

Rochester Conservation Commission

March 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
Blair Bailey, Town Counsel
Matthew Creighton, BSC Group
Tanya Ventura, Board Administrator
Marissa Perez-Dormitzer, Recording Secretary

The meeting convened by telephone and video conference via Zoom Meeting ID: 851 8669 2991. 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 announced that the meeting was being recorded, and that each presentation was limited to 10 minutes and 3 minutes were allowed for public comment. Chairman Conway stated that votes will be taken by roll call.

Public Hearings

(Continued from March 2, 2021) **DEP SE# 272-0604 A Notice of Intent filed by Steven Morrell, 512 High Street, Rochester, MA 02770, for property located on 0 County Road, designated as Lot 10 on Rochester Assessors Map 17.** The applicant proposes to alter 5,000 s.f. of a previously disturbed isolated vegetated wetland (IVW), created by over-excavation of sand below the seasonal water table, to expand an existing shooting range. The proposed project involves relocating and replicating the IVW to be altered, creating an improved resource area and vernal pool habitat. The applicant's representative is Brian Grady of G.A.F. Engineering, Inc., 266 Main Street, Wareham, MA 02571. The property owner of record is Steven Morrell, 512 High Street, Rochester, MA 02770.

Brian Grady of G.A.F. Engineering, Inc. reported that Commission Members had recently conducted a site visit at the property. At a previous meeting the Commission provided feedback that he incorporated into revised plans. The size of the replication area has been expanded by 1,000 square feet. There was also a request from the Massachusetts Division of Fisheries & Wildlife (MassWildlife) in a letter dated March 9, 2021 to clearly delineate the limit of work.

Agent Farinon reported that MassWildlife issued a letter dated March 11, 2021 indicating the Natural Heritage & Endangered Species Program (NHESP) determined the project would not adversely affect the habitat of the Eastern Box Turtle. The letter also indicated the applicant was required to submit an Eastern Box Turtle protection plan for review and approval by that office. Agent Farinon explained the project as designed will create a high functioning high value wetland system with shrub and tree canopy as well as a vernal pool. She recommended approving the project as proposed on the most recently submitted revised plan with the following stipulations:

- A preconstruction meeting shall be held on site with the project proponent and the wetland scientist;
- Erosion control barriers shall be installed as shown on the submitted site plan; and

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- Semiannual reports shall be submitted on the status of the wetland replication area by the wetlands scientist until the area is approved by the Commission.

A motion to approve the project as stipulated 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 February 2, 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, Inc. reported that Horsley Witten Group provided a supplemental peer review report dated January 27, 2021. At the February 2, 2021 Commission meeting, Mr. Las shared that he considered the peer review report to be clean and there are no further action items. Mr. Las reported there was a site visit with the Planning Board which focused on access to the site and minimal discussion about the solar array. Mr. Las reported that based upon comments to date, he did not expect anything within the Commission's jurisdiction to change.

Agent Farinon reported that this was the fifth public hearing on the project, and that any future continuances will require renotification of abutters and readvertising. Chairman Conway asked Agent Farinon if she was aware of the hand dug observation holes for the stormwater management system. Agent Farinon responded yes. She responded that Witten Group's report recommended that the Commission include a condition that the estimated seasonal high groundwater table be determined at the time of construction. She noted that the recommended condition was to ensure that the bottom of basins are constructed above groundwater. Chairman Conway asked if the plantings at the intersection at Robinson Road were in jurisdictional areas, and Mr. Las replied no.

Agent Farinon agreed with Mr. Las's assessment that the last report from Horsley Witten was relatively clean and the remaining items could be handled in the Order of Conditions. She noted the Planning Board might have comments on the stormwater collection system and added that it was up to the applicant if they were ready to request a closing. She noted that if there were substantive changes after the Commission closed the public hearing, the applicant will have to request an Amended Order of Conditions. Mr. Harrison stated that since most of the focus with the Planning Board was on the access road and not on the solar site where the wetlands are located, he was comfortable closing the hearing. Member Gerrior asked about the impacts of closing. Chairman Conway explained the Commission could not take any further testimony once the hearing is closed.

Agent Farinon provided a summary of the project noting that the majority was outside the Commission's jurisdiction and there was vegetated buffer provided and setback from the edge of

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wetlands around the majority of the array. Agent Farinon recommended that the Commission issue a positive Order of Conditions with the following stipulations:

- A preconstruction meeting shall be held prior to any construction activity;
- Four-foot orange safety fencing shall be installed along the limit of work within the Commission's jurisdiction;
- The applicant shall submit a Stormwater Pollution Prevention Plan a minimum of 14 days prior to land disturbance for review and approval by the Commission;
- The applicant shall provide a minimum of an 18-inch compost sock or wood chip berm in areas within 100 feet of a wetland resource area;
- The applicant shall submit a signed Illicit Discharge Compliance Statement prior to land disturbance; and
- The estimated seasonal high groundwater table shall be determined at the time of construction.

A motion to issue a positive Order of Conditions with the stipulations noted by Agent Farinon was made by Member Payne and seconded by Member Gerrior. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

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

(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, 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.)

Eric Las, P.E. and Principal of Beals and Thomas, Inc. stated that Joe Harrison, Project Developer of Sunraise Investments, and Caroline Booth of Beals and Thomas, Inc. were present. Mr. Las reported they made changes to the plans based on guidance from the NHESP regarding the work in the endangered species habitat. He shared his screen showing an overview of the project. The following changes were made to the project:

- The size of the solar installation was reduced from 4.79 MW to 4.56 MW;
- The limit of work was reduced by one full acre;
- A stormwater basin was eliminated;

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- The area of tree clearing was reduced; and
- There is an additional 5 feet of buffer added from the edge of wetlands. In general, the limit of work is 5 feet off the 25 Foot No Disturb Zone, thus providing a 30-foot buffer to the edge of wetlands.

Mr. Las reported that NHESP has indicated they were satisfied with the project changes. Mr. Las further reported they responded to BSC Group's supplemental review comments as well as comments from the Planning Board's peer review consultant. He explained there was an existing cart path running through a wetland that served as access to the site. The path has been used by Mr. Cassidy for logging in the past, and was also used to gain access to the site for a multi alarm brush fire. Mr. Las noted their goal was to avoid impacts to the wetland resource areas. At the technical review committee meeting last spring, the Fire Department indicated the existing access would be sufficient. At a subsequent site walk with the Planning Board, members indicated the existing access would be satisfactory. In early March 2021, Mr. Las received an email from the Fire Chief stating he would like a 16-foot wide road at all locations for fire access. Mr. Las noted he added expanded pull offs for passing of emergency response and construction vehicles. He reported that the Planning Board met on March 10, 2021 and the applicant was not present. At the meeting, the Planning Board decided they wanted a 16-foot wide access road due to health and safety concerns. He stated that wetland impact may be inevitable with the Planning Board's request for the widened road. He reported they will evaluate possible replication areas and did not see that as an issue with NHESP. Mr. Las explained there is a stream that flows under the road through an 18-inch culvert. They had planned to cover it with a steel plate during construction, however, that may need to change with the widening of the road.

Agent Farinon noted that the Planning Board requirement to widen the road significantly complicates the Snipatuit Solar application as the roadway widening at the perennial stream crossing will result in the alteration of Bank, Bordering Vegetated Wetland, Land under Waterbody and Riverfront Area. Suitable areas for replication will need to be investigated. She emphasized it will be important to establish the means and methods for dewatering and conduit placement, as well as better evaluation of the existing pipe.

Member Thompson asked if the distances on the roadway diagram were of the navigable surface or the entirety of the edge between existing wetland areas. Mr. Las responded that it was the navigable portion. Member Thompson asked if the edge of roadway was cranberry ditch or lowland wetland and Mr. Las replied that it was lowland wetland. Mr. Las stated they would make sure the edge of the road outside the travel width would be very stable. Chairman Conway stated he would like to see the dewatering plan prior to approval of project. He added that he would like more information regarding the inspection of the conduit for the river to ensure it can support the vehicles. Agent Farinon asked how much additional width the applicant would need for slope stabilization. Mr. Las responded that it would be a 2:1 slope to keep the impact below 5,000 square feet. Agent Farinon asked if it would be close to 20 feet total width and Mr. Las responded that it was a reasonable estimate.

There was discussion about timing for a continuance. Mr. Las agreed to continue to the April 20, 2021 meeting.

A motion to continue to April 20, 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).**

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Agent Farinon stated there was a need to replenish the peer review consulting account and noted she had spoken with Mr. Harrison about an additional \$5,000.00.

A motion to request \$5,000.00 for the additional peer review account 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).**

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

Commission Business

For Signature

Minutes

A motion to accept the minutes from the March 2, 2021 meeting 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).**

Voucher

Chairman Conway read the voucher from the meeting agenda:
BayNet Web Services/Monthly Hosting Fee (Apr, May, & June 2021)/\$60.00

A motion to accept the voucher 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).**

Old Business

Update on Makepeace Enforcement Order – G.A.F. Engineering, Inc.

(Vice Chairman Gagne recused himself.)

William Madden of G.A.F. Engineering, Inc. reported that Commission Members visited the site on March 6, 2021. He submitted a set of plans to Agent Farinon in which they attempted to identify the resource areas on the site and approximate square footages of impacted areas. They were preparing to submit a Notice of Intent. Mr. Madden mentioned a need to discuss the date for filing the Notice of Intent, the date the hearing might be held, and the consultant fee.

Agent Farinon confirmed that Mr. Madden submitted plans that incorporated comments from Commission Members. She reported that she and Town Counsel Bailey met with Mr. Madden the previous week to review the plans and provided additional comments. She noted the effort is a two-phase approach: the first step is to come to agreement on the limit of alteration and limit of resource areas impacted, the second step is to move forward with a restoration plan. The original Enforcement Order issued to Makepeace required that the Notice of Intent be submitted by the end of the week. Agent Farinon recommended that the Commission discuss a continuance date. She also recommended that the Commission request a peer review fee to hire a wetland scientist. She explained three companies were precluded from serving as the peer reviewer because they had worked for A.D. Makepeace. She suggested requesting a list of all the consultants that Makepeace

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has utilized in the past or presently utilizes. Agent Farinon recommended that the Commission request a \$15,000 peer review consulting fee.

Chairman Conway asked what submittal date Mr. Madden wanted for the Notice of Intent. Mr. Madden responded that he was looking at the May 17, 2021 meeting. Town Counsel Bailey suggested going one meeting later. Agent Farinon stated the deadline for submittal for the June 1, 2021 meeting would be May 14, 2021 and would give Mr. Madden an additional 6 weeks. In the meantime, the Commission would need to vote on a consultant. Town Counsel Bailey stated he thought it would be helpful to hire the consultant soon so the company can review the plans as they move forward. Mr. Madden commented that he reviewed the local bylaw and the section about the consultant fee indicates the consultant would be hired upon the filing of a Notice of Intent. He noted it was premature to ask for the review fee prior to filing of the Notice of Intent. He added that the Commission might need to solicit proposals from more than one consultant according to information in the state procurement laws for purchases more than \$5,000.

Town Counsel Bailey noted the Commission had already gone out to bid for peer review services. He added that he had asked Mr. Madden if he would consider providing a list of consultants and Mr. Madden had said yes. Town Counsel Bailey stated they had also discussed hiring the peer review consultant and noted having the peer review consultant start earlier would save time for the applicant. Mr. Madden agreed they had discussed the issue and noted he was sharing concerns from James F. Kane, President & Chief Executive Officer at A.D. Makepeace. Mr. Madden stated he would obtain a list of consultants that A.D. Makepeace uses and submit it to Agent Farinon.

Chairman Conway asked if Mr. Madden wanted to continue to a hearing on June 1, 2021. Mr. Madden replied yes.

Member Thompson initially made a motion to continue to June 1, 2021. However, Town Counsel Bailey noted they were not continuing, but instead they were moving the deadline required under the Enforcement Order. Agent Farinon noted that technically the deadline was May 14, 2021. Town Counsel Bailey recommended making a motion to extend the Enforcement Order deadline for filing to May 14, 2021. Member Thompson then withdrew his initial motion.

A motion to extend the Enforcement Order deadline to May 14, 2021 was made by Member Thompson and seconded by Member Gerrior. Chairman Conway asked if Mr. Madden would continue his updates and Mr. Madden responded yes. Mr. Madden asked if there would be an amendment on the Enforcement Order to extend the submittal date. Town Counsel Bailey stated they did not need a written amendment. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Town Counsel Bailey suggested waiting to vote on the peer review retainer.

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

Correspondence

Member Thompson asked about a letter in Members' packets from the MA Division of Marine Fisheries (DMF) dated March 5, 2021 regarding beaver dams on the Mattapoissett River. In the letter, Daniel J. McKiernan, Director of DMF, recommended removing the dams and "some allowance for lethal trapping" of the beavers. Member Thompson asked if there was any action

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needed by the Commission and Agent Farinon responded no. Member Gerrior noted the letter indicated that fish were more important than beavers. Town Counsel Bailey explained the decision related to the level of endangerment of both species with the herring being far more endangered than beavers. Vice Chairman Gagne asked if a Notice of Intent filing was required for trapping beavers. Town Counsel Bailey responded no since the state had made the determination.

New Business

Confirm member availability for future site visits and meetings

Chairman Conway stated he was unavailable for the next meeting on April 6, 2021. Remaining Members noted they were available. It was agreed that Vice Chairman Gagne would run the meeting in Chairman Conway's absence, and Member Payne will serve as backup.

Adjournment

The meeting adjourned at 8:25 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