



# The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

251 Causeway Street, Suite 900

Boston, MA 02114-2119

JANE SWIFT  
GOVERNOR

BOB DURAND  
SECRETARY

Tel. (617) 626-1000

Fax (617) 626-1181

<http://www.magnet.state.ma.us/envir>

September 9, 2002

## DRAFT RECORD OF DECISION PHASE I WAIVER

|                         |                           |
|-------------------------|---------------------------|
| PROJECT NAME            | : Midway Project          |
| PROJECT MUNICIPALITY    | : Boston                  |
| PROJECT WATERSHED       | : Boston Harbor           |
| EOEA NUMBER             | : 12845                   |
| PROJECT PROPONENT       | : Beacon Capital Partners |
| DATE NOTICED IN MONITOR | : August 10, 2002         |

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, ss.61-62H) and Sections 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to grant a waiver allowing Phase I of the above project to proceed, pending the preparation of an Environmental Impact Report (EIR) for the entire project. In a separate certificate, also issued today, I have issued a scope for the EIR.

### Project Description

The proposed project involves the redevelopment of a 7.1 acre site in a former industrial area of South Boston. The project site is located along A Street, inland from the Gillette manufacturing facility. The project would involve the rehabilitation of 14 of the 19 existing buildings on the site, and the construction of several new buildings, ranging in height up to 150 feet.

The program totals 1.55 million sf, including 597,000 sf (359 units) of residential and live/work space, 836,000 sf of office / R&D space, and 116,000 sf of retail, restaurant, and gallery space. There would be 1010 below-grade parking spaces. According to the ENF, the project will generate approximately 13,530 vehicle trips per day (vtd) (per unadjusted ITE numbers; actual trip generation is estimated at 3,174 vtd, based on the non-SOV mode share) and



182,000 gallons per day (gpd) of wastewater. The project will require a sewer connection permit from DEP. Because the project now intends to seek financial assistance from MHFA and/or MDFA, for the housing component, it is subject to broad scope MEPA jurisdiction. The project exceeds the Mandatory EIR threshold for traffic.

The proponent has filed an Expanded ENF, and is requesting a Phase I waiver for an initial phase. Phase I would be limited to the northeastern quadrant of the site. The existing historic warehouse buildings on Parcels 5 and 7 would be renovated, and a new 125-foot-high infill structure would be constructed on Parcel 6. The Phase I program would total approximately 400,000 sf of residential and live/work space (230 units) and 20,000 sf of retail / restaurant space, and 100 below-grade parking spaces. Based on the ENF, Phase I is predicted to generate approximately 1,575 vtd (per unadjusted ITE figures) and 47,000 gpd of wastewater. Phase I will also include roadway and streetscape improvements along the full length of Midway Street. It will not include the potential future truck connection from Richards Street to the South Boston By-Pass Road.

#### Jurisdiction

The project is undergoing MEPA review and requires the preparation of a mandatory EIR, pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations, because it will generate more than 3000 new vehicle trips per day (per unadjusted ITE trip generation numbers). The project is also undergoing review pursuant to Section 11.03 (5)(b)(4) because it will result in a new wastewater discharge of more than 100,000 gallons per day (gpd). A Sewer Connection and Extension Permit is also required from the Department of Environmental Protection (DEP). A National Pollutant Discharge Elimination System permit is required from the U.S. EPA to address construction and post-development drainage impacts. Because the project involves financial assistance from a state agency, MEPA jurisdiction is broad, and is conferred over any aspect of the project with the potential to cause significant Damage to the Environment.

#### Procedural History

The project has previously undergone large project review by the Boston Redevelopment Authority (BRA), under Article 80 of the Boston Zoning Code. The original proposal included 1.75 million sf of development, 1,200 parking spaces, and a maximum height of 300 for the new office buildings at the south end of the site. Prior to submission of the Project Impact Report (PIR) to the BRA, the project size, parking, and maximum heights were reduced to the currently proposed dimensions. The PIR was found adequate by the BRA, following a public review and comment process, in January 2002. A Memorandum of Agreement (MOA) identifying measures to mitigate impacts on historic resources, was executed by the proponent, the Massachusetts Historical Commission (MHC), DEP, and the Boston Landmarks Commission in February – March 2002. A Transportation Access Plan Agreement (TAPA), identifying traffic mitigation

measures, was executed by the proponent and the Boston Transportation Department in August 2002.

At the time of the initial PIR review, the MEPA Office issued an advisory opinion finding that the project, as it was then proposed, did not exceed any ENF review thresholds. At that time the program was primarily office, with only 183,500 sf (119 units) of residential space. Since that time the residential program has been increased to 597,000 sf (359 units), including 20% affordable units, and the proponent has chosen to seek financial assistance from a state agency for the affordable component. As a result of the programmatic change, traffic generation would decrease somewhat, and wastewater generation would increase, compared with the PIR analysis. A Notice of Project Change describing this change was filed with the BRA in June, and a determination of no further review was issued in August.

### Phase I Waiver Request

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the proponent has submitted an Expanded ENF, and that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship for the proponent, unless based on delay in compliance by the proponent; and b) not serve to avoid or minimize damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

- a) the potential impacts of phase one, taken alone, are insignificant;
- b) ample and unconstrained infrastructure facilities and services exist to support phase one;
- c) the project is severable, such that phase one 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 on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

### Findings

I have carefully reviewed the ENF and supporting documentation, written comments, and comments received at the scoping session. I make the following findings:

1. It would constitute an undue hardship and not serve to avoid or minimize damage to the environment to deny the Phase I Waiver. The project change that necessitated the MEPA filing, which followed an extensive BRA project review, will enhance the smart growth character of the development, consistent with Executive Order 385, by increasing housing on the site and decreasing traffic congestion, relative to the earlier proposal. This change has arisen, at least in part, out of the City's comprehensive planning for the area, which I called for in my Municipal Harbor Plan decision of December 2000. Finally, I acknowledge the significant contribution that phase one will make to the needs of both affordable housing and artists' live/work space in the South Boston district.

2. The potential impacts of phase one, taken alone, are insignificant. Phase one is estimated to generate approximately 1,575 vtd, and 47,000 gpd of wastewater. Both of these impact levels are well below the EIR threshold, and in each case can be accommodated by existing public infrastructure (see below). The project will not have any impacts on wetlands, tidelands, or other natural resources. The MHC has found, as evidenced by the MOA, that there are no prudent and feasible measures or alternatives that would eliminate the need for demolition of the existing garage structure on Parcel 6, and that the proponent has agreed to take steps to mitigate the potential adverse effects of such demolition.

3. Ample and unconstrained infrastructure facilities and services exist to support phase one. Transportation access will be provided by existing MBTA Red Line and commuter rail service, and by the Central Artery / Tunnel project, associated local roadways, and the MBTA's Silver Line, all of which are currently under construction and scheduled for completion prior to phase one. New on-site water, sewer, and storm drainage lines will connect to existing city facilities with adequate capacity. Traffic mitigation commitments relative to phase one are detailed in the TAPA.

4. The project is severable, such that phase one 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. The development of Parcels 5 through 7, which includes the full reconstruction of Midway Street as a pedestrian-oriented streetscape, is part of the orderly phased development of the site, which will produce a lively mixed-use area of renovated and new structures, linked by public streets, sidewalks, and open spaces. (I note that Phase I will not include the potential future truck connection from Richards Street to the South Boston By-Pass Road; therefore, the concerns expressed in several comments letters relative to truck access issues may be addressed in the EIR.)

5. Any agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project. DEP, by

executing the MOA along with MHC, has ensured that due compliance with historic resource mitigation measures will be a condition of its Sewer Connection permit. Any state agency that grants financial assistance to the project will also need to incorporate the historic resource mitigation measures of the MOA and the traffic mitigation measures in the TAPA, to ensure that this waiver condition has been satisfied.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the Phase I waiver subject to the aforementioned findings and conditions.

A Draft Record of Decision (DROD) will be published in the next issue of the *Environmental Monitor*, dated September 25, 2002, and I will receive comments on the DROD until October 8, 2002, after which date I will confirm, modify, or reconsider the DROD.

September 9, 2002

Date

\_\_\_\_\_  
Bob Durand

Comments received on the ENF:

|         |   |
|---------|---|
| 8/22/02 | BRA                                       |
| 8/28/02 | MCZM                                      |
| 8/28/02 | Massport                                  |
| 8/28/02 | Massachusetts Convention Center Authority |
| 8/29/02 | DEP – Air Quality                         |
| 8/30/02 | Boston Water & Sewer Commission           |
| 8/30/02 | DEP – NERO                                |
| 8/30/03 | MWRA                                      |
| 8/30/02 | The Boston Harbor Association             |
| 9/4/02  | Boston Environment Department             |

e12845drod