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April 7, 2006

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

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	: March 8, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

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 review of this ENF and consultation with public agencies have identified significant concerns with the design selected for this rehabilitation and its impacts on coastal wetlands and identified the need for additional information in the form of an EIR. The preparation and filing of this EIR provides an opportunity to resolve issues constructively and early in the design process through a coordinated interagency approach. The Scope of the EIR is narrowly tailored to this project and is focused on the analysis of alternatives identified in the ENF and the development of adequate mitigation. If the Draft EIR (DEIR) is adequately responsive to this narrow Scope and to the issues identified by the resource agencies and in recognition of the analysis and information developed to date, I will consider allowing the DEIR to be reviewed as a Final EIR (FEIR). DCR should coordinate with the resource agencies, the Harbor Development Commission (HDC) and other appropriate stakeholders prior to the filing of the EIR to facilitate this review process.

Project Description

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 Environmental Affairs (EOEA) 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 Preferred Alternative includes installation of a steel sheet pile bulkhead, removal of existing rip-rap, 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 (which may be located further landward from the edge of the existing pier to facilitate the provision of ADA access). Also, the project will also include an extension of the northeast corner of the pier to square it off.

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 from the Department of Environmental Protection (DEP). It may require a dredge application from DEP under the 401 Program. 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.

SCOPE

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.

Project Description

The EIR should include a thorough description of the project and all project elements and construction phases. The project description should include information on the re-development of the Pier and proposed uses. The EIR should include an existing conditions plan illustrating resources and abutting land uses for the entire project area and a proposed conditions plan (or plans) illustrating proposed elevations, structures, access roads, stormwater management systems and sewage connections. The EIR should also include a site circulation plan illustrating how cars, trucks, pedestrians and cyclists will be accommodated on the site.

Project Permitting and Consistency

The EIR should briefly describe each state permit required for the project and should demonstrate that the project meets applicable performance standards. In accordance with section 11.01 (3)(a) of the MEPA regulations, the EIR should discuss the consistency of the project with any applicable local or regional land use plans.

The EIR should include a full discussion of how the rehabilitated state pier will be consistent with and able to support uses on or at the state pier as identified by the *New Bedford/Fairhaven Harbor Plan*. The discussion should include recognition of harbor plan projected uses that are no longer expected or feasible and potential marine industrial uses that may now be considered by the New Bedford Harbor Development Commission (HDC) for possible inclusion in a future harbor plan renewal.

Alternatives Analysis

The Preferred Alternative identified in the ENF was one of several analyzed in the *New Bedford State Pier Concept Design Study (July 22, 2004)*. While this study describes several alternatives and associated construction and maintenance costs, it does not identify the criteria used to select the Preferred Alternative or identify the environmental impacts associated with each. DEP has noted that alternatives analyses and demonstration of efforts to minimize the amount of fill associated with the project is required by permitting consistent with the requirements of the Chapter 91, Coastal Wetland and 401 Water Quality Certification regulations. Coordination of the alternatives analysis with resource agencies will be particularly important to ensure it satisfies these regulatory requirements.

In addition to the Preferred Alternative (and variations of it under consideration) and the No Build Alternative, the EIR should analyze an Open Pier Alternative that would minimize impacts on coastal wetlands, fisheries and the water sheet. The EIR should include a description of criteria used for evaluating alternatives and a discussion of how each relates to these criteria. The EIR should indicate to what extent, if any, the selected alternative affects future development of the pier. For each alternative, the EIR should quantify the amount of impacts to coastal wetlands, the amount of dredging and the amount of impervious surfaces created. The EIR should explore all feasible methods of, first, avoiding impacts and then reducing or minimizing impacts.

Comments from CZM include a suggestion for maximizing the flexibility and functionality of the State Pier. Although this information is not required for permitting purposes, the long design life of this infrastructure warrants consideration of marine infrastructure that will support its long-term functionality. I encourage DCR to evaluate this aspect of the project and address these comments through the EIR.

Coastal Resources

As noted previously, the project will alter approximately 2.25 acres of submerged coastal wetlands located under the existing pile supported portion of the pier. Comments on this project have highlighted 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 EIR should include plans that clearly delineate all applicable resource area boundaries including riverfront areas, 100-year flood elevations, priority and/or estimated habitat, waterways and wetland restoration areas. The EIR should quantify the project's estimated impact on each resource area. It should describe the nature of all likely impacts that cannot be avoided, and whether they are temporary or permanent in nature.

The EIR should characterize soils within the project area and indicate whether proposed activities, including demolition, dredging, construction and installation, may re-suspend contaminated sediments or expose them to current and/or tidal action. The EIR should describe efforts to minimize potential impacts.

The EIR should include a discussion of environmental restoration proposed for impacts to coastal wetlands that cannot be avoided and minimized. This should include an assessment of the functions and values of the resources impacted or lost and discussion of how the proposed projects adequately mitigate these impacts. CZM has noted that it would be useful to convene a working group of agencies and organizations with interests in the selection of mitigation projects. This group could provide input on criteria for selecting appropriate restoration sites and projects and DCR could use such a group effectively to develop support of its mitigation plan prior to permitting.

The EIR should include a section on stormwater that demonstrates that source controls, pollution prevention measures and the drainage system will comply with the DEP Stormwater Management Policy and standards for water quality and quantity both during and after construction. The EIR should indicate how the project will be designed to minimize direct untreated discharge of stormwater to the harbor. The EIR should describe how operations and management of the system will ensure its long-term effectiveness.

The Department of Marine Fisheries (DMF) has identified the waters of the Acushnet River and New Bedford Harbor as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. The project site also lies within mapped habitat for quahogs (*Mercenaria mercenaria*). The EIR should identify mitigation for impacts to marine resources including winter flounder and shellfish habitat. It should indicate what measures (e.g. time of year (toy) restrictions, containment technology, restoration of shellfish habitat) will be used to avoid, minimize and mitigate impacts to these resources.

Tidelands

As noted previously, DEP has indicated that the proponent will be required to minimize the amount of fill or redesign for an open-pile supported structure consistent with Chapter 91 regulations. DEP and CZM have noted that squaring-off the state pier's northeast corner will require an adjustment to the state designated harbor line. The EIR should include information on the status and timing of the harbor line adjustment. In addition, the EIR should include the specific, detailed information regarding tidelands issues outlined in DEP's comment letter.

Historic and Archaeological Resources

The Board of Underwater Archaeologists (BUAR) have indicated that the level and diversity of maritime commercial, military, and recreational activities throughout the harbor may

have resulted in the creation of a number of undocumented and anonymous underwater archaeological sites. Because there is little information about the type of vessels found at these sites and they are potentially historically and archaeologically significant, BUAR has requested that it be contacted if submerged cultural resources are encountered during the course of the project and that DCR take steps to limit adverse affects.

Construction Period Impacts

The EIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities, including displacement or interruption of water-dependent uses, 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, including minimization of diesel emissions from construction equipment.

Mitigation

The EIR should include 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. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

Response to Comments

The EIR should contain a copy of this Certificate and a copy of each comment received. The EIR should respond to the comments received, to the extent that the comments are within MEPA subject matter jurisdiction. The EIR should present additional narrative and/or technical analysis as necessary to respond to the concerns raised.

Circulation

The EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals, to the list of "comments received" below, and to New Bedford and Fairhaven officials. A copy of the EIR should be made available for review at the New Bedford and Fairhaven public libraries.

April 7, 2006
Date


Stephen R. Pritchard

Comments Received:

3/31/06	Coastal Zone Management
3/30/06	Department of Environmental Protection Southeast Regional Office (DEP SERO)
3/27/06	Division of Marine Fisheries (DMF)
3/22/06	Board of Underwater Archaeologists (BUAR)

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