



SUDBURY CONSERVATION COMMISSION

Meeting Minutes of July 8, 2020

Present: Thomas Friedlander, Chair; David Henkels, Vice Chair; Bruce Porter; Richard Morse; Mark Sevier; Charlie Russo; Kasey Rogers; Ken Holtz, Associate Member, and Lori Capone, Conservation Coordinator

Chair Friedlander opened the meeting under the MA Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw at 6:30 PM.

Wetland Applications:

Notice of Intent: Massachusetts Bay Transportation Authority Right-of Way, DEP File #301-1287:

Chair Friedlander opened the Notice of Intent hearing for the installation of a new 115kV underground electrical transmission line and the construction of a portion of the Mass Central Rail Trail, from the existing Sudbury Substation to the Hudson town line, along the inactive Massachusetts Bay Transportation Authority Right-of-Way, under the State Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw, continued from April 13, 2020.

The Chair stated there had been a Zoom meeting between, himself, Coordinator Capone, Katie Kinsella and Mark Bergeron of Epsilon Associates, and Paul Jahnige, Department of Conservation and Recreation (DCR) to set up the process for this meeting so that all aspects of comments, information, and public transparency will be addressed, and fully vetted. Initially, Mark Bergeron, will discuss the status of submitted questions from the previous meeting, and then Paul will give an overview on the DCR project and answer questions about that. He then stated Laura Mattei from Sudbury Valley Trustees will be provided time for a short powerpoint presentation. Robert Bird, LSP from Envirotrac, will then be provided time to ask questions, on behalf of Protect Sudbury. He will then entertain additional comments from Rebecca Cutting and Ray Phillips, of Protect Sudbury, before opening the discussion up for additional public comments. The Commissioners and Coordinator Capone will then discuss their comments. Chair Friedlander stated this hearing would not be closed, as the third party peer review is still in progress. Marta Nover from Beta Group will be on hand, for questions should that become necessary.

Commissioner Kasey Rogers will be recusing herself, as she is an abutter to the project. K. Rogers so recused and left the meeting as a panelist but attended the meeting as an attendee.

Mark Bergeron of VHB introduced himself and his team, as well as the Eversource representative, Denise Bartone; Paul Jahnige, DCR; Barry Fogel, Counsel from Keegan Werlin; and other members of the project team. Marc Bergeron provided an overview of how they have addressed questions and comments received to date from the Commission, third party review and the public, and stated that they are still working on addressing stormwater management comments raised by BETA. He stated that their response to questions/concerns raised at the initial hearing have been posted on the Commission webpage (<https://sudbury.ma.us/conservationcommission/eversource-mass-central-rail-trail-notice-of-intent/>). He focused on the common topics from questions received from both the parties reviewing the project and the public. He addressed the question about a joint filing between DCR and Eversource explaining that separate NOIs do not need to be filed for projects with co-located work. MassDEP has agreed and encouraged Eversource and DCR be co-applicants on this project. The applicability of limited project status was presented, noting this was associated with work in the Riverfront Area, which will be

revegetated within two growing season. Mr. Bergeron then described how the project would proceed under the Time of Year Restrictions placed on the project by the Natural Heritage and Endangered Species Program. He described the sequencing and equipment that would be used and stated that work would be taking place in several segments, simultaneously, for the duration of the project. Once a schedule has been established for construction, it will be shared to the Commission. The segment with most 'time of year' restrictions is over the Hop Brook. Year 1 would be on the West side of the 128 Bridge in the Hop Brook, starting in August and concluding by November. The East side would be done June 1 through February in that same year. If not completed according to this schedule, it would take place at the same time the following calendar year.

Mr. Bergeron then discussed the subsurface investigations regarding soil and groundwater management. He stated impacted groundwater was not encountered, and it is not anticipated to be encountered within the project site during construction. Soil contained low levels of contaminants that are common to soils in areas such as these. An Environmental Monitor will oversee excavation and dewatering activities and will cease work immediately upon discovery of potential issues of contamination. Eversource and its Licensed Site Professionals (LSP) will implement the Soil and Groundwater plan to address any impacts. He said they have inquired with MassDEP Bureau of Waste Site Cleanup who advised adherence to Best Management Practices for Controlling Exposure to Soil during the Development of Rail Trails guidance. Finally, he reviewed filings required on the Federal, State and local and other agency levels to which Eversource and its partners are in various stages of formal application. Mr. Bergeron completed his presentation and recognized Paul Jahnige from DCR for his comments.

Mr. Jahnige stated his portion of the project, Phase 2, would take place after Eversource completed its work. He said the area would be in better condition than it had been previous to the rail trail being built. The path will be a 10' wide, paved path, for various types of use by the community. He reviewed the comments they received, which included Stormwater Management that will not be addressed tonight. He stated that DCR will be responsible for long-term maintenance and vegetation management for the corridor

Chair Friedlander thanked both and introduced Laura Mattei, Director of Stewardship for Sudbury Valley Trustees, for her comments. Ms. Mattei gave a Power Point presentation regarding concerns SVT has with the project impacts to endangered species, species of concern or in decline, and impacts to other wildlife and wildlife habitat. She objected to the area being described as degraded by the proponents, as Memorial Forest is managed for the locally rare pine barren habitat and is home to wild lupine, rare turtles, and declining birds and insects. She stated this project is not proposing an improvement to existing conditions to provide wildlife habitat.

Chair Friedlander then thanked her and introduced Robert Bird an LSP from Envirotrac, who has been hired by Protect Sudbury. Mr. Bird had some technical difficulties, so the Chair introduced Rebecca Cutting, 381 Maynard Road. She will be submitting more comments in writing later. She asked the proponents of the project to stop saying the railroad ties were an impediment to wildlife movement, as they are not according to her research. She also stated the proponents were underplaying the impacts to wildlife habitat. She stated that there have been other studies done in Sudbury relative to wildlife displacement, and that it would have a large, negative impact, rather than little impact according to the proponents. She questioned the segmentation work on the bridges as far as the timelines. This would compete with the migration period. She completed her comments by thanking the applicant for being willing to extend the Time of Year restriction for turtle to June 1 but felt more time may be needed for older turtles.

Chair Friedlander recognized Ray Phillips, 40 Whispering Pine Road, who expressed disappointment with the Department of Conservation and Recreation. He stated DCR has not been attendant to Sudbury

relative to their mission and stated paving is not an improvement to the area. He questioned Eversource about the ‘Stray Current Protection Plan’, why is this required, as it is known to have adverse effects on humans and wildlife.

Barry Fogel of Keegan Werlin, Counsel to Eversource, in answer to that question, said this has no impact on the wetlands, and as such, goes beyond the scope of the Commissions responsibilities.

Chair Friedlander reintroduced Robert Bird, LSP, who said that he did not believe that the rail trail and utility project should be co-applicants on the project, as they are two very separate projects. The management of soil is not compatible. He requested that the Commission be supplied with the soil boring and groundwater logs and analytical data from this testing. Chair Friedlander questioned Eversource as to the request, to which Mr. Fogel answered he would have to discuss this request with their LSP and provide the requested data.

Chair Friedlander recognized Diana Warren, 32 Old Framingham Road, from the Historical Commission. She is not acting as the member of any Town Board in this instance, she stated. She commented DCR trail guidelines are not in keeping with their mission to protect and enhance. The Historical Commission will be making comments later about the project, however she stated there is information that stated the project has ‘adverse effects’ on historical preservation. The Historical Commission is currently conducting a review that could affect the proposed bridge design. She concurred that the trail should not be paved and that other surfaces needed to be considered as it effects the historical aspects of the project. She then asked which party filed the MassDEP, Ch. 91, May 2020 Application for bridgework. Marc Bergeron, Epsilon, responded that Eversource and DCR filed jointly.

Chair Friedlander recognized the public for comments. Dan DePompei, 35 Haynes Road, asked about jurisdictional authority, questioning whether the local wetlands Bylaw was applicable for this project. Mr. Bergeron answered, yes this project is subject to the WPA and the local Bylaw, and is designed to comply with both.

Chair Friedlander recognized the Commissioners for comments and questions. C. Russo asked about the lifespan of the project. Marc Bergeron deferred to Mike Hager for Eversource and then to DCR for a response. Mr. Hager stated that typically said useful life is commonly for 50 to 80 years. C. Russo expressed concern with the condition of the existing culvert and asked if the MOU has been submitted. Mr. Jahnige stated that the MOU will be provided to the Commission once it is signed. The Lease is for 99 years and a rail trail would generally need to be resurfaced as regular maintenance, every 25 years. C. Russo discussed Joint and Several Liability, to ensure the project is not left unfinished and/or parties on the project would retain perpetual responsibilities for each aspect of the project.

Chair Friedlander asked Mr. Jahnige about other surface opportunities, to which he answered there are other surfaces used, but he maintained that asphalt is DCR’s preferred surface.

D. Henkels asked Mr. Jahnige if DCR has been involved in any other public/private partnerships to which Mr. Jahnige responded that the Weston and Wayland sections of the trail were public/private partnerships with Eversource, and were also joint Notice of Intent applications with the respective Conservation Commissions.

C. Russo asked how many work crews would be working simultaneously. Mr. Bergeron said that until they have a schedule, they do not know. C. Russo asked how the area of disturbance is calculated: whether they take into consideration the contours, especially on steep slopes. Mr. Bergeron stated that the square footage is calculated in two dimensions using AutoCAD. C. Russo asked for images showing the duct bank in relation to the bridges, and Mr. Bergeron stated these are not yet available. C. Russo closed

his comments expressing concern with impacts from habitat fragmentation and animal migration in the 21 wetland impact areas, the impacts of which he felt were underestimated in the application.

D. Henkels asked Mr. Bergeron if there was a plan to upgrade or conduct maintenance on the existing culverts as part of this project. Mr. Bergeron stated Eversource's Structural Engineers had evaluated all culverts; most were found to be sound. The information on the limited work that will be completed as part of this project was included in the submitted NOI. He listed the culverts being addressed.

Chair Friedlander then asked their Peer Reviewer for her comments at this point; Marta Nover, Vice President of BETA, introduced herself as the Town's Peer Reviewer on the project. They are in the process of reviewing the answers to the first set of comments and will have gone through them in about two weeks. They expect another set to be submitted at the next hearing. She stated the objective is to supply the Commission with a defensible position for this project. At this point, she said, they still need more information.

Coordinator Capone expressed concern about the condition of the culverts and requested the structural report for the record. She asked if the report only assessed the current condition on the culverts or did it include projections for these culverts to support the construction and infrastructure. She listed her comments about the project, which will be added to the list that will be on the website, which included concerns on proposed restoration of disturbed areas within the riverfront area, adjacent upland resource area, and vernal pool habitat, and associated impacts to adjacent coldwater fisheries and vernal pools to meet the limited project provision and the local Bylaw; inconsistency among documentation involving erosion controls, stockpiling of materials, and management of vegetation within the corridor; dust control; dewatering; long-term operations of the facility; mobilization and management of equipment within the corridor; and an additional contamination site adjacent to corridor. Coordinator Capone also requested the applicant provide an explanation of why they will not seek a letter from the Water District confirming they have no concerns with any potential impacts to the Zone II Wellhead Protection Zone and why monitoring wells will not be installed to confirm no migration of contaminants. She also asked if the Department of Public Works has reviewed any proposed connections to the Town drainage system and asked for an explanation of why pavement is proposed whereas other portions of the Mass Central Rail Trail are not paved.

After a short break, Chair Friedlander asked a question about comments submitted in the form of written submissions via Zoom. Atty. Pucci, Town Counsel, stated the Chair has discretion over how this is done. Chair Friedlander stated that as he sees questions with identification he would read them otherwise he would call on people who raise hand. The Commission agreed.

Jim Gish, 35 Rolling Lane, expressed his opposition to the project. His concern related to whether the trail surface is permeable vs. non-permeable asphalt. He asked whether porous asphalt has been considered. Coordinator Capone stated this should be examined but they require a lot of maintenance to maintain their porosity and could be an issue relative to contaminants under the asphalt.

D. DePompei commented that the life of the project is subject to MBTA's decision to, and that at any time could be shortened. This is not within the purview of the Commission, stated Chair Friedlander.

The Chair then concluded the meeting with discussion about the next meeting date for further discussion. The Commission decided on August 13, 2020.

On motion by M. Sevier, seconded by D. Henkels, the Commission voted unanimously to continue the hearing to August 13, by roll call vote.

The Chair recognized Bill Schineller, Board of Selectmen, 37 Jarmon Road. He brought up the relocation of the transmission lines after 20 years. He asked for a response from Eversource. Chair Friedlander asked Atty. Fogel, Counsel for Eversource, to respond. He stated the question has been asked and answered several times and directed them to response #63 in the *Response to Conservation Commission and Public Comments compiled at and following the April 13, 2020 Meeting* that is posted on the town website. D. Henkels asked him to read the question and answer. Mr. Fogel responded by reading the question and answer as is listed under #63. M. Sevier reiterated concerns about the culverts and suggested they be upgraded in concert with the project and should be evaluated for the lifespan of this project, not just the current conditions of the culverts.

Chair Friedlander thanked all for participating and on motion by M. Sevier, seconded by B. Porter, a unanimous vote to adjourn the meeting passed, by roll call vote.