



**SUDBURY CONSERVATION COMMISSION**  
**Meeting Minutes of January 28, 2021**

**Present:** Thomas Friedlander (Chair), David Henkels (Vice Chair), Bruce Porter, Mark Sevier, Richard Morse, Ken Holtz, Kasey Rogers, and Lori Capone (Conservation Coordinator)

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

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

**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, in Sudbury, MA, under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, last continued from January 21, 2021.

The Chair explained that we would be reviewing the draft Order of Conditions that has been provided to all parties and the public for tonight's discussion. The Chair recognized Marc Bergeron, Epsilon Associates, who began by introducing the Eversource team; himself, Paul Jahnige, Department of Conservation and Recreation; Denise Bartone and Michael Hagar, Eversource; and Attorney Barry Fogel, Keegan Werlin. Mr. Bergeron thanked the Commission for their discussions on the project, particularly the previous meeting where mitigation had been thoroughly discussed. He said they were more or less comfortable with the Order as written and proceeded to discuss the changes suggested by the Applicant.

The applicant provided modified language for the Finding related to the Energy Facility Siting Board decision. The Chair recognized the Coordinator for her comments. She briefly discussed the scope of the project and stated she had fashioned provisions to reflect possible outcomes of the Siting Boards decision which was under appeal. She said due to the Siting Board decision, the project did not allow for alternate routes to be considered. If the decision was either reversed or upheld, the Commission retained the right to rescind the Order and consider the project under alternative routes.

Attorney George Pucci, Town Counsel, said the Order has been thoroughly written, and discussed the option for alternatives following a decision on the Appeal that the Commission had the right to request. He stated the provision in that paragraph was to allow for a review of alternatives should the decision change the trajectory of the Project. Atty. Pucci stated he was not in substantial disagreement with the proposed modified language, but requested time to review this change.

The next section was to clarify vernal pool status and whether it was under State jurisdiction or under the local Bylaw. The Coordinator stated she was fine with the suggested language. She moved through the document with no issues with the language changes for the next several sections.

There were questions about granting extensions, for either one or three years depending on whether the Commission wanted to adhere to the local Bylaw or the Act. The Coordinator pointed out that if the one-year extension was used, it would give the Commission the opportunity to review the project status. She

recommended keeping the extension at one-year. The Applicant requested the language be modified to reflect that one or more one-year Extensions could be requested. The Commission concurred.

Next was discussion about the right of the Commission to enter the work site, for which the Applicant asked for reasonable advanced notice which was a reasonable request.

There was discussion about mapping invasive species, the management of invasive species removal, and what the Applicant would be responsible for. The Coordinator discussed the need to ensure the project does not result in unintended degradation of adjacent lands, through the expansion or introduction of invasive species as a result of the project. Atty. Fogel disagreed with this Condition as it placed undue responsibility on the Applicant. The Coordinator suggested a time frame for the condition, but recommended it remain.

There was discussion about access to the project site and limiting areas of access to reduce impacts to the area during construction. Only existing disturbed areas would be used, no new additional disturbances were planned. Atty. Pucci stated the Commission should consider allowing access points that could make the project move more quickly. There was some discussion about language to which both the Applicant and Coordinator agreed to. The Coordinator had similar concerns as it related to laydown areas to make sure the areas used would not substantially change the limit of work.

Replication areas were discussed with general agreement to the intent of the condition. The conversation was primarily focused on ensuring replication maintained the functions and values of the project site that was disturbed.

The Coordinator questioned whether the Commission wanted to have the right to approve or the ability to review, the Soil and Groundwater Management Plan, and the Project Compliance Manual. Atty. Fogel stated the Applicant was not opposed to comments by the Commission, but not approval.

Soil contamination from Hudson was discussed and the reuse of soils from Hudson in Sudbury, which would not be allowed. Additionally, PFAS contamination was discussed and the understanding whether there would be testing and who would be made aware of results. The Coordinator was asking to be copied on any notification about contamination updates. Mr. Hager stated each town did not want soils from the other town. He stated one small stretch may possibly push soil into the other town within feet, but the Contractor would endeavor to keep it to a minimum. Atty. Pucci said as long as the intent was understood, the incidental transfers could be clarified.

There was discussion about infiltration and making changes that reflected the Planning Boards decision at their previous meeting.

There was general agreement to the planting plan and the obligations by the Applicant to ensuring all plants were the correct plants, placed in the appropriate areas, and the treatment of 'failed plantings' and timelines for successful plantings. Clarification on conditions relative to herbicide use, the ten-foot maximum allowable trail footprint, and invasive species management ensured the Phase II principals were in agreement. Mr. Jahnige stated he was aware of the invasive management and appreciated some flexibility during construction.

There was discussion about minimizing the lag time between Phase I and II, in order to decrease the impact to the resource within the project corridor. The Coordinator stated that mitigation needed to be permanent to which Mr. Jahnige and Atty. Fogel initially disputed the perpetuity requirement, saying this was beyond the negotiated agreement from a previous meeting. Atty. Pucci agreed with the Coordinator that meaningful, long-term mitigation should be provided to offset project impacts. Atty. Fogel disagreed saying this was very onerous to place a perpetuity condition on maintenance of the area. Mr. Jahnige and DCR was

ultimately responsible for monitoring this, so they needed to agree to this condition. Mr. Jahnige said while he understood the intent of this condition, he felt it was asking too much to make DCR responsible for the permanent success of the mitigation area. Coordinator Capone stated that the direct impacts to the project area from construction and impacts from use of the corridor are permanent, and the Commission needs mitigation that offsets these impacts. Mr. Jahnige said the trail provides value noted within the local bylaw as recreation.

The Chair asked for feedback from the Commission. B. Porter asked for clarification as to what was being asked and if the perpetuity condition was the sticking point. Atty. Fogel confirmed the statement. Mr. Jahnige stated that DCR could not provide this level of mitigation for invasives for all of the rail trails they manage. M. Sevier asked about the responsibility for Eversource to assist with this mitigation obligation. Ms. Bartone, stated there would be no maintenance by Eversource on the Sudbury line, as it was DCR who would maintain the pathway, to which Mr. Jahnige concurred. Several Commissioners responded and more conversation on mitigation ensued. Atty. Pucci said that monitoring was not enough, and suggested a long term monitoring and maintenance program be developed. There was additional discussion about an agreeable compromise that would dictate when additional invasive species removal would need to be undertaken. It was agreed that the Coordinator would work with the applicant on language for the next meeting.

There was discussion on signage for trail management adjacent to vernal pools to prevent sand and debris from being blown into these resource areas. The Commission agreed to restrict this activity within 25 feet of vernal pools. Additional discussion ensued on whether signs educating trail users about the vernal pool should be installed which all parties concurred could negatively impact the vernal pools by attracting people to them.

The Chair then recognized the public to comment.

Laura Mattei, Director of Stewardship for Sudbury Valley Trustees, requested the time of year restriction be changed to April 15 to protect whippoorwills. She also suggested that not all woody material be removed from the site, but be used to recreate wildlife habitat. Coordinator Capone said the intent was to make sure the invasives were taken out and that she would endeavor to determine which materials could be left. Mr. Bergeron said they would be fine with that. Ms. Mattei requested reusing on site soils instead of bringing new soil into the site. Mr. Hager responded that the intent is to use as little soil from offsite as possible. Coordinator Capone asked that the mowing be scheduled after October 31 to protect the Box Turtle. Mr. Bergeron stated they would have to further review this and the whippoorwill timelines before agreeing to this change.

The Chair stated there were no further changes to discuss and asked for a motion to continue to date certain, 6:45pm, Wednesday, February 3, 2021. R. Morse made the motion to continue, seconded by D. Henkels. Via roll call, the vote passed 5-0 (Ken Holtz abstained).

On motion by M. Sevier, seconded by D. Henkels, the meeting was adjourned by unanimous roll call vote at 9:15 PM.