



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

June 5, 2013

Phil DiPietro
DEP Northeast Regional Office
Division of Wetlands and Waterways
205B Lowell Street
Wilmington, MA 01887

Re: Newbury: DEP File #50-1114
Richard Kleiman, Sage Stone, LLC/Han Solar LLC
70 Scotland Road, Newbury

Dear Mr. DiPietro:

The Massachusetts Association of Conservation Commissions (MACC) requests that the following comments be considered in this case and in general in relation to the siting of solar arrays or other structures in wetlands. The proponent claims that the area of impact is limited to the points of support for solar rack posts and fence posts (plus small areas for equipment pads). This is clearly an improper method of calculating wetlands alterations, and the Department of Environmental Protection (MassDEP) should rectify this in reviewing the project. To do otherwise would lead to the inevitable conclusion that other types of elevated structures such as roofs, decks, sheds, or even entire houses or other buildings can be built over wetland resource areas and the area of impact calculated only as the area of the supporting posts or piers. This would be a dangerous precedent, contrary to longstanding practice. It would also directly contravene the clear and plain definition of "alteration" in the Wetlands Regulations.

The Notice of Intent (NOI) and NOI Supplemental Information indicate that this application is for a proposed commercial-scale (3 MW) solar array to be built entirely within Bordering Vegetated Wetland (BVW) on a site off of Scotland Road in Newbury that is part of the area known as the "Common Pasture." The NOI and Order of Conditions incorrectly identify the area of proposed BVW alteration as 594 square feet (sf) based on the areas directly impacted for installation of the posts that will support the array racks, the fence posts for the perimeter fence, 5 utility poles, and the proposed utility pads. This is an incorrect and extreme underestimate of the actual area of BVW that will actually be altered if the project is built. The entire area of the array racks and panels constitute a physical alteration of the BVW and will result in significant and material alterations to the protected wetland resource area.

The NOI states that the "solar array panel area will occupy approximately 30% of the 71 acre parcel." The project initially included 18,944 panels, subsequently reduced to by 7%, which equals 17,618 panels. According to the Sheet 4 of 4 the panels are approximately 18 sf each. Therefore, the area occupied by the arrays will be more than 7 acres. The total area covered by the panels plus associated equipment and the full length of the perimeter fencing area should be the basis for the calculation of area of alteration.

The Department of Environmental Protection (MassDEP) has long required that calculation of area of impact for structures over wetlands such as docks, piers, and boardwalks be based on the horizontal area covered by the structure. Structures placed over wetlands result in direct, physical impacts including but not limited to shading which affects the growth, composition, and density of vegetation. MassDEP has established standards for construction of docks, piers, and boardwalks to minimize those shading effects, but even so in all cases the amount of area impacted is calculated as the horizontal surface area of the structure, not just the area of the supporting piers or posts.

In addition to shading, placement of structures over a wetland resource area physically alters the wetland by changing its significant wildlife habitat characteristics in relation to feeding, breeding, and migration of wetlands wildlife. The area occupied by the structure constitutes a direct physical alteration of the vertical structure of the wetland resource area and displaces wildlife habitat use, including by excluding wetland dependent birds that require large areas of open habitat. In addition, the perimeter fence may represent a barrier to wildlife movement.

The project submission attempts to argue that since the land is already in agricultural use it is of little wildlife habitat value, and that in any case the land will remain in agricultural use. These arguments are rebuttable, but in any case, are irrelevant for purposes of determining the area of project impact. The project is not a normal maintenance or improvement of land in agricultural use and therefore it is not exempt from the Wetlands Protection Act. Neither the NOI nor the OOC attempts to argue otherwise. Furthermore, the area does in fact have substantial, site-specific wetlands wildlife habitat value and MassDEP should consider the information provided by others in that regard.

MACC supports the development of renewable energy facilities and is very concerned about the effects of climate change. However, large solar arrays are nevertheless structures that occupy considerable amounts of land, and it is important that evaluation of areas of impact for such structures be treated no differently than if the structure was for some other purpose. During the recent MassDEP regulatory reform working group review process, MACC participated in discussions regarding regulatory revisions for renewable energy systems. We were assured by MassDEP staff that MassDEP had no intention of changing the regulations to allow construction of renewable energy facilities such as wind turbines or solar arrays within wetland resource areas. Indeed, the proposed regulatory revision only calls for a new limited project enabling construction of roadways where necessary to provide access for construction of renewable facilities on upland sites.

In conclusion, MACC urges MassDEP to uphold the longstanding method of calculating area of wetland impacts for construction of structures of any type, and require that the entire horizontal area occupied by those structures be considered in that calculation.

Sincerely,



Kathleen Connolly
President

cc: Newbury Conservation Commission
Richard Kleiman/Han Solar LLC
Steven C. Davis, Rackemann Strategic Consulting, Inc.
