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December 2, 2011

DRAFT RECORD OF DECISION

PROJECT NAME : BioSquare Phase II
PROJECT LOCATION : Boston
PROJECT WATERSHED : Boston Harbor
EOEA NUMBER : 12021
PROJECT PROPONENT : Boston University and Boston Medical Center
DATE NOTICED IN MONITOR : September 7, 2011

Pursuant to the Massachusetts Environmental Policy Act (G. L., c. 30, s. 61-62I) and Sections 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and request for a Phase I Waiver. I hereby propose to grant a waiver that will allow the proponent to conduct lower level research, known as Biocontainment Safety Level (BSL-2) in the National Emerging Infectious Disease Laboratories (NEIDL) Building prior to the submission of the Supplemental Final Environmental Impact Report (SFEIR) for the above project.

Project History

In 1999, an Environmental Notification Form (ENF) was submitted for the proposed project. The project required a mandatory EIR. In 2003, the DEIR was determined to be adequate. In the FEIR, the proposed project consisted of the development of 428,700 sf of medical research space, a 1,400 space parking garage (approximately 496,000 sf), and associated infrastructure on a 14.5-acre site along Albany Street. The project included the 192,000 sf NEIDL building. The BioSquare Phase II project functions as an expansion of the BioSquare Phase I project (a.k.a. the University Associates Project, EEA #7034), which completed its EIR review process in 1991 and the Moakley Services Center Project (EEA #11883). On August 11, 2004, the FEIR was determined to be adequate.

Following the issuance of that Certificate, litigation was commenced in Superior Court

involving the proponent and other parties. Among other things, the plaintiffs challenged the adequacy of the FEIR. In a Memorandum and Order dated July 31, 2006, the Court vacated the certification of the FEIR and remanded the matter to the Secretary for further administrative action in light of the Court's decision. On September 5, 2006, the then Secretary issued a Certificate that required an SFEIR. The SFEIR should evaluate an additional "worst case" scenario that involved the risk of contagion arising from the accidental or malevolent release of a contagious pathogen. The Superior Court suggested smallpox, SARS, and the Ebola virus as potentially representing "worst case" contagious pathogens. The SFEIR should incorporate the analysis of anthrax from the FEIR to facilitate comparison and review. It should identify a feasible alternative location for the biocontainment building in a less densely populated area.

NPC Project Change Description

According to the NPC, the project change consists of the utilization of approximately 65,280 square feet (sf) of BSL-2 and BSL-3 laboratory space within the completed 192,000 sf NEIDL Building prior to the completion of the additional risk assessment/SFEIR. The proponent is currently utilizing approximately another 96,000 sf of support space for offices, clinical research and lab support. According to the proponent, BSL-2 space would occupy approximately 40,320 sf.

Nearly three years after the building has been completed, the National Institute of Health's (NIH) risk assessment has not yet been completed. The proponent estimates that it may take as much as a year before the risk assessment is completed and the SFEIR is reviewed by me. Before the NEIDL Building is approved for BSL-4 laboratory use (30,720 sf), the public will be provided with an opportunity for review and comment, and state and federal agencies will have to take action approving, denying, or conditioning the BSL-4 laboratory use. BSL-4 involves the use of the highest BSL level (contagious pathogens) for a research laboratory. Additionally, six to nine months will be needed for federal and state court reviews. The proponent's best estimate is that BSL-4 research would not begin until October 2013 at the earliest.

The proponent would like to begin to use the building for lower level biological research pending the completion of the administrative and judicial reviews of the BSL-4 activities. The proponent has also agreed that it will not commence actual BSL-3 level research until the risk assessment has been completed and considered. The proponent would operate the laboratory at the BSL-2 level starting this fall and would seek additional City and State regulatory approvals necessary for BSL-3 level operations so that BSL-3 research can begin immediately following the completion of the risk assessment.

Jurisdiction and Permitting

The project as a whole is subject to a mandatory EIR pursuant to Section 11.03(6)(a)(6) and (7) of the MEPA regulations because it requires State Agency Permits and will generate 3,000 or more new vehicle trips per day and will provide greater than 1,000 new parking spaces

at a single location. It required an Access Permit from the Massachusetts Department of Transportation (MassDOT). After it has received all the necessary reviews and approvals for lower level research operations, the proponent must obtain a Sewer Use Discharge Permit from the Massachusetts Water Resources Authority (MWRA). The project required a minor modification to an existing Urban Renewal Plan from the Boston Redevelopment Authority (BRA). The proponent was required to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site.

Because the proponent has received a transfer of state land for a portion of the project, MEPA jurisdiction over this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

For the NPC and the NEIDL Building, the State Agency Permit is the Sewer Use Discharge Permit from the MWRA.

Summary of Potential Environmental Impacts

There is no identified increase in traffic generation, parking demand and stormwater flow from the NPC. The project has been designed to meet or exceed the performance standards in the Massachusetts Stormwater Policy. There is no alteration proposed on the project site that occurs in a wetland resource area or buffer zone. The project has access from the Frontage Road-South and from existing streets that connect to Albany Street.

The BioSquare Phase II project added 1400 structured parking spaces. On a typical weekday, the proponent has estimated that the total project will generate approximately 3,115 unadjusted weekday vehicle trips. The corresponding weekday morning and evening peak hour traffic volume increases are approximately 436 and 419 unadjusted weekday vehicle trips per hour respectively. The low level research portion of the NEIDL Building should have fewer trips than the total buildings utilization that was estimated at 491 adjusted weekday vehicle trips, 70 adjusted morning and 70 adjusted evening weekday vehicle trips. This amount of vehicle trips should have a minimal effect on area traffic.

The temporary environmental impacts resulting from the construction of the BioSquare Phase II include: noise, air quality (dust), water quality, and traffic. However, the NEIDL Building portion of the project has been completed for three years.

Summary of Proposed Mitigation Measures

The NEIDL Building must meet applicable city, state and federal safety regulations. For the entire BioSquare Phase II, the proponent has committed to provide 4:1 Infiltration/Inflow (I/I) removal from the wastewater system. To date approximately 60,000 gallons per day (gpd) of the 183,000 gallons of I/I removal required for the full operation of the NEIDL Building has been

accomplished. The remaining I/I removal will be accomplished through two projects which are awaiting engineering review by the Boston Water and Sewer Commission and will be implemented when the building becomes operational. The proponent created a pocket park along Albany Street. The proponent modified the East Newton/Albany Street intersection as a four-way intersection. It will provide a traffic and parking management plan for Albany Street between East Newton and Union Park Streets to the Boston Transportation Department as part of the MassDOT Access Permit, which has not been approved. The proponent rebuilt Albany Street sidewalks and provided pavement markings along Albany Street including lane striping and crosswalks and directional signing at the site. It installed fiber optic cables along a portion of Albany Street. The proponent will provide the City of Boston with up to two variable message boards for real time traffic information as part of the MassDOT Access Permit.

The proponent has instituted a Transportation Demand Management (TDM) program that includes membership in Transportation Management Agency, Transportation Solutions for Commuters. The TDM program included a 25 percent transit pass subsidy program to Boston Medical Center employees, a ridesharing program, preferential parking, a guaranteed ride home, direct deposit payrolls, shuttle bus service to the Orange and Red Lines, Zipcar, flextime, and telecommuting. The proponent provided safe and secure bicycle storage/parking areas (up to 24 bicycle parking spaces in the garage 610 Albany Street) and approximately 170 bicycle parking spaces within a block of the site and shower facilities for employees.

Waiver Request

On August 25, 2011, the proponent requested a waiver that would allow it to proceed with the utilization of approximately 65,280 sf of BSL-2 and BSL-3 laboratory research space within the completed 192,000 sf NEIDL Building prior to the risk assessment/SFEIR. Based upon my review of the NPC and the comments received, I have proposed to grant the Waiver, but only for BSL-2 laboratory research activities containing approximately 40,320 sf. The proponent currently utilizes 96,000 sf of space within the building for support service, such as office, clinical research, and lab support. The NPC was submitted in conjunction with this waiver request that identified the environmental impacts for the project and described the measures to be undertaken by the proponent to avoid, minimize and mitigate project impacts.

Standards for All Waivers

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.

Determinations for a Phase I Waiver

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 I 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 I, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- (c) the project is severable, such that Phase I 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 I 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 for BSL-2 laboratory research 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 an SFEIR prior to the utilization of BSL-2 laboratory research space would result in an undue hardship for the proponent and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(4), the latter finding is based on my determination that:

- (a) the potential environmental impacts of Phase I (utilization of BSL-2 laboratory research), taken alone, are insignificant;
 - Biological research at levels below BLS-3 is being safely conducted by the proponent at its other facilities and at many locations throughout the Commonwealth. Through the Boston Public Health Commission (BPHC) review and permitting, the proponent will be working closely with City officials in achieving a positive outcome for safety concerns and in improving health care research.
 - The site on which the NEIDL Building has been constructed has no remaining areas of environmental impacts anticipated. Traffic impacts, associated with the utilization of the NEIDL Building have been analyzed in the DEIR and FEIR and mitigation has been developed. Considered by itself, the NEIDL Building with estimates of approximately 930 unadjusted trips and wastewater generation of approximately 17,600 gallons per day (gpd) does not require the preparation of an EIR.

(b) ample and unconstrained infrastructure facilities and services exist to support BSL-2 laboratory research at the NEIDL Building;

- The building has been constructed and has the entire infrastructure necessary to support the operation of the building. The infrastructure includes redundant water, sewer, electrical, and HVAC services, extensive security controls, and vehicle access and parking facilities. The existing driveways will continued to be used for ingress and egress. No additional infrastructure is necessary to make the building operational.

(c) the project is severable, such that BSL-2 laboratory research at the NEIDL Building 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

- The proposed interim use of the facility is completely separable from the future use of the project for BSL-3 and BSL-4 research use. While the building has been designed and constructed as an integral research facility, it has completely separate laboratories with independent supporting infrastructure to support the different BSL levels of research. Thus, the decision on the future use of the building for BSL-3 and BSL-4 research is not constrained or affected by the use of the balance of the building's research laboratories.

(d) the agency action(s) for the utilization of the BSL-2 research laboratories in the NEIDL Building 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 utilization of BSL-2 research laboratory space will require an MWRA Industrial Wastewater Discharge Permit. This proposed work will be done in strict accordance with existing MWRA protocol and requirements. The proponent is merely requesting that the Secretary allow this aspect of the project to move forward in advance of the completion of the SFEIR. I hereby direct the MWRA to incorporate clear and enforceable language into the Sewer Use Discharge Permit to ensure that only BSL-2 work be conducted at the NEIDL.

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

December 7, 2011, 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 December 21, 2010. 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 all applicable permitting necessary for the utilization of BSL-2 research space in the NEIDL Building prior to preparing an SFEIR/risk assessment for the entire project, subject to the above findings.

December 2, 2011

DATE

Richard K. Sullivan Jr.

Comments received:

Boston Public Health Commission, 8/31/11
Association of Independent College and Universities in Massachusetts, 8/31/11
Fort Point Associates, 9/1/11
Joanie Parker, 9/1/11
Lynn Klotz, 9/1/11
Conference of Boston Teaching Hospitals, 9/2/11
Michele D. Maniscalco, 9/2/11
MassBio, 9/6/11
Elizabeth Glenn, 9/6/11
John Saylor, 9/6/11
Chris Knighton, 9/6/11
Nathan Seavey, 9/6/11
Monica Spicher, 9/6/11
Elizabeth Glenn, 9/6/11
Kyla Neilan, 9/6/11
Associated Industries of Massachusetts, 9/7/11
Dr. David Waxman, 9/7/11
Diana M. Nugent, 9/8/11
Ara Tahmassian, 9/8/11
Robina E. Folland, 9/8/11
Robert Donahue, 9/8/11
Donna M. Ambrosino, MD, 9/8/11
Eleanor MacLellan, 9/8/11
Louis M. & Christina S. Abbey, 9/8/11
Elizabeth Claggett-Borne, 9/8/11
Daniel Verinder, 9/8/11
Paul Saint-Amand, 9/8/11
Michael Bleiweiss, 9/9/11

Phyllis J. Miller, 9/9/11
Greater Boston Chamber, 9/9/11
Kenneth Ryan, 9/9/11
Dana–Farber/Harvard Cancer Center, 9/9/11
John Tonkiss, 9/9/11
Rebecca Gloe, 9/9/11
Jonathan Freedman, 9/9/11
Constance Phillips, 9/9/11
S. Sherill Ashe, 9/9/11
Benjamin Tocchi, 9/9/11
Rachel Mia Leone, 9/10/11
Boston University School of Public Health, 9/12/11
Patty Kellogg, 9/12/11
Mark Lohsen, 9/12/11
Mary Hart, 9/12/11
University of Massachusetts Medical School, Vice Provost for Research, 9/12/11
Lehigh University, 9/13/11
Brigham and Women’s Hospital, President, 9/13/11
Terence M. Keane, 9/13/11
Barbara McKinley, 9/13/11
Shirley Kressel, 9/13/11
Polly Wynn Allen, 9/13/11
Elizabeth B. Gerlach, 9/14/11
Patricia Aron, 9/14/11
Brenda M. Steinberg, 9/14/11
Dot Walsh, 9/14/11
Cat Bryant, 9/15/11
Nancy Seymour, 9/15/11
Joan Figler, 9/15/11
Tufts School of Medicine, Harris A. Berman, 9/15/11
Tufts University, Peggy Newell, Provost & Senior Vice President ad interim, 9/15/11
James Levin, 9/15/11
Ellen N. Jamieson, 9/15/11
Annemarie Baldyga, 9/15/11
John D. Nash, 9/15/11
Alan Weinberger, 9/15/11
William S. Grenzebach, 9/15/11
Gary L. Gottlieb, President/CEO, Partners Healthcare, 9/15/11
Alexis Brubaker, 9/15/11
Albany LLC, 9/15/11
Carolyn Cotsonas Finn, 9/15/11
Gustavo Mostoslavsky, 9/15/11
Maureen E. Fcney, Boston City Councillor, 9/15/11

Marcia Davis, 9/15/11
Jennifer A Pleus, 9/15/11
Salvatore LaMattina, Boston City Councillor
Harbor Health Services, 9/15/11
Gregory A. Viglianti, 9/15/11
Ronald B. Corley, 9/15/11
Boston University Public Safety Officers, 9/15/11
Linda E. Hyman, Associate Provost, Boston University School of Medicine, 9/16/11
Noreen Rooney, 9/16/11
Terri North, 9/16/11
Jennifer Carter-Battaglino, 9/16/11
Matthew Lubs, 9/16/11
Kenmore Association, 9/16/11
Patricia-Lee Achorn, 9/16/11
Bill Linehan, Boston City Councillor, 9/16/11
Diane Chalifour, 9/16/11
Greater Roslindale Health Organization, 9/16/11
Gregory Mooney, 9/16/11
Kerry Kareta, 9/16/11
Briana Dworkin, 9/16/11
Lucien Clalifour, 9/16/11
Rob Consalvo, Boston City Councillor, 9/16/11
Noah Carbulon, 9/16/11
Cornelia A. Sullivan, 9/16/11
Occupational Health and Delivering Results, 9/19/11
Martin Ludlow, 9/19/11
Michael Wilson, 9/19/11
Inquilinos Boricuas En Accion, 9/19/11
Nancy Wrenn, 9/19/11
Sara Willig, 9/19/11
Susan M. Mortimer, 9/19/11
Kennedy Development Company, 9/19/11
Dennis Broyer, 9/19/11
Elke Muhlberger, 9/19/11
Dr. Kath Hardcastle, 9/19/11
Stuart Mullally, 9/19/11
Thomas B. Flaherty, 9/19/11
Jess Cox, 9/19/11
Sharon Pacitti, 9/19/11
Thomas Candles Almond, 9/19/11
John Devlin, 9/19/11
Robert Pacitti, 9/19/11
Darren LeBlanc, 9/19/11

Caroline Attardo Genco, Research Director, Boston University School of Medicine, 9/19/11
James Wrick, 9/19/11
Robert Macneill, 9/19/11
Mary E. Ryan, 9/19/11
Guy Mirisola, 9/19/11
Denise Henderson, 9/19/11
Bill Donahue, 9/19/11
Brian Askew, 9/19/11
Rick Coyne, 9/19/11
Ronald Rumble, 9/19/11
Robert W. Cox, 9/19/11
Ron Morales, 9/19/11
Boston Health Care for the Homeless Program, 9/19/11
Karsten Olejnik, 9/19/11
Bob Dougherty, 9/19/11
Sandra Silver, 9/19/11
Ken Ryan, 9/19/11
Marie Wrick, 9/19/11
Jack Clougherty, 9/19/11
Scot Gilbert Nichols, 9/19/11
Keith Collins, 9/19/11
Kevin Turner, 9/19/11
Christos J. Hamawi, 9/19/11
Theodore L. Walsh, 9/19/11
Joseph T. Walsh, 9/19/11
Deborah J. Walsh, 9/19/11
Christopher Brayton, 9/20/11
Kristina Brauburger, 9/20/11
Nancy Clinton, 9/20/11
Emily Nelson, 9/20/11
Igor Kramnik, 9/20/11
Kristina Schmidt, 9/20/11
Adam Hume, 9/20/11
Stephen A. N. Goldstein, Provost, Boston University, 9/20/11
Lucille Reed, 9/20/11
Wesley McPhail, 9/20/11
Constantino Buttiglieri, 9/20/11
Peter Mancusi, 9/20/11
Theresa Claybourn, 9/20/11
Bernard Bamonte, Jr., 9/20/11
Sarah Buttiglieri, 9/20/11
Gerald T. Keusch, M.D., 9/20/11
Thomas D. Tullius, 9/20/11

Daniel Remick, Boston Medical, 9/20/11
Julie B. Pinkham & Donna Kelly, Massachusetts Nurses Association, 9/20/11
Kenneth King, 9/20/11
Jeffrey W. Hunter, Dean of Boston University School of Dental Medicine, 9/20/11
Boston City Councilors, Arroyo, Jackson, Pressley & Yancey, 9/21/11
Alan M. Garber, Provost and Jeffrey S. Flier, Dean, Harvard Medical School, 9/21/11
Christopher J. Menard, 9/21/11
Kevin M. Tuohey, 9/21/11
Elizabeth Walsh, 9/21/11
David H. Farb, Professor & Chair, Boston University Department of Pharmacology..., 9/21/11
Pax Christi Western Massachusetts, 9/21/11
James Jennings, Tufts University, 9/21/11
Samuel M. Bauer, 9/21/11
Fort Point Associates, 9/22/11
Fort Point Associates, 9/22/11
Newmarket Business Association, 9/22/11
Alexander Norbash, MD, Boston Medical, 9/22/11
R.P.F. Security Associates, 9/22/11
Sherwood S. Hughes, 9/22/11
James F. English, 9/23/11
Maira E. English, 9/23/11
Alan B. Dittrich, 9/23/11
Massachusetts Water Resources Authority, 9/26/11
Thomas G. Robbins, 9/26/11
Willis G. Wang, 9/26/11
Sheila E. Grove, 9/26/11
Scott S. Pare', 9/26/11
John A. Porco, Professor of Chemistry, Boston University, 9/26/11
James P. Keeney, 9/26/11
Judith Olejnik, 9/26/11
Boston Imaging Core Lab, 9/26/11
Metropolitan Area Planning Council, 9/26/11
359 Signed Postcards Supporting Boston University's Waiver Request, 9/27/11
Council for Responsible Genetics, 9/27/11
Stephen P. Burgay, 9/27/11
South Boston Community Health Center, 9/27/11
Michael Welsh, 9/27/11
Karen H. Antman, 9/27/11
Conservation Law Foundation, 9/27/11
Watertown Citizens for Environmental Safety, 9/27/11
Anderson & Krieger, 9/27/11
3 Signed Postcards Supporting Boston University's Waiver Request, 9/28/11
Spillane & Spillane, 9/28/11

Karen Freund, 9/30/11
Representative Charles A. Murphy, 9/30/11
Representative Thomas A. Golden, Jr., 9/30/11
Linda K. Lukas, 9/30/11
Representative Harold P. Naughton, Jr., 9/30/11
Community Development Corporation of Boston, 10/3/11
Francisco Tapia, 10/4/11
Alliance Detective & Security Service, 10/4/11
Mass Housing, Director of Public Safety, 10/4/11
College Bound Dorchester, 10/4/11
Primitiva Tapia, 10/4/11
Mass Housing, Seline Moreno, 10/4/11
Kimberly K. Russell-Lucas, 10/4/11
Pat Augustine, 10/4/11
Constance Phillips, Boston University School of Medicine, 10/5/11
Jian Huan Wu, 10/5/11
Marisa Lopez, 10/5/11
Raysa Tapia, 10/5/11
Suzeth L. Dunn, 10/5/11
Senator Sonia Chang-Diaz, 10/6/11
Foley Hoag, 11/11/11
Representative Gloria L. Fox, 10/17/11
Anderson & Krieger, 10/19/11
Fort Point Associates, 10/24/11
Representative Byron Rushing, 10/25/11
6 Signed Postcards Supporting Boston University's Waiver Request, 11/2/11

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