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December 1, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Lovejoy Wharf
PROJECT MUNICIPALITY : Boston
PROJECT WATERSHED : Boston Harbor
EOEA NUMBER : 13415
PROJECT PROPONENT : North Washington Wharf LLC and Beverly Wharf LLC
DATE NOTICED IN MONITOR : October 25, 2006

As Secretary of Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) submitted for this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (MEPA) (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

The FEIR is generally responsive to the scope contained in the Certificate on the DEIR issued on June 2, 2006. While the state permitting and resource agencies have identified, in their comments, additional information that would be required in order for the project to be permitted, and the final details of mitigation commitments still must be resolved, the proponent has met the standard in the MEPA regulations at 301 CMR 11.08(8)(c) for adequacy of the FEIR, because it has generally described the project's impacts and proposed mitigation measures such that the state permitting agencies have adequate information on which to base their Section 61 Findings and issue necessary permits for the project. Additionally, I note that the Chapter 91 Licensing process will provide an opportunity for additional public review and comment prior to final state agency actions on the project.

I would like to acknowledge the thoughtful comments submitted in response to the submissions made under MEPA for this project. Although some commenters remain steadfastly opposed to this project, I must emphasize that I do not have the authority to approve or deny this project. Review under MEPA is not a permitting process. Rather, it is a process designed to ensure public participation in the environmental review processes conducted by state agencies with permitting authority over the project, to ensure that state permitting agencies have adequate information on which to base their permit decisions and their Section 61 Findings, and to ensure that the potential environmental impacts of the project are described fully and avoided, minimized, and mitigated to the maximum feasible extent.

Additionally, I believe that the MEPA process has served to make the Lovejoy Wharf project a better project in several respects from the project that was initially proposed in the Environmental Notification Form (ENF), based on input from commenters, including state permitting and resource agencies, civic groups, environmental organizations, as well as abutters. The scale of the project has been reduced, both in terms of the number of residential units and parking spaces proposed. Additionally, in response to abutters' concerns, the project has incorporated substantial changes in building massing, reductions in height, and reconfiguration of ground floor functions in order to strike a balance between pedestrian and vehicular requirements.

Project Description

As described in the FEIR, the proposed project entails the construction of a mixed-use redevelopment project on a 2.1-acre site comprised of filled and flowed tidelands at the mouth of the Charles River. The project entails the development of 250 residential units and approximately 45,000 square feet (sf) of ground-level retail and restaurant space in a rehabilitated historic building at 160 North Washington Street and a new 10- to 14-story building at 131 Beverly Street. The buildings will have a maximum height of 155 feet consistent with the Boston Zoning Code.

The project site is an approximately 1.3-acre parcel and an adjacent 36,213-sf wharf, for a total site area of 2.1 acres, and is bounded by North Washington Street to the east, Lovejoy Place to the south, Beverly Street to the west, and the Inner Harbor to the north. The proponent proposes the adaptive reuse of the existing building located at 160 North Washington Street, including the demolition of the two upper floors and their replacement with four new floors. The proponent proposes to demolish the building located at 131 Beverly Street and replace it with a new building with two distinct masses, one with ten stories, and the other, closest to Beverly Street, with 14 stories and a maximum height of 155 feet. The project will provide parking for 315 vehicles within a fully-automated modular parking system and the first floor plan of 131 Beverly Street internalizes the majority of the parking and loading.

The proponent proposes to replace the existing dilapidated wharf to provide over three-quarters of an acre of publicly-accessible open space and an extension of the Harborwalk, which will provide connections with several important public corridors, including the Rose Kennedy Greenway, the Freedom Trail and the Charles River Basin park system. The project will include a new two-story pavilion adjacent to 160 North Washington Street with a public elevator that will provide access from the street to the wharf, a visitor center at street level, and commercial/retail uses and public restrooms at the wharf level. The floating dock to be installed along the wharf is proposed as a water taxi landing and short-term berthing for recreational vessels.

MEPA Jurisdiction and Permitting Requirements

The project is subject to environmental review and requires a mandatory EIR pursuant to 301 CMR 11.03 (3)(a)(5) of the MEPA regulations because the project requires a Chapter 91 License from the Department of Environmental Protection (MassDEP) for new non-water dependent uses of more than one acre of tidelands (1.5 acres). The project also requires a Sewer Connection/Extension Permit from MassDEP, an Access Permit from the Massachusetts Highway Department (MHD), and a Finding of Consistency from the Massachusetts Office of Coastal Zone Management (CZM). Because the Order of Conditions issued by the Boston Conservation Commission has been appealed, the project will also require a Superceding Order of Conditions from MassDEP. The proponent is seeking a Determination of No Adverse Effect from the Massachusetts Historical Commission (MHC) for demolition of a structure listed in the Historical and Archaeological Assets of the Commonwealth. The project also requires an Article 80 Large Project Review/Adequacy Determination from the Boston Redevelopment Authority (BRA); a Section 10/404 permit from the U.S. Army Corps of Engineers (ACOE) for pile driving and pier construction; and a National Pollutant Discharge Elimination System permit from the U.S. Environmental Protection Agency (EPA) for construction-related impacts.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state agency permits, and that may cause significant Damage to the Environment. In this case, the subject matter of the required state permits (particularly the Chapter 91 License) is sufficiently broad to confer MEPA jurisdiction over virtually all of the potential environmental impacts of the project.

Coordinated Review

BRA Large Project Review

The BRA reviewed the project pursuant to Article 80 of the Boston Zoning Code. The BRA reviewed the Draft EIR submitted under MEPA as its Final Project Impact Report (FPIR).

Municipal Harbor Plan Amendment

The area of the waterfront in the vicinity of North Station, including Lovejoy Wharf, was added to Municipal Harbor Plan (MHP) jurisdiction in 1999 through a Limited Geographical Amendment to the 1991 Harborpark Plan. Because there was no development proposal at that time for Lovejoy Wharf, the Harborpark Plan did not include any substantive discussion regarding the future development on the project site or its conformance to the Chapter 91 Waterways regulations.

The proposed project does not conform to several of the dimensional and use standards for non-water-dependent projects in the Chapter 91 Waterways regulations (310 CMR 9.00). The BRA submitted a proposed amendment to the Harborpark Plan that analyzes the proposed project's consistency with the MHP regulations and describes substitutions and required offsetting measures. The DEIR incorporated the proposed MHP amendment, and in accordance with the Certificate on the Environmental Notification Form (ENF) issued on February 10, 2005, the proponent did not submit the Final EIR until the MHP amendment decision was issued. This requirement allowed for public review and comment on a project in the Final EIR for which the overall regulatory scheme reflects the outcome of the public process and my Decision on the MHP Amendment, which was issued on October 12, 2006.

Chapter 91 License

The project is undergoing joint review with MassDEP's Waterways Regulation Program for a Chapter 91 License pursuant to 310 CMR 9.11(2)(b)(4). This joint review process allowed the proponent to use the Final EIR to meet the application requirements of the Chapter 91 License. However, as detailed below, the proponent must provide supplemental information to the FEIR/Chapter 91 License application.

Review of the FEIRChapter 91 Waterways

The Chapter 91 Waterways regulations at 310 CMR 9.53 stipulate that private development proposed on filled and flowed Commonwealth Tidelands must "...ensure that private advantages of use are not primary but merely incidental to the achievement of public purposes." Given this requirement, as well as the project site's location relative to the Department of Conservation and Recreation's (DCR) New Charles River Basin Park system and important recreational corridors, including the Harborwalk, the Freedom Trail, and the Rose Kennedy Greenway, it is imperative that special consideration be given to developing opportunities to attract and accommodate public use and enjoyment on the project site, particularly the enhancement of interior public space and the promotion of water-based public activity.

The following issues should be addressed in supplemental information to the Chapter 91 Waterways License application that the proponent has submitted to the MassDEP Waterways Regulation Program. The proponent should provide a set of full-scale plans that include the existing conditions survey plan of the project site, the proposed plans for the ground floor, building cross-sections and open space landscape design, and a site layout plan that clearly labels all pertinent numerical and dimensional requirements of 310 CMR 9.51-9.53 as may be substituted pursuant to my decision on the Municipal Harbor Plan Amendment (MHPA).

Extent of Filled Commonwealth vs. Private Tidelands on the Project Site

In the FEIR, the proponent used the low water line depicted in the Hills Plan to determine the extent of Commonwealth Tidelands on the project site, as requested. The proponent should overlay this historic mean low water line (HMLW) on the plans submitted for the Chapter 91 License application, showing existing and proposed conditions, so that MassDEP can determine compliance with the additional performance standards for non-water-dependent use projects on Commonwealth Tidelands.

Chapter 91 License Term

The proponent has requested an extended license term for up to 99 years that will be considered as part of the license application review process. The proponent should provide the necessary supporting information justifying the need for an extended term in accordance with 310 CMR 9.15(1)(b), as described in MassDEP's comments.

Open Space Programming

The FEIR provided illustrations of how the wharf area can be integrated with the Harborwalk, which is planned to be constructed at a lower elevation than the public plaza. In its comments, MassDEP states that it endorses the concept of the proposed plaza design because it will be sufficiently flexible to accommodate a variety of different public uses. However, the proponent must provide greater detail as the project design evolves regarding the activation of these exterior public spaces, including pedestrian amenities such as seating, lighting, materials, interpretive elements or public art, observation areas, and programming.

Facilities of Public Accommodation (FPAs)

The Waterways Regulations at 310 CMR 9.53(2) require that any non-water-dependent use project that includes fill or structures on Commonwealth tidelands "...shall attract and maintain public activity on the site on a year-round basis by providing water-related public benefits of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances." To comply with this standard, the regulations specifically require, among other things, that "(t)he project shall devote interior spaces to Facilities of Public Accommodation (FPAs)...located at the ground level of all buildings containing non-water-dependent facilities of private tenancy." The regulations further provide that at least 75 percent of such ground-level interior space must be occupied by FPAs, "...with special consideration given to facilities that enhance the

destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use...” .

The proposed project appears to comply with this requirement in that it devotes approximately 32,000 square feet (sf) of ground level interior space to restaurant, retail, and other unspecified commercial uses. In addition, the project addresses the more qualitative objective of enhancing waterfront destination value by proposing that a special FPA occupy the entire 1,466 sf space comprising the second floor terrace level of the new pavilion building on the wharf. The FEIR indicates that this space could be programmed use by a non-profit organization for use as a visitor center that would feature historic exhibits and interpretive signage. The FEIR also indicates that the proponent is committed to programming the wharf space so that it is fully activated, with possible uses including a farmers’ or artisans’ market, visual and performing arts, neighborhood block parties, and other social and public events.

In its comments, the Office of Coastal Zone Management (CZM) recommends that the proponent consider:

- offering more space for civic/cultural occupancy (including lobby or exhibit space that could also serve as a waiting area for water transportation);
 - providing that space rent-free (including utilities) for the full term of the Chapter 91 License; and
- relocating this space to the wharf level of the pavilion building or to the corner of the new 131 Beverly Street building, which would be a more strategic location for water transportation support and other visitor services.

Under these circumstances, the facility would qualify as a Special Public Destination Facility (SPDF), as the term was defined in the 1991 Approval Decision for the original Boston Municipal Harbor Plan, and would make a significant contribution toward implementation of the SPDF Network Plan referenced in that decision. A long-term commitment to maintaining this civic/cultural SPDF on the project site would clearly be a public benefit and part of an appropriate justification for the granting of an extended Chapter 91 License term for the project.

Facilities of Private Tenancy (FPTs)

In its comments, MassDEP expresses concern that the residential lobby of 160 North Washington Street appears to be a Facility of Private Tenancy (FPT) within 100 feet of the project shoreline. The FEIR points to the original 1991 MHP as providing a basis for a MassDEP waiver of this prohibition in the case of upper floor accessory services. This is incorrect, insofar as the 1991 MHP not only expressly retained this prohibition in full force and effect; it also did not apply to the geographic area containing the Lovejoy Wharf site. Accordingly, in order to ensure compliance with the Chapter 91 Waterways regulations at 310 CMR 9.51(3)(b), the proponent should make this area available for public use by integrating it with one of the adjacent public uses, which include an interior walkway to Beverly Street, the café/restaurant, or the public waterfront viewing room.

Additionally, the FEIR is not clear regarding the allocation of ground floor uses. The ground floor plan and its accompanying text should be more clearly reconciled in the proponent's Chapter 91 License application. The application should document that the project has no more than 25 percent of the ground floor dedicated to Upper Floor Accessory Services pursuant to 310 CMR 9.02 and that the remaining 75 percent of the ground floor area meets the proponent's commitment to provide Facilities of Public Accommodation (FPAs) pursuant to 310 CMR 9.02, as those terms are defined in the Chapter 91 Waterways regulations.

Facilities to Promote Water-Based Activity

As a further means of ensuring that non-water-dependent projects like the Lovejoy Wharf project will promote public use and enjoyment of Commonwealth tidelands, the Chapter 91 Waterways Regulations at 310 CMR 9.53(2)(a) stipulate that "at least one [water-dependent] facility utilizing the shoreline...must also promote water-based public activity". The regulations identify such waterfront facilities as including ferries, cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers."

The FEIR indicates that the project will meet this requirement by providing a 2,500 sf floating dock to accommodate on-call water taxi services, touch-and-go docking for private recreational vessels, and other temporary docking for relatively small boats.

Compatibility with DCR Plans for a Permanent Water Transportation Facility

The MHP approval regulations at 301 CMR 23.05(3) require that a plan "must include all feasible measures to achieve compatibility with the plans or planned activities of all state agencies owning real property or otherwise responsible for the implementation or development of plans or projects within the harbor planning area."

As mitigation for the Charles River Crossing, the Central Artery/Tunnel Project and DCR are required to reconstruct the wharf structure located on the Lovejoy Wharf site. Several legal instruments associated with the Charles River Crossing mitigation package, as well as formally adopted plans, including the DCR Master Plan for the New Charles River Basin and the City of Boston Inner Harbor Passenger Water Transportation Plan, have identified Lovejoy Wharf as the location for a permanent, water transportation facility that is compliant with the Americans with Disabilities Act.

In consideration of the extended Chapter 91 License sought for the project, the proponent has committed to provide a combination of in-kind or cash subsidy support for watersheet activation for the enhancement of water transportation on the project site, which could include the construction of water-transit terminals or docks, the total value of which is estimated to be approximately \$794,000, according to the FEIR. The proponent's commitment to provide financial support for water transportation operations and capital improvements is consistent with state and local planning objectives for the area. I expect that the disposition of a subsidy and specific mitigation measures for an extended license term will be addressed during the Chapter

91 Licensing process. I note that the proposed subsidy is in addition to the requirement contained in my Decision on the Municipal Harbor Plan Amendment that the proponent provide an annual water transportation operational subsidy of \$150,000 for a period of five years (for a total of \$750,000) and maintain the dock and shoreside facility for a period of ten years.

Compatibility with DCR Plans for the Charles River Reservation

The area occupied by the former Beverly Street, extending from Causeway Street to the new Charles River Dam, is designated as Paul Revere Landing Park South and as Revere Plaza East and West in the 1991 MOA between DCR (formerly the Metropolitan District Commission, the Massachusetts Highway Department, and the Executive Office of Transportation, as amended in 1993). The MOA requires a minimum area for this park of ± 2.0 acres. The proposed site plan presented in the FEIR depicts the project's proposed vehicular access rights across the former Beverly Street, including a drop-off entry and access to mechanical parking at the west end of the proposed new building to be located at 131 Beverly Street. In its comments, DCR states that it has had preliminary discussions with the proponent regarding pedestrian and vehicular use of this area. The proponent should provide more detailed information depicting design alternatives for accommodating pedestrians in this area during the review of the project's Chapter 91 License application.

Stormwater Management

The Order of Conditions issued by the Boston Conservation Commission has been appealed by abutters to the project. As a result, MassDEP must issue a Superceding Order of Conditions, and MEPA jurisdiction extends directly to drainage and stormwater management on the project site.

In its comments on the DEIR, MassDEP had recommended that the proponent redesign the stormwater system in order to provide treatment for total suspended solids (TSS). The FEIR proposes street sweeping and deep sump catch basins, which would control approximately 32 percent of the total suspended solids (TSS), rather than 80 percent, as recommended in Standard #4 of MassDEP's Stormwater Management Policy. This standard is applicable to this redevelopment project to the extent that it is practicable. In its comments, MassDEP states that the FEIR has not demonstrated that these are the only practicable stormwater control measures and that it appears that the project's stormwater management system could incorporate additional Best Management Practices (BMPs) suitable for constrained sites that are capable of removing more TSS. In order for MassDEP to issue a Superceding Order of Conditions for the project, I expect that the proponent will augment the project's stormwater management system. The Superceding Order will also require the proponent to place permanent plaques on nearby catch basins to identify the connection between the catch basin and the harbor discharge.

Wastewater Generation

As requested, the FEIR included recalculated wastewater flows anticipated from the project, consistent with MassDEP sewage generation rates. According to the FEIR, the proposed project is expected to generate approximately 67,036 gallons per day (gpd) of wastewater, which will discharge to the Boston Water and Sewer Commission (BWSC) sewer infrastructure in adjacent streets. Using a minimum 4:1 ratio for infiltration/inflow (I/I) removal, the proponent has committed to remove, or cause to be removed, 268,144 gpd of I/I.

However, in order for MassDEP to fulfill the permit-related Section 61 Finding obligation, and issue the appropriate Sewer Extension/Connection Permit for the proposed project, the proponent must provide documentation of the work performed, or to be performed, that improves the city's sewer system by reducing excessive I/I and eliminating illegal inflow sources. This information was not provided in the FEIR, as requested in the Certificate on the DEIR. This information is necessary to demonstrate that any the sewer work conforms to the established I/I removal approach established by the Massachusetts Water Resources Authority (MWRA) for its sewer service area.

Marine Fisheries

In its comments, the Division of Marine Fisheries DMF identified the need for a time-of-year (TOY) restriction on in-water, silt-producing work from February 15 through July 15 of any year for the protection of rainbow smelt, blueback herring, and winter flounder migration, spawning and forage habitat. The proponent has committed to adhering to this TOY restriction and it will be incorporated as a condition in state agency permits issued for the project.

The project includes repairs to the existing bulkhead and the installation of a floating dock. The Inner Harbor is essential habitat for the spawning and juvenile development of winter flounder, a regionally important commercial and recreational species. In the FEIR, the proponent should commit to adherence to a time-of-year restriction on in-water silt-producing activities from February 15 through July 15 of any year in order to protect winter flounder spawning and juvenile development and rainbow smelt foraging habitat.

Historic and Archeological Resources

Both existing buildings on the project site are included in the Inventory of Historic and Archeological Assets of the Commonwealth and are located within the Causeway/North Washington Street Area, which the Massachusetts Historical Commission (MHC) believes meets the criteria for listing in the National Register of Historic Places. In order to redevelop the site, the proponent proposes to rehabilitate the building at 160 North Washington Street, including the addition of two floors, and to demolish the building at 131 Beverly Street and replace it with a new building.

In previous comments, MHC stated that the proposed demolition would have an “adverse effect” on both buildings and recommended that alternate building designs be presented that consider both MHC’s and the Boston Landmark Commission’s (BLC) concerns. In its comments on the FEIR, MHC states that the building elevations presented therein did not consider previous MHC comments. The FEIR describes the process by which the U.S. Army Corps of Engineers issued a determination of “no adverse effect” in its National Historic Preservation Act (Section 106) review, a determination disputed by MHC. The proponent should continue to consult with MHC, and following resolution of the Section 106 review, MHC and the BLC will issue a Memorandum of Agreement (MOA) with the proponent that will outline measures ways to avoid, reduce or mitigate the “adverse effect”.

Although no underwater archeological resources are known to exist in the vicinity of the project site, the FEIR affirms that if previously unknown underwater archeological resources are encountered during project construction, the proponent will employ measures to ensure that adverse effects are avoided or minimized, and will notify the Board of Underwater Archeological Resources.

Air Quality

In response to the DEIR, residential abutters expressed concern regarding the potential for additional vehicle trips generated by the proposed project to deteriorate ambient air quality in the public spaces within the project site generally and in the neighboring residential building at 234 Causeway Street. Although the project does not require any state agency actions governing air quality per se, MEPA jurisdiction is broad in scope and the MEPA regulations provide for flexibility to evaluate project alternatives that minimize overall impacts to environmental resources and sensitive receptors and maximize the public benefits of the project. On that basis, the Certificate on the DEIR required that the FEIR address this issue.

The FEIR summarizes the air quality issues raised in the epidemiological studies and comments submitted, and describes the consultation the proponent undertook with MassDEP regarding this issue. In summary, the FEIR concludes that,

“(w)hile the most recent studies may indicate the potential for short term adverse effects of fine particulate matter associated with mobile source emissions, existing ambient fine particulate data representative of the project environment does not support the contention that the area is severely stressed. In addition, new federal regulations aimed at reducing ambient levels of fine particulate should result in reduced mobile source emissions and address concerns. In any event, the additional traffic generated by the Lovejoy Wharf project would be insignificant compared with (the) number of vehicles and associated emissions surrounding the project.”

After carefully reviewing the FEIR and consultation with MassDEP, I conclude that the FEIR has adequately addressed this issue. I also note that, according to the DEIR, the project is expected to generate 63 vehicle trips during the weekday morning peak hour and 92 during the evening peak hour. I concur that traffic generation for the project would, indeed, be insignificant in comparison with traffic levels on surrounding roadways, and that the project's location will maximize walking, bicycling, and the use of public transportation by its occupants.

Construction

The proponent has committed to participate in the MassDEP Diesel Retrofit Program by requiring construction contractors to use ultra low sulfur diesel fuel.

In response to comments submitted by the Boston Groundwater Trust on the DEIR, the FEIR indicates that the proposed sheetpile bulkhead will be constructed along the seaward side of the buildings for a distance of 400 linear feet. Groundwater recharge will continue to occur at the east and west ends of the site.

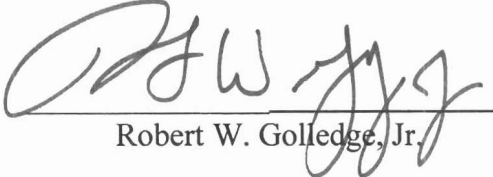
Conclusion

I am satisfied that the proponent, through its various submissions under MEPA, has adequately assessed the potential impacts of the project and committed to measures that will avoid, minimize and mitigate adverse impacts. I am also satisfied that any remaining issues can be addressed through the state permitting processes. However, I will require the submission of a NPC if the proponent proposes any material change to the mitigation proposals and commitments made in the FEIR.

The proposed project requires no further review under MEPA and may proceed to permitting. The permitting agencies should forward a copy of their final Section 61 Findings to the MEPA Office for completion of the project file.

December 1, 2006

Date


Robert W. Gollidge, Jr.

Comments received:

10/31/06	Board of Underwater Archeological Resources
11/21/06	Buchanan and Associates
11/21/06	David R. Brown
11/22/06	Conservation Law Foundation
11/24/06	Charles River Conservancy
11/27/06	Division of Marine Fisheries
11/27/06	Downtown North Association
11/28/06	Department of Conservation and Recreation
11/28/06	Department of Environmental Protection Northeast Regional Office
11/28/06	Department of Environmental Protection Waterways Regulation Program
11/28/06	Massachusetts Historical Commission
11/28/06	Office of Coastal Zone Management
11/29/06	Boston Harbor Association

SRP/RAB/rab