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May 9, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Bulfinch Triangle Project
PROJECT MUNICIPALITY : Boston
PROJECT WATERSHED : Boston Harbor
EEA NUMBER : 14194
PROJECT PROPONENT : Hines Raymond LLC
DATE NOTICED IN MONITOR : March 12, 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 the Expanded Environmental Notification Form (EENF) for this project and hereby determine that it requires the preparation of a Single Environmental Impact Report (EIR).

Project Description

As described in the EENF, the project consists of the design and construction of a 488,000 gross square foot (sf) mixed-use development on a 1.46 acre parcel in the Bulfinch Triangle. It will include a 57,000 sf supermarket, 6,000 sf of ground floor retail uses, approximately 295,000 sf of either commercial office space or research and development (R&D) space and a 200-space parking garage (on two floors). The site includes parcel 2A, 2B and 2C. Parcel 2A and 2C are owned by the Massachusetts Turnpike Authority (MTA). Parcel 2B is owned by the Massachusetts Bay Transportation Authority (MBTA).

The site is bounded by Canal Street (including the existing Terra Cotta Building), Valenti Way, Beverly Street, North Washington Street and New Chardon Street. It is located on landlocked tidelands approximately 940 feet from Boston Inner Harbor on the landward side of Commercial Street in a mixed use area that includes entertainment, retail and residential uses. It is located within the City of Boston Groundwater Conservation Overlay District. Parcel 2C is

located within the boundaries of the Bulfinch Triangle Historic District which is listed in the National and State Registers of Historic Places. Parcel 2A and 2B are located adjacent to the Bulfinch Triangle Historic District and the Causeway/North Washington Street Historic District which meets the criteria of eligibility for listing in the National Register of Historic Places. Parcel 2B and 2C are located adjacent to the Canal Street building (also referred to as the Terra Cotta building) which is a contributing resource in the Bulfinch Triangle Historic District. The site contains a MBTA Transformer Vault and MBTA Vent Building and is located over MBTA tunnels and MTA tunnels. Access to the MBTA Green/Orange Line Superstation is located across Valenti Street and access to the MBTA Haymarket Station, including bus service, is located across New Chardon Street. Also, it is located in close proximity to the commuter rail at North Station. The proponent will lease the site from the MBTA and the MTA through separate 99-year ground leases.

Permitting/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 ground lease from the MTA and a ground lease for land and air rights from the MBTA. The project requires review by the Massachusetts Historical Commission (MHC). The project may require a Sewer Connection Permit from the Department of Environmental Protection (MassDEP) and a Sewer Use Discharge Permit from the Massachusetts Water Resources Authority (MWRA).

The project requires surplus approval, approval of non-highway use of Right-of-Way (ROW) and Section 106 review by the US Department of Transportation's (DOT) Federal Highway Administration (FHWA). Also, it requires a National Pollution Discharge Elimination System (NPDES) Construction General Permit from the US Environmental Protection Agency (EPA).

The project is subject to Article 80 Large Project Review by the Boston Redevelopment Authority (BRA) which has been coordinated with the MEPA review. It requires review by the Boston Civic Design Commission (BCDC), development of a Transportation Access Plan Agreement (TAPA) and Construction Management Plan (CMP) for review by the Boston Transportation Department (BTD), Site Plan Approval and Utility Connection Permits by the Boston Water and Sewer Commission (BWSC), review by the Boston Public Improvements Commission (PIC), Curb Cut Permits and Street Occupancy Permits from the Boston Public Works Department (PWD), review by the Boston Air Pollution Control Commission (BAPCC), a permit to operate a parking garage and fuel storage license from the Boston Committee on Licenses, a Building Permit from the Boston Inspectional Services Department and review by the Boston Landmarks Commission (BLC). In addition, it requires zoning relief from the Boston Redevelopment Authority.¹

¹The project requires zoning relief for height and accessory office parking. It requires confirmation that the supermarket is an allowed use. In the event that the project does include R&D uses, the project will require additional zoning relief because R&D is not considered an allowed use.

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.

Potential Environmental Impacts

Potential environmental impacts are associated with the generation of approximately 9,342 average daily vehicle trips (adt) based on the Institute of Transportation Engineers (ITE) Trip Generation Manual, use of 88,000 gallons per day (gpd) of water and generation of 77,000 gpd of wastewater. The project's re-development of an existing disturbed site and its location in close proximity to transit will serve to minimize overall impacts. The ENF indicates that measures to avoid, minimize and mitigate environmental impacts will include the incorporation of sustainable design elements in the building, provision of public open space (including an interpretive display regarding the history of the Middlesex Canal), development of a Transportation Demand Management (TDM) program to minimize traffic trips, assistance in implementing the City of Boston Crossroads Initiative and support for a comprehensive traffic study of the Bulfinch Triangle neighborhood.

Waiver Request

As noted above, this project exceeds a threshold for filing a mandatory EIR. The proponent has submitted an EENF with a request that I grant a Waiver of the requirement to prepare an EIR. The EENF has been subject to an extended comment period consistent with Section 11.05 (7) of the MEPA regulations. 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.

In the case of a waiver of a mandatory EIR review threshold, the MEPA regulations at 301 CMR 11.11(3) state that, 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 the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Single EIR Request

The EENF included a request that I allow the proponent to fulfill its EIR obligations under MEPA with a Single EIR, rather than the usual process of a Draft and Final EIR in the event the waiver is not granted. As noted above, an EENF was submitted in conjunction with these requests and received an extended comment period pursuant to Section 11.05 (7) of the MEPA regulations. Section 11.06(8) of the MEPA regulations indicate that a Single EIR may be allowed provided that the EENF:

- (a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;
- (b) provides a detailed baseline in relation to which potential environmental impacts and mitigation measures can be assessed; and
- (c) demonstrates that the planning and design for the Project use all feasible means to avoid potential environmental impacts.

Review of the EENF

The EENF and supplemental materials provided by the proponent (in a letter dated May 2, 2008) provide project plans, a detailed project description, describe baseline environmental conditions (including a traffic analysis and air quality study), identify the potential environmental impacts of the project and potential measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The EENF includes information regarding the project's consistency with municipal and regional land use plans, with the Commonwealth's Sustainable Development Principles and with efforts to minimize greenhouse gases associated with the project design and long-term operation.

The EENF and comments from Bulfinch Triangle Community Advisory Committee (BTCAC) and the Downtown North Association (DNA) identify the extensive amount of land use, urban design and transportation studies conducted within the Bulfinch Triangle over the past decade. The North Area Planning Initiative and the Bulfinch Triangle Design and Development Guidelines emerged from these studies and articulate a comprehensive vision for urban design and development. These comments indicate that the project has involved substantive and continuing community participation, through the BTCAC. Several comment letters identify the community benefits associated with the inclusion of a grocery store, the siting of which has been an established goal of the City of Boston and the community.

Pursuant to *An Act Relative to Licensing Requirements for Certain Tidelands* (2007 Mass. Acts ch. 168), the EENF submitted on this project addresses the project's impacts on the public's right to access, use and enjoy tidelands that are protected by chapter 91, and addresses the project's impacts on groundwater levels. The EENF also addresses aspects of the project that are subject to the required Public Benefit Review. It notes that the project consists of redevelopment of an existing vacant parcel in an area of the City targeted for growth and revitalization. It identifies site improvements including the creation of a small open space, a reduction in impervious surfaces and provision of pedestrian access around the site including

wide sidewalks, lighting and street furniture. The project design is intended to improve access to Causeway Street and the waterfront by providing a welcoming streetscape at the entryway to the Bulfinch Triangle fostered by wide, tree-planted sidewalks with ground level retail space attracting passerby attention and activity. In addition, it will enhance the pedestrian environment by creating continuous streetwalls along Valenti Way, Beverly Street, North Washington and New Chardon Street. The open space is programmed to educate the public about the rich history of the Middlesex Canal. It will be landscaped and include murals and interpretive displays. Pursuant to 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. Also, it indicates that the proponent may provide limited recharge prior to discharge to the Canal Street stormwater system. The Groundwater Trust did not provide any comments or otherwise identify concerns with the project's impact on groundwater.

As the EENF indicates, the MHC, as State Historic Preservation Officer (SHPO), in consultation with the Boston Landmarks Commission (BLC), must review and approve the design of development parcels in compliance with the Central Artery Memorandum of Agreement (MOA), pursuant to Section 106 of the National Historic Preservation Act (36 CFR 800). As required by the MOA, Joint Development Guidelines were developed by MassHighway (formerly the Massachusetts Department of Public Works), MHC and BLC that address height limits, design issues, massing, materials, siting and setback requirements. The purpose of the MOA and the Joint Development Guidelines were to insure that direct impacts to historic resources and potential environmental impacts associated with the development of parcels created by the CA/T Project (EEA #4325/8721) would be avoided, minimized and mitigated consistent with federal and state requirements. Under the terms of the Section 106 MOA, the MHC, in consultation with the BLC, must review and approve the new design of any new construction on any of the air rights parcels to ensure they are consistent with the established guidelines.

Comments from MHC indicate that the project exceeds the height limits identified in the Joint Development Guidelines, 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 and request that an EIR be required to further explore how the project's impacts can be minimized. These comments also note that the proposed height of 146 feet exceeds the design guidelines which establish a minimum height of 60 and a maximum height of 100 feet. Comments from the City of Boston, which include comments from BLC, identify similar concerns with the proposed height and massing and, in particular, the project's impact on Canal Street and Valenti Way. In addition, MHC comments indicate that the MBTA failed to consult with MHC earlier in the disposition process as required by MG.L. Chapter 9, Section 26-27C.

As noted previously, the project will generate approximately 9,342 adt based on the ITE Trip Generation Manual. When this estimate is adjusted to reflect BTM mode shares, traffic generation is estimated at 2,942 adt. As noted previously, the EENF includes a traffic study and identifies, in general, measures to minimize impacts associated with this traffic. The EENF did not identify funding levels associated with various mitigation measures; however, the supplemental information indicates that the proponent anticipates providing \$75,000 for neighborhood improvements, \$12,000 for streetscape improvements, \$50,000 for the Bulfinch

Triangle Traffic Study and approximately \$1 per square foot of office and retail space for the Crossroads Initiative.

The project will generate either 33,000 gpd of wastewater (based on office use) or 77,000 gpd (based on R&D use) depending on the final uses identified for the building. Comments from the Massachusetts Water Resources Authority (MWRA), MassDEP and the Boston Water and Sewer Commission (BWSC) indicate that the proponent should assess the impact of this project on the Bulfinch Triangle Sewer Separation project and indicate that the proponent should participate in efforts to remove extraneous clean water (Infiltration/Inflow (I/I)) from the sewer system on a 4:1 basis for a maximum of 308,000 gpd.

This project is not subject to the EEA Greenhouse Gas Emissions Policy and Protocol.² However, to support its request for a Waiver or a Single EIR, the proponent has identified measures to avoid, minimize and mitigate greenhouse gas emissions associated with the building design and its long-term operation. The project will comply with Article 37 of the Boston Zoning Code and the proponent will seek certification under the Leadership in Energy and Environmental Design (LEED) Core and Shell Rating System. The EENF indicates that the proponent may seek certification at the Gold level. In addition, the proponent has committed to encourage project tenants to build space to LEED standards. Sustainable design elements include the redevelopment of an existing site in close proximity to transit, a relatively small parking supply, a TDM program including transit subsidies and bike storage, incorporation of a vegetated roof and use of low emitting materials including adhesives, sealants, paints and carpet systems. The proponent may purchase electricity from renewable energy sources.

Conclusion

Comment letters reflect strong support for the project and identify the need for a grocery store at this site. The proponent appears committed to minimizing its environmental impacts and, in particular, I applaud the proponent's intention to seek LEED Certification at the Gold level. The EENF meets the standard for granting a Single EIR because it provides adequate description and analysis of the project and its alternatives, provides a detailed baseline of environmental conditions and demonstrates that the project will incorporate all feasible means to avoid potential environmental impacts. The proponent may file a Single EIR to meet its MEPA review requirements. Concerns identified in comment letters are relatively narrow in scope. The granting of a Single EIR with a narrowly tailored Scope will significantly shorten the associated review period compared to a typical project and I expect that the issues identified in the Scope can be addressed within a relatively short timeframe.

The EENF does not meet the higher standards reflected in the criteria for granting a full Waiver of the EIR requirement including a demonstration that the requirement to prepare an EIR

² Projects are subject to the Policy if an EIR is required and the project falls into one of four categories, the first and second of which being that the Commonwealth or a state agency is either the proponent or is providing financial assistance. EEA's intent is to require analysis of greenhouse gas emissions in those instances where MEPA has full scope jurisdiction (or, as here, the functional equivalent of full scope jurisdiction). EEA will publish a clarification of the applicability of the Policy in a forthcoming Environmental Monitor. This project is not subject to the Policy.

would constitute a hardship to the proponent, a demonstration that the requirement to prepare the EIR will not serve to avoid or minimize Damage to the Environment or that the project will cause no Damage to the Environment. Comments from MHC and BLC clearly identify concerns with impacts to historic resources, consistency with the Joint Development Guidelines and identify additional information necessary to support its review. Addressing these concerns will require consultation with MHC and the BLC. The preparation of a Single EIR will provide additional information on historic resources and support the development of design refinements or development of mitigation measures that adequately avoid, minimize and mitigate impacts to historic resources. I do not expect final design approval as a condition of the Single EIR but do expect that substantive issues will be resolved. In addition, commenters have identified significant concerns with pedestrian access and safety and identify operational and design changes (by the proponent and others) that would improve access and minimize conflicts.

SCOPE

The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate.

Project Description

The EIR should include a thorough description of the entire project and all project elements and construction phases. The EIR should include an existing conditions plan illustrating resources and abutting land uses for the entire project area and a proposed conditions plan (or plans) illustrating proposed elevations, structures, access roads, stormwater management systems, and sewage connections associated with each phase of the project.

Project Permitting and Consistency

The EIR should briefly describe each state permit required or potentially required for the project and it should demonstrate that the project meets applicable performance standards.

Historic and Cultural Resources

The EIR should identify an alternative to the proposed height and massing that minimizes impacts to historic resources and addresses concerns expressed by MHC and BLC. The EIR should include 3-dimensional renderings and/or massing models that depict project alternatives in relation to the surrounding historic district. In addition, MHC has requested more detailed elevation drawings that illustrate proposed materials and sketches or more detailed descriptions of the proposed fenestration reveals as well as depths/dimensions of other applied or structural exterior details.

I note that previous projects reviewed by MEPA including Avenir (formerly Canal Place) (EEA #13674) and the Simpson Parcel (EEA#14153) enjoyed flexibility in the application of

design guidelines that were supported by MHC and BLC because of site constraints and the designs of the buildings to minimize impacts. I note that the maximum height of the Avenir project, which is located directly on Canal Street, was identified as 120 feet. The maximum height of the Simpson Parcel project, which is further setback from the Bulfinch Triangle Historic District, was 140 feet.

Transportation

The Single EIR should clearly identify and specify commitments to minimize the traffic impacts of the project including a proposed TDM Program. The EENF indicated that the TDM Program may include limited parking, designation of a transportation coordinator to manage service and loading and provide alternative transportation materials to office and retail tenants, provision of orientation packets to residents regarding transit options, and provision of bicycle racks. Also, the project may include a partnership with a car sharing service.

Comments from DNA and Walk Boston identify significant issues regarding vehicular and pedestrian access and safety and identify opportunities for addressing these issues. A particular area of concern are the constraints associated with Valenti Way particularly in light of the many demands that will be placed on it to provide vehicular access, loading access and support large volumes of pedestrians accessing the adjacent MBTA Green/Orange Superstation entrance and other destinations. The Single EIR should address whether and how primary access could be provided via North Washington Street to minimize truck traffic along Valenti Way, identify associated constraints (physical or regulatory) and identify how this issue may be addressed through subsequent permitting and review processes. The EIR should identify other measures that could be incorporated into the project and/or street design to minimize conflicts and improve safety along Valenti Way. It should identify how proposals to change streets from one-way to two-way or vice versa will be evaluated and assess qualitatively the benefits of these proposals to the project and traffic flow. Finally, it should address the suggestion by Walk Boston that the effective width of the sidewalk along North Washington Street be re-evaluated.

Wastewater

The Single EIR should identify the proponent's commitment to remove I/I from the system of a 4:1 basis. As noted previously, comments from the MWRA indicate that if industrial or R&D uses are included that will discharge industrial or laboratory wastewater to the sanitary sewer system, an MWRA Sewer Use Discharge Permit will be required. The Single EIR should describe the type of R&D uses that may be appropriate for the site and indicate whether a permit from the MWRA would be required. If such a permit is likely to be required, the Single EIR should address consistency with permit requirements.

Landlocked Tidelands

The project is proposed on landlocked tidelands and subject to the provisions of *An Act Relative to Licensing Requirements for Certain Tidelands* (2007 Mass. Acts ch. 168). Consistent

with Section 8 of this legislation, I must conduct a Public Benefits Review as part of the EIR review of projects located on landlocked tidelands that entail new use or modification of an existing use and I must make a Public Benefits Determination following completion of my review. Because the proponent has requested a Single EIR, I will issue the Public Benefits Determination after completing my review of the Single EIR.³

Section 3 of this legislation requires that any project that is subject to MEPA review and proposes a new use or structure or modification of an existing use or structure within landlocked tidelands address the project's impacts on tidelands and groundwater within the ENF. It indicates that the ENF "*shall include an explanation of the project's impact on the public's right to access, use and enjoy tidelands that are protected by chapter 91, and identify measures to avoid, minimize or mitigate any adverse impacts on such rights set forth herein.*" If a project is located in an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF "*shall also include an explanation of the project's impacts on groundwater levels, and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impacts on groundwater levels.*" The legislation notes that these provisions also apply to the filing of an EIR if an EIR is required.

The resolution of historic issues, transportation issues and the clarification of mitigation commitments in the Single EIR will be required to issue a positive Public Benefits Determination.

Mitigation

The EIR should include a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for all state permits that includes a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

This section should indicate whether the proponent will participate in the MassDEP Diesel Retrofit Program and consider use of on-road ultra low sulfur diesel (ULSD) fuel to minimize construction period air quality impacts as suggested by MassDEP and the City of Boston Environment Department.

Response to Comments

The EIR should contain a copy of this Certificate and a copy of each comment received. To ensure that the issues raised by commenters are addressed, the Single EIR should include a response to comments. This directive is not intended to, and shall not be construed to, enlarge the scope of the Single EIR beyond what has been expressly identified in this Certificate. I

³ I have convened a Technical Advisory Committee (TAC) to assist me in developing a formalized process by which to implement those aspects of the statute that direct the involvement of EEA and the MEPA Office. In the interim, the approach to the Public Benefits Determination reflected in this document should be considered provisional.

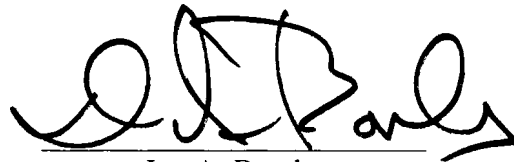
recommend that the proponent use either an indexed response to comments format, or a direct narrative response.

Circulation

The EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals, to the list of "comments received" below and to City of Boston officials. A copy of the EIR should be made available for review at the Boston Public Library.

May 9, 2008

Date



Ian A. Bowles

Comments received:

| | |
|---------|---|
| 4/28/08 | Department of Environmental Protection/Northeast Regional Office (MassDEP/NERO) |
| 4/25/08 | Massachusetts Historical Commission (MHC) |
| 4/10/08 | Massachusetts Water Resources Authority (MWRA) |
| 4/10/08 | US Department of Transportation/Federal Highway Administration (DOT/FHWA) |
| 4/30/08 | City of Boston Environment Department |
| 4/28/08 | Boston Water and Sewer Commission |
| 4/28/08 | Bulfinch Triangle Community Advisory Committee |
| 4/28/08 | Charles River Watershed Association |
| 4/28/08 | Downtown North Association |
| 4/25/08 | Walk Boston |
| 4/27/08 | Jane ForreSTALL |

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