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By Email and Courier

Ocean Management Task Force
Executive Office of Environmental Affairs
251 Causeway Street
Boston, MA 02114
Attention: Dr. Susan F. Tierney

Re: Draft Principles and Preliminary Recommendations
of the Ocean Management Task Force

Dear Dr. Tierney:

On behalf of Winn Development Company, Inc. and Noddle Island Limited Partnership, we offer the following comments on the Draft Principles and the Preliminary Recommendations (the "Draft Principles") issued by the Ocean Management Task Force (the "Task Force") in December, 2003. Noddle Island Limited Partnership, an affiliate of Winn Development Company, Inc., is the developer of an approximately 400-unit residential project at Clippership Wharf on the East Boston waterfront. The developer has recently obtained zoning approvals for the project and is in the process of applying for a Chapter 91 license and other permits and approvals for the project.

While we recognize the importance of prudent oversight of ocean resources, we are concerned that the Draft Principles, if implemented, would introduce additional uncertainty and risk in an already challenging regulatory framework for landside waterfront development. As you know, waterfront development is already subject to an array of state statutes, regulations, and policies, including Chapter 91, MEPA, the Wetlands Protection Act, and Coastal Zone Management Program policies. Many waterfront projects are also subject to the requirements of Municipal Harbor Plans and other plans and studies governing the use of waterfront resources.

This regulatory framework, although perhaps overly complex, provides considerable protection for waterfront environmental resources. The stated purpose of the Chapter 91 regulations, for example, includes protecting and promoting the public's interest in tidelands, ensuring that use of tidelands serve a proper public purpose, and fostering the right of people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and aesthetic qualities of the environment under Article XCVII of the Massachusetts Constitution. The Coastal Zone Management Program policies focus on protection of water

quality, support for the development of environmentally sustainable aquaculture, and mitigation of the impacts of development activities on ocean and environmental resources.

In this context, we strongly believe it is not in the public interest to introduce additional regulatory oversight in the realm of landside waterfront development. To do so would lengthen the permitting process for waterfront projects, causing uncertainty in the development community, increasing the costs and risks of beneficial economic activity, and delaying tax benefits, jobs, and facilities of public accommodation for the public at large. Little practical benefit would be achieved since Chapter 91 and other state regulations already adequately govern waterfront development.

In particular, we note the following comments and concerns with respect to the Draft Principles:

- Recommendations #1 and #2: While we certainly support the need to streamline state planning and regulatory review processes as mentioned in Recommendation #2, it is unclear how the Ocean Resource Management Act described in Recommendation #1 would do so. As described by the Task Force, the Act would “modify the Ocean Sanctuary Act, while retaining existing protections, modify the Chapter 91 regulations, and add additional authorities if need be.” The Act would preserve existing regulatory authority yet impose “additional compulsory guidance” and “use standards”. The Task Force does not specify the organizational structure under the Act, but suggests establishment of a new Inter-Secretariat Council with a stakeholder advisory committee or a newly appointed Board. We are concerned that the Act would only complicate the regulatory framework governing waterfront development rather streamline it.
- Recommendation #5: The Task Force states that current fees under Chapter 91 should be “increased or decreased”, but later states that current fees are “artificially low”, implying that all fees would be increased. The Task Force suggests a fee structure tied to the “economic value” of the activity. We are strongly opposed to any fee structure that rests on an uncertain and discretionary assessment of the “value” of the activity. Developers of existing and proposed waterfront projects must be able to make economic projections extending out for years or decades to ensure the viability of their projects. A value-based fee structure would introduce additional uncertainties and risks in the permitting process for waterfront development projects.
- Recommendation #6: The Task Force recommends implementing methodologies and standards for analysis and mitigation of visual, cultural, and aesthetic impacts of proposed projects. We strongly oppose the introduction of such subjective and highly discretionary standards in the review of project impacts, in particular since such impacts are typically reviewed extensively at the local level (for example, in the Article 80 review process for projects in Boston). Again, these standards would introduce additional uncertainties and risks in the permitting process for waterfront development projects.

- Recommendations #9: The Task Force recommends that environmental agencies have the statutory authority to designate and protect areas that have special, sensitive and/or unique estuarine and marine habitat and life. Such decisions are typically a legislative rather than an executive function, but here the Task Force suggests giving the authority to designate sanctuary zones to every environmental agency. We are concerned that this delegation of authority could lead to conflicting or overlapping designations by state agencies. We strongly believe any such authority should be very carefully exercised and circumscribed, so that agencies' desire to preserve potential habitats is always balanced against the need to encourage responsible and productive economic activity.

Thank you for the opportunity to comment on the Draft Principles. Please feel free to contact us if we can provide any further information with regard to any of these matters.

Yours sincerely,

Adam R. Hundley,
Attorney for and on behalf of Winn
Development Company, Inc. and
Noddle Island Limited Partnership

ARH/MJK

cc: Ellen Roy Herzfelder, Secretary of Environmental Affairs