



March 28, 2017

By Email: Anne.Canaday@state.ma.us

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office / MEPA Reviewer
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Wynn Boston Harbor Notice of Project Change, EEA #15060

Dear Secretary Beaton:

I am writing to you on behalf of the Mystic River Watershed Association (“MyRWA”) regarding the Notice of Project Change (“NPC”) submitted by Wynn MA, LLC (the “Proponent”) on February 28, 2017 for the Wynn Boston Harbor project at 1 Horizon Way, Everett, Massachusetts.

MyRWA is a 501(c)(3) 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. MyRWA seeks to protect and restore clean water and the natural environment and to promote responsible stewardship of our natural resources. In addition, 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.

MyRWA has submitted comments to the Secretary on previous filings by the Proponent under the Massachusetts Environmental Policy Act (“MEPA”). See our letters dated August 21, 2015 (SSFEIR), March 27, 2015 (SFEIR), August 7, 2014 (FEIR), and February 11, 2014 (DEIR). MyRWA has emphasized throughout the MEPA process that, given the scale and scope of the proposed resort casino and its location on the bank of the Mystic River, the Proponent has an extraordinary opportunity to make a significant contribution to the revitalization of the Mystic River waterfront and the restoration of natural habitat and water quality conditions in the river. To the credit of Wynn Boston Harbor, they have consistently communicated their commitment to this shared goal.

We commend the Proponent for having embraced this opportunity in regard to the landside portion of the project site. We encourage the Proponent to extend its commitment to environmental restoration by applying best practices to the necessary sediment remediation work ahead.

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Sediment Remediation

The NPC focuses on the Proponent's developing plans for remediation of contaminated sediments in the subtidal and intertidal (i.e., "water-side") portion of the project site. Although the need for water-side hazardous waste investigation and cleanup was mentioned in previous filings, this is EEA's first opportunity to give it meaningful attention under MEPA. We think it is clear from the NPC that the proposed sediment remediation carries significant risk of adverse environmental consequences and warrants further MEPA review. *See* 301 CMR 11.10.

A number of participating agencies, as well as the U.S. Army Corps of Engineers, will have a permitting role in relation to sediment remediation. *See* NPC, Section 1.7, Table 1-10, pp. 1-17 to 1-21 and Section 2.2, pp. 2-2 and 2-3. Given the potential for inconsistency and challenges in agency coordination, we believe that an environmental impact report ("EIR") addressing sediment remediation would be helpful to the process. *See, e.g.,* 301 CMR 11.01(c), 11.06(9)(c), and 11.08(7)(b). A supplemental EIR would also help to effectively engage the public in the evaluation of the environmental risks and benefits of alternative remedial actions and other agency procedures pertaining to the water-side portion of the project. This is especially important in light of the site's proximity to environmental justice populations. *See* EEA Environmental Justice Policy (Jan. 31, 2017).

In addition, the scope defined by the Secretary's most recent MEPA certificate (SSFEIR Certificate, dated July 22, 2015) does not adequately describe the sediment remediation and needs expansion. The content required in Section 61 findings has also changed.

An example of inconsistency in review standards, with potential for adverse consequences, has already arisen. A Revised Supplemental Phase II Comprehensive Site Assessment, dated December 30, 2016 (RTN 3-13341) (the "Revised Assessment"), was filed on behalf of the Proponent pursuant to the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.0000, in response to a requirement by the Bureau of Waste Site Cleanup ("BWSC") that the Proponent conduct further investigation and analysis of the contaminated sediments, including an assessment of potential pathways for human exposure. *See* RTN 3-13341, BWSC Memorandum (May 12, 2016). The Revised Assessment indicates that the models used by the Proponent's environmental consultants to assess human exposure are based on the assumption that only "trespassers" would come into contact with contaminated sediments or consume tainted fish. *See, e.g.,* Revised Assessment, Section 7.0, pp. 25-30. The report states:

Given the industrial nature of the area and the difficulty accessing the Site, use of the Site for recreational purposes including high frequency or subsistence fishing is highly unlikely. In addition, as previously noted Wynn does not intend to permit fishing once the resort is complete. Signs prohibiting fishing will be posted and Wynn staff . . . will enforce the restriction.

Revised Assessment, p. 27.

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EEA will note that both the right to walk along the subtidal river bottom and the right to fish and pass freely along the intertidal zone for that purpose are water-related public rights guaranteed under M.G.L. c. 91. Additional rights of pedestrian access have been, and are likely to be, included in licenses issued by the Waterways Regulation Program under c. 91. The whole purpose of the public access facilities planned for the site (and adjacent areas) is to encourage and facilitate increased public use of the shoreline. We at MyRWA envision a time, in the not-too-distant future, when the greenways bordering the Mystic River will be heavily frequented by neighborhood residents and other visitors. Under these conditions, it can be anticipated that many individuals will come into direct contact with tidelands sediment (e.g., by wading, or by transfer from pets) and that many more will engage in fishing from the banks. It can also be expected that kayakers and other boat users will stand and walk on tidal flats and river bed, and that this activity will increase in both frequency and intensity as the Wynn Boston Harbor and nearby greenways projects come to fruition, and the lower Mystic becomes more attractive to recreational boaters and fishermen. All of these individuals will be lawful users of our natural resources, not trespassers. We think it inappropriate to base human exposure analysis on a “trespasser” paradigm and question whether the agencies with responsibility under the MCP are sufficiently attuned to water-related public rights and their future enjoyment under more congenial conditions.

In addition, the Proponent’s evaluation of both the exposure pathways associated with fishing and the potential for disruption of a remedial cap on contaminated sediments (e.g., by benthic organisms) and escape of hazardous materials is premised on the observation that elements of the local environment are currently in a “degraded” condition. *See, e.g.,* Revised Assessment, pp. 25, 26, and 30 and Appendix G, p. 8; *see also* NPC, p. 3-4 and 3-9. Water quality and other indicia of ecological health are improving in the Mystic, and it is entirely reasonable to expect that both fishing activity and benthic fauna will increase over time. Moreover, the assessment fails to consider the increasing likelihood of mechanical disruption of cap and other sediments by transportation and other commercial vessels, small craft propellers and propeller wash, keels, paddles, and foot traffic, not to mention potential erosion by tidal action, storm surge, and other sources of current and turbulence. No evaluation of environmental risk or conclusion that a state of “No Significant Risk” can be achieved should be based on the assumption that current environmental conditions will persist indefinitely, when it is foreseeable that the health of the river will recover, human interaction will increase, natural conditions will change, and exposure pathways will multiply.

Although it is possible to raise such concerns through public participation under the MCP, we would prefer to see these and other potential areas of inconsistency identified and resolved through the MEPA process. MyRWA looks forward to participating in robust MEPA and agency processes to help ensure that the Proponent and participating agencies properly evaluate the risk of environmental damage and other impacts, select the best sediment remediation alternative, facilitate habitat restoration, and promote public enjoyment of the river’s abundant natural resources.

Other Project Modifications and Mitigation

We believe that the remaining project modifications described in the NPC can be adequately addressed by appropriate agency action without further MEPA review.

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Regarding certain off-site improvements related to the Proponent's mitigation commitments, we note that the Proponent has identified certain impacts to wetlands resources that must be addressed in planning for the DCR Harborwalk Connector. We believe that these issues can be managed, with appropriate public engagement, by the agencies with permitting authority. We support the Proponent's attention coastal bank restoration in the planning for pedestrian improvements.

More broadly, MyRWA commends the proponent for mitigation that will improve active transportation connections in the area. We are pleased that a feasibility study will be undertaken to explore a pedestrian/bicycle bridge over the Mystic River, a critical link that will tie into the Mystic Greenway path network and complete a regional link between downtown Boston and north shore communities. We encourage Wynn to work with MassDEP and CZM to go beyond the conceptual phase and identify the funding needed to full design and construct the bridge.

Conclusion

The current NPC filing lacks the necessary detail to adequately evaluate the extent of the remediation, the proposed final conditions, and a plan for monitoring the sediments before, during, and after. Therefore, we recommend further MEPA review of sediment remediation so that proper attention may be given to the coordination of agency actions, which otherwise may exhibit inconsistencies and produce suboptimal environmental outcomes. Additional MEPA review will also facilitate public participation and input on a variety of environmental concerns related to sediment remediation.

In particular, we call for revised standards for identifying and evaluating remediation alternatives, so that decisions under the MCP will take into account the future expanded public use and vitality of the river, its shoreline and river bottom, and not merely existing conditions that are unlikely to persist (all parties expect an increase of public use at this site given planned investment). There is likely a need for coordination among participating agencies with respect to other environmental issues pertaining to sediment remediation as well.

As an interested party and concerned stakeholder, we ask that we be updated throughout the remediation decision-making and permitting processes. Thank you for this opportunity to comment on the recently proposed changes to this important project. If you have any questions or require additional information, please contact me at (781) 316-3438 or Patrick@mysticriver.org.

Sincerely,



Patrick Herron
Executive Director

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