



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

May 23, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Fall River State Pier South Basin Improvements
PROJECT MUNICIPALITY : Fall River
PROJECT WATERSHED : Taunton
EEA NUMBER : 14226
PROJECT PROPONENT : Massachusetts Department of Conservation & Recreation
DATE NOTICED IN MONITOR : April 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L., c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), the proposed project involves the installation of a 400 foot (ft.) long x 25 ft. wide fixed pier; the installation of (2) 200 ft. long by 20 ft wide floating dock; and the installation of a 300 ft steel sheet pile bulkhead supported wharf apron. The proposal also includes repairs and rehabilitation of deteriorated components of the existing Fall River State Pier.

The project is undergoing review pursuant to Section 11.03 (3)(b)(1)(a), Section 11.03 (3)(b)(1)(e) , Section 11.03 (3)(b)(1)(f) , and Section 11.03 (3)(b)(6) of the MEPA regulations, because the project requires state permitting and results in the alteration of Coastal Bank, the New fill or structure in a velocity zone, the alteration of 1/2acre or more of any other wetlands, and construction of a solid fill structure of greater than 1,000 square foot (sf) base area in a flowed tideland. The project will require a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Fall River Conservation Commission for the proposed project. The project will also require a Section 10 Permit from the U.S. Army Corps of Engineers (ACOE) and a Consistency Review by the Office of Coastal Zone Management (CZM). Because the proponent is an agency of the Commonwealth for the project, MEPA jurisdiction extends to

all issues that may cause Significant Damage to the Environment.

The project will impact 12,885 sf of Land Under the Ocean, 330 linear feet of Coastal Bank, 3,280 sf of Rocky Intertidal Shore, and 43,125 sf of Designated Port Area. Therefore, pursuant to 310 CMR 10.00, the Wetlands Protection Act Regulations, the proponent should design and construct the project using best practicable measures to minimize adverse effects on marine fisheries habitat and storm damage prevention or flood control.

The project site is located within a Designated Port Area within the City of Fall River. MassDEP's Waterways Program has determined that the project is considered to be both a water-dependent industrial use and a supporting Designated Port Area Use, according to the definitions at 310 CMR 9.02. Therefore, the required Chapter 91 application for this type of project should be filed as a water-dependent use project.

I note that the proponent must provide additional information to MassDEP relative to the proposed expansion into the south basin via the proposed bulkhead and fill, the preferred alternative, to comply with the regulations at 310 CMR 9.32(1)(b). Regulations at 310 CMR 9.32(1)(b) state that tidelands within a Designated Port Area which allow "fill or structures for water-dependent-industrial use on flowed tidelands, provided that in the case of proposed fill, neither pile-supported nor floating structures are a reasonable alternative." MassDEP has stated that the pile-supported alternative may be a viable one. However, the proponent must make every effort to avoid, minimize and mitigate any encroachment in a waterway. I advise the proponent to consult with MassDEP to address the issues described in its detailed comment letter. I also note that the proposed project is subject to CZM federal consistency review and must be found to be consistent with CZM's enforceable program policies. The proponent should consult with CZM on this issue.

The project site lies within mapped shellfish habitat for quahogs (*Mercenaria mercenaria*) which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). Additionally winter flounder and diadromous fish species use all or part of the Taunton River for passage, spawning, nursery, and forage habitat. Although the proponent has committed to implementing best management practices to avoid or minimize impacts to marine shellfish and fisheries, the Division of Marine Fisheries (Marine Fisheries) has stated that removing the existing population of shellfish would be a form of avoidance but would not address the long term loss of habitat. During construction Marine Fisheries has advised that a siltation control device should be used to minimize turbidity in any nearby resource area. I advise the proponent to consult with Marine Fisheries to develop a strategy for mitigating the project's impacts to address the possible long term loss of habitat.

The Board of Underwater Archaeological Resources has conducted a preliminary review of the proposed project area. No record of underwater archaeological resources was found within the proposed project boundaries. However, the level and diversity of maritime commercial, military, and recreational activities throughout the Fall River water front may have resulted in the creation of a number of undocumented and anonymous underwater archaeological sites. If

submerged cultural resources are encountered during the course of this project, the proponent should take steps to limit adverse affects and notify the Board of Underwater Archaeological Resources.

During the site consultation meeting, the proponent indicated that future plans might include construction of restaurant and retail space adjacent to the pier. A Fall River Harbor Management Plan has been drafted, but has not been finalized. I strongly urge the proponent and the City of Fall River to complete a plan prior to undertaking any non-water dependent redevelopment projects in this largely marine industrial area. MassDEP has stated in its comment letter that consideration will be given to the guidance provided in the draft Fall River Harbor Management Plan in as far as it does not modify the Chapter 91 regulatory standards that apply to this project.

Based on the comments received, I believe that an EIR is not required for this project. However, while I am not requiring an EIR for this project, the proponent will need to address the comments of the agencies during the permitting process. Therefore, no further MEPA review is required.



May 23, 2008
Date

Ian A. Bowles

Comments received:

- 05/09/08 Office of Coastal Zone Management (CZM)
- 05/13/08 Division of Marine Fisheries
- 05/13/08 Massachusetts Department of Environmental Protection (MassDEP) – SERO
- 05/13/08 Board of Underwater Archaeological Resources

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