



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
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w/c 2/14/13 (B)
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February 13, 2013

FINAL RECORD OF DECISION

PROJECT NAME : Phase C-2 Proposed Cranberry Bogs/Infrastructure
 ADM Tihonet Mixed Use Development
PROJECT MUNICIPALITY : Carver, Plymouth and Wareham
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 13940
PROJECT PROPONENT : ADM Development Services, LLC
DATE NOTICED IN MONITOR : January 9, 2013

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (EENF) and hereby **grant a Waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in previous MEPA filings and the Phase C-2 EENF, the entire project entails development of 6,107 acres in the towns of Carver, Plymouth and Wareham. The project is proposed as a phased development over a 25-year period. The site currently contains the corporate headquarters of the A.D. Makepeace (ADM) Company, and includes cranberry bogs as well as undeveloped lands considered ecologically significant due to the presence of BioMap Core Habitat, Priority Habitat for rare and endangered species, and the underlying sole source aquifer. The phased development as proposed in the EENF submitted in July 2008 consists of a mixed-use village community that will incorporate principles of smart growth, open space preservation, low impact development (LID), traditional village design, and pedestrian orientation. The plan includes use of Transfer of Development Rights (TDR) to concentrate development in certain areas and ensure conservation of ecologically significant lands. Agriculture operations will continue to be a major component of the overall project.

The project is proposed in three phases consisting of Phase A, Phase B and Phase C. Phase A consists of the following three sub-phases: construction of a 80,000 sf light industrial development on a 16-acre portion of the site identified as the Tihonet Technology Park (A1); construction of 65,840 sf of commercial space, including a medical office building on a six-acre parcel located at Lou Avenue (A2); and, construction of a 5-acre cranberry bog in the northwest quadrant of Route 195/Route 25 interchange (A3). A tenant has not been identified for Phase A1. Phases A2 and A3 have been constructed. Phase B includes 337 acres of land in Wareham. It includes four development areas, totaling 78 acres, and proposes 344,700 sf of commercial and residential uses. It also includes construction of a 0.5 megawatt (MW) solar farm (Rosebrook Solar), and a 3.6 MW solar farm (Charlotte Furnace Solar). The solar farms have been constructed and are generating power. Rosebrook Solar provides power to A.D. Makepeace properties and facilities while Charlotte Furnace Solar provides power to the electrical grid.

Phase C consists of all other elements of the TMUD Master Plan and encompasses 4,910 acres. It includes agricultural, mixed-use residential, village-scale retail and preservation of open space. Phase C1 consists of construction of the Wankinco Bog, a 16.5-acre bog, a 2.5-acre reservoir and tailwater recovery pond, 13 acres of bog roads/graded areas and preservation of 24 acres of open space. Phase C-2, the subject of this FROD, consists of the construction of a 140-acre bog to be built out as older run-of-river bogs are abandoned, construction of a bypass canal around the Frogfoot Bogs and construction of a soil blending facility. The bog project will include 77 acres of unimproved bog roads and grading areas. Remaining elements of Phase C include the 1,200-acre Business Development Overlay District (BDOD) consisting of light industrial, light manufacturing and research and development space which was originally proposed as an element of Phase B; the remainder of the Tihonet Technology Park, and build-out of landholdings within the Route 28 Strip Commercial District.

Procedural History

A Special Review Procedure (SRP) was signed on January 29, 2007 and established review requirements for this project based on three project phases. The SRP allows phases of the project to be filed as ENFs and includes requirements for a baseline environmental resource assessment and cumulative impact assessment for the entire 6,000-acre project site, public outreach, and extended public comment periods. Each filing must include a revised and updated master plan, a cumulative impact assessment and discussion of the project's consistency with the Master Plan. The public participation process consists of quarterly public update meetings and/or public meetings prior to the filing of each review document. In addition, the SRP established an extended review period (45 days) for project review documents filed with MEPA.

Consistent with the SRP, the Proponent filed an EENF in 2008 that included baseline environmental resource assessment and infrastructure assessment for the entire project site, and information and analysis pertaining to the proposed Phase A and Phase B developments. In addition, the Proponent requested a Phase One Waiver to allow Phase One (Phase A) of the project to be permitted prior to completion of the EIR. A Certificate on the EENF and a Draft Record of Decision (DROD) proposing to grant the Phase One Waiver were issued on September 12, 2008. The Certificate included a Scope for the EIR for Phase B and for certain aspects and impacts of Phase C. A Final Record of Decision (FROD), granting the Phase One Waiver, was issued on October 15, 2008.

In 2009, the Proponent submitted a NPC for Phase A and requested an amendment to the SRP and to the Phase One Waiver. The NPC identified changes to the project including a reduction in size of

Phase A1, relocation and increase in size of Phase A2 and addition of Phase A3 (a 5-acre cranberry bog). A Certificate on the NPC was issued on October 2, 2009 and a Final Amended Record of Decision (FAROD) was issued on October 28, 2009. The Certificate and FAROD indicated that an amendment to the SRP was not required. A NPC/Phase B DEIR and Phase C1 EENF (Wankinco Bog) were filed in September 2010. The NPC/DEIR indicated that the BDOD would be deferred to Phase C and described the 344,700 sf development proposal. A Certificate on the NPC/Phase B DEIR was issued on November 12, 2010. It indicated that the DEIR adequately and properly complied with MEPA and directed the Proponent to file a Final EIR (FEIR) consisting of Responses to Comments and Proposed Draft Section 61 Findings. A Certificate on the Wankinco Cranberry Bog ENF was also issued on November 12, 2010. It indicated that the project did not require an EIR. The FEIR for Phase B was filed in January 2011 and a Certificate was issued on March 18, 2011. The Certificate indicated that the FEIR properly and adequately complied with MEPA and that the project could proceed to permitting.

Project Site

The entire project site is comprised of 6,107 acres of land within Carver, Plymouth and Wareham. The area includes the corporate headquarters of the ADM Company, commercial development and active cranberry bogs. It includes extensive areas of undeveloped lands considered ecologically significant due to the presence of BioMap Core Habitat, Priority Habitat for rare and endangered species, and the underlying sole source aquifer.

Phase C-2 consists of three distinct areas. The new cranberry bog is proposed within a 217-acre site off of Tihonet Road, located east of the existing cranberry bog system associated with the Wankinco River in Plymouth. The bypass canal project area consists of approximately 4,900 lf and approximately 11 acres along the east side of the Frogfoot River cranberry bogs located in Plymouth and Wareham. These areas consist primarily of undeveloped forested land, agricultural access roads and paths. Portions of the project site contain important, high quality pine barrens habitat supporting multiple state-listed species. This is part of a larger contiguous barrens system located in and around Myles Standish State Forest that is of regional and global conservation significance. Areas proposed for bog development include Estimated and Priority rare species habitat, including the Eastern Box Turtle (*Terrapene carolina*) and several pine barrens species. In addition, several areas of the site are designated as agricultural use under the Chapter 61A program and several areas are in active forest management under an approved Chapter 61 forest management plan.

The soil blending facility is proposed in Carver on a 28.5-acre site southeast of the Ocean Spray processing facility, and near active bogs. The site is previously disturbed and unvegetated. It does not contain mapped rare species habitat.

Jurisdiction and Permitting

The project is undergoing environmental review and is subject to the requirements for an EIR because it requires State Agency Actions and exceeds MEPA review thresholds, including several thresholds for a mandatory EIR. The project is undergoing review pursuant to the following sections of the MEPA regulations: Section 11.03(1)(a)(1) and (2) because it will involve alteration of 50 or more acres of land and creation of 10 or more acres of new impervious area; Section 11.03(2)(b)(2) because it will result in a taking of a state-listed species; Section 11.03 (3)(b)(d) and (f) because it involves alteration of 5,000 or more sf of Bordering Vegetated Wetlands (BVW) and alteration of one-half or

more acres of other wetlands; Section 11.03(4)(b)(3) because it involves construction of one or more new water mains five or more miles in length; Section 11.03(5)(b)(3)(c) because it will result in construction of five or more miles of new sewer main; and Section 11.03(6)(a)(6) and (7) because it will result in generation of 3,000 or more new vehicle trips and 1,000 or more new parking spaces. The October 2, 2009 Certificate on the NPC indicated that Phase B may also exceed the mandatory EIR threshold at 11.03(1)(1)(a) for alteration of one or more acres of BVW; however, this threshold was not exceeded.

The project is subject to the MEPA Greenhouse Gas Emissions Policy and Protocol. The project is subject to review by the Massachusetts Historical Commission (MHC) and may be subject to federal consistency review by the Massachusetts Office of Coastal Zone Management (CZM). The project is also subject to the U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit requirements for construction activities.

The project requires a Conservation and Management Permit from the Department of Fish and Game's (DFG) Natural Heritage and Endangered Species Program (NHESP), a Vehicular Access Permit from the Massachusetts Department of Transportation (MassDOT) and Orders of Conditions from the Carver, Plymouth or Wareham Conservation Commission (and a Superseding Order from the Massachusetts Department of Environmental Protection (MassDEP) in the event a local Order is appealed). In addition, projects require permits from MassDEP including a Groundwater Discharge Permit, New Source Approval, 401 Water Quality Certification, Water Supply System Distribution Modification, and a Sewer Extension/Connection Permit from MassDEP.

Phase C-2 is subject to preparation of a Mandatory EIR pursuant to Section 11.03(1)(a)(1) because it will involve alteration of 50 or more acres of land. Also, it exceeds the ENF threshold at 11.03 (2)(b)(2) because it will result in greater than two acres of disturbance of designated priority habitat that results in a take of a state-listed endangered or threatened species or species of special concern. Phase C-2 will require a Conservation and Management Permit from NHESP. In addition, it requires an Archaeological Permit from MHC.¹

The Proponent has applied for financial assistance from the Commonwealth, including grants from the Massachusetts Technology Collaborative (MTC), and is likely to apply for additional funding such as financial assistance from the Massachusetts Opportunity Relocation and Expansion (MORE) Program. Because the project involves financial assistance from the Commonwealth, MEPA jurisdiction is broad and extends to all aspects of the project likely to cause Damage to the Environment as defined in the MEPA regulations.

¹ The Wankinco River and Frogfoot Brook may be Chapter 91 jurisdictional waterways pursuant to the Waterways Regulations at 310 CMR 9.04. MassDEP has recommended the Proponent file a Request for Determination of Applicability pursuant to the Waterways Regulations (CMR 9.06). If the Wankinco River and Frogfoot Brook are jurisdictional waterways, proposed water control structures such as pump houses, intake/discharge pipes, or culverts placed below the high water mark may require a c.91 License. In addition, any dredging associated with these water control structures or bypass canal may require authorization under c.91 and a 401 Water Quality Certification. This issue was discussed during the consultation session and the Proponent indicated that the bypass canal can be designed without requiring work below the high water mark.

Environmental Impacts

Cumulative impacts associated with the TMUD project, including Phase C-2 are identified in the Certificate on the EENF. Potential environmental impacts associated with Phase C-2 include 228 acres of land alteration, creation of 5.93 acres of new, impervious surface, alteration of wetland resource areas (4,404 sf of Bordering Vegetated Wetlands (BVW), 198 sf of Bank, 5,609 sf of Bordering Land Subject to Flooding (BLSF), and 250 feet of Land Under Water (LUW)), generation of 460 adt, 108.3 gpd of water demand, 119 gpd of water withdrawal, and 187.5 gpd of wastewater generation.

The EENF indicates the project would include 148 acres of impact to mapped Eastern Box Turtle habitat and 153 acres of impact to mapped pine barrens habitat (the majority of which is overlapping habitat. In a letter dated January 8, 2013, the Proponent indicates that the impact to mapped Eastern Box Turtle habitat is approximately 9,850 sf, not the 148 acres reported in the EENF.

Measures to avoid, minimize and mitigate project impacts associated with Phase C-2 are identified in the EENF and supplemental information and include: design, construction and management of bogs consistent with Best Management Practices (BMPs) to reduce water use and improve water quality; offsetting of new bog construction through abandonment of flow-through bogs; Integrated Pest Management; permanent protection of 300 acres of undeveloped forest land and rare species habitat; and, potential development of geothermal energy at the soil blending facility.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Proponent has submitted an EENF with a request that I provide a Waiver of the Mandatory EIR requirement. The EENF was subject to an extended public comment period pursuant to the SRP and Section 11.06(1) of the MEPA regulations. Michael Hogan, President and CEO of A.D. Makepeace, provided a letter dated December 11, 2012 highlighting the importance of a Waiver to the project. In addition, I received a letter from the Proponent, dated December 21, 2012, that provides a more detailed discussion of the project's consistency with the criteria for a Waiver.

The EENF includes a project description, identifies potential impacts and associated mitigation measures and provides conceptual site plans. It identifies required State permits, Financial Assistance, or other State approvals and identifies how projects are designed consistent with those standards. Consistent with the SRP, the EENF provides an analysis of cumulative impacts and an update on the Master Plan. In addition, the EENF includes a summary of quarterly public meetings and other meetings to update stakeholders on the project and pending MEPA filings.

The Proponent asserts that the requirement to file an EIR will constitute an undue hardship because it will delay a project that can provide environmental benefits without providing additional value in terms of reducing environmental impacts or increasing environmental benefits. In addition, the Proponent asserts that preparation of an EIR would not avoid Damage to the Environment because there is support for the Preferred Alternative, associated environmental impacts have been identified through the review of the project and adequate measures to avoid, minimize and mitigate project impacts are included and will be refined during project permitting. Completion of the project should improve water quality and increase the efficiency of water conservation.

As required by the DROD, the Proponent provided copies of the supplemental information on the Waiver request to the EENF distribution list. Also, the Proponent indicated to the MEPA Office that it accepted the conditions identified in the DROD, with copies of this confirmation to the EENF distribution list. This information was provided in a letter dated January 8, 2013 and was copied to the distribution list as required.

Criteria for a Waiver of a Mandatory EIR

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

In addition, the MEPA regulations at 301 CMR 11.11(3) state that, in the case of a Waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) the project is likely to cause no Damage to the Environment; and
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Findings

Within the context of MEPA review of the TMUD project, the SRP established for review of TMUD projects, and the Proponent's constructive collaboration with state agencies in permitting and development of mitigation, and, based on the review of the EENF, supplemental information provided by the Proponent, consultation with state resource agencies, and review of comment letters, I find that the Waiver request has merit and that the Proponent can demonstrate that the project meets the tests for all waivers at 301 CMR 11.11 (1). I agree that, if conditions identified in the Findings section below are met, the requirement to prepare an EIR would constitute an undue hardship by delaying construction of projects that will improve water quality while increasing productivity of an important industry within this region, and preparation of an EIR would not avoid Damage to the Environment.

I also find that compliance with the requirement to prepare an EIR would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11 (3), this finding is based on my determination that:

- 1) The project is likely to cause no Damage to the Environment. The purpose of the bog project and bypass canal are to improve the productivity and efficiency of cranberry bog production while reducing associated water use and water quality impacts. Land alteration, water use and water quality impacts will be offset through abandonment of existing bogs and

permanent protection of undeveloped land. The projects will include appropriate measures to avoid, minimize and mitigate project impacts. Comments from State Agencies do not identify the need to analyze additional alternatives or mitigation. These comments identify how outstanding issues will be addressed through project permitting.

State Agencies have the opportunity to require additional information or establish conditions necessary to avoid, minimize and mitigate environmental impacts through the issuance of permits, including the Conservation and Management Permit. Impacts to wetland resource areas will be addressed through the local Conservation Commission review process.

- 2) Ample and unconstrained infrastructure facilities and services exist to support the project. The project does not require extension of municipal infrastructure or services. Water use will be managed within the established regulatory framework of the Water Management Act (WMA) and will not require new permits. Water control structures are designed to accommodate future flows and provide additional flood storage capacity. Tailwater recovery systems will be developed through conversion of existing bogs. In addition, the bog project will be phased over a 20-year time period. Construction of new bog will be introduced incrementally and impacts will be offset through abandonment of flow-through bogs and permanent conservation of undeveloped land.

The Waiver is conditioned on the following:

- New bog construction will be phased and completed in conjunction with abandonment of flow-through bogs and land protection measures. For every 16 acres of new bog construction, 10.67 acres of flow-through bogs will be removed from production. Phasing plans will be provided to MassDEP, NHESP and to stakeholders as part of the public participation process identified in the SRP and will be included in subsequent MEPA filings.
- New bog construction will incorporate BMPs to reduce water demand and improve water quality, including: laser leveling to reduce the amount of water required for harvesting and flooding, design of bogs to facilitate targeted pesticide application using booms or equally efficient methods; computer technology for irrigation management; and, tailwater recovery systems to support reuse of water and settling of pollutants.
- The Proponent will collaborate with MassDEP, the UMASS Cranberry Experiment Station, and other appropriate stakeholders to design and conduct a study to quantify the benefits of the bog project, including pollutant reduction and efficient use of water resources. Subsequent MEPA filings should include an update on development of the study and associated findings.
- Upon completion of the soil blending facility, the Proponent will provide a certification to the MEPA Office signed by an appropriate professional (e.g. civil engineer, architect, general contractor) indicating that all of the GHG mitigation measures, or equivalent measures that are designed to collectively achieve the proposed stationary source GHG emission reduction committed to in the EENF, have been incorporated into the project. This commitment should be incorporated into the draft Section 61 Findings.
- The Proponent will continue exploration of the technical and financial feasibility of geothermal energy at the soil blending facility, or other appropriate project sites.

- The Proponent will collaborate with EEA and MEPA on the development of a protocol to assess GHG emissions associated with land alteration, including providing data for the Phase C-2 project that can be used to develop and assess the protocol. Subsequent MEPA filings should include an update on the development of this protocol.
- The project will include permanent protection of 300 acres of undeveloped land in proximity to identified conservation land associated with previous phases of the project and in proximity to the Myles Standish State Forest. The Proponent will identify the approximate location of the conservation land and will identify the entity that will hold the conservation restriction (CR).
- The bog design includes a corridor for wildlife passage in the vicinity of the northern isolated vegetated wetland (IVW D). If required by NHESP, construction period measures will be employed to protect Eastern Box Turtles, including, but not limited to, turtle sweeps and contractor training.
- The Proponent will prepare draft Section 61 Findings for use by NHESP in the Conservation and Management Permit.

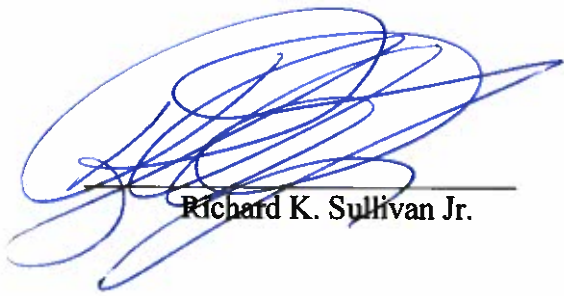
The Buzzards Bay Coalition and Mass Audubon submitted comment letters on the DROD. Comments from the Buzzards Bay Coalition indicate support for the Waiver request because it likely will result in improved water quality. This support is predicated on the inclusion of several specific conditions that were identified in the DROD, including: off-setting new bog construction with removal of flow-through bogs from production; incorporation of BMPs in bog design and operations to reduce water demand and improve water quality; collaboration with stakeholders to design and conduct a study on benefits of new bog construction; and, permanent protection of 300 acres of undeveloped land. Comments from Mass Audubon identify its objection to the proposed Waiver and indicate that additional review should be required and include detailed project plans, impact analysis and specific mitigation measures. In addition, Mass Audubon comments indicate that subsequent filings should provide updated information on wetland impacts, water quality and rare species mitigation.

As noted in the DROD, State Agency comments do not identify additional alternatives or information that should be provided in an EIR. State Agencies will address outstanding issues during project permitting.

Conclusion

I have determined that this Waiver request has merit, and issued a DROD which was published in the Environmental Monitor on January 9, 2013 in accordance with 301 CMR 11.15(2). The public comment period closed on February 6, 2013. Based on a review of the EENF and review of comments on the EENF and the DROD, I hereby **grant a Waiver** of the requirement to prepare an EIR.

February 13, 2013
Date



Richard K. Sullivan Jr.

Comments received:

2/6/13 Buzzards Bay Coalition
2/6/13 Mass Audubon

RKS/CDB/cdb

Buckley, Deirdre (EEA)

From: Korrin Petersen [petersen@savebuzzardsbay.org]
Sent: Wednesday, February 06, 2013 10:08 AM
To: Buckley, Deirdre (EEA)
Subject: EEA No. 13940 ADM TMUD Phase C2
Attachments: Buzzards Bay Coalition Comments on DROD Phase C2 EEA 13940 2-6-13.pdf

Deirdre –

On behalf of the Buzzards Bay Coalition, please find attached a comment letter on the Secretary's Draft Record of Decision, EEA No. 13940, the ADM Tihonet Mixed Use Development in Plymouth, Carver, and Wareham, Massachusetts Phase C2 – Proposed Cranberry Bogs/Infrastructure Project.

Please let me know if you have any questions or concerns. The Coalition appreciates the opportunity to comment on this project.

Sincerely,
Korrin

Korrin N. Petersen Esq., Senior Attorney

BUZZARDS BAY COALITION

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Via Electronic Mail

February 6, 2013

Secretary Richard K. Sullivan, Jr.
Executive Office of Energy and Environmental Affairs
Attn: MEPA Office, Dierdre Buckley
100 Cambridge Street, Suite 900
Boston, MA 02114

**Re: Draft Record of Decision EEA No. 13940- ADM Tihonet Mixed Use Development
Plymouth, Carver, and Wareham, Massachusetts Phase C2 – Proposed Cranberry
Bogs/Infrastructure Project No. 1833.60**

Dear Secretary Sullivan:

On behalf of the Buzzards Bay Coalition (Coalition) please accept the following letter of support for the Draft Record of Decision (DROD) dated December 28, 2012 granting a conditioned waiver of the requirement to prepare an EIR to ADM Development Services LLC's (ADM or Proponent) for the proposed work referred to as 'Phase C2 – Proposed Cranberry Bogs/Infrastructure.'

The Coalition is a membership supported non profit organization dedicated to the restoration, protection, and sustainable use and enjoyment of Buzzards Bay and its watershed including the Wareham and Wankinko Rivers. It is well established that the Wareham River is polluted with excess nitrogen and fails to meet state water quality standards pursuant to 314 CMR 4.00. Since 2002, the Wareham River has been listed on the State's Integrated List of Impaired Waters, as impaired for nutrients, pursuant to section 303(d) of the Federal Clean Water Act. Any additional discharge of nutrients within the watershed will continue to further degrade this already impaired waterbody and will be in violation of Massachusetts surface water quality standards.

The creation of new, modern bogs by the Proponent to replace flow-through bogs should result in a reduction in nitrogen load generated from within the Wareham River watershed. Further, re-routing the stream connection between Frogfoot Reservoir and Tihonet Pond may also have immediate benefits to water quality downstream by avoiding the run-of-the-river bogs.

The Coalition supports the Secretary's DROD in that it grants a conditioned waiver including the following important conditions:

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21 Luscombe Avenue, Woods Hole, Massachusetts 02543 | Tel: 508-540-6222 Fax: 508-540-5222

- *New bog construction will be phased and completed in conjunction with abandonment of flow-through bogs and land protection measures. For every 16 acres of new bog construction, 10.67 acres of flow-through bogs will be removed from production.*
- *New bog construction will incorporate BMP's to reduce water demand and improve water quality, including: laser leveling to reduce the amount of water required for harvesting and flooding, design of bogs to facilitate targeted pesticide application using booms; computer technology for irrigation management; and, tailwater recovery systems to support reuse of water and settling of pollutants.*
- *The Proponent will collaborate with MassDEP, the UMASS Cranberry Experiment Station, and other appropriate stakeholders to design and conduct a study to quantify the benefits of the bog construction, including pollutant reduction and water efficiency.*
- *The project will include permanent protection of 300 acres of undeveloped land in proximity to identified conservation land associated with previous phases of the project and in proximity to the Myles Standish State Forest.*

The replacement of flow-through bogs with new modern-style bogs and the construction of the bypass canal together with the above stated conditions will likely result in improved water quality and therefore the Coalition believes a waiver is appropriate.¹ The Coalition applauds the Proponent for taking these responsible actions which seek to reduce their nitrogen pollution within the Wareham River watershed from the Tihonet Mixed Use Development.

Sincerely,



Korrin N. Petersen, Esq.
Senior Attorney
(508) 999 – 6363 ext 206
petersen@savebuzzardsbay.org

cc: MassDEP
Town of Wareham Board of Selectmen
Michael Hogan, AD Makepeace

¹ While the Coalition agrees that a waiver is appropriate in this circumstance due to the likely water quality benefits, the Coalition does not agree with some of the reasoning in support of the waiver asserted in the supplemental information provided by the Proponent's letter dated December 21, 2012. Specifically, on page 4, the letter suggests that this land alteration will result in relatively insignificant impacts because the area of the alteration is small relative to the TMUD parcel and the overall area of the underlying towns. The letter states that the land alteration represents less than 4% of the overall TMUD parcel and less than 0.3%, .03%, and .02% of the land areas in Plymouth, Carver and Wareham. For the purposes of granting a waiver, it is critical to assess the environmental impact of the alteration as opposed to merely assessing the size of the alteration relative to the overall size of the project and the area of the town. A very small alteration may have a significant impact.

Buckley, Deirdre (EEA)

From: Heidi Ricci [hricci@massaudubon.org]
Sent: Wednesday, February 06, 2013 4:57 PM
To: Buckley, Deirdre (EEA)
Cc: sminihane@btiweb.com; Regosin, Jonathan (FWE); Langley, Lealdon (DEP); Stroman, Michael (DEP); Kouloheras, Elizabeth (DEP); rasmussen@savebuzzardsbay.org; Petersen@savebuzzardsbay.org; Peg.Blackwell@carverma.org; ESullivan@townhall.plymouth.ma.us; kbarrasso@wareham.ma.us
Subject: EEA #13940 Tihonet Mixed Use Development Project, Phase C-2 – Proposed Cranberry Bogs/Infrastructure, Plymouth, Wareham, and Carver
Attachments: 13940 Ph C-2 Tihonet Mixed Use Cranberry Bogs DROD comments.pdf

Deirdre

On behalf of Mass Audubon, I submit the attached comments on the Draft Record of Decision for EEA #13940 Tihonet Mixed Use Development Project, Phase C-2 – Proposed Cranberry Bogs/Infrastructure, Plymouth, Wareham, and Carver.

Thank you for considering these comments.

Regards,

Heidi

E. Heidi Ricci

Senior Policy Analyst
Mass Audubon
208 South Great Road
Lincoln, MA 01773
781-259-2172

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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.

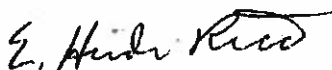
Infrastructure: Much of the project involves construction of new water management infrastructure including 5,000 foot long bypass canal, berms, and water flow control structures. No quantitative analysis has been presented on the effects of this canal and its operation on surface or groundwater flows. 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