

**Record of Decision**

**Attachment IV**

**Responses to Comments on the Final Environmental Impact Statement**

## **Responses to Comments on the Final EIS**

The Department received comment letters from eight agencies and interested parties following issuance of the Final EIS on September 5, 2014. At the Department's discretion, three letters were accepted that arrived after the close of the 30-day waiting period. During the decision-making process for the Proposed Action, all comment letters on the Final EIS were reviewed and considered by the BIA and are included within the administrative record for this project. These annotated letters are provided below, and responses to specific comments follow.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

OFFICE OF THE  
REGIONAL ADMINISTRATOR

October 2, 2014

Franklin Keel, Regional Director  
Eastern Regional Office  
Bureau of Indian Affairs  
545 Marriott Drive, Suite 700  
Nashville, Tennessee 37214

RE: Comments on the Bureau of Indian Affairs Final Environmental Impact Statement  
Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project  
Mashpee and Taunton, Massachusetts (CEQ# 20140244)

Dear Mr. Keel:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, we have reviewed the Final Environmental Impact Statement (FEIS) for the Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project in Mashpee and Taunton, Massachusetts. The FEIS was prepared by the Bureau of Indian Affairs (BIA) to evaluate the potential impacts of transferring 151 acres of land in Taunton, Massachusetts and 170 acres of land in Mashpee, Massachusetts to the United States to be held in trust for the beneficial use of the Mashpee Wampanoag Tribe (the Tribe) for subsequent development of a destination resort casino and ancillary facilities in Taunton and tribal related facilities in Mashpee. EPA previously commented on the DEIS for the project in January, 2014.

According to the FEIS the proposed project will include a 400,000 square-foot casino, three 300-room hotels, various restaurant options, retail space, a water park, a parking garage with 4,486 spaces and approximately 1,171 surface parking spaces. The casino project is proposed within the existing Liberty and Union Industrial Park in East Taunton, Massachusetts. Offsite public safety improvements and improvements to surrounding roadway, water and sewer infrastructure are also proposed as part of the project and are described in an Intergovernmental Agreement between the Tribe and the City of Taunton.

Our review of the DEIS identified a number of areas of concern related to wetland impacts and mitigation, wastewater, stormwater/water quality, secondary and cumulative impacts and air quality. We reviewed the FEIS with particular attention to these issues and offer specific comments in the attachment to this letter. In general, we found the FEIS responsive to many of our previous comments. In those areas where more could be done we recommend that the BIA provide responses prior to the close of the NEPA process.

Thank you for the opportunity to comment on this FEIS. We continue to be available to work with the BIA as you work to address our comments. Please feel free to contact me or Timothy Timmermann, Associate Director of the Office of Environmental Review, at 617/918-1025 if you wish to discuss these comments further.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Curtis Spalding', written in a cursive style.

H. Curtis Spalding  
Regional Administrator

Attachment

cc:

Quan Tobey, Environmental Director, Mashpee Wampanoag Tribe  
Jessie Baird, Vice Chairwoman, Mashpee Wampanoag Tribe  
Jennifer McCarthy, New England District, US Army Corps of Engineers

## **Additional Detailed Comments Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project**

### **Wetland Impacts**

#### On Site

EPA is pleased with the design changes that have been made in the project to avoid wetland impacts. The Preferred Development (Alternative A) does not result in any direct impacts to wetlands or other waters of the U.S. Improvements to the site access plan also reflect a trend towards reduced impacts through the elimination of access option 1 which would have resulted in the construction of a new ramp spanning the Cotley River. The FEIS identifies a new access option 3 slip ramp as the Least Environmentally Damaging Practicable Alternative (LEDPA) under the Clean Water Act. EPA concurs.

#### Offsite

According to the FEIS, off-site improvements related to the Route 24/140 interchange will result in approximately 1.1 acres of permanent direct wetland impact. The FEIS also describes alternative Northwest-2 (NW-2) which further reduces wetland impacts through changes in the design speed at the interchange to 25 mph and the design speed for Route 140 in the area to 60 MPH. EPA supports alternative NW-2 as described in the FEIS.

#### Vernal Pools

Previous concerns we raised related to impacts to the vernal pool located in wetland number 7 have been addressed in the FEIS as were comments we made regarding other potential vernal pool areas. The revised design plan features a modified parking area configuration that avoids work in a larger section of vernal pool habitat around the existing vernal pool.

#### Mitigation

EPA supports the change to eliminate wetland mitigation originally proposed adjacent to the highway interchange. EPA intends to continue to work with the applicant and Corps of Engineers during the development of final wetland mitigation plans for the project. Moreover, the FEIS mentions that wetland creation is intended on-site to address/mitigate for watershed based impacts. Figure 8.2-16 depicts some potential mitigation options being considered for both wetland and floodplain compensation. Further investigation of suitable sites is needed to avoid impacts to forested upland habitat that should otherwise be protected or preserved. EPA intends to continue to work with the Corps of Engineers and the applicant during permitting to evaluate mitigation options.

EPA.1

#### Responses to Other Previous Wetland Comments

- The response to comment 1.8.7 is adequate.
- Section 8.21.4.1 addresses the past wetland fills and mitigation associated with the Liberty & Union Industrial Park prior authorizations. EPA notes with interest that some wetland mitigation sites that were permitted were never constructed.

EPA.2

- The response to comment 1.8-8 is not correct. There is now an In-Lieu Fee mitigation program available in Massachusetts.

EPA.3

### Secondary and Cumulative Impacts

We remain concerned that the section of the FEIS on secondary and cumulative impacts is based largely on assertions about available capacity in the region (in terms of the number of unemployed people and the amount of vacant housing) rather than analysis. As we indicated in our comments on the DEIS, other studies, such as the one the Spectrum Gaming Group did for the Commonwealth of Massachusetts, have projected high turnover rates in certain job categories such as unskilled, entry-level positions. At a minimum, the implications of this projection in terms of induced growth should have been evaluated. We also disagree that the preferred development is not analogous to the South Coastal Rail project, which the FEIS states is likely to result in substantial induced growth in housing. Both are large projects with the potential to induce growth, and in fact, the projected ridership for South Coast Rail (5,240-5,670) is not much larger than the expected number of new employees in this project (3,500).

EPA.4

EPA.5

We continue to believe that the analysis of cumulative impacts is too narrow, since the period of analysis is just 8 years, with an end date of 2022. By contrast, the time horizon for the traffic analysis is 2032, which we believe would better serve as the timeframe for the entire analysis. A common temporal scope for the consideration of cumulative impacts in an EIS is the life of the project. We also strongly disagree with the approach in which only those projects being evaluated for cumulative impacts are those that have recently been or are currently under Massachusetts Environmental Policy Act (MEPA) review. This is too limiting since there may be projects being planned that are not captured by MEPA. The assertion that it is unlikely that projects not captured by MEPA would have significant environmental impacts is not consistent with the overall focus of a cumulative impacts analysis which is to evaluate the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.

EPA.6

EPA.7

### Wastewater

The document states that “the use of on-site wastewater treatment has not been investigated”, 8.8.1; however the Intermunicipal Agreement (Section 10.A) with the City of Taunton states that “The tribe shall investigate developing on-site wastewater reclamation capacity to reduce sewage flows to the City’s publicly owned treatment works facility.” The FEIS refers to a Beta Group comment letter (the City of Taunton’s consultant) that pretreatment for nitrogen would not be required, but that is different from using on-site reclamation to reduce flows. Further clarification/explanation of this issue should be provided prior to the close of the NEPA process. In our opinion, it would make sense to try to reduce flows to the treatment plant from the project since the City of Taunton is planning on a request for a flow increase.

EPA.8

The FEIS statement that the project is within the City of Taunton’s allocation of capacity of the existing wastewater treatment plant (8.4 mgd) as part of “Planned Development,” and therefore is not dependent on expansion of the treatment plant, should be documented. A memo issued by the Beta Group on January 14, 2014 indicated that a flow increase was required to accommodate

this flow. This discrepancy is of concern as it is not clear a flow increase for this facility will be approved.

EPA.9

### **Water Quality/Drinking Water**

EPA's previous comments on water quality strongly encouraged baseline water quality monitoring of the Cotley River and offered EPA assistance developing and implementing such a plan. For example, in the letter we "strongly" suggested that baseline water quality be monitored in the Cotley River for comparison to the post-construction period, and we offered EPA assistance to develop a monitoring plan. The FEIS does not include this baseline water quality monitoring. In general, in response to our water quality comments the FEIS references its compliance with MassDEP Stormwater Management Standards and EPA National Pollution Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities as efforts that are "adequately protective of water quality." While that may be the case, it misses an opportunity to adopt measures such as low impact development (LID) techniques to further enhance the project stormwater design.

EPA.10

### **Air Quality**

Our previous air quality comments regarding general conformity, motor vehicle emission modeling and emissions from stationary sources are satisfactorily addressed in the FEIS. Our outstanding air quality related concern for the project is focused on minimizing diesel emissions during construction. In our scoping comments as well as our comments on the DEIS, EPA identified health concerns associated with diesel exhaust from heavy duty diesel trucks and other heavy duty construction equipment. Section 8.19.4 of the FEIS identifies prohibition of excessive idling of construction equipment engines as well as requiring subcontractors to adhere to all applicable regulations regarding control of dust and emissions. We also, however, encourage the Mashpee Wampanoag Tribe to incorporate contract specifications that would require construction vehicles and equipment to include retrofit control equipment (oxidation catalysts or particulate filters installed on the exhaust of the diesel engine). The Northeast Diesel Collaborative has prepared model construction specifications which could be used in developing contract specifications for construction of both the Taunton and Mashpee portions of the project. The model construction specifications can be found on the Northeast Diesel Collaborative web site at <http://northeastdiesel.org/pdf/NEDC-Construction-Contract-Spec.pdf>. These retrofits are cost effective measures to minimize impacts to air quality during construction.

EPA.11

### **Environmental Justice**

The Environmental Justice analysis documents that the project is not located in a predominantly minority or low-income neighborhood and is not likely to cause or exacerbate any disproportionately adverse environmental effects on minority and low-income populations relative to the community-at-large. There is, however, a sizable minority and low income population in the greater-Taunton area that could be indirectly affected by the casino's operation.

EPA.12

### Outreach

Given that possibility, EPA suggests that the project's public involvement strategy be enhanced going forward to include more outreach tools such as expanded flyer distribution through areas further than the immediate area affected by construction and operation of the project. The developers may want to expand the geographic scope of any planned meetings to include areas identified as low income and minority in order to update those communities of the status of the project. Thought should be given to promote the inclusion of key stakeholders like members from community groups, social organizations, health care workers and clergy in the project outreach process. Finally, a critical issue is making sure that key materials (flyers, fact sheets, on-line information) are translated into relevant languages.

EPA.13



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK  
Governor

MAEVE VALLELY BARTLETT  
Secretary

DAVID W. CASH  
Commissioner

2014 OCT 14 P 1:43  
REG'N DIRECTOR

October 10, 2014

Mr. Franklin Keel  
Eastern Regional Director  
Bureau of Indian Affairs  
Eastern Region, 545 Marriott Drive,  
Suite 700, Nashville, Tennessee 37214

RE: FEIS Comments for Proposed Fee-  
To-Trust Transfer of Lands By the  
Mashpee Wampanoag Tribe

By U.S. Mail and FAX (615) 654-6701

Dear Mr. Keel,

Please accept the attached comments from the Massachusetts Department of Environmental Protection regarding the above mentioned FEIS. We apologize for our delay in providing these comments. If you have any questions I can be reached at the letterhead address or (508) 946-2870.

Sincerely,

Jonathan E. Hobill  
Regional Engineer  
Bureau of Resource Protection

Massachusetts Department Of Environmental Protection FEIS comments for proposed fee-to-trust  
transfer of lands by the Mashpee Wampanoag Tribe

Comments on Mashpee Lands

Drinking Water

Some of the facilities on the land in Mashpee (particularly: Parcel 5, The Mashpee Wampanoag Museum; Parcel 6, The Tribal Government Center; Parcel 8, and Tribal Housing) may meet the definition of a Public Water Supply (PWS) under the Safe Drinking Water Act. According to the Mashpee Water District, Parcel 6 and 8 are connected to municipal water; however, the EIS states that water is supplied by an on-site well. This should be verified, and if supplied by a private well, determine if it meets the definition of a PWS and contact the U.S. EPA for compliance assistance. The same analysis should be done for Parcel 5 and any other parcel that receives enough use to potentially be classified as a PWS.

DEP.1

Wastewater

The Commonwealth has recently made significant investments to the water resources of Cape Cod. The Commonwealth has funded the Massachusetts Estuary Project (MEP) which conducts water quality studies and analyzes watersheds to act as feeder documents for Total Maximum Daily Loads reports for impaired estuaries on Cape Cod and the surrounding area. Recently, the Commonwealth awarded over three million dollars to the Cape Cod Commission to update the Federal Clean Water Section 208 regional wastewater management plan.

The Tribe has cooperated with the Commonwealth under the Massachusetts Clean Waters Act M.G.L. c. 21 sections 23 through 52 and the associated regulations and recently received a Groundwater Discharge Permit (Permit number 918-0) which expires in 2020. The Commonwealth requests a commitment to continue to comply with the Massachusetts Clean Waters Act and associated regulations.

DEP.2

Abandoned Cranberry Bog – Parcel 9

An abandoned cranberry bog system dominates much of Parcel 9. Past farming practices often included significant pesticide and nutrient application. Cranberry bog cultivation, in particular, requires reshaping the landscape and the addition of structures to allow water movement. Older bog systems were usually constructed in wetlands that are now protected under the Massachusetts Wetlands Protection Act. The abandoned bogs likely contain elevated levels of nutrients and pesticides and potential stagnant water which can contribute to undesirable insect breeding. The Commonwealth suggests the tribe contact the UMass Cranberry Station in Wareham for advice on Best Management Practices to avoid negative environmental impacts from the abandoned bogs. To the extent that the abandoned bogs are wetlands, MassDEP recommends they receive the type of protection afforded by the Massachusetts Wetlands Protection Act.

DEP.3

## Solid Waste

The Commonwealth applauds the efforts of the Tribe to remove illegally disposed solid waste from tribal and other land within the Town of Mashpee.

The Commonwealth requests that the Tribe commit to remove all remaining solid waste from the tribal lands for offsite disposal. Off-site disposal of material will be required to meet the standards of 310 CMR 19.017 which restricts the disposal, transfer for disposal and contracting for disposal of certain hazardous and recyclable items at solid waste facilities in Massachusetts. Current materials included in the waste bans are recyclable paper, glass containers, metal containers, certain plastics, leaves and yard waste, lead acid batteries, white goods, whole tires, cathode ray tubes, clean gypsum wallboard, asphalt pavement brick and concrete, metal and wood. MassDEP encourages the proponents to consider waste reduction and source reduction practices by implementing and/or contracting for recycling, composting, and other waste diversion services such as using source separated materials as fuels.

DEP.4

DEP.5



**Paul J. Diodati**  
Director

# Commonwealth of Massachusetts

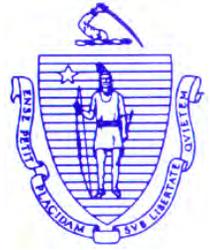
## Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617) 626-1520

fax (617) 626-1509



**Deval Patrick**  
Governor  
**Maeve Valley Bartlett**  
Secretary  
**Mary B. Griffin**  
Commissioner

October 3, 2014

Mr. Chet L. McGhee  
Regional Environmental Protection Specialist  
Bureau of Indian Affairs, Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, Tennessee 37214  
Telefax (615) 564-6701

“Comments on FEIS for Proposed Mashpee Wampanoag Tribe Property Trust and Development”

Dear Mr. McGhee:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the FEIS by the Mashpee Wampanoag Tribe for the Project First Light Destination Resort Casino. The project site borders the Cotley River and Barstow’s Pond in the City of Taunton. The water supply for the proposed development would come from the Assawompset Pond Complex in the Towns of Lakeville, Middleborough, Rochester, and Freetown. Existing marine fisheries resources and habitat and potential project impacts to these resources are outlined in the following paragraphs.

Previous fish passage surveys have not documented any anadromous fish species in the Cotley River. However, the catadromous American eel (*Anguilla rostrata*) uses this system for foraging and nursery habitat. Barstow’s Pond Dam is scheduled for removal. With the removal of this impediment to fish passage, this region would become available habitat for anadromous fishes and for this reason Barstow’s Pond is a candidate for restoring river herring (alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*)) populations. The Nemasket River system supports the largest river herring run in Massachusetts [1]. The Assawompset Pond Complex provides important spawning and nursery habitat for this run and nursery habitat for eels.

In the FEIS, the proponent provides responses to comments previously submitted by *Marine Fisheries* for the project DEIS. *Marine Fisheries*’ comments to these responses are outlined below:

- *Comment 1-9.1 – Water Withdrawal of the Assawompset Pond Complex*  
In our comments on the DEIS, *Marine Fisheries* expressed concern about the additional stress to the Assawompset Pond Complex water supply associated with the proposed project, particularly during the critical spawning and juvenile development periods for the diadromous fish species of the Cotley River. The response in the FEIS discusses total estimated water use but does not address the specific temporal concerns raised by *Marine Fisheries*. The proponent should provide further information estimating

anticipated water usage during the periods when water levels are most critical to river herring passage (i.e., mid-March to mid-November).

DMF.1

- *Comment 1-9.2 – Preservation of Riparian Buffer Along Cotley River*

The proponent notes modifications to the proposed design that reduce habitat impacts, including the removal of originally proposed parking lots to the west of the Cotley River and elimination of the proposed bridge span across the Cotley River. While these modifications will reduce habitat impacts relative to the design outlined in the DEIS, the listed preferred alternative still includes development within 100 feet of the Cotley River in certain regions. *Marine Fisheries* continues to recommend a minimum 200 foot buffer in all regions bordering the Cotley River to minimize impacts to this habitat.

DMF.2

- *Comment 1-9.3 – Expansion of Project Alternatives to Minimize Impacts to Diadromous Fishes*

As noted in comments to the DEIS, a new alternative that combines the environmental benefits of Alternative B (reduced water usage) and C (reduced impervious surface adjacent to the Cotley River and Barstow's Pond) would provide a development plan with reduced impacts to bordering diadromous fish resources relative to the existing proposed alternatives. The reduction in water demand associated with Alternative B would help to preserve adequate water levels to the Assawompset Pond Complex, which provides spawning and nursery habitat for the largest river herring run in the state of Massachusetts. The habitat preservation associated with Alternative C would help to protect Barstow's Pond, which is in the process of being restored as river herring habitat through the removal of the Barstow's Pond Dam. A design alternative that incorporates both of these conservation measures would be more beneficial to diadromous fish resources than the currently listed alternatives.

DMF.3

Questions regarding this review may be directed to John Logan in our New Bedford office at (508) 990-2860 ext. 141.

Sincerely,



Paul J. Diodati  
Director

cc: Taunton Conservation Commission  
David Hewett, Epsilon Associates, Inc.  
Alison Verkade, Christopher Boelke, NMFS  
Robert Boeri, CZM  
Ed Reiner, EPA  
Ken Chin, DEP  
Richard Lehan, DFG  
Kathryn Ford, John Sheppard, Brad Chase, Mike Bednarski, Christian Petitpas, DMF

### References

1. Nelson GA, Brady PD, Sheppard JJ, Armstrong MP (2011) An assessment of river herring stocks in Massachusetts. Massachusetts Division of Marine Fisheries Technical Report, TR-46.
2. Evans NT, Ford KH, Chase BC, Sheppard J (2011) Recommended Time of Year Restrictions (TOYs) for Coastal Alteration Projects to Protect Marine Fisheries Resources in Massachusetts. Massachusetts Division of Marine Fisheries Technical Report, TR-47.

PD/JL/sd



*The Commonwealth of Massachusetts  
House of Representatives  
State House, Boston 02133-1054*

WILLIAM M. STRAUS  
REPRESENTATIVE  
10TH BRISTOL DISTRICT  
ROOM 134  
TEL: (617) 722-2400

COMMITTEE  
Chairman  
Transportation

DISTRICT OFFICE  
Tel: (508) 992-1260  
William.Straus@MAhouse.gov

October 3, 2014

Mr. Chet L. McGhee  
Regional Environmental Protection Specialist  
Bureau of Indian Affairs – Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, Tennessee 37214

Re: FEIS for Proposed Fee-to-Trust Transfer of Property and Subsequent Development of Resort/Hotel and Ancillary Facilities in Taunton, MA and Tribal Government Facilities in Mashpee, MA by Mashpee Wampanoag Tribe

Dear Mr. McGhee:

Below, please find my comments concerning the final environmental impact statement for the above-referenced project, which was noticed on page 53077 of volume 179 of the Federal Register on September 5, 2014. I am a legislator representing communities in Bristol and Plymouth Counties south of the proposed project. This project affects the key road access points for private and commercial traffic between my region and the Boston area. I am also House Chair of the Joint Committee on Transportation.

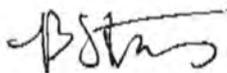
Specifically, I question the adequacy of the proposed traffic mitigation along Route 24 and at the Route 24/Route 140 interchange in connection with the casino development, as set forth in section 8.1.

As has been noted in prior comment letters with regard to this project, Route 24 currently operates at capacity, and the interchange has long been the subject of Massachusetts DOT planning efforts. Even today, for example, significant queues develop along Route 24 during the rush hour commute from I-495 to Route 140. With the increased number of vehicle trips expected from the casino development, these conditions and the impact to surrounding communities are therefore sure to worsen under any of the build alternatives.

The lane drop from three to two, which now exists at the I-495 Interchange on Route 24, is an existing bottleneck in need of correction. To permit a major development at the Route 24/Route 140 intersection without taking account of the existing conditions would be a disservice to the public having enormous detrimental economic and safety consequences.

For this reason, as a starting point, any mitigation plan under any build alternative must provide for the widening of Route 24 from the I-495 interchange to Route 140. This mitigation must be in place on day 1 of operation, and an appropriate contribution for the project must be required from the project proponent. Anything less is wholly inadequate.

Respectfully,



William M. Straus  
State Representative  
10<sup>th</sup> Bristol District

WMS.1



**Southeastern Regional Planning & Economic Development District**  
88 Broadway • Taunton, MA 02780-2557

- Acushnet
- Attleboro
- Berkley
- Carver
- Dartmouth
- Dighton
- Fairhaven
- Fall River
- Freetown
- Lakeville
- Mansfield
- Marion
- Mattapoisett
- Middleborough
- New Bedford
- N. Attleborough
- Norton
- Plainville
- Raynham
- Rehoboth
- Rochester
- Seekonk
- Somerset
- Swansea
- Taunton
- Wareham
- Westport

October 8, 2014

Kevin K. Washburn, Assistant Secretary  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

Re: FEIR Project First Light, Taunton, MA

ATTN: Chet L. McGhee, Regional Environmental Protection Specialist

Dear Mr. Washburn:

The Southeastern Regional Planning and Economic Development District (SRPEDD) has reviewed the referenced document to development of a resort casino to be located in the city of Taunton and offers the following comments:

SRPEDD's previous comments dated January 15, 2014 provided statements for the most important transportation issues in the regional, including insufficient capacity on Route 24 south of Interstate 495. The proponent responded to each SRPEDD comment, although there is no certainty that any commitments for transportation improvements have been or will be made by the proponent.

SRP.1

Although the report has a detailed descriptive list of intersections that might be impacted by the development of a casino, we found no engineering statement or detailed analysis on the impacts to those intersections. The essential part of the analysis should include vehicle queuing, spill back and any other system wide operational analysis information. It seemed that any recommendations offered were speculative in nature.

SRP.2

Specifically, the influenced area within the Stevens Street, Route 140 and Route 24 interchange indicated curb cut spacing is very close and potential traffic demand is very high. Traffic mitigation should be provided to assist readers to understand the critical issues. They are the essential part of the traffic impact study and without documentation, it is difficult for the reviewing agency to complete a thorough evaluation.

SRP.3

Thank you for the opportunity to comment on this proposal. SRPEDD staff is available to answer any questions or address any concerns raised by these comments.

Respectfully,

Stephen C. Smith  
Executive Director

October 8, 2014  
Kevin K. Washburn, Assistant Secretary  
Bureau of Indian Affairs  
Page 2

CC: State Legislators in the SRPEDD Area  
Mayor Thomas Hoyer  
Massachusetts Gaming Commission  
SRPEDD Commissioners  
Old Colony Planning Council  
Jamie Fosburgh, national Park Service



**TOWN OF RAYNHAM**  
**PLANNING BOARD**  
RAYNHAM, MASSACHUSETTS 02767  
Tel. 508-824-2745 Fax 508-828-4290

October 15, 2014

Mr. Chet McGhee  
Regional Environmental Protection Specialist  
Bureau of Indian Affairs, Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

**Re: Mashpee Wampanoag Tribe's Fee to Trust Acquisition  
Final Environmental Impact Statement (FEIS) Comments**

Dear Mr. McGhee:

The Town of Raynham appreciates the opportunity to offer its comments and concerns regarding the proposed project. The project will be located on 146.4 acres within and adjacent to the Liberty & Union Industrial Park less than 1,200 feet from the Raynham corporate boundary. According to the Environmental Notification Form (ENF), over 21,000 vehicles will be added to the roads and highways within the immediate area. On behalf of the Board of Selectmen and the Town of Raynham, I would like to forward the following comments regarding the proposed First Light – Destination Resort Casino in Taunton, MA:

- It is possible that the impact of the proposed project on the intersection of Route 44 @ Orchard Street is underestimated. Orchard Street is and will continue to be a valuable route to and from East Taunton for motorists looking to avoid congestion on Route 24 and Route 44. This should be given more consideration in the EIR. This intersection is already one of the highest rated intersections for accidents in the State and has been studied several times. The Massachusetts Department of Transportation is planning a reconstruction of this intersection in the near future and contact should be made with that department to include any potential changes in the scope of the EIR.
- It is also recommended that the scope of the EIR include South Street East from Route 44 to the bridge over the Taunton River. During peak traffic periods the segment of Route 24 from I-495 to Route 140 experiences heavy congestion and an alternate route for patrons of the proposed casino would be to exit Route 24 at Route 44 and travel to Orchard Street south to South Street East. Of major concern is the South Street East Bridge over the Taunton River that is jointly owned by the Town of Raynham and the City of Taunton. It is estimated that the bridge currently requires over \$1 million in repairs and the additional traffic would only exacerbate the deterioration of the bridge.
- Based on the trip distribution figures presented, the project will increase traffic volumes to the Route 44 @ Church Street intersection during all peak periods. At a minimum, the intersection of Route 44 and Church Street should be included within the scope of the Environmental Impact Report (EIR). This intersection was

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reconstructed and signalized by the Massachusetts Department of Transportation (Mass DOT) with the design partially funded by the Town of Raynham.

- We are concerned about the anticipated increase in traffic at the Route 44 @ Hill Street intersection and believe that the scope of the EIR should include this intersection. It may act as an alternate route due to future congestion at the Route 44 @ Orchard Street intersection. The increase in traffic volume may necessitate the installation of a traffic signal for this location.

RAY  
.4

This project will have far reaching impacts due to its size, location, proximity to other southeastern Massachusetts communities and intended use. As such, the applicant must address the project impacts to all affected study areas. As a community that directly abuts the City of Taunton, we respectfully request that the proponent be required to respond to all comments submitted on this project in a cohesive and legitimate fashion.

If you have any questions regarding the above comments or require further information, please contact me at [jcharbonneau@town.raynham.ma.us](mailto:jcharbonneau@town.raynham.ma.us) or at (508) 824-2774. Thank you for your consideration.

Sincerely,



John M. Charbonneau  
Director of Planning & Development

Cc: *Board of Selectmen*  
*Planning Board*



## Taunton River Watershed Alliance, Inc

1298 Cohannet Street PO Box 1116

Taunton MA 02780

Tel. 508-828-1101

[www.savethetaunton.org](http://www.savethetaunton.org)

October 5, 2014

Chet L. McGhee, Regional Environmental Protection Specialist  
Bureau of Indian Affairs, Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

Re: Final Environmental Impact Statement for Mashpee Wampanoag Tribe Fee-to-Trust  
Acquisition in Mashpee and Taunton, Massachusetts

Dear Mr. McGhee:

The Taunton River Watershed Alliance, Inc. (TRWA) submits the following comments on the Final Environmental Impact Statement (DEIS) for Fee-to-Trust Acquisition of land in Mashpee and Taunton, Massachusetts proposed by the Mashpee Wampanoag Tribe. TRWA is committed to the protection and restoration of the Taunton River, its tributaries and the special and irreplaceable ecosystems of its watershed. The following comments focus on the environmental impacts of Tribe's proposed use of land in Taunton for a large-scale casino development. The TRWA takes no position for or against the establishment of gaming facilities in Massachusetts, and these comments do not constitute either endorsement or opposition to the Fee-to-Trust Acquisition request.

**Impacts to wetlands.** In our comment letter of January 15, 2014 to the Bureau of Indian Affairs (BIA) regarding the DEIS for this project, TRWA commended the Tribe for selecting a site in a "Priority Development Area" identified by the City of Taunton in the South Coast Rail Corridor Plan and for locating some of the major features of the development in previously disturbed ("brownfield") areas in the southeastern portion of the site. However, we noted that some features of the proposed "preferred alternative" development plan were located in currently undisturbed areas close to the river and wetlands. The FEIS includes several modifications to the project design which reduce the

amount of wetlands alteration and encroachment on the riverfront area and buffer zone adjacent to the River. These changes include:

- elimination of two surface parking areas in presently undisturbed land on the west side of the river, reducing impacts to wetlands and river front area;
- corresponding elimination of a road crossing the river to access those parking lots;
- elimination of a proposed new ramp connecting Stevens Street to Route 140, avoiding additional wetlands alteration.

TRWA appreciates these changes and requests that if the BIA grants the proposed Fcc-to-Trust Acquisition for the land in Taunton you require adherence to these changes as a condition if the project moves forward.

**Remaining wetlands alteration.** If the modifications to the project referenced above are incorporated into final plans, the project will still result in alteration of over one acre of bordering vegetated wetlands (BVW). This alteration is associated with proposed reconstruction of the Route 24/Route 140 interchange to reduce anticipated impacts of traffic congestion expected to result from vehicles traveling to the casino under the "Preferred Alternative (Alternative A)" site build-out. The FEIS indicates (p 8-2-29) that the preferred traffic mitigation design for this reconstruction (identified by the Army Corps of Engineers and the Environmental Protection Agency as the "Least Environmentally Damaging Practicable Alternative") will involve alteration of 48,390 square feet of BVW. The FEIS further states (p. 8-2-34) that the "Alternative C (Reduced Intensity I)" site build-out plan would require the same off-site roadway improvements, but "Alternative B (Reduced Intensity II)" would require fewer road improvements because it would generate less traffic. If Alternative B were chosen as the "Preferred Alternative" for site build-out, all offsite impacts to wetlands would be eliminated.

Because of the magnitude of the offsite wetlands alteration associated with the Preferred Alternative build-out plan, construction of this alternative would "cause or contribute to significant degradation of the waters of the United States," thus violating the Guidelines to Implement Section 404(b)(1) of the federal Clean Water Act (CFR 40 Section 230). The TRWA requests that the Tribe identifies a new "Preferred Alternative" for site build-out; i.e., that Alternative A be replaced with Alternative B or another "reduced intensity" design that avoids the need for the Route 24/140 interchange reconstruction.

TRW.1

The FEIS indicates that replacement for this alteration will be provided in the southern portion of the project site, mostly in areas adjacent to the roadway and existing wetlands. Final detailed plans for this mitigation should be made available for public review and comment before the Army Corps of Engineers issues a permit for the project under the federal Clean Water Act. We reiterate our earlier comment that areas proposed as "wetland replication" to mitigate for wetland loss should not be used as compensatory flood storage areas. Mitigation plans for wetland loss in the FEIS should clearly distinguish between these functions and demonstrate that separate areas are provided for

TRW.2

TRW.3

compensatory flood storage and replacement of impacted vegetated wetlands. In other words, flood storage loss from vegetated wetland fill should be compensated for in the wetlands replication area on an increment basis and filling below the 100-foot FEMA floodplain elsewhere requires separate and distinct incremental compensation. Otherwise the project may adversely impact downstream and upstream property.

**Management of stormwater runoff.** Our earlier comments noted that the creation of acres of new impervious surface as a result of project construction will generate significant volumes stormwater runoff carrying heavy metals, petroleum, salts, chemicals and a significant sediment load. Detailed, innovative plans to manage this new runoff are essential. We reiterate our previous request that the final stormwater management plan for the project include the following components:

- use of “low-impact development” options that increase natural recharge of groundwater in place of discharge from pipes, such as pervious pavement, rain gardens, rooftop gardens, vegetated swales;
- use of native species for plantings in landscape designs, to reduce the need for application of fertilizer and pesticides; in addition, landscaping should be designed in a manner that minimizes water-intensive maintenance and maximizes the use of stormwater for irrigation;
- if pesticides and fertilizers will be used for site management, specific information should be provided regarding what products will be used, what amounts and how applications will be made, identifying measures that will be used to prevent runoff of these materials into the river and wetlands;
- Demonstration that the total water quality generated by the project is fully treated through compliance with the Massachusetts Stormwater Regulations and Stormwater Standards per 31- CMR 10.00. Full compliance with these comprehensive regulations and standards ensure that the water quality of our rivers and wetlands are protected.

TRW.4

**Habitat preservation in northern portion of site.** Natural vegetative cover, including forested areas and shrub lands capture and store carbon from airborne emissions and also cool the landscape. Our previous comments have also noted that the project site in its current condition includes areas of grassland and meadowland that provide important habitat for a number of bird species whose populations are declining in Massachusetts, as least partly from loss of habitat.

We reiterate our previous request that the Tribe reevaluate the need for construction of the hotel/indoor water park currently proposed for the portion of the site north of the railroad tracks. This construction would be in close proximity to the Cotley River and would result in loss of existing forest cover and meadowland. If this component of the project is retained, we urge the Tribe to consider ways to reduce the footprint, such as replacement of the surface parking area with a multi-tiered deck adjacent to the hotel. Often land clearing occurs well in advance of development activities. Therefore, a Development Phasing Plan should be developed and implemented to avoid premature clearing associated with any component of the casino development including the water park.

TRW.5

TRW.6

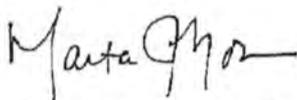
**Wastewater discharge.** As the project is proposed, 220,000 gallons per day of wastewater will be discharged to the Taunton wastewater treatment facility (WWTF). The FEIS indicates (Section 8.8 "Wastewater," p. 8-1) that the use of on-site wastewater treatment for the project was not investigated, based on the wastewater concentrations anticipated to be generated and the capacity of the City's WWTF. The FEIS notes that the Final NPDES Permit for the WWTF has not been issued.

We note that the City in its comments on the Draft Permit raised concerns to Region I of the Environmental Protection Agency regarding the proposed limits on Total Nitrogen discharge (letter of June 18, 2013 from Mayor Thomas Hoye to Susan Murphy of Region I). In "Attachment 1: Comments submitted by the City of Taunton," the City indicated among other points that the proposed limitation may be difficult or impossible to attain and may create an economic hardship. While the question of the WWTF's discharge limit for total nitrogen must be resolved between the City and the EPA, TRWA is committed to overall significant reduction of nitrogen concentrations in the Taunton River and estuary. We remain concerned about whether the addition of the wastewater discharge from this project to the WWTF sewage load will make it more difficult for the City to comply with whatever nitrogen limitations are ultimately included in the NPDES permit. We urge the Tribe to identify ways to assist the City's efforts to comply.

TRW.7

**Conclusion.** The TRWA requests the BIA to require that the onsite changes to the project that reduce wetlands alteration and encroachment on riverfront zone (referenced above) are incorporated into the final project plan if the Fee-to-Trust Acquisition request is granted. We request further consideration of the additional issues described above, including modification to onsite build-out plans identified as the Preferred Alternative that will reduce traffic generation and eliminate the need for the offsite alteration of over one acre of wetlands. The TRWA reiterates its wish to work with the Tribe to insure that if the project moves forward, it proceeds in a way that will support the restoration of the river, protect water quality, wetlands and wildlife habitat and sustain a healthy ecosystem in the future. Thank you for considering these comments.

Sincerely,



Marta J. Nover, President  
Taunton River Watershed Alliance, Inc.  
1298 Cohannet Street  
Taunton MA 02780

cc: David E. Hewett, Epsilon Associates  
Mashpee Wampanoag Tribe  
U.S. Army Corps of Engineers  
Mayor Thomas Hoye, Taunton

Regional Environmental Protection Specialist,  
Bureau of Indian Affairs  
545 Marriott Drive, Suite 700,  
Nashville, Tennessee 37214

Dear Mr. McGee:

I have enclosed documents that demonstrate that the last two Mashpee Wampanoag Administrations did not make any effort to file claims in the Federal Court in Boston for Indian lands in Mashpee Massachusetts, and yet Mr. Cromwell and the Tribal Council Want the Bureau of Indian Affairs to grant Land in Trust now for the purpose of a casino Development. The land in Taunton, Massachusetts was never Mashpee Wampanoag Land. The Malaysians provided the funds for land there.

AGB.1

As you can read in the papers enclosed; there was a possibility of a fair trial if the Officers Of the Tribe presented the case.

I also have enclosed a letter that John Peters wrote to the Tribal Council. He presently serves As the Executive Secretary for the Massachusetts Commission on Indian Affairs that I Campaigned for here in Massachusetts to be voted as a legislative Act for an Indian Commission. It isn't that we as members of the Mashpee Wampanoag Tribe do not want Land in Trust, But rather later when there is a trust worthy leadership.

Chairman Cromwell never lived in Mashpee, and has very little knowledge of our lands or culture.  
Page two.

He married into a very large family that voted him in office, and moved to Attleboro, Massachusetts From Dorchester, Massachusetts rather than to Mashpee. A matter of 50 miles away, where he lives At the present time. The Tribal administration consists mainly of his wife's family members, including

His wife. Nepotism all the way and qualifications for positions is not required.

Malaysian investors have loaned our Tribal Council millions of dollars that we cannot repay for a casino, Family salaries, and travel. A Malaysian representative attends Tribal meetings as well to note all Tribal business concerning their wishes.

.No investigation by the B.I.A. to date, although documents of questionable activities have been Reported to your office.

There are attorneys that advise our Council to take action that does not benefit the Tribe; rather for The benefit of casino interests. We want Land In Trust, but not with the present administration in Control

Sincerely:

Handwritten signature of Amelia G. Bingham in blue ink.

Amelia G. Bingham.



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## BINGHAM v. MASSACHUSETTS

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United States Court of Appeals, First Circuit.

**Amelia Peters BINGHAM, et al., Plaintiffs, Appellants, v. Commonwealth of MASSACHUSETTS, Defendant, Appellee.**

**No. 09-2049.**

**Decided: July 30, 2010**

Before LYNCH, Chief Judge, SOUTER, Associate Justice, and SELYA, Circuit Judge.\* Robert L. Bowns with whom Bowns Law Office was on brief for appellants. John Michael Donnelly, Assistant Attorney General, with whom Martha Coakley, Attorney General, was on brief for appellee. In 2008, plaintiffs Amelia Peters Bingham and her son, Steve, brought a Takings Clause claim against the Commonwealth of Massachusetts and the Town of Mashpee, seeking just compensation and the return of some of the lands in Massachusetts they say were granted in perpetuity to their ancestors, the South Sea Indians, in deeds from 1665 and 1667.

Plaintiffs styled this claim as a class action on behalf of themselves and all similarly situated descendants of the South Sea Indians, now known as the Mashpee Wampanoag. The Mashpee Wampanoag have been a federally recognized tribe since 2007. 72 Fed.Reg. 8007-01 (Feb. 22, 2007). Plaintiffs do not claim that the Commonwealth or Town directly seized lands from their tribal ancestors. Rather, plaintiffs argue that two Massachusetts statutes enacted in 1869 and 1870 deprived them of their right to hold in perpetuity all of the land currently comprising the Town of Mashpee by removing restraints on alienation and, later, by facilitating the sale of certain lands.

The district court held that the plaintiffs lacked standing and dismissed their claims against the Commonwealth and Town, *Bingham v. Massachusetts (Bingham I)*, No. 08-11770, 2009 WL 1259963, at \*1-2 (D.Mass. May 6, 2009), and affirmed that dismissal on plaintiffs' motion for reconsideration, *Bingham v. Massachusetts (Bingham II)*, No. 08-11770, 2009 WL 1886128, at \*2 (D.Mass. July 2, 2009). Plaintiffs appeal only the dismissal of their claims against the Commonwealth. The Commonwealth asserts that the Eleventh Amendment bars this suit from being brought against it in federal court and that plaintiffs, in any event, lack standing.

We affirm and hold that there is no jurisdiction to hear this case, because even when viewing all factual allegations in plaintiffs' favor, plaintiffs cannot show they have suffered a personal injury as a result of the challenged state actions. We do not reach the Eleventh Amendment issues, nor do we reach any statute-of-limitations issues.

I.

We accept as true the following allegations of fact, as stated in plaintiffs' complaint and in supporting documentation, and construe them in the light most favorable to plaintiffs. See *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 41 (1st Cir.2009); *Alt. Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33-34 (1st Cir.2001).

Deeds in 1665 and 1667 granted the subject land-substantial portions of the land that currently comprise the Town of Mashpee-to "the South Sea Indians: and their[ ] Children for ever: and not to be sold or given away from them by any one: without all their[ ] Consents there unto." In 1685, the General Court of Plymouth Colony "confirme[d] said land to the said Indians, to be perpetually to them & their children, as that no part of them shall be granted to or purchased by any English [non-tribal member] whatsoe[v]er .



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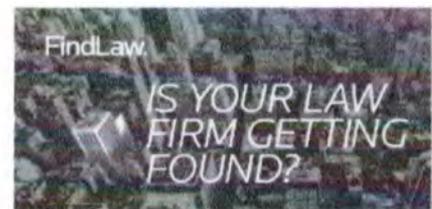
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1886128, at \*2.

II.

We review the district court's dismissal for lack of standing de novo. Though we construe the facts and draw reasonable inferences in plaintiffs' favor, plaintiffs bear the burden of "clearly alleging definite facts to demonstrate that jurisdiction is proper." *Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 25 (1st Cir.2007).

To establish standing under Article III of the U.S. Constitution, plaintiffs "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 598, 127 S.Ct. 2553, 168 L.Ed.2d 424 (2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)) (internal quotation marks omitted).

The district court correctly held that plaintiffs lack standing because they failed to show a personal injury. Plaintiffs must show they had an individual interest in the property rights granted in the seventeenth-century deeds in order to show they were personally injured by the later state actions affecting those property rights. Plaintiffs can do so only if the deeds conveyed to plaintiffs' individual ancestors discrete property interests that passed through successive generations. Even when viewing all facts in the light most favorable to plaintiffs, and taking all reasonable inferences in their favor, plaintiffs have not alleged sufficient facts to surmount this bar.

The relevant language in the 1665 deed conveyed the subject lands to "the South Sea Indians: and their[ ] Children for ever: and not to be sold or given away from them by any one: without all their[ ] Consents there unto." The 1685 grant contained similar material language. In plaintiffs' favor, we will assume, as the district court did, that the reference to the "South Sea Indians . and their[ ] children" is ambiguous.

Plaintiffs insist the deed and grant did not convey the lands to the collective members of the tribe in common. Under that interpretation, the ownership of the land would belong to the tribe as a whole, and no individual member would have a personal interest in a particular share of the property. See *N. Newton et al., Cohen's Handbook of Federal Indian Law* § 16.01[2], at 1037 (2005 ed). Only the tribe would have standing to sue for any injury to its interests under the deed. Plaintiffs argue the deed must be read as conveying individual interests in the land to individual tribal members.

We need not determine whether the conveyances were to individual tribal members or to the collective tribe, because plaintiffs lack standing under either interpretation. Plaintiffs do not represent the tribe, nor do they claim the capacity to do so. Plaintiffs cannot assert the rights of the tribe, as an entity, simply by styling their claim as a class action on behalf of all tribal descendants.

Even assuming arguendo that the deed conveyed discrete property rights to the tribe's individual members, plaintiffs still cannot show a personal injury. Plaintiffs have alleged they are direct descendants of South Sea Indian grantees who were the original beneficiaries of the deeds. Plaintiffs have not, however, alleged any facts showing that their ancestors actually held an individual, inheritable interest in the subject land that passed through successive generations. And they have not alleged any facts showing their ancestors actually held individual and inheritable interests in the subject land as of 1869-70.

Plaintiffs have also failed to allege that any such interests were affected as a result of the 1869 and 1870 acts in ways that resulted in the transfer or loss of ownership of those lands. Nor have they pled any facts showing that the loss of any "right" to hold the lands in perpetuity has caused them any injury. Plaintiffs say that "[t]hrough" the 1870 act, between 1870 and the present, many of the subject lands were ultimately conveyed to non-Indians, but a vague allegation of harms occurring over an undefined, 140-year time period is not the kind of concrete, particularized injury required to show standing. See, e.g., *Sutcliffe v. Epping Sch. Dist.*, 584 F.3d 314, 325-26 (1st Cir.2009). These shortcomings are fatal to plaintiffs' ability to show that they had an identifiable personal stake in the property rights at issue and that they suffered a concrete injury fairly traceable to the Commonwealth's allegedly unlawful conduct. This holding, of lack of pleading of individual harm from the 1869-1870 acts, also disposes of their procedural due process claim, which fails for futility.

Plaintiffs argue the district court erred when it dismissed their complaint sua sponte on the ground that the Bingham failed to allege sufficient genealogical data to support individual interest standing and they could not assert standing on behalf of the tribe. The Town's motion to dismiss had argued only that the tribe, not individual tribal members, had standing to sue for injuries to property interests granted in the seventeenth-century deeds. The Town did not address, until its reply brief to the motion for reconsideration, the issue of lack of individual interest standing.

Plaintiffs' motion to reconsider and to amend their complaint to add the names of ancestors going back to the 1665 and 1667 deeds, dates of birth and death for previous generations, and the names of ancestors who were grantees under the deeds would, as we have held, not have changed the outcome. In light of that

Against the wishes  
of the Wampanoag,

The Commonwealth  
voted to incorporate  
the Wampanoag land  
in order to charge  
the natives taxes  
knowing there was  
no cash flow.  
asb

Not  
true

without the consent of all the said Indians." See *Mashpee Tribe v. Town of Mashpee* (Mashpee I ), 447 F.Supp. 940, 944 & n. 2 (D.Mass.1978), aff'd sub nom. *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir.1979) (interpreting the word "English" in the 1685 grant to include any non-Indians).

Plaintiffs' complaint alleges that these deeds conveyed individual, inheritable rights in the subject lands to the grantees and that these interests passed to plaintiffs as the direct lineal descendants of the South Sea Indians. In support of this contention, plaintiffs listed their predecessors going back five generations. The complaint did not specify birth or death dates, details about residency, or their predecessors' relationship to the South Sea Indians. It explained that "[a]s a general rule," records prior to the nineteenth century "were not maintained for Indians."

Between 1685 and 1834, Plymouth Colony, and later the Commonwealth, continually recognized the restraints on alienation contained in the original deeds as the subject land evolved from an Indian plantation to the "Mashpee Propriety." In 1834, parts of the subject land became the "District of Mashpee," but the restraints on alienation in the original deeds endured.

In 1842, the Massachusetts General Court passed a law providing that much of the lands in the district would now be held in severalty by proprietors, who included Indians who had occupied and improved the land. See *Mashpee I*, 447 F.Supp. at 945 (describing proprietors). Proprietors were allotted acreage from the common lands, in addition to any lands they already held in severalty, so that each proprietor held at least sixty acres. *Id.* The remainder of the subject land—some three thousand acres—was still held in common by the selectmen of the district, who were all Indians. *Id.* at 945-46. The 1842 law again confirmed the restraints on alienation from the seventeenth-century deeds. *Id.* at 945.

In 1869, however, the Massachusetts General Court enacted a statute providing, in relevant part, that

[a]ll lands heretofore known as Indian lands, and rightfully held by any Indian in severalty, and all such lands which have been or may be set off to any Indian, shall be and become the property of such person and his heirs in fee simple . . . and all Indians shall hereafter have the same rights as other citizens to take, hold, convey and transmit real estate.

1869 Mass. Acts ch. 463, § 2. The law removed restraints on the alienation of the subject land, and plaintiffs allege this was over the objections of a majority of South Sea Indian descendants who attended a hearing on the legislation.

A year later, in 1870, the Massachusetts General Court passed a law creating and incorporating the Town of Mashpee. The law provided that "[a]ll lands . . . held by the district of Marshpee, are hereby transferred to the town of Mashpee, and shall be owned and enjoyed as like property and rights of other towns are owned and enjoyed." 1870 Mass. Acts ch. 293, § 1. Another provision of the 1870 law stated that upon application of the Town's selectmen, a superior court justice could, after notice to all interested parties and a hearing, determine that "it is for the interest of said parties that any or all of the common lands of said town, or of the people heretofore known as the Marshpee tribe of Indians, be divided." *Id.* § 6. The justice could then appoint three "discreet, disinterested persons [as] commissioners to make partition of the same." *Id.*

The gravamen of plaintiffs' complaint is that the 1869 and 1870 statutes "took ownership interests in the subject land that belonged to the plaintiffs without paying just compensation," in violation of the Takings Clause. They allege that the removal of restraints on the alienation of Indian lands in the 1869 act deprived plaintiffs of their "perpetual interest in . . . ownership." "[T]hrough" the 1870 act creating the Town, the Commonwealth also "transferred the common land of substantial portions of the subject land" to the Town, which sold "[a]pproximately three thousand acres of the subject land" at an unspecified later date. "Between 1870 and the present date," plaintiffs conclude, most of the subject land promised to the tribe in perpetuity has been conveyed to non tribal members without the consent of all tribal descendants.

Plaintiffs seek the return of "every portion of the subject land which is claimed, held, occupied, and/or used" by defendants, "with the exception of any substantial building structures and any other structures of improvements that serve a critical role in state or town operations." They also seek fees for the use of land so held or used and just compensation "for the ownership interests in the subject land that were taken from the plaintiffs in 186[9] and 1870." They do not seek the return of land held by private parties.

On May 6, 2009, after a hearing on the Commonwealth and Town's separate motions to dismiss, the district court granted the motions and dismissed plaintiffs' complaint for lack of jurisdiction. See *Bingham I*, 2009 WL 1259963, at \*1-2. It held that plaintiffs lacked standing to sue irrespective of whether the deeds conveyed lands to the South Sea Indians as a tribe or to individual members. *Id.* at \*1. Plaintiffs did not represent the tribe and thus could not sue on the tribe's behalf. *Id.* at \*1-2. Even if the deed conveyed rights to individual tribal members, plaintiffs failed to identify individual ancestors who had actually inherited property under the deeds or to otherwise trace their interest through successive generations. *Id.* at \*1.

On July 2, 2009, the district court denied plaintiffs' motion for reconsideration. See *Bingham II*, 2009 WL

JOHN A. PETERS JR  
315 MONOMOYSCOY ROAD  
MASHPEE, MA. 02649  
508 246 4890 ~ jimpeters@cape.com

Dear Tribal Council,

I have reviewed your proposed amendments to the MW Community Development Corporation and it saddens me to realize how short sighted your understanding of progressive Nation building is, that your vision for the future of this tribe is, restricted to what you can control.

Please be advised a preponderate conclusion in studies conducted on Tribal Economic Development is the need to **separate the political entity from the business at hand**. Successful business is accomplished through decisions based on “dollars” and “sense”, rather than political ploy

From what I see this Tribe is heading down a path for social and economic collapse and all you appear to be concerned about is who is in charge or who gets paid first. You're power struggles, infighting, misguided priorities and obvious lack of vision and experience in governmental leadership is blatant. You are hindering the progress of this tribe and you need to get your priorities in order.

**My words are not about my ego or yours, it's about what's in the best interest of this Tribe!**  
We need to develop Tribal institutions that will provide sustainable jobs and livelihoods for our people and for future generations to come. We are at the infant stage and need to set aside our personal agendas and do what's right for the tribe in the long term.

No single group, elected or appointed can physically or mentally control all of the functions of the tribe. Attempting to control everything simply bottlenecks the potential, and nothing gets done. We don't have enough time in the day, experience in all of the topics or the wherewithal to succeed following your chosen path.

It appears one of **the main issues** cited by the Council is **about disposition of land**, who gets to buy and sell land. From my perspective as a former committee member and participant drafter, land was included in the **tool box** of the CDC as it is generally required to accommodate a business and provides the basis of essential collateral for outside investment.

I don't think buying and selling property was considered a main objective of the committee, though it could be if that is a need of the tribe, probably in concert with the Housing Authority, but that is all speculation on what could be if the tools are in place to make it happen.

My objection to the Council having control of business land transaction is just that, it about decisions based on business principles not political ploy.

I make these disparaging analogies not so much on the fact that at least half of the seated Council, a few years ago, voted away the rights to our deeded ancestral lands, for nothing in return. More so to incidence, such as, when some tribal official spoke out of school at the spring town meeting and consequently prevented a tribal member an opportunity to be compensated for putting their land in town conservation . To cover that folly the Tribal Council voted to borrow \$165,000 @ 16% or \$25,000 a year in interest, with no return on investment strategy for this property. Next year when the interest is due, the tribe will have to borrow to pay the interest, on the interest and so on.

The main reason Economic Development Corporations and other entities such as Housing Authorities are created is to first separate politics from business, build capacity to develop and manage essential definable functions for the tribe and, to limit the tribe's exposure to liability while creating asset accumulation and protection.

**In our case the Tribal Council has exposed the tribe's limited asset base to so much debt that a tribal business would need to establish some autonomy from Tribal Council jurisdiction** such that it would limit its exposure to existing debt, and be able to portray itself as a viable, creditworthy entity, capable and attractive for potential business partnerships and joint ventures.

It's been a number of years that the Tribal Council has struggled with delegating such authority, and it really disturbs me that an attainable, diverse Tribal Economic Development strategy is not a main priority of our elected leadership.

We have very high unemployment, homelessness, drug addiction, crime, depression and an array of other social ills that all stems from poverty and hopelessness. Our people need sustainable opportunities, which you are not allowing to happen.

Remember , you are there to serve the people; that you are accountable to us, that there is no place for egos or control issues; it has to be what's in the best interest of the tribe.

All My Relations

Jim Peters

2011-11-20

Mashpee, Massachusetts was the sleepy town that American historians by-passed for many Generations. It was governed by the Wampanoag people from 1834-1976, when suddenly An influx of non-natives changed the voting score and the natives were voted out of office Or were fired by the new power in order make room for the newcomers The Wampanoag people became complacent and withdrew from the business of Participating in the political arena.

As the Town ceased to be an administrative forum for the tribe, it evolved in an independent administrative body to support the needs of the Mashpee Wampanoag people. Under the leadership of Amelia Bingham, the Tribe was incorporated as a non-profit Organization with the General Tribal meetings remaining the decision making process for The tribe with the business matters conducted under the auspices of the Mashpee Wampanoag Tribal Council, Inc. which was incorporated in 1973 as the administrative arm of the Tribal government for exercising legal, fiscal and managerial services for the tribe.

THE MISSION OF THE MASHPEE WAMPANOAG INDIAN TRIBAL COUNIL, INC. :

- (1) To seek social and economic resources for the Tribe and it's delegates
  
- (2) To assist in the quest for Self-Determination and preserve the Tribal history, Culture and lands.

The Tribal Council is a non-profit corporation under Chapter 180 of the Massachusetts General Laws and exempt Section 501 (c3)

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BIA-ERO  
REGIONAL DIRECTOR

Contrary to the vote by our Tribe the present Council officers have join forces with Malaysian Investors who now dictate actions taken by the Wampanoag leaders that are corrupt and not in the Best interest of the tribe. Although the B.I.A directors have been advised of illegal actions here in Mashpee, there have been no reactions or responses or investigation by your office.

The Tribal members thought that the B.I. A. would make an attempt to come to Mashpee and Investigate our situation. The I.R.S. was also advised of financial misconduct.

We as Tribal members thought that the Federal government would protect our Federally Recognized Tribe.

Most of the employees in The Tribal headquarters are relatives of the Chairman with extremely high Salaries including his wife. Many without the qualifications to serve in the positions that they occupy. Federal funds also have been transferred to pay salaries until a new loan from the investors was Received. We as a tribe, without a vote on loan applications to the foreign investors will be Charged for the millions of dollars borrowed that do not benefit our tribe, rather for the benefit Of the present officers of the Tribal Council. Families, lawyers and friends.

No reports are made to our members as to where all the millions are allocated.

The chairman receives a large salary as the Tribal Chairman as well as a salary as the Chairman Of the Casino Commission. And all expenses for each, as well as for four security guards that are There only for show, as he hires the Town of Mashpee Police force when he needs protection. .

Please be advised that it is not in the best interest of our tribe that the LAND IN TRUST BE APPROVED BY THE FEDERAL GOVERNMENT AT THIS TIME. DUE TO THE ATTACHMENT OF OUR TRIBAL OFFICERS TO FOREIGN INVESTORS WHO HAVE CONTROL OF OUR TRIBAL BUSINESS.

AGB.2

Sincerely



Amelia G. Bingham: (Original incorporator of the Mashpee Wampanoag Tribe)

Phone 508-477-1765  
cell 702-281-1488

## **Responses to Comments on the Final EIS**

The Department received comment letters from eight agencies and interested parties following issuance of the Final EIS on September 5, 2014. At the Department's discretion, three letters were accepted that arrived after the close of the 30-day waiting period. During the decision-making process for the Proposed Action, all comment letters on the Final EIS were reviewed and considered by the BIA and are included within the administrative record for this project. These annotated letters are provided below, and responses to specific comments follow.

## Responses to Specific Comments on the Final EIS

### 1. U.S. Environmental Protection Agency (EPA)

**COMMENT EPA.1:** The FEIS mentions that wetland creation is intended onsite to address/mitigate for watershed based impacts. Figure 8.2-16 depicts some potential mitigation options. Further investigation of suitable sites is needed to avoid impacts to forested upland habitat that should otherwise be protected or preserved.

**RESPONSE EPA.1:** The referenced wetland creation work is proposed as mitigation for direct impacts to wetlands and other waters of the U.S. associated with the proposed off-site transportation improvement work. The details of the wetland creation plan will be developed in consultation with the Corps and EPA under Section 404 of the U.S. Clean Water Act, and with MassDEP and the Taunton Conservation Commission under Section 401 of the Clean Water Act and Massachusetts Wetlands Protection Act. The evaluation of wetland creation sites is ongoing, and this concern will be included in the evaluation of potential mitigation sites.

**COMMENT EPA.2:** Section 8.21.4.1 of the FEIS addresses past wetland fills and mitigation associated with the Liberty & Union Industrial Park Authorities. EPA notes with interest that some wetland mitigation sites that were permitted were never constructed.

**RESPONSE EPA.2:** Taunton Development Corporation owns and manages the Liberty & Union Industrial Park (LUIP). Certain approved elements of the LUIP that would have involved the discharge of fill material in wetlands were not in fact constructed. As a result, those proposed wetland mitigation sites that were permitted commensurate to those unbuilt elements have not been built to date.

**COMMENT EPA.3:** The FEIS Response to Comment 1-8.8 is not correct. There is now and In-Lieu-Fee mitigation program available in Massachusetts.

**RESPONSE EPA.3:** Comment noted.

**COMMENT EPA.4:** EPA is concerned that the section of the FEIS on secondary and cumulative impacts is based largely on assertions about available capacity in the region (in terms of the number of unemployed people and the amount of vacant housing) rather than analysis. Other studies, such as the one Spectrum Gaming Group did for the Commonwealth of Massachusetts, have projected high turnover rates in certain job categories, such as unskilled, entry-level positions. At a minimum, the implications of this projection in terms of growth should have been evaluated.

**RESPONSE EPA.4:** The socio-economic induced growth analysis was based on factual information, including census data, employment data, trip to work data, and housing data, as well

as research done for other casino projects. BIA's analysis was based on reasonable conclusions made by professional socio-economists.

As stated in FEIS Section 8.20.31, the Preferred Development is expected to create approximately 3,500 jobs directly on the project site and an additional 1,540 jobs indirectly within Bristol and Plymouth Counties. As described in Section 8.16.2.1, the majority of the employment at the Preferred Development would be in the food and beverage, gaming, recreation, and hotel sectors, which would not require specific skill sets that could not be obtained through basic employee training. The Tribe will implement a recruitment program and has committed through the Intergovernmental Agreement with the City of Taunton and to employ Taunton residents and to report semi-annually on city hiring.

Section 8.16.2.1 of the FEIS also reports that the homes of workers filling Preferred Development jobs are expected to be dispersed widely throughout Bristol and Plymouth counties and beyond. The Tribe expects that over 75 percent of the workforce will live within 20 miles of the Project Site, with a majority of the workforce living within Bristol and Plymouth Counties, and that most of the additional employees will come from Norfolk County, MA, and smaller portions of Providence, Bristol, and Newport Counties, RI. The anticipated commuter shed is consistent with U.S. Census Bureau journey-to-work data which shows the average travel time to work for persons living in the City of Taunton, Bristol County, and the combined Bristol and Plymouth County area (a weighted average) all to be between 26 and 27 minutes.

Unemployment in Bristol and Plymouth Counties remains at 7.1 and 5.8 percent, respectively, with over 20,000 unemployed in Bristol County and over 15,000 in Plymouth County.<sup>1</sup>

As reported in FEIS Section 1.16.2.2, the combined 2010 population of Plymouth and Bristol Counties was approximately 1,043,204. This represented an increase of 3.1 percent from 2000.

As shown in FEIS Table 7.16-2, there was an 8.5 percent vacancy rate in the total housing units in the two counties. With total housing units, this equates to approximately 36,609 vacant housing units.

As discussed in Section 8.20.3.1, earlier studies on the impact of Tribal casinos were reviewed to help estimate the number of hires from outside the area that were likely to relocate to the area to work at the casino in Taunton. The study cited, done by E.D. Hovee & Company, LLC in 2006<sup>2</sup>, was done for the proposed Cowlitz Tribal Casino, and looked at a total of four casinos (including Cowlitz) with a range of employees from 1,200 to 3,150. The casinos examined were located in urban and rural areas. The study found that between five and 25 percent of employees relocated to accept casino employment. For its analysis of the Cowlitz Casino, the study used a median value of ten percent, based on the number of management jobs expected, the relatively high level

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<sup>1</sup> Massachusetts Executive Office of Labor and Workforce Development. <http://www.mass.gov/lwd/economic-data/labor-force/labor-forceunemployment-rates.html>.

<sup>2</sup> E.D. Hovee & Company, LLC. 2006. "Cowlitz Casino Project: Socioeconomic Assessment" for Cowlitz Indian Tribe Trust Acquisition and Casino Project DEIS.

of unemployment in the area around the Cowlitz Casino, and the willingness of employees to drive relatively long distances to get to work. The Cowlitz Casino is located in a less populous study area than the Preferred Development (478,600 for the Cowlitz study area compared to over one million for the Preferred Development), but had a comparable number of employees (3,150 for Cowlitz and 3,500 for the Preferred Development) and a similar unemployment rate of 6.5 percent in its study area, making it somewhat analogous to the Preferred Development.

As discussed in FEIS Section 8.20, non-local hires would be expected to produce a demand for up to 350 housing units in the Bristol and Plymouth County area. This estimate was based on ten percent of employees moving to the area. As 350 added households represents less than two percent of the existing vacant housing stock in the area, the supply of vacant housing can reasonably be expected to accommodate any in-migration that may be attributable to the proposed project. Were the high end of in-migration estimates from the Hovee Study used (25%), the demand for housing would be 875 housing units, representing 2.4% of available housing.

One would expect that to the extent casino workers built new homes, they would more likely be built by the higher income wage earners in management positions at the casino. Conservatively estimating that these represent 15 percent of the casino workers and that all would come from outside the study area, that would represent 525 persons. If all were to construct new homes as opposed to purchasing existing homes, that would represent just over two percent of the housing units in Taunton and well less than one percent of the over 430,000 housing units in Bristol and Plymouth Counties.

EPA cites the concern that high turnover in unskilled, entry-level positions casino jobs could result in greater in-migration. While this may be true, it would be expected that if these types of lower-income jobs did turn over, they would be filled by others having similar low-income jobs, hoping to earn higher pay at the casino. These persons would be less likely than those with higher paying management jobs to construct new homes. Rather, it would be expected that they would rent or buy existing housing units.

Additional research has been done to estimate the amount of growth that might occur as the result of the Preferred Development. A study was done by the Rappaport Institute at the Harvard Kennedy School of Government to assess the potential impact of casinos in Massachusetts that looked at county-level impacts of Indian-owned casinos.<sup>3</sup> The study compared counties that host a casino with counties that do not. It looked at 365 Indian casinos in 156 different counties in 26 different states. The authors found that between 1990 and 2000, the population of counties with casinos grew about five percent faster relative to similar counties that did not have a casino. High-population counties (those with greater than 55,000 residents in 1990), which would include Bristol and Plymouth Counties, grew eight percent faster relative to similar counties

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<sup>3</sup> *The Casino Gamble in Massachusetts, Full Report and Appendices*, by Phineas Baxandall, Rappaport Institute for Greater Boston and Bruce Sacerdote, Dartmouth College, January 13, 2005.  
<http://www.hks.harvard.edu/content/download/68820/1248090/version/1/file/casino.pdf>

without a casino. Population growth in “big slot” counties (defined as those with more than 1,760 slot machines), was not statistically different than growth in similar counties without casinos. Notably, New London County, home to the destination resort Foxwoods and Mohegan Sun Casinos that the Preferred Development is modeled after to some extent, grew by only 1.5 percent, over the decade from 2000 to 2010, three percent below the state average.

As reported in FEIS Section 7.16.2.2, the population of Bristol and Plymouth Counties grew by 35,704 persons in the period between 2000 and 2010, an increase of 3.5 percent.

In summary, there is data to support the conclusion that construction of the Preferred Development is unlikely to result in induced population growth having significant environmental impacts. Some previous studies do indicate that casinos are associated with faster population growth. The data vary however substantially as to the rate of that growth. While some new employees may move to the area to work at the casino and some percentage of those may choose to construct new homes, the number is relatively small and would be dispersed over the study area.

**COMMENT EPA.5:** EPA disagrees that the preferred development is not analogous to the South Coastal Rail project, which the FEIS states is likely to result in substantial induced growth in housing. Both are large projects with the potential to induce growth; the projected ridership for South Coast Rail (5,240-5,670) is not much larger than the expected number of new employees in this project (3,500).

**RESPONSE EPA.5:** The BIA respectfully disagrees. Based on the numbers above, the South Coast Rail Project (SCRCP) ridership is expected to be 50 to 62 percent greater than the number of employees projected for the casino. Further, of the 3,500 employees at the casino, it is estimated that only approximately ten percent or 350 are likely to be those that relocate to the study area.

The Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) for the SCRCP states that, “expanded and improved transportation access would increase the potential for new households to locate in the region. Some households are likely to be attracted to new employment opportunities. Other households would be attracted to the relatively less expensive housing markets farther south of the Greater Boston area.” The proposed rail would connect job markets in Boston with areas having relatively low cost housing in the southeast part of the state. The ability to conveniently access jobs in Boston is the key factor that would attract people to relocate from areas of relatively high cost housing close Boston to the southeast region.

As discussed in the response to the preceding comment, while the casino will create new jobs, the majority would be in the food and beverage, gaming, recreation, and hotel sectors. These are not the types of positions that are likely to induce significant numbers of people to relocate to obtain. Rather they will likely be filled by locally un-employed and under-employed residents.

**COMMENT EPA.6:** EPA believes that the analysis of cumulative impacts is too narrow, since the period of analysis is just eight years, with an end date of 2022. By contrast, the time horizon

for traffic analysis is 2032, which we believe would better serve as the timeframe for the entire analysis. A common temporal scope for the consideration of cumulative impacts in an EIS is the life of the project.

**RESPONSE EPA.6:** The BIA believes that consideration of cumulative impacts in the FEIS was done appropriately given the particular circumstances of the project. As EPA points out, traffic, being the impact of most significance, was modeled to the year 2032. Traffic is able to be analyzed because the impact of the casino is known and future traffic can be projected by applying a standard background growth rate. It is nevertheless only a best estimate as any number of factors can affect traffic in unforeseen ways. For example, the recent recession resulted in many areas experiencing decreases in traffic.

The other primary longer-term impact is that of water and sewage demand. The BIA notes that the FEIS considered water supply impacts out to the year 3030, the most distant year for which service projections were available.

Impacts from the Preferred Development for other categories of impacts are much less significant, tend to be “one time impacts” associated with construction and not impactful on an ongoing basis as are traffic and water-related impacts. They are also much more problematic to model. For these reasons, BIA believes that an analysis of these impacts would necessarily be so speculative and the results so subject to variability based on unknown future events as to make the analyses unreliable.

Wetland impacts provide a good example of the difficulties encountered in attempting a long-term analysis of cumulative impacts. The Preferred Development is expected to impact approximately 1.1 acres of wetland at the Route 24/140 Interchange. These impacts will be mitigated for under local, state, and federal wetlands permitting programs that will require restoration, preservation, and creation of new wetland to offset losses. To attempt to analyze the cumulative effect of the casino’s minor wetland impacts in combination with unknown levels of wetland impact, occurring in unknown locations at unspecified times would be extremely difficult. The BIA is comfortable with the assessment of impacts that looked at other known projects of significance in the area.

Other impact categories, e.g., stormwater, rare species, noise, cultural resources, etc., for which the casino’s minor impacts would be considered in combination with unknown impacts well into the future pose similar challenges, and would likely not yield reliable results.

**COMMENT EPA.7:** EPA disagrees with the approach in which only those projects being evaluated for cumulative impacts are those that have recently been or are currently under Massachusetts Environmental Policy Act (MEPA) review. This is too limiting since there may be projects being planned that are not captured by MEPA.

**RESPONSE EPA.7:** In response to this comment, further research was undertaken by contacting the regional planning agencies and local town planners in the surrounding

communities. The table below summarizes the findings from those communities that provided information.

<b>Town</b>	<b>Projects</b>
North Attleboro	<p>The town has various residential projects in the permitting phase that would add up to about 500 new residential units, mostly single family. Other potential projects are all infill projects with no current specific plans:</p> <ul style="list-style-type: none"> <li>• Route 1 Redevelopment</li> <li>• Downtown Redevelopment</li> <li>• Northern Route 152 Redevelopment</li> <li>• Mall Redevelopment</li> </ul>
Mansfield	<p>There is a proposed adaptive reuse project for “the chocolate factory.” It is being proposed to turn this building into 130 units of rental apartments and 35,000 sf of commercial space.</p>
Easton	<p>The August 2014 Master Plan identifies areas with growth potential, but does not have any specific plans proposed.</p>
Norton	<p>No Data Provided</p>
Raynham	<p>No Data Provided</p>
Taunton	<p>There is an approved commercial plaza to be built on the corner of Hart and County Streets., across from the new CVS. In addition, Myles Standish Industrial Park Phase V – Dever Drive was recently approved by the planning board for seven industrial lots.</p>
Berkley	<p>No Projects</p>
Dighton	<p>No Projects</p>
Rehoboth	<p>Small restaurants and some large solar farms approved; no projects over 50,000 sf proposed.</p>
Attleboro	<ol style="list-style-type: none"> <li>1. Attleboro Sports Complex off Commerce Way: Includes a 212,000-square-foot building and a hotel – approved May 2014</li> <li>2. Renaissance Station on Wall/So Main Street: 80 unit residential complex with commercial on the ground floor – approved April 2013 (nearly completed)</li> <li>3. Riverfront Drive: installation of a park and roadway between Wall and Olive Streets that will open up many lots for transit-oriented development – approved April 2014 (under construction)</li> </ol>
Seekonk	<p>No Projects</p>

Swansea	A new Toyota dealership is under construction near the intersection of Routes 6 and 136, just off Exit 2 on I-195. Nothing similar is under consideration at the moment. Smaller commercial projects include a new 120-seat restaurant, near the Toyota dealership, which recently opened, and the permitting of a 7,500 sf water processing plant on Route 6, to the east of the restaurant, which has yet to begin construction. Swansea also recently approved the demolition and reconstruction of a McDonald's restaurant near the Target plaza on Route 6. Two large residential subdivisions were approved and are under construction: Touisset Point, a 37-lot project on Barton Avenue near the state line with RI, and High Hill Estates, a 49-lot project off Nike Site Road.
Fall River	See Freetown below.
Freetown	Freetown, in partnership with Fall River, is working to support a potential new warehouse just off Exit 8B of Route 24. The facility would be one million square feet. Freetown has also approved a 90,000 sf recycling facility.
Somerset	A mixed-use redevelopment vision was created for Slade's Ferry Crossing in 2010 and zoning was amended in 2012. A final plan depends on land transfer from MassDOT.
Lakeville	No Data Provided
Middleboro	No Data Provided
Bridgewater	No Projects Identified
West Bridgewater	No Data Provided
Brockton	No Projects Identified

As is shown, the projects listed are all relatively small and not expected to have, by themselves, significant regional impacts. Presumably, all will be subject to local review and must comply with applicable laws and regulations, such as the Massachusetts Wetlands Protection Act, and thus would be expected to have only minor impacts. The most significant project identified was a proposed new warehouse/distribution center in an industrially zoned area off of Route 24 in Fall River and Freetown, approximately eight miles from the proposed casino development. The new facility is expected to provide up to 500 new jobs for the region. This project was not specifically included in the future traffic analysis; however, the traffic analysis did include general background growth intended to capture increases in development over time. The project's other impacts are not yet known, so could not be added cumulatively to the casino's.

The BIA recognizes that growth will occur in the region and that over time the casino will in some ways, primarily through traffic and economic impacts, likely contribute to cumulative impacts that occur due to general growth in the region. The casino's off-site impacts, however, are largely confined to traffic impacts for which the Tribe is undertaking the mitigation measures described in the FEIS. It does not appear that other impacts from the casino will contribute significantly to cumulative impacts.

**COMMENT EPA.8:** FEIS Section 8.8.1 states that “the use of on-site wastewater treatment has not been investigated”; however the Inter-municipal Agreement (Section 10.A) with the City of Taunton states that “the Tribe shall investigate developing on-site wastewater reclamation capacity to reduce sewage flows to the City’s publicly owned treatment works facility.” Further clarification/explanation of this issue should be provided.

**RESPONSE EPA.8:** Since the IGA was signed, the City of Taunton has re-evaluated future flow projections. The revised flow projections include 0.225 MGD for the proposed project allocated under the category “Planned Development,” as shown in the BETA Group’s April 4, 2014 letter that is provided in Appendix F of the Final EIS. Most importantly, flows from the proposed project are now allocated within the current WWTF annual discharge limit of 8.4 million gallons per day (mgd) and not dependent on future plant expansion.

The Final NPDES permit for the Taunton Wastewater Treatment Facility (WWTF) has not been issued. However, in accordance with the BETA Group’s April 4, 2014 letter, provided in Appendix F of the Final EIS, process upgrades are anticipated to accomplish nitrogen removal at the WWTF. The letter further states that based on the wastewater concentrations anticipated to be generated by the proposed development, pretreatment for nitrogen removal will not be required prior to discharge into the Taunton collection system.

For these reasons, the City and its consultants have determined that the development of an on-site wastewater treatment is unnecessary and less environmentally desirable than the option of connecting the casino and ancillary facilities to the Taunton WWTF.

**COMMENT EPA.9:** The FEIS statement that the project is within the City of Taunton’s allocation of capacity of the existing wastewater treatment plant (8.4 mgd) as part of “Planned Development,” and therefore is not dependent on expansion of the treatment plant, should be documented. A memo issued by the Beta Group on January 14, 2014 indicated that a flow increase was required to accommodate this flow. This discrepancy is of concern as it is not clear a flow increase for this facility will be approved.

**RESPONSE EPA.9:** The BETA Group’s January 14, 2104 letter is superseded by an April 4, 2014 letter that is provided in Appendix F of the Final EIS. The April 2014 letter states: “In regard to future flow allocations through 2025, based on existing known proposed development and infill the average annual flows are not expected to exceed the permitted capacity of 8.4 mgd. The average annual flow is 7.1 mgd and the planned additional flows and infill allowances are estimated at 1.25 mgd for a total of 8.35 mgd.” The letter references attached Table 4.7 which itemizes the planned additional 1.25 mgd and explicitly includes 0.225 mgd from the proposed casino.

**COMMENT EPA.10:** The FEIS does not include commitment to baseline water quality monitoring of the Cotley River that the EPA strongly suggested in earlier comment letters. Reference to compliance with MassDEP’s Stormwater Management Standards and EPA National Pollution Discharge Elimination System (NPDES) General Permit as efforts that are

“adequately protective of water supply” misses an opportunity to adopt measures such as low-impact development (LID) techniques to further enhance the project stormwater design.

**RESPONSE EPA.10:** In addition to compliance with NPDES, the proposed stormwater management system for the Project Site under Alternative A incorporates LID techniques and structural measures providing stormwater quantity and quality management based on MassDEP’s “Structural BMP Specifications for the Massachusetts Stormwater Handbook, Volume 2, Chapter 2.” Collectively, these Best Management Practices (BMPs) will function to avoid and minimize potential adverse water quality impacts to the Cotley River and adjacent wetlands and waters of the U.S. The proposed stormwater management BMPs are depicted on Figures 8.3-1 and 8.3-2 and described in Table 8.3-1 of the Final EIS.

**COMMENT EPA.11:** EPA encourages the Tribe to incorporate contract specifications that would require construction vehicles and equipment to include retrofit control equipment (oxidation catalysis or particulate filters installed on the exhaust of the diesel engine).

**RESPONSE EPA.11:** The BIA agrees with this recommendation, and encourages the Tribe to do so.

**COMMENT EPA.12:** There is a sizable minority and low-income (Environmental Justice) population in the Greater Taunton area that could be indirectly affected by the casino’s operation.

**RESPONSE EPA.12:** The study area for the environmental justice analysis provided in the FEIS encompasses the area most likely to be affected by the BIA’s proposed action and considers the area where potential impacts resulting from construction and operation of a destination resort casino at the Project Site could occur. As described based on 2010 U.S. Census data and the 2006-2010 American Community Survey in Section 7.17.2 of the FEIS: As a whole, the study area does not exceed the proportions of minority population or population living below the poverty level of Bristol County, and is therefore not considered a potential environmental justice area. However, as Census Tract 6141.01 Block Group 3 exceeds the proportions of minority population and population living below the poverty level in Bristol County, this census tract is considered an Environmental Justice Community.

As described in Section 8.17.1 of the FEIS, none of the Development Alternatives described for the Project Site in Taunton are expected to result in any disproportionately high and adverse effects on minority and low-income populations. While the Preferred Alternative will induce traffic, traffic impacts in this area will be mitigated. Notably, several intersections along Route 140 within Census Tract 6141.01 Block Group 3, including Mozzone Boulevard, Erika Drive, and High Street (Hart’s Four Corners) will be improved as part of the mitigation program, thus improving traffic conditions within the Block Group. These improvements would mitigate any undue traffic burden the Preferred Alternative could cause to the nearby Environmental Justice Community. As described in Section 8.17.2, the Preferred Alternative is expected to have a

positive impact on the local economy and local low-income communities, as it will increase the market demand for labor and the number of jobs available.

**COMMENT EPA.13:** EPA suggests that the project's public involvement strategy be enhanced going forward to include more outreach tools such as expanded flyer distribution through areas further than the immediate area affected by construction and operation of the project. The developers may want to expand the geographic scope of any planned meetings to include areas identified as low-income and minority in order to update those communities of the status of the project. Thought should be given to promote the inclusion of key stakeholders like members from community groups, social organizations, health care workers and clergy in the project outreach process. Finally, a critical issue is making sure that key materials (flyers, fact sheets, online information) are translated into relevant languages.

**RESPONSE EPA.13:** The Tribe is committed to maintaining a transparent and robust public outreach program and will comply with all applicable regulations with regard to its public outreach efforts.

To date, the Tribe has conducted extensive outreach and gone beyond the minimum requirements of NEPA and MEPA. Extensive outreach occurred during Scoping and Draft EIS review periods in accordance with NEPA regulations. Following BIA's publication of the Notice of Intent (NOI) in the *Federal Register* on May 31, 2012 (77 FR 32123), letters including the details of how to participate in the scoping of this action were sent directly to officials at federal agencies, agencies of the Commonwealth of Massachusetts, regional bodies, the City of Taunton, and Town of Mashpee, elected representatives, and federally-recognized Indian tribes in the region. Because of the nature of the Proposed Action, elected officials and planners from the towns bordering Taunton were also sent invitations. The Tribe also published legal notices announcing the scoping meetings in two local newspapers, the *Taunton Daily Gazette* and *Cape Cod Times*. The Scoping Meetings, held at both Mashpee High School and Taunton High School, did not conclude until everyone interested had the opportunity to present all of their comments.

A similar process occurred following the EPA's publication of a Notice of Filing in the *Federal Register* on November 22, 2013 (78 FR 70041). Letters describing options for obtaining and commenting on the DEIS were sent to Federal, Tribal, State, and local agencies, as well as all interested parties who offered comments during Scoping. Hard copies of the DEIS were sent to the government offices of the City of Taunton, Town of Mashpee, and their local libraries for public access. Legal notices were published in the *Taunton Daily Gazette* and *Cape Cod Times*, and public hearings were held at both Mashpee High School and Taunton High School. The comment period was set to expire on January 6, 2014; however, the BIA voluntarily extended the comment period an additional 11 days through January 17, 2014 to allow commenters additional review time.

In addition, the Tribe organized and/or attended several local community meetings commencing in early 2012 to address any questions concerning the casino project. The meetings varied from

a community meeting/open house with 200 residents in attendance to smaller “Community Conversations” with local residents and businesses. This significant community outreach continues as the Tribe remains an active member of the Taunton Area Chamber of Commerce and the Taunton Rotary Club.

## **2. Massachusetts Department of Environmental Protection (DEP)**

**COMMENT DEP.1:** According to the Mashpee Water District, Mashpee Parcels 6 (Government Center) and 8 (Tribal Housing) are connected to municipal water; however, the EIS states that water is supplied by an on-site well. This should be verified, and if supplied by a private well, the Tribe should determine if it meets the definition of a Public Water Supply (PWS) under the Safe Drinking Water Act and contact the EPA for compliance assistance. The same analysis should be done for Mashpee Parcel 5 and any other parcel that receives enough use to potentially be classified as a PWS.

**RESPONSE DEP.1:** The parcels are connected to municipal water.

**COMMENT DEP.2:** The Tribe has cooperated with the Commonwealth under the Massachusetts Clean Waters Act M.G.L. c. 21 sections 23 through 52 and the associated regulations and recently received a Groundwater Discharge Permit which expires in 2020. The Commonwealth requests a commitment to continue to comply with the Clean Waters Act and associated regulations.

**RESPONSE DEP.2:** The Tribe will comply with all applicable laws and regulations with regard to the Groundwater Discharge Permit.

**COMMENT DEP.3:** The Commonwealth suggests that the Tribe contact UMass Cranberry Station in Wareham for advice on Best Management Practices to avoid negative environmental impacts to the abandoned bogs on Mashpee Parcel 9 (Cultural/Recreational Land, adjacent to Government Center).

**RESPONSE DEP.3:** The Tribe has proposed no development on Parcel 9, which is not accessible via existing roadways. Therefore, no impacts to the former cranberry bog are expected. Should development be proposed on that parcel be considered in the future, the Tribe will seek expert advice.

**COMMENT DEP.4:** The Commonwealth requests that the Tribe commit to remove all remaining solid waste from Tribal lands for off-site disposal.

**RESPONSE DEP.4:** The Tribe intends to remove solid waste, if any, from the proposed casino site once the Tribe has purchased the site.

**COMMENT DEP.5:** MassDEP encourages the proponents to consider waste reduction and source reduction practices by implementing and/or contracting for recycling, composting, and other waste diversion services such as using source separated materials as fuels.

**RESPONSE DEP.5:** The Tribe manages waste disposal and recycling at all tribal facilities with the goal of waste reduction. Section 8.10 of the Final EIS describes waste management methods proposed for casino facilities in Taunton, which reflect those in place and planned in tribal facilities in Mashpee.

### **3. Massachusetts Department of Marine Fisheries (DMF)**

**COMMENT DMF.1:** FEIS Response to Comment 1-9.1 discusses total estimated water use but does not address the specific temporal concerns raised by DMF about the additional stress to the Assawompset Pond Complex during critical spawning and juvenile development periods for the diadromous fish species of the Cotley River. The proponent should provide further information estimating anticipated water usage during the periods when water levels are most critical to river herring passage (mid-March to mid-November).

**RESPONSE DMF.1:** The project will have no short-term or long-term impacts to diadromous fish species potentially using the Assawompset Pond Complex or Cotley River during spawning and juvenile development periods. More specifically, under the MassDEP Water Management Act Registrations and Permits, the City of Taunton is currently authorized to withdraw 7.29 million gallons per day (MGD) from the Assawompset Pond Complex. As presented in Table 7.7-1, Average Day Raw Water Withdrawals by Community, the City of Taunton's water demand has been generally decreasing over time. From 2007 through 2013, the City withdrew an average of 6.321 MGD from the Assawompset Pond Complex. This leaves 0.969 MGD of available water supply from this source with an additional 0.20 MGD available from the newly installed Dever Well, for a total of 1.169 MGD of available supply capacity before reaching the Water Management Act withdrawal limit. The proposed project has an anticipated average water demand of only approximately 0.309 MGD; therefore, the City of Taunton would still have about 0.860 MGD of authorized withdrawal remaining under its permit. Furthermore, the Proponent anticipates that water withdrawals are generally consistent year-round and will not be subjected to seasonal spikes typical of municipal water use. During peak water usage periods (summer months), water withdrawals are still substantially below permit limits.

Further, water withdrawals within the Assawompset Pond Complex should not affect water levels or fish spawning within the Cotley River. The Assawompset Pond Complex is not hydrologically connected to the Cotley River. The Assawompset Pond Complex is located within a watershed of the same name (HUC12:010900040202 Assawompset Pond), while the Cotley River is located within the Cotley River-Taunton River watershed (HUC12:010900040204). Both watersheds outfall into the Taunton River; the Assawompset Pond Complex's major outfall is the Nemasket River, which flows into the Taunton River approximately six miles (nine Taunton River miles) east of the confluence of the Cotley River and the Taunton River. Further,

the Tribe will be using closed water and wastewater systems such that no treated water or contaminated water would be discharged into the Cotley River onsite.

Water management permits consider environmental factors in determining allowable water limits. Using water withdrawals well below permissible levels, it is reasonable to conclude that water levels and fish populations along the Nemasket River would not be adversely affected by withdrawals.

**COMMENT DMF.2:** DMF recommends a minimum 200-foot buffer in all regions bordering the Cotley River to minimize impacts to habitat.

**RESPONSE DMF.2:** Section 8.2.1.1 of the Final EIS describes the modifications to and rationale behind the Project layout that significantly reduced the amount of work proposed adjacent to the Cotley River and preserve its riparian corridor to the greatest extent practicable. These modifications include the elimination of the proposed driveway crossing and parking lots on the west side of the Cotley River, minimizing encroachments into the vernal pool habitat, reconfiguring the water park layout, eliminating all wetlands fill on the Project Site, reducing the amount of new impervious surfaces, and eliminating the proposed bridge span across the Cotley River near Stevens Street. The buffer is proposed as shown in the FEIS.

**COMMENT DMF.3:** A new alternative that combines the environmental benefits of Alternative B (reduced water usage) and C (reduced impervious surface adjacent to the Cotley River and Barstows Pond) would provide a development plan with reduced impacts to bordering diadromous fish resources.

**RESPONSE DMF.3:** The BIA believes that the Alternatives Analysis examined a reasonable range of Alternatives that provided sufficient information on which to base this decision. The Tribe has taken significant steps to protect the water quality of Barstow's Pond and the Cotley River.

#### **4. Representative William M. Straus (WMS)**

**COMMENT WMS.1:** Any mitigation plan under any alternative must provide for the widening of Route 24 from the I-495 interchange to Route 140. This mitigation must be in place on Day 1 of operation, and an appropriate contribution must be required from the project proponent.

**RESPONSE WMS.1:** The Tribe worked closely with the MassDOT throughout the NEPA process to develop appropriate traffic mitigation measures and continues to work with them on the design of transportation improvements. Under the proposed mitigation, Route 24 Southbound will widen to three travel lanes from the Hart Street overpass to the Route 140 interchange. Section 8.1.3.4 of the Final EIS provides further details. The improvements discussed for this interchange in the Final EIS will be funded by the Tribe and completed prior to

the full opening of the casino. In addition, MassDOT is pursuing a further reconstruction of the Route 24/140 Interchange. That work will be funded through a combination of federal and state funds. A portion of the funds could come from contributions and revenues designated for transportation improvements pursuant to the terms of the Tribal-State Compact. The Tribe will design this project to the 25% level for MassDOT.

## **5. Southeast Regional Planning and Economic Development District (SRP)**

**COMMENT SRP.1:** There is no certainty that any commitments for transportation improvements have been or will be made by the proponent.

**RESPONSE SRP.1:** The Tribe has been working collaboratively with MassDOT and the City of Taunton. The IGA signed by the Tribe and the City sets out specific transportation mitigation measures. Furthermore, the Section 61 Findings attached to the Access Permit issued by MassDOT will specify the Proposed Development's mitigation measures.

**COMMENT SRP.2:** Although the report has a detailed descriptive list of intersections that might be impacted by the development of a casino, SRPEDD found no engineering statement or detailed analysis on the impacts to those intersections. The analysis should include vehicle queuing, spillback, and any other system-wide operational information.

**RESPONSE SRP.2:** All Study Area intersections listed in Section 7.1.2.1 of the FEIS were analyzed under Existing, No-Action, and Build Conditions. The levels of service for all locations were depicted in LOS Summary graphics in the Final EIS, and detailed queuing, delay, and volume-to-capacity ratios results were provided in Appendix B of the FEIS.

**COMMENT SRP.3:** The area within the Stevens Street, Route 140 and Route 24 interchange indicated curb cut spacing is very close and potential traffic demand is very high. Traffic mitigation should be provided to assist readers in understanding the critical issues.

**RESPONSE SRP.3:** All Study Area intersections listed in Section 7.1.2.1 of the FEIS were analyzed under Existing, No-Action, and Build Conditions. The queuing analysis is provided in Appendix B of the Final EIS. Through this analysis it was determined that there would not be queues spilling back into the neighborhoods on Stevens Street. The queues on Route 140 and Route 24 will be alleviated by the proposed improvements that will be completed prior to the full opening of the casino.

## **6. Town of Raynham (RAY)**

**COMMENT RAY.1:** It is possible that the impact of the proposed project on the intersection of Route 44 and Orchard Street is underestimated. Orchard Street is and will continue to be a valuable route to and from East Taunton for motorists looking to avoid congestion on Route 24

and Route 44. The Massachusetts Department of Transportation is planning a reconstruction of this intersection in the near future and contact should be made with that department.

**RESPONSE RAY.1:** The route analysis and trip distribution through Route 44 and all other routes were reviewed and approved by MassDOT. The construction at the intersection of Route 44 and Orchard Street is currently underway. Traffic calming measures are proposed in the East Taunton Neighborhood to discourage vehicles from cutting through as described in Section 8.1.3.12 of the FEIS. Capacity improvements proposed on Route 24 and Route 140 will encourage motorists to use this more direct route.

**COMMENT RAY.2:** The scope should include South Street East from Route 44 to the bridge over the Taunton River. During peak traffic periods, the segment of Route 24 from I-495 to Route 140 experiences heavy congestion and an alternate route for patrons of the proposed casino would be to exit Route 24 to Route 44 and travel to Orchard Street to South East Street. It is estimated that the South East Street Bridge over the Taunton River currently requires over \$1 million in repairs and the additional traffic would exacerbate its deterioration.

**RESPONSE RAY.2:** The route analysis and trip distribution through Route 44 and all other routes were reviewed and approved by MassDOT. The construction at the intersection of Route 44 and Orchard Street is currently underway. Traffic calming measures are proposed in the East Taunton Neighborhood to discourage vehicles from cutting through. Capacity improvements proposed on Route 24 and Route 140 will encourage motorists to use this more direct route.

**COMMENT RAY.3:** Based on the trip distribution figures presented, the project will increase traffic volumes to the intersection of Route 44 and Church Street during all peak periods. This intersection should be included in the scope.

**RESPONSE RAY.3:** The intersection of Route 44 at Church Street was included in the scope of analysis. Section 7.1.2.1 of the Final EIS provides a list of all intersections included. This intersection was analyzed during all peak hours. As shown in Figure 8.1-73 of the Final EIS, the intersection will continue to operate well at an LOS B or C during all peak hours.

**COMMENT RAY.4:** The intersection of Route 44 and Hill Street should be included in the scope. It may act as an alternate route due to future congestion at the intersection of Route 44 and Orchard Street. The increase in traffic volume may necessitate the installation of a traffic signal for this location.

**RESPONSE RAY.4:** The intersection of Route 44 and Hill Street was included in the scope of analysis. Section 7.1.2.1 of the Final EIS provides a list of all intersections included. This intersection was analyzed during all peak hours. The through movements on Route 44 will continue to operate at LOS A during all peak hours with the full development. It is not anticipated that motorists will cut through Hill Street as it comes to an end at Dean Street. Vehicles traveling on Route 44 will take more direct routes such as Route 18, Route 79, or Route 24 to access the site.

## 7. Taunton River Watershed Alliance (TRW)

**COMMENT TRW.1:** Because of the magnitude of offsite wetlands alteration associated with the Preferred Alternative build-out plan, construction of this alternative would “cause or contribute to significant degradation” of the waters of the United States,” thus violating the Guidelines to Implement Section 404(b)(1) of the Federal Clean Water Act (CFR 40 Section 230). The TRWA requests that the Tribe identifies a new “Preferred Alternative” for site build-out; i.e., that Alternative A be replaced with Alternative B or another “reduced intensity” design that avoids the need for the Route 24/140 interchange reconstruction.

**RESPONSE TRW.1:** The proposed wetland impacts at the Route 24/140 Interchange will require permitting under Section 404 of the Clean Water Act and will be reviewed by the Army Corps of Engineers for compliance with the regulations.

**COMMENT TRW.2:** Final detailed plans for wetland replication should be made available for public review and comment before the Army Corps of Engineers issues a permit for the project under the federal Clean Water Act.

**RESPONSE TRW.2:** Wetland creation plans and related details for off-site wetland impacts will be developed in consultation with the Corps, EPA, MassDEP and the Taunton Conservation Commission during the local, state, and federal permitting processes. Each of these permit applications will include a set of permit drawings depicting and describing the proposed wetland creation area in sufficient detail such that the regulatory agencies can issue their respective permits. There will be opportunity for public comment on this discrete project element during the Corps Public Notice process and other similar public notifications required under the MA Wetlands Protection Act and Section 401 of the Clean Water Act.

**COMMENT TRW.3:** Areas proposed as “wetland replication” to mitigate for wetland loss should not be used as compensatory flood storage areas. Mitigation plans for wetland loss should clearly distinguish between these functions and demonstrate that separate areas are provided. Flood storage loss from vegetated wetland fill should be compensated for in the wetlands replication area on an increment basis and filling below the 100-foot FEMA floodplain elsewhere requires separate and distinct incremental compensation. Otherwise the project may adversely impact downstream and upstream property.

**RESPONSE TRW.3:** Comment noted. The Tribe will work closely with the permit-issuing authorities to design and construct wetland replication and compensatory flood storage areas in accordance with applicable local, state and federal regulations and guidance documents.

**COMMENT TRW.4:** The creation of acres of new impervious surface as a result of project construction will generate significant volumes of stormwater runoff carrying heavy metals, petroleum, salts, chemicals and a significant sediment load. The final stormwater management plan for the project should include the following components:

- Use of “low-impact development” options;
- Use of Native species for planting in landscape designs;
- If pesticides and fertilizers will be used for site management, specific information regarding what products will be used, what amounts and how applications will be made, and measures to prevent their runoff into the river and wetlands;
- Demonstration that the total water quality generated by the project is fully treated through compliance with the Massachusetts Stormwater Regulations and Stormwater Standards per 310 CMR 10.00.

**RESPONSE TRW.4:** The Development Alternatives have been designed to make use of previously disturbed and developed land to the greatest extent possible, and the proposed layout of the casino development has been modified based on comments received through the EIS process as described in Section 8.2.1.1 of the Final EIS. Any development on the Taunton parcels will comply with current EPA NPDES General Permit for Discharges from Construction Activities and MassDEP Stormwater Management Standards.

The proposed stormwater management system for the Project Site under Alternative A incorporates LID techniques and structural measures providing stormwater quantity and quality management based on MassDEP’s “Structural BMP Specifications for the Massachusetts Stormwater Handbook, Volume 2, Chapter 2.” These BMPs will function to avoid and minimize potential adverse water quality impacts to the Cotley River and adjacent wetlands and waters of the U.S. The proposed stormwater management BMPs are depicted on Figures 8.3-1 and 8.3-2 and described in Table 8.3-1 of the Final EIS.

Landscape design on the Project Site is proposed to limit, if not eliminate the need for, the use of potable water for landscape irrigation. Irrigation area is also very limited overall in the development. The small amount of landscaping incorporated will be irrigated with stormwater captured in the large underground stormwater retention systems required for the Project.

The stormwater management system designed will also comply with MassDEP Stormwater Standards for long term operations and maintenance plans relative to pesticide use.

**COMMENT TRW.5:** The Tribe should reevaluate the need for construction of the hotel/indoor water park currently proposed for the portion of the site north of the railroad tracks. If this component of the project is retained, the Tribe should consider ways to reduce the footprint, such as replacement of the surface parking area with a multi-tiered deck adjacent to the hotel.

**RESPONSE TRW.5:** The development proposed under Alternative A is considered to most suitably meet all of the purposes and needs of the Tribe; thus Alternative A was selected as the preferred alternative. The hotel and indoor water park are expected to contribute significantly to the economic development the Tribe needs to fund tribal government programs, provide employment opportunities for members, and facilitate economic self-sufficiency and achievement of self-determination. As stated in Section 8.2.1.1 of the Final EIS, the proposed

layout of the water park facility has been redone and made smaller based on earlier comments relative to potential vernal pools and the adjoining terrestrial habitats.

**COMMENT TRW.6:** A Development Phasing Plan should be developed and implemented to avoid premature clearing associated with any component of the casino development including the water park.

**RESPONSE TRW.6:** The BIA agrees with this recommendation and encourages the Tribe to consider construction phasing carefully.

**COMMENT TRW.7:** TRWA remains concerned about whether the addition of the wastewater discharge from this project to the Wastewater Treatment Facility (WWTF) sewage load will make it more difficult for the City of Taunton to comply with whatever nitrogen limitations are ultimately included in the NPDES permit. The Tribe should identify ways to assist the City's efforts to comply.

**RESPONSE TRW.7:** The Final NPDES permit for the Taunton WWTF has not been issued. However, in accordance with the BETA Group's April 12, 2014 letter, provided in Appendix F of the Final EIS, process upgrades at the WWTF are anticipated to accomplish nitrogen removal. The letter further states that based on the wastewater concentrations anticipated to be generated by the proposed project, pretreatment for nitrogen removal will not be required prior to discharge into the Taunton collection system.

## **8. Amelia G. Bingham (AGB)**

**COMMENT AGB.1:** The last two Mashpee Wampanoag Administrations did not make any efforts to file claims in the Federal Court for Indian lands in Mashpee, Massachusetts. The land in Taunton, Massachusetts was never Mashpee Wampanoag Land.

**RESPONSE AGB.1:** This issue is outside the scope of NEPA and the Environmental Impact Statement.

**COMMENT AGB.2:** It is not in the best interest of the Mashpee Wampanoag Tribe that the land in trust be approved by the federal government at this time, due to the attachment of Tribal officers to foreign investors who have control over Tribal business.

**RESPONSE AGB.2:** This issue is outside the scope of NEPA and the Environmental Impact Statement.