SUBMERGED LANDS LEASE – FINAL FINDINGS AND DECISION

APPLICANT: SHM Rockland, LLC

PROJECT LOCATION: City of Rockland

APPLICATION: Department of Environmental Protection (DEP) NRPA Application No. L-20386-4E-P-N

PROJECT DESCRIPTION: The applicant proposes to expand an existing marina float system for which it received a submerged lands lease on January 13, 2021. Much of the marina that had been included on the lease issued in 2010 to the previous owner was not constructed. The attached plan includes revisions to that site plan as well as construction of portions of those original elements. The applicant now proposes to place an adjoining floating dock to the east of the main pier marked as “Dock A” with a 20 ft. by 100 ft. concrete dock extending to the north beyond the existing pier. Two hundred and forty feet of wave attenuating floats would extend west and east at the end of Dock A in a T formation. Three 150 ft. concrete finger floats would extend eastward from the new floating dock system adjacent to the eastern side of the existing pier. A platform and ramp would connect the main pier with the Dock A system. “Dock B” consists of the existing pier and fingers with two new concrete finger floats (155 ft. and 172 ft.) that would extend westward toward the inner harbor from the main pier and from the new wave attenuating dock. The westernmost marina system marked as “Dock C” on the attached site plan was included on the leased area but was never constructed. Dock C would extend from the innermost finger to the west and would be 248 feet long with 7 fingers to the northeast and 8 fingers to the southwest. A 49 ft. extension of the main string of floats from Dock B would extend to the west across the inner harbor to access the Dock C float system. Approximately one hundred eighteen piles would be driven to anchor the structures. The most seaward float system would extend approximately 300 feet beyond the mean low-water line in Rockland Harbor for commercial use.

The applicant also proposes to dredge a 138,000 square ft. area under and around the proposed floats, including an area within the City’s channel, removing approximately 12,520 cubic yards of material to be disposed of in a nearby upland gravel pit for beneficial purposes.

REVIEW COMMENTS: Notification letters were sent to the municipality, abutters and Department of Marine Resources (DMR). The application was also posted on the Bureau of Parks and Lands’ (Bureau’s) website. Comments were received from several interested parties regarding pollution from the increased number of boats and from the proposed dredging, increased car traffic, potential noise from generators, the view shed from the boardwalk, public access to the boardwalk, and effects on the sense of community. Environmental and socio-economic impacts, upland uses, and view shed are not within the scope of the Bureau’s review when considering a request for a submerged lands conveyance.

However, pursuant to subsection 1.6(B)(10) of the Bureau’s Chapter 53 rules (01-670 C.M.R. ch. 53), the terms of a submerged lands lease require that the lessee obtain all permits or other approvals required by federal, state, and local law and remain in compliance with all such permits and approvals for the duration of the lease term.
Comments were also received regarding the safety of navigation in the inner harbor, the displacement of moorings, the berthing of boats that would be longer than the 150 ft. finger floats to the east, impacts to commercial fishing, public access to the South End Beach, navigation of vessels in the City channel, and continued safety for recreational swimming and kayaking. Bureau staff visited the site on November 5, 2021 along with representatives from DEP, DMR, the Army Corps of Engineers (ACOE), and the City’s Harbormaster. The applicant, the applicant’s agent, the Mayor, City Manager, several members of the City Council and many interested parties were also present.

Preliminary Findings were issued on December 6, 2021 subject to another 30-day review period for comments. No further comments were received.

FINDINGS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands makes the following findings in accordance with Title 12 M.R.S.A. section 1862 and pertinent regulations.

LITTORAL ZONES AND SETBACK DISTANCES:
Under the Submerged Lands Rules (Rules), boundaries of littoral zones lying off shore of upland properties are established by right angle projections from a baseline established along the shoreline at the intersection of the high-water line and the side boundary of each property. Setback standards are established from other existing structures, the applicant’s littoral zone boundary, and the midpoint between divergent littoral boundaries. The Rules allow for exceptions to the setback standards when the project otherwise meets the terms, conditions, and standards of the Rules, and the applicant has demonstrated that no reasonable alternative location is available. The littoral zones and setback standards are established to identify the submerged land area adjacent to the applicant’s upland property and to maintain adequate separation between structures for navigation and access for both the public and riparian owners. The littoral zones are not intended to delineate areas of public submerged lands for the exclusive use of the applicant or other riparian owners. The Bureau finds that that the proposed structures are entirely within the littoral boundary and meet the 25 ft. setback to the littoral lines required for new structures. The Bureau also finds that the proposed structures meet the 50 ft. setback from existing structures required for new structures.

PUBLIC ACCESS WAYS:
Comments were received from interested parties regarding public access to the City boardwalk and to the City’s beach (South End Beach) to the east. The Bureau does not consider the boardwalk as public access to submerged lands. The project would extend from the applicant’s private property and would also be adjacent to South End Beach, which is a public access point to the shore. Access to the beach is via a public street. There is no evidence in the record that the project would affect public access to the beach. As such, the Bureau finds that the project will not unreasonably interfere with public access ways to submerged lands.

PUBLIC TRUST RIGHTS:
Comments were received regarding negative impacts to commercial fishing, navigation within the project area, and the displacement of moorings. Concerns were also expressed regarding the use of the City Channel for berthing boats. The City has authorized boats with a beam wider than 20 feet that require berthing on the outer eastern float of Dock A to do so, but only with prior written approval from the Harbormaster. Such berthing would be limited to specific purposes on a case by case basis. No boats would be allowed to moor in the City Channel without prior written permission. Furthermore, the ACOE has added the following permit condition that “The permittee shall not have any structures (including vessels and floats) wider than 20 feet or encroaching into the City Channel “Due East” northern or seaward of “Dock A” T-Head” without prior approval from the City of Rockland Harbormaster.” The berthing area in the submerged lands lease would thus reflect the possibility of boats with a wider berth for those special circumstances. The Harbormaster also stated that the larger vessels would be captured by trained crews and thus would not create a concern for navigation of vessels to and from the dock. Berthing of vessels longer than the 150 ft. on floats to the east would not unreasonably impact navigation in
the surrounding area as several moorings already exist in the area and there is ample room to navigate around any vessels that extend beyond the floats.

Dock C would leave a 60 ft. opening between the City’s dock and the outer floats. The Harbormaster stated that the project would leave room within the harbor for navigation to and from the City’s dinghy dock and for kayaks and other boaters to continue to paddle under the bridge at the City’s dock provided that the boats berthed at Dock C do not extend beyond the finger floats. Berthing will therefore be limited to the length of the floats at Dock C. The Harbormaster also stated that he has no concerns with congestion with the additional traffic of smaller vessels accessing Dock C.

Although the public has indicated that there is some small scale, seasonal lobster fishing activity near the proposed lease area, no commercial traps were observed in the area during the Bureau’s site visit. The representative from DMR noted that the area of the project is not designated or known as a productive fishing ground.

The Harbormaster has identified 16 moorings to the east of the applicant’s current pier that would be displaced by the floats and proposed berthing area. Bureau staff discussed the moorings with the applicant and the agent. In response to the Bureau’s and the City’s concerns, the applicant has agreed to pay the cost of relocation of mooring gear and any changes to mooring gear that are needed as a result of the relocation of those sixteen moorings. The applicant is also in talks with the City of Rockland to participate in a new mooring management plan upgrade to better accommodate people who wish to have vessels moored in Rockland Harbor. The Bureau finds that with the City’s requirements and the special condition of the ACOE, there are no unreasonable impacts to navigation with Dock A. The Bureau also finds that the project will not unreasonably interfere with fishing, fowling, navigation, or other existing marine uses of the area.

RECREATION:
Interested parties commented that the project would interfere with swimming at the City’s adjacent South End Beach and make recreational kayaking in the area unsafe. Concerns were also raised that the presence of vessels longer than the 150 ft. floats to the east would further interfere with use of the public beach area. Bureau staff noted that the mooring field currently located seaward of the swimming area is located closer to the beach than the proposed finger floats to the east or any vessels up to 200 ft. that would be berthed alongside the floats. Additionally, the Harbormaster noted that potential larger vessels that berth on the floats to the east would be captured by professional crews thereby minimizing navigational safety concerns. The applicant stated that vessels berthed on the eastern floats of the A Dock would be docked for the duration of their stay, thus reducing daily boat traffic in the area. The Bureau finds that the project will not unreasonably interfere with recreation.

SERVICES AND FACILITIES NECESSARY FOR COMMERCIAL MARINE ACTIVITIES:
The project will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

INGRESS AND EGRESS OF RIPARIAN OWNERS:
Comments were made by interested parties that access to and from the City’s floats would be restricted. Bureau staff discussed with the Harbormaster whether accessing the City’s inner dinghy docks and its’ other floats to the east would be impacted. The Harbormaster requested that vessels berthed on the fingers of Dock C not exceed the length of the floats to maintain an adequate opening between the structures. Given the size of vessels that navigate on the eastern side of the City’s dock, if the berthing area is kept within the length of the floats, the Harbormaster stated that he would have no concerns with ingress and egress to the City’s docks. With the stipulation that the size of vessels berthed on the outer finger floats of Dock C be limited to the length of the floats (80 feet) the Bureau finds that the project will not unreasonably interfere with ingress and egress of riparian owners.
RISK TO LIFE OR PROPERTY:
Comments were received from an interested party regarding the risk of larger vessels associated with the project coming loose from their moorings and damaging other boats in the harbor during storms. Regarding subsection 1.7(C)(5) of the Bureau’s Chapter 53 rules, the project will present minimal safety risks to life or property because the floats that would extend beyond the current pier and the outer float system would be wave attenuating floats, designed to protect vessels from high waves and storm surge activity. The Bureau finds that the Project will not result in significantly increased risk to life or property in the vicinity of the proposal under conditions of weather and vessel traffic that are likely to be encountered.

REQUIREMENTS OF OTHER AGENCIES:
Regarding subsection 1.7(C)(6) of the Bureau’s Chapter 53 rules, the Bureau understands that the Applicant is in the process of obtaining all required federal, state, and municipal approvals. Standard language in the submerged lands lease requires that the lessee acquire all federal, state, and local approvals within a limited time frame after the lease is issued, and that the lessee comply with the terms of all such approvals throughout the lease period. Failure to obtain all necessary federal, state, and local approvals invalidates the lease for the portion of the Project that does not receive a required permit. The Bureau finds that the proposed Project complies with subsection 1.7(C)(6) because the lease is conditional upon receiving all necessary approvals.

SPECIAL PROTECTION AREAS OF SUBMERGED LANDS:
Regarding subsection 1.7(C)(7) of the Bureau’s Chapter 53 rules, there is no evidence in the record that any portion of the proposed submerged lands lease area has been designated for special protection by an agency authorized to make such designations. Therefore, the Bureau finds that the Project will not conflict with established management guidelines designed to protect such designated areas.

COASTAL POLICIES:
Because the Bureau has determined that the Project otherwise meets the standards described in subsection 1.7(C) of the Bureau’s Chapter 53 rules, the Bureau finds, per subsection 1.7(C)(8), that the use does not conflict with those aspects of the Coastal Policies or the Coastal Policy guidelines in 38 M.R.S. § 1801 that relate to the criteria considered by the Bureau.

PUBLIC INTEREST and CONSISTENCY WITH RULES
Based on all the findings above, and because the lease terms require the Applicant to obtain all necessary federal, state, and local approvals, the Bureau finds, regarding subsections 1.7(C)(1) and (9) of the Bureau’s Chapter 53 rules, that the Project is not inconsistent with the Bureau’s rules and is not otherwise contrary to the public interest, provided the Applicant obtains the necessary federal, state, and municipal approvals.

OUTSTANDING FEES:
The Applicant has paid the fee required for processing the application. Regarding subsection 1.7(C)(10) of the Bureau’s Chapter 53 rules, the Bureau finds that there are no outstanding fees relative to the application.

CONCLUSIONS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands concludes that the project meets the requirements set forth in 12 M.R.S.A. section 1862 and in the Bureau’s Chapter 53 Submerged Lands Rules.

DECISION: In accordance with Title 12 M.R.S.A. section 1862, the Director of the Bureau of Parks and Lands has determined that Submerged Lands Lease No. 2354-L-51 and Submerged Lands Dredging Lease No. 01-23DL will be granted to SHM Rockland, LLC.
APPEAL RIGHTS: In accordance with 5 M.R.S.A. section 11002 and Maine Rule of Civil Procedure 80C, this decision may be appealed to Superior Court within 30 days of receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

SPECIAL CONDITION: Lessee shall not allow vessels berthed on the outer (northeasterly) floats of Dock C to extend beyond the end of the finger floats (80 feet).

Signed: ___________________________  Date: ____________, 2022
Andrew R. Cutko, Director
NOTES:
1. CONTOURS ARE IN FEET AND REFERENCE MEAN LOW WATER (MLW).
2. CONTOURS BASED ON DEC. 2009 SURVEY BY GARTLEY AND DARSKY AND UPDATED SURVEY NOV. 2017 SURVEY BY ECO-ANALYSTS.

DREDGE DEPTH LEGEND
- 5' MLW: ~2.0 ACRES
- 8' MLW: ~0.5 ACRES
- 10' MLW: ~0.3 ACRES
- 13' MLW: ~2.2 ACRES

PROPOSED DREDGE AREA
FEDERAL CHANNEL OFFSET
PROPOSED DREDGE AREA
EXISTING FIXED PIER
EXISTING RIP-RAP REVETMENT
MEAN HIGH WATER
HIGHEST ANNUAL TIDE

SH ROCKLAND - NRPA APPLICATION
PROPOSED DREDGE PLAN
ROCKLAND, MAINE

SCALE: 1"=150'
JUNE 2021

SHEET 15 OF 17