



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

February 11, 2014

VIA E-MAIL (anne.canaday@state.ma.us) &
HAND DELIVERY

Secretary Richard K. Sullivan, Jr.
Executive Office of Energy and Environmental Affairs
Attn: MEPA Office
Analyst Anne Canaday, EEA No. 15060100
Cambridge Street, Suite 900
Boston, MA 02114

RE: Draft Environmental Impact Report for Wynn Everett: EEA# 15060

Dear Secretary Sullivan:

The City of Somerville has reviewed the Draft Environmental Impact Report (DEIR) submitted by Wynn MA, LLC for the proposed Wynn Everett casino and resort project and provides the following comments.

Regional Concerns

The proponent is proposing to build a resort style casino on approximately 33.9 acres of vacant industrial land on the Everett waterfront. This development will result in significant negative impacts on Somerville and other surrounding communities including but not limited to traffic, air quality, construction impacts and visual blight. In reviewing the DEIR, we believe there are a number of areas that do not adequately address issues raised in your decision on the ENF. We strongly urge you to require the proponent to further address these concerns through a Supplemental DEIR.

In the Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form ("ENF Certificate"), you directed the project proponent to address issues raised in the comment period by state regulatory agencies, surrounding municipalities and members of the general public. While the DEIR proposes some changes to the project and provides further clarity on certain topics, we believe that the proponent fails to adequately address many of the issues that were raised by the comments, including traffic, waterfront development, hazardous waste remediation, air quality and the visual impact of the development.

As we stated in our comment letter on the ENF, Somerville and Everett share both a history along the Mystic River and an interest in providing new opportunities for growth on land that has lain vacant for decades. To accomplish that goal, Everett has chosen to support the construction of a monolithic development in an area that requires a significant departure or exemption from the current regulatory standards that govern waterfront development in Massachusetts while failing to provide a commensurate set of public benefits.

Municipal Boundaries

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As referenced by the ENF Certificate, the DEIR should clarify municipal boundaries. In addition to the Boston-Everett boundary referenced therein, this clarification should also include the Somerville-Everett boundary line in the Mystic River with respect to the proposed project.

Transportation Network

In your ENF Certificate, you required the proponent to significantly expand the scope of its traffic study and analysis. Below is a list of the issues of most concern to the City and additional comments on the City's position on the inadequacy of the DEIR.

- 1) The City requested that project impacts be modeled against the Central Transportation Planning Staff's (CTPS) traffic demand model for 2035 build conditions from the current long range transportation. A seven year time horizon for the casino project only represents the first three to four years of operation given that the environmental process and construction would, at best, be completed by 2017.

The ENF Certificate lengthened the seven year time horizon from 7 to 10 years. It is the position of the City that this is still not a long enough time frame to fully understand the impacts of a development of this size on the transportation system. Additionally, it is not possible to ascertain what baseline numbers were used for the regional transportation demand model used in the DEIR because the build year (2023) is between time horizons used by CTPS for their regional model. The City requests an explanation of this discrepancy and an accounting of the horizon years.

- 2) The City requested that the DEIR address the impacts of the following:
 - Proposed road diet and re-element currently under design by the City of Boston at Sullivan Square and Rutherford Ave;
 - Full build out of Assembly Square, including mixed-use development at the IKEA site; and
 - Additional development and job growth in Union Square and Inner Belt/Brickbottom that will result from the Green Line Extension (GLX).

The ENF Certificate states that "the ENF study states that the traffic study included in the ENF was prepared in consultation with MassDOT and the City of Everett and, using information available from the Cities of Boston, Somerville..." However, the proponent's study fails to include all of the information provided by the City of Somerville despite representations to the contrary by Wynn Everett's representatives.

On July 31, 2013, City of Somerville staff met with technical staff representatives of Wynn Everett. At the conclusion of that meeting, Mr. Jeffrey Dirk of Vanasse and Associates indicated to City staff that the City of Somerville's projected growth numbers for the Inner Belt/Brickbottom, Boynton Yards, and Union Square would be incorporated into future traffic modeling.

On December 2, 2013, City staff met with technical staff representatives of Wynn Everett. Ms. Kari Pike of Howard Stein Hudson and Associates indicated to City staff that she did not know if Somerville's growth projections or a "road diet" currently under construction in East Somerville (feeding into Sullivan Square) were incorporated.

On December 4, 2013, the below email message was received by city staff from John Tocco, authored by Ms. Pike, it reads in part as follows:



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We did not incorporate their longer term plans for Inner Belt/Brickbottom, Boynton Yards, and Union Square, primarily because those plans are more than likely more than 10 years out. Even Boston only has a commercial absorption rate historically of about 1 MSF per year. They also provided no detail on what would be built except "Residential" or "commercial" (see attached spreadsheet). A lot of the development is predicated on the advancement of the Green Line extension (GLX). I believe the GLX project is slated to be complete by 2017. Presumably that also means that the mode share of transit ridership will be higher with the Green Line in place.

We did incorporate the Broadway East Somerville project that is currently in construction in No Build and Build. We did not specifically include Grounding McGrath, as we aren't studying any of the intersections in the elevated stretch of McGrath.

Given that on July 31st the City of Somerville was assured that the traffic analysis zones (TAZ) level growth data would be incorporated in Wynn Everett's future analysis and the ENF Certificate states as much, it is the City of Somerville's position that this DEIR filing fails to meet the requirements of the ENF Certificate.

- 3) The study of impacts should assume that Somerville is going to implement changes on McGrath Highway in future years including the alternative for creating a Boulevard-type road that is currently in environmental study by MassDOT, as well as current roadway improvements at Broadway that will reduce the street in East Somerville to one lane in each direction.

In the email dated December 2, 2013 to the City of Somerville from John Tocco containing Ms. Pike's responses to the City of Somerville's data incorporation in the DEIR. Ms. Pike states "We did incorporate the Broadway East Somerville project that is currently in construction in No Build and Build. We did not specifically include Grounding McGrath, as we aren't studying any of the intersections in the elevated stretch of McGrath."

The City understands that the intersections included for detailed analysis in the DEIR do not include those under the elevated section of McGrath; the McGrath corridor would qualify as part of the regional transportation network and should be included in its reduced capacity when the regional traffic demand model is run.

- 4) The City's ENF comments asked who will pay for public transportation improvements including a new commuter rail station, water transportation system, and, if necessary, access to the Orange Line and requested that cost be borne by the applicant, not the taxpayers of the Commonwealth.

The proponent must be required to demonstrate its commitment to any proposed transportation improvements, including funding. At a public meeting on February 4, 2014 in Charlestown, Chris Gordon, a representative of Wynn Everett stated that mitigation for the traffic congestion at Sullivan Square and Wellington should come from the Transportation Infrastructure and Development Fund because the development of the proposed project didn't create the traffic congestion. He further asserted that the traffic problems are an existing issue.

The intent of the Transportation Infrastructure and Development Fund is to add supplemental funds for MassDOT to implement their plans for infrastructure development across the Commonwealth. It is not funding for mitigation for increased transportation demand created by the proposed project. The proponent should be required to show its capability and commitment to fund any proposed improvements to the transportation network arising from the proposed development.



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Additionally, the ENF Certificate states "The MBTA currently operates services within walking distance of the site...the DEIR should contain an analysis of what additional demands will be generated by the project." The DEIR as filed assumes that 13% of patrons and 33% of employees will use public transportation.

This assumption was contradicted by Mr. Wynn himself. According to an article on wbur.com, Wynn told reporters: "I don't think that our people really travel on the commuter, they come by car."¹

If the assumption by Wynn Everett is that 100% of casino patrons will come by car, then there will be a resulting consequence on traffic and air quality that was not accurately represented in the DEIR and the true traffic impacts are represented in the DEIR. If it is the proponent's position that they are both not responsible for the impact of the casino development on Sullivan Square and that casino patrons will arrive by car then:

- The City contends the DEIR transportation section is invalid, as it contains an incorrect transportation mode split because 100% of patrons will be arriving by car;
- That without knowing the full impacts of this increase in patron traffic that a full understanding of possible traffic mitigation cannot be understood;
- The Air Quality assumptions in the DEIR would also be incorrect and in light of this a Health Impact Assessment seems even more important and we would again ask that the proponent be required to do so; and
- The expense of paying for the relief in transportation at Sullivan Square is that of the developer and should not be attributed to Commonwealth taxpayers or utilize the Transportation Infrastructure and Development Fund – which is intended to be a discreet funding source for MassDOT to advance transportation goals across the whole Commonwealth.

In summation, the City is not satisfied with the DEIR's presentation of current and future traffic and air quality impacts. In conditions where regional infrastructure is at capacity, and the likelihood of long term idling resulting in air quality issues, the DEIR does not fully account for the overall transportation and public health impacts on the City and the region – a region that is, and has been, a non-attainment area for air quality since the standards was set in 1990.

Air Quality

There is a clear and demonstrated relationship between increases in traffic congestion and declining air quality. Working with the Tufts School of Medicine through the Community Assessment of Freeway Exposure and Health (CAFEH) study, Somerville has been examining the negative effects on public health of human exposure to freeway automobile emissions. The study has focused on the Ten Hills and Lower Broadway neighborhoods. The increased traffic on Interstate 93 and Route 28 that will accompany the construction of the casino will result in an increase in residents' exposure to automobile emissions and a corresponding increase in asthma and other cardio-pulmonary health issue issues.

Environmental Remediation

¹ Fred Thys, "Rival Casino Developers Make Their Pitches", Online at: <http://www.wbur.org/2014/01/23/boston-casinos>. WBUR, January 23, 2013.



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Chapter 12 outlines a proposed plan for remediating the site according to a Phase III report that was filed by the LSP for the current property owner, FBT Realty, LLC. Somerville supports clean up of the site, but the MEPA process must address the interaction between remediation and the other objectives of the development plan. The Phase III indicates that the site will require an Activity and Use Limitation, on portions of the land, which could restrict certain kinds of activities including active and passive recreation opportunities. As is noted above, Somerville believes that the proposed public benefits are far from adequate to offset the major exemptions that it seeks from normal waterfront development requirements. And it may well be that even those benefits will not be fully realized, because of the nature of the remediation that is proposed. The Phase III and the DEIR indicate that in-situ Stabilization/Solidification (ISS) will be used to treat one of the most hazardous spots on the property that also abuts a portion of the river. While ISS is an accepted method for treating certain hazardous wastes, there have been concerns raised about the method as it relates to corrosion of the treated material and erosion related to water infiltration. We ask you to require the proponent to fully examine the long-term issues related to ISS and to consider alternatives to ISS for this site. In addition to its concern that the remedy chosen may limit achievement of claimed public benefits, the City's paramount concern is that the proponent be required to provide detailed information relative to hazardous waste and to demonstrate that any removal or remediation can be done in a manner that will not harm the waterway or surrounding communities over the long term. The proponent has indicated that they believe the site can achieve a long term permanent solution – it must be further demonstrated that this can be done in a safe and environmentally responsible manner.

Mitigation

As requested in your ENF Certificate, the proponent has listed a series of mitigation measures that will be part of the development. Most of these, however, are either required by the licensing process for a casino in Massachusetts or are a part of the agreement that the developer signed with Everett as a Host Community for the casino. These measures only exist because of the type of development that is occurring and not because of any environmental impacts that occur because of the project. Beyond the standard open space requirements of Chapter 91, there is very little else that could be considered environmental mitigation for a project of this size. The proponent must be required to set forth specific and detailed information on the impacts and mitigation commitments from the proposed construction and development, including mitigation which addresses all regional impacts, such as the increased transportation system demand.

Moreover, certain of the mitigation proposed for the casino project involves traffic improvements whose lawfulness is uncertain. For example:

[I]n order to accommodate both access to the Project Site and to address both current and projected future operational deficiencies at Santilli Circle, the Proponent proposed to replace the signalized rotary with a grade-separated, single-point, urban interchange. The Proponent will provide the necessary design and construction funding to complete the proposed improvements.

DEIR 4-169. But both Federal and State law require that such a project can be approved only if it is a part of the regional Long Range Transportation Plan. *See* Clean Air Act, Section 176(c), 42 U.S.C. 7506(c); 40 CFR Part 93, Subpart A; 310 CMR 60.03 ("No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP" 60.03(25). *Emphasis added.*) The Santilli Circle improvements clearly meet the definition of "regionally significant highway . . . project," and they are not a part of Boston Metropolitan Area Long Range Transportation Plan.



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Thus, even if Wynn Everett were prepared to fund these improvements itself, it is uncertain that the improvements can lawfully be undertaken and therefore that necessary project mitigation will occur or can constitute a commitment.

Waterfront Development

The City of Somerville has provided detailed comments on the impact of this proposed development on the Mystic River waterfront through our letter to you on the Everett Municipal Harbor Plan (see enclosed). Those comments are incorporated herein. It is important, however, to reiterate some of those concerns as they relate to the DEIR. A serious concern with the proposed Wynn Everett buildout is that while it may return some vacant property to active use through remediation and redevelopment, it does so by providing a significant economic benefit to the proponent, with a building height that is unprecedented outside of Boston or Springfield, with only limited benefit to the public at large. The balance between private gain and public benefit is at the core of Chapter 91. In the case of the Wynn Everett buildout the balance is heavily weighted towards private gain.

Since outside of the casino licensing process, it is the DEIR that will set the scope for any mitigation by the proponent, we are concerned that far too little benefit to the public is required in exchange for the dramatic relaxation of normally applicable standards that is being proposed.

Economic Development

As mentioned in the Transportation section of this correspondence, it is clear that Wynn Everett's failure to adequately assess the traffic impacts arising from its proposed development, especially those impacts certain to affect Somerville's carefully planned growth in areas such as Assembly Row, the Inner Belt, Brickbottom, Union Square and other sections of the City, offers the real potential of creating a chokehold on economic growth here in Somerville. The City continues to have concerns with the lack of a comprehensive analysis by the proponent of the impacts arising from an Everett casino upon Somerville's economic growth. Questions regarding the potential impacts upon Somerville's neighborhood shopping districts and restaurants and those specialty shops that make this City so unique remain unanswered. The proponent should be required to provide a complete analysis of these impacts.

Conclusion

Finally, the shortcomings in the Draft EIR are of particular concern because of the central role that the MEPA process and the Final EIR will play in the Massachusetts Gaming Commission's decision whether to issue a license for the Wynn Everett casino. The Gaming Commission's own statute makes it clear that a thorough understanding and evaluation of potential environmental impacts of the project must be a part of the decision whether to grant a license to the project, *see* M.G.L. Chapter 23K, Section 18(2), (8) and (9), or indeed to any casino in the region, *see* Chapter 23K, Section 19(a). And that is the case under MEPA as well. Environmental review for this project is not, as is "ordinarily" the case, "limited to the subject matter of required or potentially required permits;" rather, "the subject matter of the Gaming License confers broad scope jurisdiction and extends to all aspects of the project that may cause Damage to the Environment."²

For these reasons, shortcomings in the project's environmental analysis not only compromise the informing-the-public aspect of the process – itself one of MEPA's central functions; they also undermine the

² Certificate on the ENF 4.

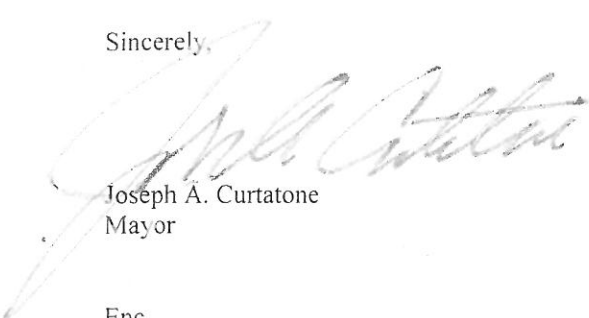


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validity of the licensing decision itself, which by statute must take into account the environmental benefits and detriments of the project.³

Thank you for the opportunity to provide comment on this proposed project. Please contact my office with any questions.

Sincerely,


Joseph A. Curtatone
Mayor

Enc.

cc: City of Somerville Board of Aldermen

³ In this connection, the Gaming Commission's recent publication of a proposed form of license is troubling. See <http://massgaming.com/news-events/requests-for-public-comments/>. If the Commission issues a license before the conclusion of the MEPA process, it will have prejudged the issues (whether to issue a license and to whom) that both its own statute and MEPA require it to consider. The Certificate on the DEIR should make it clear that the Commission may not make that judgment before the MEPA process is completed.

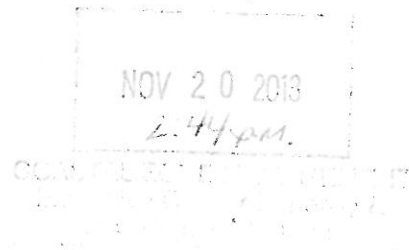


CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

November 20, 2013

VIA E-MAIL (Valerie.Gingrich@state.ma.us)
& HAND DELIVERY

Office of Coastal Zone Management
Attention: Valerie Gingrich
251 Causeway Street, Suite 800
Boston, MA 02114



Re: City of Everett Central Waterfront Municipal Harbor Plan

Dear Ms. Gingrich:

Pursuant to 301 CMR 23.00, I offer the following comments on behalf of the City of Somerville regarding the proposed Everett Central Waterfront Municipal Harbor Plan (MHP), as submitted for approval by the Secretary of the Executive Office of Energy and Environmental Affairs.

The City of Somerville, as a direct abutter to the MHP area, has a significant interest in the impacts of proposed development in the MHP area. As such, Somerville has had a representative serving on a MHP Advisory Committee during the preparation process. Notwithstanding our participation on the advisory committee, in reviewing the MHP as proposed, the City of Somerville has serious concerns with aspects of the proposed MHP.

Because of the nature and extent of the exemptions that the MHP seeks from the baseline requirements of Chapter 91, the Secretary's decision in this matter will shape the municipal harbor planning process in the Commonwealth for years to come. As is described below, the plan would permit the tallest building in Massachusetts that is not in the urban core of Boston or Springfield to be built in protected tidelands directly across the Mystic River from Somerville.

That building would be constructed under one of the two different sets of conditions that the City of Everett has proposed for the Central Waterfront – the Wynn Everett Project. The other set of conditions – the Lower Broadway Plan – would also require relief from Chapter 91's baseline requirements, but it does not require the extraordinary departure from tidelands protections that is contained in the height variance proposed for the Wynn Everett Project. The existence of these two very different proposals complicates review of the MHP. While both proposals



deserve significant review, the City of Somerville is most concerned with the impact of the Wynn Everett Project.

1) Development Context

Within the City of Somerville, significant public and private investments on the banks of the Mystic River have enhanced public facilities, upgraded open space, and met both the letter and the spirit of the modern Public Waterfront Act (MGL Chapter 91).

The most significant investment has been the Assembly Row mixed-use project, which will bring transit-centered jobs and housing to Somerville, including affordable housing units. Per Chapter 91, Assembly Row has lower building heights closer to the Mystic River and allows for higher buildings further from the water. The tallest buildings in Assembly Row reach 250 feet, in an area at least 300 feet away from the waterfront, and adjacent to the new MBTA Orange Line station.

The development at Assembly Square required no waivers from Chapter 91, and no municipal harbor plan was necessary. Nonetheless, as part of the process of developing Assembly Row, significant water-related improvements have been and will be achieved: with investment from the Assembly Row developer, the Commonwealth has restored Baxter Park along the south side of the Mystic River, is preparing for improvements to Draw 7 park and is building a new MBTA station that will bring the public to the waterfront and its parks. Currently, DCR is completing construction of a pedestrian connection under the Route 28 bridge, allowing access from the Ten Hills neighborhood and Blessing of the Bay Boathouse to the remainder of the Mystic River waterfront. The new Assembly Row project, when openings begin this May, will open the waterfront to significant public access and use while growing economic opportunities for the region.

While I recognize that each municipality must develop its own vision for its waterfront, Chapter 91's protections are intended for all of the citizens of the Commonwealth. Especially given the geographical relationship of the two cities, I would hope that review of the MHP takes into account the compliant development on the opposite bank of the river. One of the purposes of the regulations governing review and approval of municipal harbor plans is to "promote long-term, comprehensive, municipally-based planning of harbors and other waterway areas that fully incorporates state policies governing stewardship of trust lands..." 301 CMR 23.01(2)(a). In this instance, a unique aspect of this MHP is that a substantial component of the development of the harbor rests upon a particular build-out. The Wynn Everett Project is a project wholly contingent upon a decision anticipated in the immediate future as the Massachusetts Gaming Commission expects to issue a decision on a gaming license by April 2014. This plan is arguably shortsighted in seeking approval of a harbor plan intended to serve long-term planning, when one of the primary build-out scenarios may very well be moot in the near future.



I also recognize that it is not the Secretary's job, in determining whether to approve a municipal harbor plan, to pass on the appropriateness of the specific uses that will be made of the buildings constructed pursuant to the plan (except that the Secretary must ensure that public accommodation and public access requirements are met). But it is the Secretary's job to ensure that the plan meets the requirements of Chapter 91. Those requirements apply whatever use a municipality proposes to permit within protected tidelands. If a particular use is not economically feasible unless it is housed in a building that clearly does not comply with the requirements of Chapter 91, then that use cannot occur in protected tidelands.

2) Tower Height and Lot Coverage

The most significant exemptions from Chapter 91 in the MHP are exemptions from the baseline height and lot coverage requirements from the plan. Taken alone, a height waiver or a lot coverage waiver may serve to shift development capacity from one portion of a lot to another portion of a lot with the purpose of maximizing public benefit and establishing a better site plan. But the MHP seeks both waivers and, taken together, the request seeks significantly more development than would otherwise be permitted on and near tidelands.

Certainly, a height waiver is a common request within a MHP, and is often granted in exchange for adequate public benefits. In this case, the height requirement request for the Wynn Everett Project is unprecedented, and the mitigation is far from adequate. 301 CMR 23.05(c)(5) provides that, as proposed, the MHP must "specify alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access..."

The question whether the 400 foot building proposed under the Wynn Everett Project version of the MHP is "relatively modest" would benefit from some perspective. The City of Boston has 25 buildings that are taller than 400 feet. None of these buildings is within a MHP area. The closest of these buildings to the waterfront are the Harbor Towers Condominiums, which are approximately the same height as the proposed tower in Everett. The Harbor Towers were developed before the modern update of Chapter 91 that was approved in 1993. Their impact on the Boston waterfront was an important impetus for the update to the Public Waterfront Act. In addition, because they are in downtown Boston, Harbor Towers' broader context – a dense urban setting with many tall buildings – is very different from that of the proposed Wynn Everett Project, which would be, by a very substantial margin, the tallest building for miles around.

Outside of Boston, the only building in the Commonwealth taller than 400 feet is the Monarch Place office building in Springfield, which is not close to any areas protected under Chapter 91.

Therefore, this Municipal Harbor Plan is seeking to build a building that will rival the tallest waterfront structure in Massachusetts, which would almost certainly not have been permitted under the modern Public Waterfront Act and will be the tallest (or possibly second tallest)



building in the Commonwealth outside of Boston, while using the MHP process to create the greatest height exemption in the 30 year history of the modern Public Waterfront Act. This sets a dangerous precedent for our waterfront. And it is further exacerbated by the limited nature of the public amenities being proposed (see sections 3 and 4 of this letter). The massing of the building under the Wynn Everett Project build-out far exceeds that attainable under the Waterways requirements.

The MHP requests substitute provisions to open space requirements of the Waterways Regulations within the harbor planning area. The proposed offsets are uncertain at best, and fail to demonstrate the legal arrangements by which new open space would be created. The MHP's "first priority" offset is plainly contingent on the feasibility of property ownership "or other restrictions" – the nature of which must be specified. The MHP should be conditioned with a maximum lot coverage which would be permitted under both build-out scenarios and require an explanation of the arrangements and binding mechanisms by which offsets would be carried out.

Furthermore, even with the proposed height, the application is still seeking an exemption from maximum lot coverage requirements. Thus it is clear that the purpose of the tower is not to preserve open space by shifting development into a higher structure and leaving more land area open. Instead it is designed to provide significant new waterfront development capacity, which will have a visual impact on both sides of the Mystic River and in adjacent neighborhoods. This tower will be the most significant element on the horizon, visible not just from Everett, but also from the investments on the Somerville side of the river and new development and historic parkland in Medford. All of these impacts should be considered as they relate to this height exemption.

A viewshed analysis should have been conducted in order to assess how the proposed height substitution would impact the ground level environment and whether such a large structure in the case of the Wynn Everett build-out will be conducive to water-dependent activity and public access within the MHP area and adjacent river area. None of the submitted documentation comprising the MHP illustrates how public use will be impacted on both sides of the river, including existing public open space, Draw 7 Park in Somerville and Baxter State Park. Concerns with the height and orientation of this tall a building would include: a walled off effect from use of the river and lighting from the building may impact usability of the river area. Visibility concerns include areas both on the river and from across the river into Somerville. Additional comment period should be permitted to allow for public input on this analysis.

The MHP proposes no offsets relative to the height substitution sought, other than in the event of shadow adverse impacts, 310 CMR 9.51(3)(e). Even in the event of adverse shadow impacts, the offset proposed is a generic one-for-one foot of open space within the MHP area. It is not clear if the open space would be on the Development Site. The MHP should require an offset regardless of whether there are adverse shadow impacts, and further, should specifically define the nature and location of any new open space area, in light of the extensive height substitution sought.



In fact, Everett recognizes that the Wynn Everett Project is extraordinary in scale when compared to the surrounding community, and it does not propose that the level of impact that project would produce should be permitted except in the case of the particular proposal going forward. This is the reverse of the way the harbor planning process should work – beginning with a municipality's vision for its waterfront and seeking economically viable uses to conform to that vision. Of course no such process can proceed in the abstract, without regard to realistic potential projects and their economic viability. But the process for the Wynn Everett Project did not walk the line between ideal planning and economic reality: It simply started with a desired use and then sought, without much success, to make that use fit within the Chapter 91 guidelines. This turns the process on its head, and it should not be accepted.

3) Open Space and Public Facilities

To meet the public access provisions of Chapter 91, the MHP proposes to provide a number of open space improvements. These include developing and maintaining walking and cycling trails in the Water Dependent Zone and a possible amphitheater as part of the Wynn Everett Project. I believe, however, that these proposed improvements do not significantly exceed the normal conditions that the development would be subject to under Chapter 91. Since the Wynn Everett Project in the MHP exceeds the open space coverage standard by 5%, much greater enhancements to the public space obligations should be required.

Furthermore, the plan is in violation of 301 CMR 23.05 (4) which states that "The plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in the Waterways Regulations." There are two issues which must be addressed:

a) A review of the proposed Hazardous Waste Cleanup plan for the site indicates that an Activity and Use Limitation (AUL) would be required for much of the development site and that this AUL would limit including the types of active and passive recreation activities proposed in the MHP. Therefore, the proposed open space may be even less capable of delivering the public benefits referenced in the MHP; and

b) The connecting pathways depend upon an as-yet to be completed land transfer with the MBTA, a real estate transaction that must comply with applicable laws and regulations.

The MHP fails to contain an implementation program which specifies the legal and institutional arrangements necessary to effectuate the proposed open space improvements.

4) Water Based Facilities



The proposed MHP discusses the need to require that any development incorporate a public water related facility and references the Wynn Everett Project as meeting this requirement. A "nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands." 310 CMR 9.52. From a review of the MHP, however, it is my understanding that the docking facilities that would be constructed would be used almost exclusively for the private purposes of the developer, to ferry customers to and from the site. Although there would apparently be "touch and go" docking opportunities for other privately-owned boats, this seems unlikely to encourage or enhance the public's use of the local water sheet since the development is proposed as a destination-style facility not suited for typical "touch and go" uses. I encourage the Secretary to require Everett to ensure that increased docking opportunities would bring real long-term benefits to the public, in accordance with applicable regulations.

5) Dredging

Given that proponents of the proposed Wynn Everett Project build-out have indicated some level of dredging, the MHP should detail the nature and scope of any anticipated dredging within the boundaries of the MHP and demonstrate that dredging would be conducted in a manner that avoids unnecessary disturbance of submerged lands and otherwise avoids or minimizes adverse effects on water quality, physical processes, marine productivity, and public health, as provided in 310 CMR 9.40. The MHP should indicate the areas which may be impacted by dredging on maps which clearly indicate MHP boundaries and state and municipal boundaries. See 301 CMR 23.05(2)(a)(7). Further, the MHP should identify the legal and factual basis by which it has depicted the water boundary line between Everett and Somerville. See MHP, Figure 1-1.

6) Renewal Date

MHP fails to include the date on which the municipality proposes to submit the plan for renewal in accordance with 301 CMR 23.06(2).



Conclusion

For these reasons, I encourage you to reject this Municipal Harbor Plan until Everett has conducted the additional studies and analyses and addressed the substantive issues described in this letter. Any revised Central Waterfront Municipal Harbor Plan must either conform to the baseline regulations of Chapter 91 or establish a balance of development capacity with open space, public facilities and water based facilities that would establish benefits that exceed the impacts of the proposal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joe Curtatone", is written over a faint, larger version of the same signature.

Joseph A. Curtatone
Mayor