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December 29, 2008

FINAL RECORD OF DECISION

PROJECT NAME : The Merano  
PROJECT MUNICIPALITY : Boston  
PROJECT WATERSHED : Boston Harbor  
EOEA NUMBER : 14304  
PROJECT PROPONENT : Boston Development Group  
DATE NOTICED IN MONITOR : October 8, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (ENF) and hereby **grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR). In a separate Certificate issued on October 3, 2008, I set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

As described in the EENF, the project consists of the design and construction of a 463,000 square foot (sf) mixed use development in Boston, MA. The project includes approximately 190,000 sf of hotel uses (short-term and long-term), 206,000 sf of office space, 10,000 sf of retail and 13,000 sf of restaurant space. It will include a parking garage on the second floor that will provide 203 spaces (93 double stacked and 17 single). The project requires demolition of a one-story commercial building at 88 North Washington Street.

The project site includes Parcel 1B, Parcel 1C and 86-88 Washington Street. Parcel 1B was created by the demolition of the elevated I-93 highway structures and 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. Parcel 1C and 86-88 Washington Street are owned or will be owned by the proponent.

The 1.26-acre site is bounded by Causeway Street, Beverly Street, Valenti Way, North Washington Street and buildings along Medford Street, including 239 Causeway Street and 98 North Washington Street. It is in close proximity to the Massachusetts Bay Transportation Authority (MBTA) Green Line and Orange Line and the commuter rail at North Station. The parcel, which is located over MTA tunnels, is vacant with the exception of an area used for surface parking. It is located on landlocked tidelands approximately 415 feet from the shoreline of Boston Inner Harbor and within the City of Boston Groundwater Conservation Overlay District. The site is located immediately adjacent to the Causeway/North Washington Street District, which is eligible for listing on the National Register of Historic Places. It is located in the vicinity of the Bulfinch Triangle District, which is listed in the State and National Registers of Historic Places and in the vicinity of the North End Area, an area included in the Inventory of Historic and Archaeological Assets of the Commonwealth.

#### Permitting/Jurisdiction

The project is undergoing MEPA review and subject to preparation of a Mandatory EIR pursuant to 11.03 (6)(a)(6) because it requires a state permit and will generate 3,000 or more new average daily vehicle trips (adt) on roadways providing access to a single location. The project requires a Sewer Connection Permit from the Massachusetts Department of Environmental Protection (MassDEP), a long-term ground lease from the MTA and review by the Massachusetts Historical Commission (MHC). The project may require authorization from the Executive Office of Transportation and Public Works (EOTPW) for use of former railroad right of way (ROW). The project is subject to the MEPA Greenhouse Gas Emissions Policy and Protocol and will require a Public Benefits Determination for use of landlocked tidelands. Also, it requires a Sewer Use Discharge Permit and Construction Dewatering Permit from the Massachusetts Water Resources Authority (MWRA).

The project is subject to Article 80 Large Project Review by the Boston Redevelopment Authority (BRA) pursuant to Article 80 of the Boston Zoning Code. The BRA issued a decision on the Project Notification Form (PNF) on September 23, 2008 indicating that no further review was required. In addition, it requires multiple permits and reviews by the City of Boston including development and review of a Construction Management Plan and a Transportation and Access Plan Agreement by the Boston Transportation Department (BTD). The project will require zoning relief including relief for dimensions and setback requirements as well as the proposed hotel and parking.

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 as defined in the MEPA regulations. Pursuant to 301 CMR 11.01(2)(a)(3), MEPA subject matter jurisdiction is functionally equivalent to full scope jurisdiction.

### Summary of Potential Environmental Impacts

Potential environmental impacts associated with the project include the generation of approximately 2,044 adjusted adt, use of 63,701 gallons per day (gpd) of water, generation of 57,910 gpd of wastewater and non-water dependent use of landlocked tidelands.

### Summary of Proposed Mitigation Measures

The EENF and supplemental information dated December 10, 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 and construction of a building that is certifiable by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) at the Silver level and which will lower the project's energy use by at least 14% from the ASHRAE 90.1-2004 standard;
- measures to minimize GHG emissions associated with the project including high albedo roofing, high efficiency HVAC systems, daylighting, energy efficient lighting, refrigerants with a low global warming potential, dedicated space for recycling infrastructure, use of construction materials with recycled content, use of regionally manufactured construction materials, duct sealing, water conservation measures and fundamental building commissioning performed by a third-party;
- provision of adequate pedestrian access around and through the site including wide sidewalks, lighting and street furniture;
- creation of a plaza at the Causeway Street/Beverly Street corner of the site;
- development of a Transportation Demand Management (TDM) program and provision of a limited parking supply to minimize vehicle trips;
- discounted parking rates for drivers of low-emitting, fuel efficient vehicles;
- 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.

### Waiver Request

The proponent has requested a Waiver of the requirement to prepare an EIR. An EENF was submitted in conjunction with this request and it was subject to an extended comment period as required. 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 scoping session for the project which was held on September 10, 2008.

A Draft Record of Decision (DROD) was issued on October 3, 2008 and published in the

October 8, 2008 edition of the Environmental Monitor in accordance with 301 CMR 11.15(2). It was subject to an extended comment period which ended on December 22, 2008. As a condition of the DROD, the proponent was required to provide supplemental analysis of Greenhouse Gas (GHG) emissions and mitigation measures associated with the project. Supplemental information, dated December 10, 2008, was provided to the MEPA Office and to all individuals and organizations that commented on the EENF.

#### 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 identified the environmental impacts of the project and identified the project's consistency with the Commonwealth's Sustainable Development Principles. The EENF included a traffic study, a GHG analysis and described measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts including commitments to minimize GHG emissions.

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. State agency comments do not identify concerns with the granting of the waiver request. The proponent has addressed adequately the comments on the EENF related to GHG emissions and mitigation measures. The revised GHG analysis includes additional analysis of on-site renewables, cogeneration and enhanced building commissioning and provides clarification of commitments identified in the EENF. Additional and/or enhanced mitigation measures include a commitment to measures that will qualify the project for LEED Certification at the Silver level (compared to the Basic level identified in the EENF), third-party building commissioning and duct sealing. The proponent has evaluated incorporation of a solar photovoltaic (PV) system or a combined heat and power (CHP) cogeneration system but deemed it infeasible. One significant constraint identified is that the project is located on NSTAR's spot network and, therefore, limited to an inverter based distributed generation system (DG) up to a maximum of 15kw which is approximately .25% of the project's anticipated electrical load. The revised GHG analysis clarifies the proponent's commitment to water conservation and provides an estimate of associated GHG emissions reductions. It indicates that it will use low-flow fixtures that can reduce water demand by 30% as compared to the Energy Policy Act of 1992 compliant fixtures or 2,373,707 gallons per year (gpy). Based on the formula provided by MassDEP, use of low-flow fixtures will reduce CO2 emissions by 4,558 pounds per year or 2.3 tons per year (tpy).

The EENF and supplemental filings 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 proposed buildings exceed the height limits established by the JDG and indicate that the project will have an adverse effect on the Bulfinch Triangle and Causeway/North Washington Street historic districts through the introduction of visual elements that are out of character with and alter the setting of these historic districts. MHC comments request consideration of design alternatives for the proposed height and massing. The MHC comment letter does not identify concerns with the granting of a waiver.

Comment letters on the EENF from the Downtown North Association (DNA) and the Bulfinch Triangle Community Advisory Committee (BTCAC) express strong support for the project and the Waiver. Comments from the Boston Groundwater Trust provided to the BRA (dated July 23, 2008) do not identify any significant concerns with the impact of the project on groundwater levels.

As noted previously, the categorical requirement to prepare an EIR is based on exceedance of a transportation threshold. Trip generation is estimated at over 3,000 adt based on the Institute of Transportation Engineers (ITE) Trip Generation Manual. According to the EENF, adjusting this estimate using BTM mode shares, results in an estimate of 2,044 adt. This estimate is lower than the mandatory EIR threshold of 3,000 adt. In addition, the trip generation and traffic impacts of the project have been reviewed by the City and BTM 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 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. 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 at the Silver level. In addition, the proponent has conducted a GHG analysis as required and committed to measures to reduce GHG emissions.
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 measures to eliminate extraneous clean water from the sewer system (infiltration/inflow (I/I)) 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 project was approved by the BRA on September 23, 2008, 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 must provide a certification to the MEPA Office signed by an appropriate consultant (e.g., engineer, architect, general contractor) indicating that the mitigation measures identified in the EENF and the December 10, 2008 supplemental GHG analysis,

or other measures sufficient to achieve at least a 13% reduction in stationary source GHG emissions compared to the Baseline Condition, have been incorporated into the project. The certification should be supported by as-built plans. For those measures that are operational in nature (i.e. TDM, recycling) the proponent should provide a plan identifying the measures, the schedule for implementation and how progress towards achieving measures will be obtained.

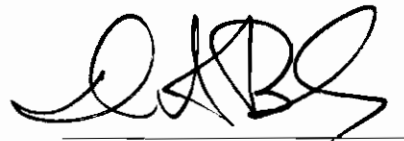
- The proponent will remove or cause to be removed approximately 235,640 gpd of I/I from the wastewater system.
- The proponent will consult with MHC regarding alternatives to the proposed building design and massing and will provide more detailed elevation drawings which depict proposed materials and will provide sketches or more detailed descriptions of the proposed fenestration reveals as well as depths/dimensions of other applied or structural exterior details.
- 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.
- The proponent will participate in the MassDEP Diesel Retrofit Program to mitigate the construction-period impacts of diesel emissions to the maximum extent feasible. The proponent will require contractors to retrofit construction vehicles with after-engine emission controls such as diesel oxidation catalysts (DOCs) and/or diesel particulate filters (DPFs) that are verified by the U.S. Environmental Protection Agency (EPA).

### Conclusion

I have determined that this waiver request has merit, and issued a Draft Record of Decision (DROD), which was published in the Environmental Monitor on October 8, 2008 in accordance with 301 CMR 11.15 (2), which began the public comment period. The DROD was subject to an extended public comment period that ended on December 22, 2008. I hereby **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.

December 29, 2008

Date



Ian A. Bowles

No comments received

IAB/CDB/cdb