SAVE THE BAY®
NARRAGANSETT BAY

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Sent via email to: martin.wencek@dem.ri.gov

June 15, 2020

Martin D. Wencek, Program Supervisor
Freshwater Wetlands Program
Office of Water Resources
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

Re: Wetland Application 19-0181
401 Water Quality Certification Application 19-141
FERC Project Number 14633

Dear Mr. Wencek,

Please consider the within comments on the above-reference applications.

Save The Bay is on the list of interested parties that receive notices of applications to alter a freshwater wetland. Notice of the above-referenced application was sent on April 29, 2020 to Save The Bay through first class mail. As you are aware, Governor Gina Raimondo issued an Executive Order on March 28, 2020 requiring Rhode Islanders to stay at home. While the requirement was lifted on May 9, 2020 the governor asked all employed Rhode Islanders that were able to work from home continue to do so. Save The Bay staff continues to work remotely. On May 26, 2020 staff discovered the notice of the above-referenced application sent to the Save The Bay offices. On May 27, Save The Bay requested an extension of the public comment period from June 15 until July 6, 2020. The stated reason for the request was that our staff is working remotely due to Covid 19, and the complex nature of this application requires time to review the file and evaluate the impacts to the functions and values of wetlands. The request for public comment extension was summarily denied the date it was submitted without justification.

On that same date, we also requested electronic copies of the site plans, the notice as well as the Impact Avoidance and Minimization Statement. Although you accommodated the portions of this request that were sent as part of the public notice, you directed us to the Office of Customer Service and Technical Assistance (OCTA) for the narrative. On May 29th we sent a records request for an electronic copy of the Impact Avoidance and Minimization Statement, noting that our comments were due on the application on June 15th. On June 3 Jenna McIntyre of OCTA responded with a cost estimate that stated the time spent to retrieve the file and scan it would be 4 hours. A narrative that takes that long to scan would take many days to read and comprehend and that unfortunately was not time we had to spend.

Rhode Island law mandates a 45- day notice period. The obvious intent of the law is to give the public sufficient time to review application materials. Given these unprecedented times when staff are working from home and it is unsafe for individuals to spend extended time indoors with others outside of their immediate household, we submit that DEM did not provide sufficient notice and it was unjust to deny our request for an extension of time.

Save the Bay has reviewed the following documents in order to provide comments:

- Site plans submitted with the Public Notice
- Environmental Assessment for Small Hydroelectric Project Exemption, Albion Dam Hydroelectric Project, FERC Project No. 14633-001, Rhode Island dated January 2020
- Comments, Recommendations, Terms & Conditions, created by United States Department of the Interior Office of the Secretary, Office of Environmental Policy and Compliance, Application Ready For Environmental Analysis, Albion Dam Hydroelectric Project, FERC No. 14633-001, Blackstone River, Providence County, RI addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission dated August 7, 2019.

Given our limited time to review the information that was available, we submit the following preliminary comments concerning the Application to Alter and the Water Quality Certification:

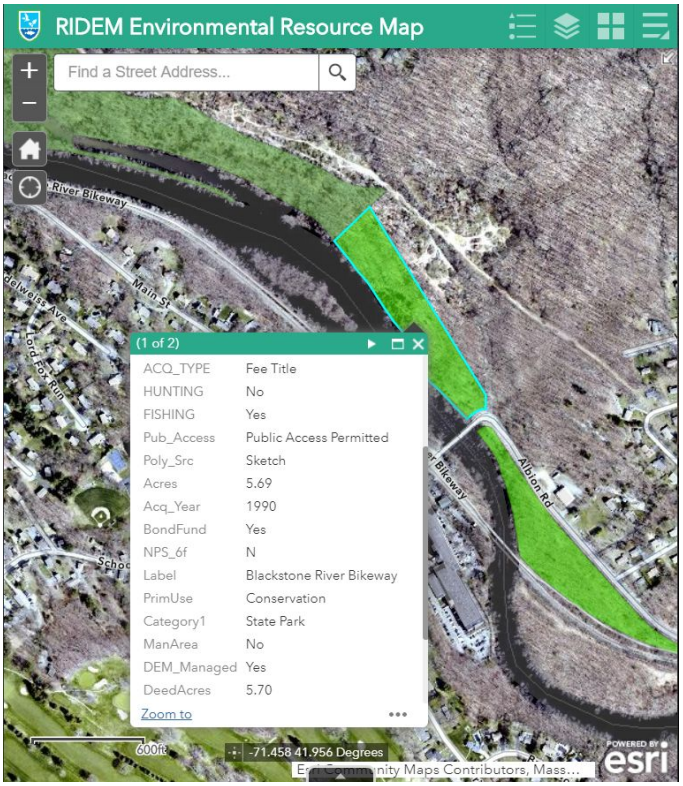
Assessor's Plat 33, Lot 431 is owned by the State of Rhode Island as State Conservation Land with public access permitted. Save The Bay's Riverkeeper visited the site on June 9, 2020 to assess the wetlands functions and values and determine the extent of alterations. Fixed reference points included wetland flagging and limit of disturbance flagging, as well as structures within the dam. Wetland resources within the limit of disturbance include the 200 foot riverbank wetland, wetland B, a surface water seep forested wetland adjacent to the Blackstone River, and wetland C, a small isolated depression forested wetland. The 200' riverbank wetland is vegetated with trees, shrubs, and a leaf litter layer. Many cobbles and rock outcroppings are present, as well as bark and coarse woody debris on the forest floor, providing habitat for a variety of insects and a food source for insectivorous species. Ledge outcroppings on this side of the dam provide unique opportunities for wildlife. The B series wetland is characterized by skunk cabbage, winterberry, jewelweed, lurid sedge, red maple, Norway maple, black birch, wild grape, sessile bellwort, Solomon's seal, wild geranium, poison ivy, blue flag iris, New York fern, tall meadow rue, Jack in the pulpit, and a wide variety of herbaceous species. Vegetation in the C series wetland includes at least red maple, cinnamon fern, skunk cabbage, Jack and the pulpit, oriental bittersweet, tall meadow rue, wild geranium, Solomon seal, and wild grape. The C series wetland is a small depression that does not appear to contain standing water for any length of time during the growing season. Vegetation within the area of disturbance for the proposed turbines, construction laydown area, and crane pad includes white and black oak, white ash, red maple, sassafras, swamp dog hobble, whorled loosestrife, yellow iris, poison ivy, highbush blueberry, mountain laurel, white pine, hillside blueberry, ironwood, pennsylvania sedge, and sweet pepper bush.

Wildlife observed onsite include white tailed deer (tracks), Carolina wren, painted turtles,

snapping turtle, dragonflies, water striders, Baltimore oriole, eastern gray squirrel, song sparrow, warbling video, morning dove, eastern chipmunk, American robin, eastern tufted titmouse, downy woodpecker, tree swallow, blue jay, red winged blackbird, yellow warbler, gray tree frog, and a number of freshwater fish species. Many additional species are expected to use this site for feeding, resting, brood rearing, foraging, and migration.

The project falls within a mapped Natural Heritage Area: areas where rare and uncommon species have been identified or historically been present. Uncommon geologic features are present including areas of exposed ledge. The unique geology here also contributes to the high aesthetic value of the site. This forested stretch of riverbank is viewable from the Blackstone River Bikeway, with parking, fishing, and kayak access present on the southwestern bank. Development of the proposed access road will undeniably reduce the very high aesthetic value of this parcel.

Recreational opportunities abound onsite. According to the RIDEM Environmental resource map (screenshot depicted) the property proposed for development is owned by the State of Rhode Island, acquired in 1990 through bond funding with conservation designated as its primary use. It is a popular area for hiking and the town of Cumberland maintains a nearby walking trail. It is adjacent to Cumberland Hill Conservation Area (99 acres of open space conservation land) as well as additional conservation land south east of Albion Road. These lands are intended to protect open space and access for both active and passive recreation.



Comments on the applicant's failure to address Review Requirements:

1. The applicant failed to avoid wetland impacts as required by Rule 10.02(D)(1). The proposed project includes a temporary access road that is 12 feet wide and approximately 160 feet away from the river, in addition to a 20 foot wide permanent access road that is within 30 feet of the B series forested wetland and within 100 feet of the Blackstone River. Use of a narrower permanent access road, placed in the outer edges of the riverbank wetland, would avoid stormwater impacts, habitat impacts, and aesthetic impacts.

Comments on the applicant's failure to address Review Criteria:

1. The design of both permanent and temporary access roads has not been minimized to the maximum extent practicable as required by law. Since there are opportunities to avoid physical alterations this project is random and unnecessary and therefore does not meet review criteria outlined in Rule 10.05 (B)(3). (Shall not result in any random, unnecessary or undesirable alteration of freshwater wetland).

2. Proposed site development will detrimentally alter existing wildlife travel corridors along the eastern bank of the Blackstone River. The proposed permanent access road, overhead electrical lines, and powerhouse will make the existing in-river barrier, the Albion Dam, an even larger barrier to semi-aquatic and terrestrial species. The access road will also exclude forested wetland B from the rest of the undeveloped riparian corridor. This aspect of the project does not meet review criteria outlined in Rule 10.05 (C)(3) (Significant displacement or extirpation of any wildlife species from a wetland or surrounding areas due to the alteration of the wetland).

3. Clearing, grading, blasting, and soil disturbance will permanently eliminate riparian habitat and reduce the quality of surrounding habitats. A loss of perching sites, nesting sites, hunting and feeding areas, reduction of shading of the Blackstone River due to loss of overhanging tree canopy, elimination of ledge outcropping and dramatic topography will affect a variety of aquatic, obligate and facultative wildlife species. Although the proposed powerhouse employs technology that is less damaging to fish and eels, the Albion Dam remains a significant barrier to aquatic species. This project does not include fish or eel passage. Therefore the project does not meet review criteria outlined in Rule 10.05 (C)(6) (Significant reduction in the suitability of any wetland for use by any resident, migratory, seasonal, transient, facultative, or obligate wildlife species, in either the short- or long-term as a travel corridor; feeding site; resting site; nesting site; escape cover; seasonal breeding or spawning area).

4. The site is currently owned by the State of Rhode Island with public access permitted. Unimproved pedestrian and mountain bike trails are present, as well as fishing access to the Blackstone River. The site is within walking distance to public parking off of School Street. It is clear that the public regularly uses this parcel to climb, sit, explore, relax, fish, run, hike, practice nature photography, access the river below Albion Dam to launch watercraft, study nature, and/or harvest natural foods. In addition to these active recreational activities, passive recreational activities available on the southwestern side of the Blackstone River will also be reduced. Users of the Blackstone River Bikeway will no longer be able to appreciate the aesthetic value of a forested riverbank. Since the southwestern bank of the river is developed with a well used bikeway wildlife are more likely to use the parcel proposed for development, and a reduction in wildlife viewing and wildlife photography will result. Development of this parcel will therefore not meet review criteria outlined in Rule 10.05 (C)(9) (Significant reduction in overall current or

potential ability of a wetland to provide active or passive recreational activities to the public).

5. For many of the reasons outlined in Comment 4, above, the proposed project will eliminate the traditional human access to and along the bank of the Blackstone River. The parcel's primary use is conservation, and two easements, a temporary construction easement and a permanent hydropower project easement were placed on the land. The limit of disturbance extends beyond the easements and will violate the conservation restriction. In addition to the access that Rhode Islanders have enjoyed here since 1990, this land may have cultural significance for native people. Therefore, this project does not meet review criteria outlined in Rule 10.05 (C)(11) (Elimination of, or severe limitation to traditional human access to, along the bank of, up or down, or through any rivers, streams, ponds, or other freshwater wetlands).

6. The placement of the proposed permanent access road is problematic. Significant grading is required to provide vehicular access, and the banks here are steep. The potential for erosion, thereby leading to phosphorus pollution, is significant. The applicant has proposed a perimeter silt sock to control erosion, which does not appear adequate. Additionally, post construction the permanent access road will direct stormwater directly to the Blackstone River. The river has known impairments for Phosphorus, among other impairments, and precautions must be taken to avoid sedimentation and phosphorus pollution during and after construction. Therefore, this project does not meet review criteria outlined in Rule 10.05 (C)(12) (Any reduction in water quality functions and values or negative impacts to natural water quality characteristics, either in the short- or long-term, by modifying or changing: water elevations, temperature regimes, volumes, velocity of flow regimes of water; increasing turbidity; decreasing oxygen; causing any form of pollution; or modifying the amount of flow of nutrients so as to negatively impact wetland functions and values).

7. As previously stated, this parcel is within mapped Natural Heritage Area, and although it is unknown if any rare species are using the habitat on this parcel, the designation is an indication of unique and uncommon geologic features. The ledge outcroppings and dramatic topography present onsite will be detrimentally altered as a result of this project. Therefore, it does not meet review criteria outlined under Rule 10.05 (C)(14) (Significant loss of important open space or significant modification of any uncommon geologic or archaeological features).

8. The project proposes clearing and significant grading along 500 feet of forested riverbank wetland. Trees remaining in forested wetland B will be at risk of falling from the disturbance. Trees remaining east of the proposed permanent access road will be subject to trimming to avoid conflicts with overhead utility lines. Replacing a forested riparian corridor with a power station will result in a significant modification to the natural characteristics of this wetland and therefore does not meet review criteria outlined in Rule 10.05 (C)(15) (Significant modification to the natural characteristics of any wetland area of unusually high visual quality).

9. Removal of the vegetated buffer within the riverbank wetland, as well as permanent alteration of portions of forested wetland B will remove the ability of these areas to slow down stormwater runoff, take up excess nutrients including nitrogen and phosphorus, and bind with and neutralize heavy metals. The proposed bioretention areas are designed to replace some of these functions, however clearing naturally vegetated areas that are already providing a water quality function in order to create an engineered solution is inefficient. Therefore, this project does not meet review criteria 10.05 (C)(26) (Any detrimental modification of the wetland's ability to retain or remove nutrients or act as a natural pollution filter).

It is the public policy of the state to preserve the purity and integrity of the freshwater wetlands, buffers, and floodplains of this state for the health, welfare, and general well-being of the populace. § 2-1-19. We submit that the applicant has not met its burden to show that wetland alterations have been avoided, or minimized, or mitigated as required by the Rules and Regulations Governing the Administration and Enforcement of the FreshWater Wetlands Act and the project is inconsistent with the Freshwater Wetlands Act, R.I. Gen. Laws §§ 2-1-18 and 2-1-19. Based on the foregoing, the application should be denied in accordance with R.I. Gen. Laws § 2-1-21.

Thank you for your time and consideration.

Sincerely,

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