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February 29, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Simpson Parcel 1  
PROJECT MUNICIPALITY : Boston  
PROJECT WATERSHED : Boston Harbor  
EOEA NUMBER : 14153  
PROJECT PROPONENT : SHLP-Bulfinch LLC  
DATE NOTICED IN MONITOR : December 24, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the proposed project consists of the design and construction of a 361,450 gross square foot (sf) mixed-use development on a 45,394 sf parcel in the Bulfinch Triangle. The parcel is owned by the Massachusetts Turnpike Authority (MTA). The proponent was designated as the developer of this parcel by the MTA following a public Request for Proposal process that included public presentations and meetings. The proponent will lease the property from MTA through a ground lease. The project will include approximately 14,910 sf of retail space on the ground floor (including 11,940 sf of restaurant space), a 142-space parking garage on the second, third and fourth floors and 283 residential units on the remaining floors.

The site is bounded by Haverhill Street, Causeway Street, Beverly Street and Valenti Way. The site consists primarily of impervious surfaces. It is located above the Massachusetts Bay Transportation Authority (MBTA) Green and Orange Line Stations and directly across from the commuter rail at North Station. The site includes utility corridors, emergency tunnel access, MBTA station access and MBTA air shafts. It is located on landlocked tidelands approximately 475 feet from the shoreline of Boston Inner Harbor and within the City of Boston Groundwater Conservation Overlay District. The parcel was created through the Central Artery/Tunnel (CA/T) project and is owned by the MTA.

### Jurisdiction

The project is undergoing MEPA review and subject to preparation of mandatory Environmental Impact Report (EIR) pursuant to Section 11.03 (6)(a)(6) because it requires a state permit and will generate 3,000 or more new average daily vehicle trips (adt). The project requires a Sewer Connection Permit from the Department of Environmental Protection (MassDEP) and a ground lease from the MTA.

The project is subject to Article 80 Large Project Review by the Boston Redevelopment Authority (BRA) which was completed prior to filing of the EENF Certificate. In addition, it requires the development of a Transportation Access Plan Agreement (TAPA) and Construction Management Plan (CMP) for review by the Boston Transportation Department (BTD), a Curb Cut Permit from the Boston Public Works Department (PWD) and Boston Parks and Recreation Commission approval for construction of a building within 100 feet of a park.

### Summary of Potential Environmental Impacts

Potential environmental impacts are associated with the generation of approximately 3,054 average daily vehicle trips (adt) based on the Institute of Transportation Engineers (ITE) Trip Generation Manual, use of 63,860 gallons per day (gpd) of water, generation of 58,000 gpd of wastewater and use of landlocked tidelands. Re-development of this site that is located in close proximity to transit will minimize overall impacts. The ENF indicates that measures to avoid, minimize and mitigate environmental impacts include: incorporation of sustainable design elements as required by Article 37 of the Boston Zoning Code; development of a Transportation Demand Management (TDM) program and a limited parking supply to minimize traffic trips; and support for streetscape improvements including a \$300,000 contribution to the City of Boston Crossroads Initiative.

Because the proponent is seeking a land transfer, in the form of a ground lease, MEPA jurisdiction extends to those aspects of the project within the area subject to the land transfer that are likely, directly or indirectly, to cause Damage to the Environment. Pursuant to 301 CMR 11.01(2)(a)(3), MEPA subject matter jurisdiction is functionally equivalent to full scope jurisdiction.

### Summary of Proposed Mitigation Measures

The EENF and supplemental information provided on February 27, 2008, identify the project's consistency with the Commonwealth's Sustainable Development Principles and describe the following measures to avoid, minimize and mitigate environmental impacts:

- Re-development of a vacant lot located in close proximity to transit;
- design of a LEED Certifiable building consistent with requirements of Article 37 of the Boston Zoning Code;
- provision of adequate pedestrian access around and through the site including wide sidewalks, lighting and street furniture;
- development of a Transportation Demand Management (TDM) program (including transit pass subsidies) and a limited parking supply to minimize vehicle trips;
- support for streetscape improvements including a \$300,000 contribution to the City of Boston Crossroads Initiative; and
- support for additional traffic analysis including \$50,000 for a comprehensive study of the Bulfinch Triangle neighborhood.

In addition, the proponent indicates its goal to certify the project at the Silver level which will require a commitment to incorporate into the project design additional measures beyond those identified in the LEED project checklist included with the EENF.

### Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. The proponent submitted an EENF in conjunction with this request. The EENF identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The waiver request was discussed at the consultation/scoping session for the project which was held on January 17, 2008.

### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) Not serve to avoid or minimize Damage to the Environment.

### Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

### Findings

Based upon the information submitted by the Proponent, consultation with the relevant state agencies, and comment letters submitted on the project, I find that the waiver request has merit and that the Proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1).

As noted previously, the EENF identifies the environmental impacts of the project, identifies the project's consistency with the Commonwealth's Sustainable Development Principles and describes how the design and long-term operation of the building will minimize greenhouse gas emissions. The EENF included a traffic study, additional information regarding historic impacts and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

State agency action associated with the project is limited to the issuance of a Sewer Connection Permit by MassDEP and a ground lease by MTA. Comments from MassDEP indicate that the agency has no objections to the issuance of a Waiver if it is conditioned upon compliance with the removal of extraneous clean water (Inflow/Infiltration (I/I)) from the sewer system. The EENF contains sufficient information to allow state agencies to understand the environmental consequences of its permit decision.

MHC, as the State Historic Preservation Officer, has reviewed the project as required by the "joint development" process of the Central Artery/Tunnel (CA/T) Project and the associated Memorandum of Agreement (MOA). Comments from MHC note that the height of the building is acceptable given the site constraints (for access to utilities and to the tunnels) and that the massing of the building components step back from the Bulfinch Triangle Historic District. Comments from BED indicate that the Boston Landmarks Commission (BLC) shares the viewpoint of MHC that the overall scale and massing minimize the impact and the architectural design is sympathetic to the neighborhood context. MHC comments indicate that more detailed designs must be provided for review as the project progresses.

Other comments letters received on the project do not identify any additional alternatives that should be analyzed or environmental issues that require significant additional analysis.

Comments from the Boston Groundwater Trust provided to the BRA (dated December 3, 2007) do not identify any significant concerns with the impact of the project on groundwater levels or request monitoring of groundwater levels at the site. The comment letter from Downtown North Association (DNA) indicates its strong support for granting of a waiver and identifies the project's consistency with longstanding design and planning goals.

As noted previously, the categorical requirement to prepare an EIR is based on exceedance of a transportation threshold. As noted previously, trip generation is estimated at over 3,000 adt based on the ITE Trip Generation Manual. According to the EENF, adjusting this estimate using BTD mode shares, results in an estimate of 702 adt. This estimate is significantly lower than the mandatory EIR threshold of 3,000 adt and also below the ENF threshold of 2,000 adt. In addition, the trip generation and traffic impacts of the project have been reviewed by the City and BTD through the BRA Article 80 process. This review has resulted in a design that incorporates measures routinely required or encouraged through MEPA review including a low parking ratio, development of an effective TDM program, provision of transit subsidies and adequate pedestrian and bicycle infrastructure.

Based on the foregoing, I find that preparation of an EIR is not necessary in order for the proponent to demonstrate that it will avoid, minimize, and mitigate potential Damage to the Environment to the maximum extent practicable. Strict compliance with the requirement to prepare an EIR would therefore cause undue hardship and would not serve to minimize Damage to the Environment.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is likely to cause no Damage to the Environment:
  - The project consists of redevelopment of a vacant lot, comprised entirely of impervious surfaces. The site does not contain any significant natural resources or protected open space or parkland. Adequate mitigation will be provided for impacts to landlocked tidelands, transportation, wastewater and historic resources.
  - The project is consistent with the Commonwealth's Sustainable Development Principles and is designed to be LEED certifiable. Sustainable design elements include the redevelopment of an existing site in close proximity to transit, a low parking ratio, a TDM program including transit subsidies and bike storage, green or cool roofing materials, re-use of stormwater for irrigation, water conservation and building commissioning. In addition, it may include the purchase of renewable energy credits, low emitting materials and enhanced daylighting.
2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:

- MassDEP and MWRA indicate that I/I mitigation can and should be provided to address any potential impacts to the wastewater infrastructure.
  - Adequate pedestrian circulation is provided around and through the site and contributions to the Crossroads Initiative will improve pedestrian access and safety along Causeway Street;
  - The BRA Board approved the project on December 20, 2007, thereby indicating that the project has provided an adequate description of and mitigation for potential community impacts.
3. The proposal to grant the Waiver is conditioned on the following to ensure the environmental impacts of the project are minimized:
- The proponent will remove or cause to be removed approximately 232,000 gpd of I/I from the wastewater system.
  - The proponent will provide detailed project designs to MHC for review and approval per the terms of the Central Artery/Tunnel (CA/T) Memorandum of Agreement (MOA).
  - Consistent with Article 32, Section 6 of the Boston Zoning Code, the proponent will certify that the project will not negatively impact groundwater levels on the site or on adjacent lots.

### Conclusion

Based on these findings, I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on March 12, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on March 26, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant the waiver** requested for this project from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions.

February 29, 2008

Date

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Ian A. Bowles

Comments received:

1/23/08 Department of Environmental Protection/Northeast Regional Office (MassDEP  
NERO)  
1/16/08 Massachusetts Historical Commission (MHC)  
2/21/08 Massachusetts Historical Commission (MHC) (second letter)  
1/23/08 Massachusetts Water Resources Authority (MWRA)  
1/23/08 City of Boston Environment Department  
2/19/08 Downtown North Association

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