



July 21, 2017

BY EMAIL: [Ivan.Morales@state.ma.us](mailto:Ivan.Morales@state.ma.us)

Department of Environmental Protection  
Wetlands and Waterways Program  
Attn: Ivan Morales  
One Winter Street, 5th Floor  
Boston, MA 02108

Re: Waterways License Application No. W17-4976

Dear Dr. Morales-Parra:

I am writing to you on behalf of the Mystic River Watershed Association (MyRWA) regarding the above-referenced Chapter 91 Waterways License Application submitted by Wynn MA, LLC (the "Applicant").

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 seek to protect and restore clean water and the natural environment and to promote responsible stewardship of our natural resources. In addition, we work 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.

MyRWA represents the interests of more than 500,000 residents in 22 towns and cities within the watershed, including Boston and Everett.

**MyRWA commends the Applicant for its noteworthy investment in hazardous waste remediation and its commitment to restore shoreline habitat and provide vital public access to the waterfront.** The Wynn Boston Harbor development presents an opportunity for the Applicant to make a unique contribution to the revitalization of the Mystic River waterfront and the restoration of natural habitat and water quality conditions in the river. The removal and control of contaminated sediments at the project site is an important and necessary step that furthers the public interests protected by Chapter 91. MyRWA supports this project, which we believe will help local ecosystem conditions improve and promote greater public enjoyment of our aquatic resources. We offer the following comments to assist the Applicant and the Department in implementing the proposed sediment remediation project in a manner consistent with M.G.L. c. 91 and relevant portions of the Waterways Regulations.

*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)

## Chapter 91 Considerations Applicable to Proposed Sediment Remediation

The Applicant seeks a Chapter 91 license that authorizes dredging to remove contaminated sediments (in addition to previously approved navigational dredging) and the use of fill to cap both newly dredged areas and other areas where the Applicant intends to leave contaminated sediments in place. The Applicant identifies and discusses five remedial action alternatives in its Phase III Remedial Action Plan and Phase IV Remedy Implementation Plan for the sediment portion of the Former Everett Staging Yard Site (RTN 3-13341). The Applicant has selected Alternative 2 (partial dredge and cap), with certain modifications.

Any Chapter 91 license granted for the project should be conditioned on full compliance with the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. See 310 CMR 9.31(1)(b) and 9.33. Moreover, appropriate guidance by the Department's Waterways Regulation Program, reflected in license conditions, can help ensure that the remedial action alternative approved under the MCP will be implemented in a way that furthers the interests protected by Chapter 91.

### *Regulation of Dredging, Dredged Material Disposal, and Placement of Fill*

Under the Waterways Regulations, any fill for water-dependent use on flowed tidelands, such as the required capping of polluted sediments, must be located below the high water mark and cannot be approved unless "reasonable measures are taken to minimize the amount of fill". 310 CMR 9.12(2)(a)14, 9.31 (1)(a), and 9.32(1)(a)2. **We believe that the Applicant's request for authorization under Chapter 91 to cap sediments at the project site is consistent with this standard.**

The Applicant acknowledges the restrictions imposed by the Waterways Regulations on dredging and the disposal of dredged material. Several of these apply equally to the deposit of fill. MyRWA asks the Department to prescribe all appropriate conditions in the license, including, without limitation:

- Time of Year Restrictions. The license should be consistent with Chapter 91 License No. 14188 (Aug 3, 2016) p.3 Special Waterways Conditions (3) that imposes time of year restrictions to avoid interference with diadromous fish runs, banning all dredging and filling between February 15 and September 15. The Mystic River is documented as one of the largest river herring migration locations in Massachusetts. Our own organization documented a run of 660,000 river herring in 2017 at the Mystic Lakes Dam.
- Salt Marsh Protection. The license should require actions that minimize and mitigate adverse impacts on listed resource areas, including robust response actions should any nearby salt marsh be damaged or threatened. We suggest that the licensee be required to involve the Department in the response and certify both near- and long-term success. 310 CMR 9.40(2)(b) and (3)(b).
- Dredge Technology. The Department should stipulate that the removal of barges and other debris, dredging of sediments, and placement of fill conform to best management practices for hazardous waste removal and containment in near-shore aquatic resource areas. MyRWA asks the Department to approve the use of mechanical dredging if it determines that the proposed method is a safe and

*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)

effective way to conduct the sediment remediation and will not adversely affect the interests protected by Chapter 91.

- Supervision. The license should provide for close supervision, including advance notice to the Department of each stage of the operations and detailed information regarding, and Department approval of, all sediment dewatering, transport, and offloading arrangements. 310 CMR 9.40(5).

### *Water-Related Public Rights*

No license may be issued unless the project preserves the public's right to use the affected tidelands and waterway for lawful purposes and preserves any associated public rights of access. These public rights and standards that must be met are outlined in 310 CMR 9.31(1)(d), 9.35 and 9.36.

These public rights include:

the right to seek or take any fish, shellfish, fowl, or floating marine plants, by any legal means, from a vessel or on foot; the right to protect habitat and nutrient source areas in order to have fish, fowl, or marine plants available to be sought and taken; and the natural derivatives thereof.

This standard is not met if the project:

1. poses a substantial obstacle to the public's ability to fish or fowl in waterway areas adjacent to the project site; or
2. results in the elimination of a traditional fishing or fowling location used extensively by the public.

Our organization would reference our own recent work and the context of fishing within this area. In collaboration with Conservation Law Foundation, UMASS Boston and GreenRoots, MyRWA has recently completed testing for toxicants in local endemic fish species to inform a future Lower Mystic Fish Advisory. The content of the advisory will note that many local fish species should not be consumed but highlight that consumption of Striped Bass and Bluefish is safe. The advisory will also note that 'catch-and-release' is a safe activity associated with any of the fish species. This area of the Mystic River and in particular this project site has historically been a popular location for fishing stripers and bluefish.

Although MyRWA believes that the sediment remediation project itself is fully consistent with the applicable standards under 310 CMR 9.35 and 9.36, we would like to take this opportunity to comment on how public access to tidelands at the casino site should be managed to promote the exercise of water-related public rights under Chapter 91.

MyRWA believes that the potential for public enjoyment of all protected recreational uses should be preserved and should not be unduly restricted. We understand that the Applicant will prepare a public access management plan for the onshore development for review and approval by the Department, in accordance with 310 CMR 9.35(5). We expect this plan to strike a balance between potentially competing uses to achieve "effective public use and enjoyment" without excluding any category of use altogether, including the right to access tidelands on foot or by boat for the purpose of fishing. As c. 91 deals specifically with the ability to fish

### *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*

or fowl in waterways, it is important that this use is accommodated in the public access management plan and license conditions

## Conclusion

We believe that the Applicant's request for authorization under Chapter 91 to cap sediments at the project site is consistent with this standards outlined in 310 CMR 9.12(2)(a)14, 9.31 (1)(a), and 9.32(1)(a)2. The Applicant's extensive sediment remediation actions will undoubtedly make it safer for the public to exercise its water-related rights at the project site, while continued monitoring should alert the Applicant to the need for any additional remediation action.

It is a rare project that completes the remediation of contamination on land and extends that work into the water to undertake remediation in sediments. We applaud the commitment to the local environment and improvements that Wynn is making to the Mystic River.

We hope you will take the above concerns into consideration as you review the application before you. If you have any questions or require additional information, please feel free to contact me by phone (781) 316-3438 or by emailing me at [patrick@mysticriver.org](mailto:patrick@mysticriver.org).

Finally, our organization would also like to commend Wynn for proactively offering our organization access to Wynn staff and consultants. The opportunity to meet and discuss these issues provided our team a better understanding of the project and the commitment that Wynn is making to the local environment.

On behalf of the Mystic River Watershed Association,



Patrick Herron, Executive Director

CC:

Nathan Sanders,	MyRWA Policy Committee
Tracy Olson,	MyRWA Policy Committee
Natalie Brown,	Wynn Development
Jamie M. Fay,	Fort Point Associates

*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)