



Via email: andrea.langhauser@state.ma.us

February 26, 2016

Ben Lynch
Program Chief, Waterways Regulation Program
Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108

ATTN: Andrea Langhauser, DEP Wetlands and Waterways Program

Re: Chapter 91 License Application #W16-4562, 585 Commercial Street / BPS Eliot Innovation School Phase III

Dear Mr. Lynch,

On behalf of The Boston Harbor Association (TBHA), thank you for the opportunity to comment on the Eliot School Phase III Chapter 91 license application.

Project Description

The Eliot Innovation School in the North End of Boston is comprised of three separate properties: 16 Charter Street, 39 North Bennet Street, and 585 Commercial Street. The proposed renovations at the 585 Commercial Street site will be located on 0.82 acres and provide 42,000 gross square feet of space. The project sits wholly on Commonwealth tidelands and is therefore subject to Chapter 91 jurisdiction.

As proposed, the school will accommodate grades 2-4 of the Eliot Innovation School and includes 18 regular classrooms, two special classrooms, a media center, administrative offices, a cafeteria/multi-purpose area, and 20 parking spaces. Construction is set to begin in the summer of 2016 with expected completion in the fall of 2017. Our comments follow.

Chapter 91 Designations and Definitions

Requirement to Provide Public Benefits

Non-water-dependent uses on Commonwealth tidelands must provide robust, year-round opportunities to attract and maintain substantial public activity on a site. Chapter 91 aims not only to provide physical access to and activation of the waterfront but also to ensure a high degree of destination value for public use and enjoyment.

Under Chapter 91 non-water dependent projects are presumed not to serve a proper public purpose and are required to provide greater benefit than detriment to the public's rights in tidelands. Although

we believe that the Eliot School is an appropriate use of this site, we respectfully disagree that its intrinsic value should count as a public benefit for the purposes of Chapter 91. Under 310 CMR 9.53, DEP considers material benefits that directly accrue to the *transient public*, not to a delimited subset of people, such as enrolled students. To conform to Chapter 91, the Eliot School must provide appropriate tangible, year-round benefits that accrue to the general public without interfering with school operations.

Facilities of Public Accommodation

A facility of public accommodation (FPA) is defined as a facility at which goods or services are made available directly to the transient public on a regular basis, or at which advantage of use are otherwise open on essentially equal terms to the public at large rather than restricted to a relatively limited group of specified individuals. 310 CMR 9.02.

Chapter 91 can and does include FPAs that limit access, including museums, stores, hospitals, and restaurants. Nonetheless, each of these facilities allow for the relatively unencumbered flow of pedestrians without substantial safety protocols and restrictions.

During the November 17, 2015 MEPA site visit, our staff was unable to enter the school building as all entryways were locked and required administrative personnel to buzz visitors into the building only after providing adequate identification. This is understandable and appropriate for an urban public school. That said, these justifiable restrictions also make the building inappropriate for use as an FPA.

The Eliot School may decide to make some or all of its facility more readily accessible for more general afterschool programming and/or adult education. Such opportunities would allow the broader community to benefit from a prime waterfront location while preventing interactions between students and the general public.

Climate Change Resilient Design

Until recently, most of Boston's new waterfront developments had been permitted well before Superstorm Sandy made coastal flooding a more immediate concern. At this point, however, information about Boston's flood risk and options for flood preparedness is robust and widely available. All new projects and major retrofits must include measures to manage current and long-term risks of harm from climate-related flooding and temperature extremes.

During the site visit, the project team indicated the mechanical equipment will be above flood zones on the second floor of the building and that there will not be basement space on this property. We commend the proponent for taking these initial measures to address climate change vulnerability at this site. We strongly encourage the team to incorporate up-front climate-resilient strategies into this project that anticipate and decrease the costs of additional flood proofing in the future.

Project Mitigation Measures

Walkway from Commercial Street to Harborwalk

In an area such as the North End with limited public access to the waterfront, new projects should maximize any such opportunities through robust public access plans. We commend the proponent for reducing the parking spaces from 32 to 20 to allow for construction of a new public sidewalk next to the school building that connects Commercial Street to the Harborwalk and a play area.

Chapter 91 requires that any project providing public access maintain adequate signage at all entryways. In addition to the standard blue Harborwalk sign, we request that at least one sign advise the public of access-related rights, rules, and hours of operation. We encourage proponents to also include wayfinding and interpretive signs to help visitors locate nearby attractions and provide a sense of history and place.

Exterior Play Area and Green Space

As previously stated, under Chapter 91 standards the school is a non-water-dependent use. As such, it is required to maintain substantial public activity on the site on a year-round basis. The project should include exterior open space for active and passive public recreation located at or near the water to the maximum reasonable extent. It should also include related pedestrian amenities such as lighting, seating facilities, restrooms, and trash receptacles.

As proposed, the site includes plans for an exterior play area. It is our understanding that the school is actively fundraising for the playground and if they cannot secure funding, a small green space will be created instead. A playground would be an ideal use of open space at this site and would provide a benefit to both the school and the surrounding community. We ask proponents to carefully balance student safety and public benefits, and allow this playground to be used by the general public outside school hours.

In addition, Mass DCR owns a small waterfront plot between the Eliot School and the Harborwalk that is currently devoid of lighting, signs, benches, and other public amenities. We understand that school staff is willing to work with DCR to activate the space and we encourage them to do so. Such collaboration could provide the school with additional play space students and/or an active waterfront area for residents, and visitors.

First Floor Multi-purpose Room

As part of the required mitigation, the Eliot School will, for a nominal fee, open the first floor multi-purpose room to the general public. This area can be used for scheduled public events and meetings after regular school hours. We commend the school for opening this space to the public and ask that they publicize this amenity to ensure it provides a genuine public benefit as required by Chapter 91.

Potential Pier Renovations and the Constitution Marina Proposal

During the February 18th public hearing, Constitution Marina co-owner Tom Cox expressed interest in renovating and leasing a currently decrepit pier located directly behind the Eliot School and adjacent to the Harborwalk. Our understanding is that Mass DCR and the City of Boston own the pier and adjacent

land, respectively. Constitution Marina is requesting a multi-year lease to operate the pier, with a portion of the facility designated for public benefits.

TBHA strongly supports maintaining and enhancing water-dependent uses along the waterfront. Rehabilitating the currently fenced off pier would be a significant improvement over the status quo, and Mass DCR has a record of leasing state lands to private tenants. That said, the agency has been strongly criticized for mismanaging current leases and continues to struggle to ensure that leases are market value and rents are collected.

We believe that the Constitution Marina, the Eliot School, the City of Boston and Mass DCR can create a win-win situation by ensuring at least the following:

- Use of the pier by its members and the general public does not interfere with the safe operation of the Eliot School;
- Lease of this land and pier is done fairly, transparently and at market rates;
- A number of public access and amenities.

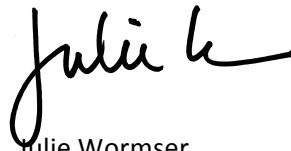
Such public amenities might include a subsidized dinghy dock and/or water taxi stop, fish cleaning station and free access for non-profit recreational boating programs. We look forward to seeing a more detailed proposal from Constitution Marina that includes proposed renovations, operations and public benefits.

Thank you again for the opportunity to comment. We look forward to the completion of the third and final property of the Eliot Innovation School renovation project.

Sincerely,



Jill Valdes Horwood
Waterfront Policy Analyst



Julie Wormser
Executive Director