



## Massachusetts Association of Conservation Commissions

*protecting wetlands, open space and biological diversity through education and advocacy*

December 6, 2013

By email to [alexander.strycky@state.ma.us](mailto:alexander.strycky@state.ma.us)

Secretary Richard K. Sullivan, Jr.  
Executive Office of Energy and Environmental Affairs (EEA)  
Attn: MEPA Office  
Alex Strycky, EEA No. 15119  
100 Cambridge Street, Suite 900  
Boston MA 02114

Re: Comments on the Environmental Notification Form for the Braley Road Solar Project, EEA 15119

Dear Secretary Sullivan:

The Massachusetts Association of Conservation Commissions (MACC) appreciates the opportunity to comment on the Environmental Notification Form (ENF), EEA # 15119, for the Braley Road Solar Project that is proposed for a wetlands in New Bedford. As we explain below, we believe the proposed project is inconsistent with requirements of the Massachusetts Wetlands Protection Act and requires the preparation of a draft and final Environmental Impact Report (EIR).

MACC is the professional association of Massachusetts conservation commissions. We represent more than 2,100 conservation commissioners throughout Massachusetts who are responsible for protecting the natural resources of their communities under the Conservation Act (G.L. c.40, § 8c) and for administering and enforcing the Wetlands Protection Act (G.L. c.131, § 40) and municipal wetlands laws and regulations. We protect wetlands, open space, and biological diversity across Massachusetts by supporting conservation commissions through education and advocacy. We advocate for strong science-based laws, regulations, and policies that function well. MACC has been doing that work since 1961.

Preliminarily, it is important to note that this is yet another solar array project proposed for protected wetlands without any clear or articulated state policy on whether such projects should ever be approved or how such projects should be considered and evaluated. That concerns MACC and, we think, should concern EEA and DEP. The growing temptation to place large solar arrays on wetlands-- because the wetlands are there and, for good reasons, not built upon -- is a serious threat to our natural resources. State law recognizes that wetlands perform many vital ecological functions that require protection, including flood control, improved water quality, and as wildlife habitat (flora and fauna). Wetlands also play an important function in climate mitigation and adaptation, including by absorbing carbon and storm water flows. Covering wetlands with solar arrays is inconsistent with the interests protected by the Wetlands Protection Act.

The Braley Road Solar Project is an example of the problem. It would include the construction and placement of a three megawatt solar array and associated equipment and perimeter fencing within and over fifteen acres of bordering vegetated wetlands (a former cranberry bog) and with unspecified impacts to inland banks and land under water. The project proponent acknowledges the project will

affect jurisdictional wetlands, but claims the project qualifies as a limited project under 310 CMR 10.53(4) for projects that increase the natural capacity of wetland resource areas to protect the interests of the Wetlands Protection Act. We think the project's proposed reliance on the limited project provision of the regulations is misplaced. The project is a significant alteration of a wetlands, with negative impacts on the interests protected by the Wetlands Protection Act, presented under the guise of a limited project. It is our opinion that the project, as proposed, is not approvable under the Wetlands Protection Act.

The limited project provision at 310 CMR 10.53(4) allows the usual 5,000 square foot limit on wetland alteration to be exceeded for restoration and enhancement projects that have a positive benefit on the affected resources. The project proponent is claiming here that because it will keep vegetation under and around the solar array in a low condition it will be enhancing habitat by maintaining a wet meadow habitat and preventing a naturally succeeding wooded swamp. That is a serious misapplication of the limited project provision. The limited project provision is for projects where the primary purpose is wetlands enhancement or restoration, not to enable excessive amounts of alteration to be justified with associated mitigation in the form of vegetation management. Restoration of a former agricultural wetland to a more natural condition may qualify as a limited project, but constructing structures within the wetland does not enhance its ability to support the interests of the Wetlands Protection Act. Solar arrays, with their many impacts, including shading of the ground that reduces the amount of direct sunlight and direct rainfall hitting the ground, and their water runoff characteristics, are not a natural condition of a wetland. The project as proposed cannot qualify for limited project provision status.

The ENF acknowledges that the project will impact fifteen acres of jurisdictional vegetated wetlands, but that the impacts are temporary. The conclusion that the impacts are temporary is wrong. Construction of structures over wetlands, such as docks, piers, and boardwalks, has long been acknowledged by DEP as resulting in permanent alteration of the affected wetlands. The area of impact is measured as the horizontal area occupied by the structure; there is no reason that calculation method should not apply to solar arrays. It is the presence of the structure that constitutes the alteration, not the proposed use of the structure. By describing only the temporary impact of the support posts and ignoring most of the project's potential longer-term impacts, the ENF has failed the MEPA requirement to provide an initial assessment of the potential environmental impacts. 301 CMR 11.054(a). Those impacts are not assessed in the ENF. Consequently, the preparation of an EIR that assesses the actual impacts is required.

Equally important, an EIR is mandatory, not optional, because, as explained above, the real extent of alteration of the wetlands exceeds ten acres. 301 CMR 11.03(3)(a)1.

If solar arrays are treated differently from other structures, with impacts calculated based only on the support posts for the arrays, other projects would begin seeking similar treatment. DEP cannot create a special treatment for solar arrays that does not exist in statute or regulation and that is not justified by the interests protected by the Wetlands Protection Act. The standards for docks, piers, and boardwalks would thus be changed, with untold and unanticipated consequences. Pavilions, decks, sheds, homes, commercial buildings, towers, and other structures could be proposed to be built in an elevated fashion over wetlands, based on the claim that the only area of wetland impact associated with such structures is the area occupied by their support posts or piers. Longstanding wetland protection standards would be undermined. Assessment of the impacts of solar arrays projects must be based on the area of alteration, not the proposed use.

The project also will alter an unspecified quantity of inland bank associated with the ditches located within the former cranberry bog. The ENF provides no information on those impacts and ignores that the ditches are likely jurisdictional streams subject to regulatory requirements for land under water. The ENF also fails to provide information regarding the location of array support posts in relation to the ditches or associated banks. The site plan shows that the arrays will cross the ditches in numerous locations. It also provides no information on how access and maintenance of the arrays will be conducted with the ditches in place.

The ENF's storm water analysis states that storm water management is not required for the array. We question that assertion. Solar arrays are impervious surfaces. The combined runoff from many arrays over 15 acres may alter runoff and infiltration across the site and affect downstream discharge rates. The need for storm water management systems may depend on site-specific conditions such as underlying soils and slope. That is not discussed in the ENF.

For these reasons, we request that a draft and final EIR be required.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eugene B. Benson". The signature is fluid and cursive, with a large initial "E" and "B".

Eugene B. Benson  
Executive Director  
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cc: Lealdon Langley, DEP Division of Wetlands and Waterways  
New Bedford Conservation Commission