

Approved 4/30/14

**City of Boston Conservation Commission**  
**Public Hearing Meeting Minutes**  
Boston City Hall, Hearing Room 801  
Boston, Massachusetts, 02201

**March 5, 2014**

**Commissioners Present:** Aldo Ghirin, Jacob Kritzer, Vivien Li, Michael Wilson

**Commissioners Not Present:** Charles Button, Stephen Kunian, John Sullivan

**Staff Present:** Stephanie Krueel, Executive Secretary

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- **Motion made by A. Ghirin and seconded by J. Kritzer to appoint Vivien Li as the meeting chair (4/0/0 6:08 PM).**
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**6:08 PM** Notice of Intent for DEP File No. 006-1380 from NSTAR Electric for the Station 315 Distribution Project at North Beacon Street, Brighton, Charles River (Riverfront Area, Buffer to Inland Bank)

*Representatives: David Halliwell, VHB; Joe Mayall, NSTAR*

V. Li stated that NSTAR and VHB are dues-paying members of her employer, The Boston Harbor Association.

D. Halliwell described the project as installation of an electric distribution line in a typical duct bank, with all work in the road. Silt sacks will be installed in the catch basins, and there will be no impacts to wetland resource areas.

Ms. Li asked when the project would start and how long it would last. J. Mayall replied that the DPU permit will likely be issued in the fall of 2014, and PIC and Boston Traffic permits are being applied for simultaneously. The whole project will take eighteen months to complete, and the portion of the project subject to this filing would take one to two weeks, intermittently.

A. Ghirin asked where within the roadway the duct would be located. Mr. Halliwell replied that in the bridge it will be between the pavement and decking. Nine ducts would be stacked vertically in groups of three in the landside roadway, and in groups of four or five in the bridge.

Mr. Ghirin asked for a description of the erosion & sedimentation control measures that would be implemented for the bridge work. Mr. Halliwell replied that there would be no overnight stockpiling and catch basins would be lined with silt sacks. Mr. Ghirin asked what time of day the work would take place. Mr. Mayall replied that work hours would be dictated by the City of Boston. Mr. Ghirin asked if DOT and DCR are involved with the project. Mr. Mayall replied that three separate agencies own the bridge, the road bed, and the sidewalk, and they are working with all of them.

M. Wilson asked if any existing utilities would need to be rerouted during the project. Mr. Mayall replied that no utilities would need to be relocated. The duct bank will go around any existing utilities.

Ms. Li asked what NSTAR is doing to adapt their facilities to climate change. She asked what the lifetime of the project would be. Mr. Mayall replied that the project has an expected lifetime of forty years. NSTAR hired a firm familiar with post-Katrina activities to study the impact of climate change on the height of the Charles River. Ms. Li asked the applicant if they could supply the study to the Commission, and Mr. Mayall responded in the affirmative.

Mr. Halliwell asked for clarification of draft condition number 46. Ms. Li asked staff to provide a sample construction/demolition log to the applicant.

Mr. Wilson requested that the applicant submit a plan showing the lines for BLSF and the 500 year floodplain.

Ms. Li asked staff to request in advance that the utility companies provide information on climate change vulnerability assessments.

Mr. Ghirin asked with regard to condition 38, who the owner would be who is responsible for removing debris from wetland resource areas in perpetuity. Ms. Krueel replied that it would in this case be DCR, as they are the owner of the land containing the actual wetland resource areas.

- **Motion made by M. Wilson and seconded by J. Kritzer to issue the Order of Conditions amended as follows (4/0/0 6:26 PM):**
  - **The Applicant shall submit to Commission staff a summary of the storm study performed for the Charles River.**

**6:27 PM** Notice of Intent for DEP File No. 006-1381 from the Economic Development and Industrial Corporation of Boston for Wharf 8 Bulkhead Repairs, 290 Northern Ave, South Boston, Boston Harbor (Designated Port Area, Land Under Ocean, Coastal Banks)

*Representatives: Briscoe Lang & Karl Hammond, Pare Corporation; Nat Gorham, EDIC*

B. Lang described the history of the site and the proposed project. Past studies have identified the need to repair the bulkhead, and maintenance is required as per the Chapter 91 license. The goal is to build a facility with a 50 year lifespan with minimal maintenance and support future development of Pier 7. The applicant recognizes the presence of the Preliminary FIRMs and their implications for the site. K. Hammond pointed out that the sheet 2 of the submitted plans shows the preliminary floodplain lines. Mr. Lang referred to the demolition plan on sheet 5. He then described in detail the two types of proposed repairs. He noted that the Harborwalk is to be re-established with high performance blue paint and new signage. Public access would be maintained during construction to the degree possible, with the priority of ensuring public safety. The project meets the performance standards for Land Under Ocean and Coastal Bank.

M. Wilson asked how the proposed seawall would tie in to the proposed rip rap at the corner. Mr. Hammond replied that the transition will be accomplished with concrete plugs at the intersections. Mr. Wilson asked if the structure of the wall would be compatible with future increased height. Mr. Hammond replied that the wall is designed to be overtopped and inundated.

N. Gorham noted that over the past few years fill has been lost through holes at the base of the seawall. The project will add lost fill to stabilize the Harborwalk area.

Mr. Hammond stated that when Pier 7 is developed, sea level rise will be taken into account. Mr. Gorham described that the four-foot black vinyl coated chain link fence will be somewhat temporary in nature to allow for future changes to the site. New lighting is also part of this project.

J. Kritzer noted that the 1993 study identified a series of problems, and asked if all of them had been dealt with. Mr. Gorham replied that repairs completed in 1994 and 2004 temporarily addressed the west face and north side revetment. The proposed project is meant to address conditions permanently.

Mr. Kritzer asked if the seaward-facing material would be concrete. Mr. Hammond explained that the concrete would be embedded with a 3/8" pvc fascia to improve the appearance and durability. Mr. Kritzer ventured that the project could take advantage of the textured concrete surface for biological reasons, since it seems like the vinyl would be quite smooth. Mr. Hammond replied that the vinyl is not totally smooth, but is not as course as concrete. It is needed to provide the maintenance-free solution sought by the applicant.

Mr. Kritzer asked if there was any potential for greenscaping along the top edge of the property. Mr. Gorham replied that the Harborwalk is generally narrow- between 6- and 8-feet wide, with existing facilities abutting it. There is not really any room for greenscaping.

Ms. Li asked for clarification on the number of Harborwalk signs proposed. She requested three signs and the representatives agreed.

Ms. Li asked how long construction would take, and if it could be staged within the timeframe specified by the Division of Marine Fisheries' Time of Year restrictions. The representatives replied that the TOY would be adhered to.

- **Motion made by A. Ghirin and seconded by J. Kritzer to issue the Order of Conditions amended as follows (4/0/0 6:49 PM):**
  - **Condition #54 was amended to add "Three Harborwalk signs..."**

**6:50 PM** Request for Determination of Applicability from Landmark Center Owner Limited Partnership for Wetland Boundary Confirmation, 401 Park Drive, Fenway, Muddy River (Bordering Land Subject to Flooding)

*Representatives: Daniel Padien & David Roache, VHB; Abe Menzin & John Pugh, Samuels & Associates; William Dillon & Brian Judge, Goulston & Storrs*

V. Li stated that Goulston & Storrs and VHB are dues-paying members of her employer, The Boston Harbor Association.

D. Padien described the site and showed the limits of Bordering Land Subject to Flooding on the existing FIRMs.

A. Ghirin pointed out that the Sears Rotary was given back to the Parks Department, and should now be referred to as the Riverway.

Mr. Padien described the existing path of the Muddy River and noted that the base flood elevation is 10 feet NAVD88. He stated that there is no hydrologic connection between the floodplain and the subject site. The U.S. Army Corps of Engineers' study confirms that there is no connection. Approximately eight years ago the nearby MBTA green line station flooded, and the floodwaters did not affect the subject property. There are no other wetland resource areas on site. Mr. Padien showed the flagged wetland sites on the adjacent property and indicated that they are roughly 700 feet away from the subject site.

Mr. Wilson asked about existing culvert connections. Mr. Padien explained that water currently is contained in culverts, but when day lighted will result in an open water course that overtime is likely to develop bordering vegetated wetland of some kind. Mr. Wilson asked if the new wetlands would make the subject property subject to jurisdiction via a 100 foot buffer. Ms. Kruel noted that a Determination of Applicability is only valid for three years. Mr. Padien suggested that it won't be possible to delineate any wetlands for at least five or six years after the new slopes are planted.

J. Kritzer asked if figure 5 illustrated assumed wetlands. Mr. Padien clarified that the yellow hatched area shows today's topography and indicates a low point. The land will not look this way after the daylighting project is complete. He does not know what the floodplain will look like, but the goal of Army Corps project is to lower the floodplain.

Mr. Wilson asked why FEMA had mapped the floodplain as it had. Mr. Padien replied that back in the 1970's they likely used the USGS map to pick a contour line and use it to delineate the wetland. It is clear that the actual topography, which includes the former Sears building, was not taken into account (the line goes through the building).

Mr. Ghirin asked if the Army Corps survey takes into account post-daylighting conditions. Mr. Padien replied that it only shows designed conditions. It is difficult to predict how wetland resource areas will mature five years out into the future.

Mr. Ghirin asked what changes the applicant will propose for the Landmark Center property.

A. Menzin explained that the redevelopment had received Article 80 approval from the BRA in February. The plans compliment the Muddy River Restoration project, in that they plan to restore parkland to the front of the building (currently a parking lot).

Mr. Wilson asked how the site currently drains. D. Roache indicated that water from Park Drive goes into conduits that bypass the Muddy River. The subject property drains to the BWSC system on Brookline Ave.

Mr. Kritzer asked if the applicant has approached FEMA with their request. Mr. Padien explained that a Letter of Map Amendment request was in preparation. He noted that if wetlands do develop on the property in the future, the Landmark Center will not have a negative impact on them. Ms. Kruel pointed out that the Commission only needs to determine if there are wetlands presently on the site, and does not need to determine if wetlands will be on site in the future. Mr. Padien noted that if work on the site occurs after the three-year determination expires, and wetlands are present, the applicant will need to return to the Commission.

Mr. Kritzer wondered why the applicant decided to seek an RDA rather than just pursuing a LOMA from FEMA. Mr. Menzin stated that they are trying to finance the project and want to show the lenders that they are following all regulations. Mr. Kritzer speculated that if the FEMA maps were correct, and the project complied with an OOC that met the performance standards of the WPA, then the applicant would have done everything right. He wanted to know what the advantage would be of removing the property from the floodplain. Mr. Padien replied that there are areas on site below elevation 10. The applicant wants to reshape that area, and if it were in fact floodplain, any filling would require compensatory flood storage on-site. However, it is not in fact floodplain, so it's not necessary to provide the flood storage.

Mr. Kritzer asked if there has been an empirical test of the floodplain, i.e. a historical 1% annual chance storm. J. Pugh replied that they have only owned the building since 2011. They met with the MBTA to discuss past flooding of the Green Line. During the largest flood at Kenmore, all the water went into the MBTA tunnel and the subject site did not experience flooding. Mr. Wilson asked if the water wasn't going into Kenmore any longer, would it flow onto the subject site. Mr. Roache replied that the flood control mound is higher than flood stage, and would prevent overflow to the site.

Mr. Padien said that they are awaiting delivery of a stamped survey from USACE (they already have the CAD files), then the applicant will complete some additional survey work, and then the LOMA application will be submitted.

Mr. Wilson asked if the additional work would include ground-truthing or modeling. Mr. Padien replied that the LOMA is strictly based on elevation and hydro connectivity.

Mr. Kritzer expressed reluctance to issue a Negative Determination of Applicability and would prefer to wait for FEMA's response. He was concerned about the implications of being wrong about the floodplain. He asked if it would hinder the project to wait for the LOMA approval. Mr. Padien replied that FEMA is currently busy with other mapping issues, and it is difficult to know how long their LOMA approval would take.

Ms. Li asked the applicant what he would do if FEMA does not respond in a timely fashion. Mr. Menzin replied that they would need to change the grade on the design, and that they really need to know if the site is in or out of the floodplain.

Mr. Wilson wanted to know if FEMA determines that the site is not in the floodplain, would the project then be outside of the Commission's jurisdiction? Mr. Padien replied in the affirmative.

W. Dillon added that they would still come to the Conservation Commission to confirm that no wetlands are located on the site.

Mr. Ghirin suggested that the applicant does in fact need a LOMA to move forward. Mr. Dillon replied that the property needs to be removed from the floodplain for two separate purposes. One is for flood insurance, and the other is for design purposes.

Ms. Li asked about the timing of the project. Mr. Menzin replied that it is currently in schematic design.

Mr. Kritzer maintained that he would prefer to hear from FEMA first; however he does not want to hold the applicant up. Ms. Li suggested the Commission continue the hearing for some time period. He suggested that a letter from the Commission might expedite the FEMA process. Ms. Krueel replied that such a letter would be unlikely to influence the process.

Ms. Li wondered if the site would be affected by FEMA's new preliminary maps and the City's review of those maps. Ms. Krueel replied that the preliminary maps are only for the Coastal Zone, and the city's map review would not cover the subject area.

Mr. Wilson asked how the applicant had determined the extent of future wetlands, and requested diagrams. He wondered if wetlands filled the former Sears rotary, if the subject property would still be outside of the 100 foot buffer. Mr. Roache referred to sheet F-8, and pointed out that as designed, any bordering vegetated wetlands that may arise from the Muddy River Restoration Project do not appear to reach the site. Mr. Roache explained that in order to estimate where a new wetland might develop, he plotted the top of USACE's planned geocells, which are above the replicated wetland, and which represent the absolute limit of any expected water flow. The wetlands would only extend to that height in the worst case scenario. Ms. Krueel pointed out that even if wetlands were to reach to that extent, they would still be more than 100 feet away from the subject property. Mr. Roache indicated that the applicant cannot say with certainty what would appear on the ground based on USACE's design on paper.

Mr. Kritzer stated that he is less concerned with future wetlands than he is with delineating current BLSF. He feels there needs to be adequate peer review of the request, and he does not feel qualified to perform such a review.

Ms. Krueel asked when the flood control dike was built. Mr. Roache replied that he did not know, but that they do appear on the FEMA panel. He pointed out that the floodplain was not based on detailed grading of the site, and it clearly doesn't even take the building into account.

Mr. Kritzer suggested a continuance based on the date of the LOMA submittal. Mr. Dillon requested that the Commission allow the applicant to return within a defined timeframe. Ms. Li suggested the first hearing in May. Mr. Kritzer reiterated his desire to not cause any undue delay. Mr. Dillon requested the first meeting in April.

Mr. Ghirin noted that he will address the proposal with his colleagues in the Parks Department.

Ms. Li asked Mr. Padien when he expects to submit the LOMA to FEMA. Mr. Padien told the Commission that he would like to submit information that better demonstrates the lack of hydrologic connection between the Muddy River and the subject site by April in the event they do not have a response from FEMA.

Ms. Kruel suggested that the Commissioners not present this evening may have additional comments on the project. Mr. Wilson and Mr. Kritzer suggested the applicant may be bearing the brunt of having to deal with new Commissioners. Ms. Li also acknowledged the significant change in the makeup of the Commission since the representatives have last been before it.

- **Motion made by A. Ghirin and seconded by J. Kritzer to continue the hearing to the April 9, 2014 meeting (4/0/0 7:32 PM)**

### 7:33 PM Updates and General Business

- Request for Certificate of Compliance for DEP File No. 006-1318, Site Improvements at the Morton Street Compost Site, Canterbury Brook (Continued from 2/19/14)

Ms. Kruel stated that the applicant requested another continuance to allow more time to supply the Commission with the Operations & Management log.

- **Motion made by M. Wilson and seconded by J. Kritzer to continue the item to the March 19, 2014 hearing at the request of the applicant (4/0/0 7:34 PM)**

- Emergency Certification Ratification for Stabilization of Collapsed Pier at South Pier Jetty, Boston Marine Industrial Park, South Boston

Ms. Kruel explained described the request and indicated that the applicant would be filing an NOI to reconstruct the pier.

- **Motion made by M. Wilson and seconded by J. Kritzer to ratify the Emergency Certification (4/0/0 7:35 PM)**

- DEP File No. 006-1359 Review of Shipyard Quarters Marina Snow Management Plan (Condition #37), Public Walkway, Landscape & Signage Plan (Condition #38) & Refuse Management Plan (Condition #39)

Ms. Kruel explained the requirement to submit the above documents. The Commission reviewed the three plans. Ms. Kruel identified several issues: The plans specify parcels subject to maintenance and snow removal. Three parcels that make up the Harborwalk are not included in either of the first two plans due to an ongoing lawsuit involving the entities that are responsible for maintenance of those parcels (Parris Landing and SQM/Mr. Oliner). Also, the Harborwalk plan does not address landscaping or signage.

Ms. Li addressed condition #37 first. Ms. Kruel clarified that the brief documents currently before the Commission are not a summary, but rather the entire submission.

Mr. Ghirin pointed out that the date proposed for end of sand & salt use does not match that in the Order of Conditions. Ms. Kruel speculated that this may be a typo on the applicant's part, as she could see no reason to purposely change that particular date.

Ms. Li confirmed that Ms. Kruel is required to approve the snow maintenance plan. Ms. Kruel wants to ensure that the Commission is comfortable with the contents of the plans as well as with the locations to which they are applicable.

Mr. Kritzer pointed out that there is no mapped plan, just merely a repeat of the wording of the conditions. Ms. Kruel noted that the Commission is looking for a commitment in writing from the applicant that they will in fact perform these activities. It is not uncommon to have received a descriptive plan rather than a map. Ms. Kruel noted that the Chapter 91 license also addressed snow removal and landscaping issues.

She does not want to accept a plan that contradicts that license in any way. She had suggested to the applicant that he adopt the language of the City of Boston's snow removal ordinance.

Ms. Krueel explained that Parris Landing has accepted responsibility for maintenance of Parcel 2C, but that no one is maintaining parcels 3D and 3G. BRA has been providing snow removal services without reimbursement. Mr. Oliner is in the process of suing Parris Landing because he believes they agreed to maintain parcels 3D and 3G through an agreement executed as part of the land disposition process. It is unlikely that Mr. Oliner will agree to maintain something that he is currently suing someone else to maintain.

Ms. Li noted that if the Commission does not accept the plans, then the project for which the OOC was issued cannot begin. Ms. Krueel agreed. For the benefit of the new Commissioners, she explained that issuance of an OOC only allows an applicant to do work; it does not force them to do the work. Ms. Li stated that it is not the intent of the Commission to hold up the work, since it is repair work necessary to protect public safety. She suggested that staff reply that the plans are approved subject to the addition of parcels 2C, 3D and 3G, along with any other changes identified. Ms. Krueel agreed to proceed in this manner.

Mr. Kritzer asked how we address the fact that no one is currently dealing with the snow, which may be impacting resource areas.

Ms. Krueel clarified that the repair plan includes portions of the Harborwalk that Parris Landing is currently adequately maintaining (parcel 2C). She explained that she wants a maintenance plan for the entire Harborwalk. The owner can then assign it to another party to perform. Ms. Krueel stated that Dick Mulligan confirmed that BRA has recently been performing snow removal activities on parcels 3D and 3G as a public service.

Ms. Krueel asked Barbara Mackey in the audience if anyone calls the Mayor's Hotline (635-4500) to report snow covered sidewalks, which initiates the code enforcement/fining process. Ms. Mackey replied that the snow is cleared too soon (by BRA) for anyone to complain. Ms. Mackey asked for confirmation that all parcels are Mr. Oliner's responsibility.

Ms. Li clarified that these are conditions related to construction of this project. Ms. Krueel mentioned that Chapter 91 and the City Code also specify ways in which the Harborwalk must be maintained. She explained a bit more of the history of the project.

Ms. Ghirin asked if the applicant could move ahead with his planned work once he gets his Chapter 91 license. Ms. Krueel responded in the affirmative, and noted that the currently approved work is only for the area accessible to the public, not within the private marina.

The group discussed how access to Constellation Wharf and a portion of the Shipways Condominium are only accessible via Mr. Oliner's parcels.

Ms. Li suggested that Ms. Krueel approves the plans with the addition of parcels 3D and 3G to the snow management and Harborwalk plans.

The Commissioners reviewed the plans associated with conditions #38 and 39 and found several grammatical errors.

Ms. Mackey confirmed that the dockmaster does not work weekends during the off-season, thus the plan specifies that repair work will not be done on weekends or holidays.

Mr. Kritzer asked why condition #37 specifies staff review and approval, but conditions #38 & 39 do not. Ms. Krueel replied that she did not know why that was the case.

Ms. Li addressed condition #39 and confirmed that the majority of the trash is generated by the restaurant rather than by passers-by. She suggested the plan be submitted to the restaurant owner as well. Ms. Krueel asked Ms. Mackey if the hole under the dumpster at pier 6 had been repaired. Ms. Mackey stated that the enclosure had been repaired, but was not sure about the hole in the floor decking.

Mr. Wilson asked why the word "metal" was left out of the plan. Ms. Krueel replied that perhaps the waste management company supplies dumpsters with plastic covers. She was unsure as to the significance of specifically providing a metal cover.

Ms. Li asked about trash being picked up twice per week, rather than as needed. Ms. Kruel replied that “twice per week” seemed preferable to “as necessary” as it is more concrete and provides a minimum level of service. Ms. Mackey noted that there are currently dumpsters out on pier 8. Those are not addressed in the refuse management plan.

Ms. Li asked to hold off on review of minutes from 2/19/14.

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- **Motion made by A. Ghirin and seconded by M. Wilson to adjourn the meeting (4/0/0 8:15 PM).**

Respectfully submitted,

*Stephanie Kruel*

Stephanie Kruel  
Executive Secretary