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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

PROPRIETORS OF UNION WHARF
Portland, Cumberland County
MAINTENANCE DREDGING
L-22079-4E-A-N (approval)

) NATURAL RESOURCES PROTECTION
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of the PROPRIETORS OF UNION WHARF with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to dredge approximately 700 cubic yards of silt and clay from the berth of an oil spill response vessel known as the MAINE RESPONDER using a barge mounted crane with a clamshell bucket. The proposed project will restore a safe berthing depth of 19 feet at mean low water (MLW) over the approximately 5,550 square foot subtidal area of the berth at the Union Wharf in Portland. The dredged material will be transported by scow and dumped at the Rockland Disposal Site (RDS). The project is shown on two drawings entitled "Maine Responder Berth, Union Wharf," prepared by Post Road Surveying, with a last revision date of June 2, 2004.

B. Current Use of the Site: Union Wharf is a commercial wharf on Commercial Street that is the site of several marine related businesses including the Marine Spill Response Corporation that maintains and operates the vessel MARINE RESPONDER.

2. WATER QUALITY CONSIDERATIONS:

The applicant will dredge the site during the late winter or early spring and transport the material to the RDS, which is managed by the U.S. Army Corps of Engineers (Corps). The Corps reviewed the applicant's sediment sampling data and found that the dredge material is suitable for unconfined ocean disposal at the RDS. Based on sediment chemistry, the winter dredging schedule and the offshore location of the disposal site, the Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

3. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) reviewed the proposed project, and held a meeting in Rockland on February 2, 2005 to receive input from the public and the fishing industry. Concerns raised at that meeting included the potential release of contaminants into Penobscot Bay, the potential transport of lobster shell disease and oyster disease, and the potential

interference with fishing activity along the proposed barge route. After the meeting, as discussed in the memorandum from DMR dated February 16, 2005, DMR staff determined that the transport of either lobster shell disease or oyster disease as a result of the proposed project is not a significant concern.

DMR recommended that dredging and disposal be completed between January 1 and March 31 to minimize potential adverse impacts to marine resources and fishing activity. DMR recommended that the barge route follow the existing approach channel to Penobscot Bay shown on a nautical chart. The applicant agreed to comply with these two recommendations.

Based on DMR's review comments, the suitability of the dredged sediments for ocean disposal, and the applicant's agreement to modify the barge route and complete dredging between January 1 and March 31, the Department does not anticipate that the proposed project will unreasonably harm estuarine or marine fisheries or other aquatic life.

4. WETLANDS AND WATERBODIES PROTECTION RULES:

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

- a. **Avoidance.** No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis completed by its consultant and dated November 1, 2004 and a revised analysis dated December 13, 2004 that evaluated ocean disposal at both the Portland Disposal Site and the Rockland Disposal Site and reviewed an upland disposal option at the Gulf Oil Terminal in South Portland. The Department finds that the analysis demonstrates that ocean disposal at the Rockland Disposal Site is the least environmentally damaging practicable alternative that meets the project purpose.
- b. **Minimal Alteration.** The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. Dredging will be limited to an area of approximately 5,550 square feet the footprint of the existing berth. The Department finds that this is the minimal area necessary to provide safe access and egress for the MAINE RESPONDER.
- c. **Compensation.** The applicant sampled the subtidal area to be dredged to assess the abundance and diversity of marine organisms as a measurement of coastal wetland functions and values. The applicant observed a portion of the berth covered by discarded scallop shells and found a small number of crabs, starfish, and one juvenile lobster. Based on a review of similar dredging projects and their aftermaths, the Department has found that the loss of functions is temporary and that the substrate is recolonized by marine organisms after the dredging is completed. In accordance with Chapter 310, Section (5) (C) (7), compensation is not required to achieve the goal of no net loss of wetland functions and values.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

5. DREDGE SPOILS TRANSPORTATION CONSIDERATIONS:

As required by 38 M.R.S.A. Section 480-D (9), DMR has provided an assessment of the proposed project and its impact on the fishing industry as stated in Finding 3. To minimize this impact, the Department finds that the applicant must:

- a. Clearly mark or designate the dredging area and the transportation route from the project site to the RDS.
- b. Publish the transportation route in local newspapers of general circulation along the transportation route from Portland to Rockland.
- c. Publish in local newspapers the procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

6. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic or aesthetic uses, soil erosion, the natural transfer of soil, natural flow of water, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the dredging is completed between January 1 and March 31.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of the PROPRIETORS OF UNION WHARF for maintenance dredging, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

- 1. Standard Conditions of Approval, a copy attached.
- 2. All dredging and disposal shall be completed between January 1 and March 31.
- 3. The applicant shall comply with the provisions of 38 M.R.S.A. 480-D (9) and shall:
 - a. Clearly mark or designate the dredging area and the transportation route from the project site to the RDS.
 - b. Publish the transportation route in local newspapers of general circulation along the transportation route from Portland to Rockland.
 - c. Publish in local newspapers the procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 28th DAY OF February, 2005.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

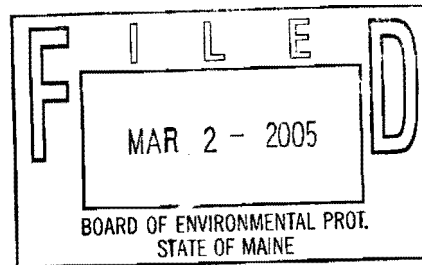
By: 
 DAWN R. GALLAGHER, COMMISSIONER

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application November 01, 2004
 Date of application acceptance November 04, 2004

Date filed with Board of Environmental Protection

DBB/ATS53446/L22079AN



NATURAL RESOURCE PROTECTION ACT (NRPA)
STANDARD CONDITIONS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Revised (4/92)

DEP LW0428