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March 13, 2015

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

PROJECT NAME : Proposed Floating Dock System, Moorings, Pier
Rehabilitation, and Seasonal Tiki Bar
PROJECT MUNICIPALITY : New Bedford
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 15326
PROJECT PROPONENT : VVK Realty, LLC; Gregory Kulpinski
DATE NOTICED IN MONITOR : February 11, 2015

Pursuant to the Massachusetts Environmental Policy Act (M.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 the rehabilitation of an existing timber pier, the addition of floating dock and gangway systems north and south of the existing pier, installation of moorings, and relocation of a seasonal tiki bar from an adjacent property (the Edge restaurant) to the project site. The project site is located on East Rodney French Boulevard on the western side of Buzzards Bay, seaward of the New Bedford hurricane barrier. The 1.36-acre site contains a building and parking areas previously used for a bar and nightclub (the Smuggler's Den and Billy Wood's Wharf) and a timber pier and shed previously used as a landing facility for the Schamonchi ferry, which provided passenger service between New Bedford and Martha's Vineyard. The project site is bounded by a public boat

ramp to the north, Buzzards Bay to the east, the Edge restaurant to the south, and East Rodney French Boulevard to the west. The proposed improvements to the pier, addition of moorings for transient recreational boaters, and relocation of the tiki bar will support proposed renovations to the existing building. As presented in the ENF, the building footprint and paved parking area will not change. The project may be constructed in multiple phases, separating the pier rehabilitation from the installation of floating docks, and may occur over several years.

Specifically, the project includes rehabilitation of the 140-foot by 10-foot pier which, based upon inspection, is in fair condition with localized areas of deterioration of the timber frame, decking and piles. A floating dock system will be affixed to the timber pier and will consist of four floats, totaling 3,400 square feet (sf) in area. These floats will be pile-supported by 16 16-inch diameter timber or steel pipe piles and accessed via two aluminum five-foot by 35-foot gangways. Twelve moorings are proposed to accommodate transient recreational vessels up to 60 feet long. These moorings are not intended for use during storms.

The project site is mapped as a shellfish suitability area by the Division of Marine Fisheries (DMF), and includes work within the Federal Emergency Management Agency (FEMA) velocity zone (elevation 17.0 feet North American Vertical Datum of 1988 (NAVD 88)) per the current Federal Insurance Rate Map (FIRM) for the area (July 16, 2014). The proposed mooring area is located within *Estimated* and *Priority Habitat* mapped by the Natural Heritage and Endangered Species Program (NHESP). Rare species habitat is located approximately 18 feet from the end of the existing timber pier. The ENF indicated that the project site is subject to the New Bedford/Fairhaven Municipal Harbor Plan dated May 26, 2010. The Proponent indicated that the project will enhance public access from navigable waters to and from the site in a manner consistent with the Municipal Harbor Plan.

MEPA review (EEA# 14772) was previously conducted for the property located to the south of the project site which currently contains the Edge restaurant and seasonal tiki bar. A Certificate on the ENF was issued on August 19, 2011 to a former owner of this property (MWTP Ventures, Inc., (Davy's Locker Inc.)) indicating that no further MEPA review was required and that substantive issues were to be deferred to the MassDEP c. 91 process for resolution. This project required an amended Chapter 91 (c. 91) license to authorize the tiki bar as a non-water-dependent use of filled tidelands. The Proponent subsequently acquired both the project site and the Edge restaurant property. As noted by MassDEP, the Proponent is responsible for completing the c. 91 licensing process (file #w11-3367N) for the Edge restaurant site. The Proponent, in consultation with MassDEP, should coordinate the location of public access accommodations and amenities to create meaningful access to tidelands. The Proponent should consult with the MEPA office to determine whether potential changes to the Edge restaurant site (including relocation of the tiki bar from the site and changes to public access that were previously described in the ENF) may require additional MEPA review.

Permits and Jurisdiction

The project is undergoing MEPA review and requires the filing of an ENF pursuant to 301 CMR 11.03(3)(b)(6) MEPA regulations because it requires a State Agency Action and includes construction, reconstruction, or expansion of a pile-supported structure of 2,000 or more sf base area located in flowed tidelands of other waterways.

The project will require a c. 91 License from the Massachusetts Department of Environmental Protection (MassDEP). The project will also require an Order of Conditions from the New Bedford Conservation Commission (or in the case of an appeal, a Superseding Order of Conditions (SOC) from MassDEP) and a General Permit (GP) from the Army Corps of Engineers (ACOE) for activities subject to Corps jurisdiction in waters of the U.S. within the boundaries of, and off the coast of, the Commonwealth of Massachusetts excluding work within the boundaries of Indian tribal lands in accordance with Corps regulations at 33 CFR 320-332 (see 33 CFR 325.5(c)(1)).

The project is not receiving Financial Assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. Because the project requires a c. 91 License, MEPA jurisdiction is effectively equivalent to broad scope jurisdiction.

Review of the ENF

The ENF described the existing conditions within the project area and the proposed project and its programmatic and physical elements. The ENF included existing and proposed conditions plans and identified environmental resources and proposed impacts.

The ENF described three additional project alternatives evaluated by the Proponent, which were subsequently dismissed, in addition to the Preferred Alternative:

- A No-Build Alternative – this alternative would not meet project goals and would result in continued limited access to navigable waters to and from the site.
- A Pier Rehabilitation and Upgrades as a Vessel Berthing Facility Alternative – this alternative would include upgrade and rehabilitation of the existing timber pier to facilitate direct vessel docking in lieu of the proposed float and gangway system. This alternative would require reconstruction of the majority of the pier and the addition of piles resulting in environmental impact to wetland resources. This alternative would be complicated by the elevation differential between the waterline and pier deck during the majority of tides making embarking and disembarking from vessels potentially unsafe.
- A Floating Docks Located Off Eastern End of Pier Alternative – this alternative would install a floating dock system off the end of the existing timber pier and placement of the proposed moorings farther into Buzzards Bay. The floats and moorings in this location would require installation of a wave-break due to

increased exposure. This alternative would also increase impacts to rare species habitat.

The ENF discussed how the project will be consistent with local and regional planning documents, most notably how it will support access to the waterfront.

Wetlands and Stormwater

The project will permanently impact Land Under Ocean (LUO) and Land Containing Shellfish. As described in the ENF, the floats will impact 3,400 sf of each resource area, the piles will impact 22.4 sf of each resource area, and the moorings will impact 21.2 sf of each resource area. The seasonal tiki bar will occupy approximately 6,257 sf of Land Subject to Coastal Storm Flowage (LSCSF). The project also includes work within the 100-foot Buffer Zone to Coastal Bank. The ENF discussed how the project will be constructed consistent with the applicable performance standards for impacts to wetland resource areas set forth in the Massachusetts Wetlands Protection Act (WPA) and the Wetlands Regulations (310 CMR 10.00). The ENF discussed project consistency with the Office of Coastal Zone Management (CZM) *Coastal Hazards Policy*.

No dredging is required to accommodate the new floats, as sufficient water depths are available throughout the tide cycle. Pile spacing for the floats will be maximized to limit impacts to LUO and shellfish habitat and maintain a similar pattern of water circulation compared to existing conditions. The landward-most portion of the floats will likely be used for tenders and will limit potential impacts to the substrate, as all floats are located in a manner that will maintain more than 2.5 feet of clearance below them at all tides. The Proponent indicated that the project area is a former shipyard and deteriorated pilings may be present in the area of the proposed float locations. The Proponent should discuss removal protocols and Best Management Practices (BMPs) for any deteriorated pilings with the New Bedford Conservation Commission as part of the Notice of Intent review and with MassDEP as part of the c. 91 licensing processes to minimize environmental impacts while ensuring safe public navigation.

The project site is not located in an area mapped as suitable eelgrass habitat and no submerged aquatic vegetation was observed during a hydrographic survey. Portions of the project site are mapped as suitable shellfish habitat for quahog (*Mercenaria mercenaria*) and bay scallop (*Argopecten irradians*) by the Division of Marine Fisheries (DMF). The Proponent has not verified the presence of shellfish in the project area nor surveyed the boundaries as identified by DMF GIS data. DMF comments to not include recommendations for sequencing, timing, or methods to avoid or minimize impacts to shellfish resources.

The project includes 12 helical anchor moorings, which the Proponent states will minimize impacts to LUO and Land Containing Shellfish compared to a mushroom or block system mooring. The CZM comment letter noted the potential for scouring impacts to benthic habitat from the 12 mooring chains and tackle. I concur with CZM's recommendation for the Proponent to consider using conservation moorings, which eliminate chains to avoid these impacts. More information on conservation moorings can be found in a report prepared on behalf of the Massachusetts Bays Program entitled *Conservation Mooring Study* issued in

January 2013 and found at <http://www.mass.gov/eea/docs/mbp/publications/conservation-mooring-report-uhi-dec2013.pdf>.

According to the delineation methods of the historic mean high water (HMHW) line presented in the ENF, the project site contains approximately 32,580 sf of previously authorized filled tidelands, 367 sf of which are covered by structures. These include the former ticket office for the Schamonchi ferry that will be repurposed as a support building for the pier (i.e., storage of safety equipment, use by staff). A small portion of the existing deck occupied by the former bar and nightclub and paved parking are also located in filled tidelands. Draft c. 91 licensing plans included in the ENF also identified the location and elevation of the Mean Low Water (MLW), Mean High Water (MHW) and High Tide Line (HTL). A 10-foot wide public access pathway is proposed along the eastern edge of the project site adjacent to the water.

As noted by MassDEP, the Proponent should work with Waterways staff to obtain electronic copies of relevant historic low and high water lines to verify the landward-most extent of c. 91 jurisdiction on-site. These data should be incorporated into plans submitted for the new c.91 License to authorize the proposed structural alterations and change in use of filled and flowed tidelands of Buzzards Bay.

The existing ferry ticketing shed and pier/floats/gangway system are considered water-dependent uses, while the tiki bar is considered a non-water-dependent use under c. 91. MassDEP indicated in its comment letter that the existing parking could be categorized as either an accessory to the water-dependent use or a non-water-dependent use. While this should be determined in conjunction with the c. 91 licensing process, due to the combination of uses on-site, MassDEP will process the forthcoming c. 91 license application as a non-water-dependent project in accordance with 310 CMR 9.12(1). The Proponent will be required to demonstrate consistency with the non-water-dependent performance standards (310 CMR 9.5-9.54) as part of the c. 91 license approval process. The c. 91 license application should identify the proposed location of the tiki bar within the lease area and provide additional detail on the proposed public walkway, specifically connection points to public access accommodations on abutting properties.

The ENF presented the proposed pier/float system for use as transient berthing. MassDEP indicated that it considers this facility a public recreational berthing facility and a marina because it would accommodate at least ten boats (pursuant to 310 CMR 9.02 that provides a definition of a *Marina and Public Recreational Boating Facility*), despite the slips not being leased on an annual basis. Therefore, the Proponent will be required, as part of the c. 91 application, to demonstrate consistency with the specific standards for these types of facilities (310 CMR 9.38 and 9.39).

Climate Change Resiliency and Adaptation

The coastal location of the project makes it susceptible to sea level rise and increased storm intensity and frequency-related impacts. The Proponent indicated that the existing building will be renovated and will not include changes to the footprints or elevation. As project design is finalized, I encourage the Proponent to consider climate change resiliency measures that can be incorporated into the renovation design (e.g., resilient flooring and dry wall materials, location of

heating and cooling systems above the flood elevation, etc.) or can be readily adapted in the future to respond to climate change and sea level rise. I encourage the Proponent to incorporate measures into the project that would provide a level of protection greater than the minimum applicable standards set by the Massachusetts Building Code for renovation projects in a velocity flood zone.

Additionally, the Proponent does not intend to use the berthing facility or moorings during storms and indicated that off-site storage for the gangways and floats are available landward of the New Bedford hurricane barrier. This will limit potential damage to the pier or adjacent properties during a storm.

For additional information and guidance on climate change adaptation, please review EEA's *Climate Change Adaptation Report* (September 2011) (<http://www.mass.gov/eea/docs/eea/energy/cca/eea-climate-adaptation-report.pdf>) and the Office of Coastal Zone Management's (CZM) December 2013 report entitled, "*Sea Level Rise: Understanding and Applying Trends and Future Scenarios for Analysis and Planning*" (<http://www.mass.gov/eea/docs/czm/stormsmart/slr-guidance-2013.pdf>). The CZM report outlines predicted sea level rise for a variety of climate change scenarios over the next century that may be of particular assistance in selecting climate change adaptation measures for the restaurant, pier and on-site public accommodations.

Rare Species

A determination has yet to be made regarding whether the project will result in a "take" of State-listed rare species habitat. The Proponent should complete a Massachusetts Endangered Species Act (MESA) Project Review Checklist and submit it to NHESP concurrent with the WPA Notice of Intent to ensure consistency with the MESA regulations. If a "take" will occur, the project may be required to file a Notice of Project Change (NPC) to address this State Agency Action.

Construction

The ENF indicated that piles will be driven using land-based and water-based equipment and a vibratory and/or impact hammer. Pier repairs are proposed to be staged from a small work barge and/or the existing pier. The floating docks and gangways will be constructed off-site and installed either by use of a land-based crane or towed via water. The Proponent should implement appropriate erosion and sedimentation control Best Management Practices (BMPs) to limit impacts during the construction period and specifically during in-water work. All construction should be managed in accordance with applicable MassDEP Solid Waste and Air Pollution Control regulations pursuant to M.G.L. c.40, §54.

Conclusion

The ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review and demonstrated that the project's environmental impacts will be avoided, minimized and/or mitigated to the extent practicable. Based on review of the ENF and comments received, and in consultation with State Agencies, I have determined that no further MEPA review is required. The Project may proceed to permitting.

March 13, 2015

Date



Matthew A. Beaton

Comments Received:

| | |
|------------|---|
| 02/12/2015 | Board of Underwater Archaeological Resources |
| 02/25/2015 | Office of Coastal Zone Management |
| 03/02/2015 | Division of Marine Fisheries |
| 03/03/2015 | Massachusetts Department of Environmental Protection – Southeast Regional Office (MassDEP-SERO) |

MAB/HSJ/hsj



HJ pcf

The COMMONWEALTH OF MASSACHUSETTS
 BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
 EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
 251 Causeway Street, Suite 800, Boston, MA 02114-2136
 Tel. (617) 626-1141 Fax (617) 626-1240 Web Site: www.mass.gov/eea/agencies/czm/buar/

RECEIVED
 FEB 12 2015
 MEPA

February 12, 2015

Secretary Matthew A. Beaton
 Executive Office of Energy and Environmental Affairs
 Attention: Holly Johnson, MEPA Unit
 100 Cambridge St., Suite 900
 Boston, MA 02114

RE: Proposed Floating Dock System, Moorings, Pier Rehabilitation and Season Tiki Bar,
 New Bedford (EEA#15326)

Dear Secretary Beaton:

The Massachusetts Board of Underwater Archaeological Resources (BUAR) has completed its review of the proposed project's ENF (EEA#15326) prepared by CLE Engineering, Inc., on behalf of VVK Realty, LLC. We offer the following comments.

The Board has conducted a preliminary review of its files and secondary literature sources to identify known and potential submerged cultural resources in the proposed project area. No record for any underwater archaeological resources was found. Based on the results of this review and the limited nature of the proposed project, the Board expects that this project is unlikely to impact submerged cultural resources.

However, as the historical record indicates the occurrence of a number of shipwrecks within New Bedford Harbor for which locations are vague, the Board cannot conclude that there are no submerged cultural resources in the proposed project area. Furthermore, the loss of earlier and smaller coastal vessels and the purposeful abandonment of obsolete or damaged vessels are generally not found in the documentary record. The level and diversity of maritime commercial, military, and recreational activities throughout the New Bedford waterfront may have resulted in the creation of a number of undocumented and anonymous underwater archaeological sites such as small craft, derelict vessels, or dumpsites. These possible site types represent classes of vessels of which our knowledge is severely limited and, thus, are potentially historically and archaeologically significant. Therefore, should heretofore-unknown submerged cultural resources be encountered during the course of the project, the Board expects that the project's sponsor will take steps to limit adverse affects and notify the Board, as well as other appropriate agencies, immediately in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources*.

The Board appreciates the opportunity to provide these comments as part of the review process. Should you have any questions regarding this letter, please do not hesitate to contact me at the address above, by email at victor.mastone@state.ma.us, or by telephone at (617) 626-1141.

Sincerely,

Victor T. Mastone
 Director

/vtm



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

MEMORANDUM

TO: Matthew A. Beaton, Secretary, EEA
ATTN: Holly Johnson, MEPA Unit
FROM: Bruce K. Carlisle, Director, CZM
DATE: February 25, 2015
RE: EEA 15326, Proposed Float System, Moorings, Pier Rehabilitation, and Seasonal Tiki Bar ENF; New Bedford

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Environmental Notification Form (ENF), noticed in the *Environmental Monitor* dated February 11, 2015, and offers the following comments.

Project Description

The project is proposed by VVK Realty, LLC, and is located at 1494 East Rodney French Boulevard in New Bedford. While the overall project is the renovation of an existing waterfront building as an event venue and bar, the ENF focuses on the rehabilitation of an existing timber pier, along with the installation of four pile-anchored floating docks totaling 3,400 sf, two gangways, and 12 moorings utilizing helical type anchors and traditional chain mooring systems. The float system will include dinghy docks and provide a landing site for transient, recreational vessels. The project also proposes a ten foot wide public access path along the water's edge on the eastern side of the property and the relocation of a seasonal tiki bar from the adjacent property to an area landward of the public access path and within filled tidelands. The area of the proposed floats and moorings may be in areas mapped by the Massachusetts Division of Marine Fisheries as Land Containing Shellfish. The moorings are located within NHESP Priority/Estimated Habitat.

Comments

While increasing recreational boater access to the site may be consistent with CZM public access policies, CZM has concerns with aspects of the proposed project. The proponent has included efforts to minimize the project's negative environmental impacts by maximizing pile spacing, ensuring floats are located in waters with sufficient depth to minimize bottom impacts, and using helical anchors. However, CZM believes additional improvements should be considered. The scour caused by mooring chain and tackle is significant. In some Buzzards Bay harbor's scour areas from a single mooring can be 50 feet in diameter, an area of approximately 1,960 square feet. The constant drag and bounce of mooring chain within the scour areas continually destroys or damages benthic habitat in the area, re-suspends sediments that reduce water quality and clarity, and reintroduces nutrients into the water column. Assuming the 12 proposed moorings each have a scour area of approximately 50 feet in diameter, the total area of damage to the benthic habitat could be approximately 23,520 square feet, or over one half acre. With this in mind, CZM strongly encourages the proponent to consider the use of conservation moorings which eliminate the use of chain and, thereby, the benthic damage and water quality degradation associated with the use of chain mooring systems.



Further CZM Review

The proposed project may be subject to CZM federal consistency review, which requires that the project be found to be consistent with CZM's enforceable program policies. For further information on this process, please contact Bob Boeri, Project Review Coordinator, at 617-626-1050 or visit the CZM web site at www.mass.gov/czm.

BKC/dsj/rlb

cc: Karen Kirk-Adams,
New England District, USACE
Liz Kouloheras
Southeast Regional Office, MA DEP
Ben Lynch, Waterways
Boston Regional Office, MA DEP
Carlos Fragata
SERO Office, MA DEP
Sarah Porter, Conservation Agent
New Bedford Conservation Commission
Susan Nilson
CLE Engineering, Inc. 15 Creek Road, Marion, MA 02738

Johnson, Holly (EEA)

From: Petitpas, Christian (FWE)
Sent: Monday, March 02, 2015 9:29 AM
To: Johnson, Holly (EEA)
Cc: 'snilson@cleengineering.com'; 'Sarah Porter'; Churchill, Neil (FWE); Shields, Thomas (FWE); Reiner.ed@epamail.epa.gov; Boeri, Robert (EEA); Chin, Ken (DEP); alison.verkade@noaa.gov; Chris Boelke; Lehan, Richard (FWE); Ford, Kathryn (FWE)
Subject: EEA# 15326, VVK Realty, LLC, New Bedford

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
Holly Johnson, EEA No. 15326
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Beaton:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the Environmental Notification Form by VVK Realty, LLC for proposed rehabilitation of an existing timber pier, addition of floating dock and gangway systems on the north and south of the existing pier, installation of moorings, and relocation of the seasonal tiki bar from adjacent property to the site at 1494 East Rodney French Boulevard, Buzzards Bay in the City of New Bedford. The project was reviewed with respect to potential impacts to marine fisheries resources and habitat.

The project site lies within mapped shellfish habitat for quahog (*Mercenaria mercenaria*) and bay scallop (*Argopecten irradians*) which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). Mapped land containing shellfish is deemed significant to the interest of the Wetland Protection Act and the protection of marine fisheries. Additionally, the project site is in close proximity to a *Marine Fisheries* sampling station that consistently contains quahogs and is Conditionally Approved for shellfish harvest.

Based on the information provided, *Marine Fisheries* has no recommendations for sequencing, timing, or methods that would avoid or minimize impact at this time.

Questions regarding this review may be directed to John Logan in our New Bedford office at 508-990-2860 ext. 141.

Sent on behalf of John Logan

MEMORANDUM

TO: Holly Johnson, Environmental Reviewer, MEPA Unit

THROUGH: Jonathan Hobill, Regional Engineer, Bureau of Water Resources
Philip Weinberg, Regional Director
David Johnston, Deputy Regional Director, BWR
Maria Pinaud, Deputy Regional Director, BAW
Millie Garcia-Serrano, Deputy Regional Director, BWSC
Jennifer Viveiros, Acting Deputy Regional Director, ADMIN

CC: Elizabeth Kouloheras, Chief, Wetlands and Waterways
Mark Bartow, Wetlands Program
Carlos Fragata, Waterways Program
Andrea Langhauser, Boston – Waterways Program
Pamela Truesdale, Municipal Facilities
Tena Davies, Wetlands and Waterways Program
Leonard Pinaud, Chief, Site Management
Allen Hemberger, Site Management
Ben Lynch, Boston - BWR-DWM-WW
New Bedford Conservation Commission
New Bedford Harbor Master

FROM: Sharon Stone, SERO MEPA Coordinator

DATE: March 3, 2015

RE: ENF EOEEA #15326 – NEW BEDFORD – Proposed Floating Dock
System, Moorings, Pier
Rehabilitation and Seasonal
Tiki Bar, 1494 E. Rodney
French Boulevard

"For Use in Intra-Agency Policy Deliberations"

The Southeast Regional Office of the Department of Environmental Protection (MassDEP) has reviewed the Environmental Notification Form (ENF) for the proposed floating dock system, moorings, pier rehabilitation and seasonal tiki bar project to be located at 1494 E. Rodney French Boulevard, New Bedford, Massachusetts (EOEEA #15326). The project proponent provides the following information for the project:

*The project consists of the rehabilitation of the existing timber pier, addition of floating dock and gangway systems north and south of the existing pier, installation of moorings and relocation of the seasonal tiki bar from the adjacent property (The Edge) to a proposed lease area within this site.
Permits listed in the ENF to be sought for the project include a MassDEP Waterways Chapter 91 License.*

Wetlands and Waterways Program Comments

The Wetlands Program has reviewed the ENF. It is the Program's opinion that any wetland issues can be reviewed and addressed through the permitting process and that no further MEPA review should be required for this project.

Waterways Program

The Mass. Department of Environmental Protection, Waterways Regulation Program (MassDEP/Waterways) has reviewed the referenced Environmental Notification Form (ENF) noticed in the Environmental Monitor on February 11, 2015. The Proponent, VVK Realty LLC, has proposed: to install four pile-supported floating docks (3,400 sf in total area), two 5' x 35' gangways, 12 helical moorings, and a 10' wide waterfront walkway; to rehabilitate the existing pier; and to relocate an existing seasonal tiki bar from the southerly abutting restaurant property onto this property.

Chapter 91 Jurisdiction: According to the ENF, the 1.36 acre site includes 32,580 square feet of previously authorized filled tidelands fronting Buzzards Bay. On the draft license plan provided with the ENF, the project engineer plotted the presumed historic high water identified through the Department's Presumptive Line Project, which is based on an 1895 map prepared by the US Coast and Geodetic Survey (T-2220). The MassDEP can provide an electronic copy of the historic low water line from the same T sheet, which is located parallel to the historic high water and generally behind the existing seawall. Therefore, the site includes filled private and Commonwealth Tidelands landward of the existing rip-rap. The ENF also identifies a series of licenses issued on the project site, most recently License #13647 issued in 2014 for the existing uses and structures. Since the presumptive line includes a small corner of the existing restaurant building that was not previously authorized, an electronic copy of the historic high water line will also be provided to verify the most landward extent of Chapter 91 jurisdiction. The Proponent acknowledges that a Chapter 91 license application will be required for the structural alterations and change in use of filled and flowed tidelands of Buzzards Bay.

Determination of Water Dependency: The existing shed previously used for ferry ticket sales, has been authorized as a water-dependent use. The proposed expansion of the pile-supported docking facility to include two large adjacent floats (and two tender floats) and a mooring field are essentially for berthing and public access to navigable waters, and, therefore, considered water-dependent uses. The relocation of the tiki bar proposed in an area of filled tidelands (6,257 sf) is for restaurant use, a nonwater-dependent use. The use of the existing parking needs to be determined; it could be categorized as either accessory to the water-dependent use or nonwater-dependent. The proponent stated at the scoping session that in redeveloping the site, the existing parking area may be landscaped with minimal or no parking on site. Even without clarification on the parking status, there is a mix of water-dependent and nonwater-dependent uses so the MassDEP/Waterways will process the forthcoming application as a nonwater-dependent use project since, in accordance with 310 CMR 9.12(1).

Review Standards: At the scoping meeting, the proponent stated that the floats are to be for transient berthing, and therefore did not characterize proposed docking facility as a

marina. The MassDEP/Waterways does consider this a public recreational berthing facility and a marina because even though the slips will not be leased on an annual basis there is room for at least 10 boats (see 310 CMR 9.02 Definitions – Marina and Public Recreational Boating Facility). The Chapter 91 Application will need to address the specific standards associated with such facilities (310 CMR 9.38 and 9.39).

The ENF does not describe how the project complies with the nonwater-dependent review standards of 310 CMR 9.5 -9.54, or where the tiki bar and associated seating will be located within the proposed lease line. A 10' wide public access walkway has been proposed along the project shoreline, in compliance with 310 CMR 9.52(1), however more information will be required to determine how the walkway will be physically separated from the restaurant area and where the walkway will connect with walkways or access areas on the abutting properties, the public boat ramp and an existing restaurant, to the north and south respectively.

While not subject to this MEPA review, the Proponent is aware that as the new landowner of the existing restaurant on the southerly abutting property, it is his responsibility to complete the license application (file # w11-3367N) for that site. The MassDEP/Waterways and the Proponent's representative have a meeting scheduled for March 11, 2015 to discuss the most appropriate and timely permitting pathway.

Waterways Application Status: The MassDEP/Waterways expects to receive a c. 91 license application, for all proposed and existing unauthorized structures and uses, upon completion of the MEPA process.

If you have any questions regarding the Waterways comments, please feel free to contact the Waterways Regulation Program in Boston (Andrea Langhauser at (617) 348-4084 or at Andrea.Langhauser@state.ma.us) or in the Southeast Regional Office (Carlos Fragata at (508)946-2873 or at Carlos.Fragata@state.ma.us).

U.S. EPA NPDES Permitting

The Proponent should determine if any of the following U.S. EPA NPDES permits are necessary:

Construction General Permit
Dewatering General Permit
Remediation General Permit

Information regarding these permits may be found at:

<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/CGP-DGP-RGP-Flow-Chart.pdf>

Bureau of Waste Site Cleanup

Based upon the information provided, the Bureau of Waste Site Cleanup (BWSC) searched its databases for disposal sites and release notifications that have occurred at and near the proposed project area. A disposal site is a location where there has been a

release to the environment of oil and/or hazardous material that is regulated under M.G.L. c. 21E, and the Massachusetts Contingency Plan [MCP – 310 CMR 40.0000].

The proposed project involves construction of a floating dock, moorings, pier rehabilitation, and a seasonal tiki bar. There are three listed disposal sites located within one-half mile of the proposed project area. Two of the listed disposal sites have been closed under a Permanent Solution, and no further reporting or response actions are required under the MCP.

There is one open disposal site located within one-half mile of the proposed project area. The Release Tracking Number for the open site is 4-10609, Allegheny Ludlum Corp. (formerly known as Teledyne Rodney Metals), 1357 East Rodney French Boulevard, located approximately 350 feet south of the proposed project area. Continued response actions are required at this site prior to closure under the MCP.

There are no other listed disposal sites located at or within one-half mile of the proposed project area. The MCP compliance status of these and all BWSC disposal sites may be viewed using the BWSC Waste Sites/Reportable Release Lookup at:
<http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

The Project Proponent is advised that if oil and/or hazardous material are 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. A Licensed Site Professional (LSP) should be retained to determine if notification is required and, if need be, to render appropriate opinions. The LSP may evaluate whether risk reduction measures are necessary or prudent if contamination is present. The BWSC may be contacted for guidance if questions arise regarding cleanup.

Proposed s.61 Findings

The “Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form” may indicate that this project requires further MEPA review and the preparation of an Environmental Impact Report. Pursuant to MEPA Regulations 301 CMR 11.12(5)(d), the Proponent will prepare Proposed Section 61 Findings to be included in the EIR in a separate chapter updating and summarizing proposed mitigation measures. In accordance with 301 CMR 11.07(6)(k), this chapter should also include separate updated draft Section 61 Findings for each State agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and contain a schedule for implementation.

The MassDEP Southeast Regional Office appreciates the opportunity to comment on this proposed project. If you have any questions regarding these comments, please contact Sharon Stone at (508) 946-2846.