



The Commonwealth of Massachusetts

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December 9, 2005

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME	:	500 Atlantic Avenue Central Artery/Tunnel Project (Corridor Plan and Surface Streets)
PROJECT MUNICIPALITY	:	Boston
PROJECT WATERSHED	:	Boston Harbor
EOEA NUMBER	:	10546, 4325/8721
PROJECT PROPONENT	:	Extell Boston Harbor Company LLC City of Boston Massachusetts Turnpike Authority ¹
DATE NOTICED IN MONITOR	:	August 24, 2005

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I have reviewed the third party Notice of Project Change (NPC) submitted by Walk Boston on the above projects and hereby determine that it **does not warrant** the preparation of a Supplemental Environmental Impact Report (SEIR).

The Rose Kennedy Greenway ("the Greenway") is the hallmark mitigation measure for the CA/T Project and will create a vibrant common ground for the City of Boston and our Commonwealth. Extraordinary effort and resources have been and continue to be devoted to realizing the vision that guides planning for the Greenway. I have taken the rare step of accepting a third-party NPC - and one that appears to be narrowly focused on a sidewalk design issue along a small segment of the Greenway corridor - to ensure that the overriding public interest in overall Greenway

¹ Metropolitan Highway System legislation (1997 Mass. Acts 3) transferred responsibility for the CA/T Project from the Massachusetts Highway Department (MHD) to the Massachusetts Turnpike Authority (MTA).

design, as memorialized in CA/T project approvals, is respected as individual projects along the corridor are reviewed, permitted and constructed. As a result of my action on the NPC the City, in consultation with Walk Boston and the Greenway Conservancy, has presented a significantly improved design for the sidewalk and accessway at the 500 Atlantic Avenue project than that which was previously permitted.

Planning for the Greenway and progress to date have been marked by a high level of coordination, cooperation and consultation between every level of government, neighborhoods, advocacy groups and the business community. These efforts must continue during the planning, review, and construction of projects to ensure the Greenway's ultimate success. I appreciate the considerable efforts of Walk Boston to address a difficult issue and bring it to our attention by filing the NPC. I also appreciate the constructive efforts of the City of Boston and Extell Boston Harbor Company ("Extell") to acknowledge the problem and develop a compromise design. By this Certificate I am confirming Extell's commitment to build a modified access plan². I am also specifying measures to ensure that review and approvals of subsequent development along the Greenway are consistent with prior planning, clearly identify expectations for the surface streets and sidewalks and ensure that related commitments are incorporated into enforceable documents.

The NPC filed by Walk Boston asserts that the design of the sidewalk and vehicular access proposed for the hotel and residences under construction at 500 Atlantic Avenue, which was permitted by the City's Public Improvements Commission (PIC), is inconsistent with the Surface Transportation Action Forum (STAF) guidelines³ for the surface streets and sidewalks of the Greenway. The NPC asserts that this constitutes a material change to the project as it was presented in the Final EIR (FEIR). STAF guidelines for the public right-of-way were adopted by the City and the Massachusetts Highway Department (MHD) and presented for MEPA review in the 1996 Central Area Surface Street Consensus Plan NPC (EOEA#4325/8721).⁴ These guidelines include: a commitment to

² 500 Atlantic Avenue Sidewalk and Drop-off Layout submitted by the City of Boston and dated December 7, 2005.

³ STAF is a consortium of community, environmental and business groups, the Massachusetts Highway Department (MHD) and City of Boston agencies. STAF outlined the design and function of the surface streets and sidewalks to be built over the Central Artery Tunnel that carefully provided a careful balance of pedestrian, bicycle and vehicular access while recognizing possible impacts on traffic flow and localized air quality.

⁴ The City of Boston and the MTA are listed as project proponents because they

narrow streets of not more than three lanes (including a multipurpose or managed parking lane); an enhanced pedestrian environment with a minimum sidewalk width of 15-feet, 7 inches, numerous neckdowns at intersections and space for continuous tree planting and sidewalk furniture; improved access for business and residential districts; a surface street system to support future development of the corridor; and support of public transportation use. The Draft EIR (DEIR) and FEIR for the 500 Atlantic Project included a commitment from the proponent that its design would be consistent with STAF guidelines and included conceptual plans for the sidewalk and vehicular access that demonstrated this consistency.

However, following issuance of the FEIR Certificate, the proponent designed and received permits for a substitute walkway that eliminated 125 feet of the public right-of-way (ROW) along the Rose Kennedy Greenway to provide curb cuts and a more than 18-foot wide vehicular drop-off/pick-up area. The plan forced the sidewalk on to the proponent's private property inside of the building columns and underneath the building. Documents filed for MEPA review had not included this access plan as an alternative design and an NPC was not filed when it was introduced during project permitting. Despite its inconsistency with prior review, the project secured all required permits, including the curb cut permit from the PIC, and the project has been in construction for two years.

After considerable consultation, Extell has agreed to construct a modified access plan that addresses some of the inconsistencies of this plan with the goals and guidelines established by STAF. Most importantly, this modified plan creates a straight and continuous 7-foot walkway from the outside edge of the building columns to the edge of the driveway. It includes a flush curb and changes in paving materials to improve safety and provide visual cues to the public nature of the walkway. The modified plan was developed by the City of Boston in consultation with the developer, Walk Boston and the Greenway Conservancy.

While the modified access plan imperfectly reflects consensus design guidelines for streetscape development of the Rose Kennedy

are responsible, through construction, coordination, project review and permitting, for ensuring consistency with approved plans for the Greenway surface streets and sidewalks. These plans include the May 1991 Central Artery Surface Restoration Environmental Notification Form (ENF), the September 1996 Central Area Surface Street Consensus Plan NPC and the September 1998 Central Area STAF South Surface Street Consensus Plan NPC.

Greenway (and should not be interpreted by any subsequent developer as a precedent), the City and Walk Boston have indicated that it is an acceptable improvement over that which was previously permitted. Based on a review of the NPC, the modified access plan, consultation with public agencies, the City of Boston, Walk Boston and the Greenway Conservancy, and public comments, I do not believe that additional review of the Extell project would serve a useful purpose, and I accordingly decline to require additional review.

I note that these groups will continue to negotiate details (such as the final dimensions of grade changes, curb transitions, and final design, specifications and exact locations of paving materials, islands and bollards) as the design is finalized. While accepting the modified access plan, Walk Boston has continued to advocate for improvements and has requested that, upon completion of the surface restoration, the City conduct a review of traffic operations at 500 Atlantic Avenue and reconsider the availability of the curb lane for 24 hour use by the hotel as a drop-off/pick-up area.⁵ If the curb lane were available for hotel uses, the vehicular access area could be reduced to one lane, the sidewalk could be widened and street trees could be restored to the design, recognizing the longstanding goal of creating a tree-lined boulevard. I expect that these issues will continue to be addressed in good faith and that the City and Extell will continue efforts to improve upon the access plan.

There are additional measures that need to be taken to ensure that similar problems are avoided during review, permitting and construction of other projects along the Greenway. First, the City of Boston and the MTA must resume and continue consultation with STAF consortium members and other Greenway stakeholders, including the Mayor's Central Artery Completion Task Force and the Greenway Conservancy through final design and beyond. These consultations should address the status of design and construction, identify and seek consensus on changes requiring additional review, and establish procedures to ensure adequate public notice to participants regarding projects along the Greenway. Once surface restoration is completed, the City will have primary responsibility for ensuring consistency with STAF and modifications to the right-of-way will be subject to PIC approval.

⁵ STAF designated the third traffic lane for multipurpose use or managed parking during non-peak traffic hours.

The City must therefore ensure that the PIC and other relevant agencies, departments and commissions participate in and support these consultations and are familiar with prior planning and commitments made by the City. The City has indicated that it will, as a matter of course, advise the PIC on consistency of projects with STAF.

Second, MHD and/or MTA will be transferring, in the form of an easement, care, custody and control of the final Greenway surface streets and sidewalks to the City. Any land disposition agreement should include language to ensure that responsibility for ensuring consistency with STAF is transferred along with the interest in land.

Third, I am directing the MEPA Office to elevate Greenway issues during MEPA review. In any MEPA review, I will apply the fundamental principle that public use of this special corridor (whether on foot or in a vehicle) must be satisfied before private uses are addressed. Project proponents will be required to demonstrate consistency with STAF, MEPA Certificates will include detailed commitments to STAF, and commitments will be incorporated into legally enforceable Section 61 Findings for state permits to ensure their enforceability.

Finally, I want to reiterate the importance of the MEPA NPC process. Many projects change as they go through permitting and the MEPA process acknowledges and supports refinement of designs while protecting the integrity of our review through the NPC process. If an NPC had been filed for this project during permitting it would have facilitated a fair review of the issue and a timely resolution (in fact the vast majority of NPC filings do not require additional review). The fact that the City, the CA/T Project and/or Extell did not file a timely NPC has resulted in significant concerns emerging about this design as the project is under construction.

I am reconfirming the NPC requirement included in the October 11, 1996 Secretary's Certificate on the Central Area Surface Street NPC and binding upon the MTA and the City of Boston. Any changes in the surface corridor design presented in the NPC (for example, the deletion of a neckdown or elimination of street parking from one or more sections of roadway) will require the filing of another NPC.

December 9, 2005

Date


Stephen R. Pritchard

Comments received:

8/12/05 Franklin G. Stearns, Esq. for Extell Boston Harbor LLC
11/14/05 Franklin G. Stearns, Esq. for Extell Boston Harbor LLC
(second letter)
12/8/05 Franklin G. Stearns, Esq. for Extell Boston Harbor LLC
(third letter)
12/8/05 City of Boston
11/15/05 Massachusetts Turnpike Authority
8/19/05 Massachusetts Turnpike Authority (second letter)
11/14/05 Representative Byron Rushing
9/8/05 Central Artery Environmental Oversight Committee
10/14/05 Conservation Law Foundation
9/13/05 Move Massachusetts
8/31/05 Mass Bike
10/26/05 Boston Society of Architects
11/13/05 Boston Society of Landscape Architects
11/14/05 Boston Society of Landscape Architects (second letter)
11/14/05 Adaptive Environments
9/23/05 Environmental League of Massachusetts
9/7/05 Artery Business Committee
9/22/05 Artery Business Committee (amendment to 9/7/05 letter)
11/14/05 North End/Waterfront Residents' Association
10/25/05 Unite Here! Local 26
9/9/05 Ashton Associates
11/10/05 Mario Avila
10/28/05 Susan Benveniste
10/4/05 Libby Block
9/13/05 John and Tamara Bliss
8/9/05 Elizabeth S. Boveroux
10/21/05 Margaret R. Carvan
9/11/05 Elizabeth Byrne Dawes
8/25/05 Nicholas Deane
10/20/05 Mia DellaRusso
11/11/05 John L. Del Negro
9/8/05 Joyce DiBona
11/14/05 Michael A. Dimyan, MD
8/25/05 Stan Dolberg
8/28/05 Carol A. Farley
9/2/05 Paul Fast
10/8/05 Christopher J.B. Fincham
8/28/05 Gloria Ganno
8/29/05 Nina Garfinkle
9/5/05 Jeanne K. Gray
9/13/05 Helen Hendrickson

EOEA #12276/12245

NPC Certificate

12/9/05

9/13/05 Ann Hershfang
10/25/05 Ann Hershfang (second letter)
8/30/05 Rachel E. Hershfang
8/30/05 Marjorie Jeffries
10/3/05 Karla H. Karash
8/29/05 Dennis Kavanagh
10/28/05 John B. Kelly
8/26/05 Don Kindsvatter
9/1/05 Judith R. Klau
10/28/05 Kenneth J. Krause
9/2/05 John Kyper
11/14/05 Bill Lee
10/12/05 Liz Levin
9/15/05 Erik Lund, P.C.
11/29/05 Erik Lund, P.C. (second letter)
8/31/05 Tommye-K Mayer
10/1/05 John S. McLachlan
9/8/05 Lynn McWhood
8/30/05 James Meehan, Ph.D.
10/14/05 Samuel E. Mintz
11/10/05 Hana Pegrimkova
9/1/05 Linda Olson Pehlke
8/28/05 Chris Porter
11/14/05 Bill Reyelt
10/26/05 David J. Roderick
11/14/05 Fred Salvucci
10/26/05 Robert Skole
9/2/05 Charlie Seelig
9/6/05 Fruzsina Veress
12/7/05 John Vitagliano
9/9/05 Ann Williamson
11/10/05 Ana Young
25 Form Letters (Respect Workers Rights)

SRP/CDB/cdb