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 OFFICE OF COASTAL ZONE MANAGEMENT  
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## MEMORANDUM

To: Ellen Roy Herzfelder, Secretary, EOE  
 ATTN: LeAndrea Dames, MEPA Unit  
 FROM: Tom Skinner, Director, CZM *[Signature]*  
 DATE: June 25, 2004  
 RE: EOE # 13279 - Residences at Pier 5; Charlestown Navy Yard, Boston

The Massachusetts Coastal Zone Management (CZM) Office has completed its review of the Expanded Environmental Notification Form (EENF) for the above-referenced project, which proposes to construct a five-story building on Pier 5 in the Charlestown Navy Yard (CNY) with the remainder of the pier devoted to public open space for pedestrian and vehicular circulation; a 100+ space underground parking structure on the adjoining CNY Parcel 2A3; and a 21-slip recreational marina in the waters along the southerly side of the pier. The building, at 170,000 gross sf, will contain approximately 59 residential units on the upper floors with much of the ground floor programmed for Facilities of Public Accommodation (FPAs) such as various small-scale retail, restaurant, and lodging uses.

In previous Certificates governing further MEPA review of Navy Yard projects (see EOE #2383, dated August 12, 1987; see also EOE #2383, dated October 17, 1991) the Secretary has declared that a separate Environmental Impact Report (EIR) will be required for redevelopment of Pier 5. CZM recommends the preparation of a draft and final EIR rather than a single EIR as the applicant requests, because the project poses a number of significant issues of compliance with the applicable provisions of the waterways regulations at 310 CMR 9.00, including several relating to the requirement of conformance with the Municipal Harbor Plan (MHP) for Boston, as approved by the Secretary on May 22, 1991 ("Approval Decision"). This approved MHP remains in full force and effect in the CNY subdistrict, except for the Yard's End area, pending completion of the City's extended amendment/renewal process as commenced by the Secretary by letter to the Boston Redevelopment Authority (BRA) dated June 14, 1996, in accordance with then-applicable regulations at 301 CMR 23.06(2)(a) [effective December 15, 1994].

A full EIR process is appropriate not only to address issues of conformance with the existing MHP, but also because it serves as a timely and efficient mechanism to coordinate further project design and programming with the Secretary's review and approval of two MHP



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amendments that are necessary for the proposed project to become eligible for a Chapter 91 License. The primary amendment is necessary to fulfill a condition of the Approval Decision requiring the City to plan for the development of a network of Special Public Destination Facilities [SPDFs] for the Charlestown Navy Yard subdistrict; the other pertains to an approval condition requiring development of more project-specific guidelines to ensure nonwater-dependent uses on piers are not in conflict or incompatible with the operation of nearby water-dependent and/or public activities.

The applicable harbor planning regulations include a procedure for public hearing, comment, and consultation with the City that should be dovetailed with the Pier 5 EIR process, in two ways. First, we recommend that the DEIR be employed as the vehicle for publishing, as an attachment, a public hearing draft of the City's proposed amendments to the MHP upon which licensing of the proposed project is contingent. Second, we recommend that the applicant be directed not to submit an FEIR for the proposed project until the amendments in question have been approved by the Secretary, in order to ensure all relevant terms and conditions of such approval can effectively inform the MEPA review process.

Our detailed comments for purposes of scoping the EIR are provided below.

#### Conformance with MHP Approval Requirement 3

The portion of the Boston MHP applicable to the CNY includes an approved "substitution" for the standards of the waterways regulations governing public open space, at 310 CMR 9.51(3)(d) and 9.53(2)(b). The substitute provision, codified in Harborpark zoning for the Navy Yard, stipulated that at least 50% of the total lot area of all lots in the subdistrict (exclusive of the Historic Monument Area) shall be reserved as publicly accessible open space; and the Approval Decision (at page 31) stipulated that, for implementation purposes, "the City shall keep a running tally of the open space percentage, and every Section 18 recommendation on a Waterways license application shall include certification, based on such tally, that the required minimum percentage will be maintained upon completion of the proposed project".

Although the proposed project will result in an areawide reduction of approximately 40,000 sf in aggregate open space, the EENF makes no mention of Requirement 3 and asserts only that the building proposed on Pier 5 meets the site coverage requirement of 310 CMR 9.51(3)(d). Doing so, however, does not render inapplicable the terms and conditions of the approved MHP relative to open space, because conformance to the approved MHP is a separate licensing requirement pursuant to 310 CMR 9.34(2). Thus, the DEIR should include the numerical assessment called for in Requirement 3, showing the extent to which the proposed project will reduce the percentage of publicly accessible open space on a district-wide basis. DEP and the BRA have had consultations on this matter in the context of other license applications, so the methodology to be employed should be reasonably well established.

#### Conformance With MHP Approval Requirement 7

The approved Boston MHP also lifts the c. 91 categorical prohibition on development of housing, offices, and other nonwater-dependent facilities of private tenancy (FPTs) on pile-

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supported structures over the water, in three specific locations including CNY Pier 5. For this to occur, however, the Secretary's Approval Decision stated (at page 25) that "additional measures must be put in place both to limit the density of facilities of private tenancy that may be located on flowed tidelands [See Requirement 7], and to expand the presence of facilities of public accommodation as a means of offsetting the substantial increase in private usage that would otherwise be excluded from the waterfront space in question [See Requirement 8]". A key function of the DEIR, then, should be to provide detailed information regarding implementation of the measures stipulated by the Secretary in these respective Requirements.

Requirement 7 is titled "Facilities of Private Tenancy Over Water – Limits". Sub-part (a) thereof states that "all buildings containing nonwater-dependent facilities of private tenancy shall conform to a height limit of 55 feet, to the setback requirements of Requirement 5(a)-(c), above, and to the site coverage limitations set forth in 310 CMR 9.51(3)(d)"; and sub-part (b) prohibits parking and limits facilities of private tenancy in general to 50% of the ground floor building spaces on the pier. Except with respect to the height and setback standards, it is difficult to evaluate compliance with Requirements 7(a) and (b) because the EENF offers vague spatial percentages rather than specific square footages broken down into appropriate categories. The DEIR should include more informative tabulations (in square feet), beginning with the proposed footprint of the Pier 5 building (including the areas encompassed by the arcades along the perimeter and at the center) followed by a breakdown of how much ground level interior space will be occupied by each of the various proposed uses (restaurant, retail, management office, condominium common area, etc). Similarly, the sizing of all exterior spaces (i.e. those outside the footprint of buildings) should be listed according to: (1) how much is on filled vs. flowed (on pier) tidelands; (2) how much is positioned within vs. outside the footprint of the existing pier; (3) how much is open to the sky vs. covered by an arcade or other structural element; and (4) how much will be devoted to pedestrian activity vs. vehicular movement vs. landscaping use.

The remainder of Requirement 7 pertains especially to residential uses, which are allowed only if two criteria are met. These are:

- ground floor spaces may not be used for residential use except for "upper floor accessory services" (i.e. utility and access facilities), and "any residential use of the second floor shall be accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior facilities of public accommodation, or water-based public activities as the term is used in 310 CMR 9.53(2)(a)"; and
- "such facilities shall be subject to specific guidelines to avoid conflict and minimize incompatibility with the operation of nearby water-dependent and/or public activities; at a minimum, such facilities shall address the factors identified in 310 CMR 9.51(1) that give rise to such adverse effects; such guidelines shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1)".

The EENF is silent on the second criterion, which requires an amendment to the MHP in order for the Secretary's authorization of FPTs over the water to take effect, and addresses the first to a very limited extent by stating (at page 3-5) that "while the MHP requires only 50% of the ground

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floor be reserved for FPA's, the Project will set aside the entire ground floor for FPA space". This appears to be the only extra public benefit offered to satisfy the "commercial increase" criterion quoted above, since the project appears to comply to the minimum extent only with the applicable setback and open space requirements, and does not provide for any water-based public facilities (as discussed further below). It is difficult to assess the quantitative extent of this additional benefit, absent any square footage data establishing the extent of ground floor space to be devoted to ground floor FPAs as compared to the additional density of residential use that will occupy the second floor. In addition, the statement that FPAs will occupy the entire ground floor does not find support in the Ground Floor Plan shown in EENF Figure 3-7, which indicates that a considerable amount of space will be devoted to management offices (an FPT) and condominium common areas (which appear to violate the ban on ground floor residential uses other than upper floor accessory services, which are limited by definition in 310 CMR 9.02 to utility and access facilities). All this suggests that the proposed project does not conform with Requirements 7 (c) and (d), governing residential uses on Pier 5.

#### Conformance With MHP Approval Requirement 8

Requirement 8 of the Secretary's 1991 Approval Decision, which is fully applicable to the CNY subdistrict<sup>1</sup>, reads in pertinent part as follows:

At any location for which this Decision authorizes waiver of the use standards in 310 CMR 9.51(3)(b) on flowed tidelands, DEP shall grant such waiver to a project if and only if the Harborpark Plan has been revised to include one or more plan(s), together with appropriate implementation commitments, to develop a network of "special public destination facilities" within interior spaces along or near the Harborwalk, primarily at the ground level. Such plan(s) shall be prepared in consultation with CZM, and shall be submitted for review and approval by the Secretary in accordance with 301 CMR 23.06(1).

The requirement continues in five sub-parts that set forth, among other things, a SPDF definition and additional guidance for the choice thereof, and a quantitative requirement which establishes an areawide minimum amount of ground level space that must be programmed for SPDF use, as a percentage of the aggregate space that will be devoted to nonwater-dependent FPTs on pile-supported structures and at the ground level on filled tidelands within 100' of a project shoreline.

Requirement 8 does not make specific reference to Pier 5, but does include a directive to the effect that "reasonable arrangements shall be made to locate such [SPDF] space on pile-supported structures in conjunction with new facilities of private tenancy" and "development of special facilities shall be concurrent with development of the relevant facilities of private tenancy....." This criterion is reinforced by Requirement 4(b) of the Approval Decision, stating

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<sup>1</sup> Requirement 8 as it applied to the North End subdistrict was modified by the Secretary's "Decision on the City of Boston's North End Historic Pier Plan" dated March 18, 1999. As the title suggests, however, this Decision was limited in its geographic scope and cannot be construed to alter Requirement 8 for purposes of licensing projects in the Charlestown Navy Yard and other relevant subdistricts outside the North End.

that "at least 50 percent of the ground floor spaces within all buildings containing nonwater-dependent facilities of private tenancy, on pile-supported structures on flowed tidelands, shall be occupied by facilities of public accommodation, including, to an extent deemed appropriate in accordance with Requirement 8, special public destination facilities." Recognizing in the early 90s that the CNY Master Plan earmarked Pier 5 as the only remaining site in the Navy Yard where new FPTs could be developed on flowed tidelands, the Secretary and CZM strongly urged the City to commit to requiring a SPDF at this location. The City expressed such a commitment in the Final Supplemental EIR on the CNY Master Plan dated September 3, 1991 (see page 44, "Response to the Secretary's Certificate on the DSEIR, Comment #16"), and stated that detailed program development would be addressed in the separate EIR to be prepared when a Pier 5 project comes forward for permitting.

That time has come, and the EENF acknowledges (at page 3-5) that the proposed development must provide a Special Public Destination Facility to offset the private use of flowed Commonwealth tidelands, in partial fulfillment of Requirements 4 (b) and 8 of the 1991 Approval Decision. However, the EENF contains no further discussion of how such a facility will be incorporated into the use program for the site; nor does it mention the fact that the approved MHP has yet to be amended by the City to establish the necessary areawide context and detailed buildout guidance, in the form of an approved SPDF Network Plan for the CNY pursuant to Requirement 8.

The City established a solid foundation for such a plan during the 1991 MEPA review of the CNY Master Plan, which introduced the concept of a "Double Interpretive Loop". The Secretary applauded this initiative in the Approval Decision (page 26), as follows:

One example of the kind of pedestrian network I am encouraging is already on the drawing boards in the Charlestown Navy Yard, whose collection of historic piers, drydocks, and backland buildings lies squarely between the U.S.S Constitution and the proposed site for the greatly expanded New England Aquarium. The concept under development is to integrate these dramatic anchor attractions with the unique maritime culture of the Yard itself by means of a "double interpretive loop", one branch of which will direct Yard visitors to the Chain Forge and Ropewalk cultural facilities along the spine of First Avenue, and then on to other special facilities of the type I contemplate along a return path traversing Piers 5-8, and area of substantial housing concentration. This is creative thinking on behalf of water-related public interests....

The CNY Master Plan SFEIR completed in the months following the Approval Decision provided an elaboration of the goals and objectives of the Double Interpretive Loop Plan and a preliminary map of potential interpretive sites (including Pier 5), and the Secretary provided encouragement for further planning in the Certificate on the SFEIR dated October 17, 1991. Describing the concept as "one of the most exciting aspects" of the CNY Master Plan, the Secretary said: "As with all plans of this sort, it is important to know that it will in fact be accomplished. That commitment will be provided through the continued discussions between the proponent and the National Park Service....I urge the proponent to involve the public and interested parties as fully as possible in the development of this plan".

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The DEIR at hand provides a timely opportunity to resume the SPDF planning process for which such effective preliminary work has already been accomplished.

#### Other Waterways Regulation Issues

The proposed project as described in the EENF raises three additional issues of compliance with the standards of the waterways regulations applicable to non-water-dependent use projects. The provisions in question are 310 CMR 9.32(1)(a)(3), governing structures to accommodate public pedestrian access on flowed tidelands; 310 CMR 9.53(2)(a), governing the provision of water-based public facilities; and 310 CMR 9.37(2), governing projects located within a flood zone. The DEIR should address these issues in accordance to the comments provided below.

#### *310 CMR 9.32(1)(a)(3)*

This provision makes new public access structures over the water eligible for approval only in the event "that it is not reasonable to locate such structures above the high water mark or within the footprint of existing pile-supported structures or pile fields". The EENF at page 3-4 states that a portion of the Harborwalk running along the northeasterly side of the pier "will be accommodated through the construction of a new, 12-foot wide, pile-supported boardwalk extending from the base of the Pier approximately 385 feet toward the center of the Pier". The apparent reason for this sizable encroachment into the waterway, as suggested in Figure 1-6 ("Site Plan"), is to make room for a vehicular drive culminating in a mid-pier roundabout described at page 3-6 as a "drop-off area", apparently to be used primarily (if not exclusively) for a valet service to off-pier parking for building residents and visitors. According to the EENF at Table 5-3, it is estimated that the project will generate 508 vehicle trips per day to and from the garage parking facilities; if all users avail themselves of the valet service, then an equal number of cars will be driven on and off the pier each day, unavoidably crossing and running immediately adjacent to the Harborwalk in the process.

Such vehicular activity will detract significantly from the quality of the pedestrian experience on and near the pier, and presents a potential safety hazard in the area where the driveway intersects the existing Harborwalk. Creating such an intersection thus appears inconsistent with the waterways standard set forth at 310 CMR 9.36(3), stating that "the project shall not significantly disrupt any water-dependent use in operation as of the date of license application..." Accordingly, CZM recommends elimination of the driveway for routine vehicular use on the pier, which in turn would obviate the need for the Harborwalk to extend beyond the existing footprint of the pier (unless a clear showing is made in the DEIR that there is no reasonable alternative means of accommodating emergency vehicle access).

#### *310 CMR 9.53(2)(a)*

This provision governing nonwater-dependent projects on Commonwealth tidelands states that "at least one facility utilizing the shoreline in accordance with 310 CMR 9.52(1)(a) [requiring one or more facilities that generate water-dependent activity on the site] must also

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promote water-based public activity; such facilities include but are not limited to ferries, cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers.” The proposed project does not include such facilities; instead, the water portion of the project site is programmed exclusively for a 21-slip commercial marina along the southwesterly side of the pier. Although the EENF asserts at page 3-4 that this marina will meet the definition of a “public recreational boating facility”, the waterways regulations at 310 CMR 9.52(1)(a)(1) clearly distinguish (through separate listing) marinas from the water-based public facilities contemplated by 310 CMR 953(2)(a).

We also note that the proposed marina appears inconsistent with the Navy Yard Pier Management Plan issued by the BRA on April 15, 1992, as an adjunct to MEPA review of the CNY Master Plan and pursuant to the Certificate of the Secretary on the Master Plan Final Supplemental EIR, dated October 17, 1991. With regard to Pier 5, the Pier Management Plan states as follows:

With regard to docking availability for watersheet activity, both sides of the pier form the edge of the access channels for vessels based at Piers 4 and 6 respectively. This pattern of two piers with active floats with an intervening pier playing the “dummy” role ensures safe and efficient navigation. This model may be slightly adjusted in the future should it be discovered that adequate operational space exists for the “dummy” pier to host limited docking activity.

Contrary to the Pier Management Plan, the marina layout depicted in EENF Figure 3-6 runs the entire length of the pier and occupies the entire watersheet on the property. This seems likely to pose navigational problems that further call into question the advisability of including a recreational boating facility in the proposed project, in lieu of a less intrusive water-based public facility. Accordingly, the DEIR should include an alternative vessel use program on the southwesterly side of the pier.

### *310 CMR 9.37(2)*

The EENF indicates that the proposed residential structure will be located within coastal hazard areas (A- and V-zones) as defined on the Flood Insurance Rate Maps (FIRM) for Boston. Pursuant to 310 CMR 9.37(1)(a), the proposed building must, therefore, be designed in accordance with 780 CMR 744.00, The State Building Code (Requirements for Construction in Floodplains.) In addition, pursuant to the National Flood Insurance Program and Related Regulations (44 Code of Federal Regulations, Chapter 1,) the bottom of the lowest horizontal structural member of all buildings located in a V-Zone must be elevated above the ground level so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. The design of the proposed structure should also incorporate measures to ensure that: (1) major utilities and mechanical equipment are protected from inundation and damage during a major storm event; (2) utility connections and underground services are capable of withstanding storm forces without damage or contamination of nearby resources or adjacent properties; and (3) the structure remains habitable following major storm events, with systems necessary for habitation (i.e., water, sanitary sewer, and electric power) operating properly.

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Also applicable to the proposed project is 310 CMR 9.37(2)(a), which stipulates that "in coastal high hazard areas as defined in 310 CMR 9.02, new or expanded buildings for residential use shall not be located seaward of the high water mark."

Finally, pursuant to 310 CMR 9.37(2)(b) and in accordance with CZM's Coastal Hazard Policy #1, relative sea level rise predictions during the estimated design life of the buildings should be incorporated into the project. Based on current projections published by the National Ocean and Atmospheric Administration (NOAA), CZM recommends strongly that the lowest structural member of the proposed nonwater-dependent residential building be elevated a minimum of one (1) foot above the base flood elevation to accommodate sea level rise.

Finally, CZM recommends that the DEIR include an accurate existing conditions plan at suitable scale, such as 1" = 40', prepared and stamped by a Professional Land Surveyor. Among other things, the plan should show the present MHW (based on correct tidal datum and tidal epoch information - MHW = 5.13 NGVD29, 10.78 Boston City Base), the edges of the existing pile-supported structure, and all flood zones both as currently identified by FEMA and as proposed by the applicant in applying for a Letter of Map Amendment.

#### Closing Remarks

Although a variety of planning and licensing issues remain to be resolved for the redevelopment of Pier 5 to be successful, CZM is confident that the result of this process will be a project of the highest quality from a public interest standpoint. Much progress has been made in that direction since the late 80s, when some 150 residential units in an eight-story structure (extending to within 50 feet of the end of the pier) was proposed, with private parking instead of any public uses on the ground floor. Last, we hereby provide notice pursuant to 310 CMR 9.13(2) of our intent to participate in the Chapter 91 license proceedings for the proposed project, with opportunity to participate in all meetings between DEP and the applicant concerning the issues discussed herein.

The project may be subject to CZM federal consistency review to determine consistency with CZM's enforceable program policies. For further information on this process, please contact Alex Strycky, Project Review Coordinator, at 617-626-1219 or visit the CZM web site at [www.state.ma.us/czm/fcr.htm](http://www.state.ma.us/czm/fcr.htm).

TWS/DD

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