

Conservation Commission Minutes, 08/03/2017

**Lenox Conservation Commission
Landuse Meeting Room
August 3, 2017
Minutes**

Members present: Chair Neal Carpenter, (NC); Tim Flanagan, (TF); David Lane, (DL); Joseph Strauch, (JS); Vince Ammendola, (VA); Dick Ferren, (DF); Rose Fitzgerald Casey, (RFC)

Staff Present: Peggy Ammendola, Land Use Clerk

Request for Determination of Applicability, Eversource Energy for the Eversource right of way on East Street to Willow Creek Road. The proposed project is the removal of mature woody vegetation within upland Buffer Zone areas.

Kate Wilkins of Tighe and Bond and Tom Degnan of Burns and McDonnell presented the application which included additional maps which have been updated since the original submittal.

There were two site visits. At the first one it was noted that there were few of the original delineation flags, so the flags were refreshed and the second site visit was on August 2nd.

According to the plan this is a Transmission Right-of-Way Reliability Program (TRRP) project to clear woody vegetation along the right of way to the easement edge. The work area is comprised of 1.39 acres total in town and .95 acres total within the buffer zone. (This is included in the updated plan.) Existing access routes throughout the right of way will be used. Ms. Wilkins doesn't think there will be any work done that is off of the right of way easements, but if so that would be worked out with landowners prior to activity. She said that there will be no work within the resource area. There are neither rare species habitats nor Article 97 land. In conclusion, Ms. Wilkins said that this is 100 foot buffer zone to BVW and bank.

Mr. Degnan said that the equipment that will be used includes forestry style equipment, e.g., skidders, chippers, feller bunchers, etc. He described the work that would be done to clear and to stabilize. The intent is to remove all large tall growing species in the right of way and turn it into successional forest and manage it in the same way as in their maintained easements. Water bars, hay bales and chips will be used to stabilize the soil and stumps will remain in place. There are some areas of steep terrain where there are one or two trees to be removed, the trees will be left on the ground to decay if they are not highly visible or problematic to the land owners. This is to reduce impact to the site.

The applicant stated that landowners have been notified of the project and have been asked if they would want any of the wood which is in their easements.

Ms. Wilkins wanted to clarify that on the map pages, the grayed and whited out areas are "no go" areas. The areas to clear are denoted with white hatching.

JS asked about how these areas will be maintained once the project is complete. Mr. Degnan said that these will be rolled into the normal vegetation management program. Newly disturbed areas will come back in quickly and an integrative vegetative management program which includes herbicides and mechanical removal will be utilized. Within a few years, these areas will look like the maintained easements.

Mr. Degnan wanted to make it clear that he will not be using herbicides for this project, only mechanical means. JS pointed out that herbicides are not permitted for use in buffer zones. Mr. Degnan referred the Commission to Eversource regarding their use of herbicides in their vegetation management activities.

TF said that he has looked over the RDA carefully and has had good conversations with both Ms. Wilkins and Mr. Degnan at the site visit and he doesn't want to come off as opposing or thinking that this project can't be done under the regulations, but he believes that the Commission needs to go a step farther in the review.

TF said that he would be making a motion for a positive finding, but before doing so he wanted to share his thoughts and reasoning behind that. He said that the maps presented indicate a presence of resource areas throughout the corridor so it is jurisdictional land. He pointed out that there is a stream crossing and associated BVW and bank to consider. At the site visit he observed unpermitted work which has resulted in damage to the resource area, e.g., cutting of the BVW and woody shrubs. Also he saw that plywood had been placed and the banks have been compacted and collapsed. He did not know who was responsible.

Another concern expressed by TF is the work going on in the buffer zones. He said that the regulations say that anything other than a minor activity within 100 feet which will alter a resource area is subject to jurisdiction. TF continued:

"If we visit the language "*what is a minor act and what is not, what is exempt and what is not*" and take a look of some of the characteristics...these are characteristics that I don't see at the site, we don't have an ANRAD, correct me if I am wrong, and there has been no jurisdictional determination of the boundaries so far. We are taking a look at that for the first time here. No wetland delineation has been reviewed. So there is a logical disconnect. How can you establish buffer zones and boundaries if you can't say where the resource area is? I am concerned about establishing the boundaries. This RDA does not ask us to verify the boundaries. It only asks us for an assessment of the work, not the

boundaries. Some of the buffer zones have some steep slopes which is a reason not to consider this a minor activity. If we don't have a known resource area with a known buffer zone we also can't see the overlap of the Natural Heritage areas and can't be really talking in any detail about wildlife implications. We also note that almost everything on the map, except for maybe that first map, is within an Area of Critical Environmental Concerns (ACEC). The regulations ask us to apply the highest possible standards in reviewing ACEC work, but what we are being asked with the RDA is effectively applying the lowest standards. You are asking for a negative determination. The regulations also ask for certification that the owners have been notified in the event the applicant isn't the owner and we have heard that the public relations people are pretty good about that and that is great, but do not see the certification of that in the RDA. The language is also quite specific when resource areas are involved: "The Conservation Commission *shall find* (that is the language in the regulations) that Chapter 131 Section 40 applies when an area is defined as subject to protection." We do have resource areas subject to protection and the work that is being done in that resource area is clearly alteration proposed and I would suggest that is subject to regulations as well and for all of those reasons I will move that the Commission issue a Positive Determination on the project and note that the boundaries have not at this point been reviewed and approved. "

JS seconded the motion.

NC inquired as to if there was a way this project could be approved on the RDA if more detail could be given on which trees would be removed and how access would be gained etc. TF responded that a determination could not be conditioned. Mr. Degnan compared this project to a logging operation with identifying the main access, but not identifying how to get to every single tree. The project would be done with as minimal impact as possible and accessing the area in the smartest way possible. To identify each tree would be an amazing amount of detail, according to Mr. Degnan, unless the area is small, but said that it was something that could be looked at. He discussed the various areas of the project work, some of which had no trees.

TF suggested that the Commission look at the number of linear feet of wetland on this whole project. He stated that if the applicant is off only a couple of feet, they could be in violation of the Wetland Protection ACT. For this reason, the Commission would normally ask for something like a 50 foot no disturbance zone, but the applicant is asking to cut right up to the resource boundary. TF stated that with the level of detail provided, the Commission cannot know where the resource boundary is let alone a 50 foot or 100 foot setback or a Natural Heritage review.

Ms. Wilkins responded that if there were Natural Heritage areas within the project area, they would be denoted on the map set. Polygons are given to them by Natural Heritage and Ms. Wilkin said that they are then mapped on the map sheets. TF argued that the Commission doesn't have information for the wetland boundary or buffer zone. Mr. Degnan asked for an explanation. Ms. Wilkin responded to Mr. Degnan by saying that the Commission wants the Applicant to actually check off a box saying that the Commission is to go out to confirm that the boundaries are where they are. That, she said, would confirm where the buffer zone is and that the Applicant would confirm that the project is in the buffer zone. Ms. Wilkin added that Tighe and Bond doesn't normally do that with any of the other towns. TF said that may be because other towns are not in an ACEC area. Mr. Wilkin argued that would apply if work was proposed in a resource area, but this project is in the buffer zone. TF responded the wetland boundaries haven't been defined and the Commission hasn't been asked to confirm them. Mr. Degnan agreed that he could identify the number of trees and put more detail on the map including how they would gain access. Ms. Wilkins asked if the Commission would be satisfied if the RDA was resubmitted showing the actual trees or at least document the number of trees within each clearing area and check off the box to confirm the resource area. She concluded that they would not file an NOI and wished to avoid a MEPA review.

NC asked TF if he thought that the additional detail offered would suffice and TF responded that he would not get into a debate with the Applicant, but stated that he feels that an NOI is necessary in order to get the issues out. He added that best management practices have been mentioned but are not in writing and he doesn't know how the project could be properly reviewed to protect the public interest under an RDA. He doesn't feel that an NOI has to be that complicated, but feels that it does have to happen.

Ms. Wilkins said that she understands TF's perspective, but does not agree that this project could not be done under an RDA with additional documentation and certification from landowners.

NC called for a vote. The Commission voted 4-3. TF, VA, DF and JS voted in favor of the motion to issue a Positive Determination and DL, NC and RFC voted against.

Notice of Intent Willow Creek Road (Map 14, Parcels 2 & 3). The 748.80 kilowatt ground-mounted solar photovoltaic array on the closed and capped landfill includes work within the jurisdictional buffer zone to wetland resource areas. The Conservation Commission granted an Order of Conditions for the project on July 28th, 2016. This project has been completed, and DEP is requiring the Town to take corrective actions. AMEC Foster-Wheeler will present the required corrective actions to the Conservation Commission. *Note: This item was placed on the agenda on August 1, 2017 for August 3rd at the request of Gwen Miller and Rich Niles. On August 2, 2017, Mr. Niles informed Gwen Miller that he would not be ready for the August 3rd meeting as AMEC is currently addressing MassDEP's comments on the Corrective Action Design which will change work in resource areas. It is expected that he will have a updated site plan later in the week and will forward and discuss how permitting will be approached.*

Other Business:

- **Priority and Estimated Habitats Map**-Effective August 1, 2017 received from Natural Heritage Endangered Species Program.
- **SMA, Pittsfield Municipal Airport (PMA), 0 West Mountain Rd., Map 27 Parcel 24.**~LCC reviewed a letter for submission to DCR. See the minutes of July 20, 2017 when the Commission agreed to send an inquiry requesting information on the status of March 31, 2017 DCR letter in which the DCR requested documents related to the SMA Order of Conditions dated March 7, 2017. RFC made a motion to approve and send the letter to DCR. JS seconded the motion. The Commission voted to agree 7-0.
- **Site Visit- BNRC-Off Undermountain Road**-July 26, 2017-Attended by Mackenzie Greer, TF, JS, and NC.
- **Site Visit-Eversource**-July 26, 2017-Attended by Tom Degnan, Katie Wilkins, Jeff Burrell (sp?), a forester with Eversource, TF, JS, NC. There was only one flag. Requested re-flagging.
- **Site Visit-Eversource**-August 2, 2017-Attended by TF JS NC and Ms. Wilkins. Confirmed that the flags were in place.
- **Site Visit-Stone Path**-241 Walker St. This was scheduled for August 9, 2017 at 9:00 AM.
- **Bakers Pond**-Bob Coakley reported to DL that a branch broke off from a tree during a storm and asked permission to clean it up. DL made a motion to approve and DF seconded the motion. The Commission voted to approve 7-0.

Approve Minutes: *July 20, 2017*-JS made a motion to approve and DL seconded. The Commission voted to approve 5-0-2. RFC and DF abstained as they were not present at that meeting.

RFC made a motion to adjourn. DF seconded the motion and the Commission voted to adjourn at 8:40 PM.

Respectfully submitted,
Peggy Ammendola