

41 Pier Seven  
Charlestown, MA 02129

June 25, 2004

Ellen Roy Herzfelder  
Secretary of Environmental Affairs  
MEPA Office  
Executive Office of Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Expanded Environmental Notification Form  
The Residences at Pier 5  
Charlestown Navy Yard

Dear Madame Secretary:

I am writing you on my own behalf concerning the development proposal advanced by LDA Acquisition, LLC for Pier 5 in the Charlestown Navy Yard, and more particularly about the issue of whether the Boston Municipal Harbor Plan (“MHP”) for this part of Boston’s waterfront is valid or has expired. Several of my friends and neighbors have sent you letters on this issue, letters which in my view make a compelling case to the effect that the MHP has lapsed, and that, as a consequence, under Chapter 91 regulations this proposal to construct facilities of private tenancy over flowed tidelands is – a priori - not permitted.

I do not propose to repeat their points. I wish to address you in your capacity as a senior Commonwealth official during a time when the credibility of governmental agencies throughout the nation is not very high.

As a former federal sub-cabinet official myself, I will acknowledge that “the call” re the MHP could, plausibly, go either way. A skilled staff could present you with a recommendation to waive this project through, indicating that “to all intents and purposes” and “given the pattern established by EOEA actions in a couple of 1999 cases”, the City might be allowed to proceed under some semblance of a “virtual” MHP, perhaps with a stern Commonwealth injunction “not to view this as a precedent”, along with a good-government admonition to “proceed expeditiously with an *updating* of the Boston MHP for Charlestown”. Very workable, very clever. I would not cringe if I had to explain this one to the public.

And yet ... it is built into our governance system in the Commonwealth that the state and the city levels will frequently be in tension. The State will institutionally lean in the direction of order, structure, planning and careful process, while the City will opt for pragmatism, flexibility and realism since they are on the firing line vis-à-vis the public. At given points in time, one of these viewpoints will be more appropriate than the other – neither viewpoint is eternally valid. At this juncture - for valid *political* reasons - the more methodical approach of “order, structure, planning and careful process” is the appropriate one for EOEA and, more broadly, for the administration in which you serve, for several reasons.

First, if this issue were posed as a hypothetical case discussion in a graduate school of public administration, after the more nimble students argued either side, there would be a consensus that grossly incompetent, arrogant and self-serving approach of a (hypothetical) city agency in deliberately disrespecting over many years a clear statutory requirement by a (hypothetical) state agency should not be encouraged or rewarded.

Second, if a student were to suggest that perhaps the (hypothetical) state agency should lay back, and wait for angry intervenors to “loosen things up”, another student might respond: Is this really the kind of administration? Clever and adroit, yes; shrewd players of inside-baseball, yes; but capable of leadership and clarity on major policy issues? The *political* heart of the matter is that the Massachusetts voters have elected Republican governors for the past 14 years precisely to obtain policy clarity rather than policy cleverness, and in particular to put a check upon the machinations of the Beacon Hill crowd.

If, regrettably, EOEA does not challenge the validity of the MHP, then it must follow that the proponent and the BRA should adhere to that MHP, particularly to the requirements for Pier 5 private tenancy set out in detail in the June, 1991 Charlestown Navy Yard Redevelopment Draft Supplemental EIR. These requirements are described in letters to you from friends and neighbors in the Yard. I would add the following:

The proponent’s track record in the Charlestown Navy Yard in complying with the DSEIR and in maintaining the portion of the Harborwalk for which he has responsibility, is **demonstrably inadequate**, as attested to vigorously by several neighbors and by community groups such as the Charlestown Waterfront Coalition. The BRA’s oversight performance is also **demonstrably inadequate**.

The proponent and the BRA should be advised that any action on the EENF will be held in abeyance, pending the submission to EOEA of credible, documented commitments to comply with all relevant aspects of the 1991 DSEIR, securitized by the proponent in the form of an **Irrevocable Letter of Credit by the proponent to the BRA**, covering the projected capital costs of these

commitments, and with funds to be released only with the joint approval of the BRA and EOEА.

Very truly yours,

Peter Borre'