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June 16, 2004

James Gribaudo
Senior Project Manager
Boston Redevelopment Authority
One City Hall Plaza, 9th Floor
Boston, MA 02201

**Re: The Residences at Pier 5:
Expanded ENF/Project Notification Form**

Dear Mr. Gribaudo:

I am deeply concerned with the recent Expanded Environmental Notification Form /Project Notification Form ("report") submitted by LDA Acquisition, LLC ("developer") regarding the disingenuously named "The Residences at Pier 5" in the Charlestown Navy Yard. Disingenuous in the sense that residences are but a portion of this project, a 160-seat restaurant and lodging units are also planned. This project was hastily conceived and designed to beat the impending development deadline of the BRA Land Disposition Agreement with the developer. The entire report is seriously deficient and lacking in thoughtful and meaningful analysis of the proposed project's impacts. Allow me to outline a few of those deficiencies below.

Extension to Comment Period Should Be Granted

As a threshold matter, the developer has foisted the project upon the community with little or no advance notice. As you know, it is difficult for community groups to match the resources and expertise of the developer when attempting to create a dialogue leading to meaningful project analysis. For instance, the developer skillfully argued that a Municipal Harbor Plan ("MHP") for the Navy Yard is invalid in an action to evade paying the BRA certain fees on one hand, and is now, not so skillfully, asserting that a valid MHP for the Navy Yard exists for the purposes of the this project.

It is obvious that this project was hastily conceived by the complete lack of thoughtful and meaningful data contained in the report. The paucity of real data in the report denies decisionmakers relevant information about the project's adverse impacts and reasonable alternatives before making decisions impacting one of the Commonwealth's most precious, and too often ravaged, natural resources, our public tidelands. Any decision allowing this project to proceed prior to the developer's provision of the comprehensive analysis required by law and regulation would be a violation of the Article 80 and MEPA

review processes. The report, instead of providing meaningful analysis, is riddled with conclusions without basis in fact.

To attempt to provide analysis on such an abbreviated time frame shortchanges the public, especially when the potentially illegal development of Commonwealth Tidelands (Chapter 91 regulations may be violated) is proposed. Accordingly, I request that you extend the comment period for at least 30 days to allow for the type of review and comment that a project of this nature needs. I also attach an e-mail from the BRA's Mr. Gribaudo explaining that the BRA will accept comments until at least June 25, 2004. Mr. Gribaudo amended this deadline to June 30, 2004 in the June 15, 2004 Charlestown Neighborhood Council Development Committee meeting.

Traffic Assessment Seriously Deficient

1. Traffic

A startling example of the developer's disregard for the review process is his conclusions in Section 5 regarding transportation. It is obvious that the developer did not commission a comprehensive traffic study, instead relying on models not applicable to the Navy Yard area. Section 5 is a skimpy recitation of unsupported statements that dramatically underestimate local traffic impacts. For instance, the restaurant and lodging units will obviously create a large increase in taxi and private vehicle trips in an already congested and unsafe area. Local residents have long endured the excessive speeds and dangerous driving techniques of taxis and drivers unfamiliar with 8th Street's narrow design and significant child population.

The developer indicates that "Traffic from regional roadways, including the Central Artery and Rutherford Avenue will use either Sixth Street or Eighth Street for access to and from the site". This indicates woeful ignorance of the roads in the immediate vicinity of Pier 5, or an attempt to obfuscate a plan to cause a major disruption to the Yard's "Shipyard Park" which lies between Sixth Street (a.k.a. Terry Ring Way) and Eighth Street. In fact, at the June 15, 2004 meeting with the public and the Charlestown Neighborhood Council's development Committee, the New York-based developer's representative had to ask the public where Terry Ring Way was.

Sixth Street runs from First Avenue to a cul-de-sac on the southern edge of Shipyard Park. To create access the site from Sixth Street, the developer would have to cut a road from the cul-de-sac at the head of Sixth street, skirt the southern wing of Flagship Wharf, and cut across the Harborwalk to connect with the Pier 5 site. This wholesale disruption is totally unacceptable and will end up causing a multitude of traffic problems in the immediate area.

The developer's traffic review is severely deficient, as evidenced by a review of the "Guidelines for EIR/EIS Traffic Impact Assessment", approved by the Executive Office of Transportation and Construction and the Executive Office of Environmental Affairs.

The deficiency of the developer's traffic assessment is so severe, that instead of attempting list all the gaps in assessment, I refer you to the Guidelines for review.

2. Parking

The developer indicates with regard to parking that "The proposed Project also includes the construction of an approximately 106 space underground parking structure Parcel 2A3" ... "the at-grade land above the parking garage will be landscaped and preserved as waterfront open space". The Parking Garage Plan is illustrated at Figure 2-9.

This part of report is seriously deficient: the discussion is misleading and the severe disruption approach involved in going underground is unacceptable, for the following reasons:

1. A priori, the BRA must rule on this kind of use on Parcel 2A3, and there is no evidence of the BRA's stance in this matter in the report; a deficiency.
2. The structured parking, as illustrated in the report, consists of 25 spaces valet/managed, and 81 standard spaces; the "standard" spaces are blocked when the valet spaces are occupied; it is doubtful that residents of the luxury units proposed for Pier 5 would accept the delays involved in accessing their cars, and would instead attempt to park on the streets.
3. The underground parking facility would require on Parcel 2A3 an access path, a down/up ramp, and a gatehouse for control; none of this is evidenced in the report, which simply characterizes this space as "open space" to meet open space requirements.
4. The access path, down/up ramp and gatehouse would take up a substantial part of Parcel 2A3's 1.1 acre surface, and thus diminish and restrict significantly the parcel's green space which is now entirely available for the public.

Tidelands

Section 3's discussion of Tidelands jurisdiction and applicable regulatory requirements is a prime example of the type of cursory, self-serving analysis apparent throughout the entire report. First of all, it is unclear whether the Municipal Harbor Plan (MHP) that the developer references as relaxing Chapter 91 requirements is still in force and valid. Apparently, MHPs need to be reauthorized every 5 years. The last valid MHP for the Navy Yard was approved in 1991 and has not been renewed.

In fact, according to a Delaware Bankruptcy Court decision (*In re: Comp petrol Acquisition Partnership, L.P., et al* Case Nos. 94-622 through 94-626, August 2, 2000), it appears that the developer fashioned an argument denying that he owed the BRA a

significant development milestone payment because the BRA was unable to cause the renewal of the MHP relative to a part of the Navy Yard.

It is unclear as to whether the MHP in question would be applicable to the location in the Navy Yard of the proposed project, but it is worth noting that the issues (i.e., the requisite renewal of MHPs in general) surrounding the MHP in question in the Bankruptcy Court surround any MHP for the part of the Navy Yard where this project is proposed.

Even if the MHP in question in the Bankruptcy Court was specific to a small portion of the Navy Yard, it appears that the MHP relative to the rest of the Navy Yard has not been reauthorized since 1991 and is therefore inapplicable to this project. A review of correspondence between EOEA and the BRA (dated: May 20, 1997; June 30, 1997; February 18, 1998; and November 26, 2001) indicates that there is no valid MHP relative to the Navy Yard in place. Apparently, the developer is also arguing in the alternative that other projects have gone forward in recent years pursuant to the MHP. Obviously, that does not cure the non-renewal of the MHP, it only calls into question the legality of those projects.

Apparently, it is the Commonwealth's position that Navy Yard developments are subject to the more stringent Chapter 91 requirements (Parcel 4 was subject to Chapter 91 permitting). Representatives of the DEP and CZM have indicated they believe that Navy Yard development is subject to Chapter 91 requirements, unmodified by a MHP.

In hasty and conclusory fashion, the developer makes no effort to explain why he believes there is a valid MHP. Clearly, the developer has not addressed how different the project would be if subject to Chapter 91 requirements, which should be part of an alternatives analysis. In fact, it appears that the substantial commercial/residential components of the project would constitute a private tenancy on Commonwealth Tidelands and thus not be allowed. This is an important issue that warrants much further discussion. Otherwise, much site preparation and destruction to the environment could occur only to find out that Chapter 91 disallows the project.¹

Environmental

There are important environmental issues ignored and/or glossed over by the developer which require robust analysis. Anything less puts the public health and natural resources at risk in an area of critical concern. It is critical to understand that all of the developer's assertions regarding the environmental aspects of the project are conclusory and sadly deficient. There are serious air and water quality issues not addressed by the developer, as well as wind, noise, and groundwater issues. In fact, all Section 4 issues need much more analysis in the developer's next submittal (which should be a draft report, not a

¹ In an effort to get the rules relaxed even further, the developer characterizes the road he intends to build on Pier 5 as open space for "vehicular circulation." In other words, a street. The developer brazenly asserts that the 18% of "open space" the street constitutes only a "small portion" of his open space requirements.

and sediment disturbance. Shadows over the watershed (a result of the overhanging walkway) and their adverse impact also need to be a part of the developer's draft submittal to the BRA and the MEPA office.

Alternatives/Mitigation

The purpose of the draft and final reports is to provide meaningful opportunities for public review and to identify potential environmental impacts and to avoid and/or mitigate damage to the environment. The developer has offered no alternatives or meaningful mitigation regarding the project. The public has a right to know the differences between the environmental impacts caused by the proposed project and say, a Maritime Park (one of the plans discussed for Pier 4 in certain forums), or other public benefit uses required by Chapter 91.

The construction mitigation measures proposed during construction are entirely insufficient. The area is one where wind gusts typically reach 30 miles an hour and higher. Any sort of excavated contaminated sediment will result in unhealthy human exposure via air pathways. Therefore, state of the art construction mitigation procedures are required to protect the health of nearby residents and their children.

Financial Viability of the Project

Given the issues regarding the potential remediation of Pier 5 and the ongoing remediation of Parcel 4 (RTN 3-22380), there is doubt regarding the financial viability of both the project and the developer. If the project become financially insolvent due to escalating remediation costs, the project could languish and be an eyesore for years. Review of this project needs to include a financial review of the economics of the project. There should also be a bonding requirement, or similar financial mechanism, to insure that if the project becomes insolvent, then at least the remediation is completed and the site returned to a safe condition.

Conclusion

Because of the complexity of this project and its location in a sensitive ecological area, the comment period should be extended. This extension is needed to insure adequate and meaningful dialogue between the developer and the community. The developer should not be allowed to push this project through without robust analysis. The proposed construction of such an ill-conceived project on one of the Commonwealth's most precious, and too often ravaged, natural resources, our public tidelands, requires as much.

It is ironic that after enduring more than a decade of Big Dig construction bettering the skyline and adding the Zakim/Bunker Hill Bridge, this project denies the public those beautiful views. There are many other locations of the Navy Yard in less environmentally sensitive areas available for responsible development. The developer should include those locations in his alternatives analysis. Also, the developer should not

final report). I will illustrate a few pertinent examples below with the caveat that the general tenor of the remarks apply to all the other Section 4 issues.

1.) Environmental Legacy

As you are aware, the Navy Yard was the locus for the construction and repair of thousands of ships during a period when environmental concerns and regulations were unheard of. Pier 5 itself serviced over 2000 ships during the World War II era. Not surprisingly, one would expect to find significant toxic industrial waste such as chlorinated solvents, PCBs, PAHs, soil, cleaning and degreasing solvents, and other types of toxics used to service ships. The developer has admitted that he has not conducted testing of the soils and/or sediments on or under Pier 5. Presumably, no testing has been done in order to avoid triggering DEP reporting requirements.

The developer has admitted, albeit vaguely, that there will significant amount of piling restoration and the driving of new pilings to provide the load bearing support a development of this size will need. The resultant unearthing and disturbance of sediment in the Pier 5 Commonwealth Tideland area is sure to cause and/or exacerbate environmental conditions, requiring extensive remediation. In fact, the developer is having this just this problem at his other Navy Yard project at Parcel 4, (DEP Release Tracking Number 3-22380), where oil and hazardous material contamination was reported to DEP last December. Remediation of sediments in such a ecologically critical area as Pier 5 would certainly cause delay of the project for years, jeopardizing the public health of surrounding residents and their children.

In addition, such disturbance could very well reverse years of environmental remediation and restoration work performed in Boston Harbor. In other words, substantial tax monies used to originally clean up the Harbor will be wasted in order to provide a New York-based developer a development opportunity. To safeguard against this wholly unacceptable consequence, the developer should be required to perform a comprehensive environmental study of the site area and submit appropriate remediation plans as part of the developer's draft submittal to the BRA and the MEPA office. Anything less jeopardizes the public health and environment.

2.) Wildlife Habitat

Even though a search of the Massachusetts National Heritage Program Atlas did not turn up identification of the site as high priority regarding endangered species, it is wrong for the developer to assert that the project "will not adversely impact wildlife habitats." Inevitably, wildlife habitats will be adversely impacted. The developer doesn't even mention what species of wildlife may present at the site.

Presumably, there are wildlife species making a comeback due to the Harbor cleanup. Those species are important to the area's biological health and water quality. A comprehensive survey needs to be done regarding the existing wildlife, the adverse impacts, and alternatives and mitigation to the adverse impacts during the construction

be allowed to circumvent the public participation process by letting his next submittal be a final report instead of a draft report.

Of critical importance are the Chapter 91 issues. They need to be resolved before any more time or resources are spent on this project. Even if an MHP is determined valid (though that would take an illogical and tortured analysis of the issue), the Navy Yard is a much different place than it was in 1991. It is more congested and developed. For instance, it is apparent that 8th Street can not accommodate the additional traffic caused by this project. Pier 5 is a natural location to reflect the realities of the present-day Navy Yard. Pier 5 should preserve for the public benefit the abundant recreational benefits Pier 5 offers. Accordingly, Chapter 91 requirements should be followed to the letter no matter what the status of the MHP.

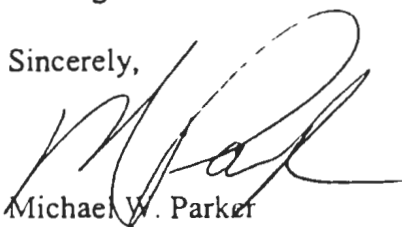
Equally important is the environmental legacy of the Navy Yard. It can not be ignored or glossed over by the developer. The scant environmental information provided needs to be subject to a much more comprehensive analysis in order for the community and regulators to make informed decisions regarding this project. The environmental cleanup reports filed for Parcel 4 should be made available so that community members may be informed as to what conditions are present at Parcel 4 in order to determine what conditions may be found at Pier 5.

I found it disappointing that the developer's representative at the June 15th meeting answered many important questions regarding the impacts of the project by asserting that this is an "as of right" project, relying on decades-old planning documents. In essence, the developer's representative was stonewalling members of the community. There is no "as of right" private use for Commonwealth Tidelands. Also, it is clear that the impacts of projects of this size and scope are legally required to be studied carefully. The community's right to know of the adverse impacts transcends the developer's stonewalling tactics. The more known about the proposed project, the better.

In concluding, I quote a passage from a letter, dated May 20, 1997, authored by Thomas N. O'Brien (past Director of the BRA), and sent to EOEA's Secretary, Trudy Cox, asking for an extension of time amending an MHP; **"As you know, planning and technical issues along the harbor are numerous and the preparation of policies and planning recommendations require time for thoughtful analysis and community input."** Please follow the BRA's own words on harbor development and act accordingly.

Thank you for the your careful consideration of these comments. Please add me to your mailing list for future announcements about this matter.

Sincerely,



Michael W. Parker