

**Rochester Conservation Commission
February 2, 2021**

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

Absent: *(none)*

Laurell J. Farinon, Conservation Agent
Marissa Perez-Dormitzer, Recording Secretary

The meeting convened by telephone and video conference via Zoom Meeting ID: 811 6751 0062. 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 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 272-0548 A Request for a Certificate of Compliance was made by Darren Michaelis of Foresight Engineering, Inc., on behalf of Bruce & Laura Ouellette, for work completed at 245 Hartley Road, Map 39, Lot 23.

Agent Farinon shared her screen showing the site plan and as-built plan for the septic upgrade. The work was 50 feet from the bordering vegetated wetland, a cultivated cranberry bog, and included two new septic tanks and a new subsurface sewage disposal leaching area. She showed two photos of the site and noted the project had been completed for quite some time. Agent Farinon recommended that the Commission issue a Certificate of Compliance to Bruce & Laura Ouellette under DEP-SE 272-0548. Chairman Conway asked if there were deviations from the original submittal and Agent Farinon responded no, and referred to Mr. Michaelis' stamped letter stating there were no deviations.

A motion to issue the Certificate of Compliance as stated by Agent Farinon was made by Member Thompson and seconded by Member Payne. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

DEP SE # 272-0483 A Request for Extension was made by Stephen Meltzer of Edgewood Development Company, LLC for work completed on Kings Highway Bituminous Concrete Production Facility

Stephen Meltzer of Edgewood Development Company, LLC reviewed the history of the project with a document shared on his screen. He stated the Commission's Order of Conditions originally expired on March 22, 2018. An extension was granted until March 22 2021. They had been working through the air quality permitting process from the Massachusetts Department of Environmental Protection (MassDEP) that began in 2018 and were close to a final submission. In May 2019, a preconstruction meeting was held on the site and a certain amount of work was allowed prior to the issuance of the air quality permit. The work included clearing and preparing the site. Mr. Meltzer shared his screen showing the plan. He pointed out the jurisdictional areas on the 5-acre site. For the last extension request, they showed the borders of the wetlands had not changed. For this current

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request, Mr. Meltzer said that Pare Corporation would provide the technical analysis. He showed several old aerial photos as well as a more recent one that showed the clearing on the site.

Agent Farinon explained the applicant was required to request the permit 30 days in advance, however, the Commission does not need to decide by March 21, 2021. The last extension request was appealed to MassDEP and the Commission's decision to issue the Extension Permit was upheld. She stated the Massachusetts Association of Conservation Commissions (MACC) recommends treating the request as if it were a new filing to include a site visit as well as review of the submitted site plans and Order of Conditions. Pare Corporation will be reviewing the wetland line to substantiate that it has not changed. Chairman Conway asked for more details about the air permit. Mr. Meltzer stated it is a major air permit and noted it is a long process. Agent Farinon suggested they discuss a site visit date at the next meeting in February and continue the Public Hearing to March 2, 2021. Chairman Conway and Mr. Meltzer agreed.

A motion to continue to March 2, 2021 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).**

Public Hearings

DEP SE # 272-0603 A Notice of Intent filed by Ryan Correia, 91 Sarah Sherman Road, Rochester, MA 02770 for property on 0 Mendell Road, designated as Lot 2E on Rochester Assessors Map 30. The applicant is proposing the construction of a single-family home with associated grading, landscaping, and utilities within 100' of bordering vegetated wetlands. All disturbed areas are to be loamed and seeded upon completion. The applicant's representative is Nyles Zager of Zenith Consulting Engineers, LLC, 3 Main Street, Lakeville, MA 02347. The property owner of record is M&K Realty Services, 10 Parsons Walk, Raynham, MA 02767

Nyles Zager of Zenith Consulting Engineers, LLC shared his screen showing the plan. He pointed out the resource areas as flags 299 to 311 and N20 to N5. He reported there is a perennial stream to the south of the property that added a 200 feet riparian zone. He noted the work was in the 100 Foot Buffer Zone, within 50 feet, but not within the 25 Foot No Disturb Zone. Mr. Zager explained they will use a silt sock for erosion control and noted the septic system and paved driveway were outside the 100 Foot Buffer. The soils had been perc tested and approved by the Board of Health. He stated the Board of Health requires a 150-foot setback for the onsite well. Mr. Zager reported that the majority of the house, some landscaping and grading are within the Buffer Zone. He stated that Agent Farinon has concerns about the wetland delineation and requested additional information from the wetland scientist. Mr. Zager noted he was willing to continue the Public Hearing until Agent Farinon and the wetland scientist came to an agreement on the line.

Agent Farinon reported that she requested the wetland report and data sheets and had not yet received a response. When she receives the information, she will need to spend some time in the field with the delineator as she is not in agreement with the line as flagged.

As a general comment on the proposed project, Agent Farinon recommended a semi-permanent barrier along the limit of yard as proposed tree clearing is up to the 25 Foot No Disturb Zone in some areas. Agent Farinon suggested that a continuance be pushed to March 2, 2021 due to the amount of time needed for fieldwork.

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Chairman Conway noted several concerns related to the applicant's signature and the signature of the representative on the application

Alton Ellis, 111 Mendell Road, asked where the project was located on Mendell Road. Mr. Zager stated it was near 365 Mendell Road and Agent Farinon added that it was across the street from Mr. Ellis's mother's property. A motion to continue to March 2, 2021 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 January 19, 2021) **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 provided an update on the project since the last meeting. They responded to the most recent comments from Horsley Witten Group, the Commission's peer reviewer in a letter dated January 20, 2021 and revised the plan set. They received an updated letter dated January 27, 2021 from Horsley Witten Group and he wanted to discuss how to resolve or condition some of the remaining items. Mr. Las shared his screen showing the plan set. There were two isolated vegetated wetland areas delineated by Beal and Thomas on the Koczera's property adjacent to proposed work. After a field evaluation by Horsley Witten Group, the Koczera's consultant LEC Environmental and Agent Farinon, it was determined that the areas were not jurisdictional. The field visit was documented in Horsley Witten Group's January 27, 2021 letter. Mr. Las reported they removed the wetlands and related buffer zones from the plan.

Mr. Las reported they added the Acushnet town line to the plan set and noted the property in Acushnet was also owned by Mrs. Holden. He stated they determined that the work in Rochester was solely under the jurisdiction of Rochester and that Acushnet did not have jurisdiction. However, they communicated with the Town of Acushnet to make them aware of the project. He noted they added flags D1 through D5 for wetlands located in Acushnet.

Mr. Las highlighted several items from the most recent letter from Horsley Witten Group:

1. Horsley Witten Group noted regular maintenance was needed to ensure the slope of the access road was maintained at 2%.
2. Horsley Witten Group suggested requiring more substantial erosion control barrier in areas within the buffer zone. Mr. Las stated their standard was two BMPs including entrenched silt fence and an 8-inch compost filter sock. He was not sure why Horsley Witten Group was not recognizing the silt fence. In areas with stump grinding, they have three different measures, the third being a berm comprised of stump grindings.

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3. Mr. Las reported a certified soil evaluator hand dug the test pits due to challenges with access to the site. He noted the applicant would be amenable to doing mechanical test pits if the Commission wanted to consider it as a condition.
4. Horsley Witten Group suggested the estimated seasonal high groundwater be confirmed at the time of construction. Mr. Las stated they were amenable to confirming it prior to construction.
5. Mr. Las stated the only proposed plantings were at the site entrance and not in a jurisdictional area. He mentioned the type of seed mix they were using which was a mix of native species. He commented that if the Commission would like review by a landscape architect, as suggested by Horsley Witten Group, they were amenable.

Agent Farinon agreed with Mr. Las's assessment that the January 27, 2021 letter from Horsley Witten Group was a clean letter and that major issues had been addressed. The remaining minor issues could be conditioned. She noted that the Planning Board is in the preliminary stage of review by Field Engineering.

Julie and Mike Koczera, 2 Robinson Road, were present. Ms. Koczera stated the site owner's manual appeared to apply to the solar array site only. She asked if there would be a separate manual presented to the Planning Board that covered the extensive proposed access road that covers the three properties. Chairman Conway stated it was not part of the Commission's role.

Chairman Conway asked for several clarifications on the information submitted by the applicant as follows:

- In the Site Owner's Manual, Section 3.3 Recordkeeping, it said that records would be kept for the past three years. Chairman Conway asked why they would stop at three years and suggested five years. Mr. Las was amenable.
- In the Site Owner's Manual, Section 3.10 Gravel Access Road, Chairman Conway asked for clarification on what it meant that the gravel access road would be maintained as necessary. He suggested indicating they would inspect the road once a year. Mr. Las was amenable.
- In the Site Owner's Manual, Section 4.2.3 Stormwater Outfalls, Chairman Conway asked if the twice per year inspections of the stormwater outfalls would be recorded. Mr. Las responded that it would be recorded in the Operations and Maintenance Log. He noted that the Site Owner's Manual and the Operations and Maintenance Log go together as one comprehensive document. He asked if a special condition would help to enforce it and Chairman Conway responded yes.

Agent Farinon recommended that the Commission schedule a site visit. Discussion ensued about how to access the site, which is over a long right of way over private property. Joe Harrison, Cushman Road Solar, LLC, stated that Commission members cannot drive to the locus property because the access road was not constructed and their site did not have a parking lot. He suggested that members park along Robinson Road. Agent Farinon asked if they propose that members enter through the Mann or Koczera property; Mr. Las replied through the Mann property. Agent Farinon expressed concern about parking on the road and entering through private property that is operating as a business which boards horses and provides riding lessons. Mr. Harrison reported he would notify the owners of the right of way as soon as the site visit was scheduled. Agent Farinon asked Mr. Harrison if he will contact the Mann's directly and he responded yes. The site visit was scheduled for February 6, 2021 at 9:00 a.m.

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A motion to continue to March 16, 2021 was made by Member Thompson and seconded by Member Payne. **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

Old Business

Update on Status of Makepeace Enforcement Order from Bill Madden of G.A.F. Engineering

Bill Madden of G.A.F. Engineering reported they had hired a wetlands consultant and G.A.F. Engineering was serving as the engineer. They recently flew a drone over the area and had delineated most of the disturbed areas. He reported that it had been difficult to figure out the original topography because there was so much disturbance. They found lidar data from 2011 but needed to field proof it and add any new site features that would not have been present in 2011. He stated they found the best available information for the resource area boundaries in a plan put before the Commission years ago with the NSTAR right of way. Mr. Madden stated he thought they could provide the restoration plan on the agreed date. Agent Farinon recommended a site visit to obtain feedback from the Commission, and suggested discussing the site visit date at the next meeting. Mr. Madden agreed.

For Signature

Minutes

There was discussion about the minutes from the January 19, 2021 meeting. Chairman Conway reported that in the discussion about the Snipatuit Road solar project, the draft minutes stated the applicant requested a continuance. However, the applicant had not properly advertised so the Chairman asked the Commission to continue the Public Hearing to February 16, 2021.

Agent Farinon stated there was a correction to the last set of minutes at the last meeting: *“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.”* However, it would have made the vote 3 to 3. Marissa Perez-Dormitzer, Recording Secretary, reviewed the video of the meeting and found Member Gerrior voted in the affirmative. Member Gerrior stated he thought he voted nay. Agent Farinon suggested that Member Gerrior review the video to confirm his vote, and the January 19, 2021 meeting minutes will be placed on the agenda for the next meeting for further review.

New Business

DEP SE# 272-0567 – Old Middleboro Road – Request Regarding Change to Relocated Ancient Way

Chairman Conway stated there was a request for a continuance to February 16, 2021 to allow the applicant time to understand what the Natural Heritage and Endangered Species Program is requesting. Member Thompson was concerned that the developer had just recently realized they needed to move the ancient way and noted it would put them right on the 25 Foot No Disturb Zone. Agent Farinon explained the applicant informed her that the location of the cart path was incorrect on the plan. Chairman Conway mentioned the discussion that night was going to be about

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procedurally how to handle the request and whether they would need a new filing. It will be discussed at the next meeting.

A motion to continue to February 16, 2021 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).**

Confirm member availability for future site visits and meetings

Members confirmed they were able to attend the next meeting.

Adjournment

The meeting adjourned at 8:36 p.m. on a motion made by Member Thompson and seconded by Member Bourque. Vice Chairman Gagne was opposed. **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