

**Rochester Conservation Commission
January 19, 2021**

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

Absent: *(none)*

Laurell J. Farinon, Conservation Agent
Tanya Ventura, Board Administrator
Marissa Perez-Dormitzer, Recording Secretary

The meeting convened by telephone and video conference via Zoom Meeting ID: 846 0268 7745. Chairman Conway called the meeting to order at 7:00 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 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.

DEP SE 272-0474 A Request for a Certificate of Compliance was made by William F. Madden, P.E. of G.A.F. Engineering, Inc., on behalf of Bendrix Bailey, for after-the-fact approval of a dock and ramp at 34 Gerrish Road, Map 43A, Lot 29B.

Brian Grady of G.A.F. Engineering, Inc. stated the applicant was requesting a Certificate of Compliance from an Order of Conditions issued in 2010. The Order of Conditions (OOC) was approved for an after-the-fact installation of a wooden dock on Snipatuit Pond. Mr. Grady explained that no work was performed after the Order of Conditions was issued therefore there was no as-built plan. He noted the dock had been subsequently replaced with an aluminum dock of the same shape and smaller footprint. Agent Farinon, Bendrix Bailey, property owner, and Mr. Grady inspected the site.

Vice Chairman Gagne noted the plan was for a wooden ramp with 4" x 4" posts. Mr. Grady stated the entire structure has been removed from the water including the 4" x 4" posts that had feet. Chairman Conway mentioned the application required a written statement showing compliance and any deviations from the plan. Mr. Grady responded that they could not prepare an as-built since there was no structure. He noted the plan that was stamped by an engineer was submitted to show the work that was done.

Agent Farinon explained that Mr. Bailey was subdividing the property and the lien was found by a title attorney. She shared her screen showing photos from the site visit. The dock had not been in use for three years, and was stored offsite on Mr. Bailey's property off Neck Road. A site visit was made to inspect and photograph the structure. Agent Farinon showed photos of the frames and panels. She added that Mr. Grady had measured the components and found it was smaller than the originally permitted dock. Agent Farinon reached out to the Massachusetts Department of Environmental Protection (MassDEP) and their opinion was that it was appropriate for the Commission to issue a Certificate of Compliance.

**Rochester Conservation Commission
January 19, 2021**

A motion to issue the Certificate of Compliance for this project was made by Member Payne and seconded by Member Thompson. Chairman Conway was opposed. **The motion passed in a roll call vote of 5 in favor, 1 opposed, 0 abstained (5-1-0).**

Public Hearings

***(Continued from December 15, 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.

Ward Smith of Wendell Wetland Services and Asa Smith of Atlantic Design Engineers, Inc. were present. Chairman Conway noted that an 18-page report submitted on behalf of the applicant mistakenly was not included in Members' packets. Members received the letter by e-mail the day before and the letter was posted on the Commission website. Chairman Conway encouraged participants to ask any questions related to the letter if they had them.

Mr. Smith explained the applicant was seeking approval for two bordering vegetated wetlands marked A and B on the site plans and three isolated wetlands marked C, D, and E potentially subject to the Town's Bylaw. He reported that Horsley Witten Group, the Commission's peer reviewer, had made changes to the A and E series wetland delineation. He noted they were not requesting a determination on potential vernal pools. He acknowledged there was one vernal pool in the C wetland and they would like to revisit the D and E wetlands during the Notice of Intent process. He noted the C, D, and E wetlands could be Isolated Lands Subject to Flooding and could be revisited during the Notice of Intent process. Mr. Smith also acknowledged the offsite perennial stream and said it would be addressed during the Notice of Intent filing.

Agent Farinon reported she had done some research with MassDEP and it confirmed that the applicant had the right to stipulate what exactly they wanted approved by the Commission as part of the ANRAD process. She spoke with Mr. Smith from Atlantic Design Engineers, Inc. and the applicant does not want to do the additional field work at this time to establish groundwater elevations or site topography to make the determinations. Agent Farinon noted that the engineer revised notes on the site plan stipulating the areas to be confirmed as part of the ANRAD. She stated that if a future project moves forward on the subject property, the Commission can request the issues be addressed at the time. Agent Farinon recommended that the Commission approve the wetland delineation as shown on the most recent revised plan.

A motion to accept the wetlands delineation line as specified by Agent Farinon was made by Member Thompson and seconded by Member Bourque. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

***(Continued from December 1, 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**

**Rochester Conservation Commission
January 19, 2021**

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.)

Chairman Conway stated the applicant requested a continuance to February 2, 2021 to respond to peer review comments.

A motion to continue to February 2, 2021 was made by Member Bourque 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 December 15, 2020) DEP SE# 272-0596 A Notice of Intent filed by Featherbed Lane South Solar, LLC, Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772, for property located at 0 Featherbed Lane, designated as Lot 24 on Rochester Assessors Map 46. The applicant proposes to install an approximate 2.5 MW DC ground-mounted photovoltaic solar array on an estimated 59-acre property at 0 Featherbed Lane. The project involves work within the 100 Foot Buffer Zone to a bordering vegetated wetland and is located within the Estimated and Priority Habitat for Rare and Endangered Species. The proposed work includes converting a tract of forested upland to install the array, access road, equipment pad, and stormwater management features. The applicant's representative is Eric Las of Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772. The property owner of record is Judith DuPont, 123 Rounseville Road, Rochester, MA 02770.

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

Eric Las, P.E. and Principal of Beals and Thomas, Inc. reported they had worked through the peer review comments with Environmental Partners and one item remained unresolved. Agent Farinon, Scott Turner from Environmental Partners, and he had a meeting regarding the use of rainfall data and were unable to come to an agreement. In a letter dated January 11, 2021, Mr. Las explained to Mr. Turner that the permitting process in Rochester started with the tech review meeting. The use of rainfall data was not brought up at that time. They used the MA Stormwater Handbook as required by the Rochester Subdivision Rules and Regulations and local bylaws. Mr. Las noted it was brought to their attention late in the permitting process and it would be unfair for them to have to redesign. He requested that the Commission accept the project as it was currently designed. He noted the plans had not been updated since November 10, 2020.

Agent Farinon stated the areas within the Commission's jurisdiction included tree clearing, some sections of perimeter roadway, and the stormwater collection system. The work was in the 100 Foot Buffer Zone and not in the 25 Foot No Disturb Zone. Agent Farinon explained that Mr. Turner was

**Rochester Conservation Commission
January 19, 2021**

recommending precipitation tables that planned for climate change. She noted that there is a DEP work group studying the issue that will be making recommendations in the coming months, but nothing has been formally adopted. Agent Farinon reported she consulted with Town Counsel who agreed with Mr. Las's assessment. She noted that Town Counsel stated the Commission would not be on sound legal ground with something that was not codified. She recommended that the Commission approve the design as presented.

Member Payne asked what would change if they used the updated rainfall tables. Mr. Las responded that it would result in the basin being larger and they would have to balance the larger basin with the limit of work that was 50 feet away from the 25 Foot No Disturb Zone. Mr. Las further explained there was a MassDEP workgroup looking at the rainfall tables.

Member Gerrior asked which data set should be used to serve the residents of Rochester. Agent Farinon suggested it could be studied in the future with advice from professional engineers. Member Gerrior asked if the data Mr. Las used was currently the state standard. Agent Farinon responded that the Beals and Thomas design is consistent with the Stormwater Handbook and MassDEP standards.

Chairman Conway noted the Commission follows the Bylaw and if they were to veer from that, a court could overturn it. He suggested that they not use the peer reviewer's recommendation.

Agent Farinon recommended that the Commission close the Public Hearing and issue a positive Order of Conditions with the following special conditions:

- Prior to any construction activity, the Conservation Agent shall be contacted to inspect the proper installation of siltation control barriers.
- Along the entire limit of work within the Commission's jurisdiction, four-foot-tall orange safety fencing shall be attached to the upland side of the silt fence.
- The establishment of vegetative cover shall be monitored during construction.
- The Stormwater Pollution Prevention Plan shall be submitted, including a snow management plan, for review and approval.
- A Spill Prevention Control and Countermeasure plan shall be submitted for review and approval.
- There shall be a mandatory preconstruction meeting prior to any construction activity.

A motion to close the Public Hearing and issue a positive Order of Conditions as stipulated by Agent Farinon was made by Member Thompson and seconded by Member Bourque. **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 December 15, 2020) DEP SE # 272-0597 A Notice of Intent filed by Snipatuit Road Solar, LLC, P.O. Box 1320, Portsmouth, NH 03801, for property on 0 Snipatuit Road, designated as Lots 26, 27 on Rochester Assessors Map 46 and Lots 1, 4, 9, and 9A on Rochester Assessors Map 47. The applicant proposes tree clearing, grading, construction of a perimeter access roadway, stormwater collection system and installation of portions of a 4.8 MW DC ground- mounted solar photovoltaic array within the 100-foot Buffer Zone to Bordering

**Rochester Conservation Commission
January 19, 2021**

Vegetated Wetlands. Proposed work is located within Estimated and Priority Habitat for Rare and Endangered Species, and is located within the Mattapoisett River Valley Watershed. A certified vernal pool is located within the central wetland to the south of the existing access drive and another two certified vernal pools are located on the west side of the property. The applicant's representative is Beals and Thomas, 144 Turnpike Road, Southborough, MA 01772. The property owners of record are Kevin J. and Cassandra A. Cassidy, 529 Snipatuit Road, Rochester, MA, 02770, Aquidneck Nominee Trust, ET AL, Lisa Holden, Trustee, P.O Box 388, Rochester, MA 02770 and Rochester Realty Trust, P.O. Box 388, Rochester, MA 02770.

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

Chairman Conway stated the applicant requested a continuance to February 16, 2021 to respond to peer review comments.

A motion to continue to February 16, 2021 was made by Member Thompson and seconded by Member Gerrior. **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.)

Commission Business

For Signature

Minutes

Vice Chairman Gagne stated that at the December 15, 2020 meeting, during the vote regarding DEP File # 272-0600, filed by CVE North America, Member Gerrior also dissented. Member Gerrior confirmed.

A motion to approve the minutes as corrected for December 15, 2020 was made by Vice Chairman Gagne and seconded by Member Gerrior. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Vouchers

Chairman Conway read the voucher from the meeting agenda:

Environmental Partners Group, Inc./Professional Services (11/1/20 to 11/30/20) Featherbed Lane South/ Invoice# 1120194: \$735.00

He stated there were two additional vouchers:

- BSC Group, peer review on Snipatuit Road solar project, \$2,793.00
- Horsley Witten Group, for work on stormwater management design peer review, technical peer review letters and hearing attendance on Cushman Road solar project, \$400.00

A motion to accept all vouchers as presented 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).**

**Rochester Conservation Commission
January 19, 2021**

Old Business

Update on A.D. Makepeace Enforcement Order

(Vice Chairman Gagne recused himself.)

Agent Farinon reported that at the December 15, 2020 meeting, the Commission voted to issue an Enforcement Order to A.D. Makepeace. At the meeting, Bill Madden of G.A.F. Engineering, Inc. committed to provide verbal update reports every two weeks to the Commission. Agent Farinon reported that she has spoken with him twice since the meeting. G.A.F. Engineering is working to meet the requirements of the Enforcement Order. G.A.F. has visited the site with representatives of A.D. Makepeace. They are researching historic photos, existing licenses, and investigating what could and could not be done. They will need to do a topographic survey. Agent Farinon reported that G.A.F. worked with A.D. Makepeace to release water so they could document existing conditions. They will also be flying the area with a drone. Mr. Madden said he would like to do a site visit with the Commission when they reach a stopping point on their field work.

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

New Business

Forest Cutting Plan/North Avenue/Fred Underhill

Agent Farinon referenced the Forest Cutting Plan in the Commission packet and explained the plan was for cutting on a property near New Bedford Waterworks on the Middleborough line. The owner proposes to do limited cutting and removal of some beech and birch trees to encourage the growth of pine. She stated that this is one of many cutting plans on the Underhill property over the years, and that the family have been excellent stewards of the land.

Emergency Snow Removal

Agent Farinon explained the guidance from MassDEP regarding emergency snow removal was important for larger communities in urban areas with a lot of snow and few places to put it.

Confirm member availability for future site visits and meetings

Members confirmed they were able to attend the next meeting.

Discussion About Rainfall Standards

In his work as an engineer, Vice Chairman Gagne reported there were three different stormwater events used in calculations. These included the TP40 numbers used by MassDEP, the Cornell method, and Atlas 14. He noted the TP40 numbers were in use since the 1970's and were fairly conservative. The Cornell method was an interim method from 10 to 15 years ago that progressed to larger storm events. Atlas 14 was the latest and is continuously updated and location specific.

He explained that by having larger stormwater events included in the calculations, the stormwater features would take up more room on the plans. He noted the basins were limited by how deep they could be so they were getting larger. Vice Chairman Gagne recommended waiting to see what MassDEP decides for a standard. Member Thompson agreed on using what the state was recommending.

**Rochester Conservation Commission
January 19, 2021**

Adjournment

The meeting adjourned at 8:21 p.m. on a motion made by Vice Chairman Gagne and seconded by Member Thompson. Vice Chairman Gagne abstained. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 1 abstained (5-0-1).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman