

# The Commonwealth of Massachusetts

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November 2, 2006

## CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Bass River Beverly, LLC – Pier Project  
PROJECT MUNICIPALITY : Beverly  
PROJECT WATERSHED : North Coastal  
EOEA NUMBER : 13869  
PROJECT PROPONENT : Bass River Beverly, LLC  
DATE NOTICED IN MONITOR : September 11, 2006

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 **requires** the preparation of an Environmental Impact Report (EIR).

I am requiring the preparation of an EIR because the potential impacts of the project are potentially significant and because the MEPA process itself represents an appropriate public forum to analyze impacts and describe trade-offs related to coastal and marine protection. Specifically, this project requires further analysis on alternatives, public waterfront access, marine and underwater archaeological resources, and impacts to navigation and mitigation measures. As discussed in more detail below, the project is not permissible as currently proposed. The Department of Environmental Protection's (MassDEP) Waterways Regulation Program (WRP) is currently reviewing a license application filed for this project. If the proponent wishes to pursue the licensing of this project further, MassDEP expects that the license application will be modified such that the project complies with the applicable regulatory requirements.

As described in the Environmental Notification Form (ENF), the project involves the construction of a 283-foot long pile supported pier with associated gangway, floats, and finger floats in the Bass River. The proposed project is located on flowed tidelands within the geographic jurisdiction of M.G.L. Chapter 91, the Public Waterfront Act, and 310 CMR 9.00, the Waterways Regulations, and is considered a water-dependent use project. Most of the proposed pier would pass through the intertidal zone between the mean high and mean low water marks,

with the finger floats extending beyond the mean low water mark. The facility is proposed to include 12 boat slips for the exclusive use of residents of an adjacent subdivision.

This project is subject to review pursuant to Sections 11.03(3)(b)(5) and (3)(b)(6) of the MEPA regulations, because the project will require a Chapter 91 License from MassDEP for the non-water dependent use of tidelands and the project involves construction, reconstruction or expansion of a pile-supported or bottom anchored structure of 2,000 or more square feet of base area in a flowed tideland. The project will also require an Army Corp of Engineers' Individual Permit and an Order of Conditions from the Beverly Conservation Commission (and hence a Superseding Order from MassDEP if the local Order were appealed).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. The Chapter 91 License confers broad subject matter jurisdiction under MEPA.

I advise the proponent that the project must meet all the requirements for the Chapter 91 permitting process. In addition, MassDEP, the Division of Marine Fisheries (DMF) and the Massachusetts Board of Underwater Archaeological Resources, many local officials and concerned fishermen and citizens have expressed numerous project design recommendations and concerns that must be addressed in the EIR.

The proponent must prepare a Draft and a Final EIR in fulfillment of the requirements of Section 11.03 of the MEPA regulations.

## **SCOPE**

### General

The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The EIR should contain a copy of this Certificate and a copy of each comment received. The proponent should circulate the EIR to those parties who commented on the ENF, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in section 11.16 of the MEPA regulations.

### Project Description and Permitting

The EIR should include a description of the proposed project, including as much information as possible. The EIR should provide a detailed project description with a summary/history of the project. The EIR should identify and describe any project phasing.

The EIR should briefly describe each state permit required for the project, and should demonstrate that the project meets any applicable performance standards. In accordance with

section 11.01 (3)(a) of the MEPA regulations, the EIR should also discuss the consistency of the project with any applicable local or regional plans.

### Alternatives

The EIR should analyze the no-build alternative to establish baseline conditions. The EIR should evaluate alternative design layouts of the proponent's preferred alternative in order to arrive at a design layout that minimizes overall impacts. The analysis should clearly present the alternative configurations at the site and identify the advantages and disadvantages of the Preferred Alternative. The EIR should provide a comparative analysis that clearly shows the differences between the environmental impacts associated with each of the alternatives. As part of each of the alternatives developed the EIR must present siting information and fully investigate engineering aspects of the alternative.

The EIR should also analyze an alternative that fully conforms to local zoning, planning, and Chapter 91 regulations. Based on the analysis presented in the Draft EIR, I reserve the right to require analysis of a reduced build alternative in the Final EIR, if the Draft EIR demonstrates that the proponent's preferred alternative continues to not be permissible.

### Marina and Public Access

The EIR should provide the proponent's determination of the limits of Chapter 91 jurisdiction for the project. The EIR should respond to MassDEP's issues related to Chapter 91 licensing. As stated earlier in this Certificate, the project is not permissible as currently proposed. The project is considered a marina in accordance with 310 CMR 9.02, since it includes more than ten berths. According to the ENF, the berths are proposed to be assigned to the owners of the adjacent subdivision. However, assigning berths in this way is prohibited by the Waterways Regulations at 310 CMR 9.38(2)(a)(1), which states that "no berth in a marina shall be assigned pursuant to any contract or other agreement that makes use of a berth contingent upon ownership or occupancy of a residence or other nonwater-dependent facility of private tenancy." The proponent must either reduce the number of slips to fewer than ten, in which case the facility will not be considered a marina and 310 CMR 9.38(2)(a)(1) will not apply, or make the slips available to the broader public. MassDEP has stated that in the event the proponent continues to propose a marina, then 310 CMR 9.38(2)(a)(2) prohibits the assignment of more than half of the slips for period of longer than one year. I advise the proponent to work closely with MassDEP to resolve these issues. The EIR should discuss the results of these discussions.

The marina facility as proposed is also subject to the standards regulating marinas found at 310 CMR 9.39(1). These requirements include providing or contributing to sewage pumpout facilities in the vicinity of the marina. In addition, the standards concerning Compensation for Interference with Public Rights in Commonwealth Tidelands at 310 CMR 9.35(4) apply to this project since it is proposed to be located on city-owned property. In accordance with 310 CMR

9.35(4)(b), a marina may be required to provide water-related public benefits such as a public boat launch, a community sailing program, public pedestrian facilities, and other benefits.

#### Impacts to Navigation

During the review of the ENF, the MEPA office received information from the Beverly Harbormaster and many local fishermen attesting to the potential impacts to navigation that may result from this project. Pursuant to 310 CMR 9.35(a), MassDEP must ensure that any pier does not impede navigation by extending into a navigational channel, impairing sight lines, requiring the alteration of an established course of vessels, and other factors. The proponent has stated that because of the shallowness of the Bass River at low tide, the navigable width of the river at low tide is greatly reduced, and that therefore the length of the proposed pier and the extension of the proposed floats into a navigable section of the river, below mean low water may have significant impacts to navigation by impeding existing uses and activities on the river. This proposed pier also would exceed the length of adjacent structures in the Bass River. I strongly advise the proponent to work closely with MassDEP, the Beverly Harbormaster and local fishermen to address the many substantive concerns raised during the review of the ENF. The EIR must include analysis ensuring that the project does not impede navigation.

#### Marine Resources

The project area is located on the Bass River, part of shellfish growing area N17, designated by the Division of Marine Fisheries (DMF) as productive soft shell clam (*Mya arenaria*) habitat and as such is afforded protection under the Wetlands Protection Act (310 CMR, 10.34). The area also provides intertidal forage habitat for a variety of marine fish species including winter flounder (*Pseudopleuronectes americanus*). Intertidal habitats such as salt marsh and mud flats are important coastal resources, providing for forage, shelter and juvenile fish development as well as habitat for invertebrates and shellfish. The structures described in the ENF have the potential to negatively impact both salt marsh and intertidal mudflat containing shellfish. The EIR should include bathymetry and area resources, such as shellfish, clearly indicated on the project plans. The EIR should also include a clear explanation of how short term and long term impacts to fisheries resources and habitats are to be avoided and minimized. In addition, the EIR should include more detailed engineering plans that depict the pier, float and associated vessels in cross section, in relation to MHW, ELW and coastal wetland areas. I strongly encourage the proponent to work with DMF as they develop the EIR.

#### Underwater Archaeological Resources

The Massachusetts Board of Underwater Archaeological Resources has stated in their comments that research indicates that certain types of environmental and topographical settings, such as the proposed site that offered diverse resources on a consistent or seasonal basis, are strongly associated with the presence of prehistoric archaeological deposits. The Massachusetts Board of

Underwater Archaeological Resources has not observed direct evidence of cultural materials and no record of any underwater archaeological resources was found. However, the project area is a fairly undisturbed river setting, which can be characterized as sensitive relative to its potential for containing submerged prehistoric archaeological deposits. The Massachusetts Board of Underwater Archaeological Resources strongly encourages the proponent, and I concur, to develop changes to the pier design which would reduce the project's area of potential effect or impact. If cultural resources are encountered during the course of the project the Massachusetts Board of Underwater Archaeological Resources should be notified and steps should be taken to limit adverse affects.

### Comments

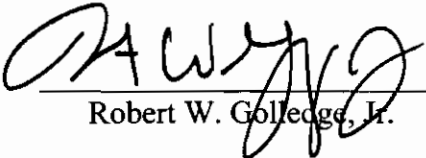
The EIR should respond fully to the substantive comments received. The EIR should present additional technical analysis and/or narrative as necessary to respond to the concerns raised, not otherwise raised in this Certificate. The proponent should circulate a copy of the EIR to any party submitting written comments on the ENF. The EIR should contain a copy of this Certificate and of each comment received.

### Mitigation

The EIR should include a separate chapter on mitigation measures. The mitigation section should include a proposed Section 61 Finding for the state permit required. The proposed Section 61 Finding should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation should also be included.

November 2, 2006

Date



Robert W. Golledge, Jr.

### Comments received:

09/19/06	City of Beverly Harbormaster
09/20/06	Petition to Oppose Bass River Project: signed by 35 citizens
09/22/06	Harry and Nancy Coffey
09/30/06	Joe Randazzo
10/02/06	Massachusetts Board of Underwater Archaeological Resources
10/02/06	Beverly Harbor Management Authority
10/03/06	Chris Dunn
10/04/06	Margaret Falloni
10/04/06	Steve Dunn
10/04/06	Norman & Brabara Stewart

## Comments received (continued):

10/04/06	Michael Hogan
10/06/06	James Kilcoyne
10/10/06	Bass Haven Yacht Club
10/12/06	Karelle Morrissey
10/16/06	Ron Swanick
10/18/06	City of Beverly Harbormaster, 2 <sup>nd</sup> comment letter
10/20/06	John Fitzgerald
10/20/06	Division of Marine Fisheries
10/23/06	James Bartlett
10/23/06	North Shore Marine, Inc.
10/24/06	Sandra Desmond
10/26/06	Department of Environmental Protection

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