



December 12, 2016

BY EMAIL: Jerome.Grafe@state.ma.us

Mr. Jerome Grafe  
MassDEP Waterways Regulation Program  
One Winter Street – 5th Floor  
Boston, MA 02108

RE: Waterways License Application Number W16-4697

Dear Mr. Grafe,

I am writing to you on behalf of the Mystic River Watershed Association (MyRWA) regarding the Chapter 91 Waterways License Application submitted by Massachusetts Electric Company and New England Power Company, each d/b/a National Grid, for a site along the Malden River in Everett, Malden and Medford.

This letter expands on comments I made at the public hearing on this matter on November 17, 2016 urging National Grid to provide waterfront access along the entity of their property. MyRWA submits these comments on its own behalf and for 32 concerned citizens. I have attached a list of names and addresses of the of the individuals who are commenting on the application by means of this letter (Appendix A).

MyRWA is a nonprofit organization dedicated to the preservation and enhancement of the Mystic River, its tributaries and watershed lands for the benefit of present and future generations. We represent the interests of more than 500,000 residents in 22 towns and cities within the watershed, including Everett, Malden and Medford. MyRWA works to improve public access to water bodies and shorelines throughout the watershed, and especially for environmental justice populations whose recreational opportunities have been limited by the concentration of industrial and commercial development along the edges of the river.

We are excited by this and other recent opportunities we have had to work with MassDEP, municipalities, citizens groups, and property owners to redress a longstanding injustice and restore public benefits in trust lands protected by M.G.L. c. 91. along the Malden River. The Boston

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford  
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • [www.MysticRiver.org](http://www.MysticRiver.org)

Harborwalk and Charles River Paths are shining examples of what public trust stewardship can bring to modern city life. Why have the citizens of the Commonwealth who live near the Malden River been so long deprived? These communities and their elected officials have spoken, and it is time to give them their due.

The Malden River does not need an esplanade or massive public access facilities. We envision only a modest public pathway that invites people to the water's edge and allows them to pass in a continuous circuit around the lower, exposed portion of the river. National Grid can help us achieve this at a moderate cost and with no adverse effect on its operations.

Years have passed with virtually no attention being given to the water-related rights of the public in tidelands bordering the Malden River. National Grid has benefited enormously from the filling of these tidelands and their later conversion from maritime use to their present-day use as a site for utility infrastructure. It is time to honor the long-neglected interests of the public and provide reasonable and appropriate access in the form of a continuous shoreline path.

### **I. License Application and Focus on Public Access**

National Grid seeks a c. 91 waterways license for existing nonwater-dependent uses and structures on filled tidelands at the site. The principal address of this site is 170 Medford Street, Malden. The site comprises 28 acres, of which approximately 3 acres are filled tidelands.

The new license, if issued, will validate National Grid's use of these filled tidelands for certain nonwater-dependent infrastructure facilities and will supersede several historical licenses for existing fill on portions of the site. Such a license would cure any defect or invalidity in National Grid's existing licenses and provide financial protection against future license revocation.<sup>1</sup>

The plans included in the application reveal that a large portion of these 3 acres of tidelands is now occupied by buildings, parking lots and other paved areas, infrastructure for stormwater management, and other public-utility related improvements. However, significant areas of filled tidelands remain available and potentially accessible to the public throughout the site, notably: between the buildings and parking lots on the (northern) Malden portion of the site and the river; between the developed areas in the (southern) Everett portion of the site and the river (surrounded by what appear to be undeveloped floodplain and uplands); and along most of the southeast site

---

<sup>1</sup> The historical record is unclear as to how the tidelands at the site came to be filled. There appear to have been several phases of United States and Commonwealth-sponsored activity, as well as private measures, to straighten the Malden River and fill flowed tidelands to facilitate commercial use of its banks. Some of this occurred before the Supreme Court's seminal "public trust" decision in *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892). All of the legislative acts relied on by National Grid occurred before the landmark case of *Boston Waterfront Development Corp. v. Commonwealth*, 378 Mass. 629 (1979), concerning implied use limitations in legislative grants. Historically, it appears that the authorizations for fill and associated structures at the site on which National Grid relies all involved water-dependent uses. The license narrative included in the application provides no information about the property's conversion to nonwater-dependent use and no explanation for why the public has historically been barred from these tidelands by National Grid and prior owners.

boundary. A large tract of undeveloped land sits at the southern end of the site, bordered on three sides by the Malden River and filled tidelands.

Any license issued by MassDEP must comply with the public trust doctrine by safeguarding the water-related interests of the public in filled tidelands at the site and in the adjacent waterway through appropriate license conditions, including provisions for adequate public pedestrian access. National Grid's application makes provision for minor public access facilities at the northern (i.e., Medford Street) end of the site, consisting of a small viewing area with two benches near the river, and a short access path from the sidewalk on Medford Street. The Cities of Everett, Malden and Medford, MyRWA and other stakeholders advocate for a shoreline path along the entire length of the project that can connect with paths on adjacent parcels, eventually forming a continuous pedestrian pathway around the Malden River.

MassDEP conducted a public hearing on the application on November 17 in Everett. This hearing was attended by more than 40 people, representing the cities of Everett, Malden and Medford, elected officials, MyRWA, Friends of the Malden River and other local stakeholders. The 19 government officials, advocacy groups, and members of the general public who spoke at the hearing unanimously deemed National Grid's proposal for public access inadequate and favored the alternative of a continuous shoreline path that will form part of a continuous pedestrian pathway around the Malden River (the "Riverwalk").

**MyRWA urges the MassDEP to require that National Grid's public access plan include a full waterfront path from the north to south end of the side and to conduct this planning and design process in collaboration with municipal and community representatives.**

In the next section of this comment letter, I will describe the Mystic Greenways Initiative and what it means for the Malden River. I will then discuss the Chapter 91 regulatory requirements, including the particular standards applicable to National Grid, and why they require that longitudinal shoreline access be provided at this site consistent with the goals the Mystic Greenways Initiative.

## **II. The Mystic Greenways Initiative and the Malden River**

The Malden River is an important community and environmental resource serving Everett, Malden and Medford. This once-forlorn river has recently undergone renewed investment that has restored waterfront land, opened up public access and improved water quality. National Grid has the potential to contribute to this reinvestment and to a larger vision for a waterfront park system that provides public access to the Malden River.

MyRWA recently launched the Mystic Greenways Initiative to restore, revitalize and connect waterfront parklands. This work is particularly important on the Malden River (a tributary of the Mystic). For decades, this river has been walled off to the public, because commercial and industrial users found it a cheap and convenient place to locate their facilities, giving scant attention to public trust stewardship. At the same time, many of the surrounding communities lack the kinds of high-

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford  
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • [www.MysticRiver.org](http://www.MysticRiver.org)

quality green spaces that have been shown to increase physical health and psychological well-being. The banks of the Malden now present the best opportunity for restoring green space to local residents of Malden and Everett, in particular.

Public expectations for land use along the Malden have changed, and both landowners and MassDEP are responding. River's Edge, across the river in Medford, was developed a decade ago and provides beautiful park space. Recently, MassDEP conditioned its approval of a c. 91 license at 295 Canal Street, just upstream from the National Grid site, on the installation of a shoreline path running north from Medford Street.<sup>2</sup> This will connect with a similar path to the north, under an existing c. 91 license for 195 Canal Street, giving continuous public access to virtually the entire east bank of the river above Medford Street. Meanwhile, directly south of the National Grid site, the former General Electric site is being redeveloped with a waterfront path along the entire edge of the property. Further connectivity is being facilitated by the construction of pedestrian underpasses on both sides of the Malden River at the Woods Memorial Bridge.

It is time to complete a connected chain of waterfront paths around the entire Malden River. Currently, two-thirds of the Riverwalk is complete or in progress (under design or construction). The National Grid site is one of the key missing links in this envisioned network.

### III. Chapter 91 Regulatory Requirements

Before granting the requested license, MassDEP must find that the project satisfies certain basic requirements set forth in 310 CMR 9.31(1). These include compliance with specific standards designed to preserve water-related public rights. 310 CMR 9.31(1)(d) and 310 CMR 9.35. All projects must preserve the public's right to use tidelands and waterways for lawful purposes together with "any public rights of access that are associated with such use." 310 CMR 9.35(1).

Paragraphs (2) and (3) of 310 CMR 9.35 prohibit any significant interference with public rights of navigation (including the loading and unloading of boats), fishing, fowling, and free passage for such purposes. A project site that includes filled tidelands "shall include reasonable measures to provide on-foot passage on such lands" for the exercise of such water-related rights. For nonwater-dependent use projects consisting of infrastructure facilities, this requires providing public pedestrian access facilities in accordance with 310 CMR 9.55 (discussed below). 310 CMR 9.35(3)(b)2.

As MyRWA Board member Michael Fager noted at the public hearing on this application, the Attorney General has interpreted the term "fowling" to include bird watching. The viewing platform proposed by National Grid is wholly inadequate to the needs of birders, because most of the filled tidelands on the site that provide habitat for birds lie south of the area and are separated from it by structures. A continuous shoreline path would allow birders to exercise their protected rights.

---

<sup>2</sup> See Written Determination on Waterways License Application Number W16-4721-N (October 31, 2006), page 8, Draft Special Condition 2.

Users of small boats on the river are denied safe access to shore at this site by the artificially steep underwater gradient and industrial aspect of the property. As MyRWA Policy Committee member David Barlow indicated at the public hearing, a longitudinal shoreline path would promote visual contact and social interaction between boaters on the river and pedestrians on shore, expanding each group's appreciation of the resource. It would also provide safe escape to the numerous scullers and kayakers who use the river in the event of capsize or other emergency.

In addition to meeting the basic requirements in 310 CMR 9.31(1), MassDEP must conclude that the project "serves a proper public purpose which provides greater benefit than detriment to the rights of the public" in the affected tidelands. M.G.L. c. 91, § 18; 310 CMR 9.31(2). For a nonwater-dependent use project consisting entirely of infrastructure facilities, as defined in 310 CMR 9.02, this standard may generally be met by complying with the special mitigation and public access standards in 310 CMR 9.55.

*Public Trust Standards for Nonwater-dependent Infrastructure Facilities*

As indicated in 310 CMR 9.31 and 9.35, the key regulatory standards that apply to MassDEP's decision on public access at the National Grid site appear in 310 CMR 9.55.

First, the license must provide for "mitigation and/or compensation measures . . . to ensure that all feasible measures are taken to avoid or minimize detriments to the water-related interests of the public." 310 CMR 9.55(1). The regulations contain a nonexclusive list of such water-related interests, many of which have been severely compromised by the existing fill and infrastructure facilities on the National Grid site for decades, with little or no mitigation, and with no compensation measures taken to date. Let me offer the following brief observations about some of the interests included in that list:

1. "protection of maritime . . . recreation and associated public access"

The priority given to navigation and commerce over recreation by earlier generations, who channelized the river and filled its tidal margins, limits opportunity for tidelands-based maritime recreation. What remains (e.g., the freedom to walk or run, to go fishing or birding, to stop, look and listen) must be conserved and promoted as these tidelands continue to be put to non-water dependent use.

2. "protection, restoration, and enhancement of living marine resources"

Human effort made drastic alterations in local ecosystems, e.g., by eliminating salt marsh and tidal flats, capping the upper reach of the Malden, and treating the Malden as a stormwater conduit. Human effort is now bringing the river back to life, in altered form. Future progress depends on expanding public awareness and appreciation of this hidden urban wild.

3. "attainment of water quality goals"

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

The Malden's water quality continues to be impaired by excess influx of pathogens and nutrients, largely from stormwater. With large buildings and paved areas in proximity to the river, National Grid has certainly contributed its share of effluent over the years (although some stormwater management systems are now in place). The original tidelands now occupied by National Grid provided water purification and other valuable ecosystems services which have not been replaced. The filled tidelands were long ago converted from their original water-dependent use, and some compensation (e.g., enhanced public access) is due for the detriment to water quality caused by the reduction in this natural resource.

4. "reduction of flood and erosion-related hazards"

Although flood risk is now primarily controlled by the Amelia Earhart dam, it is obvious that the presence of nonwater-dependent electric and natural gas facilities on tidelands that were originally filled for water-dependent use creates hazards associated with storm surge and climate-change induced flood risk for which the public is entitled to compensation under c. 91.

5. "protection and enhancement of public views and visual quality in the natural and built environment of the shoreline"

As several of the speakers at the public hearing indicated, the proposed viewing area offers little in the way of visual experience that cannot be obtained from the nearby Medford Street bridge. Although 80-feet of fencing will be removed and benches at this location may provide comfort and enjoyment to pedestrians with limited mobility, most members of the public would prefer to walk farther down the shoreline for unobstructed views and quiet contemplation away from this heavily traveled bridge.

The extended waterfront path that MyRWA recommends be included as a license condition would significantly reduce the detriment to the public's recreational and aesthetic interests in the shoreline environment caused by the presence of this large infrastructure facility so close to the water's edge. It would also provide a degree of compensation for harm to other protected interests, for which insufficient mitigation has been provided.

There is no basis to conclude that it is infeasible to install or maintain such pedestrian access. Although the license application alludes vaguely to "safety and security" concerns, and a representative of National Grid mentioned equipment security needs at the public hearing, details are lacking. There is no reason to think that adequate safety and security measures cannot be provided in conjunction with a shoreline path. The application also refers to "physical constraints" imposed by "existing utility facilities, drainage structures along the project shoreline and the steep (1:1) slope of the riverbank." The site plans included in the application, however, suggest that the only existing infrastructure that imposes any significant constraint on the creation of a shoreline path is a small paved area between the building on the Malden portion of the site and the river, located entirely on filled tidelands. If this paved area makes it difficult to achieve the standards in 310 CMR

9.55(1) and 310 CMR 9.55(2) (discussed in the text, below), it can easily be removed and replaced elsewhere on the site.

By contrast, the minimal public access facility proposed by National Grid would do little to reduce the detriment to public enjoyment of the river and its shoreline and offers no compensation whatsoever for the harm caused to other protected interests. The public access provided in the current proposal is a mere 80-feet and is similar to the existing river view available from the adjacent Medford Street bridge. National Grid's proposal falls far short of the standard that "all feasible measures" be taken to "avoid or minimize" detrimental impact to the public interests at stake.

If there is any doubt that the general standard in 310 CMR 9.55(1) favors the creation of a continuous shoreline path on the National Grid site, the specific standard on public access in 310 CMR 9.55(2) should settle the matter. This rule stipulates that the project "shall take reasonable measures to provide open spaces for active or passive recreation at or near the water's edge, wherever appropriate."

Based on statements made at the public hearing on this application, it is clear that the short path and small viewing area that National Grid has proposed to install at the extreme northern end of the project are inadequate to meet the legitimate public need for recreational space along this stretch of the Malden River and thus do not constitute "reasonable measures" to provide such facilities "wherever appropriate" at the site. Meanwhile, National Grid has made no adequate showing that a continuous shoreline path would unduly interfere with its infrastructure facilities or threaten public health, safety, or the environment.<sup>3</sup> On the contrary, it is both reasonable and appropriate to insist that there be pedestrian recreational access along the entire length of the waterfront at this site.

#### **IV. Conclusion**

A seamless Riverwalk would serve tens of thousands of residents in Everett, Malden and Medford, including several environmental justice communities. Restoring full public access to the Malden River, and creating a community asset for recreation and active transportation, would help to reverse some of the inequity that these residents have faced for decades. National Grid has an obligation to do this, as well as an opportunity to lead.

The plan for a limited public viewing site off Medford Street at the northern end of the site fails to meet the applicable regulatory standards. A c. 91 license conditioned on such meager accommodation of the public's water-related interests would impede current efforts to restore use of the shoreline to the people and perpetuate a longstanding injustice.

---

<sup>3</sup> Moreover, National Grid fails to note that if any restrictions on pedestrian access are deemed necessary to protect public health, safety, or the environment, the license must include additional access-related requirements "to offset any significant loss of benefits to the public which may be associated with such restrictions." 310 CMR 9.35(5)(d). The two benches included in National Grid's plan for the viewing site at the Medford Street end of the project obviously provide no adequate compensation for the severe loss of benefits if the public is denied linear access to the shoreline and other tidelands areas.

We ask that MassDEP require National Grid to conduct a planning process, in collaboration with municipal and community representatives, to explore and develop a robust alternative design for public access at the site, including provision for a continuous shoreline path by which pedestrians and others may pass through the southeast corner of the site (and from any public pathway that may be constructed on the abutting parcel to the south) to Medford Street, along the Malden River and across filled tidelands on the site. We anticipate that this process will result in public access plans that adequately serve the interests protected by c. 91, consistent with public safety and security and National Grid's reasonable operational needs at these infrastructure facilities.

We hope you will take the above concerns into serious consideration as you review the application before you. If you have any questions or require additional information, please feel free to contact me. Thank you for your consideration.

Sincerely,



Patrick Herron  
Executive Director  
Mystic River Watershed Association, Inc.

CC:

[Jason.Lewis@masenate.gov](mailto:Jason.Lewis@masenate.gov)  
[Sal.DiDomenico@masenate.gov](mailto:Sal.DiDomenico@masenate.gov)  
[Joseph.McGonagle@mahouse.gov](mailto:Joseph.McGonagle@mahouse.gov)  
[paul.donato@mahouse.gov](mailto:paul.donato@mahouse.gov)  
[mayorcarlo.demaria@ci.everett.ma.us](mailto:mayorcarlo.demaria@ci.everett.ma.us)  
[tom.philbin@ci.everett.ma.us](mailto:tom.philbin@ci.everett.ma.us)  
[rachel.kelly@ci.everett.ma.us](mailto:rachel.kelly@ci.everett.ma.us)  
[catherine.rollins@ci.everett.ma.us](mailto:catherine.rollins@ci.everett.ma.us)  
[Tony.Sousa@ci.everett.ma.us](mailto:Tony.Sousa@ci.everett.ma.us)  
[gchristenson@cityofmalden.org](mailto:gchristenson@cityofmalden.org)  
[dburke@maldenredevelopment.com](mailto:dburke@maldenredevelopment.com)  
[npernice@maldenredevelopment.com](mailto:npernice@maldenredevelopment.com)  
[sburke@medford-ma.gov](mailto:sburke@medford-ma.gov)  
[AHunt@medford-ma.gov](mailto:AHunt@medford-ma.gov)  
[Alexander.CastilloNunez@masenate.gov](mailto:Alexander.CastilloNunez@masenate.gov)  
[Zachary.Crowley@masenate.gov](mailto:Zachary.Crowley@masenate.gov)  
[dmoran@clf.org](mailto:dmoran@clf.org)  
[bcampbell@clf.org](mailto:bcampbell@clf.org)  
[friendsofthemaldenriver@gmail.com](mailto:friendsofthemaldenriver@gmail.com)  
[bmurphy@cityofmalden.org](mailto:bmurphy@cityofmalden.org)  
[pcrowe@cityofmalden.org](mailto:pcrowe@cityofmalden.org)  
[romalley@cityofmalden.org](mailto:romalley@cityofmalden.org)  
[swinslow4152@gmail.com](mailto:swinslow4152@gmail.com)  
[claylars@gmail.com](mailto:claylars@gmail.com)

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford  
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • [www.MysticRiver.org](http://www.MysticRiver.org)



## Appendix A

Members and associates of our organization who are commenting on this application by means of this letter. 27 of these individuals lives in Malden, Everett or Medford, the location of the National Grid site.

Name	Street	City	Zip Code
David Barlow	21 Wellington Street	Arlington	02476
Teresa Bello	28 Avon St., Apt. 2	Malden	02148
John Roland Elliott	34 Emery Street	Medford, MA	02155
Dr. Julie A. Hambrook Berkman	56 West Street	Medford	02155
Stephen Winslow, Bike to the Sea, Inc	83 Jacob St	Malden MA	02148
Hubert E Holley	28 Avon St	Malden	02148
Susan Altman	201 Winthrop Street	Medford	02155
Laura Spark	20 Bardwell Street	Jamaica Plain	02130
Beth Collins	52 Regent Road	Malden	02148
Laura Yardumian	2 Raymond Street	Malden	02148
Philip Bronder-Giroux	40 Sprague Street	Malden	02148
Harout Yardumian Khodaverdian	2 Raymond Street	Malden	02148
Varandt Yardumian Khodaverdian	2 Raymond Street	Malden	02148
Haig Yardumian	113 Woodland Roaf	Malden	02148
Virginia Yardumian	113 Woodland Road	Malden	02148
Richard Beinecke	28 Fairmont Street	Arlington	02464
Andrew Petit de Mange	79 Wareham St	Medford	02155
Naomi Kahn	33 Tyler Street	Malden	02148
Alicia Hunt	41 Wason St	Medford	02155
Susan Fairchild	31 Hillcroft Park	Medford	02155
Barbara M. Murphy, Malden City Council President	Forest Street	Malden	02148
Kathleen M. Vandiver	3 Peacock Farm Road	Lexington	02421
Ayla Geller	Hillcroft Park	Medford	02155
Lillian H. Johnston	30 Gladstone St.	Everett, Ma	03410
Jon E. Norton	120 Wyllis Ave. Britney Place Unit 411	Everett	02149
John Desmond	109 Boylston St.	Malden	02148

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford  
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

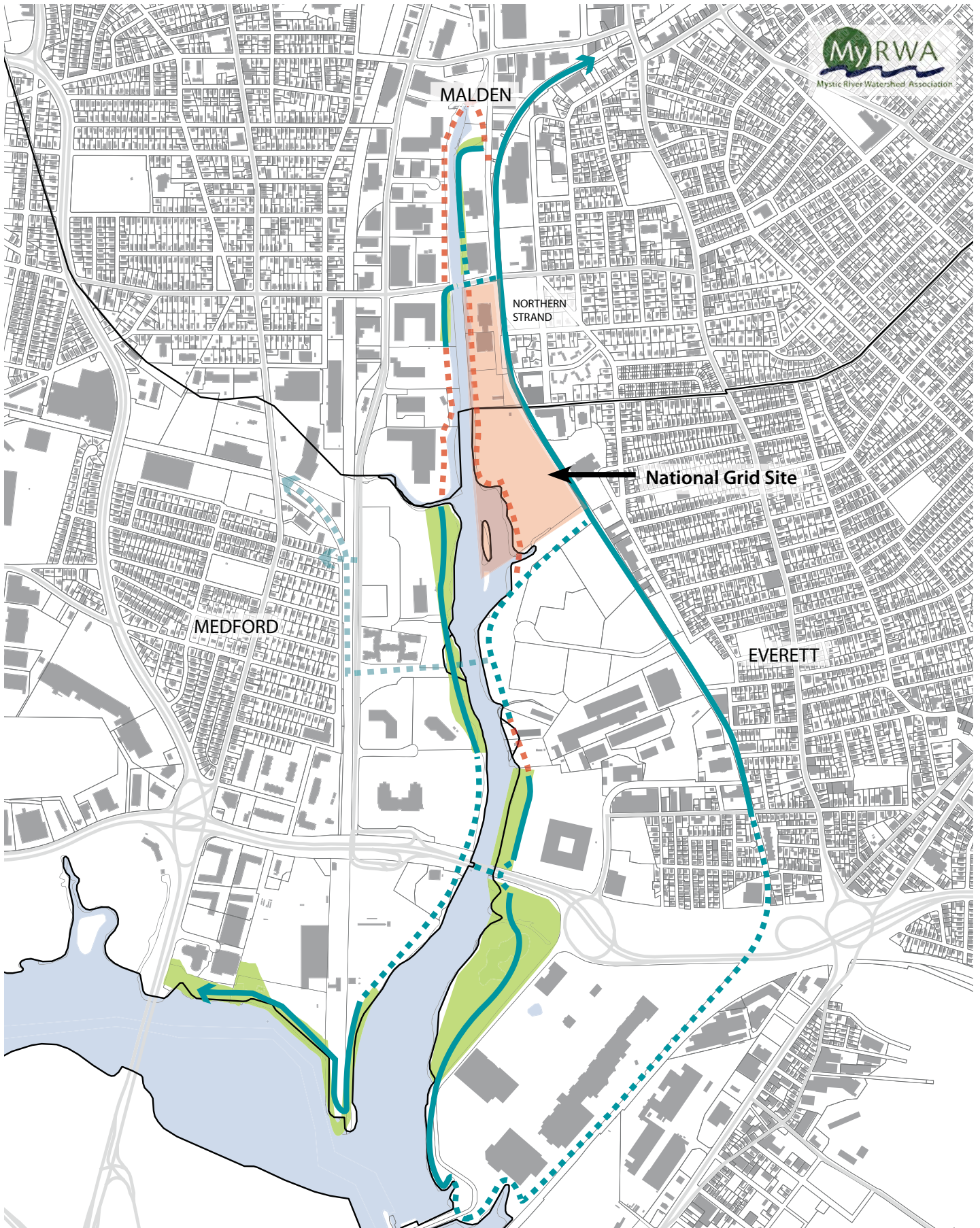
Nick Cohen	55 Magazine Street	Cambridge	02139
Barbara Pennucci	42 Irving St.	Medford	02155
Ken Krause	50 Mystic St	Medford	02155
Thomas Lincoln	27 Gleason Street	Medford	02155
Rita E. Hashem	120 Wyllis Avenue - U. 308	Everett	02149
Mary Hastings	67 Bainbridge St	Malden	02148

*Serving Twenty-Two Communities*

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford  
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*



National Grid Site Diagram-  
Proposed Chapter 91 public access and surrounding connectivity/access



### MALDEN RIVER - GREENWAY NETWORK

- Existing ——— In-Progress - - - - -
- Missing Links - - - - - Envisioned - - - - -

