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March 18, 2005

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SECRETARY CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS

ON THE

DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : The Residences at Pier 5
PROJECT MUNICIPALITY : Charlestown
PROJECT WATERSHED : Boston Harbor
BOEA NUMBER : 13279
PROJECT PROPONENT : LDA Acquisition, L.L.C.
DATE NOTICED IN MONITOR : February 9, 2005

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted for this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (MEPA) (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent may prepare and submit the Final EIR (FEIR) for MEPA review.

Project Description

As described in the DEIR, the proposed project entails the construction of 75 residential condominium units (16 units more than was presented in the Expanded Environmental Notification Form) in a 5-story building containing approximately 178,500 square feet (sf) of space and with a maximum height of 55 feet. The project is located on a 3.8+-acre site located at the seaward end of Eighth Street, also known as Pier 5, in the Charlestown Navy Yard (CNY). The project will also include ground-floor spaces that will be accessible to the general public, including a 3,000-sf restaurant, a 30-room inn, and a 1,500-sf Special Public Destination Facility, as well as a 14-slip marina (seven slips less than was presented in the Expanded ENF). The project will

provide nearly one acre of public open space on the site adjacent to Boston Harbor and add over 1,400 linear feet to the Harborwalk network. It is anticipated that parking for the project will be accommodated in the existing Flagship Wharf parking garage, which was approved and permitted by the Boston Redevelopment Authority to include additional parking to support the Pier 5 project. The proponent intends to acquire approximately 113 parking spaces for occupants of the Pier 5 project.

MEPA Jurisdiction and Permitting Requirements

The project is subject to environmental review and requires a mandatory EIR pursuant to 301 CMR 11.03 (3)(a)(5) of the MEPA regulations because the project will create a new non-water dependent use of more than one acre of tidelands. The project requires a Chapter 91 License and a Sewer Connection/Extension Permit from the Department of Environmental Protection (DEP). The Massachusetts Office of Coastal Zone Management (CZM) will review the project to issue a Finding of Consistency with CZM guidelines. The project also requires an Order of Conditions from the Boston Conservation Commission for alteration of Land Subject to Coastal Storm Flowage and Land Under the Ocean (and hence, a Superceding Order from DEP if the local Order is appealed); a Section 10/404 permit from the U.S. Army Corps of Engineers for pile driving and pier construction; and a National Pollution Discharge Elimination System permit from the U.S. Environmental Protection Agency for construction-related impacts.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required permits, and that may cause significant Damage to the Environment. In this case, the subject matter of the required state permits (particularly the Chapter 91 License) is sufficiently broad to confer MEPA jurisdiction over virtually all of the potential environmental impacts of the project.

I note that the Massachusetts Historical Commission (MHC) stated, in its comment letter, that the proposed project is consistent with Amended Design Guidelines for Parcel 1B in the CNY.

Joint Review

The project is undergoing joint review with the BRA, as a Large Project, pursuant to Article 80 of the Boston Zoning Code. Therefore, the document under review was submitted as a joint DEIR/Draft Project Impact Report (DPIR) in order to satisfy the requirements of both the city and state environmental review processes. The following is the scope for the Final EIR (FEIR)/Final PIR (FPIR) document.

SCOPEGeneral

I hereby reiterate that the 1991 Boston Municipal Harbor Plan (MHP) is still in effect for the project site. The approved MHP remains in full force and effect in the CNY sub-district, except for the Yard's End area, pending completion of the City of Boston's extended amendment/renewal process. The Chapter 91 Waterways Regulations require conformance with the MHP and its amendments. Therefore, the FEIR should analyze and describe the consistency of the project alternatives with the MHP and any proposed amendments. I strongly encourage the proponent to continue to work closely with CZM, DEP and BRA during the MHP amendment process and to fully address the agencies' comments on the DEIR. Furthermore, I reiterate the requirement contained in the Certificate on the Expanded ENF that any and all amendments to the MHP pertaining to this project (e.g., the Pier Management Plan) be approved prior to the submission of the FEIR.

The FEIR should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The FEIR should include a copy of this Certificate and a copy of each comment received. The proponent should circulate the FEIR to those parties who commented on the DEIR, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in Section 11.16 of the MEPA regulations.

Municipal Harbor Plan/Chapter 91 Waterways*General*

The DEIR did not include a complete tabulation of the floor area for each of the ground level interior uses (facilities of publication accommodation, upper floor accessory uses, common areas, etc.) and exterior spaces, as requested in the scope for the DEIR contained in the Expanded ENF Certificate. The FEIR should present all relevant dimensional information for the project, as specified in the comment letter submitted by CZM, in a spreadsheet or other summary format, accompanied by a set of plans that clearly indicate the location and size of interior (floor by floor) and exterior elements. This information is critical to understand the proposed mix of uses, the proposed floor area for each use, and the project's overall conformance with the Chapter 91 Waterways regulations and the 1991 MHP Approval.

Open Space

The Chapter 91 Waterways open space standard at 310 CMR 9.51(3)(d) states that:

"...at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing non-water-dependent use on the project site..."

The DEIR indicates that the proposed project includes approximately 8,145 sf of open space on Parcel 1C. However, it appears that Parcel 1C was incorporated into the Chapter 91 Waterways license for the adjacent Flagship Wharf property (License #1741, dated December 30, 1987) as necessary open space for that project. Parcel 1C cannot be used a second time as credit toward meeting the open space standards at 310 CMR 9.51(3)(d) for this project. Consequently, it appears that the open space proposed in conjunction with the Pier 5 project is actually 8,145 sf less than that presented in the DEIR.

With the concurrent apparent increase in the size of the proposed building footprint, as described in more detail in CZM's

comment letter, and the reduced open space described above, it does not appear that the project would comply with the Chapter 91 open space standard. The FEIR should present revised project plans and an accompanying discussion that demonstrate conformity to 310 CMR 9.51(3)(d).

In addition, much of the proposed open space at the tip of the pier appears to include landscaped areas contained in large, raised planters. These landscaped areas should not result in significant reductions in the amount of space available for public pedestrian uses, especially those associated with any vessel-related activity at the pier end. Accordingly, the FEIR should present downscaled landscaping plan for the pier end. The Final EIR should also present plans that depict the location of restroom facilities easily accessible to the public 24 hours a day and clarify how the building cutout will preserve the view corridor from the Harborwalk to the Custom House Tower.

Conformance with the 1991 Municipal Harbor Plan (MHP) Approval

The Draft EIR provided the numeric detail on the different types of proposed uses within and around the proposed building as requested by the WRP but there is no corresponding level of detail and disclosure of the anticipated Special Public Destination Facilities (SPDFs) use on the ground plane or the programming of all proposed public facilities. Without knowing the type of SPDF it is impossible to understand the space requirements, complementary uses and programming of the adjoining uses, both within and outside of the building, to ensure the project's compliance with the MHP.

Requirement 7 of the 1991 MHP Approval limits residential uses over flowed tidelands on Pier 5 only if, in part, two criteria are met. These are

- Requirement 7(b): 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

- Requirement 7(c): *"...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 FEIR should include a detailed discussion of the project's conformance with Requirement 7(b) of the MHP Approval, as described in greater detail in CZM's comments. I acknowledge that the proposed Water Dependent Use Management Plan currently underway will be incorporated in the MHP Amendment being developed, and is, in part, intended to comply with Requirement 7(c). Beyond a task outline and a schedule, the DEIR presents no information regarding this effort, so it is not possible to ascertain the project's compliance with this requirement. The FEIR should present a thorough discussion of the MHP amendment that addresses project compliance with Requirement 7(c).

Requirement 8 of the MHP Approval requires an amendment to the MHP for a network of Special Public Destination Facilities (SPDFs) for any location at which a waiver of the use standards of 310 CMR 9.51(3)(b) are authorized and establishes an area-wide 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 non-water-dependent Facilities of Private Tenancy (FPTs) on pile-supported structures.

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 1991 MHP Approval, stating that:

"...at least 50 percent of the ground floor spaces within all buildings containing non-water-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."

In addition, the City of Boston committed to requiring a SPDF at Pier 5 in the *Final Supplemental EIR on the CNY Master Plan* dated September 3, 1991.

Requirement 8 addresses the need for the project to provide and expand the presence of Facilities of Public Accommodation (FPA) in a manner that will offset the effects of a substantial increase in private usage that, without the exemptions contained in the MHP, would not be allowed. To achieve this end, the MHP required the City to undertake a comprehensive, area-wide Network Plan to identify and propose locations for SPDFs, which the BRA has initiated. The proponent should work with the BRA to complete the area-wide Network Plan so that the plan can be submitted for review and approval prior to submission of the FEIR. I also expect that the forthcoming MHP amendment will describe the SPDF network plan, as called for in Requirement 8.

The DEIR did not present information on how a SPDF at Pier 5 would be incorporated within the larger network plan for the CNY. The FEIR should include a detailed proposal for a SPDF on Pier 5 that includes substantive programmatic, operational, and dimensional information for both the proposed SPDF and other complementary FPAs, and explains how they conform to the recommendations of the MHP. For purposes of public activation of the entire Pier, and in keeping with standards for activation of Commonwealth Tidelands for public use at 310 CMR 9.53 and the conditions of Requirement 8, I strongly recommend that the proponent consider including the majority of SPDF space at the seaward end of the pier.

Pedestrian Activity and Vehicular Access

The project has been modified since its original presentation in the Expanded ENF to eliminate the proposed expansion of the existing pier deck to accommodate the Harborwalk. This change appears to bring the project into compliance with 310 CMR 9.32(1)(a)(3) by eliminating unnecessary encroachment into flowed tidelands, for which I commend the

proponent. In addition to this change, the site access drive was relocated within the footprint of the proposed building to create separation from the pedestrian and non-motorized use of the Harborwalk. As presented in the DEIR, the proposed site drive would culminate in a roundabout approximately a third of the way down the pier, apparently to be used for deliveries and a valet service to off-pier parking building residents and visitors, to be located in the Flagship Wharf parking garage.

The DEIR states that the project would generate 628 vehicle trips per day to and from the parking facilities at Flagship Wharf. Such vehicular activity presents a potential safety hazard in the area where the site drive would intersect with the existing Harborwalk and appears to be inconsistent with the standard set forth at 310 CMR 9.36(3), which states that:

"...the project shall not significantly disrupt any water-dependent use in operation as of the date of license application..."

The DEIR does not make a compelling argument for the need for so many vehicle trips per day, beyond the mere convenience of the residents and visitors.

The FEIR should present a detailed analysis of the likely implications of the proposed site drive and its use, a justification for why such a configuration would be considered necessary, and the proposed means by which the proponent will mitigate the potentially difficult conflicts between pedestrians and automobiles in such an active and confined area. In the absence of a compelling argument for such an arrangement, I strongly recommend limiting at-grade vehicular activity on the pier to emergency vehicles only.

Watersheet Activation

The proponent has reduced and reconfigured the proposed marina, from that presented in the Expanded ENF, to minimize navigational conflicts with the Courageous Sailing Center, which is located on the adjacent pier. The watersheet portion of the project site is programmed exclusively for a 14-slip commercial marina along the southwesterly side of the pier. Contrary to the Navy Yard Pier Management Plan issued by the BRA in 1992, the marina layout depicted in the DEIR runs the entire length of the

pier and occupies the entire watershed on the project site. This seems likely to pose navigational problems that call into question the advisability of including a recreational boating facility in the project development program, in lieu of a less intrusive water-based public facility.

In order to comply with the standards of 310 CMR 9.53(2)(a), the proponent must provide:

"...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 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 project, as currently proposed, does not include such facilities. In its comments, DEP reiterates that a public recreational boating facility, in and of itself, would not fulfill this requirement.

In the DEIR, the proponent states that this requirement will be met through a monetary contribution of \$260,500 to water transportation at a nearby location elsewhere in the harbor, in accordance with a formula set forth in a draft Water Transportation Policy issued by DEP. However, it is unclear how these funds will be used. The FEIR should explore opportunities for on-site measures that are more consistent with the approved MHP and 310 CMR 9.53(2)(a) including, but not limited to, operation of ferry service to the Boston Harbor Islands. To the extent that such a ferry facility would require interior support space, it could be credited toward meeting Requirement 8 of the 1991 MHP Approval.

The FEIR should specifically respond to the comments submitted by the Courageous Sailing Center regarding this matter.

Construction within a Flood Hazard Zone

A portion of the project site includes flood hazard zones (V and A Zones). The standard at 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."

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. The DEIR states that a two-foot high perimeter barrier will be constructed and a Flood Insurance Rate Map Revision will be requested. However, it is unclear to what extent the proposed building would be located within the flood hazard zones (especially with the affect of sea level rise), where the perimeter wall would be located, or how the wall would affect the design and programming of the Harborwalk and open space. I strongly encourage the Proponent to consult with the Massachusetts Flood Hazard Management Program and CZM regarding this matter. The FEIR should present a full resolution of these issues.

Waterways License Term

The Draft EIR states that the proponent will request an extended license term of 99 years. The proponent should note that pursuant to 310 CMR 9.15(1)(b), the maximum term the Department could issue a license over flowed tidelands is 65 years and only if the proponent provides justification that the maximum term is warranted. The FEIR should provide this justification, including relevant supporting documentation as specified at 310 CMR 9.15(1)(b)(2).

Transportation

Vehicular Traffic

I expect that the BRA and the Boston Transportation Department (BTD) will thoroughly evaluate the traffic study contained in the DEIR for impacts to local streets and key intersections in the vicinity of the project. The FEIR should thoroughly respond to any concerns expressed by the BRA and BTD regarding vehicular traffic generated by the project, as well as the substantive comments submitted by numerous abutters to the project.

Transportation Demand Management (TDM)

The DEIR states that the project will achieve a significant mode share in favor of public transit. In its comments, the Massachusetts Bay Transportation Authority (MBTA) states that although the project is located close to existing water transportation service at Pier 4 and local bus service, and is within walking distance of the MBTA's Orange Line, Green Line, and commuter rail services at North Station, the mitigation proposed in the DEIR is inadequate to achieve the indicated mode share. The FEIR should either justify or revise the mode share assumptions based on the comments provided by the MBTA, and evaluate the feasibility of a coordinated TDM program, which includes the adjacent Pier 4 and other proposed waterfront developments. The FEIR should also demonstrate that the project's waterfront location will be maximized by supporting and facilitating water transportation to downtown Boston, through the Pier 4 water terminal or other potential locations.

Limited parking should be provided during the construction period to encourage construction workers to use nearby public transit services. All construction workers should be included in the TDM plan to discourage single occupant vehicle trips to and from the site. The Construction Management Plan should include specific TDM commitments that can be implemented during the construction period.

In general, the FEIR should present a TDM program that minimizes single occupancy vehicle trips to and from the site and thoroughly responds to the concerns expressed in many comment letters, particularly those of the MBTA and the Metropolitan Area Planning Council, as well as anticipated comments from BRA and BTD.

Parking

The DEIR states that parking facilities for the Pier 5 project will be provided in the existing Flagship Wharf parking garage. The FEIR should identify how the parking spaces in the garage will be allocated so as to ensure that 100 spaces will remain available to the public as required in Special Condition #4 of License 1741 (issued to Flagship Wharf Realty Trust on

December 13, 1987). The FEIR should also thoroughly address the many specific comments on parking, including those submitted by the Boston Environment Department and the Friends of the Charlestown Navy Yard,

Stormwater Management

The DEIR did not include information on the proposed design of the stormwater conveyance system and the water quality treatment units. The FEIR should address the deficiencies described in DEP's comment letter and demonstrate that the project will comply with the Stormwater Management Policy. I strongly encourage the proponent to consider incorporating low-impact development strategies in the design of the project's stormwater management facilities.

Wastewater Generation

The greater number of residential units proposed in the DEIR will result in estimated wastewater flows of approximately 26,435 gallons per day (gpd), as opposed to the 15,500 gpd presented in the Expanded ENF. Although the proponent has acknowledged that infiltration and inflow (I/I) mitigation is required for the project, the DEIR did not provide any information regarding potential infrastructure improvements that could be implemented to eliminate four gallons of I/I for every gallon of wastewater generated by the project, or approximately 105,740 gpd. I strongly encourage the proponent to consult with DEP and the Boston Water and Sewer Commission (BWSC) in order to provide more detailed information on wastewater mitigation in the FEIR. The FEIR should thoroughly respond to the comments submitted by the BWSC and include a revised Draft Section 61 Finding for use by DEP.

Construction Period Impacts

The FEIR should include a Draft Section 61 Finding for use by DEP that commits the proponent to mitigate adverse construction period impacts from diesel emissions by using

equipment with after-engine emissions controls, such as oxidation catalysts or particulate filters, as well as on-road low sulfur diesel (LSD) fuel in off-road construction equipment.

The FEIR should also provide information on the volume and types of waste and/or recyclables that are likely to be generated annually once the project is occupied and the extent to which recycled materials will be incorporated in the construction and furnishings of the building and other on-site amenities.

The FEIR should also respond to the specific concerns expressed in several comment letters, in particular that of the Friends of the Charlestown Navy Yard, regarding construction period impacts.

Responses to Comments


The FEIR should thoroughly respond to all substantive comments received. I recommend that the proponent use either an indexed response to comments format, or direct narrative responses. The EIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Mitigation and Draft Section 61 Findings

To the extent that the mitigation for the project, as proposed in the FEIR, differs from that presented in the DEIR, the FEIR should include an updated summary of all mitigation measures to which the proponent has committed and revised draft Section 61 Findings for use by the state permitting agencies.

March 18, 2005

Date


Ellen Roy Herzfelder

Comments received:

03/09/05 Thomas & Stephanie Deeley
03/09/05 Robert MacNair
03/09/05 Wendy J. Strothman
03/09/05 Elaine Vigneau
03/10/05 Constellation Wharf Condominium Association
03/10/05 John P. Bishop
03/10/05 James Brogan
03/10/05 Jeffrey & Barbara Tansey Bush
03/10/05 Kathia A. Capellupo
03/10/05 Leonard V. Dorrian
03/10/05 Kathy Elliott
03/10/05 Joel & Sheila Kessel
03/10/05 Jane Legere
03/10/05 Stephanie Poster & Mark Dudinski
03/11/05 Boston Water and Sewer Commission
03/11/05 Courageous Sailing Center
03/11/05 Ecodesign, Inc.
03/11/05 Friends of the Charlestown Navy Yard
03/11/05 Charlestown Waterfront Coalition
03/11/05 Julia Ann Beard
03/11/05 Paul & Nadine Broude
03/11/05 James Brogan
03/11/05 Paul Clausen
03/11/05 Walter J. Dodd
03/11/05 Christopher P. & Marilyn Fleming
03/10/05 Jean Grimes Hackett
03/11/05 Michael Parker
03/11/05 Ivey St. John
03/11/05 Kathleen A. Schatz
03/14/05 Office of Coastal Zone Management
03/14/05 Department of Environmental Protection Waterways
Regulation Program
03/14/05 Department of Environmental Protection Northeast
Regional Office
03/14/05 Massachusetts Historical Commission
03/14/05 Metropolitan Area Planning Council
03/14/05 Keith F. Batchelder
03/14/05 Douglas C. Bates
03/14/05 Marion Dancy Cullen & Terry Cullen
03/14/05 Kendall deLong

03/11/05 Dr. Robert M. Donahue
03/14/05 Rosemary Frazier
03/14/05 Joseph Friedman
03/14/05 Petie Hilsinger
03/14/05 Roberta A. Masiello
03/14/05 William S. Peck
03/14/05 J. Marvin Reynolds
03/14/05 William G. Rogerson
03/14/05 John Russell
03/14/05 Sue & Joel Sherman
03/15/05 Boston Redevelopment Authority
03/15/05 Boston Harbor Association
03/15/05 Vik & Kamala Mani
03/16/05 Boston Environment Department
03/17/05 Massachusetts Bay Transportation Authority

ERH/RAB/rab