

## **Chapter 7 – Request for a Public Benefit Review and Determination**

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## 7. REQUEST FOR A PUBLIC BENEFIT REVIEW AND DETERMINATION

### 7.1. Introduction

The SSX project exceeds EIR review thresholds as defined in 301 CMR 11.03 and requires a Public Benefit Determination in accordance with the regulations at 301 CMR 13.00, the procedures and standards to implement the public benefit determination requirement under Massachusetts General Law (M.G.L.) Chapter 91, and as confirmed by the Secretary of EEA's Certificate on the ENF.<sup>1</sup>

The Secretary is required to consider the following when making a Public Benefit Determination for projects in tidelands, including landlocked tidelands:

- Purpose and effect of the development.
- The impact on abutters and the surrounding community.
- Enhancement of the property.
- Benefits to the public trust rights in tidelands or other associated rights.
- Community activities on the development site.
- Environmental protection and preservation.
- Public health and safety.
- General welfare.
- Protection of groundwater.

This Chapter describes how the SSX project would provide appropriate public benefits and would be adequately protective of the public trust rights inherent in tidelands.

### 7.2. Nature of Affected Tidelands

MassDEP confirmed the limits of jurisdictional and filled tidelands at the South Station site in its comment letter on the SSX project ENF, dated April 9, 2013. The South Station site contains landlocked filled tidelands beginning at a point 250 feet landward of the Fort Point Channel. While Dorchester Avenue has not been a public way since 1966, the Massachusetts General Court<sup>2</sup> deemed the construction on air rights over and adjacent to South Station exempt from the licensing requirements of Chapter 91. Accordingly, the filled tidelands located more than 250 feet from the flowed tidelands of Fort Point Channel are considered landlocked.

However, the SSX project is subject to the jurisdiction of 2007 statute, "An Act Relative to Licensing Requirements for Certain Tidelands" (2007 Massachusetts Acts Chapter 168, Section 8) (the Act), because it contains landlocked tidelands within the footprint of the following project elements, as shown in Chapter 4, Figure 4-3:

Filled tidelands within the South Station site, located 250 feet landward of Fort Point Channel and separated from the flowed tidelands by Dorchester Avenue. Filled tidelands within the Beacon Park Yard and Widett Circle layover facility sites, located more than 250 feet from flowed tidelands of the Charles River and the Fort Point Channel respectively, and separated from the shoreline by one or more interconnected public ways that existed prior to January 1, 1984.<sup>3</sup> Per the Act and the Massachusetts

<sup>1</sup> Executive Office of Energy and Environmental Affairs. *Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form 15028*. April 19, 2013. <http://www.env.state.ma.us/mepa/mepacerts/2013/sc/enf/15028enf.pdf>.

<sup>2</sup> Acts of the Massachusetts General Court 2000. Chapter 235, Section 85.

<sup>3</sup> Massachusetts Department of Environmental Protection. *Waterways Regulations (310 CMR 9.02)*. June 2009. Accessed October, 2012. <http://www.mass.gov/dep/service/regulations/310cmr09.pdf>.

Waterways Regulations (310 CMR 9.00), landlocked, filled tidelands are exempt from Chapter 91 licensing requirements. Landlocked tidelands are defined by the Act as:

*“...any filled tidelands which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands which are presently located (a) within 250 feet of the high water mark...”*

### **7.3. Assessment of Public Benefits**

#### **7.3.1. Purpose and Effect of the Development**

The purpose of the SSX project is to expand Boston South Station Terminal rail capacity and related layover capacity in order to meet current and future high-speed, intercity, and commuter rail service needs. The expansion of Boston South Station would enable planned growth in passenger rail along the NEC and within the Commonwealth of Massachusetts, and would facilitate accompanying improvements in corridor and regional intermodal and multimodal mobility, passenger experience and comfort, economic development, and quality of life.

There are three fundamental transportation deficiencies (project needs) that the SSX project is intended to address to improve both current and future railroad operations:

- Terminal capacity constraints.
- Insufficient layover space.
- Inadequate station facilities.

The transportation elements of the project would have many permanent beneficial effects on the South Station site and surrounding community, including improvements to transportation infrastructure, new public waterfront access to approximately one-half mile of the Fort Point Channel shoreline, and public access to approximately 4.4 to 5 acres of public land currently closed to public access and use. The planned joint/private development would further activate the waterfront by creating a new major neighborhood destination containing residential, retail and commercial office uses in an area presently closed to public access.

#### **7.3.2. Impact on Abutters and Community**

The SSX project has been reviewed in numerous public meetings with abutters and commuters alike and is expected to have an overall positive impact to the community. A list of public presentations and agency meetings held through August 1, 2014 is provided in Appendix 1 – *Public Involvement and Agency Coordination Report*.

The South Station component of the project would result in a substantial net benefit to the general community by addressing critical rail transportation needs; reopening Dorchester Avenue to pedestrian, bicycle and vehicular traffic; and creating a new neighborhood destination on land that has been effectively isolated from public use since the 1960s when the portion of Dorchester Avenue east of South Station was purchased by the USPS for its exclusive use. The planned transportation improvements would enhance rail service for the traveling public, while providing local transportation improvements and other benefits in the South Station neighborhood including:

- Constructing approximately one-half mile of cycle track and Harborwalk in Dorchester Avenue and providing new pedestrian and bicycle connections between Summer Street and the existing public portions of Dorchester Avenue in South Boston.

- Improving vehicular traffic flow by reducing curbside congestion on Atlantic Avenue; providing alternative roads to accommodate curbside activity; and separating vehicular traffic from pedestrian and bicycle activity.
- Improving pedestrian connections around and through the South Station site to the neighboring communities of the Leather District, Chinatown, and the South Boston Waterfront/Innovation District.
- Expanding the existing intermodal and multimodal transportation network through improved interconnections between the South Station Rail Terminal and South Station Bus Terminal, as well as with the MBTA Red and Silver Lines.

In addition to the aforementioned intermodal and multimodal transportation improvements, the SSX project would result in economic benefits to the community through increased temporary construction jobs and permanent commercial, retail and transportation employment, as well as residential opportunities. Additional details of public benefits to the neighborhood are presented in Appendix 4 – *Socioeconomic Conditions Technical Report*.

The SSX project would facilitate economic growth in the Boston metropolitan region and beyond. *The Way Forward: A 21<sup>st</sup>-Century Transportation Plan*, identifies several high priority projects that would be instrumental in “unlocking economic growth in the Commonwealth,” including South Station Expansion and South Coast Rail.<sup>4</sup>

### 7.3.3. Enhancement of Property

The SSX project would enhance the 49-acre property (including the South Station and USPS parcels and Dorchester Avenue) by converting an approximate 14-acre parcel from a quasi-public USPS facility, to an expanded publicly accessible multimodal transportation facility and a reopened Dorchester Avenue. The project would provide substantially improved pedestrian, bicycle and vehicular accessibility.

The transportation portion of the project would create an expanded headhouse, which would be appropriately designed to complement the existing historic headhouse and to provide new and expanded pedestrian connections through the site, to neighboring communities, and to Fort Point Channel. The joint/private development alternatives would provide even greater enhancement of the property by creating a new, active, mixed-use urban district, combining commercial, residential and office uses. The mixed-use development, together with new open space at the ground level, would reconnect the public with Fort Point Channel through a series of pedestrian, bicycle, transit, and vehicular connections. At the South Station site, the SSX project would create an urban node of activity generated by mixed public and private uses in a location with substantial foot traffic, and a re-activated waterfront along the Fort Point Channel.

The SSX project would play a part in advancing MassDOT’s vision as a national leader in promoting sustainability in the transportation sector. Enhanced rail service at South Station would advance MassDOT’s goal of promoting mode shift by improving the access, convenience, and availability of transit as a viable alternative to people who would otherwise commute or travel to Boston by car.

The expansion of South Station would incorporate applicable sustainable design measures, including adaptation strategies. The project would be planned, designed, constructed, and operated under the umbrella of the MassDOT *GreenDOT Implementation Plan*, which identifies specific tasks to reduce

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<sup>4</sup> Massachusetts Department of Transportation. *The Way Forward: A 21<sup>st</sup>-Century Transportation Plan*. January 2013. [http://www.massdot.state.ma.us/Portals/0/docs/infoCenter/docs\\_materials/TheWayForward\\_Jan13.pdf](http://www.massdot.state.ma.us/Portals/0/docs/infoCenter/docs_materials/TheWayForward_Jan13.pdf).

greenhouse gas emissions; promote healthy transportation options of walking, bicycling, and public transit; and support smart growth development.

The SSX project would comply with all applicable state and federal water quality regulations which prohibit the degradation of water quality, as detailed in Chapter 4 and Appendix 7- *Water Quality and Stormwater Technical Report*. Consistent with MassDEP’s stormwater management policies, the project would include new best management practices (BMPs) to improve water quality to the extent practicable. Each of the layover facility sites would include improvements in stormwater quality discharged from the site through the implementation of stormwater BMPs. The Beacon Park Yard site is a tributary to the Charles River which is covered by two Total Maximum Daily Load (TMDL) restrictions and would therefore require a reduction in pollutant loads. The land use changes proposed at the Widett Circle site would likely include a net reduction in impervious area and a reduction in potential pollutant sources, resulting in a net benefit for water quality.

#### **7.3.4. Benefits to the Public Trust Rights in Tidelands or Other Associated Rights**

The SSX project would result in substantial improvement in public benefits in tidelands through the reactivation of approximately 4.4 to 5 acres of filled tidelands from their existing predominantly private use, to a mix of public interior and exterior uses which would reactivate the now closed tidelands. At the South Station site, the project would include the reopening of Dorchester Avenue to a public right-of-way to serve bicycle, pedestrian and vehicular users. The replacement of the USPS function with a combination of transportation uses in Alternative 1 – Transportation Improvements Only, and the addition of ground floor facilities of public accommodation in Alternative 2 – Joint/Private Development Minimum Build and Alternative 3 – Joint/Private Development Maximum Build, would greatly improve public use and access to filled tidelands at the site. The reopening of Dorchester Avenue under all Build Alternatives would reopen approximately one-half mile of the shoreline of Fort Point Channel that has been closed to public use for over 48 years.

By providing South Station users as well as the general public with direct access to Fort Point Channel via an extended Harborwalk, the SSX project would advance an objective of the *Fort Point Channel Watersheet Activation Plan* to enhance “the civic role” of Fort Point Channel.<sup>5</sup> Direct access to the Fort Point Channel waterfront would present opportunities to expand the multimodal network in the South Station area to include water travel.

The addition of layover facility sites would improve public use of filled tidelands by meeting the public need for additional rail transportation capacity. No new public waterfront access or activation of filled tidelands at the layover facility sites is proposed.

Traditional public trust rights in tidelands and the right to fish, fowl, and navigate have long been precluded at the South Station site by the closure of the site by the USPS. However, the modern expression of these traditional public trust rights on filled land would be realized by the conversion from USPS uses to a combination of rail transportation improvements, restored public access to the waterfront and, under the joint development alternatives, mixed uses to further activate filled tidelands.

The SSX project would provide the following public benefits to public trust rights in tidelands:

- Reactivation of 4.4 to 5 acres of filled tidelands in Dorchester Avenue currently closed to public access.

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<sup>5</sup> Boston Redevelopment Authority. *Fort Point Channel Watersheet Activation Plan*. May 2002. Page 8.

- Construction of new public transportation facilities within filled tidelands to expand the rail capacity of South Station.
- Construction of approximately one-half mile of new Harborwalk adjacent to Fort Point Channel, eliminating the last remaining gap in a continuous waterfront walkway in downtown Boston.
- Construction of approximately one-half mile of cycle track within the existing footprint of Dorchester Avenue.
- Provision of ground floor facilities of public accommodation, for both Joint/Private Development Alternatives 2 and 3.
- Enhancement of existing waterfront open space in the South Station area, including Rolling Bridge Park and South Cove waterfront, by creating improved public accessibility along Dorchester Avenue.

### 7.3.5. Community Activities on the Site

The project would result in a substantial net improvement to community activities at the South Station site by converting the existing access-restricted USPS site to rail transportation uses to serve public needs, accompanied by substantial improvements in the public activation of Dorchester Avenue. In the existing condition, there are no community activities at the site. In all Build Alternatives, the expanded South Station site would become an important public space attracting rail transportation users and activating approximately one-half mile of Fort Point Channel as an attractive pedestrian corridor.

Joint/Private Development Alternative 2 and Alternative 3 would further increase the potential for community activities at the site by providing a new active storefront development and sidewalk along the western edge of Dorchester Avenue and adjoining open space as required by Chapter 91.

In summary, the SSX project would result in substantial improvements in waterfront activation and public use at the site under any of the proposed Build Alternatives.

### 7.3.6. Environmental Protection/Preservation

The SSX project would require multiple local, state and federal approvals, which are listed in Chapter 1. These reviews and required approvals would ensure that the SSX project minimizes potential environmental impacts to the extent practicable and provides appropriate mitigation for unavoidable impacts.

The SSX project's review under the following programs would ensure that all practicable project alternatives are considered and any associated environmental impacts identified before any state agency permit or approval process may commence:

- *MEPA*. This DEIR has been prepared in full accordance with the Secretary's Certificate on the ENF. It is anticipated that the Secretary's Certificate on the DEIR would be issued in December, 2014. The Final EIR (FEIR) would be prepared in accordance with the Secretary's Certificate on the DEIR. MassDOT would prepare the FEIR to comply with 301 CMR 11.00.
- *Fort Point Downtown Municipal Harbor Plan – Phase 3 and South Station Master Plan*. The South Station site is located within the planning area of the Fort Point Downtown Municipal Harbor Plan (MHP). A Phase 3 Amendment to the MHP and a South Station Master Plan is in the early stages by the City of Boston. This City of Boston planning effort, to be completed in coordination with the Office of Coastal Zone Management and subject to the review and approval of the Secretary of EEA, is a critical step in redevelopment of the site.
- *Massachusetts Historic Commission State Register Review and Section 106 of the National Historic Preservation Act Review*. The SSX project would include work within and adjacent to

the South Station headhouse, which is individually listed on the State and National Registers of Historic Places, and located proximate to a number of historic districts, including the Leather District Historic District, the Fort Point Channel Historic District, and the Fort Point Channel Landmark District, which are listed on the State and National Registers of Historic Places. Furthermore, the SSX project would require federal funding and would be subject to review under Section 106 of the National Historic Preservation Act.

### **7.3.7. Public Health and Safety**

The project would promote public health and safety through implementing a site design that would provide a safe and universally accessible facility from all directions. The design includes on-site and off-site transportation improvements to increase pedestrian and bicyclist safety and accessibility in the neighborhood. Improvements include new and expanded urban landscape and appropriate lighting and signage to provide a safe well-lit environment for residents, visitors, customers and employees on a permanent basis.

Transportation improvements at South Station would advance public health and safety. Currently, the South Station headhouse facilities are unable to adequately support anticipated passenger service needs. As discussed in Chapter 2, Project Purpose and Need, MassDOT seeks to upgrade and modernize existing station platforms to meet current MassDOT design standards for island platforms and to meet MBTA's and Amtrak's future berthing requirements to accommodate longer trainsets needed to meet future demand. The new pedestrian platforms, circulation, and waiting areas for transit and rail facilities would be designed to provide a reasonable level of service for passengers and other station visitors. Additionally, platform upgrades would be implemented to stay current with Americans with Disabilities Act (ADA) and life safety regulations, including emergency egress considerations.

### **7.3.8. General Welfare**

The project would protect the general welfare by improving public infrastructure and expanding transportation capacity, including reducing redundant moves to reposition trains due to a lack of adequate layover space. It would substantially improve the public realm by opening approximately 4.4 to 5 acres of Dorchester Avenue to public use for pedestrian, bicycle and vehicular use. All of these improvements are being planned in consultation with local, state and federal agencies to avoid potential adverse impacts and maximize project benefits. The SSX project would comply with all applicable local, state and federal environmental protection standards.

### **7.3.9. Protection of Groundwater**

The Act, previously described in Section 7.2, requires projects subject to MEPA to consider a project's potential impacts on groundwater and, in cases where projects are located in areas of known low groundwater, include measures to avoid, minimize, or mitigate potential impacts. Portions of the track located west of South Station along the NEC are located within the published boundaries of the Boston Groundwater Overlay Protection District.

The City of Boston's Groundwater Conservation Overlay Protection District (GCOD) was established by Zoning Article 32 to ensure that construction projects do not cause reduction in groundwater levels on the construction site or on adjacent lots, and to recharge stormwater into the ground to help raise the level of groundwater to a safe level. The areas of the South Station site located within the GCOD are limited to existing track and right-of-way along the NEC to Cove Interlocking. No areas of the principle South Station site or any of the layover facility sites are located within the GCOD. The minor track alterations



proposed in the vicinity of Cove Interlocking require only minor excavation and are not expected to result in any short-term or long-term impacts to groundwater.

#### **7.4. Summary**

The SSX project would meet the requirements of 2007 Massachusetts Acts (Chapter 168, Section 8) by providing appropriate public benefits, and adequately protecting the public trust rights inherent in tidelands as described herein.

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