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To: Ellen Roy-Hertzfelder, Secretary, EOE  
 Attn.: Richard Bourre, MEPA Unit  
 From: Ben Lynch, Program Chief, Waterways Regulation Program, DEP  
 Date: March 11, 2005  
 Re: EOE #13279, Residences at Pier 5 in the Charlestown Navy Yard (Boston)

Burke

The Department of Environmental Protection's Waterways Regulation Program (WRP) has completed the review of the Draft Environmental Impact Report/Project Impact Report (Draft EIR), for the *Residences at Pier 5* in the Charlestown Navy Yard. The proposed project is a five-story mixed use-residential building of approximately 157,155 square feet with publicly accessible spaces on the majority of the ground floor (80%), over an acre (1.26 acres) of open space, and a Harborwalk along the full perimeter of the pier (1400 l. f.). The proposal has been modified since the earlier MEPA filing in the following ways. Parcel 2A3 is no longer part of the project site reducing the size by 1.1 acres (to 3.78 acres) and the parking that was scheduled for Parcel 2A3 now is proposed within the existing Flagship Wharf parking garage. The number of residential units has increased from 59 to 75 units without increasing the mass of the building. The proposed marina was reconfigured and reduced in size (to 14 slips) after consultation with the Courageous Sailing Center on Pier 4. The Harborwalk and access drive were redesigned to stay within the footprint of the existing pier with better separation between the two by relocating the drive under the drip line of the building. Lastly, space on the ground floor (1500 s.f.) has been reserved for a Special Public Destination Facility to be named later.

The WRP recommends that the project proceed with the filing of a Final Environmental Impact Report "subsequent to the approval of the proposed Municipal Harbor Plan (MHP) amendments" as stated in the ENF Certificate. Since the Proponent has filed a Joint MEPA EIR license application, the majority of the Department's review will occur during the MEPA process. As such, it is imperative that there be greater design development to clarify a number of complicated permitting issues to document conformance with the 1991 MHP approval, such as the type and placement of the Special Public Destination Facility, as well as other Chapter 91 standards identified below. The WRP has the following specific comments.

Municipal Harbor Plan: The WRP's comments are based on the Waterways Regulations, 310 CMR 9.00, as modified by the Secretary's approval of the Boston MHP dated May 22, 1991.

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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 (SPDF) 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 8 of the MHP 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 Special Public Destination Facilities (SPDF). The Boston Redevelopment Authority began the planning process as evidenced by the scope appended to the Draft EIR. The Proponent should work with the BRA to complete the area-wide Network Plan so the plan can be submitted to the Secretary for state review and approval prior to submitting the Final EIR for Pier 5. Based on the draft recommendations of the area-wide Network Plan, the Proponent should develop a detailed proposal for a SPDF on Pier 5. So as to make the Final EIR submission as broad and inclusive as possible, the WRP recommends that it include substantial programmatic, operational, and size information on the proposed SPDF and other complementary Facilities of Public Accommodation as well as explain how they conform to the recommendations of the MHP.

Absent a completed Network Plan, the Draft EIR responded to the Secretary's strong suggestion that locating an SPDF on the Pier 5 site would be an appropriate means to counteract the effects of private usage over flowed tidelands. It remains unclear if the 1500 square feet offered would be considered sufficient size for whatever SPDF is recommended in the future or to what degree it might offset the 130,265 square feet of proposed private development on the project site regardless of the programming issues raised above.

The Secretary's decisions on the MHP and the Pier 5 ENF require the City develop and submit a second MHP amendment prior to filing the Final EIR, the Pier Management Plan. It will be very useful in the WRP license application review for this project to review the design guidelines and legal tools recommended in the Pier Management Plan to address potential conflicts between water dependent uses and nonwater-dependent uses as well as potential navigational conflicts between different types of water based water-dependent uses. For these reasons, the WRP supports the Secretary for requiring the approval of all MHP amendments prior to the filing of the Pier 5 Final EIR.

Until the WRP can review further detail regarding the SPDF it would be imprudent to evaluate whether the proposed use of the second floor for private residences has been offset by a "commensurate increase in one or a combination of public spaces, building

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setbacks, interior facilities of public accommodation, or water-based public activities as the term is used in 310 CMR 9.53(2)(a)" as required by the MHP approval.

Pedestrian Access: The WRP commends the proponent for redesigning the Harborwalk on the northeast side of the pier so that the 385 linear feet previously proposed over flowed tidelands is now located within the footprint of the existing pier in accordance with 310 CMR 9.32(1)(a)(3). The access drive also was relocated within the drip line of the proposed building to create greater separation from the pedestrian and non-motorized use of the Harborwalk. However, the proposed drive crosses the Harborwalk at a critical juncture without making a compelling argument, beyond the mere convenience of the residents and guests, for the need for so many vehicle trips per day. As stated in the ENF comments, the WRP recommends a much more detailed analysis of the likely implications of such vehicular activities, a justification of why such a configuration is 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. Absent a compelling argument for such an arrangement, the WRP continues to recommend limiting at-grade vehicular activity on the pier to emergency vehicles only.

Parking: The Draft EIR states that the necessary parking will be provided in the existing Flagship Wharf parking garage. In the Final EIR, the proponent should identify how the parking spaces in the garage will be allocated so the WRP can ensure that 100 parking 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).

Watersheet activation: The WRP recognizes the Proponent has reduced and reconfigured the proposed marina to minimize navigational conflicts with the Courageous Sailing Center use on the adjacent pier. However, the Proponent needs to address the WRP comments on the ENF. To comply with the standards of 310 CMR 9.53(2)(a), the proponent must provide a water-based public activity that is described therein as "including but not limited to ferries, cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers." The WRP suggested that a proposed public recreational boating facility, in and of itself, does not fulfill the referenced requirement. The Pier Management Plan presently under development should inform the selection of an appropriate water-based public activity for this site.

The Draft EIR states that a contribution of \$260,500 will be provided for water transportation, yet it is unclear how these funds will be utilized. There are many opportunities that can and should be explored in the Final EIR, given that the proposed project is located within close walking distance of a well-established water transportation facility on Pier 4.

Waterways License Term: In relation to the water transportation contribution, the Draft EIR states that the proponent will request an extended license term of 99 years. Please 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

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justification that the extension is warranted. In the Final EIR or license application the proponent should provide this justification, including relevant supporting documentation, on the following factors that are identified at 310CMR9.15(1)(b)(2) as: the expected life of the structure; typical financing requirements; consistency with the approved Municipal Harbor Plan; appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location; and other relevant factors.

Open Space Requirements: The schematic plan places an appropriate emphasis on pedestrian-focused open space that in confined sites such as Pier 5 the WRP believes is a more important use than planted areas. The plans in the Draft EIR appears to adequately describe at the concept level the qualitative aspects of the Landscape Plan as required by 310 CMR 9.53(2)(b), with the exception of the conflicting use of a portion of the Harborwalk for vehicular use and the location of the flood barrier described in other sections of this memo. Also, in the Final EIR the proponent should locate rest room facilities easily accessible to the public 24 hours a day.

Please clarify how the building cutout will preserve the significant view corridor from the Harborwalk to the Custom House Tower, as stated in section 2.4.2. Figure 6-5 illustrates a view from the Harborwalk in which the Custom House Tower can't be seen through the cut out.

In the Draft EIR, the existing Harborwalk on Parcel 1C has been included in the open space calculations for Pier 5 but was constructed and conditioned under the chapter 91 authorization for Flagship Wharf (see License #1741). Clarification should be provided to ensure that no open space previously authorized is double counted. The BRA may provide this when they address the area-wide commitment for open space but, since this is a Joint MEPA EIR license application review, it would be most valuable to include in the Final EIR rather than waiting as late in the application process as the section 18 finding.

Construction within a Flood Hazard Zone: The building site includes flood hazard zones (V and A Zones). The proponent states in the Draft EIR that a two-foot high perimeter barrier will be constructed and a Flood Insurance Rate Map Revision will be requested. However, in the WRP review of the Draft EIR it is unclear what extent of the proposed building is within the flood hazard zones (especially with the affect of sea level rise), where the perimeter wall will be located, or how the wall will affect the design and programming of the Harborwalk and open space. The Proponent should seek the guidance of the Massachusetts Flood Hazard Management Program and Coastal Zone Management in this matter. Given the requirements of 310 CMR 9.37(2) regarding locating residential structures with flood hazard areas, these issues need to be resolved within the Final EIR.

Waterways Application status: The Department anticipates that the Proponent will submit a Waterways application with all the information required by 310 CMR 9.11(3)(a)-(c) for a Joint MEPA EIR application so there will be a coordinated review by MEPA and the Department. Pursuant to the provisions of 310 CMR 9.11(2)(b)(4), upon receipt of the

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final certificate issued by the Secretary the Department will assign a file application number, make a determination of water-dependency, determine the completion of the application or request additional information as appropriate, and issue a public notice.

Please contact Andrea Langhauser at (617) 348-4084 or me at (617) 292-5615 if you require more information concerning the c. 91 aspects of this project.

BL/AL/al

cc: Susan Snow-Cotter, Acting Director, CZM  
Richard McGuinness, Senior Waterfront Planner, BRA  
Lealdon Langley, Program Director, Wetlands and Waterways Program, DEP  
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WRP files