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November 26, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

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: October 22, 2008

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on the above project **adequately and properly** complies with the Massachusetts Environmental Policy Act (M.G.L., c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00). The Proponent's request that I allow the DEIR to be reviewed as a Final Environmental Impact Report (FEIR) in accordance with 301 CMR 11.08(8)(b)(2), is denied because there are outstanding issues which must be addressed in the FEIR. The Scope for the FEIR below will identify those remaining issues.

Project Description

As described in the DEIR, the project consists of 45 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 five-foot wide sidewalks on both sides, and a cul-de-sac with a 45-foot radius. The project is expected to generate 320 new daily vehicle trips, generate 9,680 gallons per day (gpd) of wastewater, and use 9,680 gpd of drinking water.

A related project on the project site is the Chadwick Lead Mills Remediation project (EEA #13726) which involves the remediation of the site under the Massachusetts Contingency Plan (MCP). On June 8, 2007, I approved a Final Record of Decision for the waiver request filed by the proponent and responsible party (NL Industries) to remediate the project site and restore



wetland resource areas. 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.

Jurisdiction and Permitting

The project requires 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 project will also require Orders of Conditions from the Salem and Marblehead Conservation Commissions. Because the proponent is seeking a Chapter 91 License for the project, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Review of the DEIR

The DEIR included a thorough description of the project, including a detailed description of construction methods and phasing. It included a brief description of each state permit or agency action required or potentially required, and it demonstrated that the project will meet applicable performance standards. The DEIR provided an update on the local permitting process.

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 allowed the filling of 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.

While the residential buildings proposed as part of the Lafayette Tides project appear to be located outside of Chapter 91 jurisdiction, the project will include activities within Chapter 91 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 serving the residential development is a non-water-dependent use pursuant to 310 CMR 9.12. MassDEP 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. While a portion of the roadway lies within 100 feet of the shoreline, the roadway will be a public way and allow public access to the open space at the site. It will include three parking spaces for public use along the cul-de-sac. The project will also provide facilities that promote the water-dependent use of that portion of the project lying within the water-dependent use zone, and the project site will include an appropriate pedestrian access network, specifically a walkway with benches and landscaping within the waterfront portion of the site. The DEIR included a landscaping plan.

The DEIR contained a draft of the stormwater management plan. It discussed the ownership of internal roads, and stated that the condominium association will be responsible for the ongoing operation and maintenance of structural BMPs.

In the DEIR, the proponent included a letter from Massachusetts Historical Commission (MHC) that indicated that no significant historic or archaeological resources will be affected by the proposed project, and it determined that no further investigations are required.

The DEIR included a discussion of construction phasing. It evaluated the potential impacts associated with construction activities, and proposed feasible measures to avoid or eliminate these impacts. The proponent will implement measures to alleviate dust, noise and odor nuisance conditions which may occur during the construction activities.

SCOPE

The FEIR should resolve the remaining issues outlined below. It should follow the MEPA regulations at 301 CMR 11.07 for outline and content, as modified by this Certificate.

Project Description and Waterways Licensing

The FEIR should provide a detailed project description. It should include readable and scaled existing and proposed site plans. The FEIR should include plans that depict the final grades of remediated areas on a site plan of existing conditions. It 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. The FEIR should also include details concerning the pedestrian public access amenities, such as signage and trash receptacles.

The FEIR should summarize each state agency action required for the project. It should identify if financing is being obtained from Massachusetts Housing Finance Agency. The FEIR should discuss the consistency of the project with local and regional growth management and open space plans for Salem and Marblehead and Executive Orders No. 484, 385, and 418.

Wetlands

The FEIR should include a plan of reasonable scale that delineates the revised resource areas, and accurately depicts the extent of all Federal Emergency Management Agency (FEMA) flood zones on the site relative to the existing topography and proposed remediation and development. The Lafayette Tides access road would be constructed on top of contaminated sediments that would be stabilized and buried underneath it. The FEIR should consider the change in grades and potential for impacts within Land Subject to Coastal Storm Flowage (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.

Drainage

The FEIR should consider stormwater runoff from the proposed buildings and the vegetated areas that will be converted to landscaped areas. It 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 Massachusetts Stormwater Management Requirements and its ten standards. 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. Given both the contaminated nature of the sediments immediately offshore from the site and the potential to negatively impact marine habitat, the FEIR should consider additional stormwater Best Management Practices (BMPs) that will assure the highest level of stormwater treatment available.

The FEIR should discuss the potential Low Impact Development (LID) drainage techniques that could be incorporated into the project. It should incorporate stormwater BMPs that could 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 the use of pervious surfaces. 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/>.

Mitigation

The FEIR should contain a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for MassDEP and any other state permit or funding that includes a clear commitment to implement mitigation measures, an estimate of the individual cost of each mitigation measure, and identify the parties responsible for implementing the mitigation. The FEIR should provide a schedule for the implementation of the mitigation, based on the construction phases.

In the DEIR, the proponent committed to the following mitigation measures:

- Install traffic calming measures such as an island, rumble strips, and a pedestrian traffic light at the site driveway/Lafayette Street intersection.
- Provide public access to the waterfront via a 10-foot wide stone dust public walkway with benches adjacent to the Forest River with three associated parking spaces.
- Provide handicapped access to the beach and the public beach access.
- Provide 12 units of affordable housing.

The FEIR should discuss the proponent's efforts to incorporate Leadership in Energy and Environmental Design (LEED) Certification for the proposed project. It should identify the LEED design components that are selected by the proponent. I encourage the proponent to commit to LEED design components within the mitigation section of the FEIR.

Response to Comments

In order to ensure that the issues raised by commenters are addressed, the FEIR should include responses to comments. This directive is not intended to, and shall not be construed to enlarge the scope of the FEIR beyond what has been expressly identified in this Certificate.

Circulation

The FEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to the list of "comments received" below and to Marblehead and Salem officials. The FEIR should be printed on both sides of each page to reduce the use of paper. Copies of the FEIR should be made available for public review at the Marblehead and Salem Public Libraries.

November 26, 2008

Date


for Ian A. Bowles

Comments received:

MCZM, 11/11/08

MassDEP/NERO, 11/19/08

MA Division of Marine Fisheries, 11/21/08

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IAB/WTG