

14 July 2008

Senator Pam Resor
Representative Frank Smizik
Chairpersons, Joint Committee on Environment,
Natural Resources and Agriculture
State House
Boston, MA 02133

RE: HB 4861- Mystic River Designated Port
Area (DPA), Charlestown Shore

Dear Chairwoman Resor and Chairman Smizik:

The Boston Harbor Association, a non-profit, public interest organization founded in 1973 by the League of Women Voters and the Boston Shipping Association to promote a clean, alive, and accessible Boston Harbor, appreciated the opportunity to testify before your committee on 10 July 2008, regarding Bill No. HB 4861.

The Boston Harbor Association was an active participant in the boundary review of the Charlestown shore of the Mystic River DPA beginning in 2002 when the MA Office of Coastal Zone Management began its review. A number of public meetings were held at which we participated, and we submitted comment letters during the public participation process. After weighing all comments, the MA Office of Coastal Zone Management issued its designation decision for the Mystic River Designated Port Area, Charlestown Shore, on 16 December 2002.

Bill No. HB 4861 proposes to remove the Schrafft Center at 529 Main Street, Charlestown, and 465 Medford Street, Charlestown, from the Mystic River Designated Port Area (DPA), Charlestown Shore. In addition, the proposed legislation would exempt both properties from having to seek a Chapter 91 license for any construction, reconstruction, renovation, use, or re-use of any building or structure on each of the properties.

As stated at last week's hearing, The Boston Harbor Association is opposed to the bill as written, and urges its modification for the following reasons:

Schraffts Center- the MA Office of Coastal Zone Management approved in its 16 December 2002 Designation Decision the removal of the Schraffts Center from the Designated Port Area, effective immediately. While there was subsequent litigation regarding other aspects of CZM's decision, removal of the Schraffts Center from the DPA was never challenged, and the property is currently outside of the Designated Port Area.

It is confusing and unnecessary to include the Schraffts Center in the provision regarding the removal of the parcel from the Designated Port Area, since the parcel has not been part of the DPA for several years now.

465 Medford Street- the 16 December 2002 Designation Decision by the MA Office of Coastal Zone Management approved the exclusion of 465

Medford Street from the DPA, subject to efforts to support a major improvement in transportation infrastructure to facilitate truck access and improve the quality of life for the neighborhood which abuts the DPA. During the 2002 DPA boundary review, there was considerable discussion about the need to protect existing and future maritime industrial uses and users in the Mystic River DPA including such significant maritime industrial users as Boston Autoport, U.S. Gypsum, and LaFarge Cement, while improving conditions for local residents.

Consistent with the public discussions regarding DPA de-designation of the 465 Medford Street site, the MA Seaport Advisory Council and the MA Executive Office of Environmental Affairs in late 2002 provided the Massachusetts Port Authority with \$4.2 million to purchase the 1.4 mile Mystic Wharf Branch running from the MBTA's tracks north of North Station to a dedicated right-of-way running between various waterfront businesses and Medford Street. By purchasing the Mystic Wharf Branch from B&M, Massport was able to preserve the rail right-of-way for potential future rail service to the Port of Boston.

We strongly urge that the language governing 465 Medford Street in this bill be re-written to incorporate the thoughtfully-developed Designation Decision which balanced input from the property owner, Boston Redevelopment Authority, Massachusetts Port Authority, residents, commercial abutters, harbor advocates, and others.

Page 6 of the Designation Decision reads as follows: "For the properties at 465 Medford Street and the Nancy Sales Building, this designation decision hereby modifies the recommendations of the boundary report in two ways. First, both the Memorandum of Understanding and the contract to study and design the transportation corridor need to include a provision requiring that, if necessary, an Environmental Notification Form (ENF) is filed with MEPA subsequent to the feasibility study (NOTE: refers to a feasibility study for an industrial transportation corridor for truck and rail service into and out of the DPA generally along the route of the existing Mystic Wharf Branch rail line) but prior to development of the final design. The cost of the ENF shall be included in the feasibility and design work to be underwritten by the owners of the Flatley and Nancy Sales Properties. The cost of materials developed for MEPA review subsequent to the MEPA certificate on the ENF, if any, shall be the responsibility of the project proponent. The intent of this requirement is to ensure that analysis and design of the transportation corridor is undertaken in the context of applicable review and permitting requirements".

Specifically, we ask that the conditions cited below from the Coastal Zone Management Program's Designation Decision which addresses the concerns of abutters, residents, commercial interests, city and state agencies, and harbor advocates, be incorporated into a revised provision of HB 4861:

"Given the foregoing, and pursuant to 301 CMR 25.03(5) and as described in the boundary report, I determine that the DPA boundary shall be redrawn as illustrated at Figure 10 of the report (attached) to exclude the Flatley property at 465 Medford Street at the time the agreement with the Executive Office of Transportation and Construction or its designee has been executed; after financing for the engineering studies and MEPA review is placed in escrow and a notice to proceed issued to an engineering firm to study and design the corridor; after execution of a deed restriction prohibiting future residential development of the property; after a formal acknowledgement that portions of land outside the existing railroad right-of-way will be made available for the transportation corridor has been received; and after the MOU described in the boundary report has been executed" (page 7 of 16 December 2002 Designation Decision).

Chapter 91 Exemptions- The Boston Harbor Association strongly opposes any Chapter 91 exemption for these sites. As the Committee is well aware from the deliberations during review of the land-locked tidelands legislation last year, there is very little consensus for exemptions or changes to the Chapter 91 law at this time.

During the past five years of review of Charlestown's waterfront, there has not been any public discussion of Chapter 91 exemption for these or any other Charlestown properties. If this provision of the bill is approved, it will established an extremely unfortunate precedent, and

could potentially mean that all properties along Boston's waterfront would be seeking similar Chapter 91 exemptions, thereby seriously undermining any additional public access, water-dependent uses, or public amenities such as open spaces for the general public. We ask that the section of the bill regarding Chapter 91 exemptions be deleted in its entirety.

Thank you for the opportunity to testify before you and to submit written comments. Please contact us at 617-482-1722 if you have any question.

Sincerely,

Vivien Li
Executive Director
The Boston Harbor Association