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November 1, 2007

DRAFT 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 : September 25, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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 (ENF) and hereby **propose to grant** a waiver 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.

Project Description

As described in the Expanded Environmental Notification Form (ENF), the proposed project consists of the redevelopment of a waterfront site in East Boston. Phase 1 of the project consists 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 will include construction of a 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.

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 MBTA's Blue Line Maverick Station. The site includes 50,434 sf of 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. It contains a 9-story warehouse, a 5-story warehouse, a 3-story building, accessory structures, dilapidated wharves and piers. The site is largely comprised of impervious surfaces and untreated stormwater 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 Municipal Harbor Plan (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 Transportation Access Plan Agreement (TAPA) and Construction Management Plan (CMP) for review by the Boston Transportation Department (BTD) and requires an Order of Conditions from the Boston Conservation Commission (and a Superseding Order of Conditions from DEP 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. 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.

Summary of Potential Environmental Impacts

Potential environmental impacts associated with the project include .9 acres of nonwater dependent use of filled tidelands, generation of 2,219 average daily vehicle trips (adt), use of 39,100 gallons per day (gpd) of water and generation of 35,510 gpd of wastewater. In addition, it will alter 14,100 sf of Land Under the Ocean, 100 sf of DPA, 100 sf of Fish Runs 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 an existing 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 project proponent has identified the following mitigation commitments:

- design and construction of LEED Certifiable buildings;
- 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;
- extension of the Sumner Street view corridor;
- 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;
- design, construction and maintenance of a stormwater management system consistent with the MassDEP Stormwater Management Policy;
- development of a groundwater monitoring system;
- creation of lawn and open space consistent with Chapter 91 requirements;
- measures to minimize construction period impacts; and
- recycling of 75% of construction and demolition debris.

Waiver Request

The proponent has requested a waiver 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. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

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 proposes measures to avoid and minimize Damage to the Environment and commits to completion of DPA requirements. In addition, I have conditioned this proposed Phase 1 Waiver to ensure it will comply with Chapter 91 regulations and adequately address environmental impacts. Requiring the resolution of the MHP Amendment prior to completion of Phase 1 is likely to significantly delay aspects of the project that do not necessarily require an MHP amendment. 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 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.

The Expanded ENF 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 527 square foot area of Facilities of Private Tenancy (FPT) must be reprogrammed as FPAs. In addition, the proponent must identify adequate reductions of Inflow/Infiltration (I/I) to offset its wastewater generation, remove site runoff from the Boston Water and Sewer Commission and the Massachusetts Water Resources Authority systems and the proponent must conduct a reconnaissance historic and archaeological survey as requested by MHC and the Board of Underwater Archaeologists (BUAR) as part of Phase 1. Finally, MassDEP should consider during project permitting whether a significant

contribution to the LoPresti Park Master Plan, as recommended by the Boston Harbor Associates, is appropriate based on the environmental impacts of the project.

Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on November 12, 2007 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on November 26, 2007. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project, subject to the above findings and conditions.

November 1, 2007

Date

Ian A. Bowles

Comments Received:

10/19/07	Coastal Zone Management (CZM)/Board of Underwater Archaeological Resources (BUAR)
10/15/07	CZM
10/25/07	Department of Environmental Protection/Northeast Regional Office (MassDEP NERO)
10/15/07	Department of Conservation and Recreation (DCR)/Flood Hazard Management Program
10/25/07	Division of Marine Fisheries (DMF)
10/3/07	Massachusetts Historical Commission (MHC)
10/19/07	MHC (second letter)
10/24/07	Massachusetts Water Resources Authority (MWRA)
10/25/07	Pepe & Hazard for Boston Towing and Transportation Companies
10/29/07	The Boston Harbor Association

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