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August 29, 2008

DRAFT AMENDED RECORD OF DECISION

PROJECT NAME : New Street Development
PROJECT MUNICIPALITY : Boston
PROJECT WATERSHED : Boston Harbor
EOEA NUMBER : 14102
PROJECT PROPONENT : New Street Realty Trust
DATE NOTICED IN MONITOR : June 25,2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Draft Environmental Impact Report (EIR)/Notice of Project Change (NPC) and hereby **propose to amend the Phase 1 Waiver**. The Phase 1 Waiver will allow the proponent to proceed with Phase 1 of the project prior to preparing the Final EIR (EIR) for the entire project.

Project Description

As described in the Expanded Environmental Notification Form (ENF), the proposed project consisted of the redevelopment of a waterfront site in East Boston in two phases. Phase 1 consisted of redevelopment and expansion of the existing 9-story building to create 148 residential units, construction of a 2-level parking garage to the north of the building, demolition of three existing buildings, construction of a Harbor Walk connection along the waterfront with a connection to LoPresti Park, construction of a water taxi landing in the Designated Port Area (DPA) and water taxi waiting area adjacent to the DPA, removal of existing pile fields, construction of a DPA vehicle access route from New Street, creation of surface parking in the southeastern area of the site and creation of lawn and open space on the remainder of the site. Phase 2 consisted of construction of a new 6-story building to provide 62 residential units or 106

hotel/extended stay units, an underground parking garage, construction of a single story building for a restaurant or other Facility of Public Accommodation (FPA), construction of a recreational marina to the south of the DPA and dredging of approximately 2,300 cubic yards (cy) to support the marina.

Project Change

The project change consists of increasing the height of the existing building by an additional three stories for a total of 15 stories, adding an additional level to the garage at the northern end of the site for a total of three parking levels and removing a level of underground parking from the 6-story building. The addition to the redeveloped building will be setback from the edges of the existing building and will be 199 feet tall. The 6-story building will be a uniform height of 69 feet. The proponent continues to consider whether the 6-story building will contain residential units or hotel/extended stay units. The project change will increase the overall size of the project from approximately 225,919 gross square feet (gsf) to 264,298 gsf¹ and will provide an additional 28 residential units. The parking spaces increase from a proposed range of 149 to 225 to a range of 174 to 201 spaces (depending on whether car stacking technology is used). The Draft EIR/NPC indicates that Facilities of Private Tenancy (FPT) proposed within chapter 91 jurisdiction have increased from 527 sf to 1,200 sf. In addition, in a letter dated August 26, 2008, the proponent indicates that at the request of state agencies and other commentors it will shift construction of the water taxi landing and waiting area to the non-DPA watersheet and it will relocate a portion of the Harbor Walk, which was proposed to be pile supported, landward of the existing seawall. The letter notes that the commitment to shift the water taxi landing is premised on CZM concurring that the revised plan complies with the Secretary's 2003 DPA Boundary Decision and that the final Municipal Harbor Plan (MHP) Amendment will reflect the change.

The Draft EIR/NPC indicates that the change in building massing is proposed in response to recommendations that emerged from the City of Boston's Article 80 process. The removal of a level of underground parking is proposed in response to concerns regarding construction in the floodplain and the Draft EIR/NPC asserts that the removal of the underground parking level will significantly reduce the amount of hydrostatic forces that the structure will encounter.

The proposed changes to the parking structures are within chapter 91 jurisdiction. The proposed changes do not require any additional state agency actions or alter MEPA jurisdiction.

Project Site

The 3.93-acre site is located in the southwestern corner of East Boston on the waterfront. It is bound by New Street and Maverick Landing to the east, LoPresti Park to the south, Boston Inner Harbor to the west and the Boston Towing and Transportation Companies property to the north. It is located in close proximity to Maverick Square and the Massachusetts Bay Transportation Authority's (MBTA) Blue Line Maverick Station. The site includes 50,434 sf of

¹ The document includes conflicting figures for total gsf. An email from the consultant, dated August 13, 2008, addresses the inconsistency and confirms that 264,298 gsf is the correct figure.

filled tidelands, 84,547 sf of flowed tidelands and 36,150 sf of uplands. These include private and Commonwealth tidelands. The northern half of the watershed adjacent to the project is designated as a DPA. The site is located within the New Street Complex which is listed in the Inventory of Historic and Archaeological Assets of the Commonwealth. The site contains a 9-story warehouse, a 5 story warehouse, a 3-story building, accessory structures and dilapidated wharves and piers. It is largely comprised of impervious surfaces and untreated stormwater from the site flows into Boston Harbor.

Permitting/Jurisdiction

The project is undergoing MEPA review and subject to preparation of a mandatory EIR pursuant to Section 11.03 (3)(a)(5) because it requires a state permit and consists of new non-water dependent use or expansion of an existing non-water dependent structure provided the use or structure occupies one or more acres of waterways or tidelands. The project requires a Chapter 91 License, a 401 Water Quality Certificate and a Temporary Construction Dewatering Discharge Permit from the Department of Environmental Protection (MassDEP). It requires approval of an amendment to the MHP by the Executive Office of Energy and Environmental Affairs (EEA) and review by the Massachusetts Historical Commission (MHC). It is subject to federal consistency review by Coastal Zone Management (CZM). Also, the project is subject to Article 80 Large Project Review by the Boston Redevelopment Authority (BRA), requires the development of a Construction Management Plan (CMP) and a Transportation Access Plan Agreement (TAPA) for review by the Boston Transportation Department (BTD). In addition, it requires an Order of Conditions from the Boston Conservation Commission (and a Superseding Order of Conditions from MassDEP in the event the local Order is appealed).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state agency permits, and that may cause significant Damage to the Environment as defined in the MEPA regulations. In this case, the subject matter of the required state permits (i.e. the Chapter 91 License) is sufficiently broad to confer MEPA jurisdiction over virtually all of the potential environmental impacts of the project.

Procedural History

An Expanded ENF was submitted in conjunction with a Phase 1 Waiver request to allow the proponent to initiate Phase 1 of the project prior to completion of an EIR for the entire project. The November 1, 2007 Certificate on the Expanded ENF indicated that the project required the preparation of an Environmental Impact Report (EIR). A Final Record of Decision (FROD) was issued on December 3, 2007 which granted the Phase I Waiver subject to conditions identified in the FROD.

Joint MEPA/BRA Review

MEPA review is being coordinated with the local review procedure conducted by the BRA in accordance with Article 80 of the Boston Zoning Code. The Draft EIR/NPC also serves as the Draft Project Impact Report (DPIR).

As noted previously, the project requires an amendment to the East Boston Municipal Harbor Plan. The Draft EIR/NPC indicates that the East Boston Waterfront District Municipal Harbor Plan Amendment was submitted by the City to CZM prior to the filing of the Draft EIR/NPC. Comment letters indicate that the Final EIR should not be submitted until the MHP Amendment process has been completed. I agree that the Final EIR should not be submitted until the MHP process has been completed to ensure that all relevant terms and conditions of the approval effectively inform the MEPA review process.

Summary of Potential Environmental Impacts

As described in the Draft EIR/NPC, potential environmental impacts associated with the project include nonwater dependent use of .9 acres of filled tidelands, generation of a maximum of 2,390 average daily vehicle trips (adt) to 2,907 adt², use of 28,633 to 35,404 gallons per day (gpd) of water and generation of 36,610 to 40,130 gpd of wastewater. In addition, it will impact approximately 25,000 sf of Land Under the Ocean (LUO) and Fish Runs (consisting of temporary and permanent impacts), 50 sf of DPA and 30,800 sf of Land Subject to Coastal Storm Flowage (LSCSF).

Summary of Proposed Mitigation

As noted previously, the project consists of redevelopment of a site that is currently underutilized and contains aging infrastructure. The Expanded ENF identifies a range of measures to ensure adequate environmental protection, rehabilitate aging infrastructure and improve access to the waterfront. The proponent is committed to the following measures:

- design and construction of a building certifiable by the U.S. Building Council's Leadership in Energy and Environmental Design (LEED);
- construction of 750 linear feet of new public access on the site including construction of a 10-foot clear Harbor Walk with a connection to LoPresti Park;
- \$25,000 contribution to the Boston Parks Department for the LoPresti Park Master Plan;
- extension of the Sumner Street view corridor;
- construction of a water taxi landing and waiting area in the non-DPA watersheet;
- removal of existing pile fields;
- construction of a DPA vehicle access route from New Street;
- design, construction and maintenance of a stormwater management system consistent with

² If the project is only residential, it will generate approximately 2,390 adt; if the project includes a hotel, it will generate approximately 2,907 adt.

- the MassDEP Stormwater Management Policy;
- use of siltation booms and time-of-year (TOY) restrictions for in-water work;
 - development of a groundwater monitoring system;
 - creation of lawn and open space consistent with Chapter 91 requirements;
 - measures to minimize construction period impacts;
 - recycling of 75% of construction and demolition debris; and
 - participation in the MassDEP Diesel Retrofit Program.

Waiver Request

The Draft EIR/NPC includes a request to retain the Phase 1 Waiver for the project that will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project and identifies changes to the project associated with Phase 1.

Criteria for a Phase 1 Waiver

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.

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 1 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 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 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 1 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 1 of the project would result in an undue hardship for the proponent because the Expanded ENF and Draft EIR/NPC proposes measures to avoid and minimize Damage to the Environment and commits to completion of DPA requirements. Requiring the resolution of the MHP Amendment prior to completion of Phase 1 could significantly delay aspects of the project that do not necessarily require an MHP amendment. In addition, I have conditioned this proposed Phase 1 Waiver to ensure it will comply with Chapter 91 regulations and adequately address environmental impacts. Therefore, the requirement for completion of an EIR prior to Phase 1 is not necessary and would not serve to avoid or minimize Damage to the Environment. In fact, advancement of the project will improve access to the waterfront through completion of the Harbor Walk and improvements to waterfront infrastructure. In accordance with 301 CMR 11.11(4), the latter finding is based on my determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant.

The project consists of redevelopment of an existing site in close proximity to transit. The proposed design will reduce the amount of impervious surfaces on the site, improve existing infrastructure (including the stormwater management system), improve access to the waterfront and the DPA and includes construction of a LEED-certifiable building. The permitting process will provide sufficient opportunities to address any outstanding information requests or the development of additional, specific mitigation.

- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1.

Because the project is a redevelopment project, the site contains existing water, sewer and other utility infrastructure. It is located in close proximity to existing transit and will introduce water transit to minimize impacts on local roadways. In addition, it will rehabilitate existing waterfront infrastructure and provide water transit.

- (c) the project is severable, such that Phase 1 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.

Phase 1 is a self-contained project that is not dependent upon completion of the full-build of the project. Its impacts can be permitted and mitigated separately from the full-build of the project. Permit review will confirm that the public access and open space measures associated with Phase 1 satisfy Chapter 91 requirements.

(d) the agency actions on Phase 1 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.

The Expanded ENF and Draft EIR/NPC has provided sufficient information to demonstrate that the project can adequately meet the performance standards and requirements of required state permits. The Chapter 91 License can be conditioned to ensure that the full-build of the project complies with MEPA and its implementing regulations. As a condition of the Phase 1 Waiver, the proponent must prepare draft Section 61 Findings outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting. Prior to submitting a Chapter 91 license application for Phase 1, the 1,200 square foot area of Facilities of Private Tenancy (FPT) must be reprogrammed as FPAs. In addition, the proponent must identify adequate removal of clean extraneous flow (Inflow/Infiltration (I/I)) from the sewer system to offset its wastewater generation, remove site runoff from the Boston Water and Sewer Commission (BWSC) and the Massachusetts Water Resources Authority (MWRA) systems and the proponent must provide copies of the historic and archaeological surveys to MHC and the Board of Underwater Archaeologists (BUAR) as part of Phase 1.

Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Amended Record of Decision (DAROD), which will be published in the next edition of the Environmental Monitor on October 8, 2008 in accordance with 301 CMR 11.15(2), which in turn begins the public comment period. The public comment period lasts for 14 days and will end on October 22, 2008. Based on written comments received concerning the DAROD, I shall issue a Final Amended Record of Decision (FAROD) within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

I hereby **propose to amend the Phase 1 Waiver** for this project, which will allow the proponent to proceed with Phase 1 of the project prior to submitting the Final EIR for the entire project, subject to the above findings and conditions.

August 29, 2008
Date


For Ian A. Bowles

- 7/30/08 Coastal Zone Management (CZM)
- 8/18/08 Department of Environmental Protection/Northeast Regional Office (MassDEP/NERO)
- 7/18/08 Massachusetts Historical Commission (MHC)

8/21/08 Senator Anthony Petrucci and Representative Carlo Basile
8/18/08 Boston Water and Sewer Commission (BWSC)
8/26/08 City of Boston/Environment Department
8/20/08 The Boston Harbor Association
8/18/08 John Vitagliano

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