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December 6, 2019

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Town of Amherst Solar Project
PROJECT MUNICIPALITY : Amherst
PROJECT WATERSHED : Connecticut River
EEA NUMBER : 16109
PROJECT PROPONENT : Town of Amherst Solar, LLC
DATE NOTICED IN MONITOR : November 6, 2019

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** an Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the project entails the construction of an approximately 3.8-Megawatt (MW) ground-mounted solar photovoltaic (PV) facility. The solar facility will consist of 10,248 solar panel modules covering an approximately 7.5-acre portion of a capped landfill. The solar panels will be mounted on a racking system that will be held in place by ballast rather than a dug or drilled foundation system to minimize impacts to the landfill cap. The facility will be enclosed by a seven-foot (ft) high chain-link fence. An approximately 3,200-square foot (sf) pad with a transformer, battery storage, and other electrical equipment will be installed on the southern portion of the site adjacent to the Town of Amherst's (Town) transfer station. The facility will be connected to the electrical distribution system running along Belchertown Road. A gravel driveway will provide access to the facility from an existing perimeter road at the base of the landfill.

Project Site

The approximately 56.2-acre site is located in western Amherst, approximately 500 feet from the Pelham town line. It is bordered by Belchertown Road (Route 9) to the south and by undeveloped land and low-density residential areas to the west, north, and east. Another capped landfill is located on the south side of Belchertown Road.

The site is occupied primarily by a capped landfill. The Town of Amherst's (Town) transfer station is located in the southwest corner of the site. Bordering Vegetated Wetlands (BVW) are located along the eastern edge of the site. Both the project site and capped landfill to the south are located within Priority Habitat as mapped by the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP). According to NHESP, the sites provide habitat for the Grasshopper Sparrow (*Ammodramus savannarum*), which is a state-listed Threatened species.

Environmental Impacts and Mitigation

Potential environmental impacts of the project include direct alteration of 7.5 acres of land, creation of 0.7 acres of impervious area, and disturbance of 14.5 acres of rare species habitat. Measures to avoid, minimize, and mitigate environmental impacts include: providing mitigation for impacts to rare species habitat in accordance with the requirements of a Conservation and Management Permit (CMP) to be issued by NHESP, including protection of 29.12 acres of off-site rare species habitat; using a ballasted foundation system for the PV array; designing the project to avoid direct impacts to BVW; and use of sedimentation and erosion controls during construction.

Jurisdiction and Permitting

This project is undergoing review and requires an ENF pursuant to 301 CMR 11.03(2)(b)(2) because it requires a State Agency Action and will disturb greater than 2 acres of designated Priority Habitat that results in a Take of a state-listed species. The project requires a CMP from NHESP and Landfill Post-closure permits from the Massachusetts Department of Environmental Protection (MassDEP).

The project received a Negative Determination of Applicability from the Amherst Conservation Commission on September 25, 2019 that was not appealed. It requires a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA).

Because the Proponent is not seeking Financial Assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required State Agency Actions and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to land alteration, rare species, and solid waste.

Review of the ENF

The ENF provided a description of existing and proposed conditions, preliminary project plans, and identified measures to avoid, minimize, and mitigate project impacts. Comments from MassDEP

and NHESP do not identify information or analysis requiring MEPA review through the submittal of an EIR. The Proponent has submitted a Landfill Post-Closure Use permit application to MassDEP and has coordinated with NHESP on mitigation for impacts to rare species habitat.

Alternatives Analysis

The purpose of the project is to generate renewable energy for transmission to the electrical grid. According to the ENF, the Town considered siting the facility only on previously-developed brownfields sites to minimize impacts of the project. The Town evaluated siting the facility on the closed landfill to the south. The cap on the southern landfill is large enough to accommodate the proposed solar array without impacting wetlands or altering undeveloped land. Impacts associated with the southern landfill alternative would be similar, including disturbance of Grasshopper Sparrow habitat that would require mitigation through a CMP. However, the southern landfill alternative is not feasible because its cap is older than the one at the proposed location and is not suitable for supporting the proposed structures.

The Preferred Alternative will avoid new land alteration and wetland impacts by constructing the solar array and associated equipment on previously-disturbed land, including the landfill and transfer station. The solar panels will be mounted on support structures held in place by ballast to avoid the need for any excavation of the landfill cap. Impacts to rare species habitat will be mitigated by permanently protecting Grasshopper Sparrow habitat at a 2:1 ratio at the nearby southern landfill.

Rare Species

The installation of the solar arrays, access roads, equipment pad, and other project activities will alter 14.5 acres of Priority Habitat for the Grasshopper Sparrow. NHESP has determined that the project will result in a Take. Issuance of a CMP requires that a project avoid and minimize impacts to state-listed species in accordance with the following performance standards: 1) assess alternatives that avoid or minimize temporary and permanent impacts to the state-listed species, (2) demonstrate that an insignificant portion of the local population will be impacted or that no viable alternative exists, and (3) develop and implement a conservation plan that provides a long-term net benefit to the conservation of the local population of the impacted species. The Proponent has proposed to permanently protect 29.12 acres of Grasshopper Sparrow habitat by installing a fence around the southern landfill. The fence will restrict uses on the landfill cap, which currently include passive recreation and dog-walking. In connection with restricting the use of protected habitat area, the Town will establish a dog park adjacent to the southern landfill by enclosing a 1.5-acre area within a fence. According to NHESP, the location of the proposed dog park also includes Grasshopper Sparrow habitat, but will not result in a Take. Impacts to rare species habitat caused by the dog park will be mitigated as part of the CMP to be issued for the solar array.

Construction Period

The Proponent should implement measures to prevent and minimize nuisance conditions such as dust, noise, and odors during construction. The Proponent should also implement measures to reduce emissions of air pollutants from construction equipment, including anti-idling measures in accordance with the Air Quality regulations (310 CMR 7.11) which limit vehicle idling to five minutes. I encourage the Proponent to require that its contractors use construction equipment with engines manufactured to

Tier 4 federal emission standards, or to select project contractors that have installed retrofit emissions control devices or vehicles that use alternative fuels to reduce emissions of volatile organic compounds (VOCs), carbon monoxide (CO), and particulate matter (PM) from diesel-powered equipment. Off-road vehicles are required to use ultra-low sulfur diesel fuel (ULSD). All construction activities should be undertaken in compliance with the conditions of all State and local permits. The Proponent should consult MassDEP’s comment letter for additional guidance.

Conclusion

Based on a review of the ENF and comments received, and in consultation with State Agencies, I have determined that the ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review and demonstrated that the project’s environmental impacts can be avoided, minimized and/or mitigated to the extent practicable. NHESP and MassDEP will require additional information for permitting and have adequate regulatory authority to address outstanding issues. No further MEPA review is required. The project may proceed to permitting.

December 6, 2019
Date

K. Theoharides
Kathleen A. Theoharides

Comments received:

- 11/25/2019 Natural Heritage and Endangered Species Program (NHESP)
- 11/26/2019 Massachusetts Department of Environmental Protection (MassDEP) – Western Regional Office (WERO)

KAT/AJS/ajs



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

November 26, 2019

Kathleen A. Theoharides, Secretary
Executive Office of Energy & Environmental Affairs
Massachusetts Environmental Policy Act Office
Alex Strysky, EEA No. 16109
100 Cambridge Street, 9th Floor
Boston, MA 02114-2524

Re: Town of Amherst Solar, LLC
Amherst ENF # 16109

Dear Secretary Theoharides,

The Massachusetts Department of Environmental Protection (MassDEP), Western Regional Office (WERO) appreciates the opportunity to comment on the Environmental Notification Form (ENF) submitted for the proposed solar project at 740 Belchertown Road in Amherst (EEA #16109).

I. Project Description

The Town of Amherst (Proponent) is proposing construction of a 3.9 MWdc ground mounted photovoltaic solar facility on approximately 7.5 acres of a 56.2 acre town-owned parcel on an existing capped solid waste landfill. To prevent disturbance to the landfill cap, the solar photovoltaic modules will be installed using a ballasted (non-penetrating) racking/foundation system. The solar arrays will be surrounded by a 7-foot high chain link fence. The project includes an above ground electrical interconnect to the local distribution lines along with associated electrical equipment (transformers and battery storage). The proposed interconnection route will follow the property access route currently used to enter the transfer and recycling facility. Transmission poles will be installed along the route to a connection point along Belchertown Road.

The area of the proposed project will alter 14.5 acres of Priority Habitat for the grasshopper sparrow which is listed as "threatened" under the MA Endangered Species Act. Loss of habitat will be offset at a 2:1 ratio by fencing of the "old" landfill, across the street. The "old" landfill will be set aside as a grassland bird management area, surrounded by 5 feet fencing using a ballasted foundation system. Additionally, there is a proposed dog park area within the "old" landfill, to be developed in the future.

The applicable MassDEP regulatory and permitting considerations regarding wetlands, air pollution, solid waste, hazardous waste and waste site cleanup are discussed.

Environmental impacts associated with this project include:

- 56.2 total site acreage
- 0.5 new acres of land altered
- 0.7 new acres of impervious area– 3.2 acres total

II. Required Mass DEP Permits and/or Applicable Regulations

Wetlands

310 CMR 10.00

Air Pollution

310 CMR 7.00

Solid Waste

310 CMR 19.00

Hazardous Waste

310 CMR 30.00

Bureau of Waste Site Cleanup

310 CMR 40.000

III. Permit Discussion

Bureau of Water Resources

Wetlands

The Proponent acknowledges that a portion of the landfill access road is in a buffer zone as defined under the Wetlands Protection Act. The Proponent submitted a Request for Determination of Applicability for the project to the Amherst Conservation Commission on September 27, 2019. The Commission issued a Negative Determination, with Conditions, affirming that the work in the buffer zone will not alter the adjacent resource area.

Bureau of Air and Waste

Air Quality

Construction and Demolition Activities

The construction and demolition activity must conform to current Air Pollution Control Regulations. The Proponent should implement measures to alleviate dust, noise, and odor nuisance conditions that may occur during the construction and demolition activities. Such measures must comply with the MassDEP's Bureau of Air and Waste (BAW) Regulations 310 CMR 7.01, 7.09, and 7.10.

Sound

Once the facility's photovoltaic power system is in full operation, the Proponent shall ensure that the facility's equipment and components do not cause excessive noise that could impact the nearby receptors.

Construction Equipment

MassDEP recommends that the Proponent require the contractors and subcontractors to use diesel equipment/machinery that are fitted with pollution control devices as well as to minimize excessive idling. All non-road engines shall be operated using only ultra-low sulfur diesel (ULSD) with a sulfur content of no greater than 15 ppm pursuant to 40 CFR 80.510.

Solid Waste

Prior to any disturbance to the landfill the Proponent must obtain approval from MassDEP; the applicable permit is Solid Waste Permit, *BAW SW 36, Post-Closure Use-Major*. The Proponent has submitted a permit application and it is currently under review by MassDEP staff. The permit application must include detailed information to ensure that the project will not negatively impact the final cover system of the landfill during either construction or operation. The Proponent has also filed a *BAW SW 45, Solid Waste Facility Modification* under the *Presumptive Approval* application procedures for the installation of fencing surrounding the "old" landfill (south of Route 9).

A separate *BAW SW 36, Post-Closure Use-Major* permit application must be submitted for the dog park that will be constructed on the "old" landfill.

The proponent shall properly manage and dispose of all solid waste generated by this proposed project pursuant to 310 CMR 16.00 and 310 CMR 19.000, including the regulations at 310 CMR 19.017 (waste ban).

Hazardous Waste

Any hazardous wastes generated by the construction/demolition activities or universal wastes such as mercury containing lamps or mercury thermostats, lead connector or solder waste, must be properly managed in accordance with 310 CMR 30.0000.

If any hazardous waste, including waste oil, is generated at the site the Proponent must ensure that such generation is properly registered with the Department and managed in accordance with 310 CMR 30.0000.

Bureau of Waste Site Cleanup

Massachusetts Contingency Plan (MCP)

The Massachusetts Contingency Plan (MCP) and regulation 310 CMR 40.0000 governs the cleanup of confirmed oil and hazardous material releases in Massachusetts. The site, 740 Belchertown Road, is currently regulated under the Solid Waste Regulations and has no reported releases of oil/hazardous material. If a release occurs during construction activities, a Licensed Site Professional (LSP) must be retained to manage the contaminated media in compliance with the provisions of the MCP.

Spills Prevention

A spills contingency plan addressing prevention and management of potential releases of oil and/or hazardous materials from pre- and post-construction activities should be presented to workers at the site and enforced. The plan should include but not be limited to, refueling of machinery, storage of fuels, and potential future on-site activity releases.

IV. Other Comments/Guidance

MassDEP staff is available for discussions as the project progresses. If you have any questions regarding this comment letter, please do not hesitate to contact Kathleen Fournier at (413) 755-2267.

Sincerely,

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

Michael Gorski
Regional Director

cc: MEPA File



View Comment

Comment Details

EEA #/MEPA ID*	First Name	Address Line 1	Organization
16109	David	1 Rabbit Hill Road	Division of Fisheries and Wildlife
Comments Submit Date	Last Name	Address Line 2	Affiliation Description
11-25-2019	Paulson	--	State Agency
Review Due By	Phone	State	Status
11-26-2019	--	MASSACHUSETTS	Opened
Reviewer	Email	Zip Code	
Alex Strysky 617-626-1025	david.paulson@mass.gov	01581	

Comments

Topic: Town of Amherst Solar Project at 740 Belchertown Road, Amherst, MA (16109/16-35567)

Dear Secretary Theoharides: The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the Division) has reviewed the Environmental Notification Form for the proposed Town of Amherst Solar Project and would like to offer the following comments regarding state-listed rare species and their habitats. On October 11, 2019, the Division issued the following determination for the above referenced project. Attached is a copy of the determination letter for your review and reference. Massachusetts Endangered Species Act The Division has determined that the proposed project is located within the mapped Priority Habitat of the Grasshopper Sparrow (*Ammodramus saviannarum*), state-listed as "Threatened". This species and its habitats are protected pursuant to the MESA. A fact sheet for this species can be found on our website, www.mass.gov/nhesp. Solar Array (Parcel 18D-23) Project, as currently proposed, includes the construction of a solar array and associated site work resulting in ±14.5 acres of disturbance on the ±56.16 acre parcel, as shown on the Project Plans. Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that the Solar Array, as currently proposed, will result in a Take (321 CMR 10.18 (2)(b)) of the Grasshopper Sparrow due to the permanent loss and or fragmentation of suitable habitats and interference with the feeding and breeding activities of this species. Projects resulting in a Take of state-listed species may only be permitted if they meet the performance standards for a Conservation and Management Permit (CMP; 321 CMR 10.23). In order for a project to qualify for a CMP, the Applicant must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) adequately assess alternatives to both temporary and permanent impacts to the state-listed species, (b) demonstrate that an insignificant portion of the local population will be impacted, and (c) develop and agree to carry out a conservation and management plan that provides a long-term net benefit to the conservation of the state-listed species. This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03. Any notice of claim for an adjudicatory hearing shall be made in writing, accompanied by a filing fee in the amount of \$500.00 and the information specified in 321 CMR 10.25 (3). The notice of claim shall be sent to the Division's Director, Mark S. Tisa, by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination. The Applicant has proactively consulted with the Division to avoid, minimize and mitigate impacts to state-listed species and their habitats associated with proposed project, and it is our understanding that it intends to apply for a CMP. Please note that the Division will not render a final decision until a final CMP Application has been submitted and the Massachusetts Environmental Policy Act (MEPA) review process has been completed. We appreciate the opportunity to comment on this project. If you have any questions about this letter, please contact David Paulson, Senior Endangered Species Review Biologist, at (508) 389-6366 or david.paulson@state.ma.us.

Attachments

[Amherst_16-35567.pdf](#) ...

Update Status

Status

Opened

See Status

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MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

October 11, 2019

Daniel Band
Town of Amherst Solar, LLC
3402 Pico Blvd
Santa Monica, CA 90405

David Ziomek
Town of Amherst
Town Hall, 4 Boltwood Ave
Amherst, MA 01002

RE: Applicant: Town of Amherst Solar, LLC & Town of Amherst
 Project Location: 740 Belchertown Road, Amherst
 Project Description: Phase 1: Construction of a Dog Park on Parcel 21B-8 (\pm 51.83 acres);
 Phase 2: Construction of Solar Array on Parcel 18D-23 (\pm 56.16)
 NHESP File No.: 16-35567

Dear Applicants:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received the MESA Project Review Checklist, plans entitled "Amherst Dog Park @ Old Landfill, Amherst" (dated 5/17/19; revised 6/27/19; prepared by The Berkshire Design Group, Inc.) and "Preliminary Civil Drawings Amherst Landfill 740 Belchertown Road Amherst, MA 01002" (dated 7/26/19; revised 9/3/19; prepared by TRC) (collectively, the "Project Plans") and other required materials for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

The MESA is administered by the Division, and prohibits the Take of state-listed species. The Take of state-listed species is defined as "in reference to animals...harm...kill...disrupt the nesting, breeding, feeding or migratory activity...and in reference to plants...collect, pick, kill, transplant, cut or process...Disruption of nesting, breeding, feeding, or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of Habitat" of state-listed species (321 CMR 10.02).

The Division has determined that the proposed project is located within the mapped *Priority Habitat* of the Grasshopper Sparrow (*Ammodramus savannarum*), state-listed as "Threatened". This species and its habitats are protected pursuant to the MESA. A fact sheet for this species can be found on our website, www.mass.gov/nhesp.

MASSWILDLIFE

Phase 1 - Construction of Dog Park (Parcel 21B-8)

Phase 1 of the project, as currently proposed, includes the construction of a Dog Park resulting in ± 1.2 acres of disturbance on the ± 51.83 acre parcel.

Based on the information provided and the information contained in our database, the Division finds that Phase 1 (Dog Park), as currently proposed, **must be conditioned in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a))**. To avoid a prohibited Take of state-listed species, the following conditions must be met:

1. **Timing of Work.** All Work shall occur during the Grasshopper Sparrow Inactive Season (August 1st-May 1st) unless otherwise pre-approved by the Division.
2. **Construction Notification.** Written notification shall be submitted to the Division within thirty (30) days of both the initiation of and completion of work associated with the Dog Park.
3. **Authorization Duration.** This authorization is valid for 5 years from the date of issuance of this letter. Work shall be completed by the expiration of this authorization. If needed, the Applicant shall submit a written request to the Division for an extension of time to complete the Work no later than 60 days prior to the expiration of this determination, and the Division will review the Project pursuant to the MESA for any continuing impacts as described herein and for any new impacts to any State-listed Species found subsequent to the issuance date of this letter.
4. This approval for Work, prior to the issuance of a MESA CMP, explicitly and exclusively applies to the Dog Park as shown on the Project Plans.

Provided the above-noted conditions are fully implemented and there are no changes to the Project Plans, Phase 1 (Dog Park) will not result in a Take of state-listed species and may proceed prior to the issuance of the MESA CMP for Phase 2 (Solar Array).

We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. The Division notes that, pursuant to the anti-segmentation provisions of 321 CMR 10.16, impacts to habitat associated with Phase 1 (Dog Park) will be mitigated for consistent with 321 CMR 10.23 as part of any MESA CMP issued for Phase 2 (Solar Array). Any changes to the proposed project or any additional work beyond that shown on the Project Plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Phase 2 - Construction of Solar Array (Parcel 18D-23)

Phase 2 of the project, as currently proposed, includes the construction of a solar array and associated site work resulting in ± 14.5 acres of disturbance on the ± 56.16 acre parcel, as shown on the Project Plans. Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that Phase 2 (Solar Array), as currently proposed, **will result in a Take (321 CMR 10.18 (2)(b)) of the Grasshopper Sparrow** due to the permanent loss and or fragmentation of suitable habitats and interference with the feeding and breeding activities of this species.

Projects resulting in a Take of state-listed species may only be permitted if they meet the performance standards for a Conservation and Management Permit (CMP; 321 CMR 10.23). In order for a project to qualify for a CMP, the Applicant must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) adequately assess alternatives to both temporary and permanent impacts to the state-listed species, (b) demonstrate that an insignificant portion of the local population will be impacted, and (c) develop and agree to carry out a conservation and management plan that provides a long-term net benefit to the conservation of the state-listed species.

Please note that projects resulting in a Take of two (2) or more acres within *Priority Habitat* must file an Environmental Notification Form with the Massachusetts Environmental Policy Act ("MEPA") Office and complete all MEPA actions prior to completing the MESA permitting process, per 301 CMR 11.03 (2)(b).

This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03. Any notice of claim for an adjudicatory hearing shall be made in writing, accompanied by a filing fee in the amount of \$500.00 and the information specified in 321 CMR 10.25 (3). The notice of claim shall be sent to the Division's Director, Mark S. Tisa, by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination.

Please note that no soil or vegetation disturbance, work, clearing, grading or other activities related to Phase 2 (Solar Array) shall occur until the MESA permitting process is complete. If you have any questions regarding this letter, please contact David Paulson, Senior Endangered Species Review Biologist, at david.paulson@mass.gov or 508-389-6366.

Sincerely,



Everose Schlüter, Ph.D.
Assistant Director

cc: Jonathan Shuster, Oxbow Associates, Inc.