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June 16, 2004

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

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

Dear Ms. Herzfelder:

We are writing to express our deep concern regarding the recent Project Notification given by LDA Acquisition, LLC (“LDA”) regarding “The Residences at Pier 5” in the Charlestown Navy Yard. The project name is misleading, because residences are only a portion of this project, which also includes a 160-seat restaurant and 30 extended stay corporate apartment-style lodging units. It is clear that LDA has submitted this poorly conceived proposal with the goal of beating the impending deadline of the Land Disposition Agreement (the “Agreement”) between LDA and the Boston Redevelopment Authority (the “BRA”). As a result, the proposal is seriously deficient in that LDA has failed to deal with a number of important issues related to this site, some of which are described below. For these reasons, this project should not be permitted to proceed as proposed.

Applicability of Chapter 91

As a threshold matter, LDA’s filing is deliberately misleading by setting forth as its basis, in Section 3.1 and elsewhere, the premise that the City of Boston’s 1991 Municipal Harbor Plan (the “1991 MHP”) governs this proposed project. LDA takes this position, because absent the 1991 MHP, Chapter 91 would prohibit facilities of private tenancy of the type set forth in this proposal over the flowed tidelands beneath Pier 5. However, the 1991 MHP expired in 1997 and has not been renewed. There must be affirmative action by the City of Boston to renew the MHP Plan every five years, and the City has not taken any steps to renew the 1991 MHP.

What is most distressing about the misleading premise put forth by LDA is its deliberate nature. In an August 2, 2000 bankruptcy court case involving a dispute between LDA and the BRA, LDA took the exact opposite position, when it successfully argued that the 1991 MHP had expired as one of the bases for the Court's determination that LDA was not required to make certain payments to the BRA. In pertinent part, the Court in In re: Comp petrol Acquisition Partnership, L.P, et al (U.S. Bankruptcy Court, D. Del.), found as follows:

“...Finally, [LDA] argue[s] that the Second Milestone was not met because the Secretary's Certificate...required amendment to the Municipal Harbor Plan...To date, the BRA has not amended the Municipal Harbor Plan which expired in the Fall of 1997...See Trans. 385:7-386:6.” (emphasis added).

In addition, 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. The Commonwealth has also apparently taken the 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 also indicated they believe that Navy Yard development is subject to Chapter 91 requirements.

LDA 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 a critical issue that warrants much further review and discussion.

Preservation of Open Space

LDA states a number of times in the proposal that the project will add 1,400 linear feet of new walkway to the City of Boston's Harborwalk system. This is disingenuous for the following reasons, among others:

- All of Pier 5 is presently open space; in fact, this proposal will eliminate most of the open space in the last remaining pier at the head of Boston Harbor. Pier 5 should be preserved for a water-dependent community use that recognizes its special place at the intersection of the head of Boston Harbor, in a National Historic Monument zone, and over precious flowed Commonwealth Tidelands.
- LDA proposes to connect the walkway around the planned building to the existing Harborwalk (as required). However, LDA's plan depends on its ability to extend a cantilevered edge to the existing pier over the watersheet, since most of

the existing pier space next to the proposed building will be used for street access to the building for cars and trucks. There is no mention in the proposal of the environmental impact of the additional shade on the watersheet, nor is there any mention of how the extension of the pier will interfere with marine traffic from the existing marina located on Pier 6.

- The street access to the building will connect to Eighth Street by crossing the existing Harborwalk with hundreds of new car and truck trips daily, interfering with the use of the Harborwalk by the pedestrians for whom it is intended.
- LDA has been a poor steward of the portions of the Harborwalk located in the Navy Yard which it is already responsible for maintaining. There is no reason to believe LDA will do a better job if its responsibilities are expanded.
- The proposal attempts to falsely minimize the effect on open space, saying that “a small portion of this open space, approximately 18%, will be used for vehicular circulation.” In other words, fully one-fifth of the open space will be a heavily trafficked street crossing the Harborwalk. LDA clearly recognizes that given the already small amount of open space available on Boston’s waterfront, to use 1/5 of the project’s open space as a busy street is significant enough to try to mask the impact with euphemisms like “vehicular circulation.”
- It is not clear that LDA’s proposal meets the open space requirements of Article 42F of the City of Boston Zoning Code, since any portion of the Pier over which cars will routinely pass does not constitute open space. Article 42F-6 provides, in part, as follows with respect to the definition of Open Space:

“...routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses...is not consistent with the foregoing definition.”

Parking

The proposal contemplates two parking alternatives which would provide approximately 106 spaces, which is less than half the project’s realistic parking needs. LDA has seriously underestimated the parking requirements of this project; a minimum of 230 spaces would appear to be needed, approximately as follows:

- 90 spaces for the 59 residential units, based upon generally accepted parking density targets for Navy Yard residential developments of 1.5 spaces per

unit. Given the target sales price of the residential units (\$1 million and above), it is unlikely that purchasers will accept fewer spaces.

- 30 spaces for the 30 long-term lodging units. While transient hotel guests might not require as many spaces, LDA's plan is for long-term corporate apartment type rentals, in which every guest, like residents, would be expected to have a car.
- 50 spaces for the restaurant, based upon usage patterns in similarly sized restaurants in Charlestown.
- 15 spaces for employees of the residential building (based upon similar requirements for Flagship Wharf).
- 30 spaces for employees of the restaurant and other non-restaurant commercial space (based upon similar availability for commercial tenants of Flagship Wharf).
- 15 spaces for guests of the residential units and maintenance and repair personnel.

In addition, in several places LDA states that the BRA has "informed and assured the proponent that Flagship Wharf, adjacent to Pier 5, was approved and permitted by the BRA for additional parking to support the parking needs for development on Pier 5." In fact, all of the spaces in the Flagship Garage are owned by either residential or commercial unit owners in Flagship Wharf, none of whom have any obligation to provide such spaces to LDA for use in connection with Pier 5.

The alternative proposal to build an underground garage on Parcel 2A3 involves the destruction of existing open space. While LDA has proposed to regrade the disturbed areas, in fact much of the space would be permanently lost to parking ramp access, vent stacks, and stairway access to the garage.

Finally, the Table 5.5 incorrectly states that there are 150 public parking spaces available in the Flagship Wharf garage; in fact, the number is 100, as required by Flagship Wharf's Chapter 91 license.

Public and Community Benefits

LDA's proposal purports to offer a number of public and community benefits, which, upon closer examination, turn out to be ephemeral:

LDA's Statement	The Reality
Provide new public access to and along the water, resulting in a greatly enhanced waterfront public realm.	Previously full public access to all of Pier 5 will be severely restricted.
Add over 1,400 linear feet to the City's Harborwalk system; enhance pedestrian circulation along the perimeter of the Project site.	Pedestrians will be forced to dodge cars and trucks along both the new portion of the Harborwalk and the existing Harborwalk connecting Piers 4, 5, 6 and 7.
Create almost one acre of new publicly accessible open space on Pier 5.	Replace a majority of the existing open space on Pier 5 with a large building and high vehicular traffic.
Improve property values in the Charlestown community and immediate neighborhood.	Reduce property values, and therefore the tax base, in existing buildings such as Parris Landing, Constellation Wharf and Flagship Wharf due to limited views and increased traffic and parking problems.
Provide a total of approximately 100 jobs in the retail, restaurant, hotel and property management fields.	Provide increased traffic and a need for parking spaces not contemplated by the LDA proposal.

No thought has been given to developing Pier 5 in a way that would provide a true Special Public Destination Facility of the type contemplated by Chapter 91 for projects on flowed tidelands.

Urban Design Guidelines

The proposal purports to adhere to urban design guidelines consistent with the City of Boston Zoning Code for the Charlestown Navy Yard. However, in addition to the problems described elsewhere in this letter, the plan is seriously deficient in the following ways:

- The proposal cites a maximum height of 55 feet, while in fact building mechanicals on the roof appear to add at least 15 feet to the total size of the structure, although nowhere in the proposal does LDA actually disclose the actual height of these structures. The additional height will cause more extensive impact on light, shadow, and wind in ways that have not been addressed in the proposal.
- The addition of a cantilevered edge to the existing pier will likewise cause additional environmental impact on the site.

- The design guidelines provide that buildings shall be sited to preserve views across the water; in fact, the proposed building would severely limit the existing views from Piers 4, 6 and 7, and Parris Landing and Flagship Wharf. LDA's statement that "the impact on the views of neighboring structures (across and toward the water) are minimized" is simply false.
- No real wind, shadow or light studies have been undertaken. LDA's proposal talks about "presumed ocean breezes" on a site that is in a FEMA velocity zone. Clearly, LDA is attempting to avoid the site-specific issues that need to be addressed on Pier 5.

Transportation

LDA's proposal is startling in its use of unsupported assumptions to dramatically underestimate the local traffic impact of this project. The proposal ignores the fact that the restaurant and lodging units will create a substantial increase in taxi trips and deliveries in an already congested and unsafe area. Local residents have long been urging the City to increase traffic and parking enforcement in the Navy Yard due to the excessive speeds and dangerous driving techniques of taxis and drivers unfamiliar with 8th Street's narrow design and significant child population.

A recent study by residents of Constellation Wharf illustrates that LDA's assumption of 508 new daily vehicle trips is grossly inaccurate. The Constellation study determined that a minimum of 1,000 new daily vehicle trips are likely to result from this project, based upon the traffic experiences of Constellation Wharf (a similarly sized residential building of 64 units); several local restaurants of similar size to the one contemplated by the proposal; and the Marriott Residence Inn in Charlestown. Since most of these trips would occur between the hours of 6 a.m. and midnight, it is reasonable to expect an average of one trip every minute, each of which will cross the existing Harborwalk. In addition, because the proposal contemplates that valet parking drop off will occur in the center of the open arch in the middle of Pier 5, with parking on Eighth Street, each vehicle trip to and from Pier 5 will actually require two trips across the existing Harborwalk.

Notwithstanding vague suggestions to the contrary in LDA's proposal, Eighth Street provides the sole access to over 630 existing residential units, commercial space in Flagship Wharf, and an existing marina and restaurant on Pier 6. In the morning and afternoon, there are routinely cars double-parked on the portion of Eighth Street near First Avenue, where drivers drop off and pick-up children at a day care center. Delivery and repair vehicles routinely park in no parking zones, creating a serious impediment to emergency vehicle access. None of these issues is addressed in the LDA proposal. In fact, a cavalier reference is made to the possibility of street closings during construction,

when in fact there is no alternative access to any of the people who live, work or use existing public facilities on Eighth Street.

The proposal cites the availability of public transportation. However, there is no MBTA station within walking distance of the Navy Yard; the harbor water shuttle runs only until 8 p.m. (6 p.m. on weekends), and is therefore unlikely to provide meaningful transportation alternatives for restaurant and hotel patrons; only limited bus access is available near the Navy Yard; and the MGH shuttle cited by the proposal is intended only to be used by employees and patients of MGH. In fact, the LDA proposal recognizes that the project is not viable if residents and others must walk a few hundred feet to a valet parking facility in either Flagship Wharf or on Parcel 2A3; it is clearly unrealistic to expect any of these people to walk to a bus stop outside the Navy Yard.

Environmental

The proposal pays only cursory heed to the environmental impact of this project. This proposal requires extensive analysis to avoid putting public health and natural resources at risk.

The project site is in an area that had been an industrial shipbuilding and repair facility for many years. LDA recently encountered serious contamination on Parcel 4 in the Navy Yard when it began to actually prepare that site for construction (DEP Release Tracking Number 3-22380, where oil and hazardous material contamination was reported to DEP in December 2003). A better job evaluating the environmental issues on Pier 5 should be done at this stage, not when site preparation has begun. Pier 5 is in deteriorating condition. There is no assurance that commencing the preparation needed to build a structure of the size contemplated by the proposal will not unearth solvents, oil, PCBs, and similar contaminants.

There has been no serious attempt to address the impact of increased traffic on air quality or the impact of construction and shadows on wildlife and on the Boston Harbor cleanup project generally. LDA has offered no real mitigation to diminish the effects of this project on Boston Harbor and the surrounding community.

Construction Impacts

In addition to the traffic issues discussed above, the proposal is also deficient in how it addresses the impact to the area during construction.

The proposal briefly notes that “intermittent increases in noise levels will occur in the short-term during construction.” In fact, the acoustics in this area of Boston Harbor magnify and redirect sound, as the City of Boston knows from frequent residential complaints about reverberating noise from harbor cruises that pass by the area.

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. Therefore, state of the art construction mitigation procedures are required to protect the health of nearby residents and their children.

The proposal also gives short shrift to the effect on historic and archeological resources, conveniently disregarding Boston Harbor's protected status with respect to archeological resources under rules adopted in connection with the "Big Dig."

Financial Viability of the Developer

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 becomes 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.

Request for Single EIR

Given the woefully inadequate level of detail in the proposal, it is unreasonable to permit LDA to file a single EIR. This proposal clearly requires extensive analysis and review, beginning with LDA's blatant disregard for the application of Chapter 91 to the project. We strongly urge you to require LDA to comply with the normal development process of filing both preliminary and final EIRs, so that the community and appropriate agencies have the opportunity to give this proposal the extensive and critical review that it clearly needs.

Conclusion

LDA should not be allowed to short-circuit the well-established process for regulatory and community input on development projects, particularly in this case, which involves a callous attempt to construct an ill-conceived, carelessly planned project on one of the Commonwealth's most precious natural resources, our public tidelands. Even if the 1991 MHP is determined to remain valid, the Navy Yard in 2004 is a far different place than it was in 1991. The area is more congested and developed, substantial additional development is underway or contemplated on Parcels 4, 5, 6 and 7. Pier 5 is an inappropriate place for the project currently being proposed. However, there are many areas of the Navy Yard away from water's edge that could use responsible development.

It would make sense for this type of project to be built on parcels that do not present the same challenges as Pier 5, and to use Pier 5 for a true Special Public Destination Facility of the type contemplated by Chapter 91 for the benefit of all residents of and visitors to Boston.

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

Very truly yours,

/s/ Nadine Broude

Nadine Broude

/s/ Paul Broude

Paul Broude