



Secretary Ian A. Bowles
EOEA, Attn: MEPA Office
Ann Canaday, EOEA No. 14115
100 Cambridge Street, Suite 900
Boston MA 02114

November 28, 2007

Re: EOEEA #14115 -- Article 97 Land Grab, Randolph

Dear Secretary Bowles:

Friends of the Blue Hills takes this opportunity to comment on ENF No. 14115 submitted October 1, 2007 by Lantana LLC and the additional information submitted November 6, 2007.

Friends of the Blue Hills (FBH) is a nonprofit 501(c)3 charitable trust whose mission is to advocate for actions that will enhance the Blue Hills Reservation and serve as watchdog of activities that might adversely affect it, as well as to encourage involvement in the protection and preservation of the Reservation by all users.

We ask you to require Lantana LLC to prepare an Environmental Impact Report fully describing the proposed loss of parkland, analyzing a complete range of project alternatives, and setting forth a detailed list of appropriate mitigation measures.

This action is necessary because the transfer of the parkland to Lantana for development as a 408-space parking lot constitutes damage to the environment as defined in MGL Chap. 30 Section 61. MEPA rules require that proponents adequately describe and analyze projects and their alternatives, and likewise assess their potential environmental impacts and propose measures that will substantially mitigate those impacts.

Lantana has not adequately described the project and its alternatives, nor has it assessed its environmental impacts. This failure makes it impossible to evaluate any proposed mitigation measures. Judging by the proponent's false and misleading statements in the ENF, only preparation of an Environmental Impact Report will ensure that state agencies and the land's public owners have the information necessary to evaluate the environmental impacts of the proposed sale of protected parkland, which has been part of the Blue Hills Reservation since 1936.

Defects of the Environmental Notification Form (ENF)

1. "equal acreage and value"

On its first page, the ENF states that:

As provided under Ch 240 of the Acts of 2002, project involves a land transfer by the DCR of approximately 3.2 acres to Paul Hart. The proponent will transfer a **parcel of equal acreage and value** owned within the Blue Hills Reservation to the DCR.

The second sentence refers to a landlocked inholding Hart purchased for \$20,000 in November, 2001, about twelve weeks before he presented the swap legislation to the Randolph selectmen. This is the parcel he proposes to deed to the state for mitigation purposes. The claim that the inholding is equal in value to the parkland Hart seeks to buy from the commonwealth is demonstrably false, since the legislation requires Hart to pay the difference in value to the state's general fund, and Hart himself reported the difference at \$200,000 (*Boston Globe*, 11/22/07).

It would have been easy for the proponent to state this difference in the ENF by including the results of appraisals submitted to the Inspector General in February, 2006. Instead he deliberately withheld the valuations generated by the appraisals, and allowed a false claim of equal value to be knowingly and prominently inserted in the ENF.

Similarly, the claim that the parcels are equal in acreage cannot be verified. Although a stamped plan included in the ENF and labeled "Division of Land" indicates that parkland belonging to DCR and intended to be surrendered to the proponent totals 3.2 acres, there is no such plan or survey of the inholding, but only a reference to a deed. Later, in the Nov. 6 supplemental package, two assessor's plans were submitted, one showing the inholding before it was truncated for a Rt. 24 highway ramp fifty years ago, and a more recent sketch plan with an unsigned note referring to dimensions evidently added by the proponent. This note claims that the parcel is 4.33 acres, but if a simple geometrical calculation is performed using the supplied dimensions of the parcel (width times average of unequal lengths), the result is 2.9 acres.

Hence the proponent's claim that the parcels are of equal acreage is not substantiated and is rendered doubtful by the available information, which suggests that the inholding is substantially less than 3.2 acres. This discrepancy cannot and will not be resolved unless EOEEA requires the proponent to submit an EIR including a signed and stamped survey of the inholding.

2. "no net loss" of parkland

In the "Project Description" portion of the ENF, the proponent claims that "The land exchange will not result in any net loss of acreage to the Blue Hills Reservation."

If the parcels were equal in size, this claim might be accurate provided that the inholding were not effectively already part of the Reservation. But it has been such since 1936, when it became embedded far inside the park via purchase by the commonwealth of the surrounding land. In the meantime there is no evidence that it has been surveyed, fenced, marked, disturbed, or used or altered in any way by any owner or other persons. Nor have any facts been produced showing that any clearing, construction, or other development has ever been proposed for it. Official trail maps dating back to the 1970's portray the inholding as part of the Reservation.

In order for the "no net loss" claim to be accurate, the proponent would have to show that loss of the existing DCR land would be balanced by a gain in land that would otherwise be vulnerable to development. But there is no evidence in the ENF or the supplement that the inholding, which is bounded on three sides by the Reservation and on the fourth by a limited-access highway ramp, ever would or could be developed, given the lack of access or frontage. This lack of development value is doubtless reflected in the appraisal that the proponent commissioned but preferred not make public despite the requirements of MEPA review.

The so-called swap legislation in reality offers the proponent a perpetual and exclusive option to buy and destroy public parkland. This option was awarded to the proponent by his friends in public office. The proponent acquired the landlocked inholding for no other purpose than to give this private, no-bid sale an air of legitimacy. The sale will result in a substantial net loss of parkland because the Reservation land Hart will acquire will be cleared, graded, and paved for a 400-space parking lot, and this loss will occur if and only if the purchase is completed. If the parkland remains in public ownership, it will not be destroyed, and no development is likely to occur in the landlocked inholding.

If the proponent expects his claim of "no net loss" of parkland acreage to be credible, he must submit evidence that the inholding, which was labeled "undevelopable" in build-out plans prepared by EOEA's Community Preservation Initiative in 2001, is in fact developable on a scale comparable to that proposed for the parkland to be lost. This missing information should be included in an Environmental Impact Report prepared by the proponent. What the ENF actually shows is that the proposed sale will result in a real,

actual, and substantial loss of Reservation parkland that will not be balanced by any comparable benefits to publicly-owned open space and natural resources.

3. resource values neither assessed nor compared

The ENF nowhere attempts to state what scenic or natural values the parcel to be sold and bulldozed currently provides to the Blue Hills Reservation (and presumably justified its acquisition for the park over seventy years ago), nor does it provide any description whatsoever of what the landlocked inholding would bring to the park via a change in ownership. The inholding, in particular, remains a complete blank—nothing is said regarding its topography, soils, relation to wetlands, plant and animal communities, scenic aspects, potential for access, history of disturbance, noise levels, and so forth, although these are prime considerations for DCR’s acquisition program. How can DCR evaluate the value to the park of a parcel which the ENF presents as having no qualities of any kind?

We note that this lack of information caught the attention of the Natural Heritage Program, which stated in its letter of October 29 that the proponent’s previous determination had expired, and that the proponent should submit a detailed habitat assessment of both parcels. The letter also noted, in reference to the parkland intended to be purchased and bulldozed, the “special ecological significance” of forested uplands in the vicinity of vernal pools—a quality that the ENF nowhere mentions.

The Nov. 6 supplement declares that “the Proponent intends to conduct a face-to-face consultation with NHESP to review and address the issues referenced in their update letter.” We submit that a private conversation is not enough; the habitat impact issues identified by NHESP need to be addressed in an EIR so that MEPA requirements regarding public review and comment can be fulfilled. The DCR webpage describing the publicly-owned Blue Hills Reservation states that:

Trails traverse upland and bottomland forests, marsh, swamp and pond edges, meadows and an Atlantic white cedar bog. A great variety of plant and animal life thrive in the diverse habitats

If MEPA review is declared complete before the impacts to wildlife habitat of the proposed parkland loss are assessed, then the MEPA goal of identifying and mitigating damage to the environment cannot be achieved, and the people’s right to the natural, scenic, historic, and esthetic qualities of their environment identified in Article 97 will have been infringed.

4. mitigation insignificant or undefined

Just as the ENF fails to define the environmental impacts of the proposed parkland destruction, the proposed mitigation is completely vaporous.

We know that that the Reservation will receive a parcel of land claimed (falsely) to be of equal value and stated (dubiously) to be of equal acreage to the parkland to be lost. But since the proponent has failed to demonstrate that anything can or will happen to this parcel if it is not added to the park, its mitigation value is unknown.

We also know that the proponent claims that conversion of 3.2 acres of parkland on High St. to a lake of asphalt will “provide parking and easy access to the Blue Hills Reservation”(Section 4.0, Project Narrative). But the proponent omits to note that such parking and access already exist, in the form of the twenty-five public head-in spaces on the east side of High St. immediately across the street from the parkland proposed to be destroyed. What is the mitigation value of replacing parkland with parking where public parking is already available? None.

Here we note that the proponent has for years pointed to the provision in the legislation allowing monies due to the state in payment for the lost parkland to be replaced by in-kind contributions that could benefit the Reservation. But these since these contributions were not defined in the February, 2003 Management and Use Agreement, and are still not specified in the ENF, they cannot be considered nor compared against project impacts—two of the primary purposes of MEPA review.

In order for any such mitigation to be adequately evaluated, the proponent must prepare an EIR detailing a complete menu of mitigation possibilities that would and could, individually or in combination, substantially counteract the major loss of protected public parkland he proposes to generate. We suggest that he begin by assembling a list of nearby properties he could acquire and add to the Reservation—properties that would indeed be “equal in value and acreage” to land to be lost, unlike the landlocked inholding.

5. no alternatives analysis

Any alternatives analysis must begin with a statement of a project’s purpose. The last paragraph of the ENF’s “Project Description” states that:

The goal of the proposed project is to provide Lantana patrons with efficient parking that is convenient and an improvement to what is existing as far as pedestrian safety is concerned.

The rest of the brief section seeks to create the impression that the only way that Lantana’s parking can be made more efficient and convenient is via the seizure and destruction of over three acres of the Blue Hills Reservation, a magnificent park created over a century ago with public money in order to preserve natural scenery for public use and enjoyment, and which has become even more precious as wave after wave of development has lapped against its borders.

Dozens of large businesses abut the Reservation, including Haemonetics, Meditech, Boston Mutual, Reebok, and ComputerShare, some employing hundreds of people, and all of them have managed to meet their parking needs without demanding that large portions of the Reservation be turned over to them and flattened.

Hence the proponent bears the burden of showing what special circumstances preclude him from fulfilling his parking requirements in a manner similar to what many other commercial abutters have achieved.

We submit that this burden is not met simply by writing “Alternatives Analysis” at the top of a page and jotting down whatever comes to mind. Some evidence must be provided that a problem has been documented and that a range of solutions have been identified and explored.

The proponent first cited his concerns about parking safety when he asked the selectmen to support his acquisition of Reservation parkland over five years ago. If he were really as concerned about the safety of his existing parking as he claims, one would expect that he would have taken whatever actions he could to improve it in the interval. And yet the ENF cites no such actions.

At the October 26 MEPA site visit the proponent complained that he had put up signs and they had been stolen. Could he not replace the signs? Could he not replace them with signs that would not be carried off? What about installing a blinker, or a crossing signal that could be activated by pedestrians? Did he consider hiring a crossing guard? Could he offer valet parking? Did he ask for help from the town’s traffic and engineering department? Has he ever prepared any description of the problem that was *not* appended to a bid to acquire and destroy public parkland?

Given the proponent’s evidently lethargic approach to achieving his project goals by any means other than paving over Reservation land, one must conclude that the acquisition of the parkland is his actual goal, and that his naming of improved parking safety and convenience is meant solely to give an impression that this private project will have a modicum of public benefit.

Unless the proponent is required to submit an Environmental Impact Report describing a full range of alternatives evaluated for their feasibility and effectiveness in achieving the proponent’s ostensible goals of increasing parking safety and convenience, this MEPA review will inevitably fall short of its declared purposed to identify, prevent, and minimize damage to the environment.

6. consistency with Article 97 unexamined

Considering that the ENF is entitled *Proposed Article 97 Land Swap*, one might expect it to include some discussion of what Article 97 is and how the proposed project relates to

it. Curiously, however, nothing further is said about Article 97 either in the project description or narrative, and a reader desiring to know what it is and why it is referenced in the title is left in the dark.

It finally reappears in Attachment 9 of the November 6 Supplement, evidently because the proponent concluded that comments made at the October 26 site visit rendered his initial plan to pretend it had no relevance somewhat untenable.

Article 97 of the Massachusetts Constitution declares in its initial paragraph that:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

It later states that:

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

The ENF repeatedly refers to Chapter 240 of 2002, which directs the state to sell 3.2 acres of Blue Hills Reservation parkland to the proponent, with the implication that the passage of this legislation without a public hearing at 1:52 AM on the last day of the legislative session means that all Article 97 concerns have been met.

Even so, Attachment 9 of the supplement attempts without success to show that the proposed purchase and destruction of Reservation parkland is consistent with EOEA's Article 97 land disposition policy enacted in 1998.

This policy states that:

It is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Article of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land.

It then states that:

EOEA and its agencies shall not support an Article 97 land disposition unless EOEA and its agencies determine that exceptional circumstances exist.

The ENF nowhere alleges that any such determination has been made. Indeed, this MEPA review is the first instance when EOEEA has been asked to consider or evaluate this proposed destruction of public parkland in a public manner.

At the recent site visit MEPA analyst William Gage stated that no certificate would be issued on the ENF until DCR had declared whether or not the transfer of parkland to the proponent was or was not consistent with the Article 97 policy quoted above.

The proponent's attorney, Mr. McGarrah, retorted that any agency findings regarding the project's consistency with the policy hardly mattered because the legislation "supersedes" any such determination.

This is of interest because Friends of the Blue Hills has evidence, obtained pursuant to public records requests, that EOEEA did make some attempt to consider the legislation after it was voted on by legislators in August, 2002 and while it was on Governor Swift's desk awaiting her signature. Her office contacted EOEA and asked for guidance on the bill. EOEA staffers, who knew nothing about it, turned to DCR's predecessor MDC, which then had care and control of the Blue Hills Reservation.

MDC returned this answer, in an email from Bernadette O'Malley of MDC to Sarah Joor of EOEA dated 8/2/02:

Senate 2443 authorizes DCAM to swap land that abuts the Blue Hills Reservation with the owner of Lantana's in order for the function hall to expand its parking area. Lantana's will in turn convey a parcel of land situated with the Blue Hills Reservation to the MDC.

Since the disposition of the MDC land must conform to the provisions of the EOEA land disposition policy, we do not oppose this legislation.

This may be the only written direction EOEA and Swift received. Swift later gave Tom Benner of the *Patriot-Ledger* the following statement on August 10, after she had signed the bill:

Because it is a land swap and because it requires a two-thirds vote of the Legislature to pass, there are significant layers of protection that made me feel comfortable with the bill

But the Article 97 policy cropped up again in a letter sent to Massachusetts Audubon and other concerned parties over MDC Commissioner David Balfour's signature on August 14:

We are confident that adherence to the “no net-loss” Article 97 Policy, coupled with the negotiation and execution of an effective management and use agreement as called for within the bill, will result in improvements which will enhance this underutilized area of the MDC Blue Hills Reservation.

Here we see that at the time the legislation was pending and after, it was MDC’s opinion that the parkland sale could and would conform to the Article 97 policy, and indeed such conformance had yet to be established and was necessary in order for the public interest to be protected. And yet according to the proponent’s attorney, any such conformance is irrelevant.

We suggest that it is not MEPA’s job to decide whether the Article 97 Disposition Policy is relevant or not to this disposition of Article 97 parkland. The MEPA statute declares that:

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment.

It is MEPA’s responsibility to ensure such review, evaluation, and determination takes place and that all such “practicable means and measures to minimize damage to the environment” are explored.

Therefore Mr. Gage’s statement that DCR must declare whether the proposed disposition is consistent with the disposition policy was entirely appropriate. The sale of parkland by DCR to the proponent is an activity of a state agency; this activity is likely to cause damage to the environment; no one will know what this damage is or what means and measures can and will minimize it until such facts and measures are spelled out fully and accurately in a complete Environmental Impact Report presented for public comment to the Secretary. The ENF is sufficient evidence that MEPA’s statutory obligations cannot be realized by any other means.

Let’s not forget who owns this parkland and who it is intended to serve. It is not a buffet laid out for gluttons.

Sincerely

A handwritten signature in black ink that reads "Tom Palmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Palmer
President, Friends of the Blue Hills