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November 1, 2007

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

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 (M.G. L., c. 30, ss. 61-62H) and Sections 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). In a Draft Record of Decision (DROD) also issued today, I propose to grant a Phase 1 Waiver to allow the proponent to initiate Phase 1 of the project prior to completion of an 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).

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). Proposed measures to avoid, minimize and mitigate impacts include the following: a .5 acre reduction in impervious surfaces, improvements to the stormwater management system, provision of a water taxi and landing area, extension of the Harbor Walk and creation of new landscaped areas and open space. It is the proponent's intent for the design and programming of the site to create a waterfront destination that will increase use and enjoyment of the waterfront.

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.

### Phase 1 Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing an 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. A separate letter that identifies how the project satisfies the criteria for a Phase 1 Waiver (dated September 17, 2007) was provided to MEPA and the distribution list.

### Joint MEPA/BRA Review

The proponent has identified its intention to coordinate MEPA review of this project with the local review procedure conducted by the Boston Redevelopment Authority (BRA) in accordance with Article 80 of the Boston Zoning Code. City review will also require review and approval of a Transportation Access Plan Agreement (TAPA) and a Construction Management Plan (CMP) by the Boston Transportation Department (BTD). The proponent will prepare a joint Project Impact Report (PIR)/EIR that addresses the requirements of both MEPA and the BRA. The proponent should coordinate this joint review process with both agencies to establish the necessary review periods.

As noted previously, the project, as proposed, would require an amendment to the MHP and the proponent has indicated that it will work with the City to amend the MHP. In accordance with the MHP regulations at 301 CMR 23.04, such an amendment requires a public review process, prior to a decision on the amendment by the Secretary of Environmental Affairs. The public process must be coordinated by the City of Boston under the guidance of CZM.

The proponent has the ability to coordinate the MEPA and MHP amendment processes to provide a timely and efficient mechanism to review project design, programming, and decision-making. Comment letters indicate that the MHP Amendment should be obtained prior to filing of the EIR. The Draft EIR should be used as the vehicle for publishing a public hearing draft of the City's proposed amendment(s). Second, the Final EIR should not be submitted until the MHP process has been completed to ensure that all relevant terms and conditions of this approval effectively inform the MEPA review process.

## SCOPE

The EIR should follow Section 11.07 of the MEPA regulations for outline and content, as modified by this scope. It should include a copy of this Certificate and all comment letters. The format of the EIR can be largely determined by this Certificate and the requirements of Article 80 and the scope issued by the BRA. Impacts and mitigation associated with the full-build of the project should be included in the EIR.

### Project Description and Permitting

The EIR should include a detailed description of the project, and should briefly describe each state agency action required for the project and each phase of the project. It should demonstrate how the project is consistent with applicable performance standards. The EIR should contain sufficient information to allow the permitting agencies to understand the environmental consequences of their official actions related to the project.

The EIR should identify and explain project phasing. It should discuss the project's consistency with the Commonwealth's Sustainable Development Principles and Executive Order 385 – Planning for Growth and the Metropolitan Area Planning Council's (MAPC) Metro Plan 2000. It should discuss the project's consistency with zoning and the MHP and identify the process for addressing inconsistencies (i.e. through a variance or Planned Development Area (PDA) designation).

The EIR should include a conditions plan at a suitable scale (e.g. 1" = 40'), that includes the watersheet, mean high and low water marks, all flood zones as currently identified by FEMA and detailed existing topography. The EIR should include an overlay of the proposed project (at the same scale) to compare the location of proposed structures and proposed topography to the existing features. Scaled plans should be provided to support evaluation of the proposed redevelopment consistent with the dimensional requirements of the waterways regulations.

### Alternatives Analysis

Although this project will require an Amendment to the MHP and is not entirely consistent with the dimensional and use requirements of the Chapter 91 Program, comments from state agencies and others have not identified the need to evaluate an alternative that is compliant with local zoning and the MHP. There appears to be an understanding of the constraints posed by the project site and support for redeveloping this area of the waterfront. Therefore, I am not requiring analysis of additional alternatives in the EIR. The EIR should evaluate the No Build Alternative and the Preferred Alternative in the EIR. The EIR should identify the impacts of each of the alternatives including impacts on tidelands, open space and traffic. The alternatives 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.

Sustainable Design

The proponent has stated in the ENF that it intends to meet or exceed the Energy Star Homes program standards for energy efficiency. In addition, it will be required to meet the City of Boston's zoning ordinance requirements for Green Buildings (Article 37) and will construct a LEED Certifiable building. The EIR should identify how the project will be designed and constructed to comply with the City's program.

Chapter 91/Tidelands

If well planned and designed, this project could bring vitality and pedestrian activity to complement recently completed and planned public and private investments in this area. The EIR should identify how the project will improve the parcel's connectivity to public resources and open space surrounding it and serve to complement existing uses. It should identify how the proponent will manage potential conflicts with adjacent port uses.

*Municipal Harbor Plan*

The Expanded ENF indicates that full-build of the project will require a zoning change and an amendment to the MHP. The Secretary's 2002 Decision on the City of Boston's East Boston MHP anticipated an amendment to address site-specific issues for properties within the planning area, including the New Street Development project site. The East Boston MHP, presently under development, will request substitute provisions to the minimum use limitations and numerical standards of the Waterways Regulations governing nonwater-dependent projects on tidelands. The project appears to require two substitute provisions: 1) allowing FPTs within 100 feet of the project shoreline and 2) allowing building heights, in excess of those allowed under the Waterways Regulations, closer to the water's edge.

Comments from state agencies identify issues that need to be addressed, including the further development of mitigation, but the comments do not identify concerns with the full-build of the project or the proponent's intention to seek an Amendment to the MHP. MassDEP comments indicate that the 527 square feet (sf) of Facilities of Private Tenancy (FPT) associated with Phase 1 of the project must be reprogrammed consistent with Chapter 91 requirements and I have incorporated this condition into the DROD. The proponent should review the comments from state agencies and ensure that alternatives and project plans address the issues identified by the agencies.

*Designated Port Areas*

On April 23, 2003, CZM issued its Decision for the East Boston DPA Boundary Review. The Designation Decision removed the DPA designation from the land area of the site, leaving the northerly portion of the watershed in the DPA on the condition that redevelopment of the site would include the following: removal or restoration of all on-site piles within the entire project site; reconstruction of the deteriorated sections of the bulkhead; a permanent vehicular access route from New or Summer Streets to the Water-Dependent Use Zone and DPA; lease forms or deed notifications of pre-existing water-dependent industrial operations nearby; and non-water

dependent facilities, which are designed in a manner to prevent significant conflict with water-dependent facilities, which reasonably can be expected to locate on or near the project site. The Expanded ENF outlines the proponent's commitment to fulfill these requirements. Draft Section 61 Findings should be prepared for consideration by DEP during project permitting to ensure these commitments are secured in Phase 1. The proponent should carefully consider, and respond in the EIR, to comments from The Boston Harbor Association and Pepe and Hazard (on behalf of Boston Towing and Transportation Companies, Inc.) regarding support of DPA uses and minimization of conflict between existing and future uses.

### *Public Access*

The EENF states that the project will provide approximately 500 linear feet of Harborwalk, a connection to LoPresti Park and two public viewing areas along the waterfront to improve public access to the waterfront.

The EIR should identify preliminary designs, permitting requirements, and maintenance needs to support the evaluation of mitigation elements. The EIR should provide more detail regarding the size and use of the proposed water taxi structure, the use and design of the restaurant (or other FPA) and the landscape design of the open space. In particular, the proponent should identify additional information regarding the design of the Harbor Walk and indicate whether recommendations included in comment letters can be accommodated. The EIR should identify interim and final finishes for the Harbor Walk, indicate whether it will be widened to 12 feet, identify how the connection to LoPresti Park will be treated, indicate whether the cantilevered section of the Harbor Walk can be eliminated and indicate whether a path can be created from the Harbor Walk terminus to New Street.

### Wetland Resources

The project will result in a net decrease in impervious surfaces on the site and will include a Stormwater Management System to collect and treat stormwater. The EENF states that the proposed marina activities will require the dredging of approximately 2,300 cubic yards of material adjacent to the southern wharf. In addition, it includes construction of below grade parking within the 100-year floodplain (zone A2, with a base flood elevation of 10 NGVD).

The EIR should include plans that delineate all applicable resource area boundaries including riverfront areas, buffer zones, 100-year flood elevations, priority and/or estimated habitat, wetland replication areas, and waterways. The EIR should quantify the project's estimated impact on each resource area. It should describe the nature of all impacts that cannot be avoided and whether they are temporary or permanent in nature. The EIR should confirm that all feasible methods to reduce impervious surfaces, including parking supply/design have been explored.

The EIR should present drainage calculations and detailed plans for the management of stormwater. It should include a detailed description of the proposed drainage system design, including a discussion of the alternatives considered along with their impacts. The EIR should identify the quantity and quality of flows. The rates of stormwater runoff should be analyzed for

the 10, 25 and 100-year storm events. The EIR should address the performance standards of DEP's Stormwater Management Policy and demonstrate that the design of the drainage system is consistent with this policy.

The EIR should provide information on the dredging methods to be used, the volume of material to be dredged, the proposed disposal site and alternatives, and associated mitigation measures. The proponent should consult with MassDEP, the Division of Marine Fisheries and the Boston Conservation Commission regarding in-water work. The EIR should propose and include commitments to implement appropriate mitigation measures based on these consultations.

Comments from the Department of Conservation and Recreation identify concern with the below grade parking and note that the structure is likely to be subject to massive hydrostatic forces. The structure must be constructed consistent with the State Building Code (Sixth Edition, Section 3107.0) requirements. In addition, the proponent should consider the FEMA Technical Bulletin on Non-Residential Floodproofing - Requirements and Certification. The EIR should respond to the concerns identified by DCR and demonstrate that the project will conform with regulatory standards and requirements.

### Traffic and Transportation

The ENF states that the project will generate a maximum of 2,219 average daily vehicle trips (adt) on a weekday based on Institute of Transportation Engineers (ITE) unadjusted trip rates. Because of its proximity to transit and commercial areas, the project has the potential to minimize vehicle trips. To build on this potential, the proponent should work to minimize the amount of proposed parking and develop a strong Transportation Demand Management (TDM) Program.

The EIR should include the Traffic Impact Study prepared in accordance with a scope to be issued by the BRA and the Boston Transportation Department (BTD). It should identify appropriate mitigation measures for areas where the project will have a direct impact on traffic operations.

### Water Use

The proposed project will use approximately 39,100 gpd of water. Water will be provided to the site by the Boston Water and Sewer Commission (BWSC) through a new connection to the existing 12-inch water main in New Street. The EIR should include plans illustrating the proposed changes to the existing system and provide an updated on its consultations with the BWSC. The EIR should outline the proponent's efforts to reduce water consumption.

Wastewater

The proposed project will generate approximately 35,510 gpd of wastewater. Because the generation is between 15,000 gpd and 50,000 gpd, the proponent is required to file a certification statement with MassDEP. The Expanded ENF states that the sewer system has sufficient capacity to accommodate the increase in flows from the project. It indicates that wastewater will be discharged to the 12-inch combined sewer in New Street/Summer Street managed by the Boston Water and Sewer Commission (BWSC).

The EIR should identify the wastewater generation rates for each facility and it should demonstrate that calculation of the rates are consistent with the sewer extension and connection regulations (314 CMR 7.00). Comments from the MWRA indicate that the 12-inch sewer is an MWRA interceptor and recommend that the project connect to the BWSC 20-inch that runs along the project site. Comments from MassDEP and the MWRA indicate that the proponent will be expected to eliminate extraneous water from the system (Infiltration/Inflow (I/I)), or reduce stormwater discharge, at a minimum ratio of 4:1 (approximately 140,840 gpd for this project). I note that this ratio may be increased if specific flow constrictions/overflows already exist in the sewershed to which the new flow is added. MWRA comments indicate that the I/I reductions and a commitment to remove site runoff from the BWSC and MWRA systems should be conditions of the Phase 1 Waiver and I have included these in the DROD. The proponent should coordinate closely with the MWRA, MassDEP and BWSC regarding adequate mitigation.

Groundwater/Contaminated Soils

Dewatering of the construction site should include monitoring to avoid significant impacts to groundwater levels. The EIR should summarize pre-construction groundwater conditions and outline how it will monitor groundwater levels (on- and off-site). In addition, the EIR should address how contamination encountered during construction will be addressed and compliance with the Massachusetts Contingency Plan (MCP) will be achieved.

Historic Resources

The ENF indicates that the site lies within the New Street Complex which is listed in the Inventory of Historic and Archaeological Assets of the Commonwealth. Comments from MHC and the Board of Underwater Archaeologists (BUAR) indicate that the site has the potential to contain archaeological sites with classes of vessels of which our knowledge is severely limited and, thus, are potentially historically and archaeologically significant. The proponent should conduct a reconnaissance historic and archaeological survey including comprehensive documentary research to trace the land use and development history of the property. The survey should be conducted as part of the Phase 1 project. The proponent should refer to comments and consult with MHC and BUAR to develop the scope of the survey.

Construction



The EIR should present a discussion on potential construction period impacts (including but not limited to noise, vibration, dust, and traffic maintenance) and analyze feasible measures, which can avoid or eliminate these impacts. All demolition activities must comply with both Solid Waste and Air Pollution Control regulations (M.G.L. Chapter 40, Section 54).

Comments from the Division of Marine Fisheries (DMF) indicate that no in-water, silt producing activities should be allowed from February 15 through June 30 to protect winter flounder spawning, juvenile development and foraging habitat and anadromous fish passage and refuge habitat.

Given the close proximity to existing residences, the proponent should consider participation in DEP's Clean Air Construction Initiative to mitigate diesel emissions associated with the construction period. The EIR should present a discussion of measures to implement construction-period diesel emission mitigation including retrofit of construction equipment and use of on-road low-sulfur diesel (LSD) fuel.

### Mitigation

The EIR should include a separate chapter on mitigation measures. It should develop transportation and parking demand management measures to reduce single passenger automobile trips and encourage walking and transit use. This section should include a Draft Section 61 Finding for all state permits. The Draft Section 61 Finding should contain 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 should also be included.

### Comments


The EIR should respond to the comments received to the extent that the comments are within the subject matter of this scope. Each comment letter should be reprinted in the EIR. I defer to the proponent as it develops the format for this section, but the Response to Comments section should provide clear answers to questions raised.

### Circulation

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

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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