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June 5, 2009

FINAL AMENDED RECORD OF DECISION

PROJECT NAME: Seaport Square
PROJECT MUNICIPALITY: Boston
PROJECT WATERSHED: Boston Harbor
EEA NUMBER: 14255
PROJECT PROPONENT: Gale International, Morgan Stanley and W/S
Development Associates, LLC
DATE NOTICED IN MONITOR: May 20, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) submitted on this project and hereby **amend a Phase 1 Waiver** (previously granted on September 17, 2008), allowing the commencement of the first phase of the Seaport Square project (as defined below) prior to completion of the Environmental Impact Report (EIR) for the development of the whole project.

Project Description

As outlined in the Expanded Environmental Notification Form (Expanded ENF) and the Notice of Project Change (NPC), the Seaport Square project will establish 20 new urban blocks in South Boston's waterfront district. The Proponents propose to construct 19 new buildings on approximately 23 acres of land. The project site is generally defined by Northern Avenue, Seaport Boulevard, Congress Street and Summer Street. The building program includes approximately 6.5 million square feet (sf), consisting of 2.75 million sf of residential space, 1.25 million sf of retail space, 1.4 million sf of office and research space, 500,000 sf of hotel space, and 600,000 sf of educational, civic and cultural uses. The project is proposed as a partnership between Gale International, Morgan Stanley and W/S Development Associates, LLC (the Proponents).

The Proponents have designated a first phase of the project. In Phase 1, the Proponents propose to develop three blocks of the project area - Blocks A, H and J. The project change described in the NPC involves the swapping of uses between blocks that were the subject of the Phase 1 Waiver granted in the Final Record of Decision (FROD) issued on September 17, 2008. Block A will remain the same and will include 54,400 sf of residential space and 27,200 sf of retail/restaurant space for a total of 81,600 sf. The proposed uses for Blocks H and J will be swapped. Block H will now be the new site of the Catholic Archdiocese of Boston's Our Lady of Good Voyage Chapel, which is currently located at 65 Northern Avenue and is proposed to be demolished. The new Chapel will be approximately 25,000 sf. Block J will now be used for the 92,100-sf building that will contain 72,700 sf of residential space and 19,400 sf of retail/restaurant space. The total gross floor area for the three blocks is 198,700 sf, or approximately three percent of the total project.

The project is envisioned as a transit-oriented development which will provide significant improvements to the public realm, including new public open spaces, new streets, extensive streetscaping and bicycle- and pedestrian-friendly areas. The proposed uses will be organized around two open spaces, Seaport Square and Seaport Hill, while Seaport Boulevard itself will become an extensively landscaped urban space. The Proponents have committed to working toward Leadership in Energy and Environmental Design – Neighborhood Development (LEED-ND) Silver for the overall project. In addition, the Proponents are targeting a LEED – New Construction (NC) Silver standard on Blocks A and J. Because construction on Block H will be directed by the Archdiocese, the final design parameters of the building have not been finalized.

The project site currently consists of public for-fee parking lots, which hold City of Boston Air Pollution Control Commission permits for 3,647 commercial spaces. The Proponents propose to provide commercial parking spaces for 4,500 vehicles and 2,000 residential parking spaces in five new underground parking garages. The balance of the project after Phase 1 will be built on a series of large “bathtubs” with floor plates containing efficient below-grade parking and loading. Each of these bathtubs will provide platforms upon which multiple buildings will then be constructed.

Phase 1 Project Description

As outlined in the NPC, Block A is proposed to include an approximately 81,600 sf building that will contain one level of underground parking for residents, two floors of commercial and retail space, and condominium residences on the upper four floors. The building is conceived as a gateway to South Boston, and will be sited along Fort Point Channel between the Evelyn Moakley and Northern Avenue bridges. The design of Block A anticipates the reconstruction of Old Sleeper Street, with ground level retail spaces facing Fort Point Channel, and will create an active public plaza between Block A and the existing Barking Crab restaurant.

Block H is the first building site along the south side of Seaport Boulevard. The Our Lady of Good Voyage Chapel will be located in a new building on Block H, which will

include new worship space and a residence for the Chapel's pastor. The proposed building program on Block H is approximately 25,000 sf.

Block J is located next to the Silver Line station on the corner of Seaport Boulevard and Farnsworth Street. Currently the site contains a parking lot at the elevation of the neighboring Fort Point Wharf area buildings, two to three feet below the new sidewalk of Seaport Boulevard. Building J will contain approximately 92,100 sf of space, including approximately 19,400 sf of retail in the first two floors and 72,200 sf of residential in the floors above.

A total of 43 new parking spaces are proposed below-grade at Block A to serve the residential units. This reflects a decrease from the 68 spaces currently located on the site. No parking spaces are proposed for the retail/restaurant use on Block A, or for the proposed uses on Blocks H and J. During the construction of Phase 1, users of Blocks A, H and J will utilize nearby surface parking lots which can be accessed from Sleeper Street or Northern Avenue. Upon completion of the full project, users of the Phase 1 blocks will also be able to park in newly constructed underground parking garages and surrounding on-street parking.

Jurisdiction

Phase 1 of the project is subject to MEPA review pursuant to 301 CMR 11.03(3)(b)(5), because it entails a new non-water dependent use of filled former tidelands and 301 CMR 11.03(6)(b)(13) because Phase 1 will generate 2,658 unadjusted new daily vehicle trips. Based on BTM assumptions for the project area, Phase 1 is anticipated to generate 478 new adjusted vehicle trips. Phase 1 of the project requires a Chapter 91 License and a Sewer Connection/Extension Permit from MassDEP, possibly a Construction Dewatering Permit from the Massachusetts Water Resources Authority (MWRA), and an Order of Conditions from the Boston Conservation Commission.

Waiver Request

The Proponents submitted an Expanded ENF for the project with a request for a waiver to allow the Phase 1 projects to proceed prior to completion of the EIR for the entire project. I issued a Final Record of Decision granting the Phase 1 Waiver on September 17, 2008. The NPC requested that I amend the Phase 1 Waiver to reflect the proposed swap in uses between Blocks H and J.

Criteria for a Phase I Waiver

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 Secretary finds that strict compliance with the provision or requirement would:

- (a) Result in undue hardship to the Proponent, unless based on delay in compliance by the Proponent; **and**
- (b) Not serve to minimize or avoid damage to the environment.

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 1 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 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 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 1 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 Proponents and after consultation with the relevant state agencies, I find that:

Requiring the preparation of an EIR in advance of undertaking Phase 1 would cause undue hardship:

- Allowing Phase 1 of the project to proceed in advance of the EIR plays an important role in the Proponents' intended construction sequencing for the full project. The remainder of the project after Phase 1 will be built on a series of large parking "bathtubs" with floor plates containing efficient below-grade parking and loading. Each of these parking tubs will provide platforms upon which multiple buildings will then be constructed. Construction of the Chapel in Phase 1 is critical to allow for the demolition of the existing Chapel and subsequent development of the below-grade garages and remainder of the project to proceed. Early construction of the Our Lady of Good Voyage Chapel will allow for uninterrupted service at the Chapel because the existing Chapel will have been removed during development of the remainder of the project.
- According to the Proponents, Phase 1 of the project will provide significant benefits to the City and the public. Currently, Blocks A, H and J are predominantly covered by surface parking lots. Development of the lots will improve the aesthetic appeal of the neighborhood and help to establish a gateway to the South Boston waterfront and Fort Point Channel areas. Phase 1 will create approximately 110 residential units, including affordable and workforce housing. Allowing the Phase 1 Waiver blocks to proceed in advance of the EIR will avoid a delay in the realization of the above-listed benefits.

The preparation of an EIR would not serve to minimize Damage to the Environment and the potential environmental impacts of Phase 1 are insignificant:

General

- Phase 1 of the project is being developed on underutilized urban property that does not include sensitive environmental receptors.
- The Phase 1 project site does not contain any land regulated under MGL c. 21E or the Massachusetts Contingency Plan.
- Blocks A, H and J are currently used for surface parking, a use that generates oil, grease, pollutants and sediments. The proposed new uses on these parcels will improve water quality runoff from the site.
- There will be no potential adverse impacts to groundwater at Blocks H and J because no below-grade basement space is proposed. The one-level basement at Block A will be excavated at or just below groundwater levels. The design and construction techniques at this parcel will mitigate potential impacts to groundwater levels. The Proponents will ensure compliance with the requirements of the Boston Groundwater Conservation Overlay District and must coordinate with the Massachusetts Water Resources Authority (MWRA) and the Boston Water and Sewer Commission (BWSC) regarding construction dewatering for the Block A site.
- The project, including Phase 1, will comply with the City of Boston's Article 37, which requires that sustainable design elements be incorporated into new projects. The Proponents are targeting LEED-New Construction (NC) Silver on Blocks A and J.
- As outlined in the Certificate on the Expanded ENF, the Proponents are required to comply with the EEA Greenhouse Gas Policy, and as part of the DEIR is required to submit an analysis of project-related GHG emissions for the entire project including Phase 1, and will commit to mitigation measures to reduce GHG emissions from the entire project.

Transportation

- Phase 1 of the project is anticipated to generate only 478 new average daily vehicle trips based on BTM trip generation assumptions. The Proponents have undertaken a Traffic Impact and Access Study (TIAS) that indicates that the development of the Phase 1 area will not degrade any study area intersections. The TIAS study area for Phase 1 was developed with input from the Boston Redevelopment Authority (BRA), the Boston Transportation Department (BTD) and the community. The Phase 1 traffic study included the intersections of Seaport Boulevard/Sleeper Street, Seaport Boulevard/East Service Road/Northern Avenue, and West Broadway/A Street. Two intersections within the Phase

1 study area will experience a decrease in level-of-service (LOS) under the No-Build condition: the intersection of Seaport Boulevard/East Service Road/Northern Avenue and the intersection of West Broadway/A Street. In the Build condition, the LOS does not worsen at any of the study area intersections. At the intersection of Seaport Boulevard/Sleeper Street, the Seaport Boulevard eastbound left-turn currently operates at LOS F during the morning peak hour due to the lack of a protected left-turn phase. The Proponents propose to install signal equipment, pavement markings and signage for an exclusive left-turn lane and protected signal phase on Seaport Boulevard eastbound to remedy the situation.

- The Proponents will develop and implement a Transportation Demand Management (TDM) program to minimize the use of single-occupancy vehicle trips associated with the project and Phase 1. TDM measures for Phase 1 will include an on-site transportation coordinator, transit pass subsidies for retail employees, secure bicycle parking areas, provision of car sharing spaces in parking garages, and distribution of transit maps and schedules to residents and employees.
- The project site, including Phase 1, is within half a mile of South Station, which provides access to the Massachusetts Bay Transportation Authority (MBTA) Red Line, Silver Line and seven commuter rail branches. The MBTA Silver Line Courthouse and World Trade Center stations in addition to several local MBTA and express bus routes are located near the site as well. The Proponents have estimated that Phase 1 of the project will add 1,188 net new transit trips per day to transit lines, which can be easily accommodated by existing MBTA service.
- Phase 1 will provide an improved street and pedestrian environment. At Block A, the Proponents will work with the City of Boston to provide new paving, trees, planters, benches, lighting and outdoor restaurant seating at Old Sleeper Street and provide a connection between the Children's Museum and the Federal Courthouse. Along Seaport Boulevard, at Blocks H and J, new sidewalk paving and street trees will be installed. The Proponents will also build a pedestrian ramp at the end of the alley between Sleeper and Farnsworth Streets to connect the lower elevation of the alley with the height of Seaport Boulevard. The Proponents should ensure that any future plans for the Old Northern Avenue Bridge do not adversely impact pedestrian connections to the HarborWalk between the Evelyn Moakley Bridge and the John Joseph Moakley Federal Courthouse.

Historic Resources

- Blocks H and J are located within the Seaport Boulevard/Boston Wharf Road Protection Area of the proposed Fort Point Channel Landmark District. The proposed development on Blocks H and J will be subject to review by the Boston Landmarks Commission. Shadow impacts on historic resources resulting from new construction on Blocks A, H and J will be limited due to the height of existing buildings, the density of the neighborhood and the location of the parcels north of the historic district. The scale of the new construction will provide a transition between the Fort Point Channel Landmark

District and the larger new construction proposed for the blocks on the north side of Seaport Boulevard.

Chapter 91/Waterways

- Portions of the Seaport Square project site are within Chapter 91 licensing jurisdiction including all of Block A, the western end of Block B, the western end of Block H, the northeastern corner of Block G, and the northeastern portion of Block M. Phase 1 of the project includes 0.44 acres subject to Chapter 91. Phase 1 is primarily a residential and retail development, and will therefore be reviewed under Chapter 91 as a non-water dependent project. The Proponents provided a discussion in the Expanded ENF of the Phase 1 projects' compliance with the Chapter 91 regulations at 310 CMR 9.00, as amended by the SBMHP.
- Pursuant to the Secretary's Decision on the SBMHP, the Proponents are required to provide 9,742 sf of public open space in conjunction with the Phase 1 development. The Proponents have identified the SBMHP Parcel E as a potential location for the required open space. Parcel E consists of approximately 8,075 sf of open space that was "banked" in the SBMHP as open space offsets for future Seaport Square development projects. In addition, the Proponents have proposed improvements to Old Sleeper Street that would include an active open space area with art installations, landscaping and potential restaurant seating, as well as serving as a link between the Harborwalk at the Children's Museum and the Old Northern Avenue Bridge. Of the approximately 8,096 sf of open space on Old Sleeper Street, at least 50 percent is proposed to be publicly accessible. Parcel E, in combination with open space on Old Sleeper Street would provide approximately 16,981 sf of open space, which is greater than what is required for Phase 1 in accordance with the Chapter 91 regulations. MassDEP and the Office of Coastal Zone Management (CZM) have expressed support for the proposal to count Old Sleeper Street towards the open space requirement for Phase 1.

Because Old Sleeper Street is a public way, the use proposed in the Expanded ENF requires approval from the City of Boston. This Draft Amended Record of Decision (ROD) is accordingly conditioned on the Proponents providing MassDEP with written evidence of the support of the BRA, the City of Boston's Municipal Harbor Planning body, for the use of Old Sleeper Street in a manner that does not adversely affect access to and the operations of the various businesses located on Old Sleeper Street, which include water-dependent uses, both during the construction period and post-construction. The Proponents must ensure that existing service functions for these businesses are maintained and/or improved through the proposed improvements to Old Sleeper Street. The Proponents must also ensure that proposed improvements to Old Sleeper Street do not impede any future uses at the Barking Crab Restaurant and/or Neptune Marine Services, including the future provision of a section of the Harborwalk, as envisioned in the Secretary's Decision on the SBMHP.

- As part of the Chapter 91 Licensing process, the Proponents must ensure that Block E meets the open space standard for Commonwealth Tidelands and that it is compatible with the adjacent Children's Wharf Park, which is currently undergoing a planning and landscape design process to develop a signature waterfront park.
- The Proponents will be required to provide public amenities as part of the Phase 1 project. I direct the Proponents to suggested public amenities outlined in the Boston Harbor Association's comment letters on the Expanded ENF and NPC.
- The entire project area is located on filled former Commonwealth tidelands. The project is subject to a public benefits review and determination pursuant to Chapter 168 of the Acts of 2007. In the Expanded ENF, the Proponents provided a discussion of the public benefits associated with Phase 1, including a review of: purpose and effect of the development, impact on abutters and the surrounding community, enhancement to the property, benefits to the public trust rights in tidelands or other associated rights, community activities on the development site, environmental protection and safety, and public health and safety. According to the Proponents, the public benefits associated with Phase 1, in conjunction with the overall project, meet or exceed those established by Chapter 91 and the SBMHP. On October 17, 2008, I issued a Public Benefits Determination for Phase 1 consistent with the provisions of *An Act Relative to Licensing Requirements for Certain Tidelands* (2007 Mass. Acts ch. 168, sec.8), which referenced the Proponents' commitments to public benefits that will be enforced through the Chapter 91 licensing process.

Ample and unconstrained infrastructure facilities and services exist to support Phase 1:

- The development of the Phase 1 project does not require the construction of new infrastructure, aside from new utility connections and the resurfacing or construction of new access points to Block A and/or Old Sleeper Street. No new streets are required for Phase 1 to proceed. Phase 1 will require 30,000 gallons per day (gpd) of water and generate 27,000 gpd of wastewater. The Phase 1 blocks will be served by existing BWSC infrastructure; there is sufficient capacity in the system to meet the needs of Phase 1. Phase 1 of the project requires a Sewer Connection/Extension Permit from MassDEP. The Proponents should coordinate with MassDEP regarding wastewater permitting and mitigation for Phase 1.
- As outlined above, existing roadway and transit infrastructure can support the new vehicle and transit trips generating from the Phase 1 uses.

The project is severable, such that Phase 1 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 Proponents have designed Phase 1 such that it is a severable project, which does not require the completion of any other project phase. Construction of the Phase 1

buildings will not restrict the construction of area-wide infrastructure or the implementation of project-wide mitigation measures.

- Infrastructure improvements proposed as part of Phase 1 do not require the future build-out of any other part of the Seaport Square project. The severability standard restricts Proponents from moving forward with portions of a project that depend entirely on infrastructure improvements or other mitigation that will not be realized until future phases of the larger project. I find that development of Blocks A, H and J and associated infrastructure improvements do not depend on implementation of the remaining portions of the project.

The Agency Action on Phase 1 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:

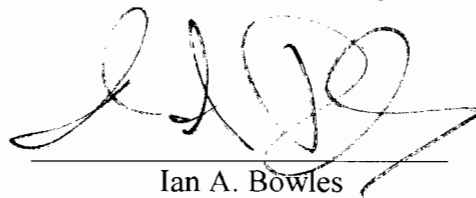
- Phase 1 of the project requires a number of state permits, including a Chapter 91 License and a Sewer Connection/Extension Permit from MassDEP and possibly a Construction Dewatering Permit from the MWRA. Permits for Phase 1 project will ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the Project.

Conclusion

I have determined that this waiver request has merit, and am issuing this Final Amended Record of Decision (ROD). I hereby **amend** the Phase 1 Waiver for this project, which will allow the Proponents to proceed with Phase 1 of the project prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions.

June 5, 2009

Date



Ian A. Bowles

Comments received on the DROD:

6/2/09 Poseidon Enterprises, Inc.

IAB/RB/rb