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August 15, 2008

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
FINAL 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 : July 9, 2008

As Secretary of Energy and Environmental Affairs (EEA), I hereby determine that the Final 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 project may proceed to permitting.

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 Final EIR

Because the Draft EIR provided an adequate alternatives analysis and adequate mitigation measures, I allowed DCR to file the Final EIR as a response to comments document. The Final EIR includes a copy of the Certificate on the Draft EIR, a copy of each comment letter on the Draft EIR and a response to each comment. As required, DCR convened an interagency meeting, including MassDEP, CZM, DMF and the US Army Corps of Engineers (USACE) to discuss the project and comments on the Draft EIR prior to filing the Final EIR.

DCR continues to identify the steel sheet pile bulkhead capped by a concrete slab as the Preferred Alternative. It will include 65,430 cubic yards (cy) of clean fill behind the bulkhead. The \$17 million project includes 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.

The project will reduce impervious surfaces by .11 acres and include an improved stormwater management system. It will 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. It will include permanent impacts to 1.35 acres of Land Under the Ocean (LUO), .6 acres of Land Containing Shellfish, .45 acres of coastal wetlands (Land Subject to Coastal Storm Flowage (LSCSF) and Land Subject to Tidal Action) and loss of 22,560 cy of 100-Year Flood Storage Capacity.

Although the Draft EIR demonstrated that the Steel Piles and Concrete Deck Alternative reduced associated impacts, DCR continues to assert that the security and safety hazards presented by the open pile pier are unacceptable. The Final EIR includes additional information regarding security concerns related to the Steel Piles and Concrete Deck Alternative and indicates that DCR has consulted with public safety and port operators regarding associated security risks. At the interagency meeting held prior to the filing of the Final EIR and in its comments on the Final EIR, MassDEP indicated 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. Because MassDEP considers the Steel Piles and Concrete Deck Alternative a reasonable alternative, a variance will be required for construction of the Preferred Alternative. DCR has submitted a variance application to MassDEP and a copy of this application was provided to the MEPA Office on August 12, 2008. MassDEP indicates that details of the variance will be addressed during the public hearing process initiated by the Waterways Program and a decision will be made and issued through a Written Determination.

The Final EIR further develops mitigation associated with the Preferred Alternative. The Final EIR indicates that the proponent will provide compensatory mitigation at a site located between the hurricane barrier and the East Rodney French Boulevard. DCR will create .54 acres of intertidal shore with persistent emergent vegetation by installing a gravity retaining wall and re-grading the western side of the northern reaches of the drainage ditch to support an extensive saltmarsh cordgrass community. This mitigation includes enhancement of approximately 2.2 acres of wetlands through removal of trash and stressed vegetation followed by re-vegetation of the area. The mitigation has been refined since the Draft EIR and, based on previous agency comments, the eelgrass plantings have been eliminated and the project now includes installation of a Stormceptor or similar pre-treatment unit at Cove Street and East Rodney French Boulevard to remove trash, total suspended solids and floating oils from stormwater discharge. To mitigate for open water and emergent wetland impacts, the proponent will install two eight-foot by eight-foot culverts beneath Goulart Memorial Drive to increase tidal flow and enhance approximately 77.9 acres of LUO and 20 acres of tidally influenced wetlands within the Jacks' Cove area of Fairhaven. In addition, to mitigate shellfish impacts DCR proposes to reseed within another area of New Bedford Harbor with at least 70,000 shellfish seeds. The Final EIR indicates that these mitigation commitments will be initiated prior to re-construction of the state pier.

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 indicate that additional information is needed to better assess and document existing degradation in Jacks Cove and to assess the benefits and costs of the proposed mitigation. In addition, CZM recommends that DCR consult with the agencies on the state-enhanced remedy committee regarding potential disposal of dredge material from the project, and also possible use of clean fill (obtained from the construction of the navigational Confined Aqueous Disposal (CAD) cells) behind the proposed bulkhead.

MassDEP comments note that the proposed mitigation at Jack's Cove will include removal of sand south of Goulart Memorial Drive and use of material for beach nourishment. MassDEP comments identify required permits and additional information that should be provided during permitting including identification of affected resource areas and quantification of alterations.

Comments from the Division of Marine Fisheries (DMF) indicate that all dredging and silt-producing activities should be conducted between September 15 and January 15 to protect winter flounder spawning, shellfish spawning and anadromous fish runs. DMF indicates its preference that the proponent consider relays of quahogs as mitigation for impacts to shellfish as an alternative to shellfish seeding. DMF indicates that the benefits of the relay include low predation and low mortality compared to shellfish seeding. DMF recommends that dredge material be placed in a textile tube to contain and filter the material during dewatering. In addition, comments from DMF indicate that the proponent should consider installation of pump-out equipment for the excursion pier.

The Final EIR does not provide more specific, detailed information regarding the proposed uses for the State Pier and evaluation of the consistency of the proposed uses with the Chapter 91 regulations. These issues will be addressed through the filing of a separate Environmental Notification Form (ENF) which will allow time for the Harbor Plan Renewal to be completed and will provide for a more effective and informed review of the proposed changes and their consistency with the Waterways Regulations. The ENF should clearly identify proposed uses, associated environmental impacts (including transportation impacts) and the consistency of these uses with the Municipal Harbor Plan Renewal and the Waterways Regulations. Subsequent to the MEPA process, DCR will need to file a new chapter 91 application with MassDEP addressing any non-water dependent uses proposed above the pier.

### Mitigation

The Final EIR identifies 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;

compensatory mitigation at a site located between the hurricane barrier and the East Rodney French Boulevard consisting of creation of .54 acres of intertidal shore with persistent emergent vegetation, enhancement of approximately 2.2 acres of wetlands through removal of trash and stressed vegetation followed by re-vegetation of the area and installation of a Stormceptor or similar pre-treatment unit at Cove Street and East

Rodney French Boulevard to remove trash, total suspended solids and floating oils from stormwater discharge;

compensatory mitigation for open water and emergent wetland impacts consisting of installation of culverts beneath Goulart Memorial Drive to increase tidal flow and enhance approximately 77.9 acres of Land Under the Ocean and 20 acres of tidally influenced wetlands within the Jacks' Cove area of Fairhaven;

- reseeding within another area of New Bedford Harbor with at least 70,000 shellfish seeds.
- 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.

The proponent should provide revised Draft Section 61 Findings, reflecting these mitigation commitments, for each state agency permit.

### Conclusion

Based on a review of the Final EIR, comments submitted on it and consultation with state agencies, I hereby determine that the Final EIR adequately and properly complies with MEPA and its implementing regulations. I note that MassDEP continues to express concerns with the Preferred Alternative and will review the Variance Application for consistency with the Waterways Regulations. I expect that mitigation commitments will continue to be developed and refined during the permitting process. As noted previously, DCR must file an ENF for the uses associated with the State Pier improvements.

August 15, 2008

Date



Ian A. Bowles

### Comments Received:

7/29/08	Coastal Zone Management (CZM)
8/8/08	Department of Environmental Protection Southeast Regional Office (MassDEP/SERO)
8/8/08	Division of Marine Fisheries (DMF)

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