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July 11, 2008

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

PROJECT NAME : Salem Port Expansion
PROJECT MUNICIPALITY : Salem
PROJECT WATERSHED : South River
EEA NUMBER : 14234
PROJECT PROPONENT : City of Salem
DATE NOTICED IN MONITOR : April 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF) and supplemental information dated June 10, 2008, the project consists of the redevelopment of 10 Blaney Street into a multi-use port facility by the City of Salem. It is anticipated that this multi-use water transportation facility will serve a variety of vessels, including the existing Salem Ferry *Nathaniel Bowditch*, excursion boats, water taxis, a Liquefied Natural Gas (LNG) offshore supply boat, commercial fishing boats, visiting ships, and small cruise ships. Upland improvements to the site include traffic changes on Derby Street (a local roadway), parking, a terminal building, landscaping and pedestrian amenities including a continuous harborwalk, and a fishing/viewing pier. Waterside improvements include the construction of a fixed pile-supported pier and a floating dock/barge system.

Portions of the 10.14-acre project site are located within a Designated Port Area (DPA). Dredging will be required to achieve water depths necessary for the proposed uses along with impacts to wetland resource areas associated with the construction of the harborwalk, piers, floats, and terminal building. The Department of Conservation and Recreation (DCR) has indicated that proposed activities that will take place seaward of the Mean Low Water line are located within the boundaries of the South Essex Ocean Sanctuary and are therefore regulated in accordance with the Ocean Sanctuaries Act (MGL c.132A §§12B-16E and 302 CMR 5.00).

MEPA Jurisdiction and Required Permits

The project is undergoing MEPA review pursuant to Section 11.03 (3)(b)(3) because it requires a State Agency action and will result in the dredging of 10,000 or more cubic yards of material. The project will also alter coastal bank (Section 11.03(3)(b)(1)(a)) and ½ or more acres of wetland resource areas (Section 11.03(3)(b)(1)(f)), and expand pile supported structures by more than 2,000 square feet (sf) in base area (Section 11.03(3)(b)(6)). The project will require a Chapter 91 License and a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP). The project may be subject to federal consistency review by the Office of Coastal Zone Management (CZM). A Section 10/Section 404 Permit from the U.S. Army Corps of Engineers (ACOE) will be required. The project must obtain an Order of Conditions from the Salem Conservation Commission, or in the case of an appeal, a Superseding Order of Conditions from MassDEP. Finally, approval under the National Pollutant Discharge Elimination System (NPDES) Construction General Permit will be needed from the United States Environmental Protection Agency.

The project will be receiving funding from the Commonwealth of Massachusetts through the Seaport Bond Bill. Therefore, MEPA jurisdiction for this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment.

Review of the ENF

Project Alternatives

The ENF and supplemental materials contained an analysis of several project alternatives, including different configurations of the floating dock/barge system and ship berths. The various alternative layouts were guided by the need to provide safe, year-round berthing for commercial lobster vessels based on wave energy reflection patterns in the harbor. Berthing locations for the excursion, cruise and offshore supply vessels, as well as the proposed location of the ferry terminal building, will remain susceptible to wave action from northeast storms and wave reflection. The preferred alternative can accommodate the stated goals of the project related to large-vessel berthing locations, as well as provide 17 protected year-round commercial lobster slips (out of a possible total of 30 commercial fishing berths), while reducing the original amount of proposed intertidal dredging by 2,590 sf to 41,600 sf in total.

Wetlands and Waterways

Proposed dredging will alter approximately 1.01 acres of Coastal Beach and 6.69 acres of Land Under Ocean. Dredging associated with the preferred alternative will impact approximately 41,600sf of the intertidal zone. Additional project impacts include alteration of 1.85 acres of Land Subject to Coastal Storm Flowage (LSCF) and alteration of 850 linear feet of Coastal Bank. Dredging of the intertidal area is proposed as a means to create a protected embayment to provide year-round berthing for lobster/commercial vessels.

The Office of Coastal Zone Management (CZM) has noted that the preferred alternative includes modifications to the existing riprap slope and construction of a new seawall to support the terminal building. To ensure that these modifications do not exacerbate existing wave energy issues, the proponent should demonstrate during the permitting process that the new design will minimize impacts on the adjacent Land Under Water such that the stability of the newly constructed or existing adjacent coastal banks or structures are not adversely affected.

As part of the preferred alternative, the project includes approximately 1,580 sf of intertidal fill to allow the construction of the ferry terminal building on upland instead of as a pile-supported structure. MassDEP has requested that the proponent demonstrate that this area of intertidal fill is a reasonable alternative to supporting the southern corner of the terminal building on piles.

Portions of the proposed dredging areas will be located within the South Essex Ocean Sanctuary. DCR has determined that the project, as proposed, is consistent with DCR's Environmental Policies outlined in the Ocean Sanctuaries regulations, in that the policy at 302 CMR 5.05(1)(g) encourages maritime commerce and development in DPAs that are not otherwise prohibited by the Ocean Sanctuary Act and regulations. I encourage the proponent to provide information during the state permitting processes on how port and vessel activities will be handled so as to maintain water quality and minimize dredging impacts on intertidal areas during construction.

The Flood Hazard Management Program (FHMP), under agreement with the Federal Emergency Management Agency (FEMA), is the state coordinating agency for the National Flood Insurance Program (NFIP). The FHMP has provided comments that include an overview of requirements and documentation for construction within regulated flood zones. It appears that some portions of the project, as described in the ENF, may not be compliant with State Building Code (780 CMR) standards for structures in a velocity flood zone (V zone). The proponent should review the proposed building design and make the changes necessary to comply with State Building Code requirements.

Fisheries Habitat

According to the Division of Marine Fisheries (DMF), Salem Harbor provides spawning and forage habitat for a variety of finfish and invertebrate species, including (*Pseudopleuronectes americanus*), Atlantic cod (*Gadus morhua*) and American lobster (*Homarus americanus*). In particular, this embayment supports seasonal spawning congregations of winter flounder. Additionally, DMF conducted a survey of the project site on June 19, 2008 which identified a seed set of soft shell clams (*Mya arenaria*), adult razor clams

(*Ensis directus*), and blue mussels (*Mytilus edulis*). The project site, including the outer two proposed dredge basins, is within an area that was mapped as eelgrass in the 1995 MassDEP eelgrass map and is listed on the National Oceanic and Atmospheric Administration (NOAA) Nautical Chart as an area that was historically vegetated and may still support eelgrass.

DMF has recommended several mitigation measures to avoid or minimize impacts to marine resources. These measures include no in-water, silt-producing work between February 1 and June 30 for the protection of winter flounder spawning and juvenile development; a survey of eelgrass in the area; consideration of additional reductions in on-site impervious area; and exploration of additional mitigation alternatives in collaboration with resource agencies during the permitting process.

Archaeological Resources

The Massachusetts Board of Underwater Archaeological Resources (BUAR) conducted a preliminary review of its files and secondary literature sources to identify any known and potential submerged cultural resources in the proposed project area. While no record of any underwater archaeological resources was found within the proposed project boundaries, research indicates at least 13 shipwrecks in the Salem area for which locations are vague. Therefore, the BUAR cannot conclude that there are no underwater archaeological resources located in the proposed project area. As recommended by the BUAR, the proponent should consider conducting a marine archaeological reconnaissance survey for the areas in which improvement dredging is proposed. This survey should be developed and undertaken by a qualified marine archaeologist in consultation with both the BUAR and the Massachusetts Historical Commission, and completed prior to any dredging.

Stormwater

The project must comply with the new MassDEP stormwater management regulations (SMR) that went into effect in January 2008. The project includes the construction of two new stormwater outfalls that will discharge to a critical area. MassDEP has identified several deficiencies with the stormwater management design presented in the ENF, which should be modified prior to submission of the Notice of Intent and application for the 401 WQC. These issues include compliance with Standard 4 of the SMR for total suspended solids (TSS) removal and appropriate selection and sizing of Stormceptor™ units. I encourage the proponent to continue to investigate ways to incorporate low-impact design (LID) Best Management Practices (BMPs) into the site design. Additionally, given the constricted nature of the site and proximity to wetland resource areas, the proponent should prepare a source control and pollution prevention plan to address snow removal and street sweeping practices and to prevent illicit discharges to the storm drains on-site.

Construction Impacts

The proponent should take measures to reduce potential demolition and construction period impacts (including but not limited to noise, vibration, dust, and traffic flow disruptions). The proponent must comply with MassDEP's Solid Waste and Air Quality Control regulations during construction. I encourage the proponent to incorporate construction waste recycling activities as a sustainable measure for the project. The proponent should consult with MassDEP for appropriate standards and guidelines for managing construction waste.

I encourage the proponent to mitigate the construction period impacts of diesel emissions to the maximum extent feasible. This mitigation may be achieved through participation in the MassDEP Diesel Retrofit Program. The proponent should work with MassDEP to implement construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as oxidation catalysts or diesel particulate filters. I remind the proponent that off-road equipment engines must use low sulfur diesel (LSD) fuel as of July 2007, as required by a 2004 regulation issued by the U.S. EPA. I encourage the proponent to further mitigate construction period air quality impacts through the use of ultra low sulfur diesel (ULSD) fuel in off-road engines, which contains even lower sulfur content than LSD.

Conclusion

Following a review of the ENF and the comments entered into the record, I find that the impacts of the project within MEPA jurisdiction do not warrant the preparation of an EIR. I conclude that no further MEPA review is required. The proponent may resolve any remaining issues during the state and local permitting processes.

July 11, 2008

Date



Ian A. Bowles

Comments received:

05/02/2008	John D. Keenan, State Representative, 7 th Essex District
05/07/2008	Hawthorne Cove Marina
05/12/2008	Burnham Associates, Inc.
06/19/2008	Massachusetts Office of Coastal Zone Management
06/30/2008	Salem Sounds Coastwatch
07/01/2008	Department of Conservation and Recreation
07/01/2008	Massachusetts Department of Environmental Protection – NERO
07/01/2008	Board of Underwater Archaeological Resources
07/01/2008	Division of Marine Fisheries

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