

Community Land & Water Coalition
Save the Pine Barrens, Inc.
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environmentwatchesoutheasternma@gmail.com

July 29, 2021

Tori Kim, Director
MEPA Unit
Boston, MA 02114
Via email to MEPA-regs@mass.gov

Re: MEPA Regulatory Review: Comments on “MEPA Public Involvement Protocol for EJ Populations”

Dear Director Kim,

Thank you for the opportunity to submit comments the draft MEPA *Public Involvement Protocol for EJ Populations* (“Protocol”). These comments are submitted by Save the Pine Barrens, Inc., and its Community Land & Water Coalition (“CLWC”), a network of groups and individuals seeking to preserve, protect and steward our unique and finite land and water resources. Our focus is on the Pine Barrens ecosystem in Southeastern Massachusetts, unceded Wampanoag territory, and the ancestral homeland of Wampanoag people.

In the last 40 years, the region has experienced the rapid acceleration of reckless, destructive, and unregulated land and resource exploitation that is destroying the environment and desecrating Indigenous physical, spiritual, cultural, and ceremonial sites. For example, in 2016, the historic King Philip’s Cave site in East Freetown was desecrated by Borrego Solar. In 2021, Grasshopper Energy destroyed a site in Hopkinton. See photos for both below.

Southeastern Massachusetts is ground-zero for reckless ground-mounted industrial solar development and unregulated industrial sand mining extraction. In some instances, these projects have triggered MEPA review, but most have not, an issue we are addressing separately with MEPA. Where MEPA review has occurred, it has been conducted with apparent disregard for the rights of Indigenous community members. The same thing is occurring in Western Massachusetts, demonstrated recently by the plan of Massachusetts Department of Transportation to destroy a 10,000-year-old archeological site for a traffic roundabout. See www.skibiski.com.

There is a gaping hole in the Protocol and in the MEPA regulations themselves. G.L. c. 30, Section 61 defines “damage to the environment” to include “damage to natural areas, parks, or historic districts or sites.” See also 301 CMR 11.02. MEPA regulation 11.03(10)

Historical and Archeological Resources vests the authority for determining the impacts of development projects with Massachusetts Historical Commission (MHC). MHC and MEPA have created a closed-loop process that excludes public comment and the review of studies and decisions under MEPA. This process is inadequate and must be revised for the reasons stated below. The Protocol must address this glaring flaw because it is inconsistent with the basic principles of environmental justice, climate justice, human rights, and current social norms.

1. MHC and MEPA's unlawful closed-loop review process

When a project is subject to MEPA review and threatens to cause Damage to the Environment as defined under c. Chapter 30, Section 61, the process is essentially as follows. The Project proponent obtains an archeological study, submits it to MHC, which (behind closed doors) determines whether the site or artifact has "substantial research value" (a phrase that is neither defined in statute nor in their certificates) in the eyes of the MHC staff. Rarely, if ever, does MHC comply with the National Historic Preservation Act, Section 106 where federal action is involved. MHC seldom, if ever, undertakes consultation with the Indigenous community. Impacts to Indigenous physical, cultural, and spiritual sites cannot simply be determined by whether MHC considers the site or artifact to have "research value" in its eyes.

Example: See attached Letter, MHC to EEA Secretary Bowles, October 29, 2010, regarding alleged "agricultural project" in Carver MA, indicating Native American presence. Based on available information, there was no consultation with the Indigenous community and no way for the public to determine whether the site has been protected. It is currently the site of an industrial sand mining operation by AD Makepeace Co.

The truncated definition of Environmental Justice populations in the Protocol and MEPA's environmental justice policy itself perpetuates this unlawful process and the systemic racism from which it stems.

2. Violations of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is based upon the principle that "control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs."¹ UNDRIP has been endorsed by the United States. The manner in which MEPA and MHC implement Chapter 30, Section 61 violates Articles Three, Four, Eighteen, Nineteen, and Twenty-Nine of UNDRIP.

MEPA and MHC systematically disregard the rights of Massachusetts Indigenous community members to self-determination and their right to "participate in decision-making in matters which would affect their rights"² by excluding them from the opportunity for

¹<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

² See Article 18 of UNDRIP

meaningful participation under MEPA. Article 19 states that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” UNDRIP Article 26 establishes the rights of indigenous peoples to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired. We have examined numerous projects “reviewed” by MEPA and MHC which have occurred on unceded Wampanoag territory in Wareham, Carver and Plymouth. The available record shows a lack of meaningful consultation and free, prior, informed consent. Taken together, the exclusion of indigenous voices from the MEPA process conflicts with both the spirit of UNDRIP and several of its articles.

3. Conclusion

We look forward to addressing these concerns in our focus group meeting with you on August 6, 2021, at 2 p.m. We urge the MEPA Office to fully examine this issue and the role played by MHC through its closed-loop review process. We look forward to the opportunity to provide further input in the process in order to advance true Environmental Justice in the Commonwealth. Thank you in advance for your time and consideration on this matter.

Sincerely,

Meg Sheehan

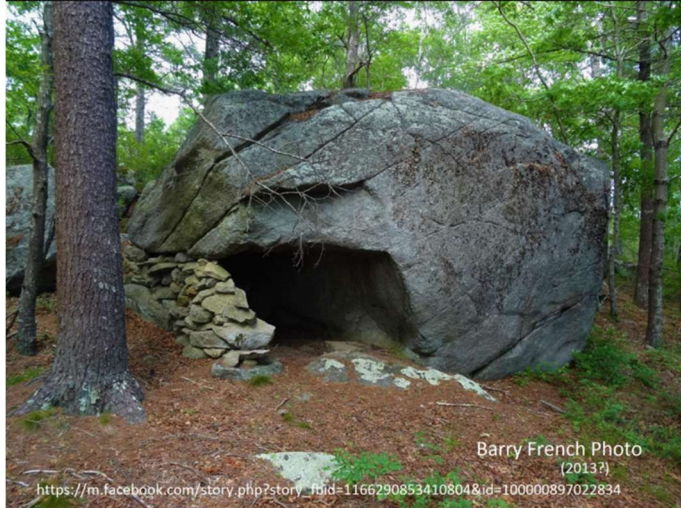
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2016 FREETON, MA:

King Philip's Cave desecrated by Borrego Solar.

<http://wakinguponturtleisland.blogspot.com/2018/08/crying-out-for-rocky-woods.html>

Before:



After:



JULY 2021: HOPKINTON MA

Indigenous cultural site desecrated by Grasshopper Energy

<https://hopkintonindependent.com/wilson-street-solar-project-ordered-to-pause-after-tribal-officials-claim-disregard-for-indigenous-artifacts/>



*Grasshopper Energy has cleared a large portion of the site off Wilson Street in preparation for a solar array.
PHOTO/JERRY SPAR*



October 29, 2010

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

Secretary Ian A. Bowles
Executive Office of Energy & Environmental Affairs
Attn: Aisling Eglinton, MEPA Unit
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: ADM Tihonet Mixed-Used Development, Phase B, Carver, Wareham, and Plymouth, MA.
MHC #RC. 38041. EEA # 13940.
And Phase C1 Wankinco Cranberry Bog Expansion, Carver, MA. PAL # 2503. MHC #RC. 38041
EEA # 13940.

Dear Secretary Bowles:

Staff of the Massachusetts Historical Commission have reviewed the Notice of Project Change/Phase B Draft Environmental Impact Report (DEIR), the Environmental Notification Form (ENF) for Phase C1 Wankinco Cranberry Bog Expansion, and the technical archaeological report, *Intensive (Locational) Archaeological Survey Wankinco Cranberry Bog Expansion, Carver, Massachusetts*, submitted by the PAL, for the projects referenced above.

A summary of cultural resources and MHC consultation to date is included in DEIR sections 4.3.4, 5.8 and 7.7. Section 5.8, Table 5.8.1 and Figure 2.6.1 are responsive to MHC's August 8, 2008 request for a project comprehensive cultural resources summary. As noted in Table 5.8.1, MHC has been in consultation with the project proponent throughout the planning process.

MHC understands that the project proponent proposes to continue to undertake archaeological testing of sensitive locations as the project planning proceeds during future phases, including the remainder of Phase C as noted in the DEIR (section 4.1.1.10, pg 4-9). MHC looks forward to reviewing project plans and additional information for the phases of development as they are developed, and continued consultation on the project.

Results of the intensive (locational) archaeological survey conducted for the Phase C1 Wankinco Cranberry Bog expansion identified one ancient archaeological site, the Wankinco Bog Site and two archaeological find spots, the Wankinco Bog Findspots 1 and 2. The Wankinco Bog site consists of a low density deposit of 19 artifacts, including rhyolite and quartz chipping debris by-products of stone tool maintenance and manufacture, a bifacial flaked quartzite tool resembling a Stark-type projectile point and a piece of charcoal. The resemblance of the biface to a Stark-type projectile point suggests that the site may include a Middle Archaic period (7500 to 5000 years before present) occupation. The submission of the charcoal piece for radiocarbon dating would provide additional information to date the site. The artifacts were recovered from natural soils, suggesting the presence of associated subsurface soil features, including fire or storage pits in the immediate vicinity. In MHC's opinion, the site possesses integrity, and may meet the criteria of eligibility (36 CFR 60) for listing in the National Register of Historic Places because it contains information on ancient Native American occupation and land use within the inland portions of Carver during at least the Archaic Period.

The Wankinco Bog Site is located approximately within the northern portion of the proposed project impact area and appears readily avoidable through minor project redesign. If avoidance of the archaeological site is not

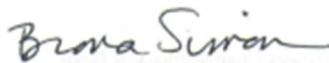
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www.sec.state.ma.us/mhc

feasible, then MHC requests that a site examination (950 CMR 70) be conducted for the site. The purpose of the site examination is to gather sufficient information to determine the exact horizontal and vertical boundaries of the sites, their internal configuration, and data contents, so that a determination of significance can be made. The results of the site examination will provide information to assist in further consultation to avoid, minimize or mitigate any adverse effects to significant archaeological resources.

The Wankinco Bog Findspots consist of two pieces of quartz chipping debris in Findspot 1 and a mid-section of a quartzite bifacially flaked tool in Findspot 2. The Wankinco Bog Findspots consist of singular pieces of the by-products of stone tool maintenance and manufacture, and while they provide information on ancient Native American land use and occupation in the inland portion of Carver, do not possess substantial research value. No further archaeological investigations of the find spots are recommended.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800), and/or Massachusetts General Laws, Chapter 9, Sections 26-27C (950 CMR 70-71) and MEPA (301 CMR 11). If you have any questions please contact Jonathan K. Patton, at this office.

Sincerely,



Brona Simon
State Historic Preservation Officer
Executive Director
State Archaeologist
Massachusetts Historical Commission

xc: Judy Kohn, AD Makepeace
Michael Hogan, ADM Development Services LLC
George G. Preble, Beals and Thomas, Inc.
Karen Kirk Adams, USACOE-NED, Regulatory
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Carver Historical Commission
Plymouth Historical Commission
Wareham Historical Commission