



Charles River Watershed Association



Environmental League of Massachusetts

May 17, 2013

Richard K. Sullivan, Secretary  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Attn: Holly Johnson, MEPA Office

**Re: *Expanded Environmental Notification Form, Daly Field Restoration, Boston and Newton, MA EOEA No. 15039***

Dear Secretary Sullivan:

The Charles River Watershed Association (CRWA) attended the MEPA site visit on May 3, 2013, and CRWA and the Environmental League of Massachusetts submit the following comments on the Expanded Environmental Notification Form (EENF) for the above project. Ch. 223 of the Acts of 2012 (the Act), allows, but does not require, the commissioner of capital asset management and maintenance, in consultation with the commissioner of conservation (DCR), to enter into a long-term lease of 7 acres of Charles River parkland off Nonantum Road, Brighton and Newton, for construction of a high intensity, NCAA-compliant sports complex.

The DCR parkland from the Esplanade to Watertown Dam and beyond is a cherished public amenity; DCR's Charles River Reservation is parkland held in trust for all the citizens of Massachusetts. Daly Field is located in the Upper Charles River Basin section of the Reservation. Before this public trust land, which also contains Commonwealth tidelands, is transferred to a private institution's use,<sup>1</sup> a thorough review under MEPA with the appropriate analyses should be required. We request that you require a full environmental impact report. A single EIR is not appropriate<sup>2</sup> and there has yet to be open, transparent and public review of this

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<sup>1</sup> Although the lessee pursuant to the legislation is the Allston Brighton Friends of Daly Field (ABFDF), a 501(c) (3) created in August, 2011, almost every aspect of the complex (except scheduling beyond the college's exclusive use hours) remains with Simmons. Simmons will negotiate the lease with DCR, construct the facility, maintain it and carry general liability insurance on it. We note that Simmons's Director of Facilities Planning is also ABFDF's board president. Contrary to the statement in the EENF at p. 1-6, ABFDF is not bearing "the costs of construction and maintenance."

<sup>2</sup> CRWA and ELM strongly believe that land transfers of DCR parkland, and certainly one of this size in the Reservation, should require an EIR, regardless of whether a mandatory EIR threshold is triggered. As CRWA wrote about Boston University's proposed sailing facility (for which a full EIR was required):

BU's project is the first of many demands that will be made for private uses of this parkland and the river. These demands come at a time when the water quality of the Charles, at great public

project,<sup>3</sup> -- a project that presents a host of environmental issues, including public trust and historic resource issues. MEPA subject matter jurisdiction here is “functionally equivalent to full scope jurisdiction,” 310 CMR 11.01(2)(a)3.

Under section 11.06(8) of the MEPA regulations, the “Secretary shall ordinarily require a draft and final EIR but may allow a single EIR” provided that the three stated criteria are met. The EENF, as discussed below, fails to analyze all aspects of the project and all feasible alternatives; to provide a detailed baseline, and to demonstrate that planning and design use all feasible means to avoid potential environmental impacts. Full review will increase public confidence in the process, the integrity of the MEPA review, DCR’s § 61 findings, and ensure that the final project is appropriately protective of the public trust. Accordingly, we urge you to require standard review with both draft and final EIRs.

While characterized by the proponent as a “restoration,” this project goes far beyond simply restoring the existing fields.<sup>4</sup> Instead, the proponent is proposing to construct two artificial turf fields, a softball diamond, 5 tennis courts, jogging track, and a field house with a training room, locker rooms, officials’ rooms, and a concession stand. The multi-purpose football and soccer field will have seating for 199 persons. The entire complex will have athletic lighting for nighttime play. This is simply not by any stretch of the imagination a “restoration.”<sup>5</sup>

Notably, the Simmons complex conflicts with DCR’s *Master Plan for the Charles River Basin* (2002) for Daly Field, which recommends: “Restore athletic fields to a more flexible arrangement and pastoral appearance. Introduce landscaping and eliminate fences, bleachers, floodlights and other nonessential athletic equipment . . . [and] Clear and maintain selected views to the river and to the opposite shore to help unify the Upper Basin[.]”

#### Article 97

This is an Article 97 conveyance. EENF at 2-1. The EIR should discuss how the proponent will comply with EOEEA’s Article 97 Land Disposition Policy (no net loss policy). Lacking in the EENF is any discussion of granting “real estate of equal or greater fair market value or value in use of proposed use, whichever is greater, and significantly greater resource value as determined by EOEA and its agencies to ensure that the mission and legal mandate of EOEA and its agencies and the constitutional rights of the citizens of Massachusetts are protected and enhanced.” Although Section 9A of the Act provides:

To ensure a no-net-loss of lands protected for conservation and recreation purposes and as a condition of the leasehold interests authorized in this act, the

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expense, has improved dramatically. Requests by other universities, schools, and community programs are certain to follow. The MEPA review of BU’s project will set an important precedent for those that follow.

CRWA-CLF comments on the BU Sailing Pavilion EENF, June 22, 2001.

<sup>3</sup> Environmental groups and others concerned with Article 97 dispositions of DCR parkland were not aware of the bill, which was filed at the end of the last legislative session, until it was before Senate Ways and Means. ABFDF held one meeting at Brighton High School *after* the legislation was passed to discuss the facility plans.

<sup>4</sup> The site presently contains a soccer field and baseball diamond, both in need of repair. Even in their present condition, these fields are fairly well used by the public, attesting to the demand for informal playing fields.

<sup>5</sup> Correctly, the proponent does not claim that this is a “replacement” project.” *See*, 310 CMR 11.02.

grantee shall compensate the commonwealth through the payment of funds or the transfer of land or a conservation restriction upon land to the department of conservation and recreation, which shall be equal to or greater than the full and fair market value of its leasehold interest under this act as determined by independent appraisal. . .

(Emphasis added). Under §7 of the Act, a \$500,000 “credit” contributed by Simmons’s Board of Trustees to DCR is to be applied to restore a portion of riverfront parkland in Watertown.<sup>6</sup> The proponent should also include documentation in the DEIR showing that no restrictions were put on the land when it was originally acquired by DCR’s predecessor agency, or the Commonwealth.

#### A. Appraisal

This independent appraisal, as far as we are aware, has not yet been conducted and Simmons’s compliance with EOEEA’s no net loss policy should be thoroughly discussed in the EIR. The EIR should include the appraisal report(s). As discussed below, if the public cannot actually access the facility because of limited parking, it would be inappropriate for DCAM to factor any general public use into the appraisal value for no net loss policy purposes.

Just as importantly, the hours of public use (and hence the value assigned it) remains to be determined. The proponent should fully discuss the restricted hours as set forth in the Act when the facilities will only be available for the use of Simmons, Brighton-Allston Little League and Brighton High School football.<sup>7</sup> The appraisal should also consider the value to the public of the hours to which it will have use. Much of the prime time the public would use the fields is exclusively assigned to Simmons, Little League and Brighton High. The proponent should explain the statement in the EENF at p. 2-9 that the combined hours for exclusive use by Simmons, Little League and Brighton High “comprise a minority of hours available” for the fields and tennis courts.

This no net loss appraisal, however, is separate from and should not be confused with that required for leasing purposes. Pursuant to EOEA’s Land Acquisition Policy -- Appraisals (1995):

The purpose of the valuation method employed shall be to determine the fair market value of the subject property. Fair market value shall be defined assuming use of the property in the light of the highest and best use to which the land could reasonably be put, and for which the property would be sold in cash, or on terms reasonably equivalent to cash, by a knowledgeable owner willing but not

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<sup>6</sup> Pursuant to the Act, DCAM has discretion whether to determine a credit for the “relative value associated with the public use of the improvements.” *Id.* The Act is specific on Simmons’s reserved times, with blocks of time also reserved for Allston-Brighton Little League and Brighton High football. While the Act provides for public access and use, realistically, there will be no genuine public access since the general public will give up on trying to use facilities already mostly spoken for and for which there is extremely limited parking.

<sup>7</sup> The EIR should include a discussion of all sports for which Simmons will be using the facilities. Because as stated at the site visit, Little League Majors has the potential to grow, and there are 4 high schools and numerous elementary schools in Brighton that lack athletic facilities, it is easy to envision that most, if not all, of the public playing time, will be reserved and permitted well in advance by these groups, further reducing use by those outside the Allston-Brighton community. This should be factored into the appraisal.

obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy.

This appraisal report should also be made available in the EIR. We note that a request for proposals was not issued for Daly Field, although we believe many other schools or athletic groups would have willingly teamed up with Brighton High on a multi-use field in return for developing this site. There is no question Simmons will derive many tangible benefits from having an athletic complex on the Charles River, including attracting students and increased alumnae giving.

#### B. Alternatives Analysis

While the EENF contains a site selection process section pursuant to the alternatives analysis required under the no net loss policy, far more detail should be included in the DEIR. For instance, although Simmons lists Hellenic College and Pine Manor College as potential sites for its athletic facilities, it merely states that these fields were not available for sale. No information is provided on the possibility of entering into a lease agreement, nor is justification offered as to why all of Simmons's sports must be combined in a single location and therefore a minimum of six acres is necessary. Its elimination of The Windsor School is based on the fact that the "fields cannot accommodate multiple NCAA fields." EENF at 2-14. The college should also explain its rejection of sites available for sale in West Roxbury and Everett as too far away and why it even lists sites in Roxbury, Jamaica Plain and South Boston if they do not have the capacity for redevelopment. Its criteria and decisions for "distance from residential and environmentally sensitive areas" should be explained.

We are sympathetic to Brighton High's lack of a home field,<sup>8</sup> but the EENF offers no rationale why the football field at Daly Field could not simply be restored as a mixed-use field by Simmons (at a far lower cost) and used by the college in the spring and shared much of the fall. Brighton High plays 4-5 home football games a year and has been holding its practices at another field according to its representative at the site visit. We note that by combining Simmons and Brighton High in the alternatives analysis, the proponent vastly constrains the site options for Simmons and buttresses the claim that this is the only feasible option available to the college. Simmons, with a campus 6 miles across town in the Fenway, should not be characterized as a "local" user. EENF at p. 1-3

The alternatives analysis under MEPA should include a reduced build scenario in which the original fields are repaired, as well as a detailed analysis of potential sites that could accommodate some, but not all, of Simmons's athletic teams.

#### Chapter 91 license

The project is located in Commonwealth tidelands and will require a Chapter 91 license. While the proponent asserts that the project is a water-dependent use (EENF at 12; 3-2), this is apparently based on the parkland's location.<sup>9</sup> Athletic fields are clearly a nonwater-dependent use. Under the proponent's reasoning, any structure built on parkland adjacent to a waterway

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<sup>8</sup> According to the EENF, Allston Brighton Little League does not face the field constraints of Simmons or Brighton High football. EENF at p. 2-15.

<sup>9</sup> Although neither is part of the site as defined by the proponent and the Act, the proponent nonetheless appears to claim that Community Rowing and the public boat launch ramp, support its claim of water-dependency. EENF at 3-2.

automatically is water-dependent and the conveyance of the land and its uses are irrelevant. This is certainly not the intent of Chapter 91.

The parkland is *an existing water-dependent use* as defined in 310 CMR 9.12 (2)(a)(4) (“parks, esplanades . . . that promote use and enjoyment of the water by the general public and are located at or near the water’s edge, including but not limited to any park adjacent to a waterway and created by a public agency”). Here, however, that parkland is being conveyed through a lease to a private entity and legally does not retain its water dependent use status. The proponent should explain its statement in the EENF at p. 1-3 how “the Project will improve public access to the Charles River” given the fencing planned around the entire site.<sup>10</sup>

In the DEIR the proponent should analyze the project as a nonwater-dependent project on Commonwealth tidelands and explain how it will meet the requirements for nonwater-dependent projects in the waterways regulations and “promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes.” 310 CMR 9.53.<sup>11</sup> This is, rightfully, a demanding and stringent test.<sup>12</sup> Public amenities beyond public bathrooms should be proposed; concession stand hours should also be provided.

### Traffic and Parking

The proponent asserts that “a comprehensive field inventory of existing conditions within the study area was conducted[.]” However, conditions in February and March, 2013<sup>13</sup> do not accurately portray conditions at the times the complex will be in use. An accurate baseline should be established. The EENF grossly undercounts traffic on Nonantum Road; its extrapolation based on days in February and March that there will be a relatively small increase in traffic is unsupported. EENF at p. 7-2. A full traffic study in warm weather months should be conducted for the DEIR. This is also an important component of the analysis of the impact the complex will have on Nonantum Road, a historic parkway.

At the site visit, there was consensus that the parking lot adjacent to Community Rowing is at capacity once rowing starts in the spring. According to the EENF at p. 7-8, between March and November, the parking demand (at Community Rowing and Daly Rink<sup>14</sup>) exceeds available supply in the early morning and afternoon hours; on weekends and during special events, the parking “may exceed capacity.” This is even without factoring in parking for use of the public boat ramp.

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<sup>10</sup> At the site visit, the proponent clarified that the Charles River “path” will be the jogging path inside the perimeter fence.

<sup>11</sup> “The Department shall take into account any factor affecting the quantity and quality of benefits provided to the public, in comparison with detriments to public rights associated with facilities of private tenancy . . .” *Id.*

<sup>12</sup> The purpose of the waterways regulations is to “protect and promote the public’s interest in tidelands . . . in accordance with the public trust doctrine . . . and to foster the right of the people to . . . the natural, scenic, historic, and esthetic qualities of their environment[.]” 310 CMR 9.01(2). A full evaluation of Chapter 91/public trust issues must be included in the EIR.

<sup>13</sup> There was a great deal of snow on the ground in March.

<sup>14</sup> At the site visit it was mentioned that Newton Country Day is planning to expand its operations at the Daly Rink.

Clearly, parking is a critical issue. There is no public transportation to the site or along Nonantum Road. EENF at 7-5. Parking is prohibited on Nonantum Road. If the public (beyond the Allston Brighton community that is able to walk or bike there) can't get to the site, then public access and use will be illusory. This should be carefully weighed in any determination of public benefit and in the appraisal for determining compliance with EEA's no net loss policy. A detailed baseline of parking conditions and future projected demand, particularly for the hours when the public will have access to the playing fields, should be included in the DEIR. Realistic numbers of persons expected to attend Simmons's sports events and the frequency of multiple events should be provided. The proponent should also propose a plan in conjunction with Community Rowing and the Newton Country Day School that will ensure that there are reserved spaces for the public's use of the sport's complex. Private events at each facility will also need to be coordinated and the public made aware of them to reduce parking conflicts.

A transportation demand management program is key for Simmons, Brighton High football, and probably for Little League. This should include transportation to the site of parents, opposing team parents, and fans, as well as players. The proponent should commit to this and include the plan in the DEIR. The plan should also include a discussion of how the proponent will discourage non-players from driving to the complex. The lease with the state should incorporate the TDM measures and require reserved parking spaces at Community Rowing and Daly Rink for the public's use of the sport's complex. If off-site parking is available at the Arsenal Mall or other lots nearby, the proponent should commit to providing regular shuttle service from these lots to the fields.

#### Historic and Ecological Resources

The proponent concludes without discussion that "the character of Nonantum Road will not be adversely impacted by the Project." EENF at 6-1. Nonantum Road, along with other DCR parkways, is listed on the State and National Registers of Historic Places. We think there is little question that the traffic, lighting of the fields and sports events will alter the character of this DCR parkway. The proponent should discuss the Massachusetts Historical Commission (MHC) consultation and review process in the draft DEIR.

No analysis is provided of aesthetic and environmental impacts to the Charles River. An analysis of visual impacts in the context of both river users and the surrounding area should be conducted. Glare and spillover on lighting from the athletic fields and tennis courts, track and pedestrian lighting and the three score boards should also be discussed.

The river and its banks provide wildlife and aquatic life habitat. The Charles is home to anadromous and diadromous fish. It has one of the largest blueback herring runs in the state and also the migration of alewife. A multi-year project to restore American shad to the Charles is underway by U.S.FWS and MA DFW. An analysis of habitat impacts should be included in the DEIR.

#### Stormwater

No stormwater baseline or water quality data is provided in the EENF. Contrary to its claim that there are no water quality impairments within a half-mile of the site, EENF at 5. 5, listed impairments for this section of the river include among others: Chlorophyll-a, DDT, Nutrient/Eutrophication Biological Indicators, Oil and Grease, Oxygen, Dissolved, pH, High, and Phosphorus (Total).

The DEIR should contain drainage calculations, depth to groundwater and detail about the BMPs, their treatment capacity, and stormwater management for the site. The proponent agrees that the project does not qualify as a redevelopment project under MassDEP's Stormwater Standards. The type and sources of the materials in the artificial turf should be identified; recycled tires should not be a component. The proponent should discuss how it will meet the phosphorus reductions required under the *Total Maximum Daily Load for Nutrients in the Lower Charles River Basin, Massachusetts* (2007).

According to the EENF at p. 3, 0.87 acres of imperviousness will be created for a total of 1.81 acres of imperviousness. The tennis courts, jogging path, paths within the complex, the 7.5 foot wide bituminous walkways around the entire complex, and the 0.13-acre increase in the new building footprint will be impervious. The proponent should explain the basis of this statement, as well the basis for its statement that "other altered areas" will be reduced by 1 acre (from 4.46 to 3.46 acres). EENF p. 8.

The proponent as mitigation should commit to improving the stormwater management for the parking lots on both sides of proposed project. We note that the increase in cars and frequency of them entering and leaving the lots will increase the amount of phosphorus deposited on the lots via car exhaust. The lots could be retrofitted with pervious pavement and BMPs such as rain gardens, stormwater tree planters and porous asphalt that infiltrate the stormwater rather than discharging it to the Charles through pipes or sheet flow. The proponent should commit weekly high efficiency vacuum sweeping, which is effective at removing the fines to which phosphorus adheres.

#### Lease

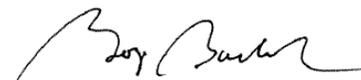
The DEIR should include a discussion of the draft lease terms—not just the rent and how it was determined, but also the public access requirements and mitigation commitments. ABFDF's role and responsibilities should be spelled out in the lease, including any role it will have in permitting the fields. A critical issue is how DCR would be able to enforce against Simmons if it fails to meet its commitments since ABFDF is the lessee under the Act. Simmons should be a co-signatory on the lease.

In sum, the project as proposed neither avoids, nor minimizes or mitigates damage to the environment to the maximum extent practicable. 301 CMR 11.01(1).

Sincerely,



Margaret Van Deusen  
Deputy Director and General Counsel, CRWA



George Bachrach  
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