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The Commonwealth of Massachusetts

Executive Office for Administration and Finance

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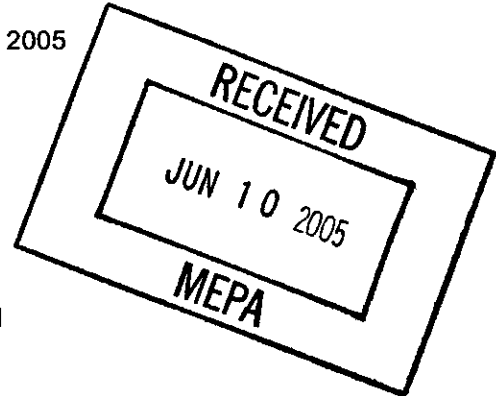
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ERIC A. KRISS
SECRETARY, ADMINISTRATION
& FINANCE

DAVID B. PERINI
COMMISSIONER

June 10, 2005

Ellen Roy Herzfelder, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston MA 02114



Re: EOEA No. 12021 Biosquare Project, Phase II

Dear Secretary Herzfelder:

Pursuant to 301 CMR 11.12(5)(e), the Division of Capital Asset Management hereby submits a copy of its Section 61 Findings with respect to the transfer of state land which is part of the above-referenced project. A copy of the Division's Reconsideration and Confirmation of Agency Action, referred to in the Section 61 Findings, is also enclosed.

We request that notice of the availability of the Section 61 Findings be published in the next Environmental Monitor in accordance with 301 CMR 11.15(2).

If you have any questions or desire any further information, please do not hesitate to contact the undersigned.

Sincerely,

Martha J. McMahon
Deputy General Counsel

Cd (w/enc): Deerin Babb-Brott, Acting Director, MEPA
James H. Greene, Rubin & Rudman
Pierce Cray, Assistant Attorney General
H. Peter Norstrand, Deputy Commissioner, DCAM
Carol Meeker, Deputy General Counsel, DCAM

Section 61 Finding

FINDING BY THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE (FOR LAND TRANSFER) UNDER M.G.L. C. 30, S. 61.

The Division of Capital Asset Management and Maintenance (“DCAM”) declares as follows:

Introduction

Massachusetts General Laws, Chapter 30, section 61 (“Section 61”) requires that “[a]ll agencies, departments, boards, commission and authorities of the Commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects, or activities conducted by them and shall use all practical means and measures to minimize damage to the environment. Any determination made by an agency of the Commonwealth shall include a finding describing that all feasible measures have been taken to avoid or minimize said impact.” The finding required by Section 61 “shall be limited to those matters which are within the scope of the environmental impact report, if any, required [on a project].”

MEPA Regulations at 301CMR11.00 et seq. were promulgated to create a uniform system for compliance with the Massachusetts Environmental Policy Act, M.G.L. c.30, ss.61 through 62H inclusive (“MEPA”). In accordance with the provisions of MEPA, an Agency undertaking action on a project for which the Secretary has required an EIR shall determine whether the project is likely, directly or indirectly, to cause any Damage to the Environment and make a finding describing the Damage to the Environment and confirming that all feasible measures have been taken to avoid or minimize the Damage to the Environment (301CMR11.12 (5)). 301CMR11.12(5)(a) requires that “the Agency shall base its Section 61 Findings on the EIR and shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable; an Agency or person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to the environmental impacts”. 301CMR11.12(5)(b) states that in the event that mitigation measures are specified as conditions to or restrictions on Agency Action, the Agency shall make its Section 61 Findings part of the permit, contract or other document allowing or approving the Agency action or the Agency may refer in its Section 61 Findings to applicable sections of the relevant permit, contract or other document approving or allowing the Agency Action.

Proponent and Project

University Associates Limited Partnership (“Proponent”), a Massachusetts limited partnership between Univer Development Foundation, Inc, (the sole member of which is Boston Medical Center Corporation) and the Trustees of Boston University, proposes to develop the second phase of the BioSquare Project. The first phase, BioSquare Phase I, was approved by the Boston

Redevelopment Authority (BRA) and Massachusetts Environmental Policy Act Office ("MEPA Office") in 1991. BioSquare Phase II will provide a biocontainment national research facility, additional medical research, retail and parking space to serve the needs of the medical and educational institutions and hospitals in the area.

Project Description

According to the Final EIR described below, the Proponent is proposing to develop the larger BioSquare Phase II site into approximately 428,700SF of biomedical research and office space with associated parking within a 1400 car garage ("BioSquare Phase II Project"). A portion of the BioSquare Phase II site consists of Parcel Q and Parcel Q-1. The Final EIR stated that Parcel Q is to be used for garage parking, circulation, open space and accessory access and infrastructure. Specifically, Building H, located on Parcel Q, is proposed as an 8-story-parking garage that accommodates approximately 1,400 parking spaces. Parcel Q has not been proposed as the site for the biocontainment national research facility, other biomedical research or office space. As noted below, such uses are not allowed on Parcels Q and Q-1 pursuant to restrictions set forth in the deed for such parcels.

On September 12, 2003, a deed ("Deed") of approximately five acres of land (Parcels Q and Q-1, as shown on a plan entitled: "Plan of Land, Albany Street, BIOSQUARE, Boston, Mass.", prepared by Harry R. Feldman, Inc., Land Surveyors, dated July 16, 2003) from the Commonwealth to the City of Boston pursuant to the Roxbury Canal Statute (Chapter 762 of the Acts of 1962) was recorded in the Suffolk Registry of Deeds ("Land Transfer"). Subsequently, Parcels Q and Q-1 were taken by eminent domain by the BRA and then conveyed by the BRA to the Proponent. The Deed restricts the uses of Parcels Q and Q-1 to surface and structured parking for not more than fifty percent (50%) of the land area, and the remaining percentage of land area (not less than fifty percent (50%)) must remain as open space with no buildings or improvements, except for permissible temporary parking, an existing heliport used by the Boston Medical Center, open landscaped areas, common grounds, access and egress walkways, driveways or roadways, and the installation, maintenance and replacement of underground utilities.

MEPA Review and Mitigation Measures

An Environmental Notification Form ("ENF") for the BioSquare Phase II Project was prepared and filed in August of 1999. On October 8, 1999, the Secretary of the Executive Office of Environmental Affairs ("Secretary") issued a Certificate on the ENF specifying that the scope for a Draft Environmental Impact Report ("EIR") extended to "all aspects of the project that may have significant environmental impacts". The Secretary's Certificate on the ENF also indicated those review thresholds referenced in 301 CMR 11.03 which were of a nature, size or location that are likely, directly or indirectly to cause Damage to the Environment. The Certificate further stated that "the EIR should contain sufficient information for the permitting agencies to evaluate the environmental impacts of their permitting decisions relative to the project". And finally the Certificate stated that "the EIR should include a summary of all mitigation measures to which the proponent has committed. The mitigation summary should form the basis of the

Proposed Section 61 Findings and Commitment Letter to be presented in the Final EIR". The Draft EIR was filed with the Secretary on September 30, 2003.

The Secretary issued the Certificate on the Draft EIR on December 1, 2003 requiring the preparation of a Final EIR. In such Certificate, the Secretary stated that:

"the purpose of MEPA review is to ensure that a project proponent studies feasible alternatives to a proposed project; fully discloses environmental impacts of a proposed project; and incorporates all feasible means to avoid, minimize or mitigate damage to the Environment as defined by the MEPA statute. After completion of the EIR process, the State permitting agencies must then issue substantive decisions on whether or not to permit those aspects of the project within their respective jurisdictions. If permits are issued, the State agencies must incorporate the information in the EIR process into their required Section 61 Findings, thus formalizing the mitigation commitments contained in the EIR."

The Final EIR was filed with the Secretary on July 30, 2004 and noticed in the Environmental Monitor on August 11, 2004, September 8, 2004 and October 9, 2004. The Secretary issued the Certificate on the Final EIR on November 15, 2004. The Secretary's Certificate listed proposed measures as Mitigation ("Mitigation Measures"), which are set forth herein and are to be implemented by the Proponent. The November 15, 2004 Certificate reiterated the above referenced language and further stated:

"I find that the FEIR is sufficiently responsive to the requirements of the MEPA regulations and the Scope to meet the regulatory standards for adequacy. The project may proceed to permitting agencies"

DCAM Findings

As set forth above, by the Secretary's Certificate on the Final EIR issued on November 15, 2004, the Secretary determined that MEPA review was completed. The November 15, 2004 Certificate also noted that the Proponent had committed to undertake specific mitigation measures which have been included in this Section 61 Finding and referenced in the accompanying Confirmation of Agency Action. The Proponent's commitment addresses the requirement of a letter commitment referenced in the Secretary's Certificates dated October 8, 1999, December 1, 2003 and November 15, 2004. The Proponent delivered a copy of the Secretary's Certificate on the Final EIR to DCAM, by letter dated January 11, 2005.

MEPA regulations, specifically 301CMR11.12(5), provide for an Agency to issue Section 61 Findings in connection with projects for which the Secretary has required an EIR. In addition, 301 CMR 11.12(6) provides:

If an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA

review.

At the time the Deed was recorded, the Proponent had previously filed the ENF in August, 1999, and the Secretary had issued a Certificate on the ENF specifying that the scope for an EIR extended to all aspects of the Project. However, the MEPA process had not then concluded, and DCAM has concluded that it did not duly comply with MEPA in connection with its transfer of Parcels Q and Q-1. Since MEPA review has now been completed, DCAM on its own initiative is reconsidering the transaction and issuing Section 61 Findings consistent with 301 CMR 11.12(6).

Based upon the ENF, the Draft EIR, the Final EIR and the Secretary's Certificates dated October 8, 1999, December 1, 2003 and November 15, 2004 ("MEPA Documents"), DCAM hereby issues this Section 61 Finding and determines as follows: (i) that, as set forth in the MEPA Documents, the project is likely, directly or indirectly to cause Damage to the Environment; (ii) that a finding describing the Damage to the Environment is set forth in the MEPA Documents and adopted by DCAM; (iii) that, according to the Secretary as set forth in the MEPA Documents, all feasible measures have been taken to avoid or minimize the Damage to the Environment; (iv) that there are no additional measures, beyond those set forth in the MEPA Documents and the Deed to the City of Boston, that DCAM would impose to avoid or minimize the Damage to the Environment; and (v) that the following measures are to be taken by the Proponent to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable with the following implementation schedule to ensure that the Mitigation Measures set forth in the November 15, 2004 Certificate shall be implemented prior to or when appropriate in relation to the environmental impacts:

- Provide 4:1 I/I removal program (approximately \$480,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the first research building of the BioSquare Phase II Project, or at such earlier time as may be required by the Massachusetts Water Resources Authority ("MWRA") or the Department of Environmental Protection ("DEP");
- Create a pocket park along Albany Street (approximately \$246,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the first research building of the BioSquare Phase II Project, or at such earlier time as may be required by the Massachusetts Highway Department ("MHD") ;
- Modify the East Newton Street/Albany Street intersection as a four-way intersection (approximately \$100,000 to \$200,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Provide a traffic and parking management plan for Albany Street between East Newton Street and Union Park Street, to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;

- Rebuild Albany Street sidewalks and provide pavement markings along Albany Street including lane striping and crosswalks (approximately \$35,000 to \$60,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Install fiber optic cables along Albany Street (approximately \$20,000 to \$25,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Provide the City of Boston with up to two variable message boards for real time traffic information (approximately \$52,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Install directional signage at site (approximately \$25,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Institute a Transportation Demand Management (TDM) Program that includes membership in Transportation Solutions for Commuters (TMA) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Provide a transit pass subsidy program (25 percent) for Boston Medical Center employees to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD;
- Provide a ridesharing program, preferential parking, a guaranteed ride home, direct-deposit payrolls, shuttle bus service to Orange and Red Lines, Zipcar, and flextime and telecommuting as part of its TDM program to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD; and
- Provide safe and secure bicycle storage areas (up to 140 bicycles in the parking garage and around the site) (approximately \$20,000) and shower facilities for employees to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or at such earlier time as may be required by the MHD.

301CMR11.12(5)(b) states that in the event that mitigation measures are specified as conditions to or restrictions on Agency action, the Agency shall make its Section 61 Findings part of the permit, contract or other document allowing or approving the Agency action or the Agency may refer in its Section 61 Findings to applicable sections of the relevant permit, contract or other document approving or allowing the Agency action.


In preparing this Section 61 Finding, DCAM sought the guidance of the Acting MEPA Director on May 23, 2005 and received a written response from the Acting MEPA Director on May 24, 2005 ("MEPA Response"). The Acting Director was not aware of DCAM's noncompliance with MEPA as of the date of his response, and he did not issue his guidance with that in mind. The guidance nevertheless provides directly relevant advice regarding the preparation of Section 61 Findings for the Project. DCAM acknowledges the advice of the Acting MEPA Director set forth in the MEPA Response and agrees with the Acting Director that "the actions of DCAM ...are not tied to a permit". DCAM also acknowledges that the Acting MEPA Director has instructed MHD and MWRA or DEP to incorporate the Mitigation Measures in such agencies' permits, so that all of the Mitigation Measures will be enforceable in a permit issued by a Participating Agency. Therefore, DCAM finds that (1) the Mitigation Measures relate to actions to be taken by other state agencies (MHD and MWRA or DEP), but not to actions by DCAM, (2) that the Deed restrictions, including the restrictions on use and the 50% open-space requirement stated above represent mitigation related to DCAM's actions already incorporated into the recorded Deed to the City of Boston; and (3) that there are no additional measures, beyond those set forth in the MEPA Documents and the Deed to the City of Boston, that DCAM would impose, and, accordingly, DCAM need not include any of the Mitigation Measures as restrictions on or conditions to the transfer of Parcels Q and Q-1.

Conclusion

Now, therefore, DCAM, having reviewed the MEPA filings for the BioSquare Phase II Project and the Mitigation Measures set forth in the Secretary's Certificate, and having incorporated the Mitigation Measures in this finding, finds pursuant to M.G.L. c. 30, section 61 that with the implementation by the Proponent of the Mitigation Measures set forth herein and in the Confirmation of Agency Action issued by DCAM contemporaneously with this Finding, all practical and feasible means and measures will have been taken to avoid or minimize potential damage to the environment from those aspects of the BioSquare Phase II Project.

MASSACHUSETTS DIVISION OF CAPITAL
ASSET MANAGEMENT AND MAINTENANCE

Date: June 10, 2005

By: 
H. Peter Norstrand
Deputy Commissioner for Real Estate

Reconsideration and Confirmation of Agency Action
RECONSIDERATION AND CONFIRMATION OF AGENCY ACTION
BY THE
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE
(FOR LAND TRANSFER) UNDER MEPA.

Consistent with the provisions of 301 CMR Section 11.12(6), the Division of Capital Asset Management and Maintenance (“DCAM”) declares, finds and confirms as follows:

Introduction

Massachusetts General Laws, Chapter 30, section 61 (“Section 61”) requires that “[a]ll agencies, departments, boards, commission and authorities of the Commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects, or activities conducted by them and shall use all practical means and measures to minimize damage to the environment”. In a separate document issued today, DCAM on its own initiative is making a Section 61 Finding for the 2003 real estate conveyance described below. In the present document, DCAM, acting on its own initiative and consistent with the provisions of 301 CMR Section 11.12(6), is reconsidering and confirming the same transaction.

Proponent and Project

University Associates Limited Partnership (“Proponent”), a Massachusetts limited partnership between Univer Development Foundation, Inc, (the sole member of which is Boston Medical Center Corporation) and the Trustees of Boston University, proposes to develop the second phase of the BioSquare Project. The first phase, BioSquare Phase I, was approved by the Boston Redevelopment Authority (BRA) and Massachusetts Environmental Policy Act Office (“MEPA Office”) in 1991. BioSquare Phase II will provide a biocontainment national research facility, additional medical research, retail and parking space to serve the needs of the medical and educational institutions and hospitals in the area

Project Description

According to the Final EIR, as described below, the Proponent is proposing to develop the larger BioSquare Phase II site into approximately 428,700SF of biomedical research and office space with associated parking within a 1400 car garage (“BioSquare Phase II Project”). A portion of the BioSquare Phase II site consists of Parcel Q and Parcel Q-1. The Final EIR stated that Parcel Q is to be used for garage parking, circulation, open space and accessory access and infrastructure. Specifically, Building H, located on Parcel Q, is proposed as an 8-story-parking garage that accommodates approximately 1,400 parking spaces. Parcel Q has not been proposed as the site for the biocontainment national research facility, other biomedical research or office space. As noted below, such uses are not allowed on Parcels Q and Q-1 pursuant to restrictions set forth in the deed for such parcels.

Agency Action

On September 12, 2003, a deed ("Deed") of approximately five acres of land (Parcels Q and Q-1, as shown on a plan entitled: "Plan of Land, Albany Street, BIOSQUARE, Boston, Mass.", prepared by Harry R. Feldman, Inc., Land Surveyors, dated July 16, 2003) from the Commonwealth to the City of Boston pursuant to the Roxbury Canal Statute (Chapter 762 of the Acts of 1962) was recorded in the Suffolk Registry of Deeds ("Land Transfer"). Subsequently, Parcels Q and Q-1 were taken by eminent domain by the BRA and then conveyed by the BRA to the Proponent. The Deed restricts the uses of Parcels Q and Q-1 to surface and structured parking for not more than fifty percent (50%) of the land area, and the remaining percentage of land area (not less than fifty percent (50%)) must remain as open space with no buildings or improvements, except for permissible temporary parking, an existing heliport used by the Boston Medical Center, open landscaped areas, common grounds, access and egress walkways, driveways or roadways, and the installation, maintenance and replacement of underground utilities.

301 CMR 11.12(6) provides:

If an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA review.

At the time the Deed was recorded, the Proponent had previously filed the ENF in August, 1999, and the Secretary had issued a Certificate on the ENF specifying that the scope for an EIR extended to "all aspects of the project that may have significant environmental impacts". However, the MEPA process had not then concluded, and DCAM has concluded that it did not duly comply with MEPA in connection with its transfer of Parcels Q and Q-1. Since, as set forth below, MEPA review has now been completed, DCAM on its own initiative is reconsidering the transaction and issuing Section 61 Findings consistent with 301 CMR 11.12(6). See also MGL Chapter 30, Section 62D (imposing time limits on agency action following completion of the MEPA process).

MEPA Review and Mitigation Measures

An Environmental Notification Form ("ENF") for the BioSquare Phase II Project was prepared and filed in August of 1999. On October 8, 1999, the Secretary of the Executive Office of Environmental Affairs ("Secretary") issued a Certificate on the ENF specifying the scope for a Draft Environmental Impact Report ("EIR"). The Draft EIR was filed with the Secretary on September 30, 2003. The Secretary issued the Certificate on the Draft EIR on December 1, 2003 requiring the preparation of a Final EIR. The Final EIR was filed with the Secretary on July 30, 2004 and noticed in the Environmental Monitor on August 11, 2004, September 8, 2004 and October 9, 2004. The Secretary issued the Certificate on the Final EIR on November 15, 2004. The Secretary's Certificate listed the following measures as Mitigation ("Mitigation Measures"), which are set forth in DCAM's Section 61 Finding and are to be implemented by the Proponent

in accordance with the schedule noted therein:

- Provide 4:1 I/I removal program (approximately \$480,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the first research building of the BioSquare Phase II Project, or such earlier time as may be required by the Massachusetts Water Resources Authority (“MWRA”) or the Department of Environmental Protection (“DEP”);
- Create a pocket park along Albany Street (approximately \$246,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the first research building of the BioSquare Phase II Project, or such earlier time as may be required by the Massachusetts Highway Department (“MHD”);
- Modify the East Newton Street/Albany Street intersection as a four-way intersection (approximately \$100,000 to \$200,000), to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Provide a traffic and parking management plan for Albany Street between East Newton Street and Union Park Street, to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Rebuild Albany Street sidewalks and provide pavement markings along Albany Street including lane striping and crosswalks (approximately \$35,000 to \$60,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Install fiber optic cables along Albany Street (approximately \$20,000 to \$25,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Provide the City of Boston with up to two variable message boards for real time traffic information (approximately \$52,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Install directional signage at site (approximately \$25,000) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Institute a Transportation Demand Management (TDM) Program that includes membership in Transportation Solutions for Commuters (TMA) to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;
- Provide a transit pass subsidy program (25 percent) for Boston Medical Center employees to be implemented by the Proponent prior to the issuance by the City of

Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD;

- Provide a ridesharing program, preferential parking, a guaranteed ride home, direct-deposit payrolls, shuttle bus service to Orange and Red Lines, Zipcar, and flextime and telecommuting as part of its TDM program to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD; and
- Provide safe and secure bicycle storage areas (up to 140 bicycles in the parking garage and around the site) (approximately \$20,000) and shower facilities for employees to be implemented by the Proponent prior to the issuance by the City of Boston of an occupancy permit for the garage building of the BioSquare Phase II Project, or such earlier time as may be required by the MHD.

Incorporation of Section 61 Finding

In preparing the Section 61 Finding, DCAM sought the guidance of the Acting MEPA Director on May 23, 2005 and received a written response from the Acting MEPA Director on May 24, 2005 ("MEPA Response"). The Acting Director was not aware of DCAM's noncompliance with MEPA as of the date of his response, and he did not issue his guidance with that in mind. The guidance nevertheless provides directly relevant advice regarding DCAM's reconsideration of the Land Transfer. DCAM acknowledges the advice of the Acting MEPA Director set forth in the MEPA Response and agrees with the Acting Director that "the actions of DCAM ...are not tied to a permit". DCAM also acknowledges that the Acting MEPA Director has instructed MHD and MWRA or DEP to incorporate the Mitigation Measures in such agencies' permits, so that all of the Mitigation Measures will be enforceable in a permit issued by a Participating Agency. Therefore, DCAM finds that (1) the Mitigation Measures relate to actions to be taken by other state agencies (MHD and MWRA or DEP), but not to actions by DCAM, (2) that the Deed restrictions, including the restrictions on use and the 50% open-space requirement state above, represent mitigation related to DCAM's actions already incorporated into the recorded Deed to the City of Boston; and (3) that there are no additional measures, beyond those set forth in the MEPA Documents and the Deed to the City of Boston, that DCAM would impose, and accordingly, that DCAM need not include any of the Mitigation Measures as restrictions on or conditions to either DCAM's Reconsideration and Confirmation of Agency Action or the underlying land transfer.

DCAM, having reviewed the MEPA filings for the BioSquare Phase II Project and the Mitigation Measures set forth in the Secretary's Certificate, having incorporated such Mitigation Measures in the Section 61 Finding, issued contemporaneously herewith, and having been advised by the Acting MEPA Director in the MEPA Response, hereby incorporates the Section 61 Finding in this Reconsideration and Confirmation of Agency Action.

Reconsideration and Confirmation of Agency Action


Now, therefore, based upon the foregoing, DCAM

1. having reviewed the MEPA filings for the BioSquare Phase II Project and the Mitigation Measures set forth in the Secretary's Certificate;
2. having issued its Section 61 Finding, referenced and incorporated herein;
3. having been advised by the Acting MEPA Director in the MEPA Response regarding the obligations of various Agencies to include Mitigation Measures in permits or other Agency Actions;
4. having reconsidered its action consisting of the land transfer of approximately five acres of land (Parcels Q and Q-1) by deed executed on July 23, 2003 and recorded in the Registry of Deeds on September 12, 2003 from the Commonwealth to the City of Boston pursuant to the Roxbury Canal Statute (Chapter 762 of the Acts of 1962), which parcels were subsequently taken by eminent domain by the BRA and then conveyed to the Proponent;
5. having found that the Proponent's BioSquare Phase II Project, as set forth in the Final EIR, contains surface and structured parking for not more than fifty percent (50%) of the land area of Parcels Q and Q-1, that the remaining percentage of land area of Parcels Q and Q-1 (not less than fifty percent (50%)) shall remain as open space with no buildings or improvements, except for permissible temporary parking, an existing heliport used by the Boston Medical Center, open landscaped areas, common grounds, access and egress walkways, driveways or roadways, and the installation, maintenance and replacement of underground utilities, all such uses being consistent with the conditions set forth in the deed of July 22, 2003 from the Commonwealth to the City of Boston for Parcels Q and Q-1; and
6. informed by the determination by the Secretary that the Proponent has successfully completed the MEPA process in accordance with MEPA regulations,

hereby confirms its prior Agency Action pursuant to MEPA.

MASSACHUSETTS DIVISION OF CAPITAL ASSET
MANAGEMENT AND MAINTENANCE

Date: June 10, 2005

By: 
H. Peter Norstrand
Deputy Commissioner for Real Estate