

October 20, 2011

Delivered by Hand

Mr. Ben Lynch, Section Chief  
Mr. Alex Strysky, Environmental Analyst  
Division of Waterways  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

**Subject: Comments on the revised Request for Determination of Applicability (RDA) #240106 dated September 30, 2011 submitted by High Rock Bridge Street, LLC for the Gateway Center in Salem, MA**

Dear Mr. Lynch and Mr. Strysky:

This letter provides comments on the revised RDA #240106 dated September 30, 2011. It is being submitted to you by more than ten citizens residing adjacent to the property and in the two large neighborhoods situated along the north and south banks of Salem's North River.

We believe that the applicant has failed to demonstrate that the land located at 401 Bridge Street and 44 Boston Street is beyond the jurisdiction of Chapter 91. Our comments are submitted under 310 CMR 9.0. To minimize repetition of information provided by Jim Treadwell, his letter dated October 15, 2011 along with its attachments, is incorporated in this letter and attached for reference. The property boundaries for the two parcels are shown in Exhibit A of Mr. Treadwell's letter.

We concur with his finding that the Gateway site is on filled landlocked tidelands and that the majority of the site to be filled by the proposed project is within 250 feet of the high water mark of the North River. Therefore, we request that you find the entire Gateway site, including both parcels, subject to Chapter 91 review.

The proponent argues that a significant portion of the site was never below the historic high water mark and that this property is therefore not a filled tideland and not subject to Chapter 91. We believe that the materials provided here and the materials provided by Mr. Treadwell show the opposite to be true.

We provide the following information and comments in addition to those in Mr. Treadwell's letter:

- The 1700 map from the Registry of Deeds is attached as Exhibit 1. The map shows that the parcels that form the Gateway property had not yet been filled and were under water.
- Exhibit 2 provides information from The Antiquarian, Volume 13, Part of Salem in 1700, No. 11 by Sidney Perley. It includes a description of the river at that time, a portion of the 1700 map in Exhibit 1 that focuses on the part of the North River where no fill was present and that shows in brackets where Federal Street will later be laid out. The text is based on numerous surveys and deeds cited of properties along the river.
- As noted in an excerpt from "Salem in the Eighteenth Century" by James Duncan Phillips, Town Life in the Twenties and Thirties, Exhibit 3, "The River was deep and navigable, and even the shipyards near Boston Street had no trouble in getting their ships to sea."
- The map of 1820/30, Exhibit 4, shows the river banks extending to the rear of all Federal Street properties between Flint, then called Dean Street and Boston Street, again underwater and with no fill.

- The thematic map of the North River in 1842, Exhibit 5, shows that the parcels were not yet filled and were under water as late as 1842. The map was prepared as part of a study funded in May of 2000 by a three-year grant from the National Endowment for the Humanities. It was a collaborative effort of North Shore Community College in Danvers, Massachusetts, and three Salem, Massachusetts museums with important Hawthorne collections: The Peabody Essex Museum, the House of the Seven Gables Historic Site, and the Salem Maritime National Historic Site. The map is taken from the web site [www.hawthorneinsalem.org/map/1847Flash76.swf](http://www.hawthorneinsalem.org/map/1847Flash76.swf)
- The map of 1851, prepared by Henry McIntyre, surveyor, Exhibit 6, shows that Federal Street properties went down to the water as late as that date. J. Lord's Tannery and D.F Nicholls tannery appear to be in the first landfill. It also appears that this landfill may form part of the current 44 Boston Street site. The exhibit includes photographs of the original map in the Phillips Library of the Peabody Essex Museum of Salem. Exhibit 6a is an enlargement showing the parcels under review. Exhibit 6b is an enlargement of the map's legend box. Exhibit 6c shows the entire map.
- The photograph of the rear of 170,172,174,176 and 178 Federal Street (left to right) taken in 1880, Exhibit 7, shows that these properties went down to the river as late as 1880. These properties abut part of the current 401 Bridge Street parcel which we believe was filled in 1888. Exhibit 7a is a copy of a newspaper article with each of the house addresses annotated. Exhibit 7b shows is a clearer copy of the photograph used in the article.
- The old license #748 issued in 1883 which, in connection with special legislation, authorized the filling of the North River, Exhibit 8, shows again that the area now called 401 Bridge Street as well as a portion of 44 Boston Street had still not been filled.
- The 2008 Salem Harbor Plan, Designated Port Area and Chapter 91 Designation, Page 101, Exhibit 9a, shows both parcels in the Gateway site to be below the historic high water mark and subject to Chapter 91. Exhibit 9b is included to show the location of the parcels as noted by Jim Treadwell in Exhibit C of his letter.
- A copy of the deed for 174 Federal Street conveyed in 1955 refers to the land running to the old sea wall still in the same location at the southern boundary of 144 Bridge Street and provides information about earlier conveyances of the property. This deed, Exhibit 10, is from the Commonwealth of Massachusetts, Essex South Registry of Deeds, Salem, MA 1986, Book 1864, page 524, Land Record Preservation Program, John L. O'Brian, Jr. Register.
- We have identified 3 types of wetland vegetation in the 44 Boston Street parcel, normally associated with intertidal habitats, photographed in Exhibits 11a, 11 b and 11 c. Please note there are two large areas of vegetation at approximately the center of the parcel near the barrel; also a large grouping of phragmites at least ten feet high located along the Bridge Street side of the 44 Boston Street parcel, and finally another type of wetland vegetation on the site. The approximate location of these plants are noted on the site map in Exhibit 11d.
- We believe that the severe flooding experienced during the flash flooding on October 4, which required police and fire equipment to remove a man trapped in his car near the intersection of Boston and Bridge Streets (Exhibit 12) underscores the fact that this area is subject to the effects of extreme high tides combined with rain. The manmade changes proposed for the Gateway site, including both the buildings and extensive parking fields, will face these increasingly common high tide/rain events.(Exhibit 13)

We also note that the RDA does not appear to consider the parking lots that will be constructed on the property to be subject to Chapter 91. We believe that the parking lots and the old seawall

(Exhibit 14) at the southern boundary of most of the 401 Bridge Street lot are subject to Chapter 91 in accordance with the definition of Structure in 310 CMR 9.2 which states in part:

“Structure shall include, but is not limited to, any pier, wharf, dam, seawall, weir, boom, breakwater, bulkhead, riprap, revetment, jetty piles (including mooring piles), line, road, groin, causeway, culvert, bridge, building, parking lot, cable, pipe, pipeline, conduit, tunnel, wire or pile-held or other permanently fixed float, barge, vessel or aquaculture gear.”

We understand that DEP’s best information regarding the historical high water line is represented in a presumptive line in a GIS database. While we have made our best efforts to research the history of the parcels, we do not have access to GIS, and therefore ask that you send us presumptive line information for the parcels associated with the application.

The signatories recognize that the City of Salem can benefit from development of the now empty parcels where the Gateway Center is planned along Bridge Street across from Salem’s North River. However, we are concerned that a decision to find the parcels not to be subject to Chapter 91 jurisdiction could establish a precedent that would weaken the protections for the river and for adjoining properties all along the North River.

Thank you for your consideration of these comments.

Very truly yours,



Alexa Ogno  
182 Federal Street, #3  
Salem, MA 01970  
978-745-4021  
[adogno@alum.mit.edu](mailto:adogno@alum.mit.edu)

For the group of more than 10 citizens whose signatures follow.

**Attachments:**

Signatures

Exhibits

1. Map of the North River 1700 from the Registry of Deeds
2. The Antiquarian, Volume 13, Part of Salem in 1700, No. 11 by Sidney Perley, pages 67-71.
3. Excerpt from Salem in the Eighteenth Century by James Duncan Phillips, Town Life in the Twenties and Thirties, page 119
4. Map of the North River 1820/30
5. Thematic map of the North River 1842
6. Map of the North River 1851 by Henry McIntyre, Surveyor. Photographs taken of the map in the PEM Phillips Library collection.
7. Photographs of houses abutting the North River circa 1880 along what is now 401 Bridge Street
8. License #748 issued in 1883
9. Salem Harbor Plan, dated January 2008, Designated Port Area and Chapter 91 designation, page 101 with location of site noted by hand and copy of Exhibit C from Jim Treadwell’s letter
10. Deed for 174 Federal Street conveyed in 1955 from the Commonwealth of Massachusetts, Essex South Registry of Deeds, Salem., MA 1986. Book 1864, page 524

11. Photographs of wetland vegetation present at 44 Boston Street 10/18/2011, with notes on the site map to indicate their location. (Site map used is Exhibit H in Mr. Treadwell's letter.)
12. Police/fire report about need to remove person from car in flooding on Boston Street 10/4/2011.
13. Article from the Boston Globe, Globe North, Sunday, October 16,2011 "Planning forum focuses on rising sea levels"
14. Photograph of the old sea wall at the rear of 144 Bridge Street abutting the north property lines of 170-178 Federal Street. We believe this wall has been restored on several occasions.

Jim Treadwell's letter dated October 15, 2011

**CC:**

Salem Conservation Commission, attention Tom Devine, Conservation Agent and  
Lynn Duncan, City Planner  
Michael Sosnowski, Ward 2 City Councilor  
Paul Prevey, Ward 6 City Councilor  
Federal Street Neighborhood Association  
Mack Park Neighborhood Association  
Richard A. Nylen, Jr., Lynch, DeSimone & Nylen, LLP

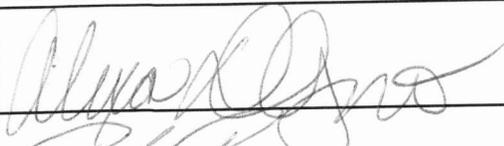
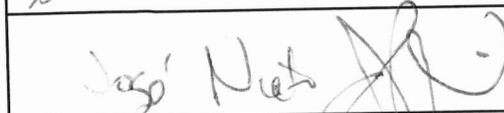
The following citizens join in commenting on the revised Request for Determination of Applicability (RDA) #240106 dated September 30, 2011 submitted by High Rock Bridge Street LLC for the Gateway Center in Salem, MA

Name	Address	Telephone
Steph Whitby Stephen Whitby	11 River St Salem	978 744 6076
Michael Sosnowski - City Councilor Michael Sosnowski	17 Collins St. Salem	978-745-6182
Joan M. Sweeney Joan M Sweeney	22 Silver St Salem	978-744-3717
Jane Curtis Arlander Jane Curtis Arlander	93 Federal Street Salem	978-744-0916
James M. Fleming James M. Fleming	47 Buttrick St Salem	978 590 6565
PATRICK H. DONAHUE Pat Donahue	12 Dearborn Ln	978-744-7662
LORENE T. SCANLON Lorene T. Scanlon	77 Mason St. Unit 4 Salem	978-273-8191
LESLIE P. LIMON Leslie P. Limon	18 Southwick St Salem	978 745 9126
Perry McIntosh	2 River St Salem	978-745-5325
Deborah Maloney	30 Jayson St	978 979-2784

The following citizens join in commenting on the revised Request for Determination of Applicability (RDA) #240106 dated September 30, 2011 submitted by High Rock Bridge Street LLC for the Gateway Center in Salem, MA

Name	Address	Telephone
JEAN Colby ARLANDER Jean C. Arlander	93 Federal St Salem, ma	978-744-0916
Alice E. Burns Alice E. Burns	22 Beckford ST Salem, MA 01970	978-745-1896
WILLIAM RUSSEL BURNS, JR. William Russel Burns	22 BECKFORD ST SALEM MASS. 01970	978-745-1896
Margaret S. Stwohery Margaret S. Stwohery	122 Federal St Salem MA 01970	978-744-6702
Dennis J. Lebowicz Dennis J. Lebowicz	122 Federal Street Salem, MA 01970	978.744.6702

The following citizens join in commenting on the revised Request for Determination of Applicability (RDA) #240106 dated September 30, 2011 submitted by High Rock Bridge Street LLC for the Gateway Center in Salem, MA

	Name	Address	Telephone
1.		Alexa Ognio 182 Federal St #3, Salem.	978-745-4021
2.		Peter Parnassos 182 Federal St #3, Salem	978-745-4021
3.		182 Federal St. #2, Salem	617-953-2419
4.		DAN FULTON 182 FEDERAL ST #1 SALEM	508-641-5830
5.		Katrina Fulton 182 Federal St #1, Salem	"
6.		182 Federal St. #2 Salem MA	978-745-5728
7.		180 Federal St Salem, MA	978-745-8731
8.		180 Federal St., Salem, MA	"
9.			
10.			

