

September 1, 2011  
86 Ruggles Street  
Quincy, Massachusetts 02169

Mr. Benjamin Lynch, Program Chief  
DEP Waterways  
One Winter Street  
Boston, Massachusetts 02108

Subject: Relocation of the Town Brook in Quincy Center

Dear Mr. Lynch:

Per the above referenced project, I'd like to thank you for forwarding the letter from the City of Quincy to your office dated June 23. Please accept this letter as a follow up to the City's letter.

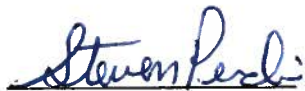
It appears that the only two relevant criteria suggested under 301 CMR 9.04 (1) (e) required for Chapter 91 to have jurisdiction over a non-tidal waterway (in this case, the Town Brook in Quincy) would be that public funds be expended and the waterway be navigable for some portion of the year. The City concedes in their letter that "public funds have been spent upstream and downstream along the reaches of the Town Brook...". The City's only objection stems from their belief that the Brook is not navigable. However, 301 CMR 9.04 reads that the waterway must be "normally navigable".

As mentioned in my previous letter included with the Request for Determination of Applicability, we have been in contact with an attorney, Mr. John A. Pike, a volunteer lawyer for the Conservation Law Foundation. He has reviewed the letter from the city. He states that "normally" means the stream's original natural flow, and not, as the City suggests, the Brook's current state, with physical obstructions and flow reduced.

The City's letter points to the culverts at Elm Street and the Trash Rack at Bigelow Street as preventing passage of a vessel. These are manmade structures that are currently unpermitted under Chapter 91. Man-made obstructions and flow reductions are certainly not part of the Town Brooks original natural flow.

We respectfully ask you to determine that a Chapter 91 permit is required for this project. Thank you for your time and attention to this matter.

Sincerely yours,



Steven Perdios

For:

Richard Joyce, Patricia Artists, Arline Goodman, Anneli Johnson, Valerie Stromberg, Ross Edwards, Josephine Costello, Ruth Griffin, and Elaine McGrail.

cc. Harrington, City of Quincy