

**SUDBURY CONSERVATION COMMISSION**  
**AGENDA Monday, August 20, 2018**  
6:30pm Rd., Town Hall, 322 Concord Rd., Sudbury MA

Present: Tom Friedlander, Chairman; Dave Henkels, Vice-Chairman; Charlie Russo; Richard Morse; Mark Sevier; Debbie Dineen, Coordinator

Absent: Kasey Rogers; Bruce Porter

**Request for Amendment to Determination: 210 Plympton Rd., K. Wennik**

Present: Kelly Wennik

Ms. Wennik explained that she has a valid negative Determination on file for replacement of a failed septic system and the revegetation of the area disturbed for this work. She would like to amend this Determination to include the removal of invasive plants and replanting slope in an area approximately 50' x 15' partially within 100' of bordering vegetated wetland.

On a motion R. Morse; 2<sup>nd</sup> M. Sevier; the Commission voted unanimously in favor of adding the additional invasive plant removal to the current Determination.

**WPA & Bylaw Request for Determination of Applicability: 19 Raynor Rd.; E. Gitelman**

No applicant present

The Coordinator presented a plan for a small front porch addition to an existing house. The wetland resource area is riverfront associated with Hop Brook. The brook is located on the opposite side of the house from the proposed work.

On a motion by D. Henkels; 2<sup>nd</sup> M. Sevier; the Commission voted unanimously in favor of a negative Determination.

**WPA & Bylaw Request for Determination of Applicability: 50 Allan Ave., J. Ryan**

Present: Ellen Attaliades and Jim Ryan

Ms. Attaliades presented a plan for a garage and house addition within the presumed riverfront area. The addition is 24' x 28'. Commissioners noted that there is a discrepancy between the sketch plan and the engineered plan provided in the RDA. Mr. Ryan stated the discrepancy is due to 8' of the addition actually being part of the existing house. This area will be converted to garage space.

With the agreement of all parties, the Commission continued the meeting to Sept. 10 to allow the applicant to provide a clear sketch of the proposed changes.

**WPA & Bylaw: Notice of Intent (cont.): Eversource: Soil Borings on MBTA ROW**

Present: Katie Kinsella & Marc Bergeron for VHB, Inc.; Denise Bartone for Eversource; Marta Nover and Dave Burke, SCC peer reviewers

Soil borings, soil samplings and other exploratory testing along the MBTA ROW from the Sudbury Substation at 183 Boston Post Road to the Sudbury-Hudson line

K. Kinsella explained that there will be 58 soil borings performed within wetland jurisdiction for the Sudbury portion of the MBTA ROW Eversource Transmission Line project. To accomplish these borings, 36 trees in excess of 3" in diameter at dbh are proposed for removal. The cut trees will be left on site. Smaller vegetation may be disturbed, however much of this vegetation is likely to recover quickly based on what was experienced in Hudson.

T. Friedlander stated the Dave Burke, Dave Henkels, Marti Nover and Debbie Dineen all observed the operation in Hudson on June 2. Impacts from the drilling rig were minimal and the area

the rig traversed several weeks early was not even discernible. D. Dineen and D. Henkels concurred that the disturbance was less than expected. D. Burke noted that the Hudson area that was reviewed was less dense than some areas in Sudbury.

D. Dineen questioned the location of the staging areas and access points. K. Kinsella replied that unless approval is granted for additional areas, the Hudson DPW is the only confirmed staging area at this time. No clearing or other improvements will need to be done for staging or access.

M. Nover reviewed her comments and suggested conditions for the OOC as follows:

1. Require that the Applicant provide a third party construction monitor approved by the Commission who works directly under the Commission's and/or their Agents direction. This independent representative shall observe all equipment access and drilling activities to insure that no additional vegetation clearing or impact to state and/or local resource areas beyond that permitted by the Order of Conditions occurs.
- 2.
2. If appropriate and necessary, include time of year restrictions for the work to be performed to protect nesting and breeding activities.
3. Any substantial deviations from the approved scope and project limits shall be approved by the Commission and / or their Agent as appropriate. If the Commission or their Representative determines the deviations cannot be approved as a field change, then an Amended Order of Conditions or new Notice of Intent may be required.
4. Trees to be removed shall be marked as described in the VHB Response. Tree marking paint shall be used.
5. Invasive species removal shall be conducted in a manner not to cause inadvertent spread of the invasive species on site or off-site. The Commission's representative should be experienced in invasive species management to ensure the Applicant is handling the removal and disposal properly. The Commission may also require that a site specific invasive species management specification be submitted for approval prior to conducting the work.
6. The Commission shall be timely notified of any documented DEP Reportable Condition resulting from soil or groundwater chemical testing conducted as part of the Order.
7. No discharge of groundwater or drill wash waters to the environment shall occur. All drill water shall be collected and disposed of off-site properly.
8. All materials used for "cribbing" as described at the Hudson site visit and in the VHB Response shall be delivered and removed so that no additional vegetation clearing results. All "cribbing" materials shall be placed so that there is no safety concern to the public and shall be removed immediately once the work is completed.
9. Trees, saplings and shrubs should be cut flush to the ground, to protect public health and safety for recreational users of the railroad platform trail.

D. Dineen reviewed additional suggested special conditions for the project:

- No deviations from the type of equipment and techniques described in the NOI and observed on the Hudson section of the MBTA ROW on June 21, 2018;
- Work to be based on the final ORAD plan with wetland delineation dated 7/24/18;
- Per Marti - The NOI stated the project qualifies as a minor project under 10.02(2)(b)(2)(g). First you must conclude that the activities are “temporary in nature” and will have “negligible impacts” to qualify as a WPA minor project.  
There is no minor project provision for BLSF
- Street opening permits must be obtained from the town and submitted to the SCC before any site activity
- Are the access routes now known? Need info from VHB on this tonight. Flagging of access routes and trees to be removed reviewed on site and approved by SCC if they are within wetland jurisdiction
- No fuels to be stored within wetland jurisdiction
- No staging, equipment or soil storage within wetland jurisdiction
- Per NOI, no stumping or grubbing
- Environmental Monitor standard language that the EM works for the town but is paid by Eversource
- Results of wildlife turtle survey submitted to SCC for review. SCC reserves right to impose additional conditions based on the results of the survey to protect the species; i.e. time of year for work
- Condition to prohibit the use of pesticides and herbicides; consider making this a perpetuity condition for the site;

She further explained that Town Counsel did not recommend conditioning the OOC to prohibit work until site approval is obtained from the EFSB. She also noted that the Commission could discuss requiring revegetation if EFSB does not approve the site. She did not recommend revegetation due to the disturbance of the ground and soils that will result from the planting.

C. Russo questioned impacts to ground nesting birds or shrub species such as the Eastern cottontail rabbit. T. Friedlander noted that the work is proposed for Sept & October so there should not be any nesting occurring at that time. D. Burke added that the growing season dictates nesting to a degree. D. Henkels advised that Hudson identified 3 species of special concern; including Whippoorwills and a moth species. He expressed concern for the historical nature of the railroad use and potential presence of contaminants. K. Kinsella added that the release of the types of actual state-listed species in the area must come from Natural Heritage and Endangered Species program.

Ray Philips, Whispering Pine Rd., speaking on behalf of Protect Sudbury, requested that the Commission consider this NOI in the context of the larger project and that no permit should be issued to further the overall project. He asked that the bore holes be correlated with the bore hole sites that were shown on the plans and that test results be submitted to the Town and the Commission. K. Kinsella stated that the test results that will be sent to the town will be the soil samples should notification to the state be required. M. Nover confirmed that all testing is done at a state-certified lab.

Mr. Philips asked that notification be given to residents along the ROW. Denise Bartone introduced their public relations person, Megan Forroff, for this project who will go door-to-door of abutting residents to provide information. He further questioned if any additional trees will now be removed based on the final ORAD. K. Kinsella replied in the negative. She also confirmed that no work will occur on private property.

C. Russo stated the importance of having Dave Burke, the Environmental Monitor, empowered to issue cease and desist orders if necessary in his opinion, and to permit fewer borings should Eversource have a desire or reason to reduce the scope. He asked what would be the result if the Commission approved only 40 borings. Marc Bergeron stated that each boring location has a specific reason. C. Russo questioned if baseline water quality testing should be done. The Commission did not feel that was necessary for this phase of the project but should be reconsidered for future phases, if they move forward in this location.

Henry Lebowitz, 50 Maple Ave. abutter, asked if the Commission is stating that the work being proposed is the same as avoidance of the work. D. Dineen replied that no, it is not the same. However, if the Commission determines that issuance of a permit with conditions will prevent adverse impact, that project should be permitted with conditions.

A. Goodman questioned if the project is now only an underground project and the borings are only for the underground option. M. Bergeron replied that is the case and underground is the project alternative being considered by EFSB. Should a different alternative go forward in the future, a different set of borings will be required.

Chris Hamilton, Jarman Rd., asked if additional trees are to be cut outside of wetland jurisdiction and if so, how many. T. Friedlander stated that was outside the scope for this hearing. M. Bergeron stated that number was given previously but he does not have that information tonight.

Dan DePompei, Haynes Rd., received clarification that the NOI was filed under both the WPA and the local wetland bylaw.

Rebecca Cutting, 381 Maynard Rd., noted that there are two identified 21E sites adjacent to the ROW. She asked if any of these sites extended into the ROW. Denise Bartone replied that the DEP protocol will be followed if any contamination is identified. M. Nover added that any information on contamination will be useful to the Commission later with a construction NOI if the project proceeds on the ROW. She stated that if contamination is found that is associated with any known disposal sites, it may increase the area of the known disposal site. Eversource would not be responsible for that contamination but would need to manage the soils to DEP requirements during the project, regardless of whether or not the MA Contingency Plan process is triggered. D. Dineen questioned who would be responsible for clean up if a new reportable condition is identified and the Eversource project does not go forward on the MBTA ROW. M. Nover stated that the property owner, in this case the MBTA, would be responsible. She added it is likely that some levels of contamination will be found due to the prior railroad use. If the levels are low, there are procedures that be acceptable to leave it in place.

Rachel Goodrich, 10 Maple Ave., asked if plans are available and what is the drilling process. Plans are available on the town website under Conservation documents. Trees to be removed are shown on the plans. Borings will be done with a drill rig advancing an 8" diameter boring. Water used in the process will be within a closed, recycled system so no water is released. Trees beyond wetland jurisdiction will need to be removed.

On a motion by M. Sevier; 2<sup>nd</sup> R. Morse; the Commission voted unanimously in favor of closing the hearing.

On a motion by D. Henkels; 2<sup>nd</sup> R. Morse; the Commission voted unanimously in favor of issuing the OOC as outlined.

On a motion by R. Morse; 2<sup>nd</sup> C. Russo, the Commission voted unanimously in favor of hiring David Burke, wetland specialist, as the Environmental Monitor for the Eversource soil borings activities within wetland jurisdiction.

**WPA & Bylaw Notice of Intent: 159 Concord Rd. violation, Rachael Donalds**

Present: Neri Donalds for the applicant

This NOI is in response to a Notice of Violation for work within 100' of a wetland without a permit. Ms. Donalds presented a plan for after-the-fact deck and patio construction and a request to remove trees. The Commission asked for clarification on several conflicting items in the NOI. The NOI form asks for approval to remove 6 trees, the arborist's report addresses only 3 trees. Ms. Donalds stated she only wished to remove one tree.

D. Dineen noted that the arborist's report did not state the trees were imminent threats, only that he recommended removal. Without an immediate threat, mitigation is required for tree removal. In addition, mitigation is required for the work in the AURA for deck and patio construction. No mitigation was proposed as part of the NOI.

With the consent of all parties, the Commission continued the hearing to Sept. 10 for clarification of the number of trees to be removed, clarification by the arborist of the status of the trees, mitigation for the deck and patio, and potentially for the tree removal if they are not declared imminent threats by the arborist.

**Certificates of Compliance:**

**17 Lincoln Ln., Robert Hanig #301-1175**

Several Commissioners and the Coordinator visited the site and found that the work fully complied with the conditions in the Order.

On a motion by D. Henkels; 2<sup>nd</sup> C. Russo, 2<sup>nd</sup>; the Commission voted unanimously in favor of issuing the COC.

**11 Bridle Path, Dennis Bulat #301-1212**

T. Friedlander, R. Morse & D. Dineen visited the site and found that the project complied with the conditions in the Order. The required vegetation was in place and healthy for the past two growing seasons. The site is fully stabilized.

On a motion by D. Henkels; 2<sup>nd</sup> R. Morse; the Commission voted unanimously in favor of issuing the COC

**18 Wolbach Rd. , SVT greenhouse #301-1144**

Present: Karen Paquin & Becky Cutting

T. Friedlander visited the site and observed that the required plantings had been installed although one of the high bush blueberry plants was not alive. Ms. Cutting stated that she felt the project substantially complied with the requirements of the Order. T. Friedlander offer to purchase a replacement the one additional plant to complete the row of vegetation at the edge of the wetland as was the intent and requirement in the OOC. The test used is 90% established. This is just short at 87.5%.

D. Dineen stated that SVT, as an environmental organization, should be concerned about the reasons for the revegetation requirement and should plant the full required number of shrubs to

enhance the wildlife values and ability to intercept runoff. She found it ironic that they were opposed to planting one native plant at the edge of the wetland.

R. Morse felt they had dotted the is and crossed the ts enough for substantial compliance. He felt confident SVT would do the right thing and plant the additional shrub. He motioned for the issuance of the COC. Motioned seconded by D. Henkels. Unanimous in favor

**Violation Status:**

**3 Goodnow Rd.** status – D. Dineen reported that the retaining wall was in the process of being removed but no hay bales were in place as required. The homeowner will be asked to install the hay bales immediately.

36 Hampshire St. – The Coordinator reported that lawn has been expanded into the conservation restriction area and the riverfront area. On a motion by C. Russo; 2<sup>nd</sup> D. Henkels; the commission voted unanimously in favor of ratifying the EO/NOV for wetland and conservation restriction encroachment.

**Other Business:**

DEP Appeal Site Visit: 137 Mossman Rd., Tues., Aug. 21, 11am for an appeal of the Order under the WPA

**Mosquito and Tick Spraying-**

M. Sevier expressed concern about the increase in spraying for ticks and mosquitos. C. Russo had drafted a brochure for residents informing them of the options to the use of pesticides. C. Russo thought that identification of sensitive areas would be helpful. Commissioners suggested the Coordinator discuss a regulation of this spraying with the Board of Health and Town Counsel.

On a motion by M. Sevier; 2<sup>nd</sup> C. Russo; the Commission voted unanimously in favor of adjourning the meeting. 9:08pm