



**SUDBURY CONSERVATION COMMISSION**  
**Meeting Minutes of August 13, 2020**

Present: Thomas Friedlander, Chair; David Henkels, Vice Chair; Bruce Porter; Richard Morse (6:50 arrival); Mark Sevier; Charlie Russo (6:40 arrival); 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.

**Minutes:**

On motion by D. Henkels, seconded by B. Porter, the Commission voted unanimously (4-0) to approve the minutes of July 27, 2020, by roll call vote.

**New Wetland Applications:**

**Notice of Intent: 36 Willis Road, DEP File #301-**

Chair Friedlander opened the Notice of Intent for 36 Willis Road to renovate and expand the existing deck, within the 100-foot buffer zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw.

The Chair recognized the applicant, Doreen Rao to present her project. She presented her plan, and stated they would be using helical piers for footings instead of concrete sonatubes to minimize disturbance. The closest point of work was 63 feet away from wetlands. Capone stated that with helical piers, there would be no need for erosion controls unless the project changes. The deck extensions are on existing lawn with no impact to wetlands. She stated that the majority of the property is already permanently protected by a Conservation Restriction.

On motion by D. Henkels, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to close the hearing. On motion by C. Russo, seconded by D. Henkels, the Commission voted unanimously, by roll call vote, to issue the Order of Conditions with Special Conditions as stated by the Coordinator Capone.

**Certificate of Compliance:**

**46 Washington Drive, DEP File #301-1286**

Coordinator Capone stated there were some minor erosion control issues which needed to be addressed. She recommended the Certificate of Compliance be placed on a future agenda. Chair Friedlander thanked her and asked the Commission whether there were any comments, to which there were none.

**Other Business**

Chair Friedlander congratulated D. Henkels and R. Morse for their reappoints to the Conservation Commission and welcomed Ken Holtz and Jeremy Cook to the Commission as Commissioner and Associate Commission, respectively.

## Continued Wetland Applications:

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

Chair Friedlander reopened the 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, in Sudbury, MA, under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, continued from April 13, 2020 and July 8, 2020.

Kasey Rogers recused herself as an abutter to this project and left the meeting.

Peer consultants present from BETA included Marta Nover, Laura Krause, and Phil Paradis. On behalf of the applicant, present were Marc Bergeron from Epsilon Associates; Katie Kinsella and Gene Crouch of VHB; Paul Jahnige, Department of Conservation and Recreation (DCR); Denise Bartone and Mike Hager from Eversource; Paul McKinley, Weston and Sampson; Barry Fogel of Keegan Werlin, Counsel for Eversource; and George Pucci, Counsel for the Town of Sudbury.

The Chair stated that in preparation for this meeting, he and Coordinator Capone had met via Zoom call with representatives from VHB and BETA for the purpose of discussing the format for this meeting. Chair Friedlander explained that we were going to have a presentation by BETA of their review and concerns. Then the discussion will be opened to representatives for Eversource and DCR to respond. The Commission will then ask questions, before the discussion will be opened up for public comment. He then opened the presentation to Ms. Nover and team for their findings.

Ms. Nover introduced her panel and stated that due to the complexity of the project they categorized their 56 pages of comments into separate topics. She began by addressing the first topic which was the Limited Project provision. She stated that some of the project had been filed under the Public Utility Limited Project Provision. If it qualifies under this provision, the Commission would have the ability to approve the project even if some of the required performance standards were not able to be met. The burden of proof is on the Applicant to provide the Commission with evidence that the project can't meet the performance standards specifically. The main criteria is restoration of the ground surface, including contours and vegetation being substantially or fully restored. Laura Krause reviewed and summarized what that means regarding converting forest to a different vegetative cover. She explained that of the 11.7 acres of land that will be cleared: 7.7 acres is within wetlands jurisdiction; 5.9 acres is associated with clearing for the paved bike path, maintained shoulders, and grassed area in the area of the transmission duct bank; 1.8 acres will be restored with an herbaceous and woody vegetation seed mix. She advised the Commission to review the intent of the limited project status and be prepared to notify the Applicant whether they feel the project can go forward under the Limited Project Provision.

Chair Friedlander then recognized Mr. Bergeron of Epsilon Associates for his comments. Mr. Bergeron began by stating he believes this project absolutely meets the standards of the Limited Project provision, stating that the project proposes considerable restoration of vegetation. He discussed the areas of focus for restoring the vegetation and discussed the amount of forested restoration. He stated that the limited project provisions do not require the same vegetation type to be restored. He stated that they have revised the planting plan and reviewed the areas they would

place shrub plantings. He stated 1,336 shrub specimens, will be introduced at 23 locations, and 1,700 supplemental plantings will be located to revegetate the corridor, along with other revegetation initiatives including installation of snags and creation of brush piles.

The Chair then recognized Coordinator Capone who asked for the square footage of area that currently is non-vegetated within the corridor that will be vegetated, to determine whether the limited project provisions are being met. She indicated the corridor is quantified as forested, which is in some areas, but devoid of vegetation in others. She is interested in quantifying how much habitat is being converted from forest to grassland or shrubland vegetation, and how much habitat may be created by the revegetation plan, in areas not vegetated now.

The Chair asked about invasive species management, to which Mr. Bergeron stated Eversource intends to monitor the area for seedling success with invasive monitoring being a part of the ongoing project. He further stated DCR would continue monitoring invasive species when they take on the remainder of the project for Operations and Maintenance in the long term. The Coordinator suggested the Commission require the applicant develop a pre-disturbance survey of invasive species, noting what is there and in what density. Post construction, they will have the ability to confirm no transport of invasives throughout the corridor.

D. Henkels asked if the applicant knew how much soil would be removed. Mr. Bergeron stated he did not have that information but if the concern was moving and reusing soil within the project area, they were particularly concerned about Japanese Knotweed as it is a very difficult invasive to bring under control. Their proposal is to identify where the Knotweed is, and not allow reuse of the soils from these areas. As far as all other species, he stated this is already in the plan. The issue of soil movement was further discussed.

Coordinator Capone then asked about hiring an independent environmental monitor to oversee construction for the Commission, besides the monitors the Applicants were using. Ms. Bartone stated that the Environmental Control team from Eversource had many experts on it because they take their part in these types of projects seriously and are committed to developing partnerships with the Commission and Town in order to assure compliance to the Town's satisfaction and to ensure a final product that all are proud of. Eversource is willing to meet with the Commission and Coordinator whenever required and intend to keep them well informed during the process but would not pay for an independent monitor. Paul Jahnige, DCR stated he agreed with Ms. Bartone, he did not feel an independent monitor was needed. DCR's plan was to keep Conservation informed through their part of the project.

Coordinator Capone then indicated an Independent Monitor is a reasonable request for a project of this size and complexity. The Coordinator's duties do not allow time to provide the oversight for the Town that this project requires. She encouraged the Commission require an Independent Monitor.

Atty. Barry Fogel, Keegan & Werlin, on behalf of Eversource stated, the Environmental Monitor will, through their bid packet, have to demonstrate the attendant qualifications for this type of project and make sure the project conforms to all conditions. He further stated the Applicant would resist a request to hire and pay for another monitor. He stated the Commission and Coordinator

would have open access to project, but felt any other condition to have a different set of monitors would not be acceptable to the Applicant.

The Chair asked for an opinion from Town Counsel, Atty. George Pucci, KP Law, indicated, he concurred with the qualifications of the Applicant's staff, yet he had reservations about not having an Independent Peer Reviewer given the length and complexity of this project. The Coordinator would not have time to monitor the site for compliance, so he felt it was reasonable to request a funded Environmental Monitor. The Chair noted that he felt some middle ground could be agreed upon and asked the Coordinator whether there was something in between that could satisfy the Commissions' needs, to which Coordinator Capone responded she did agree there did not have to be someone on site at all times, rather, during the major portions of the project construction. She voiced concerns about placing a cap on this, as there is really no way to judge how long this project will take to construct. C. Russo stated his concern that the monitors hired by the Applicant, would be segmented into their areas of expertise. A third party reviewer would be able to monitor the project in its entirety and would be accountable to the Bylaw and the Commission. He also questioned the amount of plantings, to which M. Bergeron answered there were 1,700. This was discussed in some detail regarding the number and plantings vs. the amount of disturbance within the scope of the project. Atty. Fogel stated there is some flexibility in meeting the limited project provision, as far as the project regrowth. He stated there is a period of time that the project will see change, but it eventually will be restored. Mr. Russo, stated his concerns with this type of project and the length of time it takes to return to the original state. Additionally, he cited successional habitat, which tend to encourage invasive species.

The Chair then requested these topics be added to a list of discussions to take place at a later time. Mr. Bergeron responded he felt there was a misconception about the loss of habitat, he stated the replanting would take place immediately after Phase I, thereby not threatening loss of habitat. There was some discussion and disagreement about the habitat loss and restoration. Mr. Russo asked about timeline for hand pulling of invasive species during construction and between phases. The applicant confirmed there would not be any gap in invasive species management. The discussion will be placed on a future agenda to be further examined when discussion of Environmental Monitors takes place.

Ms. Nover next introduced Phil Paradis to discuss Stormwater Management compliance. Mr. Paradis stated that BETA looked at similar utility corridor projects and also looked at the project as solely a bike path project. He shared his slides that illustrated clearing required for the bike path as compared to clearing required to install a transmission line: when transmission line is under the trail, clearing in 18 feet; when transmission line is next to the trail, the average width of clearing is 28 feet. This results is a significant impact to stormwater associated with the transmission line. BETA has received additional comments to their original review, but the Commission needs to provide guidance as to whether stormwater standards needed to be met completely, or whether maximum extent practicable standards were applicable.

The Coordinator stated that the Applicant needed to provide information as to why they could not meet full Stormwater standards and how what is being proposed compares with full compliance. Atty. Fogel responded that if it were just a transmission line, it would have 14-foot gravel surface, no new impervious surface, which is more permeable than current conditions.

Because there is a rail trail, however, stormwater standards are required to the maximum extent practicable. He asserted that because of the Eversource Transmission project, it intends to create more Stormwater Management than necessary. Mr. Paradis from BETA stated there will be other pollutants i.e. phosphorus and airborne pollutants which need to be considered in the stormwater design. The Chair asked if the bike trail itself as presented, is not currently up to the Stormwater Standard. Mr. Paradis responded the bike path alone could be allowed to meet the maximum extent practicable standard.

Mr. Jahnige from DCR commented, the final condition for the bike path is a 10-foot path with 2-foot shoulders and country drainage. Water filters to a section and is infiltrated immediately into the natural vegetation. He felt this was a low impact development technique, having no manufactured drainage structures. He felt Eversource has gone beyond to create additional structures to retain and infiltrate stormwater. He stated that Stormwater Standards are designed for roadways, highways, parking lots etc. The Chair asked about time frame for completion of the transmission line to construction of the bike path. Mr. Jahnige said they plan on beginning immediately after Phase I is completed. Mr. Paradis, disagreed that this was a typical bike path. He stated MassDOT requires more Stormwater standards with additional detail to create defensible outcomes. There was more discussion on Stormwater design.

Atty. Pucci stated that he felt this project had to meet the Stormwater Standard, in their entirety as this is not just a bike path, it is also a transmission line. He cited the regulation; that does not allow for the ‘maximum extent practicable’ designation but must be fully compliant. M. Sevier then said that Eversource already stated they met the standard, so if this only was required due to the bike path, then why is it necessary to meet the full standard. Atty. Fogel disagreed with Atty. Pucci’s assessment of the requirement to completely meet the Stormwater standard, stating DEP said they need to meet standards for the final condition of the project, which is the bike path. The access road (gravel) would only be for inspection purposed not truck traffic as suggested. Mr. Pucci commented the plain language of the regulation is clear. Ms. Nover said she concurred with Mr. Pucci; the project had to meet the full standards for Stormwater Management.

Mr. Jahnige stated if the bike project was held to the standard being discussed, it would mean cutting additional forest, grading additional areas and constructing Stormwater structures. M. Sevier asked how many places within the project site did not meet stormwater standards. Mr. Paradis stated there were additional sensitive areas where attention would be needed: he did not believe large stormwater construction would be necessary. C. Russo reflected on what he saw as a divide in understanding what should be required of the project. He felt that there were differing conclusions due to the multi-faceted project. Coordinator Capone stated Planning is reviewing this project under the Stormwater Bylaw. Atty. Fogel stated the standards are similar, but that it builds off the Stormwater standards. D. Henkels asked Mr. Paradis about Mr. Jahniges comments on low impact development. Mr. Paradis stated it would depend on location of these areas. Ms. Nover said that the Commission could require Stormwater management to whatever standards they felt important. She stated the applicant had to get the Stormwater management to the level that satisfied the Commissions interests. Mr. Pucci then noted the applicable regulation previously discussed: 310CMR 10.05(6)(m)6, “The Stormwater Management Standards shall apply to the maximum extent practicable to the following... footpaths, bike paths, and/or non-motorized vehicles access. Given that the bike path would be accessed by motorized vehicles to

maintain the utility corridor, this is a road, not just a bike path therefore he felt it had to comply with the Stormwater Management Standards fully.

There was further discussion on the composition of the path and the interpretation of the stormwater regulation, to which the Chair encouraged all parties to communicate and collaborate so that what was finally presented, was what all parties could be in agreement to.

There was a break at 8:05, which resumed at 8:10.

The Chair then commenced to introduce the next topic, which was the integrity of existing culverts. Mr. Paradis provided his assessment of the existing culverts showing photos. Generally many of them were in relatively good condition, yet some require additional evaluation to determine if they are operational and can support the proposed infrastructure and construction activity.

Mr. Bergeron stated they had performed an evaluation of the drainage structures and culverts in the project work area: citing Table 4 in the Notice of Intent. He gave some detail about the location and type of repairs planned. His evaluation on the culverts was that none were unstable, failing, or lacked the ability to convey water. He stated Eversource was willing to evaluate the area around these culverts to see if there was any way to improve the movement of wildlife in those sections. Coordinator Capone asked Mr. Bergeron if he was proposing to evaluate only those they planned on doing work on. He stated they would look at all the culverts, but were not planning to replace any of the culverts, because he felt they all were working as they should. She stated Hudson required in their Order of Conditions, replacement of any damaged culverts from the construction during the project. Ms. Bartone stated they would be willing to accept that condition and that after Eversource completed their portion of the project, DCR would also be held to that condition.

D. Henkels asked Mr. Bergeron, about culvert vs. drainage as jurisdictional. Mr. Bergeron responded Table 4 differentiated between the two. Ms. Nover advised that the culverts should be addressed presently, as good engineering practice, to ensure these were in good condition prior to the completion of the project. Once the project is completed, it would be difficult to go back to repair or replace them. There was further discussion about timing to fix the structures. The applicant maintained they were functioning properly.

The Chair asked if there was a requirement or could the repairs be conditioned, or not. Coordinator Capone answered that the Commission had requested at the previous meeting, to see the Structural Report in order to determine if repairs/replacements were needed. Mr. Bergeron said Table 4 is the Report. He did not feel a need to replace the culverts for the purpose of the project. M. Sevier stated that Table 4 was solely focused on the transmission line project, and not holistically, advising to go back after the project is completed to fix these culverts was irresponsible. C. Russo asked for the MOU (Memorandum of Understanding) for reassurance that the project is what the Commission is seeing within the Application. There was discussion about the repair/replacement of culverts by the Applicant. R. Morse encouraged the Applicant to collaborate with the several parties and present a cohesive plan. Atty. Fogel stated it would be improper for the Commission to impose the jurisdictional work within this project. He said the MOU would make clear as to the responsibility for this area on the ROW both in the short term and long term. As it is private property owned by the MBTA, the parties proposing the project are clear who has the responsibility

for these culverts going forward. He did not believe the Commission could or should impose a condition that was not part of the project proposal.

C. Russo stated that this was a window of time to make any repairs the culverts as failure would require additional disturbances to wetlands and wildlife habitat. He felt to correct the situation now was in the best interests of both the habitat and the Applicants, and that the Commission should entertain this as a condition for the project.

Coordinator Capone recommended the applicant provide a structural evaluation of existing culverts to demonstrate they can support the proposed work. After further discussion, it was agreed there needed to be further discussion.

The Chair recognized Ms. Nover to discuss the next topic area which was wildlife and habitat evaluation. Ms. Nover said the impacts are quantified and described, but did not satisfy the Commissions ability to have a verifiable assessment of habitat and wildlife protection. In 310CMR 10.60 is the section that discusses the requirements to satisfy these protections, as well as the local bylaw. The project needed more mitigation for wildlife habitat, which could include culvert improvements. Laura Krause gave her assessment on their findings in the wildlife habitat report.

Ms. Krause described the Site's several resource areas which include 45 vegetated wetlands (bordering – BVW and isolated - IVW), 13 Vernal Pools, three perennial streams (as defined by the Mass. Wetlands Protection Act), five intermittent streams, Bank and Land Under Water associated with the perennial and intermittent streams, Bordering Land Subject to Flooding (BLSF), and Riverfront Area (RA) located in and along the Project corridor. In addition, the Adjacent Upland Resource Area (AURA) and Coldwater Fisheries Resources (CFR), protected under the Sudbury Wetlands Administration Bylaw are also present. With the exception of BLSF, the resource area boundaries depicted on the plans were confirmed through an Order of Resource Area Delineation dated August 27, 2018. She reported there were several deficiencies in the report and additional information needed to fully assess wildlife impacts and stressed the need for additional mitigation to mitigate for wildlife habitat impacts. Wildlife impact areas concerns included wildlife connectivity, impacts to vernal pool habitat and replication of shrub habitat that will be removed.

The Chair asked if VHB had addressed these points, Mr. Bergeron stated they felt their evaluation was adequate but they would review the issues raised in the peer review.

The Chair recognized the Coordinator for further comments. She agreed a work session between the groups could address many of these concerns but reinforced the need to address mitigation, replication and the culvert issue.

The Chair then moved to discuss impacts to Bordering Land Subject to Flooding (BLSF). Ms. Nover explained the boundary on the Plan was approved by the Commission during the Abbreviated Notice of Resource Area Delineation (ANRAD) process, which used LIDAR to determine elevation of BLSF. She discussed BETA's findings and recommendations, peer reviewer for the ANRAD, and discrepancies noted between the LIDAR elevations compared

with surveyed elevations, however, this recommendation was not included in the Order of Resource Area Delineation that the Commission issued. Given this discrepancy, BETA encouraged the Commission consider requiring more than 1:1 compensatory storage to ensure performance standards are met.

Katie Kinsella, stated VHB will provide a written response but LIDAR is used as an industry standard. They did also use on ground control points and confirmed that the project provides more than 1:1 compensatory storage. Coordinator Capone felt the amount of floodplain fill was minimal for the project but did ask for clarification of the floodplain elevation on the plan. Ms. Kinsella offered a more detailed synopsis. They referred to page 63 an area of fill on the corridor, which had up to 2 feet of changes. Ms. Kinsella will provide more detail in a follow up report.

The Chair then asked about the impact from crane mats. Ms. Nover said more detail was needed to determine impact from crane mats to ensure impacts are minimized and adequate mitigation is provided. Mr. Bergeron then shared his screen to show a graphic of Bridge 127 and said the project is to ensure the smallest amount of impact to satisfy the needs of the safety of the project. He detailed how the mats and cranes would be set up through his slides. He showed areas of restoration after the project is done.

Ms. Nover stated she needed additional detail on elevations, wetlands, bank and boundaries to ensure the impacts would not be any more intrusive than necessary and to ensure there are no impacts to the Floodway. She asked for a planting plan. Mr. Bergeron committed to a comprehensive planting plan. The Coordinator supported the need for more specific detail on installation of the crane mats on a sloped surface. D. Henkels asked how impacts to Land Under Water would be prevented to which Mr. Bergeron responded that there would be a perimeter fence and turbidity curtain.

The Chair then introduced impacts to AURA for discussion. Ms. Nover said much of this had been covered previously when they discussed conversion of forest to grass habitat and recommended this should be further examined for a future meeting.

There was agreement between parties to schedule a work session to discuss technical questions and provide further clarification on comments raised by BETA.

The final area was mitigation under the Bylaw. Ms. Bartone, said they were open to discussion about further mitigation which they agreed to discuss in a future meeting.

The chair opened the discussion to comments from the public.

He recognized Ray Phillips, 40 Whispering Pine Road, who agreed with the requirement for an Independent Environmental Monitor. He pointed out that the paving part of the project is not assured due to no funding commitment. Unless DCR could guarantee phase two be started immediately, there should be no permit.



Coordinator Capone said there remained some open issues. Soil transportation, noting that there was a commitment soil from other Towns not be used in Sudbury, due to concerns about contamination, however, materials submitted for this meeting indicates that soils between White Pond and Dutton Road may be reused within this area. Atty. Fogel felt this was not going to happen but referred to Mike Hagar. Mr. Hager stated there was excess soil from both projects. The soil will be disposed of off-site as best they can. He stated this was a very small area. There was no intention to mix soil from both towns. The Coordinator asked about the desert area and if there was a soil management plan there. There was discussion that in that particular area, the loam and seed would not work, so they are discussing other options such as additional plantings. Mr. Gene Crouch stated they are looking into maintaining the natural conditions. B. Porter asked about reuse of the sand that is there. Mr. Jahnige said the plan is to leave it alone. D. Henkels questioned whether the area is within a Natural Heritage area, to which Mr. Crouch and Bergeron confirmed.

Coordinator Capone then mentioned the list Eversource had provided regarding Local Bylaw Towns and asked that Sudbury be added to the 'subject to local bylaw' list. She also requested the Corridor Management Plan for DCR referenced in the materials submitted for this meeting.

With no further comments, on motion by B. Porter, seconded by D. Henkels, the Commission voted unanimously, by roll call vote, to continue the hearing to September 24, 2020.

The Chair then discussed some agenda changes: the August 28<sup>th</sup> meeting will be moved to August 24; September 14 moved to September 15. The next several meetings will start at 6:45 pm. Additional administrative discussions occurred.

The Chair then entertained a motion to adjourn. On motion made by D. Henkels, seconded by B. Porter, via unanimous roll call vote, the meeting was adjourned at 9:44PM.