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April 1, 2005

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

PROJECT NAME : Emerald Necklace Environmental
Improvements Master Plan and Phase I
Muddy River Flood Control, Water
Quality and Habitat Enhancement, and
Historic Preservation Project

PROJECT MUNICIPALITY : Boston and Brookline

PROJECT WATERSHED : Charles River

EOEA NUMBER : 11865

PROJECT PROPONENT : Boston Parks and Recreation Department
and Town of Brookline

DATE NOTICED IN MONITOR : February 23, 2005

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

This Project will restore a significant component of the Emerald Necklace Park system and reestablish Frederick Law Olmsted's vision that combines landscape architecture, planning, and engineering to integrate the beauty and tranquility of the natural world in the human metropolitan experience.

The Executive Office of Environmental Affairs (EOEA), together with the Proponents and numerous dedicated people from governmental agencies, advocacy groups, and the general public have invested considerable time and resources into planning for the rehabilitation of the Muddy River and its environs, one of the nation's finest linear parks. I will continue to work with the Proponents, the Department of Conservation and Recreation

(DCR), the Maintenance and Management Oversight Committee (MMOC), the Emerald Necklace Conservancy (ENC), and the many stakeholders who have committed their time and energy to ensure that this Project moves forward. It is an opportunity to develop the institutional infrastructure that can make this Project a national model for urban park rehabilitation and successful long-term management.

Project Description and MEPA History

The proposed Project involves a range of physical improvements and management practices that will produce flood control, water quality improvements, habitat enhancement, landscape restoration, pedestrian and automobile circulation improvements, and building and bridge restoration along the Muddy River. The Project constitutes the first phase in the long-term restoration of the entire system of Emerald Necklace parks in Boston and Brookline. This MEPA review was conducted under a Special Review Procedure (SRP), established in a Certificate dated April 29, 1999. Pursuant to the SRP Certificate, a Citizens Advisory Committee (CAC) representing a full range of interested parties has met regularly over the past six years to review environmental documents and articulate comments in response.

As described in Table 2-2 of the SFEIR, the Project is comprised of six geographic elements, as follows:

- Charlesgate: removal of waterway obstructions under Ipswich Street; dredging 4,000 cubic yards (cy) of sediment and debris; and landscape rehabilitation. (In July 2002, a Phase I Final Record of Decision granted a waiver allowing much of this work to proceed pending completion of the FEIR).
- Back Bay Fens: daylighting culverts at the Fens Bridge and former Sears parking lot to restore the Olmsted-designed shoreline; dredging to remove 79,961 cy of accumulated sediment and debris, and 23,474 cy of Phragmites; 15,500 cy of dredging for deepened channel sections; installing new arch culverts under the Riverway and Brookline Avenue; reconstructing roadway storm drain systems; and bank and landscape rehabilitation.
- Riverway: dredging to remove 18,430 cy of sediment and debris, and 10,047 cy of Phragmites; 1,724 cy of dredging for deepened channel sections; reconstructing roadway storm drain systems; and bank and landscape rehabilitation.
- Leverett Pond: dredging to remove 21,788 cy of sediment

and debris; 2,063 cy of dredging for deepened channel sections; and bank, island, and landscape rehabilitation.

- Willow Pond: dredging to remove 5,054 cy of sediment and debris; 842 cy of dredging for deepened channel sections; and bank, path, and landscape rehabilitation.
- Wards Pond: dredging to remove 15,565 cy of sediment and debris; and bank and landscape rehabilitation.

The Project also includes project-wide Best Management Practices (BMPs) for stormwater management and a maintenance and management plan. The proposed BMPs include both structural and source control BMPs, including street sweeping, catch basin cleaning, and particle separators.

Required Permits and MEPA Jurisdiction

The Project will require several variances under the Wetlands Protection Act, a 401 Water Quality Certificate, a Chapter 91 License, and a Special Waste Determination, all from the Department of Environmental Protection (DEP). The Project will require a Section 404 permit under the Federal Clean Water Act from the U.S. Army Corps of Engineers. The Project will also require a Sewer Use Discharge Permit and Section 8(M) permit from the Massachusetts Water Resources Authority (MWRA). Because the Emerald Necklace is listed on the National and State Registers of Historic Places, the Project is subject to review by the Massachusetts Historical Commission, the Boston Landmarks Commission, and the Brookline Preservation Commission. The Project is receiving financial assistance from the Commonwealth; therefore, MEPA jurisdiction is broad in scope, extending to all aspects of the Project with potential impacts on the environment.

As required in the Certificate on the FEIR, the SFEIR included a summary of all permits needed for each sub-area of the Project, and demonstrated either how the Project design meets applicable performance standards, or how the Project meets criteria for a variance from applicable performance standards.

Wetlands and Water Quality

The SFEIR presented an analysis of alternatives that was adequate for DEP to evaluate any requests for variances from the Wetland Protection Act regulations. In its comments, DEP indicated that the SFEIR satisfactorily addressed its concerns and that the proposed alteration to wetland resource areas can be permitted under the limited project provisions in the Wetlands Protection Act regulations, pursuant to 310 CMR 10.53. In their

comment letters, both the Boston Environment Department and the Brookline Conservation Commission indicated their support of the project. Any remaining issues will be addressed during wetlands permitting and the 401 Water Quality Certification process.

The SFEIR satisfactorily addressed the scope contained in the FEIR Certificate pertaining to water quality. Upon completion of the MEPA review process, water quality sampling will be undertaken at eight river locations and seven outlets to assess the effectiveness of the BMP plan. The relationship of these outfall locations to the sediment sources and proposed improvements is not explained in the SFEIR. Therefore, it is not clear how the monitoring plan will assess sediment removal effectiveness and correlate that information with the primary reduction methods in the BMP plan. Given that the Proponents will provide data and information from the sampling in the Annual Update reports, described later in this Certificate, I expect that this and related issues will be addressed on an annual basis.

Stormwater Management/Pollution Control

The SFEIR includes a Plan for the Maintenance for the Muddy River Stormwater Facilities outlining the responsibilities of the Proponents, DCR, the City of Newton, and the Massachusetts Highway Department (MHD). The SFEIR states that:

"The goal of the BMP plan for the watershed is to decrease the estimated Year 2000 sediment loadings in the river by 30 percent. This reduction will expand the life of the dredging Project from in excess of 25 years to over 50 years. This goal can be achieved by implementing a BMP plan that includes improvements to both source and treatment control BMPs."

The full implementation of BMPs and the Stormwater Facilities Maintenance Plan is essential to protect the public investment in this Project and maximize its projected 50-year life-span.

However, in its comments, DEP states that because the modeling is based on generic, non-site specific stormwater data, which was not calibrated for local conditions, it remains to be seen whether the plan is adequate to achieve the goals described in the FEIR and SFEIR. On the other hand, the Proponents believe that the BMP plan will yield the desired results, and that they have taken a conservative approach by excluding street sweeping and public education from the estimate of the annual sediment

removal, thereby providing a margin of error for overestimates of sediment removal in the plan.

I note that the final decision to employ specific BMPs will occur after review of the SFEIR. The selection of BMPs is, therefore, likely to be one of many important questions for the Project management to resolve after completion of the MEPA process. Therefore, I expect that the Proponents and DCR will work with DEP on the specific issues described in its comment letter as the implementation of the BMPs and the Stormwater Facilities Maintenance Plan continues to evolve over the life of the Project. The Proponents should provide updates in the Annual Reports.

Maintenance and Management Structure

I reaffirm that I consider maintenance and management as the key to ensuring that the Project meets its long-term goals and that the significant public investment in the Project is adequately protected. As stewards of this park system, we owe it to our constituents and to future generations to ensure that the parks are properly maintained to the standards delineated in the Maintenance and Management Plan, which is described in greater detail later in this Certificate.

Management Structure

Since I issued the Certificate on the FEIR, the Proponents have worked with EOEA, DCR, the MMOC, the ENC, and the CAC to develop the management structure presented in the SFEIR. The Proponents have agreed to implement a management structure based upon a five-party Cabinet, including appropriate high-level management representatives of the Boston Parks and Recreation Department, Brookline Parks and Open Space, DCR, the Maintenance Management and Oversight Committee (MMOC), and the Emerald Necklace Conservancy (ENC).

The MMOC is a necessary component of the project management structure, as mandated in the Charlesgate Final Record of Decision. While the Proponents will continue to manage the resources under their control, with the flexibility they need to make day-to-day decisions and implement long-term management and operational policies, the MMOC will provide an important channel for public access to the new model of stewardship decisions being made on behalf of the general public. Strong public participation through the MMOC will help build and strengthen public support for the Project, and ultimately provide for improved stewardship system-wide.

Memorandum of Agreement (MOA)

The maintenance and management structure that emerges from the MEPA review process will be formalized through a Memorandum of Agreement (MOA) among the Proponents, DCR, the MMOC, and the Emerald Necklace Conservancy. The management structure and its relationship to others is described in some detail in the Draft MOA, and in greater detail in the MMOC version of the Draft MOA, both of which appear in Appendix D of the SFEIR. Although still under development, the Draft MOA specifies the maintenance and management structure and the roles and responsibilities of the signatories. The MOA will include performance standards, including commitments to improved stewardship, historic preservation and maintenance of parklands, implementation and maintenance of BMPs, coordination of maintenance activities across jurisdictional boundaries, appropriate staffing commitments, commitments to provide information amongst all signatories and to the public and EOEAs, dispute resolution procedures, and minimum requirements for frequency of top level management meetings.

I am confident that the Proponents, DCR, the MMOC and ENC are working collaboratively and diligently towards finalizing the Draft MOA presented in the SFEIR. I strongly encourage all of the signatories to consider the changes suggested by commenters that reflect the following broad goals:

- to identify clear and consistent performance standards for all resource areas within the Project Area, including parklands, parkways and the stormwater management system;
- that DCR will maintain those areas within its care, custody and control consistent with the standards required of Boston and Brookline;
- to ensure that the Cabinet is structured and operated to encourage collaboration and to promote action of the parties by consensus, whenever possible; and
- to promote the ability of the MMOC to fulfill its appointed role as an independent oversight committee.

Maintenance and Management Plan

The DEIR Certificate dated April 16, 2002 required that the Proponents develop a:

"performance-based Maintenance and Management Action Plan...to provide assurance that maintenance responsibilities will be faithfully observed over time. The Plan should establish measurable environmental performance standards for sediment

removal, erosion control, water quality, wetland and upland plantings, fish and benthic resources, wildlife resources, culvert maintenance, and structural source control and treatment control BMPs. The Plan should present an acceptable strategy for closing the gap between person hours needed to maintain the Project Area and the hours currently available."

The SFEIR includes a Maintenance and Management Plan that provides standards for maintenance of the Project Area after Phase I is constructed. The plan was developed with the assistance of the DCR Historic Resources staff, the ENC, Arnold Arboretum staff, and other skilled volunteers. I am satisfied that the Maintenance and Management Plan provides appropriate performance standards for the maintenance of the parklands. Implementation of the plan will require the commitment of necessary resources, including adequate trained professional and management personnel, to protect the integrity of the original Olmsted design and the public investment in this Project.

While the SFEIR and the Draft MOA delineate the maintenance responsibilities for each of the Proponents and DCR, annual dedicated funding sources for the full implementation of the Maintenance and Management Plan and the Stormwater Facilities Maintenance Plan have yet to be identified. However, the MOA and the Annual Update Reports, described later in this Certificate, are the two vehicles that will ensure that BMPs will be completed. The MOA will delineate the responsibilities of the Proponents and DCR to implement and fund BMPs, including ongoing maintenance. Because the MOA will establish the expectation of enforceable conditions in state permits and contracts for financial assistance to meet these obligations, I am confident that the Cabinet can address this issue as the Project proceeds.

Annual Update Reports

In accordance with the Special Review Procedure and as a condition of this Certificate, I am requiring that the Proponents must produce annual reports including information on the status of the Stormwater BMP program. These Annual Update Reports should include:

- the status of the database on catch basins, which is to include housekeeping data (such as when inspected, when cleaned, quantity of sediment removed);
- the status of the pilot project and a summary of results;
- the status of the implementation of structural BMPs; and
- water quality data based on sampling at storm drains and

in-stream sampling.

I also direct the Proponents to provide a meaningful role in the Annual Update Report process to the MMOC. The process should provide an opportunity for the MMOC to provide input regarding the issues that should be addressed in the Annual Update Reports as well as for commenting on the reports. The Proponents and DCR should also be responsive to the issues raised in the reports. The Proponents' and DCR's commitments to working in a cooperative way with the MMOC on this and other issues should be embodied in the MOA.

Role of the Maintenance and Management Oversight Committee (MMOC)

The MMOC must be able to fully and meaningfully participate in the Cabinet in order to provide accountability and transparent decision-making to ensure the long-term success and the desired 50-70 year life span of the Project. In order to ensure a meaningful role for the MMOC, I will require the following:

- the MOA must provide that (a) the Proponents and DCR continue to provide adequate financial or in-kind support for the operation of the MMOC, (b) a quorum for the Cabinet be no fewer than four Cabinet members, and (c) that the parties be required to hold no fewer than four meetings annually;
- with respect to all permitting for the Project, the Proponents should provide the MMOC with notice of the filing of all permit applications and other regulatory approvals, copies of the filings, and timely notice of dates of hearings and other actions with respect to permit applications and other regulatory approvals.

Role of the Department of Conservation and Recreation (DCR)

Although the Proponents of the Project are the City of Boston and the Town of Brookline, the parkways under the care, control and maintenance of DCR are integral to the Emerald Necklace parks. The manner in which DCR maintains the parkways and other resources, including working with the Proponents to maintain catch basins and storm drains that directly and substantially affect the Muddy River park system, will help to ensure the long-term success of the Project. In its comments, DCR expressed its belief in the importance of long-term maintenance to protect the public investment in the Project and its willingness to work with the Proponents and other signatories to the MOA.

DCR is in the process of developing a parkways management plan, which has not yet been completed, but which should be

consistent with the standards for park maintenance included in the SFEIR. The parkways management plan will guide DCR's actions in the context of overall project goals. In addition, I concur with the MMOC's recommendation that DCR should initiate the process of documenting the location of catch basins, and implement a regular system of catch basin cleaning, street sweeping and other BMPS that are consistent with project goals.

At some point in the near future, the post-construction maintenance period relating to the work completed at Charlesgate will terminate and control of the property will revert back to DCR. Until then, the City of Boston should commit to addressing the myriad issues involved in the maintenance and management of that area, including, specifically, lawn and plant maintenance, trash removal, graffiti removal, homeless encampments, and keeping the newly dredged waterway clear of debris. Adequate funding for all such maintenance should be made available.

Need for Dedicated Project Coordinator

I note and applaud the Boston Parks Department commitment to support a dedicated Project Coordinator. Because the \$92 million Project poses significant technical and administrative challenges, it warrants the appointment of this position to act on behalf of the Proponents to oversee the development of the design by the U.S. Army Corps of Engineers (ACOE), the permitting of the Project, and its ultimate construction. A dedicated Project Coordinator and additional staff are necessary to protect the public interest as the Project is designed, permitted and constructed.

The Proponents will soon sign a Design Agreement with ACOE, so the need for a dedicated Project Coordinator, with adequate time for strategic involvement in the development of the design and the necessary permitting, is immediate.

Private and Institutional Investment

The federal, state, and municipal governments have invested significant resources in the planning of this Project and in the implementation of improvements at Charlesgate and are prepared to invest significantly more in the design, construction, and maintenance of the Project. I concur with DCR's comments regarding the flood-proofing of structures as part a comprehensive strategy to address flooding along the Muddy River. Therefore, it is critical that institutional and individual property owners take pro-active steps to mitigate against flood damages.

This Project is designed to provide flood protection from a storm event similar to that which occurred in 1996. Flood events of a higher intensity will inevitably flood adjacent lands and property owners need to anticipate these events by designing new construction and expansion of existing buildings in conformance with National Flood Insurance Standards, as delineated in the Massachusetts State Building Code and applicable City of Boston and the Town of Brookline zoning and building regulations.

Historic Resources

Preservation and restoration of the historic resources in the Project Area are integral components of the Project. The park system is listed on the State and National Registers of Historic Places, and represents an historic legacy worthy of the time and resources spent during the MEPA review to ensure sensitive restoration and appropriate future stewardship. Preservation of the historic resources is also a major goal of the Emerald Necklace Master Plan, which provides the overall context in which the current Project is undergoing review.

Carlton Street Footbridge

The Carlton Street Footbridge (CSF) is an important historic link between the Riverway and the adjacent residential neighborhoods of Brookline; the Master Plan envisions the restoration of this integral component of Olmsted's original plan. Given its documented importance, the Draft and Final EIR Certificates assumed that the Town of Brookline would *"...act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge."*

I acknowledge and appreciate the Town of Brookline's efforts to move forward with the restoration and to resolve remaining issues, including accessibility for the disabled in the vicinity of the CSF. I understand that before Transportation Enhancements Program funding can be secured to restore the CSF, approvals and/or concurrence are necessary from the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Historical Commission (MHC), and the Massachusetts Architectural Access Board (MAAC). I note that, as described in the SFEIR, providing the requisite accessibility at the Longwood MBTA station appears to be a feasible approach that would satisfy both accessibility and historic preservation interests. I expect that design considerations will continue to be evaluated as the Town of Brookline addresses access issues associated with the location and design of the restoration effort.

Towards that end, I reaffirm my commitment, as described in a letter dated May 27, 2003 to the Brookline Board of Selectmen, to work with the Town of Brookline and the Massachusetts Historical Commission (MHC) to identify possible sources of additional funding for the restoration work. In that letter, I stated that:

"The Town's objective to appropriate a matching share while seeking third party funding sources is a reasonable approach, given funding constraints in general and the overall budgetary demands of Phase I. Further, I find that having the expenditure of local funds for actual restoration contingent upon the Commonwealth funding its share of Phase I of the Project to be consistent with my May 1, 2003 Certificate (the FEIR Certificate) which conditioned the release of EOEAs funds on restoration of the bridge. I am confident that by working together, we can secure the matching funds necessary to restore the Carlton Street Footbridge, as identified in the Emerald Necklace Master Plan."

Other Historic Issues

In its comments, MHC reiterated its request for more detailed plans of structural BMPs in order to ascertain their potential impacts on historic resources. I expect that the Proponents will work with MHC to provide this information prior to the development of construction drawings.

The SFEIR satisfactorily responded to the issue of the unauthorized use of Back Bay Yard (which is partially within the Olmsted system) by dirt bike enthusiasts. The Proponents have proposed a reasonable remediation and restoration program and schedule, as well as an educational program to discourage damage by dirt bikes.

Rare Species

The Natural Heritage and Endangered Species Program (NHESP) of the Division of Fisheries and Wildlife has indicated that the Project will not result in a "take" of the Threespine Stickleback, a threatened species under the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A). The Proponents should note that NHESP has requested two changes to the proposed Environmental Monitoring and Maintenance to be conducted by the Independent Environmental Monitor and work with NHESP to implement these changes.

Construction Management

In response to comments on the FEIR from local youth sporting leagues concerned about the possible loss of access to Daisy Field while the area is used for construction staging, I directed the Proponents to investigate whether other sites are available in the area for construction staging. The SFEIR considered other sites and concluded that the site of the former Kelly Ice Rink was most feasible for use as a construction staging area. However, in its comments, the Emerald Necklace Citizens Advisory Committee and the Charles River watershed association strongly recommend keeping Daisy Field as a construction staging area due to the potential environmental impacts of using the Kelly Rink site. In other comments, the representative of Landmark Center objected to any proposed use of the former Sears parking lot for construction staging. I expect that the Proponents will work with the affected parties to resolve these issues in a manner that minimizes disruption and impacts to the environment as the Project proceeds.

Responses to Comments

The SFEIR has responded fully and adequately to the substantial number of detailed and specific comments received on the FEIR from a wide variety of agencies, advocates, and individuals.

Role of the Citizens Advisory Committee (CAC)

I wish to thank the dedicated members of the Citizens Advisory Committee (CAC) who devoted much time and effort advising the Proponents in the preparation of MEPA documents and for providing me informative comments during review periods. The MEPA regulations at 301 CMR 11.09 allow for the creation of a CAC to advise the project Proponents and the Secretary during the review of MEPA filings. With the conclusion of the SFEIR, the active review of the project and thus the work of the CAC is largely concluded. While the CAC will cease to continue for MEPA review purposes, I know that its members will continue to be actively involved in the project. In an effort to enhance continued public involvement as the Project moves forward, I am requiring the following:

- the MMOC should be expanded to include two additional at-large members to be nominated from the CAC; and
- the MMOC should organize an annual meeting to review the progress of the project and annual reports. This meeting

should be publicly noticed in the *Environmental Monitor* and the current CAC members and all commenters in the MEPA process should receive notice of the meeting.

Section 61 Findings

The EOEA Section 61 Finding will condition release of state funding for the Muddy River Project to ensure that certain actions necessary to achieve the goals of the Project are satisfactorily addressed, and to protect the Commonwealth's significant investment in the Project. The EOEA Section 61 finding will require that the Memorandum of Agreement be finalized; that a dedicated Project Coordinator be hired; and that the Town of Brookline have developed enforceable commitments and a schedule for restoration of the Carlton Street Footbridge.

The Proponents should continue to work with the permitting agencies and the MMOC as the Project enters the design phase to fully develop the required mitigation measures. The permitting agencies should develop significantly more detailed Section 61 Findings than those provided in the SFEIR, and consider the specific suggestions of the commenters.

I am directing the permitting agencies to submit Draft Section 61 Findings for the project for publication in *The Environmental Monitor* for public review and comment prior to their issuance. Draft Section 61 Findings should also be distributed to the MMOC for its review and comment.

April 1, 2005

Date


Ellen Roy Herzfelder

Comments received:

03/21/05 Councilor Michael P. Ross
03/24/05 The Fenway Alliance
03/25/05 Division of Fisheries and Wildlife
03/25/05 Brookline Conservation Commission
03/25/05 Emerald Necklace Citizens Advisory Committee
03/25/05 Friends of the Carlton Street Footbridge
03/25/05 Friends of Leverett Pond

03/28/05 Brookline Greenspace Alliance
03/28/05 Medical Academic & Scientific Community Organization,
Inc.
03/28/05 Rubin & Rudman LLP
03/29/05 Department of Environmental Protection Northeast
Regional Office
03/29/05 Emerald Necklace Conservancy
03/30/05 Massachusetts Historical Commission
03/30/05 Brookline Conservation Commission
03/30/05 Charles River Watershed Association
03/30/05 Muddy River Restoration Project Maintenance and
Management Oversight Committee
03/30/05 Boston Environment Department
03/31/05 Department of Conservation and Recreation

ERH/RAB/rab