



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

March 21, 2014

Bouchard Transportation Company, Inc. Trustees
NOAA Restoration Center
Attention: Buzzards Bay RP/EA Review Coordinator
28 Tarzwell Drive
Narragansett, RI 02882

Re: City of New Bedford's Comments on the B-120 Draft Restoration Plan

Dear Trustees:

The City of New Bedford hereby urges the Bouchard Transportation Co., Inc. Trustee Council (Trustees) to reconsider its draft decision not to classify New Bedford's Project as a "Tier 1" priority project for funding in the B-120 Draft Restoration Plan (RP). New Bedford's Riverwalk will create an active recreational resource along an over two-mile stretch of the Acushnet River which has been "off-limits" to the New Bedford residents for generations. This community enhancement project has garnered broad public support. More than any other project submitted for review, the Riverwalk advances the Trustee's goals of promoting environmental justice and would provide recreational benefits to more people. At this point, the project has been partially funded, and requires the requested funds to proceed. For the reasons set forth below, the Trustees should re-classify the project as Tier 1 and recommend full funding in the amount of \$546,900.

Environmental Justice

In rejecting Tier 1 status, the draft plan glaringly ignores environment justice considerations, which the Trustees are required to give serious weight. The Riverwalk would serve the region's neediest environmental justice community; whereas none of the Tier 1 projects in the draft plan (except New Bedford's Palmer's Island project) advance environmental justice goals. The Trustees Tier 2 classification of the Riverwalk should be overturned on this ground alone.

Section 2.2 of the Draft RP reminds us that Executive Order 12898, the seminal federal policy statement on Environmental Justice (EJ), calls on each federal agency to “achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States” The Draft RP further notes, “Massachusetts Executive Office of Environmental Affairs (EEA) has determined that EJ populations are those found to be most at risk of being unaware of or unable to participate in environmental decision-making, or to gain access to state environmental resources”, and that the EEA EJ policy is a “key factor in decision-making by its agencies”.

The City of New Bedford is home to the largest EJ population in Southeastern Massachusetts and is the *only* community where much of the EJ constituency meets *all three* EJ criteria (income, minority, and language isolation). The Draft RP states that approximately 250,000 people live in the watershed area affected by the Bouchard spill, roughly 40% of whom reside in New Bedford. The Riverwalk, the project that would have the greatest and most direct impact on any EJ community, has been tabled in favor of projects that offer little or no EJ benefits. The awards are concentrated in areas that are remote from EJ populations that have significant transportation constraints. For example, while the New Bedford project will have free public access to everyone within the region, a five-acre plot of land in South Dartmouth will receive over \$800,000, even though it is accessible only to town residents. The neighborhood within walking distance of the site consists predominately of summer homes.

The concept of environment justice is a legal acknowledgement that the romantic notion that pristine nature represents environmental fairness is not valid. Even in its most narrow parameters, environmental justice does not simply involve concrete harms but also disproportionate access of the urban disadvantaged to environmental benefits, such as, most specifically, open space and parks and recreation. The Appendix of the Draft RP offers unassailable evidence in this regard. The map of Environmental Justice populations within the defined watershed area is a virtual outline of the New Bedford city limits.

In light of the heavy weigh accorded environmental justice considerations, a plan that prioritizes projects near summer homes is inherently suspect, especially where a competitive project like the Riverwalk satisfies EJ concerns in spades. It is for this reason that EJ regulation acknowledges that urban projects will often satisfy environmental goals by creating waterfront access and allow the protected citizen groups better interaction with general environmental objectives.

Meeting Project Criteria

The Draft RP stated that the following criteria were applied to each alternative in the Trustees' evaluation:

- The cost to carry out the alternative;
- The extent to which each alternative is expected to meet the Trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or service; and
- The effect of each alternative on public health and safety.

The Draft RP went on to state that consideration was also given to:

- The overall level of funds available for the settlement and funding level of each specific resource and resource use restoration category;
- A balance and distribution of funds pertaining to: the geographical distribution over the affected spill area; project activity type; restoration priority category; project and work activity approach; and the number and diversity of project proponents and partners;
- The cumulative cost of the highest-ranked projects relative to the corresponding restoration type funds available;
- Potential impacts resulting from project activities, particularly relating to the NEPA and state (MA and RI) environmental and social impact review processes;
- The likelihood of timely permits, approvals, and authorizations to be secured for the project;
- The likelihood and timeliness of obtaining requisite access easements, rights-of way, and/or any other necessary legal documentation to implement the project;
- Past performance of a project proponent to efficiently use funds, complete project planning and design, secure regulatory approvals, and successfully complete projects, particularly natural resource or resource use restoration projects; and
- Written public comments received by the Trustees regarding the proposed projects.

In response to these criteria the City offers the following:

- Regarding the cost criteria, including the “funding level of each specific resource and resource use restoration category” the City has specifically reviewed the “LU” Tier 1 and Tier 2 lists. The Buzzards Bay Coalition requested \$1,000,000 for the **Nasketucket Bay State Expansion Project** which includes *land acquisition in Fairhaven and Mattapoisett* (Project LU-1), of which the Trustees recommended 96% of the funding requested or \$960,000 for Tier 1 consideration. *This is more than 60% of all of the LU-allocated funding for Massachusetts in one project.* New Bedford requested \$546,900 for Riverwalk. The Trustees recommended funding at 56%, or \$306,900, as Tier 2. If the Trustees recommend full funding the Riverwalk as a Tier 1 project, the project would still represent less than a third of Massachusetts’ allocated LU funding while greatly increasing the “number and diversity of project proponents and partners”.
- Regarding compensation for interim losses, the LU Technical Working Group (TWG) calculated 36,441 lost trips to Massachusetts’ shoreline as a direct result of the Bouchard spill. Construction of Riverwalk will itself compensate for these interim losses and clearly in a manner that will provide greater sustainable numbers than other recommended Tier 1 projects.
- Regarding the likelihood of Riverwalk project success, one only need look to previous efforts along Boston’s Charles River and Providence’s Woonasquatucket River to experience the positive outcomes accomplished by tying a vibrant community to its water resources.
- Regarding prevention of future injury and avoidance of collateral injury, Riverwalk will transform a currently underutilized and unsecured stretch of the Acushnet River into a safe and secure recreational resource. The City believes that Riverwalk satisfies this particular criterion far more clearly than the Nasketucket Bay project.
- Regarding the extent to which the Riverwalk project will benefit more than one natural resource and/or service, the two-mile walkway will provide access to the Acushnet River, the Riverfront Area, Coastal Bank, and fringing salt marsh, in a controlled and resource-protective manner.
- Finally, the effect on public health and safety cannot be overstated. The project will provide an EJ community with historically limited recreational possibilities and access to outdoor resources with the unprecedented potential to greatly improve health and social well-being.

Overall, the City of New Bedford believes that the recommendation to relegate the Riverwalk project to Tier 2 status is counter to the evaluation criteria presented in the Draft RP.

Response to “Negatives”

The Draft RP notes “negatives” of the Riverwalk project (beginning on page 179). We have received feedback from the trustees’ agencies that the upshot of these criticisms is that there are complications associated with the project that may delay it or make it otherwise impossible to complete. These general concerns, like the more particularized objections addressed below, are unfounded. The City will proceed with the project along a longer time frame than initially intended, as the Trustees are aware, as a result of the EPA’s accelerated cleanup of New Bedford Harbor. The construction of the Riverwalk will proceed in coordination with the clean up. Make no mistake – it will proceed.

1. Trail construction may result in minor loss of vegetation and minor direct and secondary disturbances to wildlife using nearby inter and sub-tidal habitats.

RESPONSE: The funding in place for Riverwalk includes development and implementation of a planting scheme to restore the Upland Riparian Zone to native coastal riparian shrub and meadow habitat. This will broadly increase the diversity of birds, mammals, reptiles, and insects populating the area. The plan includes planting native coastal grasses along the top of the coastal bank to provide bank stability as well as food for birds and small mammals. All of the vegetation planted within the Upland Riparian Zone will also provide filtration of overland storm water from adjacent developed lands thereby improving the water quality in the Acushnet River. Species of vegetation were chosen which are not only native but provide food, cover, nesting, and resting habitat for a variety of native birds, small mammals, reptiles, amphibians, and beneficial insects such as monarch butterflies and praying mantis. In addition the vegetation of 5.6 acres of riverfront with native shrubs, wildflowers and grasses will provide filtration of overland flow from adjacent developed lands thereby improving the water quality of the Acushnet River.

2. Project will require securing multiple temporary and permanent easements with private property owners.

RESPONSE: Although easements will be required for the Riverwalk Project, the Trustees’ implication that this presents a problem is unfounded. The City has already begun working with private property owners and they have been supportive of the project, agreeing with the City that the Riverwalk will be a welcome addition to the area and a benefit to everyone affected. The project, in fact, benefits affected owners by enabling them to comply with open access requirements. That the project is complex and creative is not a reason to ignore its undeniable potential to change access to the waterfront of the City. The contours of these easements will take shape as the harbor clean up proceeds.

3. Existing PCB contamination of harbor may have an effect on construction and access.

RESPONSE: Again, the City states that postponement of final design is strategic and deliberate, providing the City and EPA the necessary time work together to assure that neither PCB's, nor the EPA cleanup, will impact the final project construction. Further, the cleanup will assure that access and use of the Riverwalk satisfies the strictest environmental regulation. Contaminated sediments will be addressed by EPA prior to construction of the Riverwalk project. As noted above, contaminated soils will be addressed in connection with the EPA clean up.

4. Removal of contaminated soil and solid waste debris is required

RESPONSE: This concern is not valid as the Riverwalk project will not require any significant land moving. Further, to the extent such actions might become necessary, the City has the experience and ability to quickly and effectively accomplish such tasks.

5. Potential presence of historic structures of significance needs to be addressed including coordination with the MHC.

RESPONSE: The City does not anticipate the removal of any historic structures, and does not foresee the need to remove any. This objection is unfounded, and the draft plan fails to substantiate it.

In summary, there is no validity to the concern that the Riverwalk project is not proceeding apace, nor is it the case that the City does not have a clear and detailed plan for its completion. The only significant lingering question is funding availability.¹

Areas Affected By the Spill

Perhaps the primary criticism of the Riverwalk is that is it would be located along a stretch of shoreline that was not damaged by the spill, and that other projects are located near areas that were sullied by oil. This criticism is a red herring.

The primary point of the public amenity projects under the trustees' review is not to repair harm caused to coastal amenities damaged by the spill. That goal already has been accomplished through the multimillion dollar clean up that was completed years ago. Nor is

¹ The Trustees also expressed concern that increased access to the inner harbor may increase fishing and fish consumption. The City believes that the increased visibility and foot traffic in the entire area will actually serve as a deterrent to prohibited fishing activity.

the goal to restore natural resources per se. The trustees have set aside funding for that purpose.²

If the goal rather is to restore opportunities for passive recreation that were lost as a result of the spill, the trustees should recognize that the *entire region* was affected by the spill. People throughout the region, including those who don't live near the water or near areas affected by spill, use our coastline. Residents of areas such as the North End of New Bedford, Acushnet and North Dartmouth avail themselves of the region's coastal amenities even though they may live miles away. The best way, therefore, to restore lost recreational opportunities is to focus on accessibility. The more people can get to a particular site for passive recreation, the more likely it would be that the public would be made whole. The particular points on the map where the spill washed ashore should not be given undue weight. Seen in this way, the Riverwalk is clearly a preferred project.

Cultivation of a Conservation Ethic

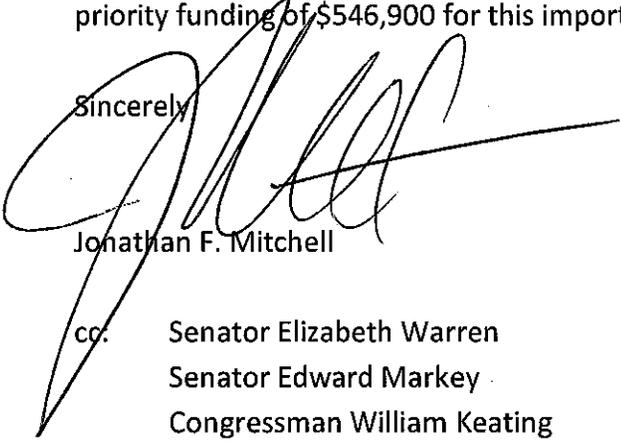
As the Trustees are aware, funds recovered in environmental torts or crimes cases are often spent either on direct resource restoration or on passive recreation, such as trails and walkways. The funding of trails advance a key conservation purpose. By bringing people to the natural resource, namely the coastline, such public amenities offer opportunities to experience the natural resources first hand and develop an appreciation for them. By helping cultivate a conservation ethic, trails and similar amenities encourage people to take steps to preserve our natural resources.

To the extent that this is the goal of funding public amenities, the Riverwalk represents by far the highest return on investment of all the projects in the LU category for one unassailable reason: the Riverwalk is located within walking distance of the most densely populated area in the region. More than any other project, it holds the most potential to influence the way residents in the region think about their natural environment. It is the biggest bang for the trustees' buck.

² Proximity to the spill was certainly not a controlling factor in the use of the fines in the criminal prosecution of Bouchard. As an Assistant U.S. Attorney, I prosecuted Bouchard and the tugboat mate that caused the spill. At Bouchard's sentencing, I successfully recommended that seven of the nine million dollars in criminal fines be used for wetland restoration projects in the region. The lion's share of these projects were in areas not affected by the spill.

Accordingly, the City believes that the Trustees to reconsider its draft decision to recommend New Bedford's Riverwalk Project as a "Tier 2" project and instead assign Tier 1 priority funding of \$546,900 for this important community resource betterment effort.

Sincerely,



Jonathan F. Mitchell

cc: Senator Elizabeth Warren
Senator Edward Markey
Congressman William Keating
Eileen Sobeck, Assistant Administrator, NOAA Fisheries
Veronica Varela, U.S. Fish and Wildlife
Richard Sullivan, Secretary of Energy and Environmental Affairs
John Bullard, NOAA Regional Director
Daniel Morris, NOAA Deputy Regional Director
Kenneth Kimmell, MassDEP Commissioner
Kate Clark, NOAA
Jim Turek, NOAA
Molly Spurduto, U.S. Fish and Wildlife
Karen Pelto, MassDEP
Millie Garcia, MassDEP
Mary Kay, RIDEM