



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

July 17, 2009

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

PROJECT NAME : Harbor Garage Redevelopment
PROJECT MUNICIPALITY : Boston
PROJECT WATERSHED : Boston Harbor
EEA NUMBER : 14411
PROJECT PROPONENT : RHDC 70 East India, LLC c/o The Chiaforo Company as
development agent
DATE NOTICED IN MONITOR : May 6, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), the proposed project consists of the redevelopment of the existing 1.32-acre Harbor Garage building site. The existing garage building is seven stories tall, contains 1,475 parking spaces, and accommodates 29,800 square feet (sf) of retail space. The proposed project would require demolition of the garage and would involve a dramatic expansion of the current use of the site, including construction of a 40-story office tower and a 59-story residential and hotel tower (comprising approximately 1.4 million sf of new development). The proposed buildings would include 860,000 sf of office space, 220,000 sf of luxury condominium space, a 350,000 sf hotel, and 1,200-1,400 parking spaces in a below-grade parking garage. The proposed office tower (Building A) would be approximately 560 feet in height and the residential and hotel tower (Building B) would be approximately 690 feet in height. In addition, a 770 foot tall skyframe is proposed as a design feature connecting the towers. These proposed heights are well in excess of

any of the surrounding buildings in the area and would, if constructed, become some of the tallest buildings in the Boston area.

The Harbor Garage building is also situated on a highly visible and significant parcel of Boston's downtown waterfront area, adjacent to the newly constructed Rose Fitzgerald Kennedy Greenway. The site is comprised of filled tidelands and subject to the licensing requirements of Chapter 91 of the Massachusetts General Laws which protects the public's shared interest in access to the waterfront. The site sits directly between the New England Aquarium and adjacent open access to Boston Harbor (on the waterfront side) and the Greenway (across Atlantic Avenue on the city side). The project consequently presents a truly unique opportunity to provide a significant new uninterrupted pedestrian corridor from the Greenway to the water's edge in addition to new visual connections between the Greenway and the waterfront, as the project Proponent acknowledges. Few parcels along the Greenway create such a golden opportunity to enhance the public's access to the waterfront in fulfillment of the public trust principles embodied in Chapter 91.

The Harbor Garage project is also being proposed at a unique moment in time. Coming on the heels of the recent completion of the Greenway, it is well situated to capitalize on the enormous opportunity provided by the reclamation of this central link through the heart of the city for open space and new development. Indeed, the redevelopment of this parcel, which seeks to replace a structure that was suitable for a building in the shadow of an elevated highway with something more appropriate to a landmark public space created by substantial public investment, is emblematic of the transformation that is both possible and necessary to fulfill the vision of the Greenway. Through the MEPA process, I intend to look very closely at such projects, to ensure that they contribute toward fulfilling the promise and the challenge that Greenway's presence now presents. I also anticipate that these topics will be the subject of a lively public debate about the future of this remarkable new public resource, and in particular look forward to ongoing engagement from key stakeholders – including the legislatively-chartered Rose Fitzgerald Kennedy Greenway Conservancy – as individual projects come before me for MEPA review.

The project Proponent has put forth a vision that would include an iconic development for this prominent site, designed to meet the dual purposes of redeveloping an under-utilized and unattractive parking garage site into a vibrant mixed-use development and reopening the connection between the waterfront and the city that is blocked by the current garage. These are laudable goals that the Commonwealth fully supports.

However, after reviewing the ENF and all of the comments received, it is clear that the project does not meet applicable state and municipal permitting standards. It exceeds height limitations and contains insufficient open space to meet the permitting standards of the Chapter 91 Waterways Regulations and the Harborpark Municipal Harbor Plan (MHP) currently in effect in the area.¹ The Chapter 91 standards and limitations (as modified by an approved MHP) are designed to protect the public's rights to use and enjoy the waterfront by maximizing public access to the waterfront, promoting active water-dependent uses and maintaining view corridors

¹ Similarly, the project also fails to comply with applicable City of Boston zoning standards for height and open space.

to the Harbor. The proposed project falls considerably short of meeting these critical planning and design standards. Indeed, the proposed Project is at such wide variance from the applicable state and local permitting requirements currently in force that it simply cannot be constructed as currently designed. In order to progress through the environmental review and permitting process in a timely fashion the Proponent will have to submit a dramatically different proposal.

I also have serious concerns about the project's potential impacts to the Greenway, which the Commonwealth has invested significant resources in to enhance connectivity between downtown Boston and the waterfront. As currently proposed, the project may not be consistent with the guidelines that will ultimately be developed under the Greenway District Planning Study being undertaken by the Boston Redevelopment Authority (BRA) to guide development along this distinctive public asset. In an effort to provide pedestrian access from the Greenway to the water's edge, the current project design features a glass-enclosed indoor promenade open to the public but constituting a physical barrier. Glass enclosure does not meet the standard of open air pedestrian access between the Greenway and the waterfront. To put it plainly, the ability of the public to look through, or walk through, the glass-enclosed lobby of a private building does not constitute a direct connection between the Greenway and the waterfront.

Going forward, the Proponent has two permitting pathways to consider. In order to successfully complete environmental review under MEPA within the limitations of the current regulatory scheme, the project Proponent will need to redesign the project to meet the height and density limitations of Chapter 91, the Harborpark Municipal Harbor Plan and the Boston Zoning Code. In addition, the redesigned project must provide additional open space sufficient to meet regulatory standards as well as a true publicly accessible -- and open -- connection between the Greenway and the waterfront. As further detailed in the Scope below, I expect the Draft EIR to present alternatives that will comply with applicable regulatory requirements and public planning design guidelines, conform to the guidance provided in this Certificate, and include a detailed and comprehensive mitigation plan for project-related impacts on nearby public resources.

Alternatively, as reflected in comments from the Massachusetts Office of Coastal Zone Management (CZM), I understand that the City is in the initial stages of planning for a Harborpark MHP renewal that could, potentially, propose revisions to the applicable height, open space and other standards for waterfront development in the downtown area. This type of comprehensive planning approach to waterfront development is consistent with the Commonwealth's interests in public access and proactive planning of waterfront uses. Such an effort will require significant coordination between the City, waterfront and neighborhood interests and other members of the public and is an approach that is warranted by the significant changes made by the presence of the new Greenway. An informed and coordinated planning process presents a tremendous opportunity to dramatically enhance the landscape of both public and private spaces in the heart of the downtown waterfront area.

With respect to the proposed project, the MHP renewal process could also provide an alternative avenue for the Proponent to explore possibilities for its planned waterfront development that are more closely related to the ideas and ambitions presented by the developer's current proposal, but that are not feasible under the state and local permitting standards currently in place. However, in order for state agencies and the public to effectively

review a revised project proposal and its potential environmental impacts, both the MHP renewal process and the Greenway District Planning Study must be sufficiently advanced at the time of submission of the Draft EIR to allow for a comparison of the proposed project against these key planning studies. Therefore, should the Proponent choose to proceed with a preferred alternative that is premised on potential revisions to the Harborpark MHP rather than the existing MHP, the DEIR should not be submitted until these municipal planning processes have progressed substantially.

MEPA Jurisdiction and Permitting

The project is subject to a mandatory EIR and is undergoing environmental review pursuant to the following sections of the MEPA regulations: Section 11.03(3)(a)(5) because it requires a Chapter 91 License for a new non-water dependent use and structure that will occupy one or more acres of tidelands; Section 11.03(1)(b)(7) because it requires approval in accordance with M.G.L. c. 121B of a major modification of an existing urban renewal plan; Section 11.03(5)(b)(4)(a) because it will result in expansion of discharge to a sewer system of 100,000 or more gallons per day (gpd) of sewage; and Section 11.03(6)(a)(6) because it will result in generation of 3,000 or more new average daily vehicle trips.

The project requires a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP), an Order of Conditions from the City of Boston (and, on appeal only, a Superseding Order from MassDEP), a Sewer Use Discharge Permit and Construction Dewatering Permit from the Massachusetts Water Resources Authority (MWRA), and it is subject to review by the Massachusetts Historical Commission. The project is subject to approval by the Federal Aviation Administration and may require a federal consistency review from the Massachusetts Office of Coastal Zone Management (CZM). The project requires a National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from construction activities from the U.S. Environmental Protection Agency (EPA). Because the project is located in tidelands and requires an EIR, it is subject to the requirements for a Public Benefit Determination in accordance with 301 CMR 13.00. The project is also subject to the MEPA Greenhouse Gas Emissions Policy and Protocol.

Because the project requires a Chapter 91 License for its use of the entire site, subject matter jurisdiction under MEPA is functionally equivalent to broad scope jurisdiction in accordance with 301 CMR 11.01(2)(a) of the MEPA regulations. Therefore, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Joint MEPA/BRA Review

The project is undergoing Article 80 review by the Boston Redevelopment Authority (BRA) and requires an amendment to an existing urban renewal plan from the BRA. A Project Notification Form (PNF) was filed with the BRA and the MEPA public comment period for the ENF was extended in order to match the BRA public comment period. I commend the project Proponent for its efforts to facilitate efficient and informed public review of the project by coordinating the state and local review processes, and I strongly encourage the Proponent to

continue to coordinate review of this project and to file a Draft EIR (DEIR)/Project Impact Report (DPIR) as a single joint document with a single joint public comment period to respond collectively to the separate scopes issued by each agency.

SCOPE

General

The Proponent should prepare a DEIR in accordance with the general guidance for form and content found in 301 CMR 11.07 as modified by this Scope. The DEIR should include descriptions of the methodologies and assumptions used for the analyses presented. If a joint PIR/EIR will be filed, the format of the DEIR can be largely determined by the requirements of the MEPA certificate, Article 80, and the scope issued by the BRA. The DEIR should include a copy of this Certificate.

Project Description and Permitting

The DEIR should include a detailed description of the proposed project and characterization of the existing environment in compliance with 301 CMR 11.07(6)(e) and (g). The DEIR should include maps, plans and other graphics at a reasonable scale to facilitate review and comment. The DEIR should include visual renderings of the proposed project from relevant locations in the project area, including the Greenway, North End, Waterfront neighborhoods, and Boston Harbor.

The DEIR should provide a brief description and analysis of applicable statutory and regulatory standards and requirements, and a description of how the project will meet those standards. The DEIR should include a list of required permits and approvals and provide an update on the status of each permit and/or approval and consultations with permitting agencies.

The project proposed in the ENF is proposed for construction in two phases between 2011 and 2017. Phase I, proposed for completion in 2014, includes partial demolition of the existing garage, utility relocations, and construction of a portion of the permanent below grade parking spaces. Construction of Phase 2, proposed for commencement in 2014 and completion in 2017, involves demolition of the remainder of the garage and construction of the remainder of the parking spaces and the two towers. The DEIR should include an updated schedule and phasing plan for construction based upon revisions made to the preferred alternative presented.

Alternatives

As outlined above, the project as proposed in the ENF does not meet the requirements for height and open space required by the Commonwealth's Chapter 91 Waterways Regulations or by the Boston Zoning Code. Under these current regulatory requirements, the project design should include at least 50 percent open space and should have a maximum height of 155 feet. The approved Harborpark MHP, which regulates development in the downtown waterfront area, does not include substitution provisions that would allow any additional building height or greater lot coverage. The project cannot therefore be permitted as currently designed and must be revised.

The DEIR should include an evaluation of the following alternatives:

1. a no-build alternative; and
2. an alternative that is compliant with all applicable requirements of the Chapter 91 Waterways Regulations and any approved MHP (including height, open space, and building programming requirements), as well as any final planning guidelines that have been adopted by the City of Boston for development along the Greenway; and
3. a reduced-build alternative that would provide for greater open space and public access than what is required under Chapter 91 and City planning guidelines.

As previously noted, it is my understanding that the City of Boston is in the initial stages of planning for a Harborpark MHP renewal, and that the City will also be working to finalize its Greenway District Planning Study. It is likely that the Greenway planning efforts will inform the eventual MHP renewal process. Because the MHP revisions may provide revised permitting standards for development in the planning district that ultimately would be applicable to this project, the Proponent should consult with the City of Boston regarding the MHP renewal process and provide an update on these consultations in the DEIR. The DEIR should specify whether the alternative presented in response to item number 2 above is compliant with the existing MHP, or with a future proposed revision to the MHP. Because any proposed project that is not compliant with the current Chapter 91 and City of Boston permitting standards cannot be properly evaluated until revised standards have been developed, the Proponent should defer submittal of a DEIR until the municipal planning process has progressed to the stage where the proposed project can be reviewed in light of the likely eventual planning standards. I note the comments provided by the Rose Fitzgerald Kennedy Greenway Conservancy requesting that the Proponent participate in and contribute resources to a dialogue with the City, the Conservancy and the community connected to this planning process and I encourage the Conservancy to continue to pursue these important coordination efforts with the Proponent and the City.

For each alternative presented, the DEIR should analyze and illustrate potential project impacts on water-dependent uses of the adjacent waterfront, the pedestrian level environment on site and on the adjacent Greenway, open space, public services and facilities, and civic and cultural benefits. In presenting an alternative that complies with Chapter 91 and an approved or revised MHP, the DEIR should describe how the project design will meet minimum open space requirements to maximize the public use, enjoyment and visual access to and along the waterfront. This alternative should provide point access walkways connecting Atlantic Avenue to the pedestrian promenade on East India Row. As indicated elsewhere in this Certificate, it should also provide direct and open access between the Greenway and the waterfront. The DEIR should describe how the project complies with the non-water dependent design standards pursuant to 310 CMR 9.52(1), which addresses utilization of shoreline for water dependent purposes, and 9.53(2)(b), which addresses activation of Commonwealth tidelands for public use, including provision of exterior open space. As noted by MassDEP in its comment letter, adherence to these standards is exceedingly important given the adjacent recreational public uses, the proximity of the Rose Fitzgerald Kennedy Greenway, and the interior public amenities proposed in the building.

The DEIR should discuss alternatives, including the reduced-build alternative, in terms of project consistency with local zoning and the existing urban renewal plan for the area, and proposed modifications to the urban renewal plan. The DEIR should discuss alternative site configurations and compatibility with neighboring land uses. The DEIR should discuss any tradeoffs associated with the increased open space requirements of the reduced-build alternative, such as reduced space for indoor facilities of public accommodation or other on-site amenities.

Chapter 91 and Municipal Harbor Plan

The ENF indicates that a portion of the project site is located within landlocked tidelands and is not subject to Chapter 91 licensing. However, MassDEP indicates in its comment letter that because East India Row is used as a pedestrian walkway and not for vehicular access, the project site does not contain any landlocked tidelands. Therefore, the entire project site is subject to the Chapter 91 licensing requirements.

The DEIR should describe in detail how the proposed project design will meet applicable requirements of the Waterways Regulations at 310 CMR 9.00 including the conservation of capacity for water dependent use (310 CMR 9.51). The DEIR should describe how the project will be designed to avoid conflict and promote compatibility, during both construction and operation phases, with water-dependent facilities and uses on or near the project site. The DEIR should evaluate how the layout and configuration of proposed buildings and other permanent structures may affect existing and potential public views of the water, marine-related features along the waterfront, and other objects of scenic, historic or cultural importance to the waterfront, especially along sight lines emanating in any direction from public ways and other areas of concentrated public activity. The DEIR should describe in detail how the project will meet the Chapter 91 standards for exterior open space to support water-dependent use and attainment of effective pedestrian and vehicular circulation within and to areas of water-dependent activity. The Proponent indicates that it owns and leases the marina/dock on the project site. The DEIR should include this dock in site plans, provide information on its current use, and propose measures to incorporate the dock as part of a watershed activation plan. The DEIR should also include details of the proposed ground floor programming for the alternatives. At a minimum, Facilities of Public Accommodation (FPAs) should be provided within 100 feet of the project shoreline in accordance with the regulatory requirements of 310 CMR 9.51(3)(b).

The plans in the DEIR should be based on surveyed plans so that important features, such as the Mean High Water and project shoreline, are represented accurately. As noted by MassDEP in its comment letter, this information is necessary to determine compliance with standards for private tenancy, setback, and height found in the Waterways regulations, 310 CMR 9.51(3)(b), (c) and (e) respectively, as modified by the approved MHP. The DEIR should include a site layout plan that clearly labels all pertinent numerical and dimensional requirements of 310 CMR 9.51 – 9.53 as may be substituted by the approved MHP.

The DEIR should include an existing conditions plan as recommended by MassDEP, which should be at a suitable scale, such as 1 inch = 40 feet, prepared and stamped by a Professional Land Surveyor, and include the complete extent of the existing pile-supported wharf and seawall, the mean high and low water marks, all flood zones as currently identified by

FEMA, and detailed existing topography. The DEIR should explain how the project design incorporates projected sea level rise during the design life of the buildings in accordance with 310 CMR 9.37(2). The DEIR should also include suitably-scaled overlays of the proposed project alternatives to enable comparison of proposed building footprints and topography with the existing features. Grading information is necessary for a preliminary assessment of project conformity with height requirements and will provide a better representation of the pedestrian level open space environment.

Walk Boston has provided detailed recommendations to enhance the pedestrian environment and design a project that will help activate the site as well as linkages to the Greenway and the harbor. I encourage the Proponent to consider these and other comments received in developing alternative designs. The DEIR should also consider opportunities to enhance the Harborwalk in the project area as recommended by the Boston Harbor Association.

Secondary and Cumulative Impacts

The DEIR should assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental impacts from all aspects of the project. The assessment should include both short-term and long-term impacts for all phases of the project in accordance with 301 CMR 11.07(6)(h).

The proposed project has the potential to adversely impact the New England Aquarium and other water-dependent activities in the area. I note the Aquarium's detailed comment letter that raises concerns about parking, traffic and visitor safety, and construction-related impacts such as the effect of noise, vibration and dust on animals, visitor experience, and the IMAX theater operations. The DEIR should evaluate the project's potential impacts on the New England Aquarium and other water-dependent uses during both construction and operational phases. This evaluation should include an assessment of impacts on current and future uses of the West Plaza. The DEIR should describe in detail all proposed measures to avoid and minimize impacts to the New England Aquarium and other water-dependent uses, and measures to mitigate any unavoidable impacts.

Public Benefit Determination

In accordance with 310 CMR 13.03, the DEIR should include a chapter detailing how the project will meet the requirements for a positive Public Benefit Determination. The DEIR should include detailed information describing the nature of the tidelands affected by the project and the public benefit of the project, the purpose and effect of the project, the impact on abutters and the surrounding community, enhancement to the property, benefits to the public trust rights in tidelands or other associated rights, benefits provided through previously obtained municipal permits, community activities on the site, environmental protection and preservation, public health and safety, and the general welfare.

Greenhouse Gas Emissions

The DEIR should include an analysis of Greenhouse Gas (GHG) emissions and mitigation measures in accordance with the MEPA GHG Policy and Protocol. The DEIR should quantify direct and indirect GHG emissions associated with project's energy use and transportation-related emissions. Direct emissions include on-site stationary sources, which typically emit GHGs by burning fossil fuel for heat, hot water, steam and other processes. Indirect emissions result from the consumption of energy, such as electricity, that is generated off-site by burning of fossil fuels, and from emissions associated with vehicle use by employees, vendors, customers and others. I encourage the Proponent to consider the energy required to provide potable water and treat wastewater as part of the GHG analysis. The DEIR should outline and commit to mitigation measures to reduce GHG emissions. I refer the Proponent to the GHG Emissions Policy and Protocol for additional guidance on the analysis and I encourage the Proponent to meet with representatives from MEPA, MassDEP and the Department of Energy Resources (DOER) during preparation of the DEIR.

The DEIR should include a GHG emissions analysis that calculates and compares GHG emissions associated with three scenarios: 1) a Massachusetts Building Code-compliant baseline; 2) a Preferred Alternative; and 3) a project alternative with greater GHG emissions-related mitigation than the Preferred Alternative. Please note that the code currently in effect for the design and construction of this project and for the establishment of the Base Code Compliant Case is 780 CMR 13.00 (dated 1/9/09). The DEIR should include the modeling printout for each of three scenarios. The DEIR should include emission tables that compare the base case (in tons of Carbon dioxide (CO₂)) with the mitigation alternatives and show the projected reduction (in tons and percentages) by emissions source. I refer the Proponent to the MassDEP comment letter (that includes contributions from DOER) for additional recommendations on analysis of GHG emissions and mitigation measures, including evaluation of on-site renewable energy alternatives, to be incorporated in the DEIR.

The ENF indicates that the Proponent will implement a Transportation Demand Management (TDM) program to reduce vehicle miles travelled (VMT) and related GHG emissions. The DEIR should identify TDM measures proposed for each of the alternatives and the corresponding emission reductions expected.

The GHG analysis should clearly demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which the Proponent plans to avoid, minimize, or mitigate damage to the environment to the maximum extent feasible. The Proponent should identify the model used to analyze GHG emissions. MassDEP and DOER recommend that the Proponent use the EQUEST model for stationary source modeling. The DEIR should clearly state modeling assumptions, explicitly note which GHG reduction measures have been modeled, and identify whether certain building design or operations GHG reduction measures will be mandated by the Proponent to future occupants or merely encouraged for adoption and implementation.

In acknowledgement of the challenges facing implementation of certain energy efficiency measures in tenant occupied spaces, the Proponent should consider reasonable measures to

educate and create incentives for tenants to adopt energy efficiency/renewable generation measures. The DEIR should address the Proponent's commitment to providing energy efficiency consulting services and information and/or developing a tenant manual to incorporate building design and operational GHG mitigation measures into lease agreements. As an example of such a document, I direct the Proponent to the New Patriots Stadium and Public Infrastructure Project (EEA No. 12037) Third Notice of Project Change and the associated Secretary's Certificate issued on April 17, 2009.

The ENF indicates that the Proponent will be evaluating the project under the Leadership in Energy and Environmental Design (LEED) system and will incorporate sustainable design elements. The City of Boston's building code, Article 37 Green Buildings, requires that the project be designed to LEED-certifiable. I strongly encourage the Proponent to pursue integrated building designs to achieve the highest level of LEED practicable as recommended by MassDEP. I refer the Proponent to the MassDEP comment letter for additional information on energy efficient and green building resources, including guidance on quantifying GHG reductions associated with recycling. The DEIR should clarify the Proponent's commitment to LEED and indicate what level the proposed project will achieve, and if it will be certified under LEED. The DEIR should include a listing of LEED points that will be achieved by the project.

In evaluating mitigation measures, the DEIR should clearly explain why certain mitigation measures, that may provide greater GHG reduction benefits, are considered by the Proponent to be infeasible or not applicable to the project. For measures considered infeasible at this time, I encourage the Proponent to consider design options that will allow cost effective integration of energy efficiency or renewable energy measures in the future when they may be more financially or technically feasible.

Sustainable Design

The Proponent has committed to designing a project that will serve as a model for green building for the City and the Commonwealth. I commend the Proponent for this commitment and I expect that the DEIR will include a detailed discussion on proposed sustainable design measures to be incorporated during the project's construction and operational phases. The DEIR should describe those sustainable design measures that have been evaluated and those measures that have been committed to by the Proponent. The sustainable design analysis should include: materials used in construction; waste management and recycling; energy, water and wastewater conservation; use of renewable energy and purchasing of green power; promoting walking, biking, and transit use; enhancing open space and waterfront/watersheet uses; stormwater and Low Impact Development (LID); and planning for climate change and sea level rise.

Air Quality Permitting

The Proponent should consult with MassDEP during the preparation of the DEIR to discuss potential pre-installation approvals that may be required for fuel utilization facilities, such as furnaces and boilers, or emergency generators. The DEIR should include information on the size and type of equipment that may be installed, an update on permits required, and a discussion of measures to comply with applicable regulatory requirements.

Noise

The DEIR should evaluate potential noise impacts associated with the project's construction and operational phases and demonstrate how the project will comply with applicable MassDEP noise policies.

Aviation

As further detailed in the comment letter from Massport, the buildings proposed in the ENF extend into critical air space that is required for safe and efficient operation of Boston-Logan International Airport. The project site is directly across the harbor from the airport. As recommended by Massport, the Proponent should submit a Notice of Proposed Construction or Alteration (7460 application) as soon as possible to the Federal Aviation Administration (FAA) for its review. The DEIR should discuss potential impacts to air space and flight patterns around the Airport, and related changes in aircraft noise impacts in the project area. The DEIR should consult with Massport regarding a proposed design that is compatible with airport operations.

Wind and Shadow

The DEIR should include detailed wind and shadow studies with narrative and graphics to illustrate potential impacts of alternative designs. In accordance with the requirements of 310 CMR 9.51(2)(c), the DEIR should describe how the scale of buildings and other permanent structures may affect wind, shadow, and other conditions of the ground level environment that may affect users of water-dependent facilities. The DEIR should also propose measures to avoid and minimize, or mitigate wind and shadow impacts. The Boston Harbor Association (BHA) and other commenters note concerns about project impacts on users of the Greenway, New England Aquarium, Christopher Columbus Waterfront Park, and Central Wharf Park, which should be addressed in the DEIR.

Historical Resources

The DEIR should include a historic resources study as recommended by the Massachusetts Historical Commission (MHC) in its comment letter. MHC has determined that the proposed new construction will have an adverse effect on historic districts. The proposed project site is adjacent to the Custom House Historic District, which is listed on the State and National Register of Historic Places, and is near the Long Wharf and other significant historic districts as further detailed in the MHC letter. The DEIR should include visual studies, geotechnical and other information as requested by MHC to evaluate the project's potential impacts on historic districts. The wind studies in the DEIR should present an assessment of cumulative wind impacts on historic properties including those in the North End including the steeple and tower of Old North Church (a National Historic Landmark). The Proponent should consult with MHC regarding measures to avoid, minimize or mitigate adverse effects of the project on historic properties. The DEIR should include an update on consultations and a description of proposed measures to avoid, minimize or mitigate historic resource impacts.

Wastewater

The ENF indicates that there is sufficient capacity in the existing collection system to accommodate the estimated wastewater flow from the proposed project (127,950 gallons per day (gpd)). Wastewater generated from the project will discharge to the Boston Water and Sewer Commission (BWSC) sewer system, which flow to the MWRA system and ultimately to the Deer Island Wastewater Treatment Facility. As noted in its comment letter, MassDEP in cooperation with MWRA and member communities, is implementing a flow control program to remove extraneous clean water (i.e. infiltration/inflow I/I) from the system. The DEIR should describe in detail proposed wastewater mitigation, including measures to meet I/I removal requirements and water conservation commitments. The MWRA in its comment letter outlines discharge permit requirements that may be applicable to the project. The DEIR should describe how the project will meet state and city regulatory requirements. The Proponent should consult with MassDEP, MWRA, and BWSC during DEIR preparation to discuss permitting and wastewater impact mitigation.

Water Supply

The ENF indicates that the project will require a total of 140,745 gallons per day of water. The DEIR should include separate estimates of water demand (maximum peak and average use) for all proposed uses including residential, commercial, industrial, irrigation of landscaped areas, and air-conditioned make-up water. The DEIR should also describe water conservation measures proposed and estimate the amount of reduction in demand expected.

Stormwater

The DEIR should include a detailed stormwater management plan and examine the project's susceptibility and adaptation to projected sea-level rise rates over the building design lifespan. The DEIR should evaluate stormwater runoff impacts during both the construction and post-construction periods. The DEIR should describe proposed source controls, pollution prevention measures, erosion and sediment controls, and the post-development drainage system. The DEIR should explain how the project will be designed in compliance with the MassDEP Stormwater Management regulations, to the extent applicable. The DEIR should also explain how water quality and quantity impacts will be controlled in compliance with the MassDEP Stormwater Management Policy (SMP), City of Boston requirements, and Boston Water and Sewer Commission (BWSC) stormwater requirements. The DEIR should include stormwater calculations, stormwater system design plans at a readable scale, best management practice (BMP) designs, and additional supporting data to demonstrate conformance with the SMP.

As noted in the comment letter from BWSC, the project is located within a Groundwater Conservation Overlay District. The DEIR should describe how the proposed project will meet applicable groundwater recharge requirements. I refer the Proponent to the BWSC comment letter for additional guidance on its stormwater requirements.

Transportation

According to the ENF, the existing project site generates 3,647 vehicle trips per day and the proposed project will generate 1,620 new vehicle trips per day (tpd) for a total of 5,267 tpd. These are adjusted numbers based on Institute of Transportation Engineers (ITE) data for land use codes and mode split assumptions, based on Boston Transportation Department (BTD) data, that allocate a percentage of trips to walking and public transit. The unadjusted vehicle trip estimates are 11,738 new trips per day.

The DEIR should include a detailed comprehensive analysis of the transportation aspects of the project, which should include an analysis of potential impacts (including distribution and level of service changes), measures to avoid and minimize impacts, and a mitigation plan for any unavoidable impacts. The ENF proposes 17 intersections in addition to the site driveways to include in the analysis. The Proponent should consult with the BRA and BTD for guidance on the study design and any additional intersections to be included in the analysis. The analysis should include consideration of other development projects in the area for the future-year traffic projections and cumulative impact assessment. The analysis should be consistent with BTD standards and guidelines. As noted above, I encourage the Proponent to file a joint DEIR/DPIR as a single document to respond to both the MEPA and BRA scopes on this issue.

The DEIR should include a detailed parking needs analysis for construction and operation phases of the project and clearly explain how the parking needs of existing users such as the New England Aquarium and Harbor Towers residents will be accommodated. The DEIR should provide information to justify the proposed parking spaces to be allocated to office, retail, residential and hotel uses. The DEIR should discuss parking supply and pricing in the context of promoting the Transit-Oriented Development (TOD) potential of the site. The DEIR should describe how on-site parking demand will be minimized. The DEIR should explain how parking capacity will be constrained during construction and describe proposed mitigation measures. The ENF indicates that provision of parking during construction is contingent upon obtaining the necessary property rights on East India Way adjacent to the site (on the Harbor side). The DEIR should clarify ownership of this parcel and identify any land transfers required for the project. The DEIR should also provide an update on consultations with the Harbor Towers Trustees to discuss parking leases and related issues raised in its comment letter.

The alternatives analysis in the DEIR should consider traffic circulation alternatives to avoid and minimize conflicts with existing and future pedestrian and other waterfront activities, including the Harbor Towers entrance and exit, and the Aquarium drop-off area. The DEIR should describe existing and proposed loading activity in and near the project site and consider potential conflicts with existing uses as part of the traffic analysis and mitigation planning. The DEIR should describe in detail how service and loading activities will be accommodated during construction and operation to avoid and minimize traffic congestion and adverse impacts to water-dependent uses and pedestrian access to and from the waterfront and the Greenway.

The ENF indicates that the Proponent is committed to implementing Transportation Demand Management (TDM) measures to minimize automobile use and project-related traffic impacts. The DEIR should describe specific measures the Proponent will implement to leverage

the site's downtown location and accessibility to transit in marketing the development to potential future tenants, residents, and hotel operators. The DEIR should include a comprehensive TDM plan and describe how any incentive programs proposed will help achieve vehicle miles traveled (VMT) reductions. I encourage the Proponent to consider funding a subsidy program for transit passes and to incorporate TDM measures in a Tenant Manual as recommended for energy efficiency measures in the GHG section above. The Proponent should consult with Massachusetts Bay Transportation Authority (MBTA) about the potential for a shuttle connecting North and South Stations as suggested in the ENF. The DEIR should discuss the feasibility of such a shuttle and the Proponent's commitments to support its implementation.

The DEIR should evaluate opportunities to promote water transportation, including a discussion of existing and future use of the watershed in front of the project site and the dock owned by the Proponent. The DEIR should describe measures the Proponent will implement to encourage residents, visitors and workers to use water transportation options, such as those at Rowes Wharf, Central Wharf, and Long Wharf, as an alternative mode of transportation.

Construction Period Impacts

The DEIR should include a detailed draft Construction Management Plan (CMP) that addresses measures to avoid, minimize or mitigate construction-related impacts including traffic, noise, vibration, dust and air quality impacts, and impacts to waterfront access and the Greenway. The CMP should include a construction schedule and identify proposed staging areas. The DEIR should evaluate groundwater and geotechnical impacts associated with project construction, which will require extensive excavation and structural support. The DEIR should explain how the construction will be designed to avoid adverse geotechnical impacts to the Aquarium, Harbor Towers, and other buildings and structures in the project area. The DEIR should include an assessment of other construction-related impacts to Harbor Tower residents, the Aquarium, and other water-dependent uses in the vicinity of the project, as well as a draft mitigation plan.

MassDEP has recommended that the Proponent commit to require all project contractors to install after-engine emission controls such as diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs). MassDEP also recommends the early use of Ultra Low Sulfur Diesel (ULSD) to reduce fine particulate matter. I refer the Proponent to MassDEP's comment letter for additional guidance. The DEIR should clarify the Proponent's commitments to construction period air quality mitigation.

The project involves demolition and construction that will generate a significant amount of construction and demolition (C&D) waste. I encourage the Proponent to incorporate C&D recycling as a sustainable design element of the project. I refer the Proponent to MassDEP's comment letter for information on source reduction and recycling, as well as solid waste and air pollution control requirements relevant to the construction period. The DEIR should address compliance with applicable regulations and describe how the project will integrate design elements that facilitate future waste reduction and recycling to minimize or mitigate potential long-term solid waste impacts.

Monitoring and Evaluation

The DEIR should include a draft Monitoring and Evaluation Plan for the long-term assessment of project impacts and mitigation, to assess the accuracy of projected impacts and the effectiveness of mitigation measures.

Mitigation, Permitting and Section 61 Findings

The DEIR should include a separate chapter on mitigation measures, which should include a summary table of all mitigation commitments as well as detailed proposed Section 61 Findings for all state permits. The Section 61 Findings should describe proposed mitigation measures, contain clear commitments to mitigation and a schedule for implementation, and identify parties responsible for funding and implementing the mitigation measures. The proposed Section 61 Findings will serve as the primary template for permit conditions. Final Section 61 Findings will be prepared by state agencies issuing permits for this project and will include conditions considered binding upon the Proponent as mitigation commitments.

Response to Comments

In order to ensure that the issues raised by commenters are addressed, the DEIR should include a response to comments to the extent they are within MEPA jurisdiction. This directive is not intended to, and shall not be construed to, enlarge the scope of the DEIR beyond what has been expressly identified in this Certificate. The DEIR should also include a copy of this Certificate and a copy of each comment letter received on the ENF.

Circulation

The DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to all those that submitted comments on the ENF. A copy of the DEIR should be made available for public review at the local branches of the Boston Public Library.

July 17, 2009

DATE



Ian A. Bowles, Secretary

IAB/AE/ae

Comments Received:

5/20/09 James and Catherine Bath
5/27/09 Martin and Sallie Katz
5/27/09 James and MaryAnn Esdaile
5/27/09 Joan Broude
5/26/09 Toby Bernstein
5/26/09 Myra Zisk
5/26/09 Marjorie Kunear
5/26/09 Mitami Kashiki
5/29/09 Westy and Susan Egmont
5/27/09 Peter and Soisic Brill
6/9/09 Mary Holland
6/9/09 Morton Zisk
6/16/09 Selma H. Rutenburg
6/17/09 John E. Pace, Jr.
6/17/09 Mary and Daniel Jones
6/18/09 Nick and Laura Kensington
6/18/09 Virginia S. Vidaver
6/18/09 Barbara Mank
6/18/09 Selma H. Rutenburg
6/18/09 George Macomber
6/22/09 Margaret B. Wood
6/22/09 Joan Broude
6/22/09 Lois Welker
6/22/09 Margaret Thompson
6/22/09 Madhu Partabray
6/22/09 Jane F. Kiusei
6/22/09 Susan Grenn
6/22/09 Luis Welber
6/22/09 John Noble
6/22/09 James L. Burke
6/23/09 Dorothy and Richard Willey
6/23/09 Kathleen Palano Ray
6/22/09 Jeff Bodestab
6/23/09 Elizabeth G. Cook
6/23/09 Susan K. Bryant
6/24/09 Richard M. Atwater, Jr.
6/24/09 Charles E. Worcester
6/24/09 Carlos Sonnenschein
6/24/09 Yvonne Kowalczewski
6/28/09 Robert G. Gordon
6/29/09 Patricia Reddyton
6/29/09 Richard M. Atwater, Jr., Harbor Towers
6/29/09 Philippe Bey
6/29/09 Rosemary Phelan
6/29/09 Marcelle Willock

6/29/09	Charles W. Worcester
6/29/09	Lili Banani
6/29/09	Susan K. Bryant
6/29/09	Kathryn and Thomas Wooters
6/29/09	Shirley Roberts
6/29/09	David G. Shaw
6/29/09	Shirley Roberts
6/29/09	David G. Shaw
6/29/09	Kathryn M. and Thomas A. Wooters
6/29/09	Marcelle Willock
6/29/09	Susan K. Bryant
6/29/09	Lili Banani
6/29/09	Rosemary Phelan
6/29/09	Philippe Bey
6/29/09	John Noble
6/29/09	Judy Casey
6/29/09	Joanne Kaufman
6/29/09	Joseph C. Benoit
6/29/09	Mary Milano
6/29/09	Richard M. Atwater, Jr.
6/29/09	William J. Gladstone, P.E.
6/29/09	Helen Rees
6/29/09	Keiko Prince
6/29/09	Blanca Batteau Fingham
6/29/09	Christopher Fincham
6/29/09	John M. Matteson
6/30/09	Stephen Bell, Pembroke Real Estate, Inc.
6/30/09	Cynthia M Oddi
6/30/09	Cho Li
6/30/09	Earl Stowe
6/30/09	Julie Bideaux
6/30/09	Monique Bey
6/30/09	James Shen
6/30/09	Sharon Julius-Doucette
6/30/09	Jennifer Lee
6/30/09	Kristin May
6/30/09	William May
6/30/09	Bette Ann Harris
6/30/09	Heidi Romanow
6/30/09	Ronald E. Oullette
6/30/09	John Chufsto
7/1/09	Angela M. Landry
7/1/09	Elizabeth Pasciucco
7/1/09	Edward C. Johnson IV, Frog Pond Foundation LLC
7/2/09	Sarah Luick
7/2/09	Christine Bassett

7/2/09 Richard Mason
7/2/09 Michael Moffat
7/2/09 Julia Ambridge
7/2/09 Marilyn Cohen
7/2/09 Russell and Nancy Peterson
7/2/09 Nancy Peterson
7/2/09 Frederick Goodman
7/2/09 Louise Pace
7/2/09 Dr. Donna L. Mager
7/2/09 Frederic Alper
7/2/09 Massachusetts Water Resource Authority (MWRA)
7/2/09 Todd Thomas
7/3/09 Dr. Clifford J. Green
7/6/09 Yanni Tsipis
7/6/09 Kitty Armstrong and Marcelle Willock on behalf of the Board of Trustees of the Harbor Towers Condominium I and Condominium II Trusts
7/6/09 New England Aquarium
7/6/09 Frederic Alper
7/6/09 Domenic A. Piso
7/6/09 Mark P. Paul, North End/Waterfront Residents' Association
7/6/09 Stephanie Hogue
7/6/09 Jeffery Burke
7/6/09 Matthew J. Conti
7/6/09 John W. Sullivan and Kristin Hohl
7/6/09 George and Eugenia Hasiotis
7/6/09 Shane and Mariana Cunningham
7/6/09 Sallie Katz
7/6/09 Bob Yelton
7/6/09 Miguel D. Vidal
7/6/09 John H. Lind
7/6/09 Micheline de Bievre
7/6/09 Robert W. Thornburg, Dean Emeritus, Boston University
7/6/09 Iris T. Schnitzer
7/6/09 Ronald T. Doucette
7/6/09 Arthur T. Lyman
7/6/09 Christine Bassett
7/6/09 Mitami Kashiki
7/6/09 Michael Moffat
7/6/09 Julia Ambridge
7/6/09 Richard Mason
7/6/09 Dr. Donna L. Mager
7/6/09 Louise Pace
7/6/09 Frederick Goodman
7/6/09 Gloria Kolihof
7/6/09 Sarah Luick
7/6/09 Russell and Nancy Peterson

7/6/09 Marilyn Cohen
7/6/09 Johanna Schoeumetzler
7/6/09 Nancy Peterson
7/6/09 Victor Brogna
7/6/09 Shaun Lee
7/6/09 Tristram and Kathleen Blake
7/6/09 Jim Clouse
7/6/09 Clifford J. Green
7/6/09 Linda Gottlieb
7/6/09 Eteri Cnilashrili
7/6/09 Tamara Sikhamlidge
7/6/09 Mary Chambers
7/6/09 Ronald S. Rotuey
7/6/09 Peter Marinos and Stella Saih
7/6/09 Elizabeth Pasciucco
7/6/09 Lloyd Selbst
7/6/09 Tamara S. Hammer
7/6/09 Roger P. and Patricia P. Joseph
7/6/09 Diane S. Monaghan
7/6/09 Charles P. Monaghan
7/6/09 John K. Piper
7/6/09 Hideko Worcester
7/6/09 David A. Kubiak
7/6/09 Elaine Ciampa
7/6/09 Linda C. Ferrin
7/6/09 Jean-Luc Boulnois
7/6/09 David H. Ferrin
7/6/09 Rodney Armstrong
7/6/09 Kurt Paiel and Bernice Knutzer
7/6/09 Dan Ciampa
7/6/09 Robert Rines and Joanne Hayes-Rines
7/6/09 Russell and Nancy Peterson
7/6/09 Sandra and Kenneth Morris
7/7/09 Anne Pistario
7/7/09 Cynthia N. Prunty
7/7/09 Angela M. Landry
7/7/09 Leonard S. Halpert
7/7/09 Max and Marjorie Schechner
7/7/09 Steve Weikal
7/7/09 Victor Brogna
7/7/09 Boston Preservation Alliance
7/7/09 The Boston Harbor Association
7/7/09 Senator Anthony Petruccelli
7/7/09 Ramesh and Rita Advani
7/8/09 Massport
7/8/09 Massachusetts Historical Commission (MHC)

7/8/09 Boston Water & Sewer Commission
7/8/09 WalkBoston
7/8/09 Stephen Passacantilli, North End/Waterfront Neighborhood Council
7/8/09 Sean and Carol Gallagher
7/10/09 Massachusetts Office of Coastal Zone Management (CZM)
7/10/09 Massachusetts Department of Environmental Protection, Northeast Regional
Office (MassDEP/NERO)
7/11/09 Sheila Ross
7/14/09 Linda Jonash, Greenway Conservancy

94 Post cards received in support
32 comments with illegible signatures