

**Rochester Conservation Commission
December 15, 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
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: 897 0233 3901. Chairman Conway called the meeting to order at 7:01 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Conway read aloud 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

DEP# 272-0602 A Notice of Intent filed by property owners David Sullivan & Cynthia Brackett, for property located at 129 Dexter Lane designated as Lot 16B on Rochester Assessors Map 6. The applicants propose to construct a dog kennel and various driveway & landscape improvements within the 100 Foot Buffer Zone to a Bordering Vegetated Wetlands, including the removal of 3 trees within the 200 Foot Riverfront area.

Rick Charon of Charon Associates, Inc., was present. Agent Farinon shared her screen showing the site plan. Mr. Charon described the 4.5-acre property and noted that 60 percent was wetland. He explained there was bordering vegetated wetland for Dexter Brook on the site that they recently re-flagged in the same position. He reported the resource area also included the buffer zone from the bordering vegetated wetland and a 200-foot riverfront area where three trees were proposed to be removed with stumps ground. He reviewed the proposed work including the following:

- Remove a rubble wall in the field area
- Till, add loam, and plant grass in the field area to make a continuous lawn
- Remove one tree in the field area and stump grind
- Add a flagpole and light near the rubble wall
- Resurface the driveway and rebuild the stone retaining walls
- Resurface a 1,900 square foot area in the back of the house
- Construct a 12' x 24' building on a concrete slab for storage; it was incorrectly called it a kennel in the filing
- Enclose an 8-foot overhang on the proposed building with fencing for dogs

Mr. Charon reported the project includes siltation controls near the 12' x 24' building and a siltation barrier in the field area.

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Agent Farinon reported the property was recently purchased and the new owners are looking to make the changes. She showed photos of the site from various angles.

Vice Chairman Gagne asked if the existing conditions including the lawn area and walls were in conformance with the original Order of Conditions. Agent Farinon responded yes. Chairman Conway asked if the property owner wanted to remove the three trees in the riverfront area because they were close to the house. Mr. Charon responded that they were within 40 feet of the house and 60 to 80 feet in height.

Agent Farinon recommended that the Commission issue a positive Order of Conditions with the stipulation that siltation control barriers be installed in the field prior to activity and the Commission office be contacted so they could be inspected.

A motion to issue a positive Order of Conditions as stipulated by Agent Farinon 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).**

(Continued from November 17, 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 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 reported he had been on the subject property hunting with the owner's permission, however he does not think it requires recusal. He explained the applicant had requested a continuance to January 19, 2021 to coordinate with the peer reviewer. Member Thompson asked how many continuances there were, and Chairman Conway responded it was the fifth. He noted they will need to re-advertise and re-notify abutters.

A motion to continue the Public Hearing as requested 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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(Continued from November 17, 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.)

Chairman Conway stated there was a request to continue the Public Hearing to January 19, 2021 to address peer review comments. Member Thompson asked if it was the sixth continuance. Chairman Conway noted the filing was readvertised for the November 17, 2020 meeting.

A motion to continue to January 19, 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.)

(Continued from December 1, 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.

Chairman Conway stated the Commission received a letter from Attorney Gene J. Guimond of Baker, Braverman, & Barbadoro, P.C. on behalf of James and Carriann McCarthy, abutters, and the letter is open for discussion at the meeting.

Christopher King of Atlantic Design Engineers, Inc. reported that at the last meeting, there was a request for Amy Ball of Horsley Witten Group and the applicant's wetland scientist to visit the site to review the wetland delineation. The site visit took place on December 7, 2020. On December 9, 2020, Atlantic Design Engineers, Inc. submitted a letter to the Commission along with the revised wetland location plan. Several flags were updated in the A-series. In a letter dated December 10, 2020, Ms. Ball confirmed the adjustments to the A-series and pointed out additional concerns and made recommendations for findings in the Order of Resource Area Delineation (ORAD). In a letter dated December 15, 2020, Atlantic Design Engineers, Inc. provided additional Isolated Land Subject to Flooding (ILSF) calculations. Mr. King reported there were six outstanding items in Ms. Ball's letter dated December 10, 2020 as follows:

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1. A portion of one of the isolated wetlands that might be a potential vernal pool is well off site. Since Horsley Witten Group was not able to verify the potential vernal pool, they recommended that the Commission include it in the findings in the ORAD. Mr. King stated the applicant was amenable to the request.
2. There was discussion in the field about the two lobes in the C-series. The northerly lobe was determined as a vernal pool. In Horsley Witten Group's letter dated December 10, 2020, it says "*while the Applicant's wetland scientist made an assessment at the appropriate time of year (i.e. spring) and concluded that the southern lobe was dry, and therefore not exhibiting vernal pool characteristics, this was done at a time preceding a state-wide drought designation.*" In the letter, Horsley Witten Group recommended that there should be another opportunity to assess the lobe and recommended including it as a finding. Mr. King stated they had no further comment on the item.
3. Mr. King noted that Mr. Guimond's letter referred to potential ILSF calculations. He reported that Atlantic Design Engineers, Inc. provided calculations for the C, D, and E-series. They demonstrated that the D and E-series were very small and did not contain the volume for the required quarter-acre-foot. Mr. King stated they would not do groundwater testing until they knew where the wetlands were located. He reported that preliminary estimates indicate the soil is well draining and that groundwater is more than 80 feet below surface. They did not think the area is influenced by groundwater.
4. Mr. King reported that the applicant was amenable to including a finding to reassess the D-series for potential vernal pool characteristics.
5. Mr. King stated the applicant was amenable to including a finding to reassess the E-series for potential vernal pool characteristics.
6. Mr. King stated the applicant was not asking the Commission to confirm the potential perennial stream located off property. Due to the proximity of the proposed work, they were amenable to including it as a finding.

Ms. Ball stated the recommendations to include findings in the ORAD for vernal pool status and ILSF status for the D and E-series seemed reasonable. She stated since the C-series was fairly close to the quarter acre volume, she hesitated to dismiss its ILSF status. Ms. Ball questioned how they determined the watershed contributing to the area and noted that since it is the same elevation as the A-series wetland, it might be worth considering a finding in the ORAD. Regarding the perennial stream, in her December 10, 2020 letter, Figure 3, she added the stream from the USGS map along with a 200-foot radius to show where the jurisdiction would potentially occur.

Agent Farinon reported that Ms. Ball, Ward Smith, the applicant's wetland scientist, and herself looked at one area of concern on the McCarthy property and found that it is not a wetland resource area. She noted the letter submitted that day by Atlantic Design was sent at 5:03 p.m. and there was not time for Horsley Witten Group, Members, or herself to review it thoroughly.

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Vice Chairman Gagne asked what the applicant was looking for the Commission to approve. Mr. King stated the applicant was looking for approval of the delineation. He noted they were amenable to Ms. Ball's recommendations regarding findings to be added to the ORAD. He added that typically their firm files a Notice of Intent and all the information is reviewed at the same time. Vice Chairman Gagne asked if Agent Farinon and Ms. Ball agreed with the wetland flag locations on the most recent plan. Agent Farinon responded yes. Vice Chairman Gagne stated he would consider a motion to approve the wetland flag delineation as agreed upon and noted the ILSF questions and perennial stream could be considered later.

There was further discussion about possible routes of approval. Agent Farinon noted the Commission did not typically include a list findings in ORADs and normally refers to the approved plan of record. There was a suggestion to approve pieces of the delineation. Member Payne stated that she had concerns approving a partial ORAD and noted the purpose of approving the ORAD was to be sure of the Commission's jurisdictional areas. Chairman Conway agreed with Member Payne.

Bill Madden of G.A.F. Engineering, Inc., was present on behalf of James and Carriann McCarthy. He reported he supported a decision for the Commission to not have a finding regarding the ILSF, particularly for the C-series. He noted the McCarthy's had experienced flooding problems and review of the information on the ILSF would help to analyze it. Mr. Madden stated the data source for the topography was not noted on the plans and it would be helpful to know.

Chairman Conway stated they would need a continuance so that Members had a chance to review the letter that was submitted that day. Mr. King stated a concern about why they could not move forward and determine if there were additional jurisdictional areas in the next phase of the project which would be the Notice of Intent filing.

A motion to continue to January 19, 2020 was made by Member Payne and seconded by Member Bourque. Vice Chairman Gagne and Member Thompson were opposed. **The motion passed in a roll call vote of 4 in favor, 2 opposed, 0 abstained (4-2-0).**

Mr. King asked what would need to be provided at the next Public Hearing. Chairman Conway responded that the Commission would review the 18-page report submitted at 5:00 p.m. by Atlantic Design Engineers, Inc. Mr. King suggested there be a finding to revisit the vernal pools when appropriate and at the same time revisit the ILSF calculations.

(Continued from November 17, 2020) **DEP SE# 272-0587 A Notice of Intent was filed by Steen Realty & Development Corp., 3 Ledgewood Boulevard, Dartmouth, MA 02747 for properties located at 22 Cranberry Highway, designated as Lots 41C and 50 on Rochester Assessors Map 17.** The Notice of Intent application is for work located entirely within the 100 Foot Buffer Zone to a wetland resource area located at 22 Cranberry Highway in Rochester. The scope of work includes associated grading and drainage outfall installation associated with the development of 208 residential units and commercial space within the Cranberry Highway Smart Growth Overlay District. A majority of the work will occur within previously altered/disturbed areas.

Phil Cordeiro of Allen & Major Associates, Inc. reported that modifications had been made to the plan including relocation of the trash dumpster and changes to the wetland line. The updated plan was approved by Henry Nover, the peer reviewer. Mr. Cordeiro reported the Planning Board had

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closed the Public Hearing on December 8, 2020. During the review process with the Planning Board, some minor modifications were made including bus routing around the site and final coordination and detailing of buildings. The building footprints did not encroach any closer to wetland areas. The changes resulted in a reduction in impervious area and they did not change the drainage calculations so there was excess capacity. They added more landscaping and lights on the back entrance. They also relocated underground utilities. Mr. Cordeiro reported the Planning Board voted to approve several waivers including a waiver request for the stormwater basin regarding the separation to groundwater. He recommended that the Commission vote to close the Public Hearing and render a decision.

Agent Farinon summarized that Mr. Nover recommended that the applicant had provided sufficient information and that the project is in compliance with the Massachusetts Stormwater Standards.

Chairman Conway asked if any of the changes impacted or took place in the wetlands or the buffer area. Mr. Cordeiro responded no. Chairman Conway asked if the Planning Board approved the project. Mr. Cordeiro explained the Planning Board is in the process of drafting and finalizing their decision. He noted that no further modifications could be made to the plans.

Agent Farinon recommended that the Commission close the Public Hearing and issue a positive Order of Conditions allowing the project to move forward with the following stipulations:

- A preconstruction meeting must be held prior to any construction activity.
- The applicant must submit a Stormwater Pollution Prevention Plan for review and approval by the Commission.
- The limit of work must be staked in the field prior to any construction activity.
- The snow fence must be installed on the upgradient side of the erosion control barriers.
- The erosion control barriers must be reviewed and approved in the field prior to any construction activity.

Chairman Conway asked when Members would see the Stormwater Pollution Prevention Plan. Agent Farinon responded that typically the plan would be submitted prior to construction and after approval by the Commission. Mr. Cordeiro asked if approval of the plan was an administrative function. Agent Farinon stated it is typically an administrative approval.

A motion to issue a positive Order of Conditions as stipulated by Agent Farinon 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).**

A motion to have a Stormwater Pollution Prevention Plan reviewed and approved by the Conservation Agent under administrative approval 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).**

Commission Business

For Signature

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Minutes

A motion to approve the minutes of December 1, 2020 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).**

Vouchers

Chairman Conway read the vouchers from the meeting agenda:

- BayNet Web Services/Monthly Hosting Fee (Jan, Feb, & Mar 2021): Invoice# 7351: \$60.00
- Environmental Partners Group, Inc./Professional Services (10/1/20 to 10/31/20) Featherbed Lane South/ Invoice# 1020243: \$3,675.00
- Horsley Witten Group/Professional Services (through 11/29/2020) Cushman Road Solar/Invoice# 48916: \$1,483.25
- Horsley Witten Group/Professional Services (through 11/29/2020) ANRAD Neck Road/Invoice# 48997: \$2,164.95

He stated there were two additional vouchers:

- Staples: \$41.44
- FY21 Membership in the Massachusetts Society of Municipal Conservation Professionals: \$20.00

A motion to accept the vouchers 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).**

Old Business

Vote on Revised 2020 Meeting and Submission Deadlines

A motion to accept the revised schedule of meetings and submission deadlines 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).**

New Business

Review draft and vote to issue Enforcement Order to A.D. Makepeace Co. for violation off County Road

(Vice Chairman Gagne recused himself.)

Agent Farinon reported she followed up on a complaint filed with DEP regarding activities on Map 17, Lot 9, adjacent to the high-tension lines. She shared her screen showing an aerial view of the property and described the area of alteration. She contacted the property owner, A.D. Makepeace Co., and arranged to visit the site. Agent Farinon showed several photos of the work that had been done. She noted that the Agricultural provisions of the MA Wetlands Protection Act allows for a limited amount of disturbance by growers as an exempt activity of with a filing. The photos showed an area that was stripped and denuded, piles of material, and a landing area where they used an excavator. Agent Farinon also showed a diagram with the disturbed areas highlighted in orange. She reported that hundreds of linear feet were altered. Since it was a sizable alteration, she had been consulting with the Massachusetts Department of Environmental Protection. The Commission was

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taking the lead in drafting the Enforcement Order; a draft had been included in Members' packets of information. It asks for the property owner to cease and desist, the resource areas to be corrected and returned to original condition, and a restoration plan filed by a certain date proposed as February 12, 2021.

Bill Madden of G.A.F. Engineering, Inc., was present on behalf of A.D. Makepeace. He stated they will work to resolve the situation to the satisfaction to all stakeholders. He had started to investigate. He expressed concern about the proposed February 12, 2021 deadline. Member Thompson asked for a reasonable deadline. Mr. Madden responded that it would take more than 60 days. There was further discussion about the deadline and Mr. Madden suggested March 16, 2021. Agent Farinon noted the Commission was also asking for an after-the-fact Notice of Intent which requires a public hearing process. She suggested March 19, 2021 as the deadline and the submittal could be discussed at the April 6, 2021 meeting. Member Thompson asked if Mr. Madden could provide a brief update at the March 16, 2021 meeting. Mr. Madden replied that he will provide Agent Farinon with an update every two weeks.

Chairman Conway asked if there could be anything potentially criminal with the violation. Agent Farinon responded that she did not want to speculate and that there was a significant amount of information to be gathered. She recommended issuing the Enforcement Order as drafted with the 1. requested change to the deadline date of March 19, 2021, 2. the stipulation that progress reports be provided by Mr. Madden every 2 weeks, and 3. the Commission authorize her to sign the Enforcement Order so that it can be issued immediately.

A motion to issue the Enforcement Order 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.)

Review and approve FY22 Annual Budget

Agent Farinon reported the budget was level funded except for step increases for the Board Administrator and Recording Secretary. She explained that additional expenditures will be taken from the Notice of Intent fund in which filing fees are deposited. She noted that the Town Hall Annex is investigating a remote filing system to store files and free up space.

A motion to approve the budget 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).**

Discuss \$20,946 Buzzards Bay Watershed Municipal Mini-grant Award for Stuart Bog Cedar Swamp Land Preservation Project

Agent Farinon reported the Commission applied for \$30,000 for the mini-grant and received partial funding. The Board of Selectmen had recently voted to authorize the Town Administrator to sign the contract documents.

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Correspondence

Agent Farinon reported the Commission received the first utility line checklist from SEMASS and no major issues were identified. She mentioned there was a notice from the Massachusetts Association of Conservation Commissions regarding the FY22 annual dues of \$434 for the Town.

Confirm member availability for future site visits and meetings

Members confirmed they could attend the next meeting on January 19, 2021.

Adjournment

The meeting adjourned at 9:03 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