

August 2, 2004

Ms. Dineen Simpson
Docket Clerk
Massachusetts Department of Environmental Protection
Office of Adjudicatory Appeals
One Winter Street
Boston, MA 02108

Request for Adjudicatory Hearing

This is to request an adjudicatory hearing regarding Wetlands Protection Act Superseding Order of Conditions (SOC), DEP File #059-0904 for a project located at 2 Hancock Street, Quincy, MA issued on July 19, 2004 to the Conroy Development Corporation.

The original Order of Conditions for this project was issued on May 30, 2003 by the Quincy Conservation Commission. That Order was appealed to DEP by a citizen group represented by Bryan Stevens, who also represents the citizen group requesting this adjudicatory hearing. The SOC approved proposed activities that the SOC cover letter describes as “the demolition of the existing building, construction of a 10 story apartment building with 280 units over two levels of parking, 167 surface parking spaces, installation of utilities, stormwater BMP’s and landscaping (the ‘Project’).”

The SOC is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, Section 40 for the following reasons:

1. The “no adverse effect” performance standards for ACECs, which apply to all coastal areas protected under the Act, were erroneously ignored in the SOC.

The Department’s cover letter acknowledges that “the Project is located within an ACEC” and yet states only that “the project as proposed meets the performance standards pursuant to 310 CMR 10.58(5) [Riverfront Area], 10.30 [Coastal Bank] and 310 CMR 10.55 [Bordering Vegetated Wetlands].” The Department should also have applied the standards of 310 CMR 10.24(5)(b), which states:

When any portion of a designated Area of Critical Environmental Concern is determined by the issuing authority to be significant to any of the interests of M.G.L. c. 131, Section 40, any proposed project in or impacting that portion of the Area of Critical Environmental Concern shall have no adverse effect upon those interests...

According to page 2 of the SOC (Form 5), “this Department finds that the areas in which work is proposed is significant to the following interest of the Wetlands Protection Act. Check all that apply:.” The interests checked are “groundwater

supply, land containing shellfish, fisheries, storm damage prevention, prevention of pollution, protection of wildlife habitat, flood control.” Thus the correct performance standard applicable to this project, which the Department failed to address in its SOC, forbids any adverse effect on any of the aforementioned interests within the Riverfront Area and Coastal Bank [as well as in Land Under the Ocean, Land Containing Shellfish and Land Subject to Coastal Storm Flowage -- see # 3, below.] 310 CMR 10.21 states that the ACEC provisions of 310 CMR 10.24(5)(b):

apply to all work subject to M.G.L. c. 131 Section 40...which will alter... fill or remove any land subject to coastal storm flowage, coastal bank, ... or land under...the ocean...The riverfront area may overlap other coastal resource areas and the performance standards for each resource area must be met.

This project fails to meet the standard of no adverse effects on these interests (specifically land containing shellfish, fisheries, storm damage prevention, prevention of pollution, protection of wildlife habitat, and flood control) in these resource areas, due to inadequate stormwater and erosion controls, improper grading, lack of adequate natural vegetation, and the addition of more riprap to the coastal bank.

Moreover, regardless of whether or not the project is otherwise eligible to be treated as redevelopment of previously developed riverfront area under 310 CMR 10.58(5) (see # 2 below), because the project is in an ACEC and thus subject to a “no adverse effects” standard of 310 CMR 10.24(5)(b), at a minimum the “no significant adverse impact” standard for riverfront areas (10.58(4)(d), which does not normally apply to riverfront redevelopment projects) does apply in this case. 310 CMR 10.58(4)(d) requires, among other things:

1.a. At a minimum a 100 foot wide area of undisturbed vegetation is provided. This area shall extend from mean annual high-water along the river unless another location would better protect the interests identified in M.G.L. c. 131 Section 40. If there is not a 100 foot wide area of undisturbed vegetation within the riverfront area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a 100 foot wide corridor of natural vegetation...Proposed work which does not meet the requirement of 310 CMR 10.58(4)(d)1.a.. may be allowed only if an applicant demonstrates by a preponderance of evidence from a competent source that an area of undisturbed vegetation with an overall average width of 100 feet will provide equivalent protection of the riverfront area, or that a partial rebuttal of presumptions of significance is sufficient to justify a lesser area of undisturbed vegetation(.

This standard is clearly not met by this project. Although appellants have no objection to a properly constructed walkway within the inner 100 feet of the riverfront area, we do believe that an area of natural vegetation with an overall average width of 100 feet is needed to meet the requirements of the Wetlands Regulations and to protect the interests of the Act.

2. The project fails to meet the standards of 310 CMR 10.58(5) for redevelopment projects within previously developed Riverfront Areas because the Superseding Order of Conditions contains no special conditions guaranteeing the full implementation or the maintenance of the “improvements” which the project allegedly provides over existing site conditions.

The Department’s cover letter erroneously claims that the project meets the “improved conditions” requirement of 310 CMR 10.58(5) in part because it will “replace the paved and gravel parking areas, located along the perimeter of the shoreline, with a landscaped walkway (which is) open to the public and can be accessed from Commander Shea Boulevard and Hancock Street.” This statement is not supported in the SOC or accompanying plans. There is no enforceable written commitment to or requirement for public access on the site. Nor is there an enforceable written commitment to or a requirement for the *permittee* to build the portion of the plan referred to as “Proposed 6 ft. wide stone dust walk for 750 more or less L.F. to existing walk at Commander Shea Boulevard. Route of Walk to follow existing gravel drive,” which is located on abutting land; there is also no evidence of permission to build from abutting property owners.

Indeed, neither the SOC nor any other state permit, license, or document requires the applicant to carry out any of the applicant’s commitments that were reflected in the Secretary of Environmental Affairs’ ENF Certification of this project. Secretary Hertzfelder stated in her June 14, 2004 Certification:

The proponent has committed to provide public access along the Neponset River (an easement) and to integrate its property into the Neponset River Watershed Association’s proposed riverwalk...On May 28, 2004, the proponent committed to continue its construction of the walkway under the Red Line Bridge and across DCR land to Commander Shea Boulevard. The proponent has also agreed to continue its walkway under the Neponset River Bridge to the Adams Inn Property and the existing DCR Trail.

Finally, the SOC does not require the applicant to maintain the area so that it does not revert to its current degraded condition. The proposed walkway is to be constructed of “stone dust”, according to the plan, which can simply be laid on top of the gravel that now covers the portion of the site where the walkway is to be built. In addition to the potential of stone dust to erode into and pollute the adjacent waterway, if the area is not properly maintained it will simply return over time to its previous degraded state.

Indeed, the maintenance and expansion of unsightly concrete riprap, the lack of benches or other amenities, the lack of access to the Neponset River, and the degradation of sight lines occasioned by raising the elevation of an area bordered by two bridges, do not appear to be designed to attract residents of the proposed apartment building, much less the general public, to the waterfront. Rather, this project appears to be simply a cheap and quick way of cosmetically “improving” the site for a short while so that the property can be developed under the “degraded areas” provision of the Riverfront Area regulations.

Without written, enforceable requirements for the applicant to meet its commitments under the ENF or to take responsibility for maintaining the alleged “improvements” it is making, we believe that this project is not eligible for permitting under the provisions of 310 CMR 10.58(5).

3. Performance standards for Land Under the Ocean, Land Containing Shellfish, and Land Subject to Coastal Storm Flowage were erroneously ignored in the SOC.

According to the Department’s SOC cover letter, “The... project site contains the following Areas Subject to Protection of the Act: Land Subject to Coastal Storm Flowage (LSCSF), Riverfront Area (RA), Coastal Bank...” However on p. 3 of Form 5, Land Under the Ocean and Land Containing Shellfish are both checked under the title, “Coastal Resource Area Impacts: Check all that apply below.” The SOC cover letter also states that the project “will discharge to a critical area (shellfish beds).” According to the 310 CMR 10.34(2) definition of land containing shellfish, such areas do not exist on Coastal Bank, Riverfront Area or LSCSF, but only on “land under the ocean, tidal flats, rocky intertidal shores, salt marshes and land under salt ponds.” In this case, the appropriate resource area appears to be land under the ocean. Thus performance standards for land under the ocean and land containing shellfish, including the ACEC standard of “no adverse effects” discussed in #1, above, should apply to this project but were not addressed by DEP in the SOC.

The DEP cover letter for this project also states: “No performance standards exist under the Wetland Protection Act for Land Subject to Coastal Storm Flowage.” This statement is incorrect. As noted in #1, above, the ACEC “no adverse effect” performance standard does apply to LSCSF. (310 CMR 10.21)

Relief sought and changes desired in the Superseding Order:

The Final Order of Conditions should be amended to:

1. contain requirements that a public access easement be placed on the property deed;
2. contain requirements that the public access area be properly maintained in perpetuity by the permittee or its successor;

3. contain requirements that the permittee build and maintain the walkway both under the Red Line Bridge to Commander Shea Boulevard and under the Neponset River Bridge to the Adams Inn property and the existing DCR Trail;
4. require conversion of the 41 parking spaces closest to the Neponset River to landscaping, in accordance with the Alternate Parking Layout Plan for Two Hancock Street, Quincy, MA dated 3/20/04 and prepared by H.W. Moore Associates, Inc., Boston, MA;
5. require construction of the public walkway with non-erodible materials to create a semi-permeable surface;
6. require the use of native species of vegetation with maximal erosion control characteristics within the riverfront area at an average width of 100 feet from the top of the bank;
7. require creation of a naturally vegetated buffer along the shore of the River (at the bottom of the bank) to protect the riparian ecosystem including water quality, fish, shellfish, and wildlife habitat;
8. require that current elevations within the public access area be maintained;
9. require that bioengineered solutions be substituted for the proposed addition of more riprap; and
10. require that existing riprap be removed and/or that other bioengineered techniques be used to improve wildlife habitat and erosion control on the bank.

A copy of this request has been sent by certified mail on August 2, 2004 to the Quincy Conservation Commission and to the Conroy Development Corporation (see addresses and phone numbers in "cc" list, below.)

Respectfully submitted by:

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These citizens are represented by Bryan Stevens, Attorney at Law, Suite 301, 1372
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Attachment (copy of Fee Transmittal Form and check)

cc: Conroy Development Corporation c/o. H.W. Moore Associates, Inc., 112
Shawmut Avenue, Boston, MA 02118, Attn: Frederick Keylor (617 357-
8145)
Quincy Conservation Commission, City Hall, Quincy, MA 02169 (617 376-1367)
Jill Provencal, MA DEP, One Winter St., Boston, MA 02108 (617 654-6537)