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July 28, 1994

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

Re: Daniel E. Geer, Jr. letter of June 23, 1994

Dear Mr. Healy:

As you requested, I have reviewed the letter to you from Daniel E. Geer, Jr. dated June 23, 1994. In his letter, Mr. Geer makes two points. First, he argues that the various mitigation measures described in the draft Mitigation Agreement between the City and the Massachusetts Highway Department must be reviewed as a single project. Second, Mr. Geer concludes that the proposed measures should be subjected to MEPA review at this time. For the reasons set forth below, it is my opinion that Mr. Geer's analysis of the requirements of MEPA is incorrect.

Mr. Geer errs in contending that the various proposed measures must be considered as a single project under MEPA. The MEPA policy against segmentation, which appears at 301 C.M.R. 11.16, is plainly aimed at separate phases of a single project and not at a group of stand-alone projects. The proposed mitigation measures are separate and distinct projects rather than phases of a single project. Each proposal has independent utility and the environmental impacts of each project will be separable. Moreover, the evaluation, design and construction of each project is to proceed independently. For these reasons, the measures are not separate phases of a single public works project and separate environmental reviews of each project will not constitute an improper segmentation.

There are two reasons why Mr. Geer also errs in contending that the proposed measures are subject to MEPA review at this time. First, Mr. Geer's statement that the Mitigation Agreement constitutes a "final decision" within the meaning of 301 C.M.R. 11.01(4) is incorrect. The Agreement contemplates studies,

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analyses and planning before final decisions are made. The Agreement also assumes that where projects are subject to MEPA, environmental review will occur before final decisions are made. For example, with respect to the Cambridgeport Roadway Improvement Program, section 1(b) of the Agreement states: "Cambridge shall cooperate with MHD regarding the planning, design and environmental review of the Program." Accordingly, the Agreement is not a "final decision".

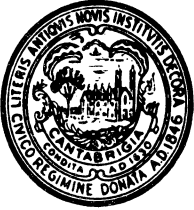
Second, any MEPA review at this time would be premature because the studies and analyses necessary to develop specific proposals have not been conducted. In order to be meaningful, review under MEPA must be based on more than a concept. Accordingly, MEPA contemplates that analysis and planning will occur prior to the MEPA process. 301 C.M.R. 11.10(2) provides that "research, design, or other work necessary to evaluate a project for purposes of MEPA" may be undertaken prior to MEPA review. In addition, in the case of projects proposed by entities other than state agencies, 301 C.M.R. 11.04(3) does not require the filing of an ENF until "10 days after the filing of the first application for a permit or financial assistance for the project." In the case of projects by state agencies, an ENF is required "prior to entering into a contract for final design. See 301 C.M.R. 11.04(4). These regulations contemplate that initial planning and design work will precede the MEPA process.

Based on this analysis, I conclude that the proposed mitigation measures are separate projects which may be reviewed separately without violating MEPA's policy against segmentation. I also conclude that the Mitigation Agreement properly calls for MEPA review after the preliminary studies and analyses have been completed.

Sincerely,

Edward F. Lawson 
Edward F. Lawson 

EFL/el
E7079



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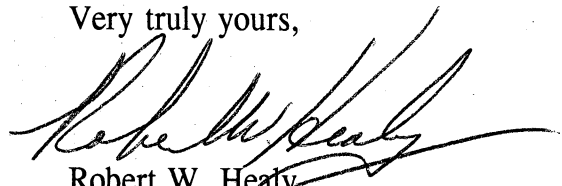
RICHARD C. ROSSI
Deputy City Manager

August 1, 1994

To The Honorable, The City Council:

In response to a communication to the City Council at the June 27th meeting from Cambridge Citizens for Liveable Neighborhoods regarding the CA/T Project, Proposed Mitigation Agreement, enclosed please find a response from Attorney Ned Lawson refuting the claims made in that letter.

Very truly yours,



Robert W. Healy
City Manager

RWH/mev
attachment

Consent Agenda # 21

S-357

Response to a communication from CCLN
regarding the CA/P Project - Proposed
Mitigation Agreement.

In City Council,

August 1, 1994

Placed on file