



February 6, 2013

Secretary Richard K. Sullivan, Jr.
Executive Office of Energy and Environmental Affairs
Attention: MEPA Office
Deirdre Buckley, EEA #13940
100 Cambridge St., Suite 900
Boston MA, 02114

Via Email: deirdre.buckley@state.ma.us

Re: **Tihonet Mixed Use Development Project, Phase C-2 – Proposed Cranberry Bogs/Infrastructure, Plymouth, Wareham, and Carver**

Dear Secretary Sullivan:

On behalf of Mass Audubon, I submit the following comments on the Draft Record of Decision for Phase C-2 of the large mixed use development project proposed by A.D. Makepeace Company on 6,107 acres in Wareham, Carver, and Plymouth. As noted in Mass Audubon's previous comments, this phase involves construction of 140 acres of new cranberry bogs, a nearly mile-long bypass canal, a soil mixing facility, and other associated infrastructure on 217 acres of land. This phase alone exceeds the Massachusetts Environmental Policy Act (MEPA) 50-acre land alteration review threshold for mandatory preparation of an Environmental Impact Report (EIR). The project also has substantial impacts to rare species and requires permitting under the Massachusetts Endangered Species Act. Approximately 150 acres of the impacted land is high-quality pine barrens habitat, a globally significant rare natural community supporting several state-listed rare species of moths as well as important habitat for a host of other plants and animals associated with this rare natural community type. The project will also have significant impacts to water resources, and although many of those effects may be positive, alterations to surface and groundwater flows have not been evaluated quantitatively. It will result in the conversion of over 200 acres of forest into other land use types; therefore the Greenhouse Gas (GHG) impact analysis for the project is needed to analyze the carbon effects of forest removal.

The Certificate on the Expanded Environmental Notification Form (EENF) and the Draft Record of Decision (DROD) propose to issue a waiver from the requirement to produce an EIR. Mass Audubon objects to this proposed waiver, as it is not consistent with the regulatory criteria for a waiver and sets a bad precedent. We recognize that the project will result in water quality improvement, and we are not suggesting that MEPA should impose delays on the applicant's progress toward getting those improvements underway.

We recommend that a more appropriate procedural approach would be to approve the EENF, combined with the extended comment period associated with the DROD, as substituting adequately for a Draft EIR, and providing in the final Certificate for this phase requirements for further documentation on progress and mitigation to be submitted with MEPA filing materials on the next phase of the larger project.

As you know, the regulatory provisions for granting of a waiver (301 CMR 11.11) require determinations that compliance would

- Result in an undue hardship for the proponent (not based on delay in compliance)
- Not serve to avoid or minimize Damage to the Environment.

Furthermore, waivers from the mandatory EIR threshold are required to demonstrate that:

- The project is likely to cause no Damage to the Environment; and
- Ample and unconstrained infrastructure exists to support the project

Exceptions to these mandatory EIR provisions are allowed if there are terms or conditions that the benefits to the environment or infrastructure will exceed those in absence of a waiver.

Hardship: Given that the proponent is a large corporation and the project is proposed to be undertaken over the course of 20 years, the argument of hardship seems strained at best. An alternative procedural approach would have been to issue a partial waiver allowing work to begin while scoping for future filings submission of additional information such as details on and confirmation of completion of rare species habitat mitigation.

Damage to the Environment: It is indefensible to conclude that conversion of approximately 200 acres of prime, globally significant pine barren habitat does not constitute any damage to the environment. While the project's benefits for water quality are likely significant, this does not directly offset the loss of rare, irreplaceable habitat, notwithstanding the proposed permanent protection of other, existing similar habitat nearby. There is still a significant net loss that constitutes damage to the environment.

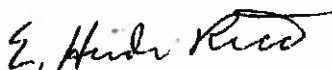
Infrastructure: Much of the project involves construction of new water management infrastructure including 5,000 foot long bypass canal, berms, and water flow control structures. No quantitative analysis has been presented on the effects of this canal and its operation on surface or groundwater flows. The new water infrastructure and modern bogs will improve water quality, but that is not the same as a determination that adequate existing infrastructure exists.

The EENF provides general plans at a broad scale, along with qualitative, narrative descriptions. It does not provide detailed plans, impact analysis, or specific mitigation measures as would typically be required of any stand-alone project of this scope.

Mass Audubon requests that MEPA require that the next submission for the larger project include additional details on this phase. Please see Mass Audubon's comments on the EENF for additional requested information. In particular, we request that there be quantitative analysis of impacts to wetlands and water resources and associated mitigation. Clarification is needed regarding extent of wetland impacts allowed under the agricultural exemption vs. impacts permitted under the agriculture improvement provisions of the wetlands regulations. Wetland impacts from this phase of the project should be included in the comprehensive compilation of impacts for the larger project. An update on status of rare species mitigation should also be included with the next filing.

Thank you for the opportunity to comment on this project. We respectfully request that you exercise care in the decision on this project, to not set a precedent on future waivers, and to ensure that the impacts and mitigation for this phase are ultimately documented within the overall MEPA documents for the larger project.

Sincerely,



E. Heidi Ricci
Senior Policy Analyst

cc: Stacy Minihane, Beals and Thomas
NHESP
DEP SERO
Conservation Commissions: Carver, Plymouth, Wareham
Coalition for Buzzards Bay