



March 31, 2017

By Email: Robert.Boeri@state.ma.us

Robert L. Boeri, Project Review Coordinator
Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 800
Boston, MA 02114

Re: MBTA Federal Consistency Review

Dear Mr. Boeri:

I am writing on behalf of the Mystic River Watershed Association (MyRWA) to comment on the application filed by the Massachusetts Bay Transportation Authority (MBTA or the “Applicant”) for federal consistency review (“FCR”) of its Charlestown Bus Facility – Shoreline Stabilization and Yard Improvements Project (the “Project”). Thank you for extending us this opportunity to comment.

We understand that the Project requires certain federal permits that depend upon concurrence by the Office of Coastal Zone Management (CZM) that the Project is consistent with all enforceable coastal program policies (“CZM Policies”). The Project is supported by a grant from the Federal Transit Administration, which may also require FCR. MyRWA offers these comments pursuant to 301 CMR 20.04(2)(a) and 15 CMR 930.2 and 930.61. MyRWA has previously commented on the Project in relation to the MBTA’s Environmental Notification Form (ENF) (EEA #15487) and Chapter 91 license application (No. 16-4842).

MyRWA Mission

MyRWA is a non-profit organization dedicated to the preservation and enhancement of the Mystic River Watershed. The mission of MyRWA is to protect and restore the Mystic River, its tributaries, and watershed lands for the benefit of present and future generations and to celebrate the value, importance, and great beauty of these natural resources. This includes working to improve the water quality in the Mystic River and all of its tributaries. A primary goal of MyRWA is to promote public access to the Mystic River and its tributaries, especially through the formation of continuous greenways that provide recreation and transportation resources associated with the river.

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Project Benefits

MyRWA is highly supportive of the MBTA's plan to improve shoreline stability and climate resiliency at its Charlestown Bus Maintenance Facility.

The Project will provide needed protection to important public transportation infrastructure serving watershed residents. MyRWA appreciates the role of safe and efficient public transportation in the economic life of our communities and understands the need to safeguard this facility.

We believe that Project is also a crucial step toward restoring public access to filled tidelands along this part of the Mystic River. The MBTA intends to grant a narrow easement to the Department of Conservation and Recreation (DCR). This will allow the construction of a multi-use shoreline pathway, accessible to the public from existing pathways above and below the site. In addition to furnishing much-needed water-based recreational opportunities to local residents, the anticipated shoreline path will supply a missing link in a transit corridor enabling bicyclists and pedestrians to travel safely from Somerville and Medford to Sullivan Square and points south.

MyRWA commends the Applicant's efforts to address environmental concerns in the Project design. The Project provides needed flood control and stormwater management improvements and contributes to climate resiliency. We are pleased to see that it incorporates bioengineering features and a degree of on-site habitat restoration.

Need for Additional Project Information and Modifications

Although it appears that the Project components presented for review by CZM *may* be consistent with CZM Policies when combined with other necessary actions, we believe that more information is needed to reach that conclusion and that certain Project modifications may be required. We focus our comments on CZM Policies favoring public access to coastal resources and ecologic restoration, making reference to Policies enumerated in the CZM Policy Guide (October 2011).

Public Access

We are in favor of the DCR easement for a multi-use pathway on the riverside of the flood prevention wall. *But we strongly believe that the planning and design for this path, if not also its construction, should be done concurrently with the shoreline stabilization and other construction work described by the Applicant.*

CZM will note that the essential purpose of the Project's shoreline protection and stormwater infrastructure improvements is to enable the Applicant to continue its nonwater-dependent use of Commonwealth tidelands. It appears that the MBTA has been operating the Charlestown

facility for decades without a waterways license, and with no accommodation of water-related public rights under the Public Waterfront Act, M.G.L. c. 91, and Waterways Regulations, 310 CMR 9.00. Whether the Project is consistent with Public Access Policy #1 depends entirely on the adequacy of the proposed shoreline pathway to redress this deficiency.

Unfortunately, the Applicant has presented no more than the concept of a possible shoreline path. The Project gives no assurance that DCR will actually fund, or that either agency will design and construct, such a path in the foreseeable future. A mere DCR easement, with no definite plans or funding commitment, falls short of meeting the applicable public access standards for this Project. *The Applicant should provide evidence of further planning as to the nature and features of the pathway, the funding and schedule for its construction, and the funding and staffing for its operation and maintenance before receiving CZM's concurrence in this FCR.*

It is still not clear whether the MBTA or DCR will be responsible for the design and construction of the public pathway, or even whether it will take the form of a multi-use path or a route for bicycles only. The DCR, in commenting on the Project's ENF, asserted that "the Proponent [i.e., the MBTA] will design and construct a bikeway (subject to funding being provided by DCR)" DCR ENF Comment Letter (Apr. 12, 2016), p. 1. The MBTA, however, continues to state that the Project improvements "will allow *the Department of Conservation and Recreation (DCR)* to construct a new multi-use pathway along the riverfront of the site." FCR Application Materials (Feb. 10, 2017), p. 1-1 (emphasis added). DCR's ENF comments referred three times to the uncertainty of funding and concluded: "If funding is not identified by DCR, DCR plans to secure the easement to preserve the ability to construct the bikeway at a later date."

Responsibility for pathway design and construction must be clarified and funding secured before CZM can be sure that the Project is consistent with Public Access Policy #1. We are aware that the DCR has limited financial and staff resources for such planning and construction projects, raising significant questions about the feasibility and timeline for construction. MyRWA has advocated to the state legislature repeatedly for increasing the resources available to DCR and would gladly support efforts to fund a well-designed multi-use path at this site.

Illustrating our concerns about the lack of specificity in the Project plans regarding public access, we note that the pathway is repeatedly referred to as 'multi-use' in both the current filing and the ENF, yet is referred to repeatedly as a 'bike path' in the Project plans submitted in Attachment B to the FCR Application Materials, as well as at various places in the MBTA's combined Chapter 91/401 application (Attachment H to the FCR Application Materials), and DCR has called it a "bikeway." It is unclear whether this discrepancy represents a change in design or merely a variation in terminology. However, it is generally unclear what the features of this path are intended to be.

The DCR's ENF comments included one unusual design detail, contingent on DCR funding: "if funded by DCR the Project will include an elevated boardwalk that will greatly enhance safety by straightening the alignment and prevent two 90° bends." DCR ENF Comment Letter, p. 2. This feature appears to have been incorporated by the ENF Certificate, which states: "A key area of

focus is at the northern end of the sheetpile bulkhead where it projects in a seaward direction at right angles to the northern shoreline. A pile-supported structure spanning that corner could improve safety for bicycles and pedestrians.” ENF Certificate (EEA #15487) (Mar. 23, 2016), p. 5. The Project currently makes no commitment to include this important amenity. The FCR Application Materials make no mention of it.

The ENF Comments submitted by the DEP’s Waterways Regulation Program refer to the shoreline path as a separate project and recommend “close coordination between MBTA and DCR in the planning, design, and construction implementation of the respective projects, including consideration of a coordinated approach that would complete both projects in a single construction mobilization.” DEP Waterways Memorandum (Apr. 12, 2016), p. 1. The ENF Certificate incorporates this suggestion, stating:

I note comments from MassDEP Waterways that encourage the MBTA and DCR to continue consultation regarding the design and construction of the multi-use path and consider whether it could be completed concurrent with the shoreline stabilization project. As the MBTA refines the project design, it should continue to consult with DCR and consider features that could facilitate completion of the pathway.

ENF Certificate, p. 5. It is essential that the MBTA and DCR demonstrate a commitment to act on the suggestion *during this FCR process* for CZM to have adequate assurance that the Project will be consistent with Public Access Policy #1.

We suggest that the Applicant collaborate with the DCR to put forward a plan for the multi-use pathway for consideration in connection with this FCR. We believe this new path offers transformative opportunities for public access and public awareness of the Mystic River, as well as potential secondary benefits in reducing traffic and automobile emissions. A carefully engineered design for the pathway, well-formulated to align with the shoreline construction and yard improvement plans described by the Applicant as well as the DCR 2009 Mystic River Master Plan, is a necessary condition for reaping these benefits and assuring consistency with Public Access Policy #1.

Wetlands Mitigation

The Applicant acknowledges that the Project will have certain unavoidable impacts on aquatic resources and that off-site mitigation is required to achieve environmental compliance. The Project, however, lacks sufficient detail or commitment regarding possible off-site shoreline mitigation to evaluate its effectiveness and sufficiency. More information is needed to determine whether the Project is consistent with Habitat Policies ##1 and 2.

The Applicant indicates that the Project will create approximately 11,800 SF of new coastal beach habitat. In its comments on the ENF, the Department of Environmental Protection (DEP) had questioned the feasibility of new coastal beach habitat and asked if salt marsh would be more appropriate. DEP ENF Comment Letter (Apr. 12, 2016), pp. 1-2. The Project’s ENF

Certificate instructed the MBTA to “evaluate possibilities for creating or restoring salt marsh on or near the project site” during the permitting process for the Project. ENF Certificate, p. 5. MyRWA would like assurances from MBTA that it will attend to this requirement and modify the Project’s on-site habitat restoration goals if appropriate. This will provide greater assurance that the Project is consistent with Coastal Hazards Policy #1, as well as Habitat Policies ##1 and 2.

We look forward to evaluating the off-site wetland resource creation the Applicant proposes to comply with the 1:1 mitigation it has committed to. We understand that this off-site mitigation will entail 65,500 SF to mitigate the total area of impacted intertidal and subtidal wetlands, accounting for the reclaimed intertidal wetland mitigated on site.

The Applicant should propose specific mitigation projects, as close to the project site as possible, and seek public input on those projects immediately. We note that there are ample opportunities for salt marsh restoration in a footprint of this size in subtidal and inter-tidal areas of shoreline adjacent to this MBTA facility. It should not be necessary to use the In-Lieu Fee Program to provide compensatory mitigation.

Conclusion

We recommend that CZM not concur in MBTA’s consistency certification at this time, but that CZM instead request additional details about public access and wetlands mitigation. CZM may wish to review information provided by DCR under 15 CFR 930.58(b). The Applicant (or DCR) should put forward specific plans for the design, funding, and construction schedule of the multi-use path, and the MBTA should specify the off-site mitigation activities it will undertake, for CZM to evaluate before issuing its concurrence or objection.

If CZM wishes to concur in the consistency certification before sufficient progress is shown in these two areas to ensure that the Project will adhere to the relevant CZM Policies, we urge CZM to include conditions, pursuant to 301 CMR 20.04(2)(d) and 15 CFR 930.4(a), 930.62(d), and 930.96(a)(2), that will require appropriate concurrent design and implementation steps during the 24- to 36-month course of the final Project design and Project construction activities.

Very truly yours,



Patrick Herron, Executive Director

cc: Maria Hartnett, Epsilon Associates, Inc.
MyRWA Policy Committee