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June 2, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT 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	: April 10, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) 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).

Project Description

As described in the DEIR, 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 1- to 14-story building at 131 Beverly Street. The buildings will have a maximum height of 155 feet. 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. 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

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public restrooms at the wharf level. The project will provide parking for 315 vehicles within a fully-automated modular parking system and 13 parking spaces along Lovejoy Place. 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 an existing building located at 160 North Washington Street and the demolition of and replacement of a building located at 131 Beverly Street. The proponent also proposes to rehabilitate the existing wharf to provide an extension of the Harborwalk onto the site and other publicly-accessible waterfront space. The project has been redesigned since filing of the ENF in the following manner:

- the total number of residential units proposed has decreased from 260 to 250;
- the total number of structured parking spaces has been reduced from 348 to 315;
- the building footprint has been reduced from 44,978 sf to 42,949 sf;
- the two upper floors of 160 Washington Street will be replaced by four floors;
- the proposed new building at 131 Beverly Street has been divided into 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 first floor plan of 131 Beverly Street now internalizes building entries and the majority of the parking and loading; and
- 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 (DEP) 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 DEP, 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 DEP. 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 is reviewing the project pursuant to Article 80 of the Boston Zoning Code. The BRA reviewed a Draft Project Impact Report (DPIR) in 2005, and the DEIR also serves as the 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 has 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 incorporates the proposed MHP amendment, and in accordance with the Certificate on the Environmental Notification Form issued on February 10, 2005, the proponent will not submit the Final EIR until the MHP amendment process is concluded. This arrangement will allow 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 the Secretary's decision on the MHP Amendment.

Once adopted, an MHP (as well as an MHP amendment) becomes part of the regulatory framework used by DEP in the Chapter 91 Waterways licensing process for projects within the MHP geographic area. In accordance with the MHP regulations at 301 CMR 23.04, such an amendment requires a public review process, which is ongoing, prior to a decision on the amendment by the Secretary of Environmental Affairs. The public process is being coordinated by the City of Boston under the guidance of CZM.

Chapter 91 License

The project is undergoing joint review with DEP's Waterways Regulation Program for a Chapter 91 License pursuant to 310 CMR 9.11(2)(b)(4). This joint review process allows the proponent to use the Final EIR to meet the application requirements of the Chapter 91 License.

SCOPE

General

The Final EIR (FEIR) should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The FEIR should include a copy of this Certificate and a copy of each comment letter received. The proponent should circulate the FEIR to those parties who commented on the DEIR, to any state agencies from which the proponent will seek permits or approvals, and to any additional parties specified in Section 11.16 of the MEPA regulations.

Chapter 91 Waterways

The proposed project will require three substitutions of the Chapter 91 Waterways regulations for height, reconfiguration of the Water Dependent Use Zone, and reducing the open space coverage on the ground plane to 46 percent while providing at least another four percent at the North Washington Street level of the site. The City has also requested a substitution to increase the Harborwalk width to 12 feet. These items will be the subject of the proposed MHP amendment currently under review and being coordinated by CZM. I expect that that the MHP amendment process will resolve these issues and that the FEIR will present a project that reflects the outcome of this process. The FEIR should address the following issues:

Open Space Programming

The FEIR should provide greater detail regarding how the proponent plans to activate the exterior public space, including pedestrian amenities such as seating, lighting, materials, interpretive elements or public art, observation areas, and programming. I strongly encourage the proponent to capitalize on this unique opportunity to activate this highly visible gateway at the crossroads of the Rose Kennedy Greenway, the Harborwalk, the Freedom Trail, and the Charles River Parks system. The proponent should consult with DEP and report on the status of this consultation in the FEIR.

Harborwalk

In order to meet the grade elevation of the Harborwalk connection to be constructed under the North Washington Street Bridge and to not inadvertently create a barrier to full public enjoyment of the waterfront plaza, construction at 2.5 feet lower than the plaza is required. The FEIR should provide greater detail regarding the proposed design.

Facilities of Public Accommodation (FPAs)

The project design includes public restrooms, a visitor center and harbor viewing area. The FEIR should provide greater detail regarding how these FPAs will be constructed and operated to meet the urban design goals indicated in the DEIR. The FEIR should include a table of ground floor uses documenting that the project would have no more than 25 percent of the

ground floor dedicated to Upper Floor Accessory Services and that the remaining 75 percent would meet the proponent's commitment to provide FPAs.

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

The DEIR includes a review of historic maps that identify historic low water lines. Despite DEP's recommendation to use the low water line depicted on the "John Hills plan" of circa 1770, the proponent chose to use a different plan, the 1808 "Mill Pond plan" to determine the extent of Commonwealth Tidelands on the project site. Although DEP recognizes the inherent difficulty in determining an accurate low water line, the "Hills plan" represents "the farthest landward former shoreline which can be ascertained with reference to topographic or hydrographic surveys [and] previous license plans ..." as required by the definition of Historic Low Water Mark at 310 CMR 9.02. Based on DEP's recommendation, the FEIR should use the "Hills plan." The FEIR should also include an accurate existing conditions plan, prepared and stamped by a professional land surveyor at a suitable scale such as 1inch = 40 feet, to ensure conformance with the dimensional requirements of 310 CMR 9.51(8)(e), 9.53(2)(b) and (c), and substitute provisions proposed by the City of Boston in its MHP.

Compatibility with DCR Plans

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." In this case, the Department of Conservation and Recreation (DCR) has identified two potential areas of incompatibility with its planned activities, one involving the development of a permanent water transportation facility on Lovejoy Wharf itself, and the other involving the development of public parkland in the adjoining area between Lovejoy Place and the Charles River Dam.

The DEIR did not explicitly address the layout and design of the Lovejoy Wharf project and the above-referenced projects that DCR is responsible for implementing on and adjacent to the project site. The proponent should consult with DCR and, based on this consultation, the FEIR should include a detailed discussion the relationship between the Lovejoy Wharf project and DCR's planned activities, along with measures to be taken to eliminate or reduce the potential for incompatibility.

Transportation

The Chapter 91 Waterways regulations at 310 CMR 9.51(1) stipulate that "if the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water dependent facility which reasonably can be expected to locate on or near the project site." Similar protection against disruption of nearby water-dependent uses, which include "pedestrian facilities that promote use and enjoyment of the water by the general public and are located at or

near the water's edge", is provided in 310 CMR 9.36(3). Commenters have expressed a general concern regarding the potential for such conflict, and assert that additional vehicular traffic generated by the project will overburden the established Beverly Street corridor and degrade its capacity for safe pedestrian passage. Given the key role of the Beverly Street corridor in connecting pedestrians to the waterfront from the northern terminus of the Rose Kennedy Greenway as well as North Station, the FEIR should thoroughly respond to these concerns and propose appropriate mitigation measures.

Stormwater Management

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

In its comments, DEP indicates that it will require that the stormwater system be redesigned to provide treatment for total suspended solids (TSS). Standard #4 of DEP's Stormwater Management Policy, which requires the control of 80 percent TSS multiplied by the impervious area, is applicable to this redevelopment project to the extent that it is practicable. The DEIR states that no water quality controls are necessary because only stormwater would run off the rooftops, wharf, driveways, parking areas and walkways. The DEIR has not demonstrated that compliance with the standard is impracticable. Therefore, the FEIR should propose a stormwater management system that incorporates best management practices (BMPs) to capture TSS and explore innovative stormwater management techniques such as the use of vegetated areas and biofiltration cells. The FEIR should also explain where the stormwater will be discharged and conveyed prior to entering the harbor, and demonstrate that there is adequate capacity in the system. The proponent should commit to placing permanent plaques on nearby catch basins to identify the connection between the catch basin and the harbor discharge.

Wastewater Generation

According to the DEIR, the proposed project is expected to generate approximately 53,191 gallons per day (gpd) of wastewater, which will discharge to the Boston Water and Sewer Commission (BWSC) sewer infrastructure in adjacent streets. In its comments, DEP questioned whether the sewage volume to be generated by the residential component of the project was underestimated. It appears that the residential sewage volume was calculated based on 110 gallons per unit for 250 residential units, for a total of 27,500 gpd. When wastewater for the residential units is calculated correctly based on 110 gpd per bedroom, the residential sewage volume increases to 39,160 gpd, and total flows from the project increase to 64,851 gpd. The FEIR should present an accurate calculation of total wastewater flows to be generated by the project.

In its comments, DEP acknowledges the proponent's commitment in the DEIR to participate in the infiltration and inflow (I/I) removal program. Using a minimum 4:1 ratio for I/I removal to new wastewater flow added, the proponent will need to remove, or cause to be removed, 259,404 gpd of I/I. However, in order for DEP 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. The FEIR should include this information and demonstrate that the sewer work conforms to the established I/I removal approach for the Massachusetts Water Resources Authority (MWRA) sewer service area. In its comments, the MWRA states that 4:1 I/I removal requirement should be based on stormwater generated during the most minor of storm events, such as a 3-month storm, that now causes surcharging in downstream systems.

Prior to submitting the FEIR, the proponent should continue to consult with DEP and the MWRA to ensure that the project would comply with MWRA's combined sewer overflow (CSO) control plan, and that the wastewater impacts of the project can be mitigated through the 4:1 infiltration/inflow (I/I) removal requirement.

Marine Fisheries

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 its comments, MHC stated that the proposed demolition would have an "adverse effect" on both buildings. MHC has reviewed the plans presented in the DEIR and recommends that alternate building designs be presented that consider both MHC's and the Boston Landmark Commission's concerns. The proponent should continue to consult with MHC to seek ways to avoid, reduce or mitigate the anticipated "adverse effect" and present mitigation commitments in the FEIR. The FEIR should report on the results of these consultations and present any proposed revisions to the project plans.

The proponent should note comments submitted by the Board of Underwater Archeological Resources. Although no underwater archeological resources are known to exist in the vicinity of the project site, if potential archeological resources are encountered, the proponent should ensure that adverse effects are avoided or minimized.

Air Quality

Residential abutters have voiced 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, given that the air intakes for this building are located on Lovejoy Place. 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. Considering the public health nature of the issues raised, the proponent should consult with DEP's air quality staff, and if determined by DEP to be necessary, the FEIR should include an expert response to the extensive documentation submitted by commenters regarding this issue. Additionally, in consultation with DEP, the proponent should consider measures that would address the project's potential impacts on air quality once constructed and occupied and the FEIR should report on the results of this consultation.

Construction

The FEIR should clarify the proponent's commitment to participate in DEP's Diesel Retrofit Program by implementing construction-period diesel emission mitigation, such as installation of after-engine emission controls and use of low-sulfur diesel (LSD) fuel in its construction equipment.

The FEIR should also thoroughly respond to the concerns raised by the Boston Groundwater Trust in its comment letter regarding the potential for the proposed sheetpile wall to reduce groundwater recharge in the vicinity of the project site.

Responses to Comments

The FEIR should respond to all of the substantive comments received to the extent that they are within MEPA jurisdiction. I recommend that the proponent use either an indexed response to comment format, or provide direct narrative responses. The FEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Mitigation and Draft Section 61 Findings

The FEIR should include a summary of all mitigation measures to which the proponent has committed. The FEIR should contain Draft Section 61 Findings for use by the state permitting agencies that include clear commitments to implement mitigation measures, including the responsible entity and the schedule for implementation.

June 2, 2006
Date

Stephen R. Pritchard

Comments received:

05/03/06	Board of Underwater Archeological Resources
05/08/06	Massachusetts Water Resources Authority
05/08/06	Boston Groundwater Trust
05/08/06	Department of Environmental Protection
05/09/06	Stephen Lecker
05/10/06	Division of Marine Fisheries
05/10/06	Louella Lecker
05/12/06	Boston Water and Sewer Commission
05/16/06	Massachusetts Historical Commission
05/17/06	WalkBoston
05/19/06	Conservation Law Foundation
05/19/06	Louis Charbrier
05/20/06	Strada 234 Condominium Trust
05/20/06	Robert Sarno
05/22/06	Buchanan & Associates
05/22/06	Downtown North Association
05/22/06	West End Civic Association
05/22/06	Jane Forrestall
05/22/06	Jennifer Hertz
05/25/06	Department of Conservation and Recreation

SRP/RAB/rab