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January 20, 2009

Ian A. Bowles, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Attn: MEPA Office

RE: Request for Advisory Opinion
Gloucester Marine Railways Corporation
81 Rocky Neck Ave. Gloucester, MA

Dear Secretary Bowles:

On behalf of my client, Gloucester Marine Railways Corporation (GMR), I am requesting an advisory opinion pursuant to 310 CMR 11.01 (6), concerning MEPA jurisdiction over sitework proposed on GMR property. The question relates to the definition of "Replacement Project" in Section 11.02 of the regulations, and clarification as to whether GMR's replacement of a wharf and sheds, which for decades occupied the northern end of its Rocky Neck Ave. site, exceeds MEPA's review thresholds.

Project Background:

GMR, the project proponent and site owner, was incorporated in 1953 by five Gloucester fishermen, who banded together to buy an existing railways operation in the Harbor Loop section of Gloucester, to support their fishing businesses. There, GMR provided repairs, dock space, and later, an ice plant. In the early 1960's, GMR purchased the Rocky Neck Shipyard across the harbor, for additional dock/storage area, and capacity for fuel service. GMR has continuously provided repairs, fuel, docking, and storage to some of the remaining Gloucester fishing fleet, together with repairs to other sectors of the commercial marine industry such as tugboats, barges, passenger boats, etc. Ownership of the corporation remains substantially in the hands of the founders' descendants with no single family, or person, owning a majority share.

Similar to so many marine-industrial businesses in the Commonwealth, GMR has faced financial hardship over the years. This necessitated the sale of the Harbor Loop property to the Gloucester Maritime Heritage Center in 1999 reducing space available for marine repair operations. Other space was lost more recently when severe damage from a winter ice storm necessitated removal of the northernmost wharf at the Rocky Neck Ave site.

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Replacement Project

GMR's post-storm replacement plan adheres to the pre-existing footprint and materials, and continues the longstanding marine repair function. The planned footprint of the rebuilt wharf is approximately 3,870 square feet (sf). The sheds would occupy 2,625 sf of that wharf, slightly less than the pre-existing buildings. These structures are consistent with those depicted on the following license plans on file at the Massachusetts Department of Environmental Protection:

| Issuer | License # | Date | Use |
|--------|-----------|-----------------|---------------------------------------|
| DPW | 3567 | August 24, 1953 | Maintain existing structures etc. |
| DPW | 4325 | May 23, 1960 | Dredge and install floats and pier |
| DPW | 4953 | July 28, 1965 | Maintain Existing & Build 2 New Piers |

In its "replacement" efforts, GMR submitted a Notice of Intent (NOI) to the Gloucester Conservation Commission, when during a site visit pursuant to that NOI filing, City officials suggested an additional finger pier extension toward the Harbor Line. They made this recommendation because the property:

- is located in the Designated Port Area;
- has served the marine industry for decades, and continues to accommodate a vital water-dependent use;
- could add to the dwindling supply of commercial docking space in good repair in the Harbor, thereby addressing a pressing community need;
- has housed marine industry for more than a century thereby negating potential for new environmental impacts;
- has ledge outcroppings which would limit access to the licensed premises, making a finger pier extension the most practical means to provide needed docking space for Gloucester Harbor vessels.

Noteworthy is Plan #1100 dated August 9, 1888, entitled *For Structures Already Built Without a License* and now on file at DEP, which shows a T-shaped pier in a location not far from the L-shaped finger pier extension currently proposed. That earlier pier extended well beyond the Harbor Line while the proposed pier ends short of the Harbor Line. The same T-shaped pier shows as a ferry landing on another plan of Rocky Neck dated 1884.

Prompted by the suggestion of City officials, GMR submitted a revised NOI plan to the Gloucester Conservation Commission, with a finger pier addition of approximately 940 sf. The Commission voted an Order of Conditions for the replacement including the finger pier extension in November 2008. That Order has not been appealed.

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Without the finger pier extension, the wharf/shed work would not need any State permit nor would it trigger any other MEPA threshold. However, the finger pier addition requires a Chapter 91 license, for which GMR is now preparing an application. This application will undergo an extensive public review process.

It is ironic that in continuing a longstanding marine-industrial use in a DPA with structures appropriate for the location, and then addressing a community need, as recommended by the Gloucester Harbormaster, the Shellfish Constable and the Conservation Agent, and voted by the Conservation Commission, this project might now be subject to MEPA review as well. This poses an additional level of effort which seems duplicative, given the recent Conservation Commission review as well as the current Chapter 91 license application. On behalf of GMR, I aver that the proposed reconstruction constitutes a replacement project pursuant to the definition in the regulations in 310 CMR 11.02, and with the finger pier extension, which has no discernible impact on the environment, but rather will address a stated need for dock space in Gloucester Harbor, is below the threshold for an Environmental Notification Form.

If you have any questions about this project or should need any additional information, you could reach me by telephone at (508)650-3592 or email at boelter1@verizon.net. Thank you for your thoughtful consideration of this matter.

Sincerely,



Alice Boelter
Principal

cc: V. Gustafson, GMR
D. Slagle, DEP