

January 22, 2020

OREM

Division of Capital Asset Management

One Ashburton Place, 15th Floor

Boston, MA 02108

Attn.: Warren A. Madden, Project Manager

RE: 57 Low Street Conveyance

Dear Mr. Madden:

This written comment elaborates upon the verbal testimony I gave at the public hearing conducted by DCAMM on the proposed conveyance of 57 Low Street to the City of Newburyport, held on January 8, 2020, in our City Hall. You had suggested I write in.

Among the purposes of Massachusetts Environmental Protection Act (MEPA) and the MEPA Regulations at 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required. (301 CMR 11.01(1)(a).) In an era when our natural environment, worldwide, is in dire crisis, the proposed transfer of 2.17 acres by the Commonwealth to the City of Newburyport has so far neglected to analyze such impacts, contrary to MEPA's command, and denying meaningful public review.

Specifically, there is a mandatory requirement to prepare and file both an Environmental Notification Form (ENF) and an Environmental Impact Report (EIR) where alteration of property to be conveyed entails a variance in accordance with the Wetlands Protection Act. (301 CMR 11.03(3)(a)(2).) Here, a professional delineation (attached) indicates that the vast majority of the land to be transferred by the Commonwealth to the City is wetland or unbuildable buffer zone, per the Wetlands Protection Act. The prospective transferee of the acreage plans to fill or otherwise encroach on these wetlands, as stated publicly by its officials, and to intensify development there.

It does not matter that the Commonwealth will not itself alter the wetland after the proposed land transfer.

In determining whether a Project is subject to MEPA jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project, including but not limited to: whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. Examples of work or activities that constitute one Project include work or activities that: ... meet or exceed one or more review thresholds on an area previously subject to a Land Transfer, provided that not more than five years have elapsed between the Land Transfer and the work or activities.

(301 CMR 11.02(2)(c) [emphasis added].)

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The same, continuous wetland is located behind the Massachusetts Military Division (National Guard) facility that will remain. MEPA imposes a legal duty to review publicly the effects of such wetlands alteration on the National Guard facility, which is listed on *Inventory of Historical and Archeological Assets* maintained by the Massachusetts Historical Commission, and on other properties, such as the River Valley Charter School, private businesses, and the City's own Department of Public Services facility nearby, before any land transfer may proceed. Yet, to my knowledge, DCAM has yet to file even an Environmental Notification Form (ENF) with the MEPA Office.

Wetlands alteration are only the trigger. MEPA jurisdiction is "broad" when a Project is undertaken by an Agency or involves Financial Assistance. (301 CMR 11.01(2)(a)(2).) Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment. (*Id.*)

The proposed land conveyance must comply with MEPA. Thank you for accepting this written elaboration on my verbal testimony, given earlier this month.

Sincerely,



Jared Eigerman
Newburyport City Council (Ward 2)

Enclosure: Wetlands Sketch Plan (Colored), June 27, 2019

cc (email): Tori Kim, Director, MEPA Office
Brona Simon, Executive Director, Massachusetts Historical Commission
Hon. Donna D. Holaday, Mayor, City of Newburyport
Hon. Heather Shand, Chair, City Council, City of Newburyport
Julia Godtfredsen, Conservation Agent, City of Newburyport