

**Rochester Conservation Commission
February 16, 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: 842 9751 8746. 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.

Public Hearings

(Continued from January 19, 2021) **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, and 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 Vegetated Wetlands. Proposed work is located within Estimated and Priority Habitat for Rare and Endangered Species, and is located within the Mattapoissett 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 March 16, 2021 to allow time to respond to peer review comments.

A motion to continue to March 16, 2021 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.)

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Commission Business

For Signature

Minutes

Chairman Conway mentioned there was a correction made to the minutes from January 19, 2021.

A motion to accept the minutes of January 19, 2021 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).**

A motion to accept the minutes of February 2, 2021 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).**

Vouchers

A motion to accept a voucher for W.B. Mason/Office Supplies for the Conservation Agent in the amount of \$57.32 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).**

A motion to accept a voucher for Signature Signs/Replacement Sign for Doggett's Brook Property in the amount of \$100.00 was made by Member Bourque and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A motion to accept a voucher for the Society of Wetland Scientists/Annual membership for the Conservation Agent in the amount of \$119.00 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).**

A motion to accept a voucher for Horsley Witten Group for the Cushman Road Solar project DEP# 272-0599 – Invoice# 49366 in the amount of \$3,416.75 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).**

Old Business

Update on Status of Makepeace Enforcement Order from Bill Madden of G.A.F. Engineering – Schedule Site Visit

(Vice Chairman Gagne recused himself.)

Bill Madden of G.A.F. Engineering shared his screen showing a plan. He explained that A.D. Makepeace had a permit for withdrawing water from the Morse Swamp Reservoir and it served as the water supply source for approximately 150 acres owned the company. He reported they located and delineated the wetland resource areas prior to any activity using aerial photographs. It was difficult because the water levels in the Morse Swamp Reservoir changed over time. Looking at water stains on existing culverts, they determined the normal working elevation of the reservoir to be 67.2 feet. He pointed out the edge of reservoir line they determined using various information.

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They identified the bordering vegetated wetland line from a 2015 wetland filing from NSTAR for right of way management. The plan included other features required by the Commission as part of the enforcement order. They identified the disturbed areas using 2011 lidar. Mr. Madden stated that approximately 13,852 square feet of bordering vegetated wetland was altered, which was predominantly from casting of dredged spoils. Mr. Madden stated they included the disturbance in the 25 Foot No Disturb Zone on the plan. Later they found that the 25 Foot No Disturb Zone did not apply to an agricultural project. He had a question on whether the activity could be considered normal maintenance and those areas might not be subject to the Enforcement Order. Mr. Madden stated the plan also showed the Zone A and Zone X line from FEMA flood maps. Regarding the Bordering Land Subject to Flooding (BLSF), he mentioned there was a provision that allowed for deposition of non-substantial fill in the flood zone. The small piles in the BLSF were inconsequential compared to the size of the BLSF.

Mr. Madden emphasized that the reservoir was an agricultural water supply and was subject to normal maintenance of land in agricultural use. The maintenance allowed for cleaning, grading, and dredging. He stated that the project had stopped and they did not complete the normal maintenance they intended to complete. He noted there was probably an interest in increasing the water supply. He said they would come up with a plan to maintain and improve the existing water supply to ensure that adequate water was available. He pointed out a dotted line that showed the outer limit of gravel piles, a portion of which was in the bordering vegetated wetland and a portion in the pond. He noted they would need to remove the material from the site.

Member Thompson reported that on the Rochester GIS map he could see islands not shown on Mr. Madden's plan. He asked if the limit of the Commission's jurisdiction ended at the edge of the water, or if the piles inside the reservoir were within their jurisdiction. Agent Farinon stated that all of it was within the Commission's jurisdiction, from the wetland boundary extending 100 feet. Mr. Madden suggested they develop a plan for further maintenance and improvement activities as part of the mitigation. Member Thompson stated that he wanted to make sure the discussions about further maintenance encompassed all the areas under the Commission's jurisdiction. Mr. Madden also mentioned that the mitigation effort should be done in conjunction with NSTAR's vegetation management plan for the right of way.

Chairman Conway asked Mr. Madden if they were on track to finish their work in a month. Mr. Madden replied yes.

Agent Farinon stated that she hadn't expected Mr. Madden to present a plan, as they had discussed reviewing any plan with Town Counsel in advance. She noted there was still a great deal of information to be added. The BLSF needed to be highlighted and there were areas more to the north and west that had been altered and area not shown. She stated a site visit will be important to verify the limits of alteration. She noted a filing had recently come in that was located nearby and said it would make sense to visit both on the same day. She noted the new filing would be heard at the March 2, 2021 meeting.

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

New Business

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**Request for Determination of Non-significance DEP SE 272-601, Jesper & Jennifer Ingerslev,
Proposal to move dwelling 23 feet away from wetlands and remove seven (7) white pines in the
Buffer Zone**

Brian Grady of G.A.F. Engineering was present. Agent Farinon shared her screen showing the plan. Mr. Grady explained the house was repositioned on the lot, 23 feet west away from the wetlands. This ensured the entire dwelling was outside the buffer zone. He reported the property owners were looking to remove six white pine trees that were outside the 25 Foot No Disturb zone and would be felled with stumps left in place.

Member Thompson asked if the vent for the septic system would be in the cleared area. Mr. Grady responded that they would leave the final vent location up to the homeowner. Member Thompson suggested moving it as far away as possible from where children would be playing.

Agent Farinon stated the property owners installed the erosion control barriers and were aware of where things were located in the field. She showed a photo with some of the trees. She stated that a logger could remove the trees without any land disturbance from outside the 25 Foot No Disturb Zone. Agent Farinon stated the request is for a determination of whether an amended Order of Conditions was required or if the changes were non-significant enough to be a non-action. She recommended that the Commission deem that the requested changes were not significant enough to require an amendment to the permit.

A motion to deem the requested changes non-significance so the applicant can move forward with the project 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).**

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

Chairman Conway stated they would discuss amongst the Members whether to amend the original Notice of Intent, require the applicant to submit a new Notice of Intent, or decline entirely. Austin Turner of Bohler Engineering was present along with Zack Osgood and Tom Gadomski of Agilitas.

Mr. Turner explained that as the Agilitas team was completing one of the basins, it became clear that the ancient way was in a different location than shown on the plan of record. It intersected the stormwater basin. Mr. Turner shared his screen showing several photos of the site and the area of concern. One photo included recently taken drone footage. He explained they were considering selectively removing some low-lying vegetation along the back side of the limit of work and having the ancient way come up along that edge for approximately 140 to 150 feet. It would then tie in to the path previously discussed. The section would be beyond the limit of work. Chairman Conway asked to confirm that the limit of work was the snow fence and Mr. Turner responded yes. Mr. Turner clarified that they would not use mechanical equipment. He showed a photo of the area with the low-lying vegetation and noted the mature trees would remain.

Member Thompson asked how they missed the actual location of the ancient way and Mr. Turner responded he did not know. He said the surveyor went out and re-identified the ancient way. Vice Chairman Gagne asked how the ancient way was originally located. Mr. Turner responded that some

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of the topography was flown where the vegetation was overgrown. In other areas they did an on-the-ground survey with GPS backpack equipment. Vice Chairman Gagne asked if the ancient way was located by aerial flyer and Mr. Turner responded that it was located on the ground. Member Gerrior asked why they were proposing to clear any of the vegetation. Mr. Turner responded that the ancient way would not be easily traversable if they did not remove the vegetation.

Chairman Conway asked when exactly they discovered the ancient way needed to be relocated. He noted they sent a related letter on January 21, 2021. Mr. Turner responded that they found out a few days prior to sending the letter. Chairman Conway stated he reviewed information from the Massachusetts Association of Conservation Commissions (MACC) regarding the decision to require a new Notice of Intent or an amendment. Based on his reading, Chairman Conway stated he viewed the situation as a substantial change requiring a new Notice of Intent. There was discussion about an initial graphic made when there was a different proposal to address the situation. Chairman Conway asked if cars drove down the green area and Mr. Turner responded no. Chairman Conway asked if the green line was a survey line. Mr. Turner responded that it was the limit of clearing that would define the path. He noted the Planning Board had decided the ancient way was 16 feet wide. However, after discussion, Mr. Turner was proposing the alternative approach with a 12 feet wide path and selective pruning of vegetation. He noted the graphic was out of date.

Agent Farinon stated a concern about the inaccurate survey, and whether anything else was not correctly shown. She prefers a design that blends the path into the existing basin and eliminates the need for cutting vegetation.

Member Thompson asked what was happening with another branch of the ancient way. Mr. Turner responded that the specific section did not have to be relocated. They were required to route the ancient way from the point of origin to its finish point. Member Thompson asked if it was inside or outside the fence and Mr. Turner responded that it was outside the fence.

Mr. Turner stated he would be happy to consider Agent Farinon's suggestion to see if can be accommodated. Chairman Conway asked if the area being discussed was in a buffer area. Mr. Turner responded that the work was outside the 25 Foot Buffer Zone. Member Thompson asked if there was a specific statement about the lower branch. Mr. Turner responded it was not specifically articulated. However, the re-routing was clearly defined. Chairman Conway stated he would like to make a site visit. Member Payne agreed with Agent Farinon that they might be able to relocate the ancient way without going beyond the limit of work. She stated she would like to see the most up to date proposal. Agent Farinon asked Mr. Turner if liability was a concern. Mr. Turner responded that it would be introducing the potential for a problem with a pedestrian walking along a stormwater management feature. He noted there might be water temporarily in the basin and the pedestrians would be walking next to it. He added that he was not adverse to having the ancient way hug the outer limit of work and redefining the basin geometry. Agent Farinon stated they would wait to hear from Mr. Turner on how he wants to proceed. If they were proposing work outside the limit of work, they would schedule a site visit.

Review & Approve Annual Report 2020

Agent Farinon explained that the Commission submitted an annual report every year for a report that is distributed by the Town. She noted that the report acknowledges it had been a unique year

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with remote meetings and several large projects. It also included information on the number of filings, the grant received, as well as the RFQ for qualified firms to serve as peer reviewers.

Member Gerrior suggested including information about the site visits by the Commission and agent. Agent Farinon said she will add a bullet point with the information requested. Chairman Conway suggested keeping track of the technical meetings Agent Farinon attended with other departments. Members agreed to add the bullet on site visits.

A motion for Agent Farinon to finalize and submit the annual report with the addition of the single bullet 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).**

Confirm member availability for future site visits and meetings

Agent Farinon recommended that the Commission schedule the site visit for the AD Makepeace property and a separate Notice of Intent filing located nearby during the March 2, 2021 meeting. Members agreed.

Eversource Letter

Agent Farinon explained the letter was regarding the annual right of way vegetation maintenance. She stated she had been in touch with Eversource and noted the line runs through the A.D. Makepeace site. She stated that vegetation management is done as an exemption since it is a utility and a right of way.

Discussion

Chairman Conway mentioned there was a road adequacy review for Snipatuit Road being done by the Fire Chief and the Highway Surveyor. He noted that it did not necessarily include the Commission; however, what they find might come before the Commission. Agent Farinon agreed the Commission should be involved.

There was further discussion about the ancient way on the Old Middleboro Road solar project. Member Thompson and Member Gerrior were concerned about what else might be happening. Member Gerrior noted he walked the fence line and the limit of work fence was installed responsibly. Agent Farinon asked for Vice Chairman Gagne's input. He stated that with the surveyor stamp on the plan, there was not much they could do. He noted that these types of situations are rarely pursued. Chairman Conway suggested they could file a complaint with the Bureau of Land Surveyors and noted it would need substantiation. Agent Farinon added that construction to date was well done.

Adjournment

The meeting adjourned at 8:55 p.m. on a motion made by Member Thompson and seconded by Member Gerrior. Vice Chairman Gagne was opposed. **The motion passed in a roll call vote of 5 in favor, 1 opposed, 0 abstained (5-1-0).**