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July 2, 2004

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ELLEN ROY HERZFELDER
SECRETARY

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : The Residences at Pier 5
PROJECT MUNICIPALITY : Charlestown
PROJECT WATERSHED : Boston Harbor
EOEA NUMBER : 13279
PROJECT PROPONENT : LDA Acquisition, L.L.C.
DATE NOTICED IN MONITOR : May 8, 2004

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Environmental Impact Report (EIR).

Project Description

The five-acre site is located at the seaward end of Eighth Street in the Charlestown Navy Yard. The proposed project involves redevelopment of the site and construction of a 170,000 square foot (sf) building containing 59 residential units. The proposed building will graduate in height to a maximum of five stories. The project also includes construction of a restaurant/cafe hotel, retail space, and a proposed 21-slip marina. The proponent may also construct one level of subsurface parking for 106 vehicles landward of Pier 5. According to the Expanded Environmental Impact Report (EENF), the project is expected to generate 508 new vehicle trips per day (vtd) on an average weekday.

Jurisdiction /Project Review

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 requires a Chapter 91 License for new non-water dependent use of more than one acre of tidelands (2.5 acres). The project requires 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 proponent is seeking a Determination of No Adverse Effect from the Massachusetts Historical Commission (MHC) for proposed work in a National Historic District. The proponent will file a Notice of Intent to obtain an Order of Conditions from the Boston Conservation Commission for alteration of Land Subject to Coastal Storm Flowage and Land Under the Ocean. The project also requires a

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Section 10/404 permit from the Army Corps of Engineers for pile driving and pier construction, and a National Pollution Discharge Elimination System permit from the 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.

In accordance with Section 11.05 (7) of the MEPA regulations, the proponent submitted an EENF with a request that I allow the proponent to fulfill its EIR obligations under MEPA with a Single EIR, instead of the two-step Draft and Final EIR process. The EENF received an extended public comment period pursuant to Section 11.06 (1) of the MEPA regulations. The EENF has not adequately described and analyzed all aspects of the project and all feasible alternatives, or demonstrated that the project will use all feasible means to avoid potential environmental impacts. Therefore, the proponent is required to submit a Draft EIR and a Final EIR to ensure that relevant issues are fully aired and addressed.

Joint Review

The Boston Redevelopment Authority (BRA) is reviewing the project pursuant to Article 80 of the Boston Zoning Code, and the BRA will also issue a scope for the Project Impact Report (PIR). The BRA scope will include a requirement to analyze project impacts on traffic, parking, transit, wind, shadow, daylight, air quality, noise, water quality, stormwater, solid and hazardous wastes, geotechnical issues, groundwater, construction impacts, historic resources, and infrastructure. The proponent has indicated its intent to prepare one document that satisfies the requirements of both MEPA and the BRA and will submit a joint EIR/PIR document.

SCOPE

General

The EIR should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The EIR should include a copy of this Certificate and a copy of each comment received. The proponent should circulate the EIR to those parties who commented on the ENF, 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.

Alternatives

The EIR should analyze the no-build alternative to establish baseline conditions. The

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EIR should evaluate variants to the proposed site layout in order to ascertain which site layout will minimize overall impacts to environmental resources and sensitive receptors and maximize the public benefits of the project. The alternatives analysis should demonstrate consistency with the objectives of MEPA review: to document the means by which the proponent plans to avoid, minimize, or mitigate Damage to the Environment to the maximum extent feasible. The EIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts on other resources.

Project Description and Permitting

The EIR should include a thorough description of the project, including the residential/hotel space, the café/restaurant, the proposed marina and any accompanying supporting facilities. The EIR should include a detailed description of the construction methods and proposed mitigation. The EIR should also include a brief description of each state permit or agency action required or potentially required for the project, and should demonstrate that the project meets applicable performance standards.

Municipal Harbor Plan / Chapter 91

CZM, DEP and several commenters have noted, and I hereby concur, 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 Charlestown Navy Yard subdistrict, except for the Yard's End area, pending completion of the City's extended amendment/renewal process. The Chapter 91 Waterways Regulations require conformance with the MHP and its amendments. Therefore, the EIR should analyze and describe the consistency of the project alternatives with the MHP and any proposed amendments. I encourage the project proponent to work closely with CZM, DEP and BRA during the MHP amendment process and work to fully address the agencies preliminary comments as submitted to MEPA. Furthermore, the FEIR should be filed subsequent to the approval of proposed amendments to the MHP.

The proponent has indicated an intent to file a joint EIR and Chapter 91 License Application. Therefore, the EIR should include a detailed discussion of tidal lands issues, and the nature of any substitutions and offsets that the project may require. The EIR should provide detailed site-specific information on project impacts, and on the character of public open space and other public benefits. The EIR should discuss the height impacts (such as visual, shadow, and wind) on public areas of the project and on adjacent properties. For baseline purposes, the EIR should analyze the wind and shadow impacts of a Chapter 91-compliant alternative with the same program.

Planning for Growth (Executive Order 385)

Executive Order 385 requires, as part of MEPA review and each state agency action that state agencies fully consider local and regional growth management plans. The EIR should analyze the

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consistency of the project alternatives with extant local growth management plans, including the MHP and the Master Plan for the Charlestown Navy Yard. The EIR should describe the plans as they apply to the project site, and justify any material divergences from those plans.

Public Access

According to the EENF, the project site lies wholly within filled and flowed Commonwealth tidelands, and approximately 1.8 acres consists of watersheet. Currently, the area is blighted and access to the waterfront park is limited due to poor site conditions. To facilitate public access to the waterfront, the proponent plans to extend the Harborwalk by 1,400 feet along the site perimeter, connecting the site to the existing Harborwalk. The project includes improvements such as public seating and landscaping along the waterfront. According to the EENF, the entire ground floor will be preserved for facilities of public accommodation (FPAs). The EIR should elaborate further on these public access benefits, including areas designated as Special Public Destination Facilities (SPDFs), and consider additional measures after consultation with DEP and CZM.

Open Space

The EIR should further describe the commitment to provide one acre of public open space (approximately 50% of the site) along the Charlestown Navy Yard waterfront. The EIR should address the percentage of land area devoted to different types of open space (i.e., parks and plazas, as opposed to sidewalks, pedestrian ways, and other unusable park areas) on a project-wide basis. The EIR should also quantify the extent to which the proposed project will reduce the percentage of publicly accessible open space on a district-wide basis. The EIR should describe the legal mechanism by which the open space will be preserved through a perpetual easement.

Wind

The EIR should include an analysis of pedestrian level wind impacts from the proposed project. The wind study should identify any areas where pedestrian level winds are expected to exceed the acceptability criteria determined by the BRA. The wind study should include areas near the project, including the entrances to the project site and any other nearby areas where pedestrians are expected to congregate. The wind analysis should also study impacts on public and private open spaces in the project area, and the nearest residential streets to the project.

Shadow

The EIR should include a shadow analysis for 9:00 AM, 12:00 noon, and 3:00 PM for the vernal equinox, summer solstice, autumnal equinox, and winter solstice; and a shadow analysis for 6:00 PM for each season except the winter solstice. The analysis should identify net new

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shadow as well as existing shadow. The study area should include all areas within the arc swept by the shadow cast on the winter solstice. The study should evaluate shadows cast on sidewalks and pedestrian areas near the proposed project, as well as any public or private open space within the study area. The study should also quantify rooftop shadow impacts.

Transportation

Traffic

The transportation analysis presented in the EIR should generally conform to the EOEA/EOTC Guidelines for EIR/EIS Traffic Impact Assessments, as modified by this Scope, and the scoping document issued by the BRA. The EIR should update traffic volumes and Level of Service (LOS) analysis on access streets and at key intersections. It should identify appropriate mitigation measures for areas where the project will have a significant impact on traffic operations, should include appropriate commitments to implement the mitigation, and should specify the schedule for implementation.

The EIR should include capacity analyses and a summary of average and 95th percentile vehicle queues for each intersection in the study area. The traffic study should include any intersection that will experience an increase attributable to the project of 10% or more over existing traffic volumes and that currently operates at LOS D or worse. The traffic study should also include any intersection that currently operates at LOS E or F and to which the project will add more than a de minimis amount of new traffic.

The EIR should describe how the project intends to accommodate service and loading functions, and the requirements of the project for service/loading infrastructure (e.g., projected demand, circulation, required turning radii, etc.). The EIR should analyze the impacts of service and loading functions on the area traffic network. The EIR should also describe all taxi, automobile, and bus drop-off areas, and should evaluate the potential for conflicts between project-related traffic (vehicular, pedestrian, and other) and general traffic (vehicular, pedestrian, and other) in the project area.

The project should include sidewalk widths and crosswalk designs that provide a safe and attractive pedestrian environment. Roadway designs to improve traffic flow must not come at the expense of pedestrians. Proposed mitigation measures should reduce traffic volumes by increasing the capacity and/or demand for non-automotive modes.

The traffic assessment should evaluate the impacts of truck traffic related to the development, and should specify the volume of truck trips associated with both the construction phase and the full-build project. The proponent should continue working with the City of Boston to determine additional intersections and locations for the traffic study, and feasible truck routes that will also minimize impacts on residential areas. This project shall take into account the

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cumulative transportation impacts of other projects proposed for the Charlestown Navy yard waterfront area.

Transportation Demand Management

The project is in close proximity to water transportation service at Pier 4, and local bus service. The MBTA Orange Line, Green Line, and commuter rail line at North Station are also within walking distance. According to the EENF, the project will achieve a high transit mode share. The EIR should justify the mode share assumptions, and evaluate the feasibility of a coordinated TDM program, which includes the adjacent Pier 4 and other proposed waterfront developments. The EIR should also demonstrate that the proponent has maximized the waterfront location by supporting and facilitating water transportation to downtown Boston, through the Pier 4 water terminal or other potential locations.

The EENF includes a preliminary Transportation Demand Management (TDM) plan to minimize single occupancy vehicle trips to and from the site, which includes bicycle storage facilities, and dissemination of public transit information. The proponent is also evaluating the feasibility of providing employer-subsidized transit passes with onsite sales, and appointing a Transportation Coordinator. The garage will contain preferential parking for carpool/vanpool users. A dual approach, which minimizes parking while fostering transit use, should be an integral component of the TDM plan as the project develops.

Pedestrians and Bicyclists

Redevelopment of the Charlestown Navy Yard presents opportunities for improved pedestrian and bicycle access. To achieve the non-auto mode shares projected by the traffic analysis, streetscape designs must accommodate and encourage a considerable volume of new pedestrian and bicycle traffic.

The EIR should analyze pedestrian trip generation and distribution, identify intersections and other areas where impacts may require mitigation to permit the free flow of pedestrians, and propose appropriate mitigation. A final roadway design that proposes to add traffic capacity at the expense of pedestrians through such measures as adding travel lanes, removing on-street parking, and enlarging corner radii, will not be an acceptable outcome.

The EIR should describe design standards for plantings, street furniture, signage, and sidewalk and crosswalk widths and paving to ensure that the pedestrian environment generally is appealing and efficient. I expect the proponent to work closely with the City of Boston, other relevant agencies and landowners to coordinate streetscape design standards. Sidewalks should be constructed in accordance with citywide standards.

The EIR should identify the proposed bicycle facility improvements included with this

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project, including bike lanes on streets, bike racks, and employee shower facilities. The EIR should investigate all potential bicycle path connections, and other opportunities in the area to determine where there are any linkage possibilities with the project.

Parking

The project includes construction of 106 subsurface parking spaces. The EIR should include a parking needs analysis to confirm that 1.25 spaces per unit is the minimum level of parking required by the project. The EIR should explain the nature of the on-site parking (for example, quantify how many employee, commercial/visitor spaces are proposed, and the number of underground and surface spaces); identify turnover rates for employees and other parkers; and include an analysis of parking supply, demand, excess capacity, and pricing in the project area. The EIR should demonstrate that the parking supply is no greater than the level necessary to accommodate project demand, that parking ratios for all uses do not exceed the ratios for comparable projects, and that it will not encourage commuting by single occupant vehicles. The EIR should explore the potential for a shared parking arrangement with area facilities. The EIR must also discuss parking availability during interim buildout stages, and demonstrate that parking ratios will remain consistently low during all phases.

The EIR should discuss the proposed parking pricing structure for the development, and should disclose whether any parking subsidies (overt or effective) will be provided to employees, patrons or residents.

Sustainable Design

New development presents opportunities for incorporating sustainable design elements and sustainable construction into project design, consistent with the goals of Executive Order 385. Sustainable design elements, over the course of the project design life, can both prevent Damage to the Environment and reduce operating costs to the proponent. The preliminary project design includes:

- Optimization of natural daylighting, passive solar gain, and natural cooling
- Energy efficient HVAC and lighting systems, appliances and other equipment
- Building energy management systems
- Low flow plumbing fixtures
- Controlled irrigation of drought resistant vegetation
- Solid waste recycling facilities

The proponent should incorporate as many sustainable design elements into the project design as is feasible, and include any additions in the EIR.

Wetlands

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The EIR should identify the wetland resource areas (including any banks, intermittent streams, perennial streams, land under the water, bordering land subject to flooding, and isolated land subject to flooding) and buffer zones present on the site on a reasonably scaled plan. The EIR should identify the significance of the resources, including value to public and private water supply, flood control, storm damage prevention, prevention of pollution, riverfront area, and fisheries and wildlife habitat. The EIR should analyze both direct and indirect (i.e. changes in drainage patterns) impacts on wetlands resulting from the project. The EIR should evaluate any wetlands impacts associated with project-specific off-site traffic mitigation. The EIR should demonstrate that the proponent has minimized the project impacts to the maximum feasible extent.

Stormwater

According to the EENF, the project includes installation of a drainage system including hooded catch basins with deep sumps. The EIR should include at least a conceptual drainage plan, and include runoff calculations for 1, 10 and 100-year storm events. It should discuss the consistency of the drainage infrastructure plan with the DEP Stormwater Management Policy and Best Management Practices. The EIR should identify any stormwater discharge points along the Boston Harbor, and describe any drainage impacts associated with the project, during and after construction. The EIR should confirm that all feasible methods of reducing impervious surfaces have been explored.

Water Supply/Wastewater

The proposed project is expected to demand up to 17,800 gallons per day (gpd) of water and generate up to 15,500 gpd of wastewater, which will discharge to the Boston Water and Sewer Commission (BWSC) combined sewer infrastructure in Eighth Street. According to the ENF, the existing conveyance system has adequate capacity to accommodate the project. The EIR should confirm estimates of project water use and wastewater generation, and should demonstrate that adequate infrastructure exists or will exist to support the wastewater demands. Prior to submitting the EIR, the proponent should consult with DEP, MWRA, and the BWSC to ensure that the project plans comply with MWRA's combined sewer overflow (CSO) control plan, and that the wastewater impacts of the project can be mitigated through the 4:1 infiltration/inflow (I/I) removal requirement.

Historic/Archaeological

The proposed project is located in the Charlestown Navy Yard, which is listed in the State and National Registers of Historic Places. Therefore, the proponent must consult with MHC to ensure that the project is consistent with the Memorandum of Agreement for the site.

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Construction

The EIR should address construction period impacts (including geotechnical and groundwater) as well as potential impacts to the watershed from earth moving, erosion and sedimentation of soils, the impact of truck traffic on adjacent roadways, and impacts to adjacent land uses. The EIR should document how the project will be coordinated with construction of other projects proposed for the Charlestown Navy Yard waterfront. A summary of the Draft Construction Management Plan (CMP) should be included in the EIR that analyzes the impacts of the project on traffic, including trucks and transit vehicles, during the construction period.

Limited or preferably no parking should be provided to encourage construction workers to use the nearby transit, with its extensive connections to additional MBTA rail and bus service. All construction workers should be included in the TDM plan to discourage SOV trips to and from the site. The CMP should include specific TDM commitments that can be implemented during construction.

I strongly recommend that the proponent participate in DEP's Clean Construction Equipment Initiative, to minimize construction-related exposures to hazardous air pollutants (HAPs) during the two-year construction period. The proponent should retrofit diesel-powered equipment with emissions controls, including particulate filters and oxidation catalysts, and use low sulfur fuel.

Noise

The EIR should include an assessment of project-related noise impacts on appropriately sited nearby residential receptors. The EIR should analyze both construction-period and operational noise, including noise from loading docks and service areas.

Comments

The EIR should respond to the comments received to the extent that they are within MEPA jurisdiction. I recommend that the proponent use either indexed response to comment format, or direct narrative response. The EIR should present an additional narrative or quantitative analysis necessary to respond to the comments received.

Mitigation and Section 61

The EIR should include a summary of all mitigation measures to which the proponent has committed, including a description of timing (by year or appropriate trigger point), estimated cost, and responsible party. The mitigation summary should be sufficiently detailed to form the basis of the Proposed Section 61 Findings, also to be presented in the EIR.

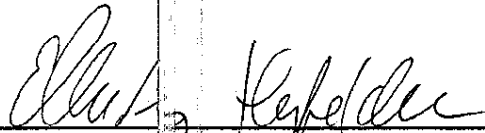
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Date


Ellen Roy Herzfelder, Secretary

Comments received:

5/27/04 Army Corps of Engineers
6/4/04 Joseph Friedman
6/4/04 Department of Conservation and Recreation
6/9/04 James Brogan
6/10/04 Kathy Elliott
6/11/04 Richard T. Silverman
6/11/04 Jean Grimes Hackett
6/11/04 Wendy J. Strothman
6/12/04 Nadine Broude
6/14/04 Maral A. Wyatt & Mark Cautela
6/14/04 Ecodesign, Inc.
6/14/04 Joel & Sheila Kessel
6/14/04 Chris & Marilyn Fleming
6/15/04 Ecodesign, Inc.
6/16/04 William S. Peck
6/16/04 Paul and Nadine Broude
6/16/04 Thomas & Stephanie Deeley
6/16/04 James Brogan
6/16/04 Michael W. Parker
6/17/04 Carol Rudich Epstein & Api Rudich
6/17/04 Richard J. DeAgazio
6/17/04 Richard A. Baker & Barbara Lloyd Baker
6/18/04 Debra & Mark Stevens
6/18/04 Barbara Tansey Bush & Jeffrey Bush
6/18/04 Karla T. Mount & William L. Mount
6/18/04 Boston Water and Sewer Commission

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6/18/04 Kathleen A. Schatz
6/19/04 Constellation Wharf Condominium Association
6/21/04 Carole J. Uhrich
6/21/04 Massachusetts Water Resources Authority
6/21/04 Christopher & Susan Richmond
6/21/04 Westport River Watershed Alliance
6/22/04 Richard F. Burt
6/22/04 Elaine V. Vigneau
6/22/04 S.T. Vanderbush
6/23/04 Nutter McClennon & Fish, LLP
6/23/04 Massachusetts Historical Commission
6/23/04 Jeff Laughlin
6/23/04 Nancy L. Leaming
6/23/04 James Brogan
6/23/04 Marion J. Dancy
6/23/04 Paul & Nadine Broude
6/23/04 Jean Grimes Hackett
6/24/04 Michael Parker
6/24/04 Conservation Law Foundation
6/24/04 Kathy Elliott
6/24/04 The Charlestown Waterfront Coalition
6/24/04 Keith F. Batchelder
6/24/04 Shipways Condominium Association
6/25/04 Ann Beard
6/25/04 Kathy Elliott
6/25/04 Peter Borre
6/25/04 Mary P. Yntema
6/25/04 Save the Harbor Save the Bay
6/25/04 Department of Environmental Protection - Boston
6/25/04 Office of Coastal Zone Management
6/25/04 George Fisher
6/25/04 The Boston Harbor Association
6/28/04 Boston Redevelopment Authority
6/30/04 Boston Environment Department

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