Cape Pickle, LLC

Project Address: 51 Evergreen Circle, Mashpee MA 02649

Company Address: 166 Hollidge Hill Lane Marstons Mills, MA 02648

FINANCIAL HARDSHIP JUSTIFICATION

Update Following Oct 30th Hearing Discussion

November 12, 2024

SUMMARY:

The Cape Cod Commission Staff Report on Evergreen Circle Pickleball, File number 24023, dated 25Oct24, concludes that the staff supports that the project satisfies the full extent of all commission objectives, however satisfying Water Resource and Traffic objectives include the potential for mitigation fee payment.

Regarding Water Resource: A nitrogen mitigation offset payment is proposed in the staff report to achieve WR3 compliance. According to the Water Resource Technical Bulletin, this fee can be varied from $0 to a maximum of $8,290 per kilogram of nitrogen produced annually.

Regarding Traffic: A $30,000.00 Fair Share Traffic Light for the intersection of Route 130 and Evergreen Circle to, in part, satisfy objective TR3.

No other fees are proposed for all other Cape Cod Commission goals and objectives are satisfied as detailed in the 25Oct24 report.

There are valid justifications that full compliance and consistency with Cape Cod Commission Objectives are satisfactorily met without these fees, and that the probable benefits of this recreational facility significantly outweigh the potential detriments. The justification will be fully described in this document, and applying waiver and flexibility are consistent with guidelines as detailed in the RPP.

Related, Cape Pickle, LLC – the company developing this facility – has filed a financial hardship exemption request with the commission which fully details the financial hardship.

It is proposed by the applicant that the nitrogen mitigation and the traffic light fair share fees be fully waived through granting of the financial hardship exemption. The exemption will not in any manner compromise the full goals and objectives of the RPP nor the technical bulletins that quantify satisfying these objectives.

SUBSTANTIATION:

As detailed on Page 96 of the 2018 RPP, *"The Commission's review and analysis of a DRI under the RPP goals and objectives also inform its benefits/detriments analysis and determination. In considering the impacts of a development, the Commission will consider the various goals and objectives in the RPP applicable to a project in order to determine whether the project is consistent with the RPP"*.

Regarding waiver and flexibility, it further details that *"the Commission may waive full and literal compliance or consistency with any specific RPP goal or objective, or required method, applicable to a project, and otherwise allow a project to meet such goal or objective to the maximum extent feasible"* provided three things:

1) *"Such waiver will not result in substantial detriment to or substantial derogation from the purposes and values intended to be protected or promoted by such goal or objective;*
2) *that the intent of the goal or objective will be met through some alternate approach, including appropriate mitigation;*
3) *that the waiver is necessary to fulfill, protect or promote another compelling regional purpose, goal, objective or value from the Act or RPP that could not be achieved without such waiver."*

Each of these waiver requirements will be reviewed separately as follows:

1) No Substantial Detriment: *"Such waiver will not result in substantial detriment to or substantial derogation from the purposes and values intended to be protected or promoted by such goal or objective"*

Nitrogen: It is the intent of Water Resource Technical Bulletin to encourage development in locations preferred to maximize the preservation of Cape Cod. Evergreen Circle Subdevelopment is a location that provides such preservation. The entirety of the Evergreen Circle subdevelopment went through a comprehensive Cape Cod Commission DRI and town review and provided significant acreage to preservation. Such acreage was assigned to encourage development within the subdivision while at the same time satisfying multiple Cape Cod Commission objectives for Natural Systems, Water Resource, and Community & Design. The very nature of the Evergreen Circle subdevelopment as previously approved by the Cape Cod Commission, and by the town zoning it as an industrial zone, substantiates that both the town and the commission prefer development in this area as opposed to other locations.

The town of Mashpee has no municipal sewer currently, but substantial progress is being made to make it available broadly within the town through the Mashpee Clean Water Plan. Evergreen Circle is proposed for sewer installation within these plans.

1. This facility is proposed in an area designated by the town for development and use per the 2011 DRI approval of the subdevelopment, the 2018 DRI minor modification to the subdevelopment, and the 2024 town vote for bylaw amendment to allow indoor recreation in industrial zones.
2. The facility, along with the total subdevelopment, preserves and protects significant continuous open space acreage.
3. The facility will connect to the town sewer once such is made available to Evergreen Circle. As detailed in town communications regarding The Clean Water Plan, *"The Town will evaluate progress toward meeting the nitrogen reduction goals after each phase of operation to determine how much more work is to be done and, if necessary, identify the area(s) that would provide the most relief."* Evergreen Circle Sewer connections will only be delayed based on the prioritization that other locations will have an even greater nitrogen reduction to Estuary Bodies. In either event, significant nitrogen mitigation will be realized through the phases in design and under construction well before nitrogen from this facility reaches estuary waters.

True, this facility will add some amount of nitrogen to the Popponesset and Waquoit Bay estuaries. Any development - whether residential, commercial, or municipal - will release nitrogen in its effluent. The applicant has spent extensive time researching nitrogen, estuary health, and septic solutions for minimizing nitrogen discharge in effluent. He has also spoken with numerous contributors to both state and local organizations to preserve Cape Cod so that steps could be taken to minimize to the greatest extent practical the nitrogen impact of this development. Folks engaged include:

- Ed Eichner, Principal Water Scientist TMDL Solutions. Ed was an author/contributor to the MA DEP Estuary Projects and Reports on Popponesset Bay and Waquoit Bay and assisted in addressing specific questions on these estuaries,
- Anastasia Rukenko, GHD Water Resource Engineer. GHD completed all Mashpee sewer project maps and plans. Anastasia assisted in understanding the origin and accuracy of estuary mapping. An additional relevant resource on estuary mapping is the 2023 NERRA work summarized as "Estuarine Habitats in and around Waquoit Bay NERR, Massachusetts: past, present, and future".
- Jessica Thomas, Umass Dartmouth Department of Estuarine and Ocean Science - an advocate for Permeable Reactive Barrier Technology. PRB was explored but deemed that it would not work adequately at this location as the location is at the beginning of flow for these estuaries and PRB are flow through solutions.

- Andrew Gotlieb, Executive Director of The Association to Preserve Cape Cod and former MA DEP executive. Andrew was a resource used to discuss various I/A septic solutions and other potential nitrogen and phosphorus removal designs,
- Zenas Crocker, Executive Director of Barnstable Clean Water Coalition. Zee was a resource used to discuss NItroe KleanTu technology and to connect the applicant to the KleanTu company founder and engineering department leads,
- Jared Meader, Town of Mashpee Wastewater Superintendent. Jared and others within the town departments of Health, Conservation, DPW, Fire, and Building were engaged to ensure compliant designs and to better understand the overall Clean Water Plan.
- Tom Fudala and Evan Lehrer. Town of Mashpee Interim and previous Town Planner – who gave perspectives on town wastewater management plans and on I/A septic designs incorporated at other facilities within the town. The applicant then followed up with those facility owners to discuss with them their experiences with these systems.

The Evergreen Circle location is on the boundary between the Popponesset and Waquoit Estuaries. The MA DEP Estuary Projects reports for Waquoit Estuary (January 2005) and Popponesset Estuary (September 2004) define Evergreen Circle as a GT10 location. Meaning – nitrogen that comes from the Evergreen Circle Subdevelopment will take greater than 10 years to reach these estuary waters.

Per these reports, the greatest concern for remediation is LT10 locations, for more than 81% of Nitrogen that enters these estuary waters comes from LT10 locations – land that is designated to have nitrogen that would flow to these waters in less than 10 years' time.

During the time it takes for nitrogen from 51 Evergreen Circle to reach these water bodies - which is greater than 10 years – there will be substantial improvements made to both estuaries through the town funded Clean Water Plan. As an example, Phase 1 and 2 when completed within the next couple of years will remove over 42% of the nitrogen flowing to the Popponesset Estuary per town reports. Phase 3, per discussions with the town Wastewater Superintendent, will make similar reductions in Nitrogen from the Waquoit estuary. This facility will connect to the town sewer within an estimated 10 years' time or when the sewer connections are available at Evergreen Circle.

The proximity of new effluent discharge to estuary bodies and the time it takes for a new facilities effluent to reach these bodies is a significant determination of the potential detrimental effects to current estuary health. Evergreen Circle effluent, as detailed in the Estuary Reports, takes more than 10 years to reach the estuary bodies. The result of which is that this project will not create a net detriment to current conditions due significantly to ongoing town wide municipal sewer treatment installations.

It is the size of this projects building, not the size of its septic system, that is the basis for DRI review. There are numerous facilities within the town of Mashpee that have similar or larger septic designs in buildings that are less than 10,000 SF and not required to go through DRI review, nor pay a nitrogen mitigation fee. Island Pickle will use both state of the art I/A septic solutions that have the highest MA DEP approvals, implement the most efficient wastewater management toilet equipment, incorporate 100% LID stormwater solutions, and make extensive use of native species pollinator friendly landscaping to further minimize nitrogen from effluent and stormwater output.

Practically speaking, this facility will generate actual nitrogen equivalent to less than four, 3-bedroom homes – specifically due to the considerable efforts taken to incorporate the highest rated MA DEP I/A septic solution. The Biomicrobics Biobarrier technology is the only I/A septic solution at 2,000-10,000 GPD rated by MA DEP with an approval limit of less than 25 mg/L. It consistently performs at levels below 10 mg/L as detailed by data on the MA DEP site. Substantial system data from similar sized and use facilities was also provided to the commission to give them confidence in the confirmation that this facility will operate at or below 10 mg/L.

In summary, Island Pickle is not net-detrimental to nitrogen levels within the town of Mashpee or to the Popponesset and Waquoit estuaries due to three primary factors: 1) the significant work taken to put in place the best available technology for nitrogen removal on site, 2) effective stormwater management, and 3) town actions through the Clean Water Plan to mitigate nitrogen in estuary bodies well before nitrogen from this facility reaches any estuary.

Traffic: The applicant agrees to implement all traffic safety and congestion mitigations actions suggested except for one: The payment of $30,000 as a fair share payment for a light due to the financial hardship request previously summitted and discussed.

2) Alternate Approach: "*the intent of the goal or objective will be met through some alternate approach, including appropriate mitigation"*

Nitrogen: The Mashpee Clean Water Plan is a significant and substantial alternative approach to the fee. The applicant has spoken at length with the town wastewater superintendent and other town officials regarding how the municipal Clean Water Plan will be implemented, where the benefits will be gained, when benefits will be realized, and how it will be funded. Funds for these projects come from state and federal grants, bonds, and other sources of income. These projects are not funded by Cape Cod Commission nitrogen mitigation fees nor town taxes. Operating costs, however, will be partially funded by town taxes once operational. Therefore, Cape Pickle, LLC will be a contributor by way of taxation, to fund the sewer infrastructure of the town.

Per Wastewater Superintendent discussions, the town of Mashpee has fees available at the commission that currently exceed $177,000 and there are no defined projects to fully utilize these funds due greatly to the priority of the broader municipal Clean Water Plan projects underway. There are small, ancillary projects that have been applied for but not granted nor approved, but these are not the primary project focus of the town. The Clean Water Plan projects are the primary town focus, and these projects will significantly reduce the levels of nitrogen in the Popponesset and Waquoit estuaries well before nitrogen enters from this facility that will flow to estuaries in greater than 10 years' time.

Traffic: The applicant can phase in the start times of various play periods so that there is no single traffic transition for the entire facility. Rather than all court play starting on the hour, courts can vary in 15-minute increments to smooth the flow of traffic in and out of the facility which will reduce traffic congestion at the intersection of Route 130 and Evergreen Circle.

The implementation of phased play offers a significant advantage when compared to what currently occurs at the Heritage Park intersection when town recreational games transition. Perhaps the concept of phased game changes is something that the town recreation department can consider to further improve traffic congestion on the Route 130 corridor in addition to the actions discussed and agreed to in this DRI review.

3) Waiver Necessary: *the waiver is necessary to fulfill, protect or promote another compelling regional purpose, goal, objective or value from the Act or RPP that could not be achieved without such waiver."*

According to the 2018 RPP, "*The Cape Cod Regional Policy Plan provides a growth policy that supports the vision for the future of Cape Cod as a place of vibrant, sustainable, and healthy communities and a protected natural environment. Growth should be focused in centers of activity and areas supported by adequate infrastructure and guided away from areas that must be protected for ecological, historical or other reasons. Development should be responsive to context allowing for the restoration, preservation and protection of the Cape's unique resources while promoting economic and community resilience"*.

The applicant has separately submitted a financial hardship exemption and detailed during the October 30th hearing that this exemption is necessary in part to ensure successful completion of the development. The balance sheet for the company developing the project is currently unfavorable, and any funds redirected to support commission fees would further and substantially impact project viability. Yes, this is a for-profit facility, but inadequate funds are on hand today making it highly impractical to pay the fees discussed at the October 30th hearing. Therefore, the applicant requested the financial hardship exemption.

Island Pickle provides a place of vibrant, healthy recreation that incorporates sustainable energy sources, the best practical and available MA DEP Approved I/A septic technology, 100% LID storm water management, with traffic safety and congestion improvements. It significantly supports the Cape Cod Regional Growth Policy and protects Cape Cods unique resources. Further,

1) The facility offers a very low environmental and community impact alternative use to this industrially zoned land that is already fully disturbed. It is a substantially better alternative use than other potential industrial facilities that could rightfully be built that may create greater substantial detriment to the environment and community but be of a size that would not require a commission DRI review.
2) A recreational facility has long been a desire of the town of Mashpee Recreation Department. But funds could never be allocated in the town budget, and it has repeatedly been denied. This project provides such a complex for town residents (as well as upper and mid-cape residents) at no town or municipal cost. The facility also generates a significant increase in tax revenues to the town of Mashpee.
3) A bylaw revision to allow indoor recreation was unanimously approved by the town planning board to include as an article at the May town meeting. And the bylaw was unanimously approved at the May town meeting. This bylaw endorsement supports the claim that the facility is significantly desired by town residents and officials.
4) This facility is being developed in an area designated by the town for development per the 2011 DRI approval of the subdevelopment, the 2018 DRI minor modification to the subdevelopment, and the 2024 town vote to encourage indoor recreation in industrial zones.
5) The facility and the entire Evergreen Circle subdevelopment preserve and protects significant continuous open space acreage and generates nitrogen effluent well below the 5ppm per acre objective of the commission.
6) Evergreen Circle makes great use of State Highway Route 130, which will keep primary traffic patterns away from other residential and commercial areas as fully detailed in the TIA report.
7) No nitrogen from Evergreen Circle will reach estuaries for more than 10 years per details provided in MA DEP Estuary Project Reports. During that 10 years' time, substantial reductions in Nitrogen will have already been made in the Popponesset and Waquoit estuaries through Mashpee Clean Water projects. There will not be a net detriment to the current conditions of these estuaries. Rather, with the inclusion of this facility, substantial reductions of the Nitrogen levels will be realized over the next few years – well before Nitrogen from 51 Evergreen Circle reaches these water bodies.
8) The facility will connect to the town sewer once such is made available to Evergreen Circle, currently estimated by the wastewater superintendent to be well before 20 years.

9) As of October 27th, 101 public comments were posted to the commission public comments portal. 100 of these were positive endorsement posts, one was a clarification post as they misunderstood that it was all indoors and none outdoors, and zero were opposed. Additionally, at least 24 letters and/or emails of support were provided to the commission. Of these, one was from the Mashpee Chair of the Economic Development and Industrial Committee; One from the Select Board of the Town of Mashpee; And one from the Mashpee Chamber of Commerce.
10) The applicant has spoken to all abutters and not only are they in favor of the project, but they also believe that the facility will increase the revenues that they generate from their businesses. Two have already offered unsolicited use of their properties for additional parking as they are so positive about the project. Such parking is not believed to be required at this time, but it substantiates the greater good of Island Pickle.

CONCLUSION:

A full waiver of mitigation fees in response to the financial hardship request is appropriate, necessary, fair and just, as detailed herein and as allowed by the 2018 Commission RPP waiver and flexibility guidelines.

The applicant is a small, local business owner and resident on Cape Cod since 2008. The company that he formed to develop this facility does not have funds available to complete this project regardless of the full waiving of commission fees per the request substantiated in the financial hardship exemption that was previosly provided and discussed at the October 30th hearing.

The current economic position of the company, however, has not deterred the applicant from applying maximum efforts to design the most advantageous, state of the art facility, that both minimizes environmental impacts to the maximum case practical as well as provide substantial community benefits and a very substantial tax gain to the town of Mashpee. Final detail design drawings are complete at this time and the project is fully ready to proceed to detailed municipal permit reviews.

Local community recreation and family fun will be enjoyed by numerous upper and mid cape residents at no taxpayer expense. And as a destination spot, the town of Mashpee merchants will financially benefit too, for many Island Pickle customers will likely become new customers to them as well.