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September 28, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Rehabilitation of New Bedford State Pier
PROJECT MUNICIPALITY : New Bedford
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 13745
PROJECT PROPONENT : Department of Conservation and Recreation (DCR)
DATE NOTICED IN MONITOR : August 22, 2007

As Secretary of Energy and Environmental Affairs (EEA), I hereby determine that the Draft Environmental Impact Report (EIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent may prepare the Final EIR for MEPA review.

Project Description

The New Bedford State Pier plays an important role in the operations and economy of New Bedford Harbor. While it provides important infrastructure and operational support for vital water-dependent industries, tourism and environmental education, it is under-utilized because of significant degradation of its infrastructure. The pier must be re-constructed to fully support existing uses and future development.

The State Pier is located on an eight-acre site on MacArthur Drive in New Bedford Harbor. It is located entirely within a Designated Port Area (DPA) and within the *New Bedford/Fairhaven Harbor Plan* planning area. The harbor plan was approved by the Executive Office of Energy and Environmental Affairs (EEA) in September of 2002 and includes specific recommendations for appropriate uses and activities on the State Pier. The majority of the New



Bedford State Pier is solid fill consisting of a bulkheaded wharf of steel and stone construction. The North, East and South edges of the pier are pile supported for a width of between 40 and 50 feet. The Acushnet River and New Bedford Harbor provide spawning habitat for the winter flounder (*Pseudopleuronectes americanus*) and anadromous river herring and the project site lies within mapped habitat for quahogs (*Mercenaria mercenaria*).

The Preferred Alternative includes installation of a steel sheet pile bulkhead, removal of existing rip-rap, dredging, backfilling behind the new bulkhead with clean fill, pouring of a replacement concrete slab over the rehabilitated and newly filled portion of the pier and installation of a timber fender system. It includes the installation of an excursion pier and boarding floats for the first 350 feet of the southwest corner of the existing pier. The project will also include an extension of the northeast corner of the pier to square it off. In addition, the project will include alterations to existing buildings, demolition of some buildings and construction of two new buildings.

Jurisdiction and Permitting

The project is undergoing MEPA review pursuant to Section 11.03 (3)(b)(1)(a), (3)(b)(1)(f) and (3)(b)(6) because it requires a state permit and consists of alteration of a coastal bank, alteration of ½ or more acres of any other wetlands and reconstruction and expansion of a pile-supported structure of 2,000 or more square foot (sf) base area that occupies flowed tidelands. The project requires a Chapter 91 license and a 401 Water Quality Certificate (for filling and dredging) from the Department of Environmental Protection (MassDEP). The project is subject to federal consistency review from Coastal Zone Management (CZM). Also, it requires an Order of Conditions from the New Bedford Conservation Commission (and hence a Superseding Order of Conditions if the local Order is appealed).

Because the project is being conducted by a state agency and includes the use of state funds, MEPA has broad scope jurisdiction that extends to all issues that may cause Damage to the Environment. These include coastal resources, water quality, tidelands and historic/archaeological resources.

Review of the Draft EIR

The Scope of the Draft EIR was narrowly focused on the analysis of alternatives identified in the ENF and the development of adequate mitigation. State agencies previously identified concerns with the alteration of coastal wetlands, identified the importance of identifying an appropriate environmental restoration project and noted the importance of stormwater management on the site. The Draft EIR includes a thorough description of the project and all project elements. It identifies each state permit required for the project and addresses the project's consistency with applicable performance standards. It indicates that legislation required to adjust the state designated harbor line has been submitted to the Legislature. It includes an alternatives analysis and provides additional information regarding the re-development of the Pier and proposed uses. It includes plans that delineate applicable resource area boundaries, identifies environmental impacts and includes measures to avoid, minimize and mitigate these impacts.

The alternatives analysis compares the impacts of a No Build Alternative, the Preferred Alternative and a Steel Piles and Concrete Deck Alternative. It identifies and describes the criteria used for evaluating alternatives and evaluates how each alternative responds to these criteria. The criteria include: structural requirements, site safety issues, site security issues, ease of implementation, temporary environmental impacts, permanent environmental impacts and cost.

The Preferred Alternative consists of a steel sheet pile bulkhead capped by a concrete slab. It will include 65,430 cubic yards (cy) of clean fill behind the bulkhead. The Steel Piles and Concrete Deck Alternative consists of new steel pipe piles driven by barge and filled with concrete. It will include installation of concrete pile caps with a concrete deck. Cost estimates (including long-term maintenance) are \$17 million and \$15 million, respectively. Both projects include removal of existing rip-rap, dredging, installation of a timber fender system, expansion of the pier in the northeast corner and retraction of the pier in the southwest corner where a floating excursion dock will be set inside the limits of the pier to provide a continuous outer edge along the south side of the pier.

Both projects will reduce impervious surfaces by .11 acres and include an improved stormwater management system. Both alternatives include removal of rip-rap, surface rock and/or debris and dredging under the existing pier. This work will result in temporary impacts to coastal resources including entrainment of sediment in the water column. Both alternatives include permanent impacts to Land Under the Ocean and include loss of .6 acres of Land Containing Shellfish habitat. The Preferred Alternative will result in additional permanent environmental impacts related to the expansion of the solid pier structure. These estimates have been refined since the filing of the ENF. They include permanent impacts to 1.35 acres of Land Under the Ocean, .45 acres of coastal wetlands (LSCSF and Land Subject to Tidal Action) and loss of 22,560 cy of 100-Year Flood Storage Capacity.

Although the Steel Piles and Concrete Deck Alternative would avoid these environmental impacts, DCR considers the security and safety hazards presented by the open pile pier to be unacceptable. MassDEP comments indicate that fill or structures for water-dependent-industrial use on flowed tidelands may be permitted, provided that, in the case of proposed fill, neither pile-supported nor floating structures are a reasonable alternative. MassDEP considers the Steel Piles and Concrete Deck Alternative as a reasonable alternative and indicates that, while some fill may be permitted, reasonable measures should be taken by DCR to avoid, minimize and mitigate any encroachment in a waterway.

The Preferred Alternative requires the development of a package of measures to further avoid, minimize and mitigate environmental impacts. The Draft EIR indicates that DCR is committed to significant mitigation including the investment of up to \$600,000 for wetlands creation and restoration. The Draft EIR proposes three projects within the Rodney French Boulevard Drainage Ditch in New Bedford to mitigate impacts of the project on coastal resources. These include: an effort to create .34 acres of a rooted vascular plant community, dominated by eelgrass, in the center of the drainage ditch; creation of .54 acres of intertidal shore with persistent emergent vegetation by installing a gravity retaining wall and re-grading the drainage ditch to support an extensive saltmarsh cordgrass community and; 2.2 acres of wetlands enhancement including removal of trash and stressed vegetation followed by plantings. In addition, the proponent is consulting with the Division of Marine Fisheries (DMF) and local

shellfish constables to identify an appropriate area for shellfish seeding. These mitigation commitments will be initiated prior to construction. The proponent has indicated its intention to respect time of year restrictions; however, in the event that these cannot be observed, the proponent is committed to use silt curtains during dredging and water quality monitoring to minimize impacts to fisheries. Comments from CZM suggest that the proposal to create eelgrass beds be reconsidered. DMF comments identify an additional time of year restriction, from June 15 to September 15, which is not identified in the Draft EIR.

As required, the Draft EIR includes a plan and discussion of the proposed re-development of the State Pier. It describes the uses identified in the *New Bedford/Fairhaven Harbor Plan* for the State Pier. It indicates that these uses are consistent with DCR plans; however, it adds that “specific implementation of these preferences has since changed, due to changing circumstances.” The Draft EIR identifies where proposed uses will require a change to the Harbor Plan but does not elaborate on the changing circumstances or rationale for introducing permanent non-water dependent uses such as a restaurant or retail. The Draft EIR notes that Chapter 91 licenses will be required but does not identify whether and how proposed uses and buildings meet the use and dimensional requirements of the regulations. As noted previously, the Harbor Plan has expired and will undergo a renewal process led by the New Bedford Harbor Development Commission (HDC). Comments from state agencies indicate that many uses (e.g. restaurant, conference/function space, retail, etc.) are clearly inconsistent with the Harbor Plan and with its identification of the State Pier for water dependent uses.

The Draft EIR describes changes to the stormwater management system to minimize direct untreated discharge of stormwater to the harbor. The stormwater management plan will include additional catch basins, use of Stormceptor systems and will be designed to meet the 80% Total Suspended Solids (TSS) requirement of the MassDEP Stormwater Management Policy. As designed, a portion of the existing drainage system will continue to discharge to the harbor without treatment. DCR should redesign the system to treat all stormwater prior to discharge. Comments from DMF indicate that the proponent should consider installation of pump-out equipment for the excursion pier.

Response to Comments

Because the Draft EIR provides an adequate alternatives analysis and mitigation measures, I will allow DCR to file the Final EIR as a response to comments document. The Final EIR should include a copy of this Certificate, a copy of each comment letter on the Draft EIR and a response to each comment. In particular, the Final EIR should provide more specific, detailed information regarding the proposed uses for the State Pier, the rationale for proposing changes that do not appear consistent with the Pier’s designation as a water dependent industrial facility and evaluation of the consistency of the proposed uses with the Chapter 91 regulations. The preparation of the Draft EIR provided an opportunity to resolve issues earlier in the design process. DCR was encouraged to actively coordinate with other state agencies prior to filing the Draft EIR. Although significant progress has been made in terms of analyzing alternatives and developing adequate mitigation, additional interagency coordination is necessary to address comments identified on the Draft EIR. I am directing DCR to convene an interagency meeting, including MassDEP, CZM and DMF, to discuss the project and comments on the Draft EIR prior to filing the Final EIR.

Mitigation

The EIR includes a chapter on mitigation measures, including revised Draft Section 61 Findings for use by state agencies. It indicates that the proponent is committed to the following measures to avoid, minimize or mitigate impacts:

- Expansion and improvement of the stormwater management system to treat stormwater prior to discharge to New Bedford Harbor and achieve a 80% removal of TSS from runoff;
- Creation and restoration of more than 2 acres of wetlands within the Rodney French Boulevard Drainage Ditch in New Bedford, including remediation of PCB contamination;
Construction period measures to control erosion and sedimentation;
- Observation of time of year restrictions identified by DMF or, in the event that these cannot be observed, the proponent will employ appropriate containment technologies (e.g. silt curtains);
- Water quality monitoring to evaluate effectiveness of mitigation and identify exceedances of water quality thresholds and;
- DCR will contact the Bureau of Archaeological Resources (BUAR) if submerged cultural resources are encountered during the course of the project and take steps to limit adverse affects.

September 28, 2007

Date



Ian A. Bowles

Comments Received:

9/21/07	Coastal Zone Management (CZM)
9/21/07	Department of Environmental Protection Southeast Regional Office (MassDEP/SERO)
9/20/07	Department of Environmental Protection/Waterways Regulation Program
9/25/07	Division of Marine Fisheries (DMF)
9/14/07	Board of Underwater Archaeology (BUAR)

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