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May 1, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : Proposed Riverwalk Redevelopment
PROJECT MUNICIPALITY : Lawrence
PROJECT WATERSHED : Merrimack
EEA NUMBER : 14389
PROJECT PROPONENT : 280 Riverwalk LLC, 290 Riverwalk LLC, and
350 Riverwalk LLC
DATE NOTICED IN MONITOR : March 25, 2009

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 (EENF) and hereby **propose to grant a waiver** that will allow the Proponent to proceed with Phase I of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

As described in the Environmental Notification Form (ENF), the project consists of phased (Phase I-II) mixed-use redevelopment on an 11.8-acre historic mill property in Lawrence. Phase I consists of: the abatement and demolition of the mill buildings at 290, 300, and half of 350 Merrimack Street; the creation of new public infrastructure which includes a new city owned roadway and utilities; the construction a 1,500 square foot (sf) community building, public park, and 17,000 sf retail building; and the renovation of the existing parking field, which includes stormwater management improvements. Phase II consists of: the construction of an aboveground 550-car, 5-story parking garage; the renovation and adaptive reuse of existing mill buildings at 280 Merrimack Street (Wood Mill) and the remaining half of 350 Merrimack Street (Cotton Mill); and the construction of a 115,000 sf, 3-story commercial building. The project includes restoration of the historic Wood Mill building. The EENF indicates that the historic building at 290 Merrimack Street (Power House) is proposed for demolition with the approval of the Lawrence Historical Commission as it is unsafe and has received a Notice of Violation from the Lawrence Department of Inspectional Services ordering it to be razed pursuant to the Massachusetts Building Code.

MEPA Jurisdiction

The project is undergoing review and requires the preparation of a mandatory EIR pursuant to Section 11.03(6)(a)(6) of the MEPA regulations because it will result in the generation of 3,000 or more new adt on roadways providing access to a single location. The project is also undergoing MEPA review pursuant to Section 11.03(10)(b)(1) because it involves demolition of a historic structure located in a Historic District listed in the State Register of Historic Places

The project is seeking financial assistance from the Massachusetts Department of Housing and Economic Development under the Growth Districts Initiative (GDI). The project was issued an Order of Conditions (OOC) by the Lawrence Conservation Commission for Phase I which was reviewed for consistency with the Wetlands Protection Act (WPA) and Massachusetts Department of Environmental Protection (MassDEP) Stormwater Management Policy (SMP). Phase I of the project does not require any additional permits.

Phase II of the project may also require an OOC and, on appeal only, a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (MassDEP). The project will also require a National Pollutant Discharge Elimination System Construction General Permit (NPDES CGP) from the United States Environmental Protection Agency (U.S. EPA) and may require review by the Massachusetts Historic Commission (MHC). The project is subject to the EEA/MEPA Greenhouse Gas Emissions Policy and Protocol.

Because the Proponent is seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations.

Summary of Potential Environmental Impacts

Phase I consists of the demolition of existing buildings which will reduce the gross square footage of structures on the site by 111,700 gross square feet (gsf), for a project total of 638,200 gsf of office, commercial, retail, and community space, and the construction of 662 new parking spaces. Because this is a previously developed site, the project will not result in any addition of impervious area, but will include the addition of 2.1 acres of new pervious area. Water consumption and wastewater generation for the entire project are estimated at 11,073 new gallons per day (gpd), respectively (for a project total of 12,810 gpd, respectively). Water consumption and wastewater generation for Phase I are estimated at 200 new gpd, respectively (for a Phase I total of 1,938 gpd, respectively). The proposed project is expected to generate 6,269 new average daily trips (adt), of which Phase I will generate 2,246 new adt. Phase I will result in the removal of approximately 69,793 cubic feet (cf) of Bordering Land Subject to Flooding (BLSF).

Summary of Proposed Mitigation Measures

Measures to avoid, minimize and mitigate project impacts presented in the EENF for Phase I include: redevelopment of an existing developed site; increase of 2.1 acres of pervious area; avoidance of wetland impacts; constructing 28,026 cf additional compensatory flood storage that increases flood storage capacity onsite; compliance with the WPA; construction of new stormwater management system compliant with the MassDEP SMP; use of Low Impact Development Best Management Practices; and measures to minimize construction period impacts.

Greenhouse gas mitigation measures proposed for Phase I include energy efficient HVAC systems, increased boiler efficiency, energy management systems, cool roof design and Transportation Demand Management (TDM) measures. The Proponent is committing to greenhouse gas reduction measures for Phase I that are estimated to result in a reduction of total CO₂ emissions by approximately 6.3% from the code-compliant base case. I note that the building area (gross square feet) proposed for Phase I is only a small fraction of the area proposed for the full build-out, and that greenhouse gas emissions and proposed mitigation will be further evaluated for the entire the project as part of the Draft EIR.

Waiver Request

The Proponent has requested a waiver that will allow the Proponent to proceed with Phase I of the project prior to preparing a mandatory EIR for the entire project. An EENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the Proponent to avoid, minimize and mitigate project impacts. The Proponent has requested a Waiver because the proposed Phase I development plan does not meet or exceed MEPA review thresholds for a mandatory EIR and the timing for completing the Phase I work is critical for obtaining the project funding.

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 a Phase I Waiver

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the Proponent to proceed with Phase I of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase I, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- (c) the project is severable, such that Phase I does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; **and**
- (d) the agency action(s) on Phase I will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

Based upon the information submitted by the Proponent and after consultation with the state permitting agencies, 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). I find that strict compliance with the requirement to submit a mandatory EIR prior to completion of Phase I of the project would result in an undue hardship for the Proponent and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

1. The potential environmental impacts of Phase I, taken alone, are insignificant:
 - The Phase I waiver elements do not independently meet or exceed MEPA review thresholds for a mandatory EIR.
 - The Phase I waiver elements will be located on a degraded urban property which is entirely developed with existing impervious space.
 - Phase I will not add any impervious area, does not expand the development footprint and adds 2.1 acres of pervious area to the site.
 - Phase I will design stormwater management system to manage untreated stormwater in compliance with the MassDEP SMP.
2. Ample and unconstrained infrastructure facilities and services exist to support Phase I:
 - The existing water and wastewater infrastructure have adequate capacity for the 200 gpd of additional water demand and wastewater generation for Phase I.

- The project does not require any new infrastructure – while there are new utilities proposed as part of the project, access to all existing utilities is readily available to the site to support the redevelopment.
 - Phase I will not result in degradation of the Level of Service at the adjacent municipal intersections.
 - Infrastructure improvements include a public roadway and public park.
3. The project is severable, such that Phase I does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.
- Construction of the Phase I elements will not limit the construction of area-wide infrastructure or the implementation of the proposed mitigation measures.
 - Phase I elements will provide public infrastructure that will improve site conditions and public access irrespective of the construction of subsequent phases of the project.
 - Compensatory flood storage calculations have been provided to consider future phases of the project and mitigate fill within the regulatory floodway.
4. The Agency Action on Phase I will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project:
- There are no state Permits required for Phase I. However, the proponent is seeking funding under the GDI, and such funding can be conditioned to reflect the above findings and conditions. The Department of Housing and Economic Development should issue findings in accordance with M.G.L. c. 30, Section 61 to demonstrate the project's compliance with MEPA.

Conclusion

I have determined that this waiver request has merit, and issued a Draft Record of Decision (DROD), which will be published in the next edition of the *Environmental Monitor* on May 6, 2009 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 May 20, 2009. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision 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, which will allow the Proponent to proceed with Phase I of the project prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions.

May 1, 2009

Date

Ian A. Bowles, Secretary

Comments Received on Expanded ENF:

03/31/2009 Natural Heritage and Endangered Species Program
04/23/2009 Massachusetts Department of Environmental Protection – NERO
04/24/2009 Massachusetts Department of Conservation and Recreation
04/27/2009 WalkBoston

IAB/PPP/ppp