

Fa Council Agenda Stephen H. Kerser

THOMAS B. BRACKEN
ATTORNEY AT LAW
33 MOUNT VERNON STREET
BOSTON, MASSACHUSETTS 02108

TELEPHONE (617) 742-4950
FACSIMILE (617) 742-4953

ADMITTED TO PRACTICE IN
MASSACHUSETTS, NEW YORK,
CALIFORNIA AND DISTRICT OF
COLUMBIA

January 13, 2003

2003 JAN 14 10 3: 09
MASSACHUSETTS

Department of Environmental Protection
Bureau of Resource Protection – Waterways
6th Floor
1 Winter Street
Boston, MA 02108

Dear Sir/Madam,

Enclosed is Request for Determination of Applicability under MGL Chapter 91 and the implementing Regulations at 310 CMR 9.00, made by the Association of Cambridge Neighborhoods and others, together with an official bank check in the amount of \$60.00 for the filing fee made payable to the Commonwealth of Massachusetts.

Very Truly Yours


Thomas B. Bracken
Counsel for Applicants

Enc.

cc: (See distribution list)



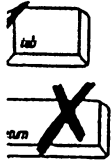
Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Waterways
**BRP WW 04 Request for Determination of
 Applicability**

 Transmittal Number

Request for Determination of Applicability

I, the undersigned, hereby request that the Department of Environmental Protection make a determination as to whether MGL Chapter 91, the Public Waterfront Act, and the regulations implementing that Act, 310 CMR 9.00, presently apply to the area of land, water, or activity thereon described below.

Important:
 When filling out forms on a computer, use only the back key to move your cursor - do not use the return key.



1. Applicant:

Association of Cambridge Neighborhoods (ACN) and others*
 Name
12 Florence Street
 Mailing Address
Cambridge, Middlesex
 City/Town County State Zip Code
617-491-1534
 Day Telephone #

2. Property Information (all information must be provided):

See Attachment A
 Owner Name (if different from applicant)
 Tax Assessor's Map and Parcel Numbers
 Location (street address) City/Town
 County Zip Code Longitude Latitude

3. Name of the water body:

Millers River, Charles River - See Attachment B

4. Summary of the Project/Activity:

See Attachment C

5. Detailed description of existing and/or proposed fill, structure, dredging or uses(s) (attach additional paper, if necessary and see #6 for plan requirements):

See Attachment D

*John Moot
 44 Coolidge Hill
 Cambridge, MA 02138
 President, ACN

Stash Horowitz
 12 Florence St.
 Cambridge, MA 02139
 Vice President, ACN

Elie Yarden
 143 Pleasant St.
 Cambridge, MA 02139
 Board Member, ACN



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Request for Determination of Applicability Cont.

- 6. Attached is a plan or plans showing:
 - a. an appropriately scaled site location map; (See Attachment E)
 - b. references to any previous Chapter 91 licenses, permits or other authorizations for existing structures, fill, or dredging at the site, including the license number(s) and the date(s) the license(s) was recorded at the Registry of Deed or Land Court; (See Attachment F)
 - c. appropriately scaled principal dimensions and elevations of proposed and existing fill, structures, or dredging in waterways;
 - d. any historic dredging, filling, or impoundment at the site; and (Attachment G)
 - e. a delineation of the present high and low water marks, and the historic high and low water marks. (Attachment H)

Please note the source information for all items provided in Section 6. (Attachment I)
- 7. At the same time that this request was submitted to the Department of Environmental Protection, I submitted copies of it to all persons identified in 310 CMR 9.13(1)(a), and have attached their names and addresses to this form. (ATTACHMENT J)
- 8. I understand that the Department of Environmental Protection may, at its discretion, require that a public hearing be held and that a newspaper notice be published at my expense regarding this request.
- 9. I understand that any person may submit written comments to the Department of Environmental Protection on this request within twenty-one (21) days of the date the request is received by the Department or the newspaper notification date, if applicable. I hereby certify under the pains and penalties of perjury that the foregoing statements, information and accompanying material are true and complete to the best of my knowledge.

John R. Moot, by JRM, counsel
Applicant's signature

Applicant's Name John R. Moot, President ACN

Applicant's signature

Stash Horowitz

Applicant's Name

Stash Horowitz, Vice President ACN

Elie Yarden
Applicant's signature

Applicant's Name

Elie Yarden, Board Member, ACN

ATTACHMENT A PROPERTY INFORMATION

Identified property owners within the 46-acre development area include the Boston & Maine Corporation, East Street, inc. d/b/a Water Street Company, the Massachusetts Bay Transportation Authority and Mac-Gray, Inc. Boston & Maine and East Street Inc. are both owned by Guilford Transportation Industries (GTI). The MBTA retains ownership of about 6 acres and has signed an agreement to transfer its land ownership to Guilford in exchange for the developers funding the relocation of the Lechmere Green Line station. This agreement has not been made public and an "Overview" or partially complete paraphrase of the agreement was included in the Final EIR #12650 as Appendix C.

The Commonwealth of Massachusetts also commands fee ownership of all Commonwealth Tidelands associated with the original channel of the Millers River. No state legislation has ever been passed which transfers this ownership.

In addition there are several Chapter 91 Waterways permits issued to the Boston & Main Railroad, and such permits may today be under the ownership or control of the Boston & Maine Corporation or Guilford Industries.

The authorized agent for the Boston & Maine parcels is the North Point Land Company. Currently the Mac-Gray company owns a 2.5 acre interior parcel and is in negotiation with the North Point Land Company and thus retains control of its properties. Similarly, there is no public evidence that the MBTA has authorized the North Point Land Company to act as its agent for the 5 to 6 acres of MBTA land within the North Point area.

There is no evidence of any state legislation transferring any ownership rights to Guilford or any of its subsidiaries. Neither has Guilford or North Point Land company made any such claim, particularly in the Final EIR and the PUD application for this project.

PROPERTY DESCRIPTION

The property in question is that combination of parcels shown in the map of Attachment 6a and identified in the Draft EIR #12560 as "the Project" at North Point. It is understood that a separate parcel and PUD application pertains to the Lechmere MBTA Station site south of O'Brien Highway. The station site is not part of the property subject to this request for determination, nor is the Charles Smith Project, for which a Determination of Applicability was issued by DEP on September 6, 2001. In neither the Lechmere Station nor the Smith Project has there ever been a question of the existence of Commonwealth tidelands. By contrast, the North Point development project area has traditionally had the presence of the Millers River channel and a lengthy history of Chapter 91 permits.

The North Point property is bounded by Charlestown Avenue to the east, the Fitchburg Division tracks and MBTA maintenance facility to the North (formerly the Boston Engine Terminal), a series of privately-owned parcels fronting on O'Brien Highway but bordering the southern edge of the property (formerly the ROW of the Boston & Lowell Railroad), to and including the properties owned by the MBTA at East Street and O'Brien Highway, and along the Charles Smith parcel (formerly Boston & Lowell Railroad) to the south, and ending at Charlestown Avenue which historically has been known also as the Prison Point Bridge or more recently the Judge John Gilmore Bridge.

The PUD application #PB 179 for the North Point project indicates the recording information for the certificates of title and deeds which comprise the property, recorded with Middlesex South Registry of Deeds unless otherwise noted.

The address of East Street, Inc. d/b/a Water Street Co. is Iron Horse Park, N. Billerica, MA 01862; the address of Boston and Maine Corporation is Iron Horse Park, N. Billerica, MA 01862, and the address of the Authorized Agent of the Owners, North Point Land Co., is 255 State St., Boston, MA 02109.

ATTACHMENT B NAME OF WATER BODY

The common name for the historic river system at North Point is the Millers River, and virtually all mapping since 1980 refers to the waterway and its remnants as the Millers River. The 1873 Bowker map refers to Millers Creek, and other names are Gibbons Creek (1635) and Willis Creek (1775).

The 1903 "Atlas of the Boundaries of the Cities of Cambridge, Somerville and Waltham..." by the Board of Harbor and Land Commissioners makes an explicit reference to the boundary as proceeding "along the old channel of the Millers River." Therefore the obligation for any research into the boundary is to achieve the best understanding of the historical channel of the Millers River, prior to any change by dredging or channelization.

Because the original channel of the river has been filled in and culverted for all but a short section near the Charles River, the exact historic location of the river may never be determined. The best source appears to be the Hales Map of 1830 for both Cambridge and Somerville, while show a gently curving channel in the North Point area with a low tide channel of 150 to 250 feet in width. The 1847 Coast Survey map unfortunately does not show either a channel centerline or a width. By this time the Middlessex Canal was virtually moribund and there were limited shipping activities in the Millers River. Only later with added filling and the creation of piers and bulkheads and the provision of drawbridges for larger ships did the Millers River take on more definitive ship channel activity into the early years of the 20th century.

The 1854 Walling map is a prime historical reference point for Cambridge and is available to the public from the Cambridge Historical Commission. Walling showed a gently curved boundary, but shifted north slightly at the Boston border, possibly as the result of tidelands filling in East Cambridge and new channel dredging. The 1873 Bowker map shows a wavy boundary for the first time in a Cambridge map, although the Parker Map of Charlestown from 1848 and the Draper map of Somerville from 1852 both show a wavy line channel centerline for the Millers River. Of all the maps, only the 1830 Hales and 1873 Bowker maps show the low tide channel, and would be suitable references to identify locations of public tidelands.

If we are to determine the location of Commonwealth tidelands associated with the Millers River channel, the two best sources appear to be the 1830 Hales and 1873 Bowker. However the shape of the channel is very different between the two. There is also the puzzling absence of a channel in the 1847 map. The 1852 Somerville map shows a wavy channel, while the 1854 Walling map shows a gently curved one. How can these mapping variations be reconciled.

One possible explanation is that of these 5 maps, the Walling map was not accurate for its time. If the 1830 Hales channel gradually became silted in to reach an 1847

condition of virtually no channel. By 1852 a new wavy channel could have cut its way through the silt and resulted in the wavy channel for the 1873 Bowker map. The 1854 Walling map could have entailed a simple transcribing of the 1830 channel, with a slight shift towards Charlestown.

Therefore it appears most reasonable to conclude that the 1830 Hales maps of Cambridge and of Somerville represent the closest to the historical channel for the Millers River that we have.

The very wavy channel/boundary which has been presented by Guilford/Spaulding & Slye appears to be a redrawing of the Cambridge/Somerville boundary shown in the December 1962 Chapter 91 permit issued to the B&M railroad for the last major filling of the Millers River. There appears to be no verification of any boundary or Millers River channel quite like this 1962 representation in any of the 19th century mapping of the Millers River area.

ATTACHMENT C SUMMARY OF PROJECT AND ACTIVITY

The North Point Land Company, representing the ownership interests of Guilford Industries and the Boston & Maine Corporation, and the development interest of Spaulding & Slye, has submitted two PUD applications for the general area of North Point. The second PUD dealing with the existing site of the Lechmere MBTA station is not included in this Request. The subject matter of this Request is the current PUD parcel as shown in the map of land ownership which is included in this Request as Attachment 6a, with the addition of the Mac-Gray site at 22 Water Street. The FEIR for North Point describes the current state of negotiations with Mac Gray for purchase of this parcel for inclusion in the overall 46-acre development proposal, of which Mac Gray is approximately 2.5 acres.

The proposed development project is for up to 5.5 million s.f. of office, retail and housing development, and the overall plan has been present in the Final EIR, EOE # 12560. [Copy delivered to DEP for MEPA review] Additional background and development information is contained in the PUD Application to the City of Cambridge Planning Board, File # PB#179. The EIR covers the entirety of the project in Cambridge, Somerville and Boston, while the PUD relates only to those elements of the project within the boundaries of the City of Cambridge.

The current proposal includes 2.1 million s.f. of office/lab/retail space, 2100 to 2700 units of housing and about 5,000 parking spaces, as well as a relocation of the Lechmere Green Line Station into an elevated complex within the North Point area. Possible future development on the site may involve roads or structures which would service a circumferential transit line called the Urban Ring. However, the current state of Urban Ring planning is somewhat vague and uncertain.

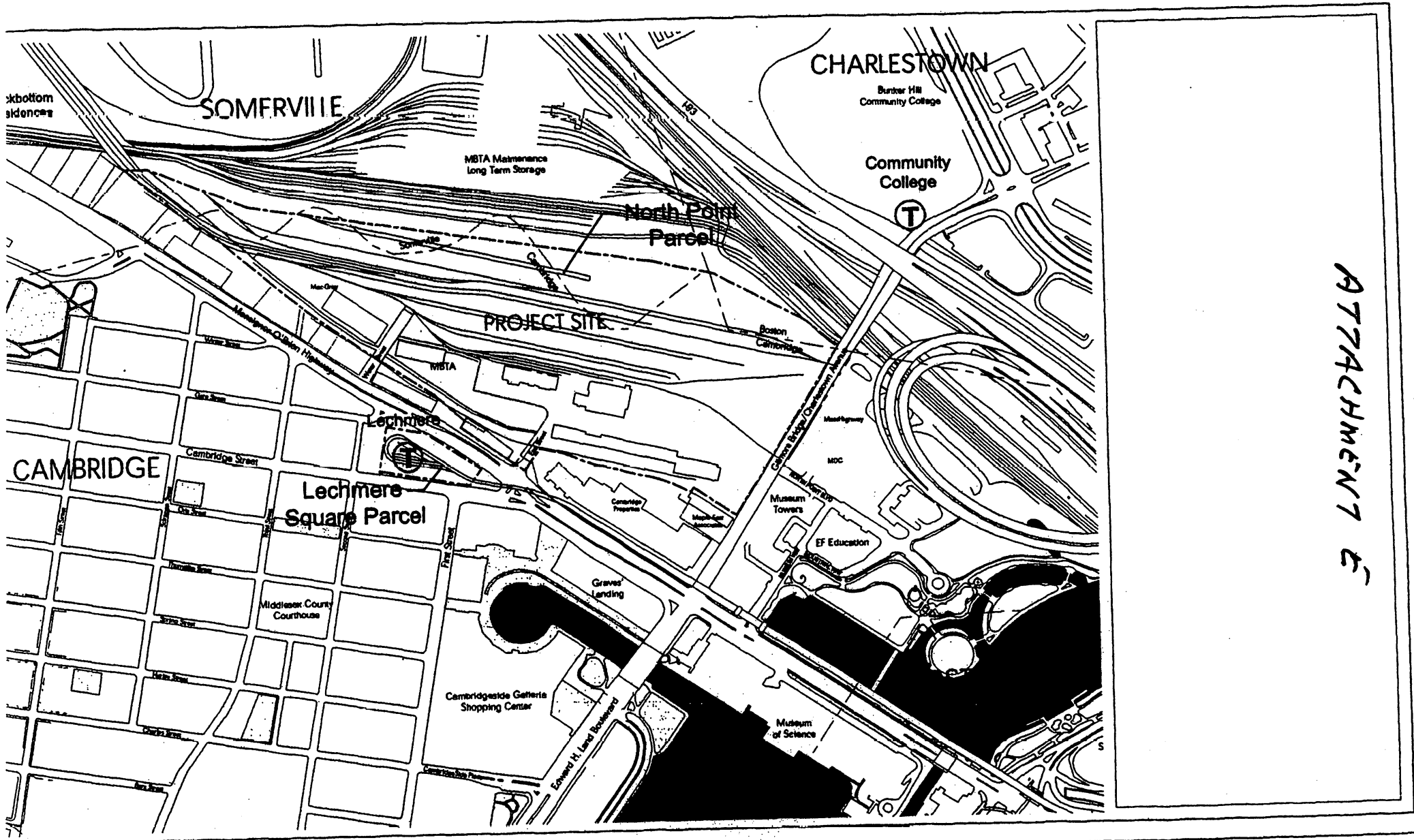
**ATTACHMENT D DESCRIPTION OF EXISTING AND/OR PROPOSED FILL
(changes shown in *italics*)**

The entire site and its historic public and private tidelands have been completely filled since 1962, so there is no exposed water body. *Existing site conditions are shown in attachments D-1 and D-2, indicating site elevations as well as historical high tide and low tide levels based on the Hales map of 1830. The shaded area indicates those private tidelands which have been filled, while the central unshaded area is the commonwealth tidelands – which also have been filled.*

The filling of the Millers River channel has obscured all historical record of the actual location of the channel and thus the city boundary between Cambridge and Somerville. In the period 1998 to 2002, Cambridge issued two different versions of the City boundary on its map, and has withdrawn the GIS “straightened” boundary first shown in 1998. Traditionally, Somerville maps have shown a somewhat wavy boundary but the geometry does not match the traditional lines shown by Cambridge up to 1998. In 2002, Somerville issued new GIS city maps which showed a boundary closer to but not exactly matching the pre-1998 Cambridge boundaries. In the meantime, Guilford/North Point Land Company have presented their own version of the boundary, which is best described as “very wavy” and in stark contrast to the gently curved boundaries shown by Hales in 1830 and Walling in 1854.

The Chapter 91 permit of 1962 *required* the B&M Railroad to install underground culverts to replace the *water-carrying* functions of the Millers River. *While not visible*, the River continues to exist under the filled area. Since 1975, the outfall section of the Charles and Millers Rivers have been separated from the tidal effects of Boston Harbor by the Warren Avenue Dam, so there are no tidal effects in any exposed or culverted sections of the Millers River.

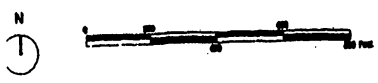
The culvert which now carries the waters of the Millers River passes in a generally straight west-to-east direction through the adjacent MBTA site, under the Fitchburg divisions tracks, as shown in attachment D-3. Preliminary indications are that this culvert is partially within public tidelands areas and partially in private tidelands areas.



ATTACHMENT E

SITE OWNERSHIP
Figure 2-3

North Point



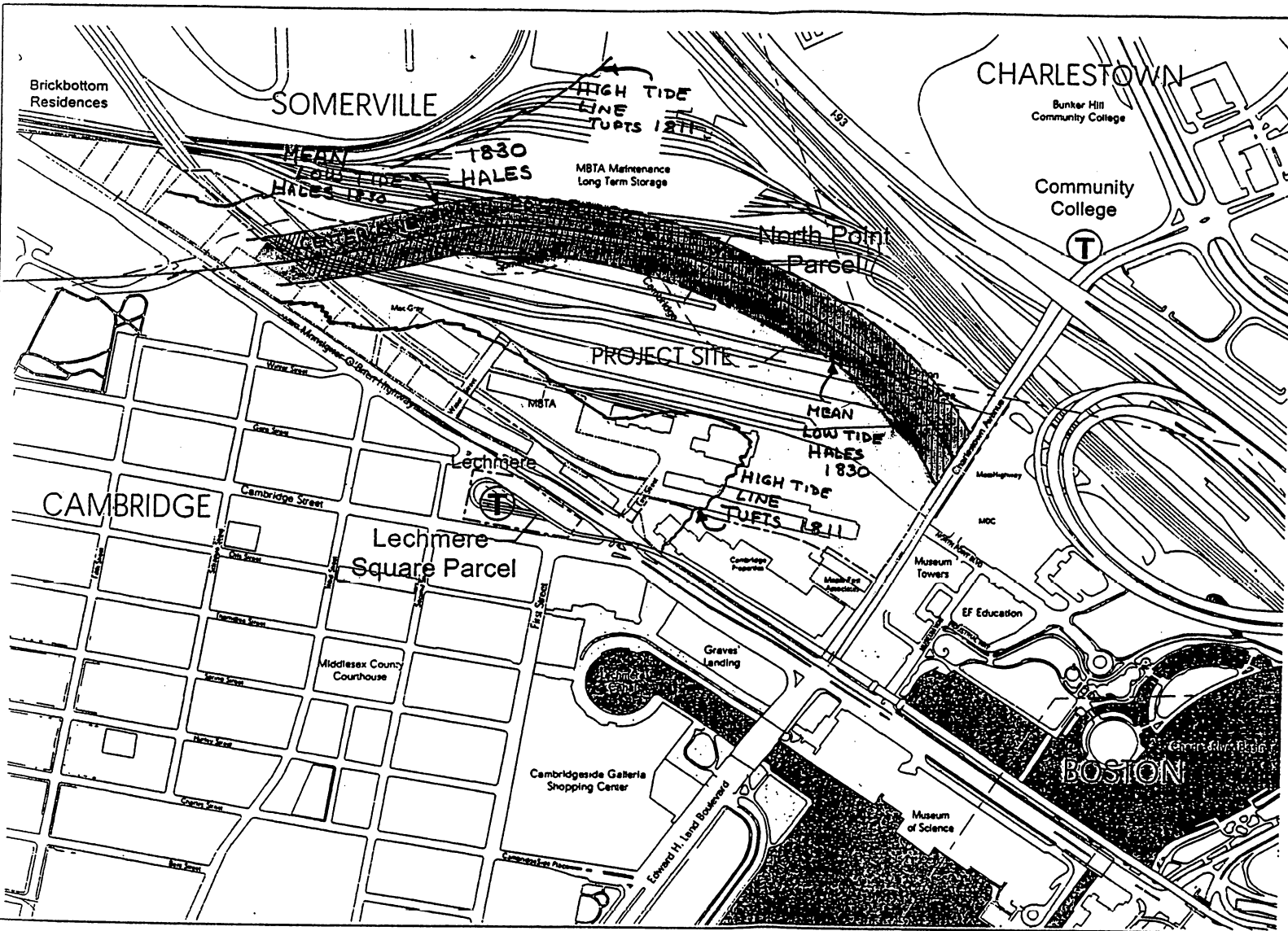
ATTACHMENT F CHAPTER 91 LICENSES FOR NORTH POINT

Registry of Deeds, Southern Middlesex County, Cambridge, Mass.

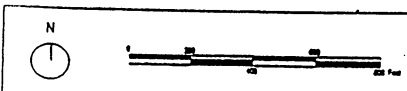
[Note : Prior to Chapter 91 and establishment of the Harbor Commissioners, the Boston & Lowell Railroad obtained permits from the state legislature to cross Millers River and the Charles River, at the western and eastern corners of the North Point area, during the period 1831 to 1835. Additional filling was done between 1835 and 1876.]

- 1876, Feb. 16 Number 314 Wharf & Dock in name of Wm. Brooks & Co. near Lechmere Square Deed Recorded July 27, 1876 Plan Book 30 Plan 14
- 1877 _____ Number 366 Filling at dock Deed Recorded May 9, 1877, Plan Book 31, Plan 9, Record Book 1435, Page 255
- 1877 _____ Number _____ Deed Recorded Dec. 12, 1877 Record Book 1466, page 68
- 1883, Sept. 13 Number 772 Seawall west of Gilmore Bridge in name of Boston & Lowell Deed recorded _____, 1883 Book 1647, page 584
- 1884 _____ Number 792 Seawall/Platform along north side of Millers River for 2400 feet to bridge Deed recorded _____
- 1885, Dec. 3 Number 904 Solid filling at Wharf in name of Nathaniel Brooks near Lechmere Square Deed recorded May 17, 1886 Plan Book 47 Plan 9
- 1889, March 14 Number 1145 Pilings for Boston & Maine near original draw span in Prison Point Bridge (aka Austin Street and Charlestown Avenue) Deed recorded April 27, 1889 Plan Book 58 Plan 13
- 1889, October 17 Number 1203 Fill and pilings for Nathaniel Brooks near Lechmere Deed filed March 12, 1890 Plan book 62 Plan 6
- 1890, March 6 Number 1235 Wharf, Well and filling at North Packing Provision Company in Somerville, George Kimball (B&M railroad) near western extremity of North Point ... Deed recorded May 9, 1890 Plan book 63 Plan 46
(Wharf Additions in Somerville : 1891 #1366; 1892 #1441; 1893 #1536; 1899 #2278)
- 1891 _____ Number 1417 Seawall along south side of Millers River from Water Street to the east about 500 feet _____
- 1896, July 14 Number 1940 Seawall and filling by B&M north of East Street Deed recorded July 31, 1896 Plan Book 99, Plan 17 Record Book 2486, page 321
- 1902, October 31 Number 2664 Temporary Draw Bridge for B&M at Prison Point Bridge ... Deed recorded December 12, 1902 Plan Book 141 Plan 4
- 1906, May 31 Number 3073 Addition to wharf in Millers River, in name of North Packing Provision Company... Deed recorded June 13, 1906 Plan Book 161 Plan 21
- 1906, October 15 Number 3116 Proposed Prison Point Bridge piers and fixed span for B&M railroad (bridge built with rotating center span) Deed recorded March 8, 1907 Plan Book 164 Plan 38
- 1907, March 8 Number 3150 Addition to drawbridge, with road connection into North Point area. Deed recorded September 6, 1907 Plan book 167 Plan 15

- 1923, January 26 Number 283 Registry Plan Book #316, Plan 35 B&M Pipes and Utilities, cable crossing.**
- 1926 August 25 ... Number 688 B&M filling in the Millers River in Cambridge, Boston and Somerville ... "Approval of the Governor and Council ... was canceled by the vote of December 22, 1926." "Therefore license never issued and is null and void [see Lic. 968]"**
- 1928, December 26 Number 968 B&M Filling of western end of Millers River basin and for 600 feet upstream of the Prison Point Bridge. (a portion was made irrevocable by Chapter 627 of the Acts of 1964) Deed Recorded _____ Record Book 5336, page 361**
- 1929, November 5 Number 1079 ... B&M license tied to #1080.**
- 1929, November 5 Number 1080 Major filling of open water 6.2 acres on north side of channel, Boston, Cambridge, Somerville.... Deed to certain lands on or near the Charles River in Boston were assigned to the Commonwealth..... Deed Recorded _____**
- 1944 Number 2683 Three 4-ft Pipes in Millers River by B&M from Prison Point Bridge to lower basin of Millers River (along Cambridge/Boston line)**
- 1944 ____ Number 2719 Fill in Millers River (Location?)**
- 1962, December 4 Number 4632 Plan Book 1163, Plan 1488 (Book 10388 Page 243) to B&M Railroad. Last 11.5 acres of open water filled. Millers River placed in a culvert, illegal fill allowed to remain. State approval required for any buildings on the filled area.**



Ownership:	
NPLC	- 39 Acres
MBTA	- 6 Acres
Jurisdiction:	
Cambridge	85%
Somerville	12%
Boston	3%
Total	100%
MILLERS RIVER CHANNEL (HALES MAP OF 1830)	
HIGH TIDE LINES (TUPTS MAP OF 1811)	
CROSSHATCHED AREA SHOWS MILLERS RIVER LOW TIDE CHANNEL (COMMON WEALTH TIDE LANDS)	



North Point

EXISTING CONDITIONS
Figure A-2
D-2

ATTACHMENT H BIBLIOGRAPHY

- 1811, September ... Peter Tufts Jr. Plan of Lechmere Point (Cambridge Historical Commission)
- 1830, June John G. Hales Plan of Cambridge, from survey (Cambridge Historical Commission)
- 1835 to present Plan books and Record Books, Registry of Deeds, Southern Middlesex Cambridge, Mass.
- 1847 U.S. Coast Survey of Boston coastal area (Dept of Environmental Protection)
- 1854 ... H. F. Walling Map of Cambridge (Cambridge Historical Commission)
- 1868 to present Records of license applications and approvals for tidelands alterations. Board of Harbor Commissioners, Mass Department of Public Works, Department of Environmental Quality Engineering and Department of Environmental Protection.
- 1873 ... E. K. Bowker Map of "Millers Creek" and Charles River (State House Library archives)
- 1873 to present Records and maps in State House library Archives, Boston
- 1898... City of Medford, Boundary Book (State House Library Archives)
- 1983 June "Protection of the Public Interest in Tidelands," Policy Report #13, Senate Committee on Ways and Means, pp. 4-261 to 4-272
- 1983 Tidelands Legislation, Chapter 589
- 1996, April 19 Waterways Regulations, 310 CMR 9.00 by Department of Environmental Protection, printed by Secretary of the Commonwealth
- 2001, September 6 Department of Environmental Protection, Sharon Pelosi Program Chief, Division of Wetlands and Waterways, Determination of Applicability, Charles E. Smith Project.
- 2001 October Kaiser, S. H. "History and Analysis of the Millers River Section of the Cambridge-Somerville Boundary," prepared for the Association of Cambridge Neighborhoods 7 folio pages & 50 pages of maps and 4 page historical background.
- 2002, January 14 Department of Environmental Protection, comment letter to MEPA by Steven Lipman on ENF #12650, North Point, page 7.
- 2002, July 19 ... North Point Land Co., "North Point - Cambridge" PUD Application and Graphics Material, 4 attachments.
- 2002 September Charles E. Smith, developers, Final Environmental Impact Report #12651 for Smith housing development proposal.
- 2002 October North Point Land Company, (Guilford & Spaulding & Slye) Final Environmental Impact Report #12650 for North Point office/R&D/housing development.

ATTACHMENT I

DISTRIBUTION LIST

PER 310 CMR 9.13 (1) (a) 1

Robert Healy, City Manager
City Hall
795 Massachusetts Ave
Cambridge, MA 02139

Cambridge Planning Board
238 Broadway
Cambridge, MA 02139

Cambridge Conservation Commission
238 Broadway
Cambridge, MA 02139

Metropolitan District Commissioner
(Performs the duties of a harbormaster in Cambridge.)
10 North Point Blvd.
Cambridge, MA 02141

Per 310 CMR 9.13 (1) (a) 5

The Environmental Monitor
Executive Office of Environmental Affairs
Attn: MEPA/Environmental Monitor
251 Causeway Street, Suite 900
Boston, MA 02114

Per 310 CMR 9.13 (1) (a) 6

Owners

East Street, Inc. d/b/a Water Street Co.
Iron Horse Park
N. Billerica, MA 01862

Boston and Maine Corporation
Iron Horse Park
N. Billerica, MA 01862

North Point Land Co.
255 State St.
Boston, MA 02109

Commonwealth of Massachusetts
Department of Environmental Protection
Bureau of Resource Protection – Waterways
6th Floor
1 Winter Street
Boston, MA 02108

Abutters

MBTA (Fitchburg Division tracks)
10 Park Plaza
Boston, MA 02116

MDC (Gilmore Bridge)
20 Somerset Street
Boston, MA 02108

Maple East Associates Limited Partnership
c/o Property Tax Department
9200 East Panorama Circle #400
Englewood, CA 80112

Maple Research Park Corp.
Trustees of Maple Research Park Trust
c/o Property Tax Department
9200 East Panorama Circle #400
Englewood, CA 80112

WS Lexington Trust
c/o Property Tax Department
9200 East Panorama Circle #400
Englewood, CA 80112

Corcoran-Jennison Inc.
150 Mt. Vernon Street #520
Boston, MA 02125

K.N. and K.M. Patel
Trustees of Natraj Realty Trust
321 Broadway, Malden 02148

M.J. and C. Simeone
21 Ginn Road
Winchester 01890

Richard J. Sullivan and City of Cambridge tax Title
15 Nantucket Road
Wellesley, MA 02181

Superior Nut Company
P.O. Box 86
Cambridge, MA 02141

Anthony, Joseph and Domenic Previte
Trustees of 245 Msr. O'Brien Highway Realty Trust
241 Msr. O'Brien Highway
Cambridge, MA 02141

Per 310 CMR 9.13 (a) (1) 7

US Army Corps of Engineers, New England Division
696 Virginia Road
Concord , MA 01742

S-31

Consent Communication #1

A communication was received from Stephen H. Kaiser, regarding filing a request for Determination of Applicability of Waterway Resource Protection for Millers River, Charles River.

In City Council January 27, 2003

PLACED ON FILE.