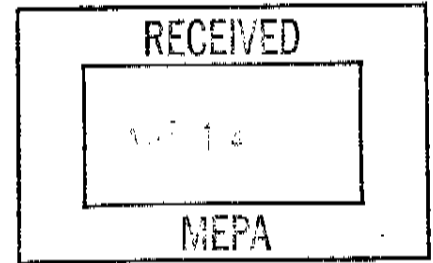




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MEMORANDUM

TO: Ellen Roy Herzfelder, Secretary, EOEА
 ATTN: Richard Bourre, MEPA Unit
 FROM: Susan Snow-Cotter, Acting Director, CZM *[Signature]*
 DATE: March 10, 2005
 RE: EOEА # 13279 – Residences at Pier 5; Charlestown Navy Yard, Boston

The Massachusetts Coastal Zone Management (CZM) Office has completed its review of the Draft Environmental Impact Report (DEIR) 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; and a 14-slip recreational marina in the waters along the southerly side of the pier. The approximately 170,000 gross square foot (sf) building would contain 75 residential units on the upper floors with much of the ground floor programmed for Facilities of Public Accommodation (FPAs).

As described in our comment letter on the Expanded Environmental Notification Form (EENF), the Municipal Harbor Plan (MHP) for Boston, as approved by the Secretary on May 22, 1991 (1991 MHP Approval) remains in full force and effect in the CNY subdistrict, except for the Yard's End area. As discussed below, the 1991 MHP Approval contains several provisions related to development on Pier 5, two of which require an amendment to the MHP in order for Pier 5 to be eligible to receive a Chapter 91 Waterways license. CZM understands that the City is currently developing the MHP amendments.

In our comments on the EENF, we recommended that the DEIR be employed as the vehicle for publishing a public hearing draft of the City's proposed MHP amendments, and 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 that all relevant terms and conditions of such approval can effectively inform the MEPA review process. The Secretary's Certificate required that the FEIR not be submitted for the project until the Secretary has approved the MHP amendment. CZM notes, however, that no MHP documentation other than the initial scopes of work has been submitted with the DEIR.

General

In its comments on the EENF, CZM requested a breakdown of the square footage of the various proposed ground level interior uses (facilities of public accommodation, upper floor accessory uses, common area, etc). CZM also requested information regarding the sizing of all exterior spaces (i.e. those outside the footprint of buildings), listed according to: (1) how much is on filled vs. flowed (on pier) tidelands; (2) how much is open to the sky vs. covered by an arcade or other structural element; and (3) how much will be devoted to pedestrian activity, vehicular movement, and landscaping use. The DEIR does not include a complete tabulation of the type requested, either in terms of the respective variables or the actual square footages. The full-size, 40-scale plans provided directly to CZM under separate cover were somewhat helpful in providing additional information. Furthermore, most reviewers of the DEIR did not have the benefit of such plans because they were not included in the DEIR itself. Accordingly, we



repeat our previous request that the FEIR present all relevant dimensional information 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. Having this information available in such a manner is necessary to understand the proposed mix and size of uses and the project's conformance with the Waterways regulations and the 1991 MHP approval.

Open Space

The DEIR states on page 5-6 that the ground floor building footprint is approximately 43,780 sf. However, the 40-scale plans accompanying the DEIR indicate that an additional, approximately 2600 sf area on Pier 5 would be occupied by a switchgear room, telephone room, and transformer adjoining the building; this area appears to have been left out of the calculations of the proposed building's footprint.

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 nonwater-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 in conjunction with that project. CZM does not believe that Parcel 1C can be used a second time as credit toward meeting the open space standards at 310 CMR 9.51(3)(d) for this project. Consequently, CZM believes that the open space provided by the proposed project is actually 8,145 sf less than the amount of open space presented in the DEIR.

With the concurrent apparent increase in the size of the proposed building footprint and the reduction in the open space provided by the project, it does not appear that the proposed project complies with the open space standards at 310 CMR 9.51(3)(d). CZM recommends that the FEIR include project revisions and an accompanying discussion demonstrating conformity to 310 CMR 9.51(3)(d). Additionally, CZM notes that much of the proposed open space at the tip of the pier appears to include large landscaping areas. While CZM supports measures that soften public open spaces, landscaping such as large, raised planters should not result in significant reductions in the amount of space available for public pedestrian use, especially as may be associated with any vessel-related activity at the pier end. CZM recommends that the project landscaping be downsized accordingly and redesigned with that objective in mind.

Conformance With MHP Approval Requirement 7

As discussed in our comment letter on the EENF, 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)".

CZM understands 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 weigh the project's compliance with Requirement 7(c) at this point. CZM expects that the FEIR will incorporate discussion of the approved MHP amendment that addresses compliance with Requirement 7(c).

With regard to Requirement 7(b), the DEIR on page 5-7 states that "...the combination of the additional ground floor FPA area and onsite public open space should satisfy the MHP requirements to compensate for the second floor residential use." As described above, the project does not appear to conform to the open space standards of 310 CMR 9.51(3)(d). The "additional ground floor FPA area" appears to be in reference to the 20,350 sf of interior FPA use and 6,540 sf of pedestrian area around the vehicle turnaround area (referred to as "exterior FPA" on the 40-scale plan) proposed for the project ground floor. Requirement 4(b) of the 1991 MHP Approval states that 50% of the ground floor spaces within the building proposed for Pier 5 must be occupied by FPAs; in the case of Pier 5, based on the size of the enclosed building space in the DEIR, approximately 14,500 sf of FPA space constitutes the baseline requirement. This leaves approximately 5,800 sf as the amount proposed beyond the regulatory minimum.

Consequently, the one-foot increase in the project setback (an increased water-dependent use zone of approximately 1,100 sf), the additional 5,800 sf of internal FPA area, and the 6,540 sf of external FPA space appear to be the extra public benefits proposed to satisfy the "commensurate increase" criterion of Requirement 7 (b) for the location of approximately 30,000 sf of FPT space on the second floor, since the proposed project does not provide for any water-based public facilities (as discussed further below). CZM recommends that the FEIR include a detailed discussion of this issue, including applicable revisions such as updated area calculations, uses, and additional measures that address the project's conformance with Requirement 7(b) of the 1991 MHP Approval.

Conformance With MHP Approval Requirement 8

Requirement 8 of the Secretary's 1991 Approval Decision requires an amendment to the MHP for a network of "special public destination facilities" (SPDF) for any location at which a waiver of the use standards of 310 CMR 9.51(3)(b) are authorized. The requirement continues in five sub-parts that include a SPDF definition 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 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." Additionally, the City committed to requiring a SPDF at Pier 5 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").

CZM understands that the forthcoming MHP amendment will describe the SPDF network plan as called for in Requirement 8. As the DEIR presents no information on the network plan, it is not possible to provide comments on the manner in which a SPDF at Pier 5 fits within the larger network plan for the Navy Yard. CZM expects that the FEIR will include a detailed discussion of this issue.

The DEIR also indicates that an approximately 1,500 sf SPDF would be provided on the Pier 5 site and states on Page 5-8 that the SPDF is "currently contemplated at the base of the Pier." While CZM is concerned with the size and proposed location of the SPDF as illustrated in the DEIR, CZM understands that the details of the SPDF space (including size, location, and programming) will be developed in conjunction with the City's SPDF network plan. Consequently, CZM recommends that the FEIR, in accordance with the provisions of Requirement 8, include details regarding the SPDF programming, size, and location on the Pier. 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, CZM recommends that the proponent look closely at including the majority of SPDF space at the seaward end of the pier. The FEIR also should discuss the manner in which the proposed SPDF is incorporated into the SPDF network plan.

Other Waterways Regulation Issues

Since the EENF, the project has been modified 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. At the same time, the DEIR does not resolve the compliance issues described in our previous comment letter on the EENF with respect to three other provisions of the Chapter 91 Waterways regulations applicable to nonwater-dependent use projects. The provisions in question are 310 CMR 9.36(3), governing disruption of water-dependent uses; 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 9.36(3)

As presented in the DEIR, the proposed project includes a vehicular drive culminating 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 for building residents and visitors (for Flagship Wharf). According to the

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DEIR on page 3-24, the project would generate 628 vehicle trips per day to and from the parking facilities at Flagship Wharf: 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 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.

310 CMR 9.53(2)(a)

This provision 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 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 for a 14-slip commercial marina (discussed more fully below). The DEIR states that this requirement will be met through a monetary contribution 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. CZM believes that there are opportunities for on-site measures that are more consistent with the approved MHP and 310 CMR 9.53(2)(a). Although water transportation funding may be creditable toward the "commensurate benefit increase" needed to meet Requirement 7(b) of the MHP approval, CZM believes it is premature to pursue such measures until compliance with the baseline requirement of the 310 CMR 9.53(2)(a) has been met. In that regard, one course of action that may be worth exploring is to incorporate operation of ferry service to the Harbor Islands State/National Parks. To the extent that a ferry facility would require interior support space that could serve interpretive as well as functional purposes, it could additionally be credited toward meeting Requirement 8 of the 1991 MHP Approval.

310 CMR 9.37(2)

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." 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 has recommended that the lowest structural member of the proposed residential building be elevated a minimum of one (1) foot above the base flood elevation to accommodate sea level rise. The DEIR states that "the structure's first floor elevation at the outshore end of the Pier" will be maintained at this elevation, which does not appear to be adequate in either the vertical or horizontal dimensions.

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Proposed Marina

The water 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 DEIR 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.

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/for.htm.

SSC/jw.dd

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