

I. Regulatory History

In addition to state regulatory restrictions, including those of Chapter 91 and the Waterways Regulations, the Charlestown Navy Yard is subject to a variety of city planning requirements. The BPDA provided the Proponents with these various documents in the RFP. As these city and state requirements are layered a top one another, it can be difficult to distinguish which regulatory elements are relevant to the current Pier 5 proposals at issue. Accordingly, CLF offers the following brief summary of these materials to generally inform various stakeholders of this complex regulatory web.

In 1991, the Secretary of the Executive Office of Environmental Affairs (EEA) approved the City's Boston Harborpark Plan. The Secretary's Decision on the City of Boston Request for Approval of the Boston Harborpark Plan ("Secretary's 1991 Harborpark Plan Approval") contained a variety of conditions, including a directive that the City create two additional planning guidelines and standards which directly pertain to the redevelopment of Pier 5: a set of guidelines for facilities of private tenancy over water to "avoid conflict and minimize incompatibility with the operation of nearby water-dependent and/or public activities" and an amendment to the Harborpark Plan which would "develop a network of 'special public destination facilities' [(SPDF)] within interior spaces along or near the Harborwalk, primarily at the ground level." Secretary's 1991 Harborpark Plan Approval at 34 and 35.

In the years following the approval of the Harborpark Plan, a developer submitted a proposal for a residential project at Pier 5 ("former Pier 5 proposal").¹ Although this development never came to fruition, the former Pier 5 proposal triggered the advancement of the two Harbor Park Plan requirements discussed above. Consequently, the City published the Charlestown Navy Yard Waterfront Activation Network Plan and the Charlestown Navy Yard Water-Dependent Use Management Plan in 2007. As required by the Secretary's 1991 Approval of the Harborpark Plan, these two documents were subsequently approved by the Secretary in the 2008 Compliance Review and Decision on the City of Boston's Charlestown Navy Yard Waterfront Activation Network Plan and Water-Dependent Use Management Plan ("Secretary's 2008 Decision"). While both the Waterfront Activation Network Plan and the Water-Dependent Use Management Plan were conceived "in the context of the [former] Pier 5 proposal," they created standards relevant to any redevelopment of Pier 5 including the current proposal review process. Secretary's 2008 Decision at 3. CLF's following comments will address these various standards and requirements as appropriate.

¹ The former Pier 5 proposal was reviewed through both the City of Boston's Article 80 process and the state's Massachusetts Environmental Policy Act (MEPA). *See* Secretary's 2008 Decision at 3. The Charlestown Navy Yard Waterfront Activation Network Plan provides the following description of the former Pier 5 proposal: "The current development proposal for Pier 5 includes 89 residences and no less than 75% of the ground floor dedicated to facilities of public accommodation, a bed and breakfast and café and special public destination facilities. The project will extend Harborwalk along Pier 5 to new open space. The exterior space will be designed and programmed as an Interactive Maritime Park as suggested by this Plan." The Charlestown Navy Yard Waterfront Activation Network Plan at 56.

II. Residential “Marinas” and Proper Public Purpose

Pier 5 is located entirely on Commonwealth tidelands. As stated by the Waterways Regulations, the Massachusetts Department of Environmental Protection (DEP) shall not issue a permit for fill or construction on Commonwealth tidelands unless “said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands.” 310 CMR 9.31(2). If the project consists of a water-dependent use, DEP will presume the project fulfills this public benefit requirement. 310 CMR 9.31(2)(a). However, if the project is not a water-dependent use, the Waterways Regulations dictate a variety of required conditions to ensure that the development project results in a proper public benefit. *See* 310 CMR 9.53(2).

Two of the three proposals envision a residential area composed of floating “vessels.” The Proponents of both Navy Blue and the Eco Pier state that their respective proposal would create a “marina” of these residential vessels. While Navy Blue, LLC calls these residences “live aboard vessels,” 6M Development refers to them simply as a “barge or large vessel.” For the purposes of this letter, CLF will refer to the residential units of either project as “floating housing units.” Both Proponents believe that their alleged marina would qualify for water-dependent status and would therefore exempt their project from the various public benefit requirements imposed by the Waterways Regulations.² As outlined below, this argument is patently untrue and finds no support in the regulatory scheme.

As a preliminary matter, we note that the Waterways Regulations plainly state that DEP will not find “housing units and other residential facilities” to be water-dependent uses of Commonwealth tidelands. 310 CMR 9.12(2)(f). Although Navy Blue, LLC and 6M Development seek to disguise their redevelopment projects as “marinas,” the predominant purpose of either proposal is to create a large residential community. The Proponents should not be permitted to circumvent this unambiguous regulatory requirement through simple and deceptive word choice. Given this and other clear regulatory requirements with which both the Eco Pier and Navy Blue proposals do not align, we are disappointed that the BPDA allowed these proposals to proceed this far in the process, especially without providing the public with the necessary regulatory context with which to evaluate the proposals. We note that conformity with zoning and regulatory restrictions is both legally required and falls within the purview of the RFP’s second Evaluation Criterion: “Exceptional Design, Development Program and Public Realm Contribution.” *See* RFP at 33. Allowing proposals that clearly fail to meet regulatory requirements to advance in the selection process does not serve the BPDA’s goal of facilitating a feasible and timely redevelopment of the pier.

² We note that 6M Development explicitly states their intention to circumvent Chapter 91 requirements through a water-dependent “marina” designation: “In order to comply with Chapter 91 without the need to amend the Municipal Harbor Plan or seek other legislative action, the spine of the pier, including the parks, dockage, gangways, saltmarsh, and any other structure is envisioned to be permitted as a marina[.] The floating blocks of housing are then designed to be detachable and movable from their tethered locations. This design makes each block of housing a barge or vessel rather than real affixed property. Accordingly, the project and blocks of housing will be subject to applicable marine vessel requirements.” *See* Eco Pier Proposal, Exhibit E: Permitting Approach.

A. Required Public Benefits

6M Development and Navy Blue, LLC’s attempt to classify their proposals as water-dependent is founded upon a misinterpretation of the very purpose of the Public Waterfront Act. Chapter 91 was created not as a complex zoning mechanism, but as an extension of the Public Trust Doctrine which originates from ancient principles of Roman law. According to the Institutes of Justinian, “the following things are by natural law common to all—the air, running water, the sea, and consequently the seashore. No one therefore is forbidden access to the seashore.” J. Inst. 2.1.1

As centuries have progressed, the various states of our own nation implemented their own statutes to protect their respective public tidal lands. Massachusetts’ is found in Chapter 91 and its implementing regulations. Accordingly, the Waterways Regulations restrict the usage of Commonwealth tidelands to those which the original Public Trust Doctrine endeavored to protect. These are called “water-dependent uses” or those which “require[] direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters.” 310 CMR 9.12(2). This requirement asks not whether a project could feasibly be located on tidelands in spite of water; it mandates that DEP consider whether the project’s use requires that it *must* be located on or near Commonwealth tidelands.

In select situations where a non-water dependent development project occurs on Commonwealth tidelands, DEP requires that the project “promotes public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes.” 310 CMR 9.53. In order to promote such public use and enjoyment, the Waterways Regulations require nonwater-dependent use projects to include a variety of public benefits. These include, but are not limited to, facilities of public accommodation (“FPAs”), exterior open spaces for active or passive public recreation including parks and plazas, as well as water-dependent use zones (“WDUZ”) where possible.

The Waterways Regulations and associated documents require substantial offsets to compensate for the private residential use of Pier 5. Facilities of private tenancy are prohibited on pile-supported structures under the Waterways Regulations. 310 CMR 9.51(3)(b). However, if the Harborpark Plan is determined to be effective, residential uses are permitted on the second floor of a Pier 5 redevelopment project, as long as these uses are “accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior [FPAs] or water-based public activities.” Harborpark Plan at 34. Furthermore, the ground floor must be devoted to FPA spaces “at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy.” 310 CMR 9.53(2)(b)(1). These include interior SPDF spaces as outlined by the 2007 Charlestown Navy Yard Waterfront Activation Plan. Acceptable interior SPDF uses include at least 2,000sf for dedicated use by Courageous Sailing, a community-based non-profit discussed in more detail in Section IV below. The Charlestown Navy Yard Waterfront Activation Plan additionally envisions a large maritime interactive park located at the end of Pier 5 to function as an exterior SPDF. Charlestown Navy Yard Waterfront Activation Network Plan at 43. Additional open space requirements include minimum setback lengths, or a WDUZ, of 19 feet and 100 feet along Pier 5’s perimeter and

terminal end, respectively to ensure public access to the waterfront and the continuation of the Harborwalk.³ Charlestown Navy Yard Water-Dependent Use Management Plan at 1-2.

The Proponents of the Navy Blue and the Eco Pier proposals attempt not only to privatize Commonwealth tidelands, but to additionally deprive residents of the public benefits required by the Waterways Regulations and associated documents which aim to compensate for the loss of this public space and the uses which flowed tidelands uniquely engender. We urge the BPDA to promptly reject these proposals to enforce Bostonian resident's rights under the Public Waterfront Act. A failure to do so will needlessly devote city resources and time to project proposals which will almost certainly fail to obtain a state Waterways License from the DEP.

B. Floating Housing Units are not "Vessels"

In order to qualify for water-dependent status, the floating housing units of the Eco Pier and Navy Blue proposals must consist of "vessels" under the regulatory scheme. If these floating housing units are not "vessels," the Proponents' alleged "marinas" would consist of nothing more than a series of waterfront townhomes with adjacent docks. Section 38 of the Public Waterfront Act provides the following definition of the term "vessel":

[A] boat or watercraft of every description, motorized and non-motorized, except a seaplane on the water, *used or capable of being used as a means of transportation on water* including, but not limited to, documented boats and ships, flat-bottomed boats, barges, scows and rafts and including all equipment, modes of power and property aboard the vessel.

(Emphasis added). The floating housing units proposed by 6M Development and Navy Blue, LLC do not fall under this definition because the floating housing units of both proposals will neither be "used" nor "capable of being used as a means of transportation on water."

In 2013, our nation's highest court issued an opinion which supports our assertion. In *Lozman v. City of Riviera*, the Supreme Court examined the term "vessel" as applied to a 60-foot by 12-foot floating home under the Rules of Construction Act.⁴ *Lozman v. City of Riviera, Florida*, 568 U.S. 115 (2013). Although originating from two different statutes, this definition of "vessel" is strikingly similar to that of Chapter 91 quoted above. In fact, the *Lozman* case turned on the issue of the phrase "used or capable of being used as a means of transportation on water." Ultimately, the Court found that the floating home was not a vessel because it did not meet this water transport criterion.

³ The Harborpark Plan reaffirmed the Waterways Regulations requirements that the WDUZ "extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet" (310 CMR 9.51(2)) and "along all sides of piers and wharves, the [WDUZ] extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than 10 feet." (310 CMR 9.51(3)). The current pier is 664 feet long and 125 feet wide. RFP at 5. Therefore, Pier 5 as it currently stands requires a perimeter setback of roughly 19 feet and a 100 feet setback from its terminal end.

⁴ "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 USC §3.

In their assessment of the *Lozman* floating home's water transport abilities, the Court created a reasonable observer test: "[I]n our view a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water." *Id.* at 118. When concluding that the *Lozman* floating home would not successfully meet this standard, the Court summarized the floating home's various characteristics. Similar to the floating housing units of both the Eco Pier and Navy Blue, the *Lozman* floating home "had no rudder or other steering mechanism...it had no special capacity to generate or store electricity but could obtain that utility only through ongoing connections with the land...Its small rooms looked like ordinary nonmaritime living quarters. And those inside those rooms looked out upon the world, not through water-tight portholes, but through French doors or ordinary windows." *Id.* at 122.

Likewise, neither 6M Development's nor Navy Blue, LLC's floating housing units are designed to a *practical degree* for carrying people or things over water. These structures are simply residential buildings built atop a barge and exhibit none of the characteristics commonly found on marine vessels. Further, although the floating housing units will originally be towed short distances into place within the redevelopments, they are not designed for further substantial movement and will not leave their assigned locations with the exception of sparse occasional maintenance. No reasonable observer would look upon these modern residential structures and conclude that they were designed for water transport; all will see through the Proponent's thinly veiled attempt to evade statutory and regulatory requirements.

III. Public Amenities and Facilities of Public Accommodation

In addition to the public benefits outlined in Section II above, the RFP directs proponents to "preserve and interpret the historic Building 123 Pump House." RFP at 10. As discussed, both the Navy Blue and the Eco Pier proposals falsely claim a water-dependent use status. Accordingly, these proposed projects fall short of the many public benefit requirements imposed on the Pier 5 project site by Chapter 91 and other various underlying regulatory guidance, including the Harborpark Plan. We note that Navy Blue and the Eco Pier's failure to provide robust public amenities is both contrary to law and an explicit Development Objective of the RFP "to promote residential and commercial activities compatible with the Waterfront and *aligned with the needs of visitors* as well as those who live and work in the Navy Yard." RFP at 10 (emphasis added). Navy Blue, LLC and 6M Development must redesign their proposals to meet these public benefit requirements if either project moves forward in the RFP process.

In contrast, the New Pier 5 proposal meets and occasionally exceeds many of these regulatory requirements. The following subsection will focus solely on public amenities and FPA spaces provided by each of the three proposals. Accordingly, this section will not address public benefits associated with open space.

A. Navy Blue

Navy Blue offers few public amenities and limited FPA space. The proposal's only public amenity space, which may be construed as an FPA but is never explicitly identified as such in the project's proposal, is the restored Building 123 Pump House. The Navy Blue project

would create a total of 116,300 sf. Navy Blue Proposal at 4. CLF notes that the area of the Building 123 Pump House, approximately 13,000sf, is not nearly enough to satisfy Pier 5's regulatory requirement to include FPA spaces which are "at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy." 310 CMR 9.53(2)(b)(1). Further, the Pump House is not located with the rest of the redevelopment, and the Proponent should be providing FPA space throughout the project site.

Although the Proponent does provide extensive pedestrian access throughout the project site, it fails to describe any other public amenities. The Navy Blue proposal briefly mentions bathrooms in the lobby at Flagship Wharf and the Building 123 Pump House but does not state whether they will be publicly accessible. The Proponent also mentions boat slips within their development project; however, these slips are not described in any detail in the project proposal. Any slips that are a part of the redevelopment of Pier 5 should be made available to public recreational boaters and not restricted to tenants of the site.

B. The Eco Pier

Similar to the Navy Blue proposal, 6M Development's proposed Eco Pier will restore the Building 123 Pump House and transform it into a small, publicly accessible café. *See* Eco Pier Proposal at 25. In addition, the Eco Pier proposal also includes various dockage space throughout the eastern side of Pier 5. The Proponent fails to indicate whether these docks will be publicly accessible or restricted to tenant access. At the pier's end, 6M Development proposes a public restaurant space. The Proponent does not indicate whether any public restrooms will be available within the restaurant space or elsewhere onsite.

In total, the Eco Pier will create 1,200 sq of retail space, 2,500 sq of restaurant space, and 6,100 sq of dockage space. Eco Pier Proposal at 14. The Eco Pier proposal does not indicate the total square footage of the development's ground floor. However, CLF assumes that these sparse public amenities and facilities do not cumulatively create an amount which is "at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy." 310 CMR 9.53(2)(b)(1).

C. The New Pier 5

The overwhelming majority of the New Pier 5's ground floor is dedicated FPA space. This proposal includes a grocery store, gym, restaurant, co-working space, six retail units, and a retail storage space. *See* New Pier 5 Proposal, Circulation Plan. We encourage the Proponent to minimize the "Residential Service Area" by reducing or eliminating vehicle access to Pier 5. Specifically, we are concerned that the proposal depicts vehicular traffic on the Harborwalk, which would be shared with pedestrians and cyclists.

Urbanica's proposal also meets the Water Activation Network Plan's requirement that 2,000sq of interior space be devoted to SPDF. As discussed in more detail below, CLF is pleased that the Proponent has dedicated this space to the community-based non-profit, Courageous

Sailing. The Proponent should provide further details regarding basic public amenities including water fountains, public restrooms, and outdoor bicycle storage in any future project documents.

IV. Impacts to Courageous Sailing on Pier 4

Courageous Sailing is a non-profit “educational center for community sailing and youth development” established in 1987.⁵ The Charlestown community, as well as Bostonians more broadly, have consistently shown great support for this organization. In 2008, the Secretary noted the robust community support for Courageous Sailing’s tenancy as a SPDF on Pier 5. Secretary’s 2008 Decision at 13. In fact, community support for Courageous Sailing was so strong in the former Pier 5 proposal process, that the former developer eliminated the project’s planned marina in order to avoid impeding upon Courageous Sailing’s ability to access the water sheet. *See* Charlestown Navy Yard Water-Dependent Use Management Plan at 4-4.

The Waterways Regulations explicitly protect adjacent water-dependent uses from displacement: “The project shall not significantly disrupt any water-dependent use in operation, as of the date of license application, at an off-site location within proximate vicinity of the project site.” 310 CMR 9.36(3) (emphasis added). Furthermore, non-water dependent facilities of private tenancy “must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which can reasonably be expected to locate on or near the project site.” 310 CMR 9.51(1). Development at Pier 5 is required to maintain a minimum setback of 25 feet from the property line separating Pier 5 and Pier 4 as well as a corresponding minimum navigable fairway of 50 feet. Charlestown Navy Yard Water-Dependent Use Management Plan at 4-3. Additionally, the current RFP issues a blanket protection to Courageous Sailing when stating “[p]roposals should complement the activities of Courageous Sailing on Pier 4 and should not interfere with their normal operations.” RFP at 11.

Unfortunately, all but one proposal would drastically hinder Courageous Sailing’s operations. Both the Navy Blue and Eco Pier proposals would decrease Courageous Sailing’s access to the local water sheet. Given the importance and robust community support for this non-profit, the Navy Blue and Eco Pier proposals’ failure to shield Courageous Sailing negatively impacts their respective Contributions to the Public Realm, an important Evaluation Criteria of the current RFP. In contrast, Urbanica’s New Pier 5 proposal both maintains Courageous Sailing’s water sheet area and provides FPA space for the non-profit institution on the ground floor of their proposal. CLF strongly supports Courageous Sailing’s operations and urges the BPDA to prioritize the protection of this beloved community maritime organization.

A. Navy Blue

As stated above, the Navy Blue proposal would significantly limit Courageous Sailing’s ability to access the water sheet. Although the Proponent claims that they have “agreed to work collaboratively to explore an array of ideas that would help facilitate [Courageous Sailing’s] mission,” Navy Blue, LLC fails to provide any satisfactory mitigation measures to protect operations at the non-profit organization. Navy Blue Proposal at 7. The Proponent offers five immaterial, and at times unrealistic, mitigation efforts: to move Courageous Sailing’s vessels to

⁵ <https://courageoussailing.org/about/courageous/mission/>

the western side of Pier 4, to shift some of the Proponent's property at Pier 6 further east, to provide Courageous Sailing with use of the Pump House as a classroom, to renovate the water and sewer lines at Courageous Sailing's existing Pier 4 Chandlery building, and to sponsor educational opportunities. *Id.*

The Proponent provides two impractical solutions involving the substantial movement of existing infrastructure. Currently, Courageous Sailing stores the majority of their fleet on the eastern side of Pier 4. This location is ideal for novice and beginner sailors to safely access the water sheet because there is minimal water traffic between the two piers. In contrast, the eastern side of Pier 4 sees more boat traffic due to the water taxi stop at the Charlestown Navy Yard Ferry Terminal. The Navy Blue proposals suggests "relocating [Courageous Sailing's] non-powered vessels to the west side of Pier 4." Navy Blue Proposal at 7. While moving these vessels to the pier's western side would provide the Proponent with enough space to build their proposed redevelopment project, it would force Courageous Sailing's vessels into a more crowded and dangerous channel. Similarly, Navy Blue's second solution, to move some of the Proponent's existing property at Pier 6, does not address the issue of restricted access to Pier 4. Unless the Proponent is moving the entirety of Pier 5 as well, this offer will not make up for Courageous Sailing's loss of water sheet access.

The use of the Building 123 Pump House as a classroom space for Courageous Sailing is welcome but again fails to address the Courageous Sailing's water sheet access needs. Furthermore, the Proponent is leaving the use of the restored Pump House space for community access at large and it remains unclear whether Courageous Sailing is guaranteed use of this space. An extra classroom does not lessen the impact of Navy Blue's development on their ability to use the Harbor. Likewise, neither renovated water and sewer lines nor sponsored educational opportunities would address the main issue of the non-profit's water sheet access. We further note that the partial dedication of a renovated Pump House serving as a "community gathering space," does not satisfy the Charlestown Navy Yard Water-Dependent Use Management Plan's vision to provide the non-profit with interior SPDF space on the pier itself. *See* Charlestown Navy Yard Water Activation Network Plan at 40.

The Proponent must implement more robust solutions to guarantee Courageous Sailing's continued use of the water sheet. We recommend Navy Blue limit construction on the western side of Pier 5 and engage in further communications with Courageous Sailing to minimize the negative impact of their development. In particular, the Proponent should remove any boat slips on the western side of their residential development to avoid conflicts between Courageous Sailing's participants and recreational boat users. The BPDA should measure the distance between the property setback of Navy Blue and the width of the navigable channel between the two piers to ensure that this proposal accords with the minimum regulatory standards as described above.

B. The Eco Pier

Unlike the Navy Blue proposal, the Eco Pier does not include recreational boat slips between the two piers. However, 6M Development's Eco Pier proposal will impede upon Courageous Sailing's water sheet access and therefore their ability to successfully carryout their mission to "transform lives through sailing programs." In contrast to the Navy Blue project, the

Eco Pier proposal offers no substantive mitigation to “complement the activities of” Courageous Sailing. In fact, the Eco Pier proposal only mentions Courageous Sailing a single time in which it simply states that initial conversations with Courageous Sailing were “positive and informative.” Eco Pier Proposal at 15.

We find this omission both troubling and confusing as it runs contrary to explicit and clear objectives of the RFP, city guidance, and regulatory requirements. If this proposal moves forward, the BPDA should require all proponents including 6M Development to mitigate any interference with Courageous Sailing’s activities. In particular, the BPDA should require 6M Development to decrease the area of water sheet their proposed “live aboard vessels” will encompass on the western side of Pier 5. Likewise, the BPDA should ensure that the Navy Blue proposal meets the regulatory minimum channel width and distance between the two property lines.

C. The New Pier 5

In contrast to the Navy Blue and the Eco Pier proposals, Urbanica’s New Pier 5 project both preserves Courageous Sailing’s water sheet access and actively supports the non-profit through the inclusion of a 2,000 square foot FPA space dedicated to the organization’s administrative and educational space needs. *See* New Pier 5 Proposal at 139. Urbanica highlights that this space will allow Courageous Sailing to continue to offer programming throughout the winter months in a heated indoor space in contrast to their existing facilities. This accords with the Charlestown Navy Yard Waterfront Activation Network Plan which lists Courageous Sailing as an acceptable tenant for a SPDF on Pier 5 in a space no less than 2,000 sf. *See* Charlestown Navy Yard Waterfront Activation Network Plan at 67. Project renderings additionally show that the New Pier 5 will provide docking space for a portion of the Courageous Sailing fleet. *See* New Pier 5 Proposal, Circulation Plan. Lastly, the New Pier 5 proposal also restores Building’s 123 Pump House through minimal renovations so as to “avoid altering the original character of the structure.” New Pier 5 Proposal at 46.

CLF is supportive of these measures and believes they set the bar for what BPDA should consider acceptable and complementary measures to support Courageous Sailing’s activities. We again encourage the BDPA to ensure that the property setback of the New Pier 5 and the navigable channel meet the regulatory minimums imposed by the Harborpark Plan and associated documents.

V. Open Space and Pier Setbacks

The Waterways Regulations state that no more than 50% of a Project site may be occupied by nonwater-dependent buildings or structures. 310 CMR 9.51(3)(d). The Harborpark Plan reaffirmed this regulatory constraint and similarly requires that any project consisting of Facilities of Private Residency over flowed tidelands to consist of 50% publicly accessible open space. Harborpark Plan at 32. On Pier 5, the Harborpark Plan requires projects to maintain a 100 foot setback from the end of a pier and 19 foot setbacks from all sides of a pier to allow for perimeter Harborwalk access.⁶ Harborpark Plan at 74. The Charlestown Navy Yard Waterfront Activation Network Plan envisions a large “maritime interactive park” at the end of Pier 5 which

⁶ For an explanation of these required setback lengths, see footnote 3.

would serve as an additional external SPDF on the pier. The Charlestown Navy Yard Waterfront Activation Network Plan at 66.

As discussed in Section II, the Navy Blue and Eco Pier proposals attempt to shirk these requirements by falsely claiming water-dependent status. CLF strongly opposes these claims and advocates that they hold no legal merit. Accordingly, we analyze all proposals in the context of the nonwater-dependent requirements imposed on redevelopments at Pier 5. We are deeply concerned by the minimal open space provided by the Navy Blue and Eco Pier proposals and urge the BPDA to require these projects to meet these statutory prescribed minimums.

A. Navy Blue and the Eco Pier

Publicly accessible open space is a vital aspect of Pier 5's redevelopment. Put simply, the Navy Blue proposal fails to provide an adequate quantity and quality of open space. The Navy Blue proposal does not include an estimate of the percentage of the proposal's open space and explicitly claims that it does not need to meet the statutorily prescribed minimum of 50%. Navy Blue Proposal at 25. Although the proposal features small "pocket parks" throughout the floating residential units and public pedestrian pathways, it is clear that this proposal falls far short of the Waterways Regulation's 50% open space requirement. In addition, the proposal references a "linear park" throughout their project description. We believe that this "linear park" is simply an imaginative name for the project's central walkway, and we caution against this deceptive language.

The open space that the Navy Blue proposal *does* provide is not adequately detailed and appears to have limited vegetation. Similarly, 6M Development's Eco Pier proposal does not provide an estimate of the project's open space. The Eco Pier includes small courtyard parks, deemed "passive green space," throughout the project site which will feature native species. These parks primarily function as small courtyards within the exterior of groups of floating housing units. Inevitably, these courtyards will not be welcoming to visiting non-residents. We urge the BPDA to require 6M Development to meet the statutorily required minimum of 50% open space and to include public way finding signage to make clear that these spaces are not reserved for Eco Pier residents. If the Eco Pier proposal moves forward through the permitting process, future planning documents must include an estimate of publicly available open space. Furthermore, we note that the Harborpark Plan requires all open space to be handicapped accessible. Harborpark Plan at 31.

Under the Harborpark Plan, both the Eco Pier and Navy Blue proposals must include setbacks from the perimeter and end of the pier structure. Once again, the Eco Pier and Navy Blue projects fall well short of these requirements; both projects provide only for a long central "artery" throughout the center of a grouping of floating residential units. The Proponents must include both perimeter access and a setback from the end of the pier structure in accordance with the standards provided at 310 CMR 9.51(2)-(3). *See* Harborpark Plan at 74. Further, each proposal should include a large green space at the end of the pier to function as a maritime interactive park as envisioned by the Charlestown Navy Yard Waterfront Activation Plan.

B. The New Pier 5

Urbanica's New Pier 5 proposal also does not provide an estimate of the project's publicly available open space. The proposal includes a large rooftop community garden/urban farm which is designed in part to reduce the impacts of urban heat effects around the building. In addition, New Pier 5 contains a public park at the end of the pier. This park functions both as publicly available open space and as a 100 foot setback from the end of the pier. Additionally, the New Pier 5 proposal allows for substantial public access around the perimeter of the building along a 19 foot pedestrian pathway.

As mentioned in BPDA's public meeting on February 8, 2021, CLF is concerned that the Proponent seeks to include the rooftop garden, or other green roof spaces, within open space calculations. This is not permitted under the Harborpark Plan or the underlying Waterways Regulations. To ensure conformance with these regulatory requirements, we request that Urbanica provide a breakdown of open space calculations to demonstrate that the 50% requirement is met without the rooftop gardens and green spaces. We appreciate that the Proponent includes perimeter access which meets regulatory minimums. However, CLF urges the Proponent to reduce vehicular access on-site. As demonstrated within the proposal's Circulation Plan, pedestrians, cyclists, and vehicles will share access on the eastern perimeter of the pier. The Proponent must take the necessary steps to ensure that pedestrian and cyclist travel will not be hindered by motored vehicles. Furthermore, as a matter of state policy, DEP has frequently disallowed vehicular access in the WDUZ or on the Harborwalk due to obvious use conflicts that would discourage water-dependent activity or public use and enjoyment of the water-dependent use zone.

VI. Climate Adaptation and Resiliency

One of the key Development Objectives of the RFP is "to promote balanced, climate-resilient growth along Boston's shoreline." RFP at 10. As all stakeholders are aware, the Charlestown Navy Yard, including the Pier 5 project site, is highly vulnerable to flooding. The Climate Ready Boston report describes the Navy Yard as one of the few areas of Charlestown exposed to near-term flood risk and as a zone that will "be exposed to high tides later in the century." Climate Ready Boston, Final Report at 154. Given this current and future flood vulnerability, it is imperative that Proponents provide robust resilience measures to protect this waterfront pile-supported structure and the greater Charlestown Navy Yard community from rising sea levels and storm surge.

A. Navy Blue

We were troubled to see the Proponent state that "[r]ising sea levels are obviously easily mitigated with floatation devices engineered for anticipated increases." Navy Blue Proposal at 34. Flotation devices are important, but they are not a replacement for more permanent flood and storm surge prevention measures. The Proponent must explain what steps they will take to protect residents in the case of a significant storm or tidal flooding. Such an explanation should include details on evacuation routes in case of an emergency and what level of flooding due to storm surge the Project will be prepared to handle. In addition, the Proponent fails to include any information regarding sheltering in place safeguards as required by the RFP. *See* RFP at 15.

While we presume that residents of the floating housing units may shelter within their homes, visitors and community members must additionally be provided with adequate accommodations “during an extreme weather event or an extended disruption of utility services.” *Id.*

We were pleased to see the consideration given to a wave attenuator at the site, however, nothing short of raising the elevation of the build site to 19.5 Boston City Base (“BCB”), as required by the RFP, and including on-site measures to mitigate nuisance flooding, will be sufficient to protect Pier 5 from flooding. Wave attenuators can be a useful strategy, and we support a feasibility study of a 20’ attenuator to prevent erratic tidal flooding, but a wave attenuator alone will not provide adequate protection against sea level rise or storm surge for this site or the neighborhood. The Proponent does mention raising piles above the base flood elevation in their project submission, but they did not provide any details about what elevation they would raise these pilings to, and we strongly urge the Proponent to raise them to at least a minimum design flood elevation of 19.5 Boston City Base (“BCB”) as required by the RFP. RFP at 15.

Of the three proposals, Navy Blue appears to include the least amount of foliage. We urge the BPDA to require the Proponent to include more green space throughout the development including grass and other native planting on the “pocket parks”. Based on the proposal’s renderings, Navy Blue will create between 4 and 6 small “water courtyards” or “pocket parks.” While the project proposal superficially mentions tree plantings and native grasses, it fails to provide an estimate quantity of either feature. Most project renderings show only three trees within each “pocket park.” Each tree is surrounded by a very small ring of grass. The remainder of these parks are covered with wooden planking which greatly decreases the value of this open space. Future project documents should include an estimate of green, open space on the project site as well as a dedication to a specific number of trees throughout these “pocket parks.” Such space will alleviate some of the project’s urban heat effects and may help to capture a portion of water resulting from storm surge events.

B. The Eco Pier

The 6M Development proposal states that it will provide “unit owners” or “tenants” with a “communal space” in the event of extreme weather or an extended disruption of utility services. Eco Pier Proposal at 22. The Proponent should include adequate space and resources for community members and visitors to the Eco Pier in these emergency shelters. We further urge the Proponent to consider the addition of a feasibility study for a wave attenuator similar to that found within the Navy Blue Proposal to protect the project site from increased storm surge and various wave action.

Like the Navy Blue Proposal, the Proponent should include an estimate of the project’s green space and a dedication to a certain number of trees throughout the project’s courtyard parks. These green spaces will provide essential mitigation to urban heat effects throughout the project site.

C. The New Pier 5

In contrast to the other proposals, Urbanica’s New Pier 5 proposal includes several measures to increase the project site’s climate resiliency. As discussed above, the proposed

structure features many green spaces including a large green rooftop and maritime interactive park at the end of the pier. The green rooftop will mitigate both urban heat effects and capture a portion of storm surge waters. *See* New Pier 5 Proposal at 141. The Proponent should include an estimate of the total green space as well as tree planting along the Harborwalk in any future project documents.

In addition, Urbanica states it will elevate the new pier structure to accommodate sea level rise and storm surge. Unlike the other two proposals, the New Pier 5 will include a community gathering space for both residents and community members to shelter-in-place during emergency events. *Id* at 9. We request that Urbanica provide further details about the elevation of the site including the total proposed elevation above BCB so that it can be evaluated in the context of the RFP requirements and Climate Ready Boston data.

VII. Miscellaneous Redevelopment Requirements

We offer the following brief comments to address miscellaneous regulatory restrictions that are not encapsulated in the broad themes addressed above.

A. Building Height

The Waterways Regulations and all associated regulatory guidance state that the building height of any development on Pier 5 may not exceed 55 feet. The RFP lowers this height maximum to 35 feet to maintain conformity and compatibility with existing building heights in the area. *RFP* at 12. The Navy Blue and Eco Pier proposals do not exceed this height maximum.

However, Urbanica's New Pier 5 exceeds 35 feet throughout the development. Further confusing matters, the New Pier 5 proposal's Zoning Analysis provides a maximum height of a range between 35 and 45 feet while contradictorily listing this range as 35 to 55 feet within the project's Climate Resiliency Checklist and elsewhere throughout the proposal materials. We urge the Proponent to clarify this discrepancy and to limit the building's height where possible. CLF notes that the RFP calls for a maximum height of 35 feet, not a "building average."

B. Development without Displacement & Affordable Housing

The RFP includes a "Development without Displacement Plan" as a Comparative Evaluation Criterion for the Pier 5 redevelopment proposals. This statement should address "the Proponent's planned approach to assisting the current residents of Charlestown to remain in their community in the future, afford housing, and find pathways to economic opportunity." *RFP* at 35. The issue of displacement is inextricably tied to affordable housing. CLF strongly supports affordable housing development on the waterfront if and when such development complies with the Waterways Regulations. We note that the Harborpark Plan strongly recommends that 25% of any housing units built on Commonwealth tidelands within the Charlestown Navy Yard are affordable. *See* Harborpark Plan at 26. If the Harborpark Plan is determined to be effective, BPDA should encourage developers to fulfill this requirement by developing affordable housing units on-site.



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April 5, 2021

Submitted via Electronic Mail: morgan.e.mcdaniel@boston.gov

Morgan McDaniel
Boston Planning & Development Agency
One City Hall Square
Boston, MA 02201

Subject: Comments on Pier 5 Redevelopment Proposals

Dear Ms. McDaniel:

Conservation Law Foundation (CLF) provides the following comments on the proposals for the redevelopment of Pier 5 in the Charlestown Navy Yard. Pier 5 was originally constructed in the 1910s, redesigned in the 1940s, and is currently in unusable condition. The Boston Planning & Development Agency (BPDA) published a Request for Proposals (RFP) for the redevelopment of the pier in September of 2020. As a result of the RFP, three development proposals are currently under evaluation: The Eco Pier submitted by 6M Development, LLC, Navy Blue submitted by Navy Blue, LLC, and the New Pier 5 submitted by Urbanica, Inc.

In accordance with our organization's expertise, we focus our comments on the city and state regulatory requirements imposed by The Public Waterfront Act ("Chapter 91"), its associated Waterways Regulations, and various city planning documents. Our comments will address overarching concerns regarding the alleged water-dependent use of two of the three proposals and will then discuss the merits of all the proposals under broad themes. When relevant, our comments will reference the RFP's stated Development Objectives and Comparative Evaluation Criteria.

The BPDA should not allow the Navy Blue or the Eco Pier project to move forward without substantial modifications to bring either proposal into compliance with regulatory requirements, including but not limited to: (1) adequate square footage devoted to Facilities of Public Accommodation (FPAs), (2) the protection of existing water-dependent uses of Courageous Sailing, (3) and sufficient open space, including setbacks along the perimeter and terminal end of Pier 5. While Urbanica's New Pier 5 proposal meets many of these regulatory requirements, the BPDA should require Urbanica to clarify certain aspects of the proposal, including open space calculations, to ensure it is in compliance with Chapter 91 requirements. Further, all proposals should be required to provide additional analysis and resilience measures to address climate change effects at the site including storm surge and sea level rise.

I. Regulatory History

In addition to state regulatory restrictions, including those of Chapter 91 and the Waterways Regulations, the Charlestown Navy Yard is subject to a variety of city planning requirements. The BPDA provided the Proponents with these various documents in the RFP. As these city and state requirements are layered a top one another, it can be difficult to distinguish which regulatory elements are relevant to the current Pier 5 proposals at issue. Accordingly, CLF offers the following brief summary of these materials to generally inform various stakeholders of this complex regulatory web.

In 1991, the Secretary of the Executive Office of Environmental Affairs (EEA) approved the City's Boston Harborpark Plan. The Secretary's Decision on the City of Boston Request for Approval of the Boston Harborpark Plan ("Secretary's 1991 Harborpark Plan Approval") contained a variety of conditions, including a directive that the City create two additional planning guidelines and standards which directly pertain to the redevelopment of Pier 5: a set of guidelines for facilities of private tenancy over water to "avoid conflict and minimize incompatibility with the operation of nearby water-dependent and/or public activities" and an amendment to the Harborpark Plan which would "develop a network of 'special public destination facilities' [(SPDF)] within interior spaces along or near the Harborwalk, primarily at the ground level." Secretary's 1991 Harborpark Plan Approval at 34 and 35.

In the years following the approval of the Harborpark Plan, a developer submitted a proposal for a residential project at Pier 5 ("former Pier 5 proposal").¹ Although this development never came to fruition, the former Pier 5 proposal triggered the advancement of the two Harbor Park Plan requirements discussed above. Consequently, the City published the Charlestown Navy Yard Waterfront Activation Network Plan and the Charlestown Navy Yard Water-Dependent Use Management Plan in 2007. As required by the Secretary's 1991 Approval of the Harborpark Plan, these two documents were subsequently approved by the Secretary in the 2008 Compliance Review and Decision on the City of Boston's Charlestown Navy Yard Waterfront Activation Network Plan and Water-Dependent Use Management Plan ("Secretary's 2008 Decision"). While both the Waterfront Activation Network Plan and the Water-Dependent Use Management Plan were conceived "in the context of the [former] Pier 5 proposal," they created standards relevant to any redevelopment of Pier 5 including the current proposal review process. Secretary's 2008 Decision at 3. CLF's following comments will address these various standards and requirements as appropriate.

¹ The former Pier 5 proposal was reviewed through both the City of Boston's Article 80 process and the state's Massachusetts Environmental Policy Act (MEPA). *See* Secretary's 2008 Decision at 3. The Charlestown Navy Yard Waterfront Activation Network Plan provides the following description of the former Pier 5 proposal: "The current development proposal for Pier 5 includes 89 residences and no less than 75% of the ground floor dedicated to facilities of public accommodation, a bed and breakfast and café and special public destination facilities. The project will extend Harborwalk along Pier 5 to new open space. The exterior space will be designed and programmed as an Interactive Maritime Park as suggested by this Plan." The Charlestown Navy Yard Waterfront Activation Network Plan at 56.

II. Residential “Marinas” and Proper Public Purpose

Pier 5 is located entirely on Commonwealth tidelands. As stated by the Waterways Regulations, the Massachusetts Department of Environmental Protection (DEP) shall not issue a permit for fill or construction on Commonwealth tidelands unless “said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands.” 310 CMR 9.31(2). If the project consists of a water-dependent use, DEP will presume the project fulfills this public benefit requirement. 310 CMR 9.31(2)(a). However, if the project is not a water-dependent use, the Waterways Regulations dictate a variety of required conditions to ensure that the development project results in a proper public benefit. *See* 310 CMR 9.53(2).

Two of the three proposals envision a residential area composed of floating “vessels.” The Proponents of both Navy Blue and the Eco Pier state that their respective proposal would create a “marina” of these residential vessels. While Navy Blue, LLC calls these residences “live aboard vessels,” 6M Development refers to them simply as a “barge or large vessel.” For the purposes of this letter, CLF will refer to the residential units of either project as “floating housing units.” Both Proponents believe that their alleged marina would qualify for water-dependent status and would therefore exempt their project from the various public benefit requirements imposed by the Waterways Regulations.² As outlined below, this argument is patently untrue and finds no support in the regulatory scheme.

As a preliminary matter, we note that the Waterways Regulations plainly state that DEP will not find “housing units and other residential facilities” to be water-dependent uses of Commonwealth tidelands. 310 CMR 9.12(2)(f). Although Navy Blue, LLC and 6M Development seek to disguise their redevelopment projects as “marinas,” the predominant purpose of either proposal is to create a large residential community. The Proponents should not be permitted to circumvent this unambiguous regulatory requirement through simple and deceptive word choice. Given this and other clear regulatory requirements with which both the Eco Pier and Navy Blue proposals do not align, we are disappointed that the BPDA allowed these proposals to proceed this far in the process, especially without providing the public with the necessary regulatory context with which to evaluate the proposals. We note that conformity with zoning and regulatory restrictions is both legally required and falls within the purview of the RFP’s second Evaluation Criterion: “Exceptional Design, Development Program and Public Realm Contribution.” *See* RFP at 33. Allowing proposals that clearly fail to meet regulatory requirements to advance in the selection process does not serve the BPDA’s goal of facilitating a feasible and timely redevelopment of the pier.

² We note that 6M Development explicitly states their intention to circumvent Chapter 91 requirements through a water-dependent “marina” designation: “In order to comply with Chapter 91 without the need to amend the Municipal Harbor Plan or seek other legislative action, the spine of the pier, including the parks, dockage, gangways, saltmarsh, and any other structure is envisioned to be permitted as a marina[.] The floating blocks of housing are then designed to be detachable and movable from their tethered locations. This design makes each block of housing a barge or vessel rather than real affixed property. Accordingly, the project and blocks of housing will be subject to applicable marine vessel requirements.” *See* Eco Pier Proposal, Exhibit E: Permitting Approach.

A. Required Public Benefits

6M Development and Navy Blue, LLC’s attempt to classify their proposals as water-dependent is founded upon a misinterpretation of the very purpose of the Public Waterfront Act. Chapter 91 was created not as a complex zoning mechanism, but as an extension of the Public Trust Doctrine which originates from ancient principles of Roman law. According to the Institutes of Justinian, “the following things are by natural law common to all—the air, running water, the sea, and consequently the seashore. No one therefore is forbidden access to the seashore.” J. Inst. 2.1.1

As centuries have progressed, the various states of our own nation implemented their own statutes to protect their respective public tidal lands. Massachusetts’ is found in Chapter 91 and its implementing regulations. Accordingly, the Waterways Regulations restrict the usage of Commonwealth tidelands to those which the original Public Trust Doctrine endeavored to protect. These are called “water-dependent uses” or those which “require[] direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters.” 310 CMR 9.12(2). This requirement asks not whether a project could feasibly be located on tidelands in spite of water; it mandates that DEP consider whether the project’s use requires that it *must* be located on or near Commonwealth tidelands.

In select situations where a non-water dependent development project occurs on Commonwealth tidelands, DEP requires that the project “promotes public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes.” 310 CMR 9.53. In order to promote such public use and enjoyment, the Waterways Regulations require nonwater-dependent use projects to include a variety of public benefits. These include, but are not limited to, facilities of public accommodation (“FPAs”), exterior open spaces for active or passive public recreation including parks and plazas, as well as water-dependent use zones (“WDUZ”) where possible.

The Waterways Regulations and associated documents require substantial offsets to compensate for the private residential use of Pier 5. Facilities of private tenancy are prohibited on pile-supported structures under the Waterways Regulations. 310 CMR 9.51(3)(b). However, if the Harborpark Plan is determined to be effective, residential uses are permitted on the second floor of a Pier 5 redevelopment project, as long as these uses are “accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior [FPAs] or water-based public activities.” Harborpark Plan at 34. Furthermore, the ground floor must be devoted to FPA spaces “at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy.” 310 CMR 9.53(2)(b)(1). These include interior SPDF spaces as outlined by the 2007 Charlestown Navy Yard Waterfront Activation Plan. Acceptable interior SPDF uses include at least 2,000sf for dedicated use by Courageous Sailing, a community-based non-profit discussed in more detail in Section IV below. The Charlestown Navy Yard Waterfront Activation Plan additionally envisions a large maritime interactive park located at the end of Pier 5 to function as an exterior SPDF. Charlestown Navy Yard Waterfront Activation Network Plan at 43. Additional open space requirements include minimum setback lengths, or a WDUZ, of 19 feet and 100 feet along Pier 5’s perimeter and

terminal end, respectively to ensure public access to the waterfront and the continuation of the Harborwalk.³ Charlestown Navy Yard Water-Dependent Use Management Plan at 1-2.

The Proponents of the Navy Blue and the Eco Pier proposals attempt not only to privatize Commonwealth tidelands, but to additionally deprive residents of the public benefits required by the Waterways Regulations and associated documents which aim to compensate for the loss of this public space and the uses which flowed tidelands uniquely engender. We urge the BPDA to promptly reject these proposals to enforce Bostonian resident's rights under the Public Waterfront Act. A failure to do so will needlessly devote city resources and time to project proposals which will almost certainly fail to obtain a state Waterways License from the DEP.

B. Floating Housing Units are not "Vessels"

In order to qualify for water-dependent status, the floating housing units of the Eco Pier and Navy Blue proposals must consist of "vessels" under the regulatory scheme. If these floating housing units are not "vessels," the Proponents' alleged "marinas" would consist of nothing more than a series of waterfront townhomes with adjacent docks. Section 38 of the Public Waterfront Act provides the following definition of the term "vessel":

[A] boat or watercraft of every description, motorized and non-motorized, except a seaplane on the water, *used or capable of being used as a means of transportation on water* including, but not limited to, documented boats and ships, flat-bottomed boats, barges, scows and rafts and including all equipment, modes of power and property aboard the vessel.

(Emphasis added). The floating housing units proposed by 6M Development and Navy Blue, LLC do not fall under this definition because the floating housing units of both proposals will neither be "used" nor "capable of being used as a means of transportation on water."

In 2013, our nation's highest court issued an opinion which supports our assertion. In *Lozman v. City of Riviera*, the Supreme Court examined the term "vessel" as applied to a 60-foot by 12-foot floating home under the Rules of Construction Act.⁴ *Lozman v. City of Riviera, Florida*, 568 U.S. 115 (2013). Although originating from two different statutes, this definition of "vessel" is strikingly similar to that of Chapter 91 quoted above. In fact, the *Lozman* case turned on the issue of the phrase "used or capable of being used as a means of transportation on water." Ultimately, the Court found that the floating home was not a vessel because it did not meet this water transport criterion.

³ The Harborpark Plan reaffirmed the Waterways Regulations requirements that the WDUZ "extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet" (310 CMR 9.51(2)) and "along all sides of piers and wharves, the [WDUZ] extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than 10 feet." (310 CMR 9.51(3)). The current pier is 664 feet long and 125 feet wide. RFP at 5. Therefore, Pier 5 as it currently stands requires a perimeter setback of roughly 19 feet and a 100 feet setback from its terminal end.

⁴ "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 USC §3.

In their assessment of the *Lozman* floating home's water transport abilities, the Court created a reasonable observer test: "[I]n our view a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water." *Id* at 118. When concluding that the *Lozman* floating home would not successfully meet this standard, the Court summarized the floating home's various characteristics. Similar to the floating housing units of both the Eco Pier and Navy Blue, the *Lozman* floating home "had no rudder or other steering mechanism...it had no special capacity to generate or store electricity but could obtain that utility only through ongoing connections with the land...Its small rooms looked like ordinary nonmaritime living quarters. And those inside those rooms looked out upon the world, not through water-tight portholes, but through French doors or ordinary windows." *Id* at 122.

Likewise, neither 6M Development's nor Navy Blue, LLC's floating housing units are designed to a *practical degree* for carrying people or things over water. These structures are simply residential buildings built atop a barge and exhibit none of the characteristics commonly found on marine vessels. Further, although the floating housing units will originally be towed short distances into place within the redevelopments, they are not designed for further substantial movement and will not leave their assigned locations with the exception of sparse occasional maintenance. No reasonable observer would look upon these modern residential structures and conclude that they were designed for water transport; all will see through the Proponent's thinly veiled attempt to evade statutory and regulatory requirements.

III. Public Amenities and Facilities of Public Accommodation

In addition to the public benefits outlined in Section II above, the RFP directs proponents to "preserve and interpret the historic Building 123 Pump House." RFP at 10. As discussed, both the Navy Blue and the Eco Pier proposals falsely claim a water-dependent use status. Accordingly, these proposed projects fall short of the many public benefit requirements imposed on the Pier 5 project site by Chapter 91 and other various underlying regulatory guidance, including the Harborpark Plan. We note that Navy Blue and the Eco Pier's failure to provide robust public amenities is both contrary to law and an explicit Development Objective of the RFP "to promote residential and commercial activities compatible with the Waterfront and *aligned with the needs of visitors* as well as those who live and work in the Navy Yard." RFP at 10 (emphasis added). Navy Blue, LLC and 6M Development must redesign their proposals to meet these public benefit requirements if either project moves forward in the RFP process.

In contrast, the New Pier 5 proposal meets and occasionally exceeds many of these regulatory requirements. The following subsection will focus solely on public amenities and FPA spaces provided by each of the three proposals. Accordingly, this section will not address public benefits associated with open space.

A. Navy Blue

Navy Blue offers few public amenities and limited FPA space. The proposal's only public amenity space, which may be construed as an FPA but is never explicitly identified as such in the project's proposal, is the restored Building 123 Pump House. The Navy Blue project

would create a total of 116,300 sf. Navy Blue Proposal at 4. CLF notes that the area of the Building 123 Pump House, approximately 13,000sf, is not nearly enough to satisfy Pier 5's regulatory requirement to include FPA spaces which are "at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy." 310 CMR 9.53(2)(b)(1). Further, the Pump House is not located with the rest of the redevelopment, and the Proponent should be providing FPA space throughout the project site.

Although the Proponent does provide extensive pedestrian access throughout the project site, it fails to describe any other public amenities. The Navy Blue proposal briefly mentions bathrooms in the lobby at Flagship Wharf and the Building 123 Pump House but does not state whether they will be publicly accessible. The Proponent also mentions boat slips within their development project; however, these slips are not described in any detail in the project proposal. Any slips that are a part of the redevelopment of Pier 5 should be made available to public recreational boaters and not restricted to tenants of the site.

B. The Eco Pier

Similar to the Navy Blue proposal, 6M Development's proposed Eco Pier will restore the Building 123 Pump House and transform it into a small, publicly accessible café. *See* Eco Pier Proposal at 25. In addition, the Eco Pier proposal also includes various dockage space throughout the eastern side of Pier 5. The Proponent fails to indicate whether these docks will be publicly accessible or restricted to tenant access. At the pier's end, 6M Development proposes a public restaurant space. The Proponent does not indicate whether any public restrooms will be available within the restaurant space or elsewhere onsite.

In total, the Eco Pier will create 1,200 sq of retail space, 2,500 sq of restaurant space, and 6,100 sq of dockage space. Eco Pier Proposal at 14. The Eco Pier proposal does not indicate the total square footage of the development's ground floor. However, CLF assumes that these sparse public amenities and facilities do not cumulatively create an amount which is "at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy." 310 CMR 9.53(2)(b)(1).

C. The New Pier 5

The overwhelming majority of the New Pier 5's ground floor is dedicated FPA space. This proposal includes a grocery store, gym, restaurant, co-working space, six retail units, and a retail storage space. *See* New Pier 5 Proposal, Circulation Plan. We encourage the Proponent to minimize the "Residential Service Area" by reducing or eliminating vehicle access to Pier 5. Specifically, we are concerned that the proposal depicts vehicular traffic on the Harborwalk, which would be shared with pedestrians and cyclists.

Urbanica's proposal also meets the Water Activation Network Plan's requirement that 2,000sq of interior space be devoted to SPDF. As discussed in more detail below, CLF is pleased that the Proponent has dedicated this space to the community-based non-profit, Courageous

Sailing. The Proponent should provide further details regarding basic public amenities including water fountains, public restrooms, and outdoor bicycle storage in any future project documents.

IV. Impacts to Courageous Sailing on Pier 4

Courageous Sailing is a non-profit “educational center for community sailing and youth development” established in 1987.⁵ The Charlestown community, as well as Bostonians more broadly, have consistently shown great support for this organization. In 2008, the Secretary noted the robust community support for Courageous Sailing’s tenancy as a SPDF on Pier 5. Secretary’s 2008 Decision at 13. In fact, community support for Courageous Sailing was so strong in the former Pier 5 proposal process, that the former developer eliminated the project’s planned marina in order to avoid impeding upon Courageous Sailing’s ability to access the water sheet. *See* Charlestown Navy Yard Water-Dependent Use Management Plan at 4-4.

The Waterways Regulations explicitly protect adjacent water-dependent uses from displacement: “The project shall not significantly disrupt any water-dependent use in operation, as of the date of license application, at an off-site location within proximate vicinity of the project site.” 310 CMR 9.36(3) (emphasis added). Furthermore, non-water dependent facilities of private tenancy “must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which can reasonably be expected to locate on or near the project site.” 310 CMR 9.51(1). Development at Pier 5 is required to maintain a minimum setback of 25 feet from the property line separating Pier 5 and Pier 4 as well as a corresponding minimum navigable fairway of 50 feet. Charlestown Navy Yard Water-Dependent Use Management Plan at 4-3. Additionally, the current RFP issues a blanket protection to Courageous Sailing when stating “[p]roposals should complement the activities of Courageous Sailing on Pier 4 and should not interfere with their normal operations.” RFP at 11.

Unfortunately, all but one proposal would drastically hinder Courageous Sailing’s operations. Both the Navy Blue and Eco Pier proposals would decrease Courageous Sailing’s access to the local water sheet. Given the importance and robust community support for this non-profit, the Navy Blue and Eco Pier proposals’ failure to shield Courageous Sailing negatively impacts their respective Contributions to the Public Realm, an important Evaluation Criteria of the current RFP. In contrast, Urbanica’s New Pier 5 proposal both maintains Courageous Sailing’s water sheet area and provides FPA space for the non-profit institution on the ground floor of their proposal. CLF strongly supports Courageous Sailing’s operations and urges the BPDA to prioritize the protection of this beloved community maritime organization.

A. Navy Blue

As stated above, the Navy Blue proposal would significantly limit Courageous Sailing’s ability to access the water sheet. Although the Proponent claims that they have “agreed to work collaboratively to explore an array of ideas that would help facilitate [Courageous Sailing’s] mission,” Navy Blue, LLC fails to provide any satisfactory mitigation measures to protect operations at the non-profit organization. Navy Blue Proposal at 7. The Proponent offers five immaterial, and at times unrealistic, mitigation efforts: to move Courageous Sailing’s vessels to

⁵ <https://courageoussailing.org/about/courageous/mission/>

the western side of Pier 4, to shift some of the Proponent's property at Pier 6 further east, to provide Courageous Sailing with use of the Pump House as a classroom, to renovate the water and sewer lines at Courageous Sailing's existing Pier 4 Chandlery building, and to sponsor educational opportunities. *Id.*

The Proponent provides two impractical solutions involving the substantial movement of existing infrastructure. Currently, Courageous Sailing stores the majority of their fleet on the eastern side of Pier 4. This location is ideal for novice and beginner sailors to safely access the water sheet because there is minimal water traffic between the two piers. In contrast, the eastern side of Pier 4 sees more boat traffic due to the water taxi stop at the Charlestown Navy Yard Ferry Terminal. The Navy Blue proposals suggests "relocating [Courageous Sailing's] non-powered vessels to the west side of Pier 4." Navy Blue Proposal at 7. While moving these vessels to the pier's western side would provide the Proponent with enough space to build their proposed redevelopment project, it would force Courageous Sailing's vessels into a more crowded and dangerous channel. Similarly, Navy Blue's second solution, to move some of the Proponent's existing property at Pier 6, does not address the issue of restricted access to Pier 4. Unless the Proponent is moving the entirety of Pier 5 as well, this offer will not make up for Courageous Sailing's loss of water sheet access.

The use of the Building 123 Pump House as a classroom space for Courageous Sailing is welcome but again fails to address the Courageous Sailing's water sheet access needs. Furthermore, the Proponent is leaving the use of the restored Pump House space for community access at large and it remains unclear whether Courageous Sailing is guaranteed use of this space. An extra classroom does not lessen the impact of Navy Blue's development on their ability to use the Harbor. Likewise, neither renovated water and sewer lines nor sponsored educational opportunities would address the main issue of the non-profit's water sheet access. We further note that the partial dedication of a renovated Pump House serving as a "community gathering space," does not satisfy the Charlestown Navy Yard Water-Dependent Use Management Plan's vision to provide the non-profit with interior SPDF space on the pier itself. *See* Charlestown Navy Yard Water Activation Network Plan at 40.

The Proponent must implement more robust solutions to guarantee Courageous Sailing's continued use of the water sheet. We recommend Navy Blue limit construction on the western side of Pier 5 and engage in further communications with Courageous Sailing to minimize the negative impact of their development. In particular, the Proponent should remove any boat slips on the western side of their residential development to avoid conflicts between Courageous Sailing's participants and recreational boat users. The BPDA should measure the distance between the property setback of Navy Blue and the width of the navigable channel between the two piers to ensure that this proposal accords with the minimum regulatory standards as described above.

B. The Eco Pier

Unlike the Navy Blue proposal, the Eco Pier does not include recreational boat slips between the two piers. However, 6M Development's Eco Pier proposal will impede upon Courageous Sailing's water sheet access and therefore their ability to successfully carryout their mission to "transform lives through sailing programs." In contrast to the Navy Blue project, the

Eco Pier proposal offers no substantive mitigation to “complement the activities of” Courageous Sailing. In fact, the Eco Pier proposal only mentions Courageous Sailing a single time in which it simply states that initial conversations with Courageous Sailing were “positive and informative.” Eco Pier Proposal at 15.

We find this omission both troubling and confusing as it runs contrary to explicit and clear objectives of the RFP, city guidance, and regulatory requirements. If this proposal moves forward, the BPDA should require all proponents including 6M Development to mitigate any interference with Courageous Sailing’s activities. In particular, the BPDA should require 6M Development to decrease the area of water sheet their proposed “live aboard vessels” will encompass on the western side of Pier 5. Likewise, the BPDA should ensure that the Navy Blue proposal meets the regulatory minimum channel width and distance between the two property lines.

C. The New Pier 5

In contrast to the Navy Blue and the Eco Pier proposals, Urbanica’s New Pier 5 project both preserves Courageous Sailing’s water sheet access and actively supports the non-profit through the inclusion of a 2,000 square foot FPA space dedicated to the organization’s administrative and educational space needs. *See* New Pier 5 Proposal at 139. Urbanica highlights that this space will allow Courageous Sailing to continue to offer programming throughout the winter months in a heated indoor space in contrast to their existing facilities. This accords with the Charlestown Navy Yard Waterfront Activation Network Plan which lists Courageous Sailing as an acceptable tenant for a SPDF on Pier 5 in a space no less than 2,000 sf. *See* Charlestown Navy Yard Waterfront Activation Network Plan at 67. Project renderings additionally show that the New Pier 5 will provide docking space for a portion of the Courageous Sailing fleet. *See* New Pier 5 Proposal, Circulation Plan. Lastly, the New Pier 5 proposal also restores Building’s 123 Pump House through minimal renovations so as to “avoid altering the original character of the structure.” New Pier 5 Proposal at 46.

CLF is supportive of these measures and believes they set the bar for what BPDA should consider acceptable and complementary measures to support Courageous Sailing’s activities. We again encourage the BDPA to ensure that the property setback of the New Pier 5 and the navigable channel meet the regulatory minimums imposed by the Harborpark Plan and associated documents.

V. Open Space and Pier Setbacks

The Waterways Regulations state that no more than 50% of a Project site may be occupied by nonwater-dependent buildings or structures. 310 CMR 9.51(3)(d). The Harborpark Plan reaffirmed this regulatory constraint and similarly requires that any project consisting of Facilities of Private Residency over flowed tidelands to consist of 50% publicly accessible open space. Harborpark Plan at 32. On Pier 5, the Harborpark Plan requires projects to maintain a 100 foot setback from the end of a pier and 19 foot setbacks from all sides of a pier to allow for perimeter Harborwalk access.⁶ Harborpark Plan at 74. The Charlestown Navy Yard Waterfront Activation Network Plan envisions a large “maritime interactive park” at the end of Pier 5 which

⁶ For an explanation of these required setback lengths, see footnote 3.

would serve as an additional external SPDF on the pier. The Charlestown Navy Yard Waterfront Activation Network Plan at 66.

As discussed in Section II, the Navy Blue and Eco Pier proposals attempt to shirk these requirements by falsely claiming water-dependent status. CLF strongly opposes these claims and advocates that they hold no legal merit. Accordingly, we analyze all proposals in the context of the nonwater-dependent requirements imposed on redevelopments at Pier 5. We are deeply concerned by the minimal open space provided by the Navy Blue and Eco Pier proposals and urge the BPDA to require these projects to meet these statutory prescribed minimums.

A. Navy Blue and the Eco Pier

Publicly accessible open space is a vital aspect of Pier 5's redevelopment. Put simply, the Navy Blue proposal fails to provide an adequate quantity and quality of open space. The Navy Blue proposal does not include an estimate of the percentage of the proposal's open space and explicitly claims that it does not need to meet the statutorily prescribed minimum of 50%. Navy Blue Proposal at 25. Although the proposal features small "pocket parks" throughout the floating residential units and public pedestrian pathways, it is clear that this proposal falls far short of the Waterways Regulation's 50% open space requirement. In addition, the proposal references a "linear park" throughout their project description. We believe that this "linear park" is simply an imaginative name for the project's central walkway, and we caution against this deceptive language.

The open space that the Navy Blue proposal *does* provide is not adequately detailed and appears to have limited vegetation. Similarly, 6M Development's Eco Pier proposal does not provide an estimate of the project's open space. The Eco Pier includes small courtyard parks, deemed "passive green space," throughout the project site which will feature native species. These parks primarily function as small courtyards within the exterior of groups of floating housing units. Inevitably, these courtyards will not be welcoming to visiting non-residents. We urge the BPDA to require 6M Development to meet the statutorily required minimum of 50% open space and to include public way finding signage to make clear that these spaces are not reserved for Eco Pier residents. If the Eco Pier proposal moves forward through the permitting process, future planning documents must include an estimate of publicly available open space. Furthermore, we note that the Harborpark Plan requires all open space to be handicapped accessible. Harborpark Plan at 31.

Under the Harborpark Plan, both the Eco Pier and Navy Blue proposals must include setbacks from the perimeter and end of the pier structure. Once again, the Eco Pier and Navy Blue projects fall well short of these requirements; both projects provide only for a long central "artery" throughout the center of a grouping of floating residential units. The Proponents must include both perimeter access and a setback from the end of the pier structure in accordance with the standards provided at 310 CMR 9.51(2)-(3). *See* Harborpark Plan at 74. Further, each proposal should include a large green space at the end of the pier to function as a maritime interactive park as envisioned by the Charlestown Navy Yard Waterfront Activation Plan.

B. The New Pier 5

Urbanica's New Pier 5 proposal also does not provide an estimate of the project's publicly available open space. The proposal includes a large rooftop community garden/urban farm which is designed in part to reduce the impacts of urban heat effects around the building. In addition, New Pier 5 contains a public park at the end of the pier. This park functions both as publicly available open space and as a 100 foot setback from the end of the pier. Additionally, the New Pier 5 proposal allows for substantial public access around the perimeter of the building along a 19 foot pedestrian pathway.

As mentioned in BPDA's public meeting on February 8, 2021, CLF is concerned that the Proponent seeks to include the rooftop garden, or other green roof spaces, within open space calculations. This is not permitted under the Harborpark Plan or the underlying Waterways Regulations. To ensure conformance with these regulatory requirements, we request that Urbanica provide a breakdown of open space calculations to demonstrate that the 50% requirement is met without the rooftop gardens and green spaces. We appreciate that the Proponent includes perimeter access which meets regulatory minimums. However, CLF urges the Proponent to reduce vehicular access on-site. As demonstrated within the proposal's Circulation Plan, pedestrians, cyclists, and vehicles will share access on the eastern perimeter of the pier. The Proponent must take the necessary steps to ensure that pedestrian and cyclist travel will not be hindered by motored vehicles. Furthermore, as a matter of state policy, DEP has frequently disallowed vehicular access in the WDUZ or on the Harborwalk due to obvious use conflicts that would discourage water-dependent activity or public use and enjoyment of the water-dependent use zone.

VI. Climate Adaptation and Resiliency

One of the key Development Objectives of the RFP is "to promote balanced, climate-resilient growth along Boston's shoreline." RFP at 10. As all stakeholders are aware, the Charlestown Navy Yard, including the Pier 5 project site, is highly vulnerable to flooding. The Climate Ready Boston report describes the Navy Yard as one of the few areas of Charlestown exposed to near-term flood risk and as a zone that will "be exposed to high tides later in the century." Climate Ready Boston, Final Report at 154. Given this current and future flood vulnerability, it is imperative that Proponents provide robust resilience measures to protect this waterfront pile-supported structure and the greater Charlestown Navy Yard community from rising sea levels and storm surge.

A. Navy Blue

We were troubled to see the Proponent state that "[r]ising sea levels are obviously easily mitigated with floatation devices engineered for anticipated increases." Navy Blue Proposal at 34. Flotation devices are important, but they are not a replacement for more permanent flood and storm surge prevention measures. The Proponent must explain what steps they will take to protect residents in the case of a significant storm or tidal flooding. Such an explanation should include details on evacuation routes in case of an emergency and what level of flooding due to storm surge the Project will be prepared to handle. In addition, the Proponent fails to include any information regarding sheltering in place safeguards as required by the RFP. *See* RFP at 15.

While we presume that residents of the floating housing units may shelter within their homes, visitors and community members must additionally be provided with adequate accommodations “during an extreme weather event or an extended disruption of utility services.” *Id.*

We were pleased to see the consideration given to a wave attenuator at the site, however, nothing short of raising the elevation of the build site to 19.5 Boston City Base (“BCB”), as required by the RFP, and including on-site measures to mitigate nuisance flooding, will be sufficient to protect Pier 5 from flooding. Wave attenuators can be a useful strategy, and we support a feasibility study of a 20’ attenuator to prevent erratic tidal flooding, but a wave attenuator alone will not provide adequate protection against sea level rise or storm surge for this site or the neighborhood. The Proponent does mention raising piles above the base flood elevation in their project submission, but they did not provide any details about what elevation they would raise these pilings to, and we strongly urge the Proponent to raise them to at least a minimum design flood elevation of 19.5 Boston City Base (“BCB”) as required by the RFP. RFP at 15.

Of the three proposals, Navy Blue appears to include the least amount of foliage. We urge the BPDA to require the Proponent to include more green space throughout the development including grass and other native planting on the “pocket parks”. Based on the proposal’s renderings, Navy Blue will create between 4 and 6 small “water courtyards” or “pocket parks.” While the project proposal superficially mentions tree plantings and native grasses, it fails to provide an estimate quantity of either feature. Most project renderings show only three trees within each “pocket park.” Each tree is surrounded by a very small ring of grass. The remainder of these parks are covered with wooden planking which greatly decreases the value of this open space. Future project documents should include an estimate of green, open space on the project site as well as a dedication to a specific number of trees throughout these “pocket parks.” Such space will alleviate some of the project’s urban heat effects and may help to capture a portion of water resulting from storm surge events.

B. The Eco Pier

The 6M Development proposal states that it will provide “unit owners” or “tenants” with a “communal space” in the event of extreme weather or an extended disruption of utility services. Eco Pier Proposal at 22. The Proponent should include adequate space and resources for community members and visitors to the Eco Pier in these emergency shelters. We further urge the Proponent to consider the addition of a feasibility study for a wave attenuator similar to that found within the Navy Blue Proposal to protect the project site from increased storm surge and various wave action.

Like the Navy Blue Proposal, the Proponent should include an estimate of the project’s green space and a dedication to a certain number of trees throughout the project’s courtyard parks. These green spaces will provide essential mitigation to urban heat effects throughout the project site.

C. The New Pier 5

In contrast to the other proposals, Urbanica’s New Pier 5 proposal includes several measures to increase the project site’s climate resiliency. As discussed above, the proposed

structure features many green spaces including a large green rooftop and maritime interactive park at the end of the pier. The green rooftop will mitigate both urban heat effects and capture a portion of storm surge waters. *See* New Pier 5 Proposal at 141. The Proponent should include an estimate of the total green space as well as tree planting along the Harborwalk in any future project documents.

In addition, Urbanica states it will elevate the new pier structure to accommodate sea level rise and storm surge. Unlike the other two proposals, the New Pier 5 will include a community gathering space for both residents and community members to shelter-in-place during emergency events. *Id* at 9. We request that Urbanica provide further details about the elevation of the site including the total proposed elevation above BCB so that it can be evaluated in the context of the RFP requirements and Climate Ready Boston data.

VII. Miscellaneous Redevelopment Requirements

We offer the following brief comments to address miscellaneous regulatory restrictions that are not encapsulated in the broad themes addressed above.

A. Building Height

The Waterways Regulations and all associated regulatory guidance state that the building height of any development on Pier 5 may not exceed 55 feet. The RFP lowers this height maximum to 35 feet to maintain conformity and compatibility with existing building heights in the area. *RFP* at 12. The Navy Blue and Eco Pier proposals do not exceed this height maximum.

However, Urbanica's New Pier 5 exceeds 35 feet throughout the development. Further confusing matters, the New Pier 5 proposal's Zoning Analysis provides a maximum height of a range between 35 and 45 feet while contradictorily listing this range as 35 to 55 feet within the project's Climate Resiliency Checklist and elsewhere throughout the proposal materials. We urge the Proponent to clarify this discrepancy and to limit the building's height where possible. CLF notes that the RFP calls for a maximum height of 35 feet, not a "building average."

B. Development without Displacement & Affordable Housing

The RFP includes a "Development without Displacement Plan" as a Comparative Evaluation Criterion for the Pier 5 redevelopment proposals. This statement should address "the Proponent's planned approach to assisting the current residents of Charlestown to remain in their community in the future, afford housing, and find pathways to economic opportunity." *RFP* at 35. The issue of displacement is inextricably tied to affordable housing. CLF strongly supports affordable housing development on the waterfront if and when such development complies with the Waterways Regulations. We note that the Harborpark Plan strongly recommends that 25% of any housing units built on Commonwealth tidelands within the Charlestown Navy Yard are affordable. *See* Harborpark Plan at 26. If the Harborpark Plan is determined to be effective, BPDA should encourage developers to fulfill this requirement by developing affordable housing units on-site.

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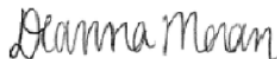
Navy Blue, LLC seems to misunderstand the dynamics of displacement and gentrification. Navy Blue claims that because no one currently lives on Pier 5, they do not need to explain how their proposed rental prices will meet the needs of Charlestown residents. Navy Blue Proposal at 20. This response falsely assumes that the Project will have no impact on the surrounding community. Since Members of the Navy Blue development team have experience with affordable housing developments through HOPE VI in Indianapolis, they should understand that high rental prices could drive up the cost of living in the surrounding area and displace current residents of Charlestown. CLF encourages Navy Blue to mitigate this risk by guaranteeing that a portion of their units will be affordable.

Although 6M Development lists a “Development without Displacement Plan” in the Table of Contents of their Design Submission, the Proponent appears to have neglected to include such a plan in their final proposal. CLF finds this omission troubling and hopes that it is not evidence of the Proponent’s disregard for this important RFP requirement. The Eco Pier proposal does not include any affordable housing. 6M Development’s Marketing Plan states that it will “aggressively target” wealthy Bostonians using coded language, which includes “[p]rofessionals who use air travel frequently for work” and “[r]enters in lifestyle buildings in North Station, Downtown, Waterfront, West End, *high paying renters* in South Boston, and North End.” New Pier 5 Proposal, Exhibit K (emphasis added). We strongly urge the BPDA to require the Eco Pier to make one fourth of their housing units affordable as mandated by the Harborpark Plan.

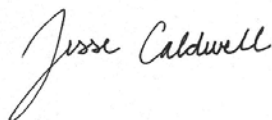
Likewise, Urbanica’s New Pier 5 proposal does not include an explicit Development without Displacement Plan. However, the Proponent addresses aspects of this requirement throughout their proposal. In particular, the New Pier 5 will create 100% affordable housing onsite. New Pier 5 Proposal at 11. The New Pier 5 development would create 89 housing units of various sizes ranging from 500 to 1,000 sq.

Thank you for your consideration of our comments. We look forward to coordinating with your office and other stakeholders throughout this process.

Sincerely,



Deanna Moran
Director of Environmental Planning
Conservation Law Foundation



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