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January 29, 2010

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

PROJECT NAME : Fairhaven Shipyard: North Yard – Travel Lift Pier
Replacement, Floating Docks, and Site Improvements
PROJECT MUNICIPALITY : Fairhaven
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 14524
PROJECT PROPONENT : Fairhaven Shipyard Companies, Inc.
DATE NOTICED IN MONITOR : December 23, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the project consists of shipyard improvements at the North Yard of the Fairhaven Shipyard in Fairhaven. The proposed improvements include the construction of travel lift piers to support a 400-ton travel lift, the replacement of a pile supported timber pier with a floating dock system, site grading, paving, and the incorporation of a pressure wash water pre-treatment system. The proposed travel lift piers will replace the existing 150-ton lift piers and will allow the Shipyard to haul and service larger vessels. The proposed piles will be driven from a barge-mounted crane and hammer, and the proposed floating docks will be deployed either from a land-based crane, the new travel lift, or from water-based equipment floated into the site. The replacement of the existing pile-supported fixed timber pier with a floating dock system will allow for greater flexibility in providing berth space to vessels and improved access for these vessels.

According to the ENF, estimated coastal wetland resource area impacts associated with the project include 33 linear feet (lf) of Coastal Bank, 153 square feet (sf) of Land Under the

Ocean, Land Containing Shellfish and Designated Port Areas, and 75,750 sf of Land Subject to Coastal Storm Flowage (LSCSF).

Jurisdiction and Permitting

The project is undergoing review pursuant to Sections 11.03(3)(b)(1)(a), 11.03(3)(b)(1)(f), and 11.03(3)(b)(6) of the MEPA regulations because it requires a State Agency Action and it involves the alteration of Coastal Bank, the alteration of 0.5 or more acres of other wetlands (LSCSF), and the construction, reconstruction, or expansion of a pile-supported or bottom-anchored structure of 2,000 or more sf base area. The project will require: an Order of Conditions from the Fairhaven Conservation Commission (and, on appeal only, a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (MassDEP)); a Chapter 91 License from MassDEP; and a Section 404 Programmatic General Permit from the United States Army Corps of Engineers. The project may require: federal consistency review by the Massachusetts Office of Coastal Zone Management (CZM); and a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit for construction activities which disturb one acre or more of land.

The Proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of required or potentially required state Permits, and that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction is limited to wetlands, waterways and tidelands, and stormwater.

Review of the ENF

The Proponent has filed a Notice of Intent (NOI) with the Fairhaven Conservation Commission and MassDEP for the project. The Proponent should use the guidance presented in the MassDEP and CZM comment letters (in addition to permit application requirements) to determine the level of detail necessary to obtain any other required State permits. Specifically, I refer the Proponent to MassDEP and CZM's comments regarding the Chapter 91 Waterways License application requirements.

According to the MassDEP Waterways Program comment letter, the project is a supporting Designated Port Area Use (310 CMR 9.02), and this water-dependent-industrial use (310 CMR 9.12(2)(b)) is allowed under the Waterways Regulations (310 CMR 9.32 (1)(b)). The Proponent should ensure that all previous licenses issued for the site will be indicated on the plans submitted as part of the Chapter 91 Waterways License application. In addition, the Proponent should address and resolve any encroachment into the harbor line, as shown on previous licenses. In addition, CZM recommends that the Proponent quantify the area of proposed pile-supported concrete floats versus the existing pile-supported wooden piers proposed for removal. CZM also recommends quantification of the number and area of impact of the proposed steel pilings versus the number and impact of the wooden piling proposed for removal. I encourage the Proponent to continue to work with MassDEP and CZM to ensure that impacts to resource areas are avoided and minimized to the maximum extent feasible, and that appropriate mitigation is provided.

The Division of Marine Fisheries (*Marine Fisheries*) has indicated that the project site lies within mapped shellfish habitat for quahogs (*Mercenaria mercenaria*) which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). In addition, *Marine Fisheries* has identified Fairhaven/New Bedford Harbor as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Finally, *Marine Fisheries* has also identified the Acushnet River as passage, spawning and/or juvenile development habitat for American eels (*Anguilla rostrata*) and alewife (*Alosa pseudoharengus*). Accordingly, *Marine Fisheries* makes the following recommendations:

- If construction is to take place during the winter flounder and diadromous fish spawning seasons, adequate containment measures should be required during construction of the steel pipe piles to minimize siltation; if the site cannot be contained, a no construction time-of-year (TOY) restriction should be required from January 15 through June 30;
- Appropriate containment techniques and MassDEP Best Management Practices (BMPs) should be used to prevent construction debris, stormwater runoff, pressure washing water and loose sediments from entering the marine environment during construction.

I ask that MassDEP incorporate conditions as appropriate in any permits issued for the project to address the concerns and recommendations of *Marine Fisheries*. I encourage the Proponent to work with *Marine Fisheries* to assure that these species are protected and habitat impacts from the project are avoided or minimized.

Comments from the Board of Underwater Archaeological Resources (the Board) indicate that the project is unlikely to impact submerged cultural resources. However, it is possible that there are submerged cultural resources in the project area. If heretofore-unknown submerged cultural resources are encountered during the course of the project, the Proponent should take steps to limit adverse effects and notify the Board, as well as other appropriate agencies, in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (updated 9/28/06).

The proposed pressure wash water pre-treatment system will be installed to filter pressure wash waters resulting from power washing of vessel hulls prior to discharge to the municipal wastewater system. According to the ENF, the system is designed to comply with state and federal regulations. The project will incorporate stormwater improvements as a separate portion of the system.

The Proponent has indicated that the building that is to be removed from the site is a wood frame style building with metal sheathing and a corrugated metal roof. The Proponent will comply with MassDEP Solid Waste and Air Quality Control regulations as required relating to the building demolition. While the project site is not presently listed on the MassDEP Bureau of Waste Site Cleanup (BWSC) database, the Proponent is advised that, if oil and/or hazardous material is identified during the implementation of this project, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) must be made to MassDEP, if necessary.

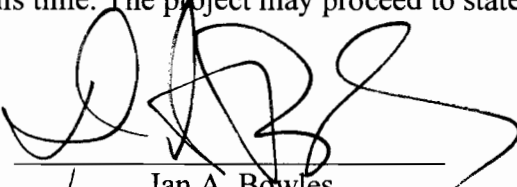
Conclusion

Pursuant to 301 CMR 13.02, I am declining to require an additional Public Benefit Review for the project. Furthermore, as a water-dependent project, it is presumed that this project will provide adequate public benefit in accordance with 301 CMR 13.04. I am satisfied that the project's impacts to tideland resources can be adequately addressed during the permitting process.

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed to state permitting.

January 29, 2010

Date



Ian A. Bowles

Comments received:

12/22/2009 Massachusetts Division of Marine Fisheries
01/19/2010 Massachusetts Department of Environmental Protection – SERO
01/20/2010 Massachusetts Office of Coastal Zone Management
01/20/2010 Massachusetts Board of Underwater Archaeological Resources

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