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April 13, 2020

Secretary Kathleen Theoharides
Executive Office of Energy and Environmental Affairs
MEPA Office
100 Cambridge St., Suite 900
Boston, MA 02114

Re: **EEA #16173 Environmental Notification Form**
Surfside Crossing - Nantucket Massachusetts

Dear Secretary Theoharides,

The mission of the Nantucket Land Council (NLC), a non-profit organization established in 1974, is to protect and preserve the fragile natural resources of Nantucket for the sustainability of the environment and the health of our community. On behalf of its thousands of members, donors and volunteers who reside on Nantucket, NLC submits the following comments regarding the Environmental Notification Form (ENF) filing by Surfside Crossing dated March 13, 2020 and appearing in the Environmental Monitor on March 25, 2020. According to MEPA Analyst Alex Strycky the public comment period for this application has been extended to May 12, 2020. Protecting the natural and human environment of Nantucket from the type of impacts anticipated from the project is squarely within the core mission of the NLC.

EEA# 16173 Surfside Crossing Comments: Nantucket Land Council



BACKGROUND

The NLC participated throughout the Nantucket Zoning Board of Appeals' (ZBA) public hearing process reviewing the Comprehensive Permit for Surfside Crossing's development, proposed under Chapter 40B. The NLC submitted extensive written and verbal testimony expressing many concerns over the impacts of this project. We also submitted scientific data from our consultants to show project impacts to rare and endangered species habitat, water resources, waste disposal, and the environment.

The Surfside Crossing project was initially submitted to the ZBA, as the Island's comprehensive permit granting authority under c. 40B, in February 2018 as a 156 unit development on the 13.5 acre property located at 3, 5, 7, and 9 South Shore Road. This area is locally zoned as Limited Use General 2 (LUG 2) with a minimum lot size of 80,000 square feet. As a result of the concerns raised throughout the public hearings by the Town, numerous abutters and members of the community at large, as well as the ZBA and its peer review consultants, the developers modified their plans to include 100 dwelling units, and then later a 92 unit plan was submitted. While small steps were taken by Surfside Crossing to explore options with reduced density, they did little to address the concerns raised regarding the environmental impacts which MEPA, per 301 CMR 11.00, is charged to review.

It should be noted that the community of Nantucket recognizes the importance and need for a variety of housing options and especially for the creation of more below-market housing stock, both owner occupied and rental. The NLC has played an important role in housing development policy on Nantucket, including the development of specific projects. The NLC holds the conservation restriction for the c. 40B development adjacent to the site called Sachem's Path. Great effort has been and continues to be made by the Town of Nantucket and other stakeholders to meet ambitious affordable housing development goals, and immediately subsequent to the issuance of the Surfside Crossing Comprehensive Permit, due to these efforts, the Town successfully entered a two year period of "safe harbor".

Affordable housing is important to Nantucket; however, the impacts associated with the proposal before you are too substantial and are not commensurate with the limited benefits. The impacts have not been addressed by the applicant. The scale of this development is completely inappropriate for the site. The proposal provides wholly inadequate buffer zones, open space, or protections for important habitat and water resources which are further outlined below. Per the MEPA regulations, 301 CMR 11.01 1.b, "*the Secretary's decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives, and assessed its potential environmental impacts and mitigation measures.*" The clear adverse impacts to environmental resources both on and off site, and the insufficient information provided to address those concerns, render this Environmental Notification Form wholly inadequate. We respectfully request that the Secretary require an Environmental Impact Report.

RARE AND ENDANGERED SPECIES

Throughout the review process for the Comprehensive Permit both the NLC and the Town petitioned the developers to allow access to the site for necessary surveys of rare and endangered species. The Town's expert consultants provided testimony that in addition to listed Lepidoptera species already mapped on the site, the site was very likely to contain state-listed plants, including the New England Blazing Star, and provide important habitat for the state endangered Northern Long Eared Bat (NLEB). The Division of Fish and Wildlife's NHESP did not recognize any plant species or the NLEB in their Determination letter, dated October 19, 2018 as the property is not currently mapped as habitat for these species. This was a "Catch 22"; as no access or survey was allowed by the developer, these species have not been mapped on the site. It is imperative that a survey take place in order to determine if listed species are present, specifically the endangered NLEB. The MESA regulations speak specifically to this scenario under 321 CMR 10.13 1.b: when a property not currently mapped as Priority Habitat is subject to MEPA review, the Division can request "...the project proponent be required to assess the area to be disturbed by the Project or Activity to determine if such State-listed Species are present". We are requesting that, through the MEPA process, site surveys for the presence of state listed NLEB and plant species be required, which after two years in the regulatory and/or appellate process and after multiple requests to the property owner, have never been required or completed.

The original Determination made by NHESP stated that the development of the 13.5 acre site will result in a "take" of the Coastal Heathland Cutworm, a Massachusetts state listed species of special-concern. We understand that NHESP is considering working with the project proponent to develop a plan for offsite mitigation to compensate for onsite impacts to this state protected Lepidoptera species. The ENF filing indicated that the mitigation may come in the form of offsite habitat protection or even a monetary contribution to a management project that is deemed suitable by the State. The Nantucket Land Council urges NHESP to follow its own clear and concise policy steps to "Avoid, Minimize, and Mitigate". First, the state should require the developer to "Avoid" direct impacts to host plant species then secondly, "Minimize" the impacts by requiring a smaller development footprint. This can easily be achieved by requiring a conservation restriction, which the NLC has previously and successfully worked with the State and land owners to accomplish on other sites. The proposal before you will completely clear cut the entire thirteen acre property. The Land Council is very concerned that the State Agency we depend on to protect our endangered species would not first mandate reasonable on site alternatives that would protect significant and sensitive habitat before determining that offsite mitigation is acceptable. Offsite mitigation should be the last and least attractive alternative, not the first and only option considered. We are extremely familiar with NHESP's work on the island; indeed we have often been their local partner in endangered species and habitat protection. On site mitigation has been required for many projects in the past and should be required here.

In addition to several endangered Lepidoptera species, the site also supports the Northern Long Eared Bat (NLEB). After investigating the population of NLEB on Nantucket, Wildlife Biologist Danielle O'Dell has concluded this property is very likely to provide important habitat for NLEB. After a federal court ruling in January overturned listing this species as "threatened" rather than the more protective "endangered" under the Federal Endangered Species Act, the US

Fish and Wildlife Service will be revisiting the protections that should be afforded to NLEB given its recent decimation by White Nose Syndrome. Given the science and threats to the species, NLEB's status is likely to be upgraded to a Federal "endangered" listing in the near future. This anticipated change should motivate our state agencies to provide more protection for this species, which is already listed as "endangered" in Massachusetts. This property is not currently mapped as Priority Habitat for NLEB because the project proponent has forbidden any surveys to be conducted on the site to look for them, but with access to the site to conduct a survey, this property would almost certainly qualify as mapped Priority Habitat.

The NHESP has the authority to require a site survey to determine whether it should, in fact, be mapped. Nantucket Island is one of the very few locations in the northeast where White Nose Syndrome has not been detected, and where the population seems to be taking refuge. We request the State, through the MEPA process, to finally require proper site surveys for the presence of NLEB, before the entire 13 acres is irrevocably clear cut, to document the importance of this habitat type to the Nantucket population and to map it as Priority Habitat if appropriate. If NLEB habitat is confirmed on the site, any additional protections that can be provided should be required. Finally, we request a prohibition on tree cutting across the site during the NLEB pupping season, in June and July, be written into any Conservation and Management Permit granted to the applicants.

The Land Council is well versed with the variety of habitat throughout the island and we trust you will respect our opinions on how important the habitat of this particular site is to protected species. This site provides important habitat within the overall vicinity, as it is surrounded by other protected land. The project, if developed as currently proposed, will cause significant habitat fragmentation. Attached below is an aerial view of the project site and nearby areas that shows protected property in the local vicinity. As you can see, there are several significant protected areas nearby, owned by diverse agencies, including the Nantucket Land Bank, Nantucket Conservation Foundation and the Commonwealth of Massachusetts (State Forest). The Land Council holds and enforces a conservation restriction to the north for the Sachems Path affordable housing development project, which was specifically required by NHESP to mitigate the abutting development. The aerial photo clearly shows how important the Surfside Crossing parcel is in connecting significant Lepidoptera habitat to the east and west. As you well know, connectivity is vital for providing ecological corridors, enhancing species resilience to development, and promoting the movement of species throughout an ecological landscape. It is critical that on-site protection and mitigation be required on the project site.

WATER RESOURCES PROTECTION

Nantucket Island has a single "sole" source aquifer, as designated by the US EPA in 1984. This public water supply serves a majority of the mid-island area, and the proposed development is located entirely within Nantucket's Wellhead Protection District, and MassDEP's Zone II Wellhead Protection Area. The implications of a development of this size and intensity on water quality must be carefully reviewed, and the project must be conditioned so as to avoid all adverse impacts. Just beyond the development site, to the south and west, are a number of properties outside of this public water district which are serviced by private wells. The extent of site disturbance and the nature of land use also threatens the groundwater serving these wells. While

the Town's public water supply usage has been calculated as it relates to wastewater generation, the on-site irrigation well proposed to serve the entire development's landscaping needs has not been taken into account. The water draw and usage from this well must be considered as it relates to abutting properties and resources.

In addition to impacting the quality of the surrounding groundwater and abutters' drinking water, Surfside Crossing also falls within the watershed to Miacomet Pond, one of Nantucket's "Great Ponds", and as noted in the ENF application, an impaired water body. Miacomet Pond has a relatively small surface area for the extent of its watershed. This watershed includes a large portion of the developed mid-island area, including significant impervious surface, and has become degraded from excess nitrogen and phosphorus loading. The Town of Nantucket's 2014 Miacomet Pond Watershed Study, by Woodard and Curran, demonstrated not only that the Surfside Crossing property falls within the Miacomet Pond watershed, but that the western half of the site also falls within the area of Direct Runoff Contribution for Miacomet Pond. This makes it critical to minimize any form of runoff pollution and to require best possible practices for stormwater management across the site. As proposed, the amount of vegetation clearing, impervious surface creation, and new landscaped areas will undoubtedly lead to negative impacts on the surrounding water resources such as Miacomet Pond, which is already an impaired waterbody. These potential impacts must be reviewed and significantly minimized or appropriately mitigated.

TOWN INFRASTRUCTURE CONCERNS

Throughout the ZBA's review and deliberations, several concerns were raised regarding the impact of the proposed development on Town Sewer and Town Water.

The ENF filing materials indicate the proponent's intention to tie all proposed units into Town Sewer via a pump station and one of the existing force mains that run along South Shore Road. It was made abundantly clear by the Director of the Town Sewer Department, as well as the Town's consulting engineers, that this is inadvisable and would not only have a negative impact on existing flow and capacity of either force main, but might also compromise the integrity of the infrastructure itself. The Town provided the proponent with a perfectly clear alternative of constructing a gravity sewer line to transport wastewater from the site to the Wastewater Treatment Facility. The Town Sewer Department also expressed concerns about construction related impacts to the two force mains running directly across the eastern portion of the site. Should either of these lines rupture from impacts surrounding construction they could release 30,000-60,000 gallons of wastewater before being shut down. Such a catastrophic failure would not only cause a public health crisis, it would also destroy fragile habitat and further impair the species that rely on it. The wastewater infrastructure design presented with this ENF filing is not possible, per direct communication by the Town during the ZBA hearings, rendering the project as proposed unbuildable. It is imperative that these designs undergo local review in order to ensure that local infrastructure requirements are properly considered.

The Wannacomet Water Company (WWC) provides Nantucket's public water throughout the mid-island area. The increasing rate and intensity of growth on the island has threatened to

overwhelm the Water Company's infrastructure and state permitted pumping rates. The Surfside Crossing development will add an unanticipated increase to Town water needs. The calculated draw on the public water supply from the 156 unit plan presented here is 31,330 gallons per day. This is significantly more water than the 60 units permitted by the ZBA would have required. Upon issuance of the Comprehensive Permit for those 60 units, WWC's application for additional pumping capacity in the Town's Water Withdrawal Permit was still pending. This is another example of an issue that must be addressed through consultation with local authorities.

SITE DESIGN

Impervious Surface

As proposed this development exceeds MEPA's threshold for creation of greater than 5.0 acres of impervious surface. The new "modified" plan increases impervious areas by almost a half acre from what had been originally proposed. The original 156 unit proposal presented by the applicants in February, 2018 included 6.05 acres of impervious surface. After multiple conceptual redesigns which incrementally decreased both the cleared land area and the impervious area, the currently presented 156 unit plan now proposes 6.46 acres of impervious surface. The massing of the structures coupled with the parking necessary to accommodate such an inappropriate number of units for this site will render nearly half of the entire 13.5 acre property impervious. This will have clear impacts on all habitat values, and is also likely to negatively impact water quality for the downgradient wells and already impaired water body Miacomet Pond.

Stormwater Infrastructure

The management of stormwater across the site during and after construction is of the utmost importance. The designs presented in this ENF filing look to consist of deep hooded catch basins, oil-water separators and underground infiltration units. It is unclear from the plans provided with this filing whether soil data has been documented for the location of these infiltration units and whether the proposed stormwater management design meets Mass DEP's Stormwater Handbook requirements. No Operations and Maintenance Plan for the infrastructure was submitted. The developers should be required to incorporate vegetated swales and bioretention basins as much as possible across the site. Improperly maintained catch basins and infiltration units supporting this much impervious area can easily result in on site flooding and runoff of pollutants that may impact downgradient wells and/or Miacomet Pond.

Transportation (Traffic)

The 156 unit design presented in this ENF filing exceeds MEPA's transportation threshold: generating greater than 1,000 daily vehicle trips with the creation of more than 150 new parking spaces. The proposed development is shown to generate 1,142 vehicle trips per day on roadways to access a single location and proposes 299 new parking spaces, just one less than the separate MEPA threshold of 300 new parking spaces at one single location. The NLC's consultant reviewed the transportation and traffic data presented with the original 156 unit proposal before the ZBA, and the Town's consultant also peer-reviewed the proposed transportation and traffic impacts. There was significant concern from the Town, the NLC and the community that the

generation of this many new vehicle trips directed at one single already burdened intersection of South Shore Rd, Fairgrounds Rd, and Surfside Rd would adversely impact the use of these roadways. The number of vehicles proposed for travel and parking at this site also increases the risk for contamination of the surrounding water resources.

Town of Nantucket Master Plan – Open Space

The applicant identifies the Town of Nantucket's 2009 Master Plan in its ENF filing as the current municipal land use plan. However, when asked to describe the project's consistency with the plan in regard to "open space impacts" the applicant simply indicates "N/A". In fact, the open space impacts from Surfside Crossing's development are very applicable to the Master Plan. The proposed project will clear cut all but 1.29 acres of perimeter strips so small they will be more or less useless as habitat or as the buffers they claim to be. While the Nantucket Master Plan recognizes the importance and need for the development of affordable housing opportunities, it also emphasizes in Chapter 6, *Open Space and Recreation*, the need to "...protect Nantucket's native ecosystems and biodiversity" as well as "to maintain the quality of its water bodies" and resources (Nantucket Master Plan Goal 6.1 and 6.2). It also clearly outlines the basis of its land use and development ethic in Goal 2.3 "To define and develop standards for growth appropriate for the patterns set by the existing built environment". The proposed Surfside Crossing development is contrary to the South Shore Road neighborhood as well as to the Nantucket Master Plan. The impacts to open space and the island's fragile water resources have not been avoided, minimized or mitigated.

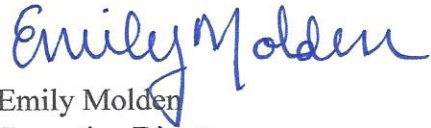
CONCLUSION

The project as proposed will clear cut 13.5 acres of state listed priority habitat and proposes to turn half of it into impervious surfaces. The proponent should be required to allow on-site surveys of the state-listed Northern Long Eared Bat so that its habitat can be appropriately mapped and mitigation for impacts can be appropriately addressed by DFW. Additional information must be provided to address stormwater impacts from the impervious surfaces not only to ensure that state standards are being met, but to mitigate for impacts to important water resources using Best Management Practices. Additional information is required to determine whether water and sewer infrastructure has been designed in a way that is compatible with the Town and more information should be provided on how the proponent will mitigate for traffic and transportation impacts.

The regulatory process for reviewing such a project should not begin with MEPA. We recognize the role that MEPA is intended to play for all applicable state agencies and state permitting authorities. However, the MEPA review process is not designed or intended to circumvent the peer review process that takes place before local regulatory boards. The materials submitted with the Environmental Notification Form do not address the wide range of environmental concerns and impacts that will result from this project. An Environmental Impact Report should be required in order to address the issues raised above.

Thank you for your time.

Sincerely,



Emily Molden
Executive Director

Enc.

cc: Nantucket Town Manager

Ms. C. Elizabeth Gibson
Town Manager
Nantucket Town Hall
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Nantucket, MA 02554