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Minutes
DRI Subcommittee Hearing (continued)
AMP Energy, 180 Cotuit Road, Sandwich (CCC File No. 19034)
Thursday, March 12, 2020, 5:00 p.m.
CCC Office, Ocean Room

Subcommittee Members: Harold Mitchell, Chair (present); Fred Chirigotis (present); Richard Elkin (remote participation); Charles McCaffrey (absent); Richard Roy (present)

Commission staff present: Jordan Velozo, Heather McElroy, Tim Pasakarnis, Jessica Rempel, Jon Idman

Documents used at the Hearing

- Public Hearing Notice
- Revised Site Plan sheet submitted by Applicant
- Natural Resources/ Open Space Flow Chart prepared by CCC staff
- Natural Resources/ Open Space Memorandum prepared by CCC staff dated 3/11/2020

Documents received at the Hearing

- Public comment/ photos from Burt Fisher, Sandwich resident

The Chair, Mr. Mitchell, confirmed a quorum and opened the continued hearing at 5 PM. He noted that subcommittee member Mr. Elkin was participating remotely, and accordingly, announced that any votes taken would be by roll call.

The Chair requested that the Applicant present Project updates.

Matthew Terry, Esq., counsel for the Applicant, discussed the meeting he'd had with staff since the last hearing session on the Project, which was primarily to discuss the approach and mechanics for open space mitigation. Evan Turner, Applicant representative, discussed the noise study prepared and submitted by the Applicant, as requested by the subcommittee. He said that, as analyzed and presented in the study, there was no appreciable increase in existing noise levels at the site property lines on account of the Project; the greatest increase, though not substantial, would be to a property across Cotuit Road from the site. He said that the modeled noise levels were within MA DEPs regulatory standards. Attorney Terry continued regarding open space mitigation; he said that he has met further with Sandwich officials, and announced that the Town's Natural Resources Director was in attendance at today's proceeding. He re-iterated the Applicant's specific proposal to meet the Commission's open space requirements; he discussed the pollinator friendly planting program proposed; he discussed the anticipated lease terms with the Town, which would also deal with open space protection, revegetation and project decommissioning; he discussed likely

alternative uses of the site that would be more impactful; and then reviewed what the Applicant suggests are benefits of the project.

The Chair asked for comments from Commission staff.

Jordan Velozo, managing the Project review for Commission staff, mentioned the updated site plan submitted by the applicant showing a single battery system as discussed at the last subcommittee proceeding. She also referenced the noise study received from the Applicant. She mentioned additional public comment letters that had been submitted.

Jessica Rempel, Commission Natural Resources staff, reviewed a staff memorandum prepared for the subcommittee proceeding, assisted with a flow chart slide laying out relevant Open Space considerations and policies relevant to the DRI review. She also discussed CCC renewable energy policies and RPP Placetype analysis. She discussed the Applicant's open space proposal, in particular crediting the entire project site as open space mitigation. She discussed the balance between energy policies natural resources and open space issues in DRI review. She said that based on this balance, the subcommittee should determine whether the entire site should be credited as open space mitigation.

The Chair asked Ms. Rempel what parts of the site should be credited as open space, considering that even the cleared part of the site would be restored as habitat, albeit a different habitat than what exists today.

Ms. Rempel said that the subcommittee might consider requiring the Applicant to provide additional off site open space to mitigate for natural resource impacts on-site where there is clearing towards the center of the site, and the subcommittee should discuss the level of impact to determine the level of additional off site mitigation.

The subcommittee discussed and reviewed with staff the open space mitigation formula set out in the Open Space Technical Bulletin; and 10.5 acres is the area of new disturbance for which mitigation is required, with 8 site acres left natural, undisturbed and wooded. They discussed how many additional acres of mitigation might be required.

The Chair opened for public comments.

David DeConto, Sandwich's Natural Resources Director, spoke about the off-site open space identified and proposed to be restricted as mitigation, and the discussions the Town has had with the Applicant about it. He also said the Town could identify other off site open space to restrict as mitigation if required.

Ronald Hurley, who identified himself as the abutter immediately to the south of the site, said that he is fully supportive of the project. He said any concerns he had about noise from the Project have been addressed. He said that he has a farm on his property, and he thinks the Project will be a quiet neighbor and less impactful than other potential uses of the site. He said has about a 42 solar panel array on his property, and supports renewable energy.

Burt Fisher, another area resident, said he is opposed to the project. He said it is not consistent with Cape Cod character or the character of the area surrounding the site. He showed a photo of Mr. Hurley's property, a farm, and said that he would like to see the site developed as a farm instead, which he says is consistent with Cape Cod and the Commission Act purposes, and should be promoted. He said with the project he'd be concerned for the welfare of Mr. Hurley's farm animals. He said he is still concerned with noise. He showed a photo of the Town of Dennis landfill which has a large solar array. He said the proposed use is industrial and would be better

located on the Sandwich landfill. He said he did radio interference studies at the Dennis landfill and concluded that he thinks the project will interfere with his Ham radio use at this property. He said the subcommittee should not consider what the likely alternative uses of the site might be because those proposals aren't proposed for consideration. He offered his photos and written comments into the project record and provided copies to Ms. Veloza.

No other public was in attendance and offered comment.

The Chair opened for subcommittee comments.

Mr. Elkin said he was happy to see that the proposed off-site open space was contiguous with other protected open space. He said that, as much as agricultural uses are important, he doesn't feel it is the Commission's role in this DRI review to promote or consider it as a realistic development alternative for the site. He said that the most likely use of the site if developed other than the way proposed is residential.

Attorney Terry addressed some of the comments raised at the hearing. He said that in terms of noise, distance from a source is as important as volume; he said that the battery inverter (which would be the sole noise source) is hundreds of feet away from residential neighbors. He also said that the Town would review noise issues more particularly during local permitting. He said in terms of the Applicant's open space mitigation proposal, it's predicated on the site being counted as open space. This has been discussed and worked out with the town. He said this has been discussed with CCC staff for months. At some point he says open space mitigation, if the site is not counted, makes the overall project uneconomic and the benefits that come along with it won't be realized. He says that the Applicant has worked hard to develop a plan with a responsible environmental approach, which includes leaving much of the site wooded, proposing a low impact use with environmental and infrastructure benefits and proposing a pollinator friendly site development plan; in the long term the site would be restricted as permanent open space with ecological benefits. He discussed the Applicant also paying market value for the off site open space, and the growth management benefits of the Applicant giving up the long term development potential of the site. He says that he thinks it's unfair that staff has drafted a new memorandum at this stage of review casting some doubt on the adequacy of the open space mitigation proposal, after having reviewed the project and discussed it for months. He said that the open space mitigation as proposed should be seen as adequate and it would be unreasonable not to give open space credit for the site but still expect that it would be donated to the town and its development rights surrendered. He doesn't think that the Applicant should have to go back to the drawing board in developing the open space mitigation approach after all the negotiation and time spent with the town; he said not moving forward as proposed would be a loss to the town and to the region. The project as proposed protects the underlying primary natural resources issue which is wellhead protection; that the Natural Resources Inventory submitted shows that the proposal will not substantially impact species; and that the site is not of the highest ecological value.

Mr. Turner for the Applicant said that a few additional acres of mitigation might be possible but that having to acquire something like an additional 21 acres would make the project uneconomic. He also said that significant funds in the short and long term would have to be allocated to pursuing and implementing the pollinator program, which program also requires long term monitoring and reporting. He added that under the State's current solar incentive program, agricultural uses and solar development can be promoted together, but the program requirements might not allow the combination at the project site. He did say that the proposed project would offer meadows similar to agricultural use in character, which is a land type lacking in the town. He said there is little impervious surface proposed. He said for these reasons the subcommittee should give consideration to credit land on-site as open space, as it is developed differently than other commercial or industrial uses.

Lawrence Cook for the Applicant said that one of the written public comments received by the Commission mentioned that solar panels should be developed on carports instead of wooded sites. He mentioned the CO₂ production from the concrete footing systems and the substantiality and complexity of those structures vs. the racking systems proposed. He also mentioned that community solar as proposed allows residents to have renewably sourced energy who might not otherwise be able to do so on their own property, and even if they could, they might have to remove trees to do so. Cumulatively, he said, the removal of trees to install roof top panels on a few thousand individual properties might be significant vs. the conservation of wooded areas on the project site. He concluded that roof top installations often require reroofing which could increase CO₂ with the need to produce new roofing material. He mentioned how the site is conducive to connecting to and providing power to the grid, and how pollinator habitat is of worldwide significance now with the decline of pollinators.

Mr. Chirigotis said that he recognizes the novelty and value in the open space mitigation approach proposed, but also recognizes the comments in the staff memorandum that some additional mitigation may be required to offset the resource impacts associated with the site clearing.

Mr. Idman, Chief Regulatory Officer, said that staff is suggesting up to 8 acres of additional off site open space, based on the discussion of the subcommittee about impacts. The subcommittee would have to look at the impacts qualitatively and consider things like the proposed pollinator program in determining what if any additional mitigation is appropriate. He also mentioned the importance of crediting some open space on site, as the long-term restriction on the land is valuable for resource protection and growth management.

Heather McElroy, CCC Natural Resources Manager, spoke and recognized that the balance to find the appropriate level of mitigation to the identified impacts is a difficult one in this case. She mentioned the unique open space proposal, as well as the unique type of project proposed. She mentioned the letters that had been received into the record from APCC and Cape Cod Climate Change Collaborative with the perspective that the project is a large development with impacts and significant clearing. She mentioned that the Applicant could work with the town, and continue to partner, to restrict additional town owned open space not currently protected; the Applicant would not necessarily have to obtain and restrict additional open space on its own on the open market. There was an opportunity for an additional "win-win" for the town, region and applicant with addition open space mitigation that is economically feasible for the project.

Mr. Turner said he was agreeable to some additional off-site open space.

The Chair suggested an additional 5 acres of off site open space.

Mr. Turner asked whether that would still require the applicant to restrict the entire site.

Mr. Idman suggested that the entirety of the site should still be donated and conveyed to the town, even with the additional off-site open space requirement. The Town could decide what level of restriction and activities could occur on the interior, disturbed portion of the site as part of its ownership over time, though the uses and activities should still be consistent with conservation use.

The Applicant and subcommittee discussed their agreement in principle (to be worked out by staff and the Applicant team) with the concept of donating the entire site to the town, subject to a leaseback for the solar installation, for on-site open space mitigation, and restricting a total of approximately 9.5 acres off site by working with the town to identify and restrict such land (i.e. 5 acres in addition to the 4.4 acres of parcels already identified off-site).

The subcommittee discussed their satisfaction in the open space approach and noise issues discussed, and were pleased with the proposed pollinator program. The subcommittee did not see a need for further submissions by the Applicant.

Mr. Idman discussed the need to have at least one subcommittee work meeting sometime in April (notice of which would be posted when scheduled in accordance with the Open Meeting Law) to discuss proposed special conditions and other matters for the subcommittee to formulate its recommendation to the full Commission, and for the subcommittee to give staff more specific direction about preparing a draft decision for the project. The members agreed; they said that staff should work with the Applicant and Town prior to the subcommittee meeting. The subcommittee members said that they were comfortable with a general condition in a draft decision to identify 5 additional off-site acres, even if the specific land was not identified prior to a decision.

Given current COVID-19 concerns; the need to hold a subcommittee meeting prior to a full CCC hearing; the time needed for staff to prepare a draft decision; and the relevant hearing and decision periods in the CCC Act, Mr. Idman suggested that the subcommittee continue the hearing on the project to the full Cape Cod Commission meeting of Thursday, April 30, 2020, 3 PM, East Wing Conference Room, Barnstable County Complex, 3195 Main Street, Barnstable 02630. Mr. Roy moved, Mr. Chirigotis seconded. The Chair took the vote on the motion by roll call. The motion carried unanimously.

The hearing session concluded at 6:07 P.M.

Respectfully submitted,


Harold Mitchell, Chair

4-17-20
Date

