site. The proponent has acknowledged that the current design for the forebay is undersized and that it must be modified (or the amount of stormwater flowing to it will need to be reduced).

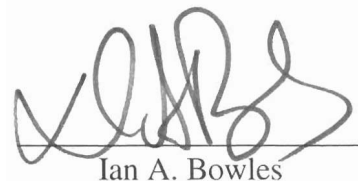
Historic Resources

The Benjamin Choate – William Morss House will be renovated and include two of the housing units. The Carriage House will either be relocated to Cashman Park (subject to the City's approval) or demolished. MHC has indicated that the proposed removal of the Carriage House will have an adverse effect on the Benjamin Choate – William Morss House and Carriage House and the Newburyport Historic District, whether through the physical destruction of all or part of the property or removal of the property from its historic location. The project is subject to MHC review and will be required to participate in the consultation process to address how this impact can be avoided, minimized or mitigated.

The review of the ENF has served to adequately disclose the potential environmental impacts associated with this project. Based on the information in the ENF and after consultation with relevant public agencies, I find that outstanding issues can be addressed adequately through state and local review. No further MEPA review is required.

March 22, 2007

Date



Ian A. Bowles

Comments Received:

1/11/07	Massachusetts Coastal Zone Management
1/12/07	Department of Environmental Protection /Northeast Regional Office (MassDEP/NERO)
1/12/07	MassDEP/Waterways Regulation Program
3/12/07	MassDEP/Waterways Regulation Program (email)
1/11/07	Natural Heritage and Endangered Species Program (NHESP)
3/14/07	NHESP (Second letter)
1/12/07	Division of Marine Fisheries
1/9/07	Massachusetts Historical Commission
2/22/07	MHC (Second letter)
1/8/07	Lawrence McCavitt and Steve Mangion
1/12/07	Tracy A. Peter, Conservation Administrator for the City of Newburyport
1/12/07	John Van Loan

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