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March 17, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE EXPANDED ENVIRONMENTAL NOTIFICATION FORMS

PROJECT NAME: Lafayette Tides
PROJECT MUNICIPALITY: Marblehead & Salem
PROJECT WATERSHED: North Coastal
EOEA NUMBER: 13725
PROJECT PROPONENT: 485 Lafayette Street Acquisitions, LLC
DATE NOTICED IN MONITOR: February 8, 2006

PROJECT NAME: Chadwick Lead Mills Remediation Project
PROJECT MUNICIPALITY: Marblehead & Salem
PROJECT WATERSHED: North Coastal
EOEA NUMBER: 13726
PROJECT PROPONENT: Glover Estates, LLC
DATE NOTICED IN MONITOR: February 8, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.G.L., c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations, I hereby determine that these two projects **require** the preparation of an Environmental Impact Report (EIR). I am requiring the preparation of a combined EIR that addresses both projects.

Project Description

Separate Expanded Environmental Notification Forms (EENFs) were filed with the MEPA office by different proponents for two projects on the same site in Marblehead and Salem, MA. The project site is the site of the former Chadwick Lead Mills. The project site is located off of Lafayette Street (Route 114) and is bounded by the Forest River to the west, Salem Harbor to the north, land owned by the town of Marblehead to the east, and private residential parcels to the south. A public bike/walking trail bisects the site in the northerly part and the Marblehead-Salem town boundary bisects it in the westerly part.

The first project, the Chadwick Lead Mills Remediation Project (EOEA #13726) involves the remediation of the historic lead mill site under the Massachusetts Contingency Plan (MCP). The second project, Lafayette Tides (EOEA #13725) involves the development of a 44-unit multi-family housing project under the state's Comprehensive Permit (Chapter 40B) program on the project site. While the two projects are separate, the proponents for the remediation and housing projects have coordinated their efforts under the MEPA review for the purpose of giving state agencies and the public an opportunity to review any interrelated permitting issues and to undertake a comprehensive review of how both projects will impact environmental resources at the site.

The Chadwick Lead Mills Remediation project involves remediation of a historic lead mill site under the Massachusetts Contingency Plan (MCP). The site has been listed by the Department of Environmental Protection (DEP) since 1995 (DEP RTN #3-12695). Results of field investigation activities conducted at the site have documented high concentrations of lead impacted soils and sediments on portions of the site and adjacent properties. A Phase I site investigation and Phase II Comprehensive Site Assessment (CSA) reports and a Risk Assessment have been completed for the Site in accordance with the MCP.

The proponent for the Lafayette Tides project will acquire the site and construct the residential development once the site has been remediated and a Class A Response Action Outcome (RAO) has been filed for the property. The project will consist of 44 units of housing in four buildings with 101 parking spaces on a 4.4-acre site. The development includes a 24-foot wide, 365 foot long paved roadway with 5-foot wide sidewalks on both sides, and a 45-foot radius cul-de-sac. The project is expected to generate 320 new daily vehicle trips, generate 9,680 gallons per day (gpd) of wastewater and require 9,680 gpd of drinking water.

Jurisdiction and Permitting

The projects are undergoing review and are subject to the preparation of a Mandatory EIR pursuant to Section 11.03(3)(a)(5) of the MEPA regulations because a Chapter 91 Waterways License is required for a new non-water dependent use occupying one or more acres of tidelands. The projects also meet MEPA review thresholds for wetlands due to impacts to coastal beach and bank (301 CMR 11.03 (3)(b)(1)(a)); salt marsh (301 CMR 11.03(3)(b)(1)(c)); and regulatory floodway (301 CMR 11.03(3)(b)((1)(e)).

The remediation project requires the following permits and/or review: a Programmatic General Permit from the United States Army Corps of Engineers (U.S.A.C.E); a Chapter 91 Waterways dredging permit and 401 Water Quality Certification from the Department of Environmental Protection (DEP); Federal Consistency Review from the MA Office of Coastal Zone Management (CZM); review from the Massachusetts Historical Commission (MHC); and Orders of Conditions from the Salem and Marblehead Conservation Commissions. The residential development will require a new Chapter 91 License from DEP for a non-water dependent use; review by MHC; and Orders of Conditions from the Salem and Marblehead Conservation Commissions. Because the proponents are not seeking financial assistance from the Commonwealth for the projects, MEPA jurisdiction is limited to the subject matter of required or

potentially required state permits. In this case, MEPA jurisdiction extends to wetlands, stormwater, waterways and historic resources.

While it is work associated with the Lafayette Tides project that triggers the mandatory EIR threshold, there are enough interconnected issues related to the permitting and potential impacts from both projects that I am issuing the scope for the EIR for both projects. As discussed in pre-application meetings with MEPA, the proponents for both projects will work cooperatively to produce one set of EIR documents for the two projects.

In accordance with Section 11.05(7) of the MEPA regulations, the proponents for each project submitted Expanded ENFs with the request that I allow the proponents to fulfill their EIR obligations under MEPA with a Single EIR, as opposed to the usual two-step Draft and Final EIR process. While each EENF contained considerable information that has been helpful in defining the scope of the EIR, I find that neither document meets the enhanced standards of Section 11.06(8) of the MEPA regulations. Specifically, the EENFs did not provide sufficient information regarding impacts to wetland resources, proposed wetland restoration plans and information about how the projects will meet the performance standards of the Chapter 91 waterways regulations. Therefore, I am requiring the preparation of a Draft and Final EIR.

DEP has indicated that it may consider permitting the remediation project separately from the residential project if the Draft EIR provides enough information for the Department to determine whether the remediation is sufficiently distinct from the Lafayette Tides project. This Certificate requires the proponents of both projects to prepare a Draft and Final EIR in response to the scope outlined below, in order to avoid project segmentation and to allow a comprehensive evaluation of the impacts from both projects. I will, however, consider a request for a Phase I Waiver from the proponent for the Chadwick Lead Mills project that, if granted, would allow the remediation project to proceed to permitting before MEPA review is completed on both projects. The proponent may consider submitting a Phase I Waiver request with the Draft EIR in accordance with Section 11.11 of the MEPA regulations.

SCOPE

General

The Draft EIR (DEIR) should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The DEIR should include a copy of this Certificate and a copy of each comment received. The proponent should circulate the DEIR to those parties that commented on the EENFs; to the Town of Marblehead and the City of Salem; 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. A copy of the DEIR should be made available for public review at the Marblehead and Salem Public Libraries.

Project Description and Permitting

The DEIR should include a thorough description of each project, including a detailed description of construction methods and phasing. The DEIR should include a brief description of each state permit or agency action required or potentially required, and should demonstrate that the projects will meet applicable performance standards. The proponents should provide an update on the local permitting process for each project. In accordance with Executive Order No. 385, "Planning for Growth" and Section 11.03 (3)(a) of the MEPA regulations, the DEIR should discuss the consistency of the projects with the local and regional growth management and open space plans.

Alternatives

The EENF for the remediation project states that due to the nature and extent of lead contamination at the site, there are no alternatives to the recommended remediation approach, which is regulated under the MCP. However, the MEPA regulations, the Water Quality Certificate regulations, and the Waterways regulations all require that the proponent undertake an alternatives analysis to determine if alternative approaches to the remediation could minimize impacts to coastal wetland resources. The alternatives analysis should clearly demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which the proponent plans to avoid, minimize or mitigate Damage to the Environment to the maximum extent feasible. I understand that the alternatives may be limited by the MCP regulations; however, the proponent should examine alternative methods of remediation that could have less impact to salt marsh, coastal beach and coastal bank. The DEIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on wetland that are necessary as part of the remediation. This section of the DEIR should respond to comments from CZM and DEP regarding alternatives. The proponent for the remediation project should also respond to comments from the MA Division of Marine Fisheries regarding an expanded alternatives analysis and additional shellfish sampling.

The EENF for the residential project considered the no-build alternative, a single family subdivision, and the development of the site for commercial use. In response to comments from state agencies, the residential project requires a more comprehensive alternatives analysis related to stormwater impacts. In addition to enhanced treatment measures that will reduce impacts to important fishery resources in the Forest River and Salem Harbor, the proponent should evaluate sustainable design alternatives such as Low Impact Development (LID) that can serve to avoid or minimize potential environmental impacts.

Waterways

Under MGL c. 91 and the Waterways Regulations at 310 CMR 9.00, DEP's Waterways Program has jurisdiction over proposed activities on portions of the site lying below the historic and current mean high water marks. Historically the site received three Chapter 91 Waterways licenses, in 1893, 1898 and 1904. These licenses were given to the owners of the former lead mill operations on the site allowing them to fill in portions of the site along the Forest River to its mouth with Salem Harbor. This area constitutes approximately 1.15 acres of filled tidelands. In

addition, portions of the site seaward from the Mean High Water (MHW) line are subject to Chapter 91 jurisdiction. This area is approximately 0.39 acres. DEP has stated in their comments on the EENFs that the proposed work for both projects will affect over an acre of filed tidelands, in addition to the areas to be dredged below the mean high water mark for the purposes of remediation.

In response to comments from DEP, the DEIR should discuss the effect of the remediation project on existing structures such as the Forest River seawall and whether it will require the construction of new or temporary structures. Activities below the mean high water should be clearly identified, including the areas and volumes to be dredged, the fate of the dredged material, and the final bottom contours. The DEIR should provide greater detail about the areas of the site to be remediated, movement of soils around the site, and final grades of remediated areas. The DEIR should specifically note whether the remediation project proposes to re-grade portions of the site in accordance with the grades proposed for the residential project. This information will allow DEP and MEPA to determine whether the remediation project is sufficiently distinct from the residential project, and therefore if it is appropriate issue a Phase I Waiver for the remediation.

While the residential buildings proposed as part of the Lafayette Tides project appear to be located outside of Chapter 91 jurisdiction, the project does include activities within the Waterway Program's jurisdiction, including the construction of a roadway serving the residences as well as a public walkway and related open space amenities. This constitutes a change in use of the fill at the site from the former industrial use to residential use, and therefore the Chapter 91 license will cover the entire area occupied by structures and open space uses related to the residential development. The proposed roadway servicing the residential development is a nonwater-dependent use pursuant to 310 CMR 9.12. DEP has preliminarily determined that the filled tidelands at the project site are Private Tidelands. Therefore, the roadway is subject to the use and dimensional standards of the Waterways Regulations at 310 CMR 9.51 and 9.52.

310 CMR 9.51(3)(b) prohibits private nonwater-dependent uses on the ground level of filled tidelands within 100 feet of the project shoreline. While a portion of the roadway lies within 100 feet of the shoreline, it is DEP's understanding that the roadway will allow public access to the open space at the site and will include a limited number of parking spaces along the cul-de-sac. The DEIR should provide greater detail about public accessibility of the roadway and parking spaces so that DEP can determine whether the roadway is sufficiently available to the public to be licensed within 100 feet of the shoreline. Since no buildings are proposed to be sited on filled tidelands, the remainder of the requirements of 310 CMR 9.51 does not apply to this project.

The residential project is subject to the public access and water-dependent use requirements of 310 CMR 9.52. These provisions require that the project provide facilities that promote water-dependent use of that portion of the project lying within the water-dependent use zone delineated pursuant to 310 CMR 9.51(3)(c), and that the project site include an appropriate pedestrian access network. A site plan included with the Lafayette Tides EENF includes a walkway and landscaping within the waterfront portion of the site, but contains little detail about the appearance of the area or its potential for public use. The DEIR should provide much greater detail concerning the proposed topography of this area, particularly within the water-dependent

use zone, so that DEP can determine whether the required public access can be accommodated. The DEIR should also include details concerning pedestrian public access amenities, such as signage, benches, and trash receptacles and provide greater detail about the walkway depicted on plans submitted with the EENF. The DEIR should include greater detail about this walkway, its connections to the street, public parking facilities, and the existing bike path, and its relationship to the other open space public amenities.

Wetlands

The proposed remediation project would have significant impacts to coastal wetland resources. According to the EENF, contaminated soils would be excavated from a 13,883 square foot (sf) area of salt marsh, a 17,914 sf area of beach, and 6,942 sf of coastal bank. The DEIR should include an existing conditions plan of reasonable scale based on recent survey data that includes at a minimum, current existing topography, delineation of all resource areas, delineation of all FEMA flood zones, and the extent of contaminated soils within each resource area.

The coastal wetlands regulations prohibit and restrict most activities in coastal wetland resource areas to preserve the significant functions those resources provide. Although not indicated in either EENF, DEP has stated that the project can be reviewed by the Salem and Marblehead Conservation Commissions under the limited project provisions in the wetlands regulations at 310 CMR 10.24 (7)(c) 6. The municipalities will need to ensure that each project is “designed, constructed, implemented, operated, and maintained to avoid or, where avoidance is not practicable, to minimize impacts to resource areas, and to meet the standards to the maximum extent practicable” in 310 CMR 10.24 (7)(c) 6.b. The DEIR should provide additional information on how each project will meet the performance standards of the wetlands regulations.

The DEIR should contain a plan for the proposed excavation of coastal wetland resources and restoration of the wetland areas. The plan should consider construction impacts to the resources being removed and impacts in the vicinity of the excavation and the disposal area. For the remediation project, the DEIR should include plans that detail the amount of soil to be removed, the depth of the proposed removal, and treatment and destination details for removed soils. These plans should include cross-sections and profiles of proposed work. The DEIR should demonstrate that construction methods, material stockpiling, sequencing, and timing of the work avoids and minimizes impacts to the greatest extent.

According to the Chadwick Mills EENF, the project will impact 13,883 sf of salt marsh for excavation and restoration. If it cannot be demonstrated through an alternatives analysis that this area can be avoided, the DEIR should provide a detailed salt marsh restoration plan for the site. In addition, the DEIR should present a restoration plan for coastal beach. The proponent should note comments from DEP and CZM regarding information required for the restoration plans, and should specifically address impacts to Land Containing Shellfish. The restoration plans should be complete in terms of pre- and post-site elevations, soils, replanting, and monitoring. It should be demonstrated that the resource area functions would be restored.

The proponent for the remediation project indicated at the site visit for the project that most of the coastal bank on site is unlikely to contain contaminated soils, but that the vegetation is

proposed to be removed from the bank because it contains invasive species. In its comments on the EENF, CZM notes that the bank is fully vegetated with mature trees and shrubs, most of which are not invasive according to information submitted with the Chadwick Mills EENF. The proponent should note that CZM does not recommend the removal of existing vegetation as part of remediation activities on the site. The DEIR should clarify the extent to which disturbance of the coastal bank is necessary for remediation activities, and should provide a detailed plan for restoring the area to pre-disturbed conditions with native vegetation if impacts are unavoidable.

At the MEPA consultation held for the projects on February 23, 2006, the proponent for the remediation project indicated that one potential restoration solution would be to armor the coastal bank. This activity, however, is prohibited by the wetlands regulations in 310 CMR 10.30 (3). The proponent and the Salem and Marblehead Conservation Commissions should note comments from DEP who advises that the Order of Conditions and Certificate of Compliance for any future building within 100 feet of the coastal bank shall be conditioned in accordance with 310 CMR 10.30 to specifically prohibit future coastal engineering structures, in the event that the bank erodes any time in the future.

According to the EENFs, the proposed projects will impact 23,520 square feet of LSCSF, but no information is provided that describes the proposed impact. The site plans submitted with the EENFs depict topographic features taken during a 1999 survey, but elevations on the plan are not legible. The DEIR should include a plan of reasonable scale that delineates this resource area, and accurately depicts the extent of all FEMA flood zones on the site relative to the existing current topography and proposed remediation and development activities. The main roadway access with a cul-de-sac is partially within the LSCSF. At the MEPA consultation session, the proponent for the Lafayette Tides project indicated that the access road would be laid on top of contaminated sediments that would be stabilized and buried underneath it. The DEIR should consider the change in grades and potential for impacts within LSCSF to ensure that the project will not change flood patterns that will contribute to increased flood damage in the area. A narrative description of the impacts to the functions of LSCSF and any proposed mitigation should be included.

Stormwater

The proponent for the Lafayette Tides project submitted a Comparative Drainage Analysis with its EENF. In addition to the building footprints and landscaping, the project will include a 24-foot wide, 365-foot long paved roadway with 5-foot wide sidewalks on both sides, and a 45-foot radius cul-de-sac. Drainage calculations in the Comparative Drainage Analysis submitted with the EENF appear to consider impacts only from the roadway, sidewalks and cul-de-sac. Stormwater treatments will be reviewed at the local level by the Salem and Marblehead Conservation Commissions. However, as no Order of Conditions has been granted for the Lafayette Tides project, and the potential for a Superceding Order of Conditions exists, MEPA jurisdiction pertains to stormwater from the entire site. The DEIR should therefore also consider stormwater runoff from proposed buildings and vegetated areas that will be converted to landscaped areas.

Following comments from DEP and the MA Division of Marine Fisheries, the DEIR should contain a stormwater control plan that demonstrates that source controls, pollution prevention measures, erosion and sedimentation controls during construction, and the post development drainage system will be designed to comply with the MA Stormwater Management Policy and standards for water quality and quantity impacts with the City of Salem and Town of Marblehead's stormwater programs. Currently, stormwater is proposed to be discharged directly into the Forest River with minimal treatment. The majority of the intertidal area in this section of the Forest River is classified as productive soft shell clam (*Mya arenaria*) habitat. In addition the Forest River is an important migratory route for American eel (*Anguilla rostrata*) and supports several species of forage fish including sand lance (*Ammodytes americanus*). Salem Harbor also provides habitat for a variety of finfish and invertebrate species.

The proposed stormwater outfall is an existing pipe protruding from the stone retaining wall along the East bank of the Forest River. Given both the contaminated nature of the sediments at the site and the potential to negatively impact marine habitat, the DEIR should consider additional stormwater Best Management Practices that will assure the highest level of stormwater treatment available. Following comments from DEP, the proponent should avoid the infiltration of stormwater runoff in areas of contaminated soils where there is the potential to exacerbate groundwater impacts.

The DEIR should contain a draft of the stormwater management plan. It should discuss ownership of internal roads, and discuss what entity will be responsible for the ongoing operation and maintenance of structural BMPs. If the roads will be maintained by the proponent, the stormwater management plan should include internal roadway sweeping, catch basin cleaning and snow removal.

I encourage the proponent to consider LID techniques in site design and storm water management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions, and are well suited for constrained sites. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. These practices offer alternative, micro-management techniques that are well suited for constrained sites; the redundancy of stormwater control functions is insurance against system failure and smaller systems also pose fewer safety concern. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>. The DEIR should provide a discussion of potential LID techniques that could be incorporated at the Lafayette Tides site.

Historic Resources

The proponents submitted a technical report, *Archaeological Investigations, Chadwick Lead Mill Site, Salem and Marblehead*, prepared by the Public Archaeology Laboratory (PAL) with the EENFs. The report contained documentary, geotechnical and comparative information on the development and industrial history of the property, and about archaeological

investigations at other comparative industrial worker sites. Research conducted at the site indicates that the property has been considerably and heavily impacted, most extensively after a 1968 fire. MHC states in its comments on the EENFs that due to impacts at the site, the Chadwick Mills site does not meet the Criteria of Eligibility (36 CFR 60) for listing in the National Register of Historic Places, because the site lacks archaeological integrity. As no significant historic or archaeological resources will be affected by the proposed projects, MHC has stated that no further archaeological investigations are warranted. The DEIR does not require any further information regarding historic and archaeological resources. The proponents should note comments from MHC regarding dissemination of the archaeological report.

Construction Period Impacts

The DEIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities, and propose feasible measures to avoid or eliminate these impacts. The proponent should implement measures to alleviate dust, noise and odor nuisance conditions which may occur during the construction activities.

Mitigation

The DEIR should contain a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for all state permits that includes 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. The DEIR should provide a schedule for the implementation of the mitigation, based on the construction phases of the two projects.

March 17, 2006
Date


Stephen R. Pritchard

Comments received:

2/17/2006	Massachusetts Board of Underwater Archaeological Resources
2/21/2006	Massachusetts Historical Commission
2/27/2006	Sandi Osattin
3/3/2006	Stuart Cohen
3/9/2006	Massachusetts Division of Marine Fisheries
3/9/2006	Town of Marblehead, Board of Selectmen
3/10/2006	Flory Denhard
3/10/2006	Bill Purdin
3/10/2006	Joanne and M. Stephen Dane
3/10/2006	Massachusetts Office of Coastal Zone Management
3/10/2006	Department of Environmental Protection, Northeast Regional Office
3/10/2006	Department of Environmental Protection, Northeast Regional Office

3/10/2006 Sandi Osattin
3/14/2009 Massachusetts Division of Marine Fisheries

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