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WENDY B. JACOBS

December 14, 1990

HAND DELIVERED


Robert W. Healy, City Manager
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: **SIP Amendment/Parking Management Ordinance**

Dear Bob:

Enclosed are a graphic and written description of the public participation process to be undertaken in connection with development of a SIP amendment and parking management ordinance for Cambridge.

Very truly yours,


Wendy B. Jacobs

WBJ:cmh
Enclosures

RECEIVED
90 DEC 15 PM 3:30
OFFICE OF THE CITY MANAGER

**COMMUNITY PARTICIPATION IN THE
DEVELOPMENT OF A SIP AMENDMENT
AND PARKING MANAGEMENT ORDINANCE**

RECEIVED

90 DEC 15 PM 3:30

OFFICE OF THE CITY MANAGER

The goals of the Cambridge community participation process are twofold: (1) to insure adequate public input before the SIP Amendment proposal and parking management ordinance are drafted; and (2) to establish mechanisms to keep the Cambridge community informed about the development of the SIP amendment and ordinance.

THE COMMUNITY PARTICIPATION PROCESS

The community participation process will begin toward the end of December, 1990 with press releases and notices publicizing the commencement of the public participation process. Public participation will be implemented at two levels. At one level, there will be meetings open to the Cambridge community at large. There will also be formed a smaller working group of approximately 14 people who are representative of the residents, businesses, and institutions of Cambridge. The working group will act in an advisory capacity, reviewing and commenting on proposed parking management strategies for Cambridge. The community-wide meetings and the working group meetings will all be chaired by a facilitator to be appointed by the City Manager. The process and timetables are outlined below.

COMMUNITY-WIDE MEETINGS

Week of:

1/14/91 **First Meeting**

Location: To be determined by City Manager or Facilitator.

Time: Weekday evenings beginning 7:00 or 7:30 p.m.

Format of Meeting:

- City Manager introduces Facilitator who will then run the meeting.
- Facilitator will provide an overview of the background and development of the SIP amendment.
- Facilitator will describe the community participation process and provide information about the community-wide meetings, formation of the working committee, and the technical issues meeting.
- Facilitator will moderate questions from the attendees and distribute outline of potential SIP Amendment and parking management options, which will be discussed at the second community meeting.

Content of the Facilitator's Presentation:

- Facilitator will stress that throughout the process it will be important to balance different objectives and community interests.
- Facilitator will explain the history and background of the Memorandum of Agreement, the Ordinance (November 1990), the proposed SIP Amendment and parking management ordinance.
- Facilitator will describe the purpose of the three community-wide meetings.
 - **First meeting** - informational;
 - **Second meeting** - workshop format for community input;
 - **Third meeting** - report from working committee and comments from community.
- Facilitator will describe how to volunteer to participate in the working committee and explain:

- Role/function of working committee, size of committee, types of representation on the committee, how often committee will meet (4-7 meetings) and what committee will discuss;
- Volunteers for committee must submit name, address, phone and representational interest, if any, to the City Manager by January 18, 1991.
- Working committee meetings will be open for public observation, but not direct participation. Comments and questions¹ must be submitted in writing prior to meeting.¹ Facilitator will review questions and select appropriate time for committee consideration.
- Facilitator will explain how technical issues will be addressed. One or two meetings will be held with the Working Committee, Cambridge Systematics, Inc. ("CSI") (technical experts advising the City's legal counsel) and Cambridge individuals who have expertise in air quality or transportation planning.
- Technical comments and questions must be submitted in writing to the Facilitator² no later than February 1, 1990.

Week of:

1/28/91 **Second Community-Wide Meeting**

Location: To be determined by Facilitator.

Time: Weekday evening beginning 7:00 or 7:30 p.m.

Format of Meeting: Workshop format.

- Summarize first meeting.
- Announce membership of Working Committee.

¹ Specific comments and questions from the general public must be submitted in writing to the Facilitator, c/o City Manager's Office, City Hall, Cambridge, MA 02139.

² Technical comments should be addressed to the Facilitator, c/o City Manager's Office, City Hall, Cambridge, MA 02139.

- Discuss any developments to date.
- Workshop (see below).
- Summarize discussion of each workshop group (see below).
- Transmit all comments/suggestions, from workshops to CSI. Announce that CSI will review these.
- Announce date of technical meeting and procedure and deadline for submitting comments and questions.
- Announce that date and time for third community meeting will be published.

Workshops: The workshops will be designed to give the community participants an opportunity to express their views and submit their comments for consideration. The participants will be divided into groups of 10-15 people. Within these smaller groups more people have the opportunity to speak and have a greater opportunity for direct involvement.

- Each group of 10-15 people will be moderated by a City staff person or CSI person.
- Each participant is given the outline of potential parking management options. Each group should be supplied with a map of Cambridge and large sheets of chart paper.
- Each group moderator will ask the group members to identify the issues and problems they would like to see answered by the SIP amendment. The moderator will record each comment on the chart paper. Forty-five minutes will be allowed for this discussion.
- Each group moderator will summarize and report its group's comments to the group at large.
- The charts will be collected and transmitted to CSI for its review.

Week of:

3/4/90

Third Community-Wide Meeting

Location: To be determined by the Facilitator.

Time: Weekday evening beginning 7:00 or 7:30 p.m.

Format: Presentation by Facilitator, Working Committee and CSI.

Content: The content of this meeting will reflect the outcome of the Working Committee meetings. The meeting will be held after the last meeting of the Working Committee and will be a forum for the Committee to report back to the community at large. The facilitator and CSI will also provide an update of the progress since the last meeting.

WORKING COMMITTEE

Week of:

1/18/91 **Nominations:** January 18 is the deadline for nominations to participate on the Working Committee. All nominations must be sent, in writing, to the City Manager and must include name, address, telephone and representational interest, if any.

Size of committee: Committee must be of a workable size that will facilitate communication. The committee will be comprised of approximately 14 people.

1/25 **Designation of committee:** City Manager will designate members of the Committee by January 25.

- Committee will be evenly split between business/institutions and residents.

1. Potential business/institution representatives:

- Hotels;
- Small retail/business;
- Mid-size retail/business;
- Large business (250 plus employees);
- Developer;
- Institutions - hospitals, etc.; and
- Parking garage owners.

2. Residents should represent different neighborhoods of the City.

1/28-3/4 **Committee Meetings:** The Working Committee will meet 4-7 times beginning the week of January 28 and completing its work by March 4.

- At least one representative from CSI and/or the City's Community Development staff will attend each meeting of the Working Committee. This will insure that the City and CSI are informed of the ideas and concerns of the Committee.
- The facilitator will coordinate the meetings and set the agenda. The content of the meetings will largely be determined by the Committee and the Facilitator. The Facilitator will insure that the Committee addresses the specific concerns of the individual Committee members and that the Committee deals with any conflicts between residents and the business sector.

- Meetings will be open for the public to observe. Specific comments and questions from the general public must be submitted in writing to the Facilitator, c/o City Manager, City Hall, Cambridge, MA 02139. This will enable the Facilitator to review the questions prior to the meeting and raise them for discussion at an appropriate time. The Facilitator will have the discretion to review several similar questions together during one discussion on the topic.
- One person will be designated to act as secretary to record, prepare and distribute minutes of the meeting.

Week of:

2/11

Meeting on Technical Issues: The Working Committee will hold a special meeting the week of February 11 to address technical issues. A second meeting will be scheduled, if necessary.

- Participants - members of the working committee, CSI, and representatives of the Cambridge community who have expertise in transportation planning or air quality.
- Comments and questions any participant would like to raise at the meeting must be submitted in writing to the Facilitator, c/o City Manager, City Hall, Cambridge, MA 02139, no later than February 1.

3/1

Working Committee Report: The Working committee will prepare a written statement describing areas of consensus and disagreement and describing its recommendations and comments on the outline of SIP amendment and parking management options. This report must be submitted to the City Manager and CSI no later than March 5.

**PUBLIC REVIEW OF DRAFT ORDINANCE/
DRAFT SIP AMENDMENT**

Week of:

- 3/15/90 **Draft Ordinance/Draft SIP Amendment Due:** Copies will be distributed to each member of the Working Committee. Interested members of the Cambridge community may obtain a copy from the City Manager's office.
- 3/15-3/29 **Public Comments:** Public comments must be submitted in writing to the City Manager no later than March 29, 1991.
- 3/29-5/6 **Draft Revisions:** CSI will review all comments and make appropriate revisions.
- 5/6 **Final Package:** The final package containing the ordinance/SIP amendment will be submitted to the City Council no later than May 6, 1991.

PRESS RELEASES AND PUBLIC NOTICES

Week of:

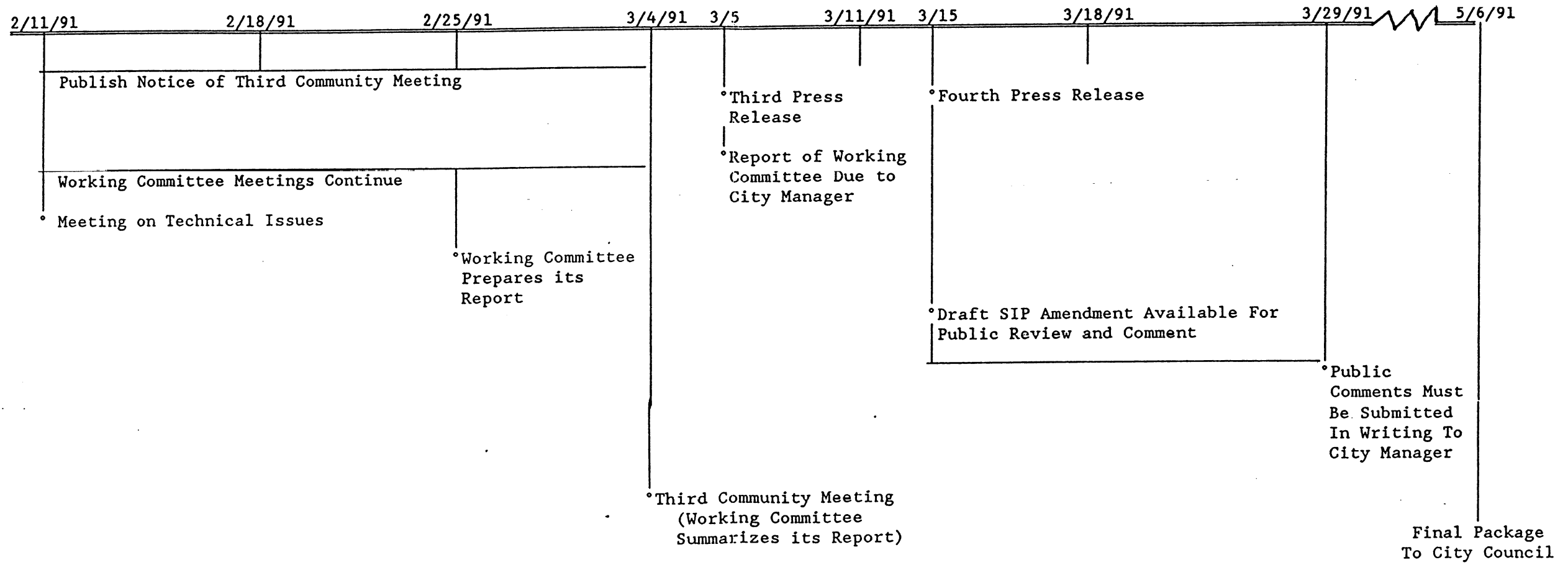
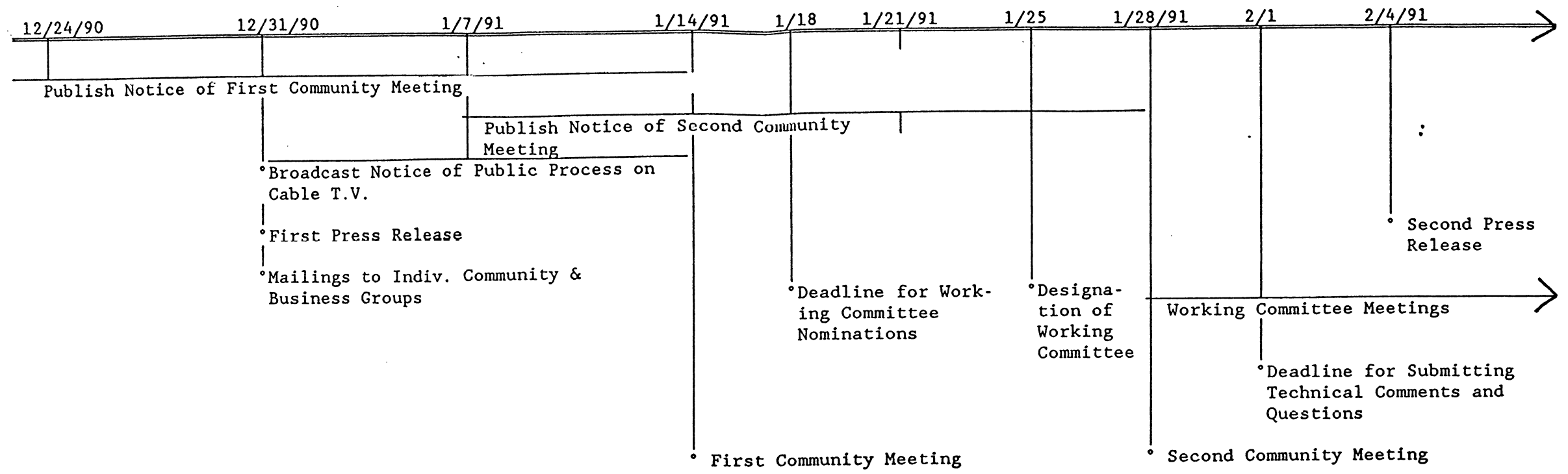
- 12/24/90 -2/25/91 **Notice of Meeting:** Notice of the three community meetings will be printed in local newspapers (Tab, Chronicle) during each of the three weeks prior to each community-wide meeting. Notices will announce:
- Date, time and place of each community-wide meeting;
 - Formation of working committee - notice will identify types of interests to be represented and advise interested persons to send their name, address, phone and representational interest, if any, to City Manager by Friday, January 18, 1991.
 - Date, time, place of technical issues meeting and procedure and deadline for submitting comments and questions.
- 12/31/90 **First Press Release:** Press release should be sent to the Tab and Chronicle. It should contain the following information:
- Brief description of events leading up to parking management ordinance, including Memorandum of Agreement, Ordinance (November 26, 1990);
 - Brief description of the public participation process;
 - Date, time and place of each of the first two community-wide meetings;
 - Formation of working committee, categories of representational interest, deadline and procedure for nominations.
- 12/31/90 **Mailings to individual community and business groups:** Notices should contain the same information provided in the press release. The Community Development Department will send this mailing to neighborhood and business groups in the City.
- 12/31/90 -1/7/91 **Cable Television:** Broadcast announcement of community-wide meeting and public participation process. Broadcast should include the same information provided in the press release.

Additional Press Releases: At least four press releases will be issued during the process of developing the ordinance/SIP amendments.

1. Prior to first community meeting (see above, First Press Release);
2. After second community meeting - this press release will summarize the meeting, briefly describe the proposed ordinance/SIP amendment and the public participation process;
3. After third community meeting - this press release will summarize the report of the working committee and progress to date on the draft ordinance/SIP amendment;
4. Notice of availability of draft and deadline for submitting comments.

* * * * *

COMMUNITY PARTICIPATION IN DEVELOPMENT OF A SIP AMENDMENT



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DANI LINN WOODS
MARK H. HOLLY
ESTHER C. BERGLAS
DENISE M. LEYDON

December 14, 1990

TO: Robert W. Healy, City Manager
FROM: Ned Lawson *NL*
SUBJECT: Possible legal bases for challenging Scheme Z

At the suggestion of Liz Epstein, I am writing this memorandum to outline in a preliminary way possible legal bases for challenging the Scheme Z alternative for the Central Artery project. What follows is based only upon what I have read about the project in the newspapers and my general knowledge of federal and state environmental laws. The memorandum will also note the need for any actions by Cambridge in the immediate future.

A. Section 4(f) of the Department of Transportation Act, 49 U.S.C. §303. Section 4(f) establishes as federal policy that a "special effort" shall be made to protect public parks and recreation lands and historic sites. The statute precludes the Federal Highway Administration (FHWA) from funding any project requiring the use of a publicly owned park or recreation area "of national, state or local significance" or historic site unless:

(1) There is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area... or historic site resulting from the use.

Application of this statute to Scheme Z raises a number of issues:

1. What publicly owned park or recreation areas will be used?
2. Are those areas of local, state or national significance as determined by the officials having jurisdiction over the areas?
3. What historic sites will be used?
4. Are there alternatives to Scheme Z which are "prudent

- and feasible" in terms of engineering, highway safety and economics?
5. If use of protected areas is unavoidable, has "all possible" mitigation been included?

The key issue here will be establishing that alternatives to Scheme Z are feasible and prudent. This will require consideration of engineering and cost issues.

B. The National Environmental Policy Act (NEPA), 42 U.S.C. §4331. NEPA is the federal statute which requires federal agencies contemplating actions which will have significant environmental impacts to prepare an EIS before acting. An EIS is intended to provide federal decision makers with information concerning the effects of the proposed action and alternatives to that action. NEPA is entirely procedural and may not be used substantively. That is, NEPA requires only that its procedures be followed and does not require that decisions be pro-environment.

A special section of NEPA allows FHWA to delegate preparation of the Central Artery EIS to Mass. DPW. Therefore, the EIR prepared by the state will also serve as an EIS. However, the fact that preparation of the EIR/EIS has been delegated does not change the requirements of NEPA, and FHWA must independently review the EIR and adopt the document as its own.

It will be important for Cambridge to provide FHWA with comments concerning NEPA deficiencies. FHWA is required to provide 30 days notice of publication of a Final EIS (i.e., of adoption of the Final EIR) before adopting a Record of Decision. Comments may be provided during this 30 day period. My sense is that FHWA is presently not rushing towards a decision on the Final EIS. Accordingly, there is time to provide comments to FHWA prior to a decision on adoption of the Final EIR.

The following are possible issues to be raised under NEPA:

1. Failure to consider significant new information concerning alternatives to Scheme Z.
2. Consideration of alternatives by Mass. DPW outside of the NEPA process.
3. Inadequate consideration of impacts (i.e. section 4(f) issues, wetlands impacts, traffic, etc.)
4. Inadequate consideration of mitigation.
5. Improper consideration of comments on Draft EIS.
6. Inadequate or unbalanced consideration of alternatives.

C. The Massachusetts Environmental Policy Act (MEPA), G.L. c. 30, §61. MEPA requirements generally parallel those of NEPA. The statute is administered by EOEA under a set of state regulations. One of the major problems with MEPA is that the

statute has been interpreted by the Supreme Judicial Court such that it is difficult, if not impossible, to obtain judicial review of decisions by the Secretary of EOEPA under MEPA. One other difficulty with MEPA is that only a few cases have been decided under the statute. However, because MEPA is based upon the same principles as NEPA, NEPA caselaw is useful.

The issues discussed above in the context of NEPA are relevant to MEPA. However, the timing is different. The Final Supplemental EIR for the Central Artery project is currently under review at EOEPA. Comments are due by December 26, 1990. It will be essential for Cambridge to provide comments by that date as a final decision under MEPA is expected by January 2, 1990. In addition, because the MEPA regulations preclude raising issues in litigation which could have been, but were not, raised during the MEPA process, the City's comments must be thorough.

D. Wetlands Protection Act, G.L. c. 130, §40. This state law requires Mass. DPW to obtain an Order of Conditions from the Cambridge Conservation Commission before it may alter any wetland resources. One of the advantages of the Act is that it is the only state law which provides local governments with regulatory authority over state agencies. However, the law allows any local decision to be reviewed and altered by DEP and also allows the Commissioner of DEP to waive regulatory requirements because of an overriding public interest if "there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the regulations."

I will not comment on the specific issues which the Conservation Commission will review under the Act because I am sure that the Commission is well aware of the issues.

E. Chapter 91. General Law c. 91, §14, requires a license from DEP for the construction of a bridge over tidal waters or filling of tidal waters. Section 14 also prohibits the construction of a bridge across a river if an objection is made by the town where the bridge is to be built unless the proposed bridge is to be located above an existing bridge or dam. This provision appears to be inapplicable to Scheme Z because the proposed Charles River crossing is above the new MDC dam.

Section 14 also requires that structures and fill serve a "water dependent purpose". DEP recently promulgated a lengthy set of regulations implementing c. 91. These regulations allow DEP to find that a road crossing is water dependent only if the Secretary of EOEPA:

[H]as determined that such facility cannot reasonably be located or operated away from tidal or inland waters, based on a comprehensive analysis of alternatives and

other information analyzing measures that can be taken to avoid or minimize adverse impacts on the environment, in accordance with MEPA.

The Final Supplemental EIR should be reviewed carefully to determine whether the analysis of alternatives which would not require filling has been satisfied.

F. General Bridge Act, 33 U.S.C. §525. This federal law provides generic Congressional consent to the construction of bridges across navigable waters. The statute requires approval by the Secretary of Transportation, who has delegated the permitting process to the Coast Guard. The Coast Guard's area of concern is navigation. Schema Z should be reviewed in the context of Coast Guard regulations to determine whether the project's impact on navigation is acceptable.

G. Section 404 of the Clean Water Act, 33 U.S.C. §1344. Section 404 requires a permit from the Corps of Engineers before fill may be placed in navigable waters of the United States. Corps permits are governed by both Corps regulations and EPA "guidelines", which are regulations. EPA's guidelines preclude the issuance of a permit for filling if "practicable alternatives" exist. For projects which are not water dependent, such alternatives are presumed not to exist.

The EIR should be reviewed in light of the requirements of section 404. Consideration should be given to providing comments to the Corps on any permit application. In addition, consideration should be given to seeking an EPA veto of any Corps permit as is authorized by section 404.

H. National Historic Preservation Act, 16 U.S.C. §470f. The National Historic Preservation Act requires federal agencies to consider the impact of their actions on districts, sites and buildings which are included in the National Register. The program is administered under regulations promulgated by the Advisory Council on Historic Preservation (ACHP). The regulations require consultation between ACHP, the Massachusetts Historical Commission and the federal agency to consider whether there are "prudent and feasible" alternatives to the project. The Act is generally procedural rather than substantive and is aimed at mitigating impacts rather than forcing alternatives which avoid impacts.

The EIR should be reviewed in the context of the ACHP regulations to determine whether and how alternatives and mitigation have been considered. Particular attention should be given to the visual and aesthetic impacts of Scheme Z.

DRAFT

December 17, 1990

John P. DeVillars, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Cambridge, MA 02108

Re: EOEA No. 7701
New Boston Garden

Dear Secretary DeVillars:

On behalf of the City of Cambridge, I am writing to ask that any decision by your office with respect to the New Boston Garden project not limit or in any way control options with respect to the Central Artery project.

Cambridge has reviewed the Draft Record of Decision which was published in the Environmental Monitor on November 7, 1990. That decision proposes to waive the requirements of MEPA with respect to the new arena and allow that part of the project to proceed prior to the FEIR. While Cambridge has no objection to the waiver per se, the waiver must be conditioned so that construction of the arena does not preclude alternatives to the "preferred" alternative for the Central Artery, Scheme Z Modified.

The bases for the City's concern are twofold. First, the DEIR for the New Boston Garden assumes that the location of the Central Artery will be as per the Massachusetts DPW preferred alternative. As a result, the DEIR failed to consider the relationship between the arena and alternative artery designs. Second, alternatives to Scheme Z Modified could require relocating the artery beneath the northeastern edge of the proposed arena. Any such relocation of the artery would require redesign of the foundation for the arena.

Cambridge believes that in light of the substantial public opposition to Scheme Z Modified, it is essential that the proponents of the new arena understand that their design may have to be modified in order to accommodate relocation of the Central Artery. There is no reason why a private development, such as the New Boston Garden, should dictate the terms of a massive publicly funded project, such as the Central Artery. In short, the proponents of the new arena must be required to assume the risks which exist because the location of the Central Artery is not yet final.

You should note that this is not the first time that this issue has been raised. In a memorandum to MEPA dated May 18, 1989, the Division of Wetlands and Waterways Regulations (DWWR) commented on the ENF for the new Boston Garden project. The memorandum noted DWWR's preference for a tunnel beneath the Charles River and questioned the impact of the new arena on that alternative:

[H]ow would the northeasterly corner of the pile foundation for the new arena be affected by the Central Artery tunnel designs of Family E? Could the foundation pilings be realigned if a tunnel design was determined to be the preferred alternative?

Similarly, the MDC's comments on the ENF for the New Boston Garden included the following:

TRAFFIC- The ENF does not adequately address the impact of the underground garage on the design of the Central Artery. It appears that if the garage is built as planned, the "E Family" of options for the Artery (e.g., tunnel connections from Leverett Circle to City Square and the Southbound Artery) will be precluded. That is, there will be no real alternative to Scheme Z for the Artery. The MDC requests that the EIR be prepared in such a way as to factor in impacts from the Artery since each project is dependent on the other.

The DEIR fails to consider this issue.

This request is consistent with the MEPA regulations. 301 CMR 11.18 (2)(d) requires that any waiver be conditioned such that "The waiver will bring about environmental benefits in excess of those that could be achieved in the absence of the waiver." Conditioning the waiver for the new arena so that the project does not preclude changes to the Central Artery which enhance the environment is necessary to achieve this purpose.

For these reasons the following finding should be added to those set forth in the Draft Record of Decision:

9. The DEIR assumes that it will not interfere with the construction of the Central Artery project. However, the state and federal reviews of that project have not been completed. Therefore, this waiver is conditioned upon the proponent's understanding that changes to the Central Artery project could require altering the design of the new arena to accommodate the Central Artery project.

On behalf of the city of Cambridge, I thank you for considering these points.

Sincerely,

E2526

the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

31a. Q. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6, 1507.1, and 1507.3.

31b. Q. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. Q. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the

criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

33a. Q. When must a referral of an interagency disagreement be made to the Council?

A. The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

33b. Q. May a referral be made after this issuance of a Record of Decision?

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

34a. Q. Must Records of Decision (RODs) be made public? How should they be made available?

A. Under the regulations, agencies must prepare a "concise public record of decision" which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1506.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1505.6(b). However, there is no specific requirement for publication of

the ROD itself, either in the Federal Register or elsewhere.

34b. Q. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

34c. Q. What provisions should Records of Decision contain pertaining to mitigation and monitoring?

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3 (a), (b). If the proposal is to be carried out by the

Agenda # 11 S-1274

RE: legal opinion provided by Foley,
Hoag & Eliot, dated December 14, 1990,
as well as a opinion by Western,
Patrick, Willard & Redding, dated
December 14, 1990, regarding the
Central Artery Tunnel Project.

In City Council,

December 17, 1990

*On motion of Councillor
Duchay to make a part
of the City Council
record -
motion carried
12/18/90 Reconsideration
filed by Vice Mayor
Reeves.*