

**Rochester Conservation Commission
December 1, 2020**

Present: Michael Conway, Chairman
Daniel Gagne, Vice Chairman
Léna Bourque
Christopher Gerrior
Maggie Payne
Kevin Thompson

Absent: *(none)*

Laurell J. Farinon, Conservation Agent
Blair Bailey, Town Counsel
Janet Bernardo, P.E. of Horsley Witten Group
Amy Ball, PWS, of Horsley Witten Group
Tanya Ventura, Board Administrator
Marissa Perez-Dormitzer, Recording Secretary

The meeting convened by telephone and video conference via Zoom Meeting ID: 852 4940 6023. Chairman Conway called the meeting to order at 7:01 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Conway read a message about remote participation and ground rules for the meeting. He stated the meeting was being recorded. Each initial presentation was limited to 10 minutes and 3 minutes were allowed for public comment. Chairman Conway stated that votes would be taken by roll call.

Public Meetings

A Request for Determination of Applicability filed by Renewable Energy Development Partners, LLC, 99 Derby Street, Suite 200, Hingham, MA, for property located at 109 Neck Road, designated as Lot 3 on Rochester Assessors Map 40. The Applicant proposes to install a test canopy project that consists of six to eight utility poles and one complete canopy bay. The property owner of record is Decas Cranberry Co., Inc., 4 Old Forge Drive, Carver, MA 02330. The applicant's representative is Sarah Stearns of Beals and Thomas, Inc., 32 Court Street, Plymouth, MA 02360.

(Vice Chairman Gagne recused himself.)

Sarah Stearns of Beals and Thomas, Inc., explained the applicant was proposing a test project for a solar canopy over an agricultural canal. The test project would allow the landowner to see the canopy infrastructure in place and evaluate the feasibility of a larger scale project. Ms. Stearns shared her screen showing an aerial view with the location of the test project and a photo of what the test site would look like. The test site would include timber poles and purlins on top. The work would be done within the buffer zone to a bordering vegetated wetland, being the cranberry bog. She noted that Thomas Melehan and Henry Ouimet of Renewable Energy Development Partners were present.

Member Thompson asked if they would place additional equipment on site and Ms. Stearns responded that the work would be limited to the area described. Mr. Ouimet clarified there would be 6 to 8 timber piles, trusses, and purlins. He noted it would not be a functional solar project. Chairman Conway asked why the applicant was not more definitive on the number of pilings.

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Mr. Ouimet explained they only needed four and the other two to four would be used for testing geotechnical conditions. He stated he could amend the request to be for eight pilings.

Agent Farinon mentioned that vibratory installation of the poles, as proposed by the applicant, went well with a prior project. She stated she did not see any impact in the resource area and recommended issuing a negative Determination of Applicability.

A motion to pass a negative Determination of Applicability was made Member Thompson and seconded by Member Gerrior. Chairman Conway mentioned an amendment of limiting the test project to eight utility poles. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

(Vice Chairman Gagne resumed his role in the meeting.)

Public Hearings

(Continued from November 4, 2020) DEP SE # 272-0599 A Notice of Intent filed by Cushman Road Solar, LLC, Joe Harrison, P.O. Box 1320, Portsmouth, NH 03801 for property located at 0 Cushman Road, designated as Lot 11 on Rochester Assessors Map 33. The proposed project involves the creation of a ±3.9 MW DC photovoltaic solar array, associated site work, and stormwater management features on the subject property. Work within the 100-Foot Buffer Zone includes approximately 69,670 square feet of tree clearing, three stormwater outfalls, grading for portions of the perimeter road, and the creation of approximately 420 linear feet of perimeter and access roads. The applicant's representative is Eric Las of Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772. The property owner of record is Lisa Holden, Trustee, P.O. Box 388, Rochester, MA 02770.

(Vice Chairman Gagne recused himself from the Public Hearing.)

Eric Las, P.E. and Principal, of Beals and Thomas, Inc. shared his screen showing a locus exhibit and the site plan set. He reported that a portion of the 58-acre property is in Acushnet, with the majority being in Rochester. The bordering vegetated wetlands on site were confirmed by the Commission in a Determination of Applicability issued in November 2019. The closest point of the array is 28 feet from the bordering vegetated wetland. Mr. Las described the sedimentation controls including a silt fence and compost filter sock. He stated they were proposing temporary stump grindings to reduce runoff acceleration during construction. There would be selective clearing outside the fence and stumps would remain. Within the fence, the area would be vegetated to reduce the possibility for sedimentation erosion. There is an access easement to the property that would be made into a 16 feet wide gravel road. There are existing septic and cellar drains that cross the easement. Mr. Las stated these were added to the plan in addition to microtopography along the access easement with 1-foot contour intervals. They are proposing concrete encasement to prevent damage to the septic and cellar drains during construction. Mr. Las explained they would have one stormwater basin within the footprint of the array to maximize use of the land. He stated they received their first peer review letter from Horsley Whitten dated November 6, 2020 and will be responding to the peer review comments and any comments from the public and Members.

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Janet Bernardo, P.E. of Horsley Witten Group, reported she completed peer review of the stormwater management system and her comments were incorporated into the November 6, 2020 letter. She explained that most of the comments related to erosion controls closest to the wetland and asking for clarification in other areas. She stated a clarification was sought on the choice of using brush as a stormwater surface instead of meadow. She noted the design for the large basin was reasonable, but they had a few clarifying questions. Overall, Ms. Bernardo concluded that she did not have any major concerns with the design. Chairman Conway asked about a reference in the peer review letter to the operations and maintenance plan. He noted he had not seen the operations and maintenance plan. Ms. Bernardo recommended that it be an independent document separate from the stormwater report. Chairman Conway noted the Commission should see the operations and maintenance plan prior to approval.

David Davignon, P.E. of Schneider, Davignon & Leone, Inc. stated he was representing the Koczera family who are direct abutters. Michael and Julie Koczera, 2 Robinson Road, were present. Mr. Davignon explained Mr. and Mrs. Koczera had a dispute with the applicant regarding access. He stated the access is across the front of their property. He reported his firm did extensive research and concluded there is a right of way across the Koczera's property. He noted that Mr. Las had worked with them on their concern about damaging the septic system pipe. Mr. Davignon stated there were wetlands shown on the Koczera's property that do not exist and they would like them removed. Mr. Koczera noted they were not getting any benefit from the project; it is costing them money; and they wanted to make sure their voices were heard.

Lisa and David Mann, 8 Robinson Road, were present. Ms. Mann reported that the access is across their front yard, 20 feet in front of their house. She noted it would be very disruptive to their horse farm and would cause safety issues for their children, the neighbors' children, and the horses. She stated they had not signed an access agreement and have legally challenged the right of way. Chairman Conway explained that the purpose of the meeting was to discuss wetlands and the Commission is not involved in rights of way. Ms. Mann noted her property was fairly wet and there was no protection shown on the plan for her land, driveway, or front yard.

Agent Farinon asked Mr. Las to share his screen showing the overall site plan with the solar array. She stated the applicant would need to continue the wetland line into Acushnet to be sure they were not missing anything. Mr. Las agreed. Agent Farinon recommended that the Commission request an additional peer review consulting fee to hire a consultant to review the isolated wetland on the Koczera property. Town Counsel Bailey stated that if there were no wetlands on the Koczera property some of their concerns may have less of an impact on them. The Commission's jurisdiction would not involve their land.

There was discussion about the timing for a continuance. Agent Farinon suggested a realistic date would be January 19, 2020. Mr. Las agreed.

A motion to continue the Public Hearing to January 19, 2020 was made by Member Thompson and seconded by Member Payne. Member Gerrior was opposed. **The motion passed in a roll call vote of 4 in favor, 1 opposed, 0 abstained (4-1-0).**

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A motion to request a \$2,000.00 peer review fee was made by Member Payne and seconded by Member Thompson. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

(Vice Chairman Gagne resumed his role in the meeting.)

(Continued from October 20, 2020) DEP File # 272-0600 An Abbreviated Notice of Resource Area Delineation filed by Ryan Young of CVE North America, Inc., 109 W. 27th Street, 8th Floor, New York, NY 10001, for property located at 0 Neck Road, designated as Lot 5 on Rochester Assessors Map 28. The purpose of the filing is to confirm 2,940 linear feet of bordering vegetated wetland boundary. The property owners are Henry & Bonnie Hartley, Trustee, The Bonnie L. and Henry A. Hartley Trust, 267 Vaughan Hill Road, Rochester, MA 02770. The applicant's representative is Richard Tabaczynski of Atlantic Design Engineers, Inc., P.O. Box 1051, Sandwich, MA 02563.

Ryan Young of CVE North America, Inc. introduced himself, Betsy Mason of Klavens Law Group, and Chris King of Atlantic Design Engineers, Inc. Mr. King reported he submitted a response to abutters' comments in a letter dated November 24, 2020. The wetland scientist revisited areas identified by Attorney Gene J. Guimond of Baker, Braverman, & Barbadoro, P.C. in a letter dated October 19, 2020. The wetland scientist confirmed that the areas identified by the abutter did not meet the requirements of a wetland. However, an additional isolated wetland was identified and one wetland already on the plan was marked as a potential vernal pool. Mr. King noted Attorney Guimond's letter mentioned a scale requirement and foot contour requirement in the plan. He explained they provided contours to the 1 foot not the 2 foot which is more accurate. They used a scale of 1-inch equals 100 feet. If the Commission were to require a scale of 1:40, as had been suggested, they would request a waiver from the requirement on behalf of the applicant. Mr. King concluded that the original and supplemental packages were complete.

Member Payne asked if the plans had been updated since they received the peer review comments. Mr. King responded no. Vice Chairman Gagne stated he agreed with the comments on the scale.

Amy Ball, Senior Ecologist, of Horsley Witten Group, reported she visited the site and reviewed the wetland boundary and abutters' comments. She submitted her findings in a peer review letter report dated November 23, 2020 and the applicant submitted a response on November 24, 2020. In the meeting, she provided an extensive review of her findings. She noted the delineation was fairly accurate and suggested minor adjustments to the boundary on the A and E flag series to incorporate additional areas. She reported that the C-series and likely the E-series would fall under the Commission's jurisdiction regarding size requirements. Ms. Ball stated the E-series was a potential vernal pool and noted it was not the right time of year to make the assessment. She added that there could be additional wetlands or vernal pools not identifiable in the fall. Regarding the plan scale, she noted it is helpful to have a plan showing the overall site and that additional details are also helpful. In the peer review letter, Horsley Witten recommended a scale of "no more than 1" = 40' as required under Section 4.4 (5)." In response to a comment about a stream in the southern portion of the site, Ms. Ball stated she thinks the stream is likely the intermittent stream in wetland A. She added that there may be potential wetlands in the southeast corner of the property.

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Attorney Guimond stated he was representing James and Carriann McCarthy 189 Alley Road. He reported the Commission's consultant had confirmed many of their comments. He reiterated that the Town's Wetlands Bylaw requires a scale not less than 1:50 and said the plans should be revised to reflect the proper scale. He also stated there was not adequate information provided. He asked if the applicant requested access from an adjacent property owner to observe the perennial stream. Attorney Guimond noted he was concerned there were some resource area downgradient to the wetland areas. He stated the Commission should request that the applicant continue to update the plans.

Agent Farinon recommended revising the flagging in the A-series and E-series wetlands. She also recommended a scale of 1:50 and color coding on the plan. She noted it may be helpful for the Commission to fine tune the Bylaws since there is some room for interpretation. Agent Farinon stated it would be possible for the applicant to take the perennial stream off the USGS topographic map and superimpose what a riverfront area would look like and the 200 feet buffer it would add. She noted she would like to visit the site with the permission of the property owners.

Mr. King requested a continuance to the next available meeting to provide the information requested from Ms. Ball and Agent Farinon. He noted they would be coming back with a Notice of Intent application. He said he would have preferred filing only for a Notice of Intent and not splitting up the application into an ANRAD and a Notice of Intent filing. Mr. King noted that Ms. Ball and Agent Farinon had agreed that the flags were on the line with minor discrepancies. Agent Farinon explained that Mr. King was referring to the Commission's in-house technical review process that is done for all projects. She reported she had advised their team months ago they would need to file for an ANRAD prior to coming in with the project. She reiterated that information provided by abutters is helpful because they see the properties over the years and during fluctuating ground water levels. Agent Farinon noted that in this situation the applicant's wetland consultant visited the site a second time and found another wetland area.

Chairman Conway asked Mr. King if continuing to December 15, 2020 was acceptable. Mr. King responded yes and said he could submit the information needed. Agent Farinon noted there was a deadline of December 9, 2020 for submittal of new information for the meeting on December 15, 2020.

A motion to continue to December 15, 2020 was made by Member Thompson and seconded by Member Gerrior. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Commission Business

**For Signature
Minutes**

A motion to accept the minutes from November 4, 2020 was made by Member Thompson and seconded by Member Gerrior. **The motion passed in a roll call vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

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A motion to accept the minutes from November 17, 2020 was made by Member Bourque and seconded by Member Gerrior. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

New Business

Discuss Correspondence

Agent Farinon reported that Ryan Correia, 1008 Walnut Plain Road, had been working with buyers and title attorneys for the sale of his property. Mr. Correia requested information in writing regarding the status of the Certificate of Compliance to back up an escrow account that would cover loaming, seeding, and stabilization. Agent Farinon noted the intention is to come back in the spring to request the Certificate of Compliance once the area is fully stabilized.

2021 Meeting Schedule

Agent Farinon reported she developed two meeting schedules with the help of Tanya Ventura, Board Administrator. However, after reviewing the legal requirements for advertising, she realized they would not gain much by switching to Wednesdays. She suggested leaving the meetings on Tuesdays.

A motion to continue meeting on Tuesdays for 2021 was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Confirm member availability for future site visits and meetings

Agent Farinon asked if Members wanted to reschedule the site visit that Sunday due to the forecasted weather. Members agreed to go forward with the site visit at Featherbed Lane scheduled for 9:00 a.m. on December 6, 2020.

Adjournment

The meeting adjourned at 8:51 p.m. on a motion made by Member Thompson and seconded by Member Bourque. Vice Chairman Gagne was opposed to the motion. **The motion passed in a roll call vote of 5 in favor, 1 opposed, 0 abstained (5-1-0).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman