



**SUDBURY CONSERVATION COMMISSION MINUTES**  
**Monday, November 2, 2020**

Present: Thomas R. Friedlander, Chair; D. Henkels, Vice Chair; Richard Morse, Kenneth Holtz, Bruce Porter, Mark Sevier, Kasey Rogers, and Conservation Coordinator, Lori Capone.

The Chair opened the meeting at 6:45 PM, via roll call, under the MA Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

**Minutes:**

On motion by R. Morse, seconded by M. Sevier, the Commission unanimously approved, by roll call, the minutes of August 24, 2020.

On motion by M. Sevier, seconded by R. Morse, the Commission unanimously approved, by roll call, the minutes of September 15, 2020.

On motion by K. Rogers, seconded by R. Morse, the Commission unanimously approved, by roll call, the minutes of September 24, 2020.

**Certificate of Compliance:**

On motion by K. Rogers, seconded by R. Morse, via roll call, the Commission voted unanimously to issue Certificates of Compliance for: Highcrest at Meadowwalk, DEP File #301-1213, Mark Aquino, 14 Tall Pine Drive, DEP File #301-1237; Natalie Haight, 275 Morse Road, DEP File #301-1278; Victoria & Mark Kempf, 196 Greystone Lane, DEP #301-257; Richard Bernardino, 54 Maple Avenue, DEP #301-1242, and Benjamin Simeone, 200 Mossman Road, DEP #301-1298.

**Issue Order of Conditions:**

**Notice of Intent: 137 Mossman Road, SWAB #091520:**

The Notice of Intent hearing for the construction of a new single family house within the 100-foot Buffer Zone and Adjacent Upland Resource Area pursuant to the Sudbury Wetlands Administration Bylaw was closed at the October 19, 2020. After review of the Special Conditions, on motion by B. Porter, second by R. Morse, the Commission voted unanimously, via roll call, to issue the Order of Conditions approving the project under the Sudbury Wetlands Administration Bylaw.

**New Wetland Applications:**

**Notice of Intent: 102 Blueberry Hill Lane, DEP File #301-1312:**

Chair Friedlander opened the Notice of Intent hearing to remove an existing pool and conduct landscaping within the 100-foot Buffer Zone to Bordering Vegetated Wetlands, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw. Coordinator Capone presented the application on behalf of the Applicant, who was not in attendance. The Coordinator explain that the applicant would like to remove  $\frac{3}{4}$  of the existing pool and return that area to lawn. Landscaping will be introduced around the pool and the applicant has agreed to use native plants from the Commission's list.

On motion by M. Sevier, seconded by R. Morse, the Commission voted unanimously, via roll call vote, to close the hearing. On motion by R. Morse, second by B. Porter, the Commission voted unanimously to issue an Order of Conditions approving the project, via roll call vote.

**Request for Determination of Applicability: 79 Goodman's Hill Road, RDA #20-17:**

Chair Friedlander recognized Mike Di Modica, of DiModica Construction, to present the Request for the replacement of a subsurface sewage disposal system within 100 feet of wetlands resource areas pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw. Mr. DiModica stated the old system was 50 years old and the new septic would be further away from the wetlands but could not be positioned outside the Buffer Zone. The Coordinator stated that neither the Board of Health nor she had any concerns with the proposed design, however there was material at the rear of the property which had recently been removed leaving the ground in the rear of the dwelling unstable. She asked Mr. DiModica to reposition the proposed erosion controls around all disturbed areas and to reseed the entire area. Mr. DiModica agreed.

On motion by K. Holtz, second by K. Rogers, the Commission voted unanimously, by roll call, to issue a Negative Determination of Applicability approving the project as discussed.

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

Chair Friedlander opened the Notice of Intent hearing for after-the-fact tree removal, restoration, and construction of an addition, within the 100-foot Buffer Zone and the 200-foot Riverfront Area pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Courtney and Greg Sawin, Applicants, stated they had plans to build an addition. The trees they had removed, were either dead or dying, he showed the area of the addition and the proposed planting plan. K. Holtz asked if the plantings were on the Sudbury Native Plant list, to which Coordinator Capone confirmed they were.

The Coordinator then discussed the topography of the site. She said the stream on the property was relocated in the 70s when the area was developed and had no associated bordering vegetated wetlands. The applicant has proposed mitigation adjacent to the stream to replace the habitat that had been removed. She also pointed out an area south of the driveway where the road drainage discharges, where stone and filter fabric is proposed. She said the tree issue is mitigated. She said it is a pretty small lot and she did not see any negative impact to the stream area.

K. Holtz asked about gutters being on the addition and runoff. The applicant stated that they would tie the roof runoff into the existing drywell.

With no further discussion and input from abutters, K. Rogers moved to close the hearing. Seconded by M. Sevier, the Commission so voted unanimously, via roll call vote. The Chair asked about special conditions, to which Coordinator Capone said there was still no DEP number on this application and suggested the Commission continue this matter to the next meeting. On motion by R. Morse, seconded by K. Rogers, the Commission voted unanimously to reopen the hearing, via roll call vote. On motion by M. Sevier, second by B. Porter, the Commission voted unanimously, via roll call, to continue the hearing to November 16, 2020.

**Continued Wetland Applications:**

**Notice of Intent: 199 Goodman's Hill Road, DEP #301-:**

Chair Friedlander opened the Notice of Intent hearing for after-the-fact vegetation removal and restoration within the 100-foot Buffer Zone pursuant to the Wetlands Protection Act and the Sudbury Wetland Administration Bylaw, last continued from October 19, 2020. The Chair asked if a DEP number had yet been issued. The Coordinator said they still did not have the DEP number, so on motion by K. Holtz, seconded by R. Morse, via roll call vote, the Commission voted unanimously to continue the hearing to November 16, 2020.

**Notice of Intent: Massachusetts Bay Transportation Authority Right-of Way, DEP #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, in Sudbury, MA, under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, last continued from August 13, 2020.

K. Rogers recused herself as she is an abutter to the project.

Chair Friedlander welcomed Denise Bartone of Eversource to introduce the representatives attending tonight's hearing for Eversource and the Department of Conservation and Recreation (DCR). She introduced Paul Jahnige from DCR, Mark Bergeron from Epsilon, Paul McKinley from Weston and Sampson their LSP. She introduced Dean Bevis from Eversource, Katie Kinsella and Gene Crouch from VHB and stated as more of her team joined, prior to their speaking, she would note who they are. She stated M. Bergeron would give a brief executive summary of changes since the last meeting. The Chair recognized Mr. Bergeron for his presentation.

Mr. Bergeron recognized Katie Kinsella from VHB to highlight the Executive Summary from the last submission of supplemental information and provided responses to various comments raised. Mr. Bergeron went on to explain that they will be developing a Project Specific Compliance Manual for this project so that the Commission, contractors, and environmental inspectors have all of the environmental details and conditions associated with permits in one place to ensure that environmental compliance can occur during construction of the project. He further stated this document would provide final details about such things as construction schedule, locations of stockpiling and dewatering.

M. Bergeron explained that one of the more substantial pieces of information provided for this hearing is a Vernal Pool Buffer Zone Analysis (Attachment A). He stated that this illustrates that the vernal pools would not be adversely effected from the project and that they would be able to continue to function properly. He said that each pool had been analyzed and that in the case of nine of the pools, there had been opportunities to provide supplemental plantings outside of the limits of work as presented in the package.

Mr. Bergeron next described the supplemental wildlife habitat evaluation in response to comments raised by BETA. He noted based on the additional information and quantification, they no longer were proposing to reinstall snags as part of the project because a significant number will remain outside the limits of their work and would not have an adverse effect on habitat in the area. He also offered additional details of the crane mat installation.

Mr. Bergeron also presented an updated mitigation package for impacts to the Adjacent Upland Resource Area (AURA). He provided an update on the Stormwater Management review underway with the Planning Board and introduced a rotary now proposed at the intersection of the Mass Central Rail Trail (MCRT) and the Bruce Freeman Rail Trail (BFRT). The Chair asked for a plan of the roundabout to which Mr. Bergeron displayed on the shared screen.

The Chair recognized Paul Jahnige (DCR), for his remarks specific to this part of the plan. He stated that since the MCRT and BFRT intersect at Union Ave., the Town requested a roundabout at this intersection. He presented the plan for this at that intersection, noting the intention to celebrate the historic aspects of the railroad and area, as well as keeping in mind users meeting at the intersection and traversing safely. He explained this would result in a minimal amount of additional impervious surface within the outer riverfront area.

The Chair asked the Coordinator for her comments about what was needed in light of these changes. She said that she believed the rotary was a de minimus impact to the riverfront area but felt the Commission needed to be aware of the change within their jurisdiction. The Stormwater component would be reviewed through the Planning Office.

The Chair stated the Commission was in receipt of a revised scope of services for the peer review. The Coordinator concurred and requested the Commission vote to accept the modified scope of services. Denise Bartone of Eversource agreed to commit an additional \$10,000 towards the peer review. On motion by R. Morse to approve the amended scope of work, seconded by M. Sevier, with one abstention by K. Holtz, via roll call vote, the amendment was unanimously accepted by the Commission.

The Chair asked if Sudbury Valley Trustees (SVT) wished to speak on the project. Kristen O'Brien, Land Steward for SVT, stated that a letter had been submitted for the Commission to review earlier in the day. She stated they have some questions on proposed mitigation. She stated they had become aware the location of the phragmites and knotweed is on SVT land and that they have yet to be consulted. She also had questions about the timeline for removal of vegetation and the degree of removal. The Chair stated the Commission understood there would be some discussion between SVT and Eversource. Laura Mattei, Director of Stewardship for SVT, stated they were willing to discuss the project with Eversource, but they were waiting to see if this met with all of the conditions of the Sudbury Bylaw. The Chair stated the vote of the Commission would determine that. Coordinator Capone said that she had discussed with the applicant opportunities for additional mitigation and had noted the removal of phragmites near bridge 128 would offer substantial benefit to the wetland system. She was not aware at the time that this was SVT property, but had floated the idea to Eversource and SVT knowing that SVT would have to approve this as well as the Conservation Commission. The phragmites is a large area, approx. one acre. She said that SVT would have to apply for a separate Notice of Intent but work would be conducted by SVT but funded by Eversource.

Dennise Bartone confirmed this was their understanding and that they supported this. When questioned as to whether SVT was willing to consider this, Ms. Mattei stated they were willing to talk. The Chair asked to have that discussed at a future meeting. He stated that this may have been somewhat premature to discuss at that point, but he wanted the Commission to be aware of this opportunity. Coordinator Capone advised the Commission that treatment would require use of foliar spray with an herbicide. If the

Commission had concerns with herbicide use, that needed to be known. There was a brief discussion about this. The Commission was willing to entertain the use of herbicides.

The Chair asked for public comments and recognized Ray Phillips, 40 Whispering Pine Road, for his remarks. He introduced Protect Sudbury's Licensed Site Professional, Tom Campbell, to comment on their analysis on soil and groundwater information provided. He stated they had submitted a report to the Commission and made a brief presentation about their findings which included concerns with 1,4 Dioxane and PFAS. He stated his obligation was to submit a report based on the Massachusetts Contingency Plan (MCP) and expressed concern with the applicability of these standards for the extensive excavation the project proposes. He gave an overview of his findings, which looked at the soil and groundwater analysis, and hazard analysis. He was concerned that adequate soil and groundwater testing had not been completed and questioned the findings relative to contaminants. Mr. Campbell suggested further testing for groundwater stability, soil removal, and a more complete set of sample rational table could be offered, for justification of site location of samples, adding testing for additional compounds. He further discussed the use of an Environmental Monitor to document impact on soils.

The Chair stated the Commission needed time to review this report. Coordinator Capone recommended the Applicant evaluate the report and provide a response for evaluation prior to the next meeting. The applicant agreed to review the report and provide a written response

The Chair recognized Amy Brown, a resident of Hudson, who expressed concern with the presence of PFAS and environmental damage from construction activities.

The Chair then introduced the next discussion topic which was the Limited Project status of both Phase I and II. Coordinator Capone explained that the Limited Project provisions allow work to exceed the performance standards, which for this project related to the riverfront area. The Commission may permit the project given three parameters:

- 1) the issuing authority may require reasonable alternative routes to the proposed work. She stated, given the Energy Facility Siting Board Decision, the Commission does not have the ability to review alternatives.
- 2) Best management measures should be used to minimize adverse effects during construction. This provision mostly related to erosion controls, which will be employed to protect the resource area during construction, but it also relates to dewatering activities, which has been a question throughout the process. She noted dewatering would be needed no matter what time of year construction would happen. She said site conditions were so tight she wanted to know if there could be any dewatering plan provided so that the contractor had something for guidance during construction.
- 3) Surface vegetation and contours of the areas shall be substantially restored.  
BETA expressed a number of issues here with meeting the limited project provision. There would be large areas of the riverfront that would be not be revegetated with the same vegetation as currently exists on site. The Coordinator said the Commission needs to determine whether the new vegetation would restore the functions and values provided currently at the site. She further stated that this was about 4.5 acres of land that would be converted from existing vegetation to grasses and small woody plants. The area of the two-foot shoulders will be grass. The area over the duct bank would be grasses and shrubs. The area will be mowed annually to the height of 10 inches so the plants will survive, but will not grow substantially in size and will be cut back annually.

Coordinator Capone had requested additional information from the applicant to substantiate compliance with this provision. She requested the applicant quantify areas without rails where there is no vegetation currently, which will be vegetated as part of the project. She also stated she requested an understanding of the area of the duct bank that is located adjacent to the trail instead of under the trail, to further restore the area and create additional buffers. If the duct bank was under the trail, there could be more substantial area of restoration. She indicated that the project needed to meet all those criteria for the limited project status, which was at the Commissions discretion to determine.

Mr. Bergeron responded that they had provided much information regarding compliance with the performance standards. He reviewed the areas of substantial restoration as it appeared to be an area requiring more additional information. He then discussed the standards for meeting the restoration in the project. He felt that the area could not be expected to be put back in the exact same conditions as prior to the project, rather it should be substantially restored. A table was shared that demonstrated the area for restoration. He claimed they would be restoring 78% of the area in a variety of ways, which he outlined in detail.

Coordinator Capone stated that for redevelopment standards, there had to be an improvement to the resource area resulting from the project. She also stated that the Commission reviews projects for impacts to the riverfront area looking at the values and functions that the riverfront provides currently, and whether the restoration that is being proposed will provide the same functions and values.

Attorney Barry Fogel, of Keegan, Werlin, LLP representing the Applicant, was recognized for this comments. He maintained many projects are based on the concept that all performance standards in any project would not meet every standard for every resource area. He stated that the premise of substantial restoration for limited projects takes into consideration, an understanding that environments change, vegetation will change, and the nature of vegetation would change. The Applicant's responses to BETA's comments take that expectation into consideration. The Regulations do not expect the vegetation to be immediately put back, and that it would be accomplished over time. They took issue with the comments by BETA relative to the revegetation standards. They felt that they had substantially answered all comments thoroughly.

The Chair then recognized George Pucci, Counsel for the Town of Sudbury. He clarified that a disagreement at the previous meeting was about Stormwater, not the Limited Project Provision. He added that the Siting Board has approved this particular alternative, so there was no other alternative the Commission could seek. He advised the Commissions of their ability to use their discretion in imposing additional conditions on restoration, but to keep in mind, the final product of the project was a trail over a transmission line, with restoration in and around the area, but not in the exact area due to a paved pathway. He concurred with the Coordinator's and BETA's recommendations on the project.

The Coordinator reminded the Commission that these provisions were strictly for the utility line, not the rail trail, which had different standards. She stated there would be a different vegetative community and what is important to ensure is that the new vegetative community would provide the same functions as the existing vegetation does, or ideally improves the area. She wanted to clearly understand the numbers presented by the Applicant and for the Applicant to be able to justify the corridor is being substantially restored. There should be some understanding about the duct bank (housing the underground transmission

line), and how it may prevent the substantial revegetation of the riverfront area. There needed to be some justification of how this meets the limited project status, or whether there would be any alternatives or reduction in the scope of the project that could increase restoration in the riverfront area.

The Chair then recognized Bill Schineller, 37 Jarman Road, Select Board member, asked about restoring the function of the vegetation particularly the canopy. He asked how the lack of shade can be mitigated. Paul Jahnige from DCR said when the project is finished there would be full canopy. Mr. Schineller asked if that was germane to a Transmission Project also, to which Mr. Jahnige stated Deb Shultz was not there to talk to that, nor had he heard that either. The Chair then called on Denise Bartone from Eversource to see if she had any comment to this. She stated that Mike Hagar, Eversource Project Manager, was available to comment on this statement. Mr. Hagar confirmed the transmission line installation would not require clearance from ground to sky. He said that trees that currently provide the canopy are outside of clearance area and will not be touched.

The Chair recognized Rebecca Cutting, 381 Maynard Road, for her comments. She pointed out that the paved area represents 20% of the area that is currently substantially vegetated which she felt obviated the canopy questions.

Coordinator Capone said, as for the limited project status for the bike path, which allows for the construction, rehabilitation, maintenance of footpaths, bike paths, and other pedestrian and non-motorized vehicles access to and along the riverfront area, but outside other resource areas. The bike path met the provisions of this limited project.

The Chair then said the Commission needed to determine the applicable stormwater standards so the Planning Board can complete the stormwater review. Coordinator Capone said this project was being filed under 310 CMR 10.05m which said Stormwater Management Standards shall apply to the maximum extent practicable for particular projects. Related to the project the Commission was hearing was item #6 which speaks to footpaths, bike paths, and pedestrian and non-motorized vehicle access. She opined this provision does not relate to access associated with the utility line. She asked for the frequency of vehicle access from the utility to assess the applicable standards.

Coordinator Capone reviewed the DEP comment letter issued on the Draft Environmental Impact Report, when this project was being filed as the transmission line only, which required full compliance with Stormwater Standards. She asked the Applicant to explain the differences as to what standards needed to be applied then and how that related to the current project. She stated that in all of the iterations of the projects, a common concern was stormwater management. She said that DEP quite stringently requires adherence to those standards as it relates to cold water fisheries and vernal pools. She further stated BETA had identified areas where improved stormwater measures could be implemented which are currently being reviewed by Horsley Witten (Planning Board Peer Reviewers). She stated the Applicant should explain the difference between the two projects, justifying why this project can't meet Stormwater Management fully, and to provide information on additional impacts to riverfront that would be needed to meet the standards fully, so the Commission can evaluate whether those impacts justify increasing stormwater management efforts. Finally, the Commission needed to know about the frequency of utility vehicles used by Eversource so that it could be conditioned if the Commission did allow for reduced standards for stormwater management.

Mr. Bergeron began by saying DEP did not specifically require the transmission line had to meet the Stormwater standards fully. Coordinator Capone read directly from DEP's comment letter. After some discussion, Mr. Bergeron said that the focus for the Commission is that this is two projects rolled in to one. The Stormwater aspect pertains to the rail trail. He asked Ken Staffier (VHB/Engineer) to outline what standards apply on the transmission line if it was the only thing being considered, and how it complies with the stormwater standards. Mr. Staffier discussed how each standards would apply to the project if it were the transmission line only, substantiating compliance with applicable standards. He pointed out there was one location (East Hop Brook area) that could possibly require some additional BMPs. He reviewed all the standards, to which the Coordinator asked for that be submitted in writing for review.

The Chair then asked the Coordinator what the Planning Board needed from the Commission prior to its meeting on this project. She said that they needed to know if the Commission would be applying the full Stormwater standards or allowing the maximum extent practicable.

Paul Jahnige asked to make a comment, to which he was recognized by the Chair. He said the end result of the project was a shared use path, which did not allow motorized vehicles, but there would be occasionally used by maintenance vehicles perhaps two times per year. This was DCR's understanding which did not mean it allowed motorized vehicles. Ms. Bartone said Eversource's intent was to only use this path for purposes of inspections once per year. Atty. Fogel further stated that this path was in no way encouraging motorized vehicles as a matter of course, rather only for specific reasons and only if there were an emergency of some kind or for maintenance of the transmission line.

The Chair recognized Rebecca Cutting 381 Maynard Road for her comment who opined the project is two projects, with separate regulation sections.

After further discussion on applicable standards, R. Morse moved that applicable stormwater standards for the rail paths fall under 310CMR 10.05(6)(m) and the standard for the transmission line is 310CMR 10.05(6)(k). Seconded by M. Sevier. Via roll call vote, the Commission so voted unanimously.

The Chair then moved to discussion about what is pending for a later time. Coordinator Capone stated there should be further discussion about planting plans. She noted the revised plan substantially reduced the trees to be planted and replaced by shrubs. She asked for the reasoning for the change.

Mr. Bergeron responded that the specimens were being replaced with larger ones. She asked about the loss of snags and dead wood in the area, to which Katie Kinsella (VHB) said during the wildlife assessment they made qualitative assessments about snags being removed and or replaced. She said they would not be focusing on snags, rather enhancing mitigation on some other components of the plan. Coordinator Capone suggested the Commission look at these the wildlife habitat summary table carefully to understand what is being planned.

There was discussion about future meetings and the need to digest additional information. The Chair reviewed some information needed before another meeting was scheduled, which includes a final review from BETA. After some discussion, a meeting was set for November 23, 2020.



On motion by R. Morse, seconded M. Sevier, the Commission voted unanimously, by roll call, to continue the hearing to November 23, 2020.

On motion by M. Sevier, second by R. Morse, the Commission voted unanimously, via roll call, to adjourn the meeting at 9:16 PM.