Shutesbury Conservation Commission

Minutes – 6/23/22 Approved – (7/29/22) Virtual Meeting

Meeting Start: 6:00 pm

<u>Commissioners Present:</u> Miriam DeFant, Mary David, Robin Harrington, Scott Kahan; Beth Willson (joined at 6:20 pm)

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Janice Stone (SCC Consultant), Christopher Stoddard, PE (Stoddard Engineering), Maria Firstenberg (TRC), Emily Stockman (Stockman & Associates, SCC Third-Party Reviewer), Anna Mancebo (applicant), Robert Kibler (applicant), Miriam DeFant (as an applicant), Sean McGrath (applicant), Shane Bajnoci (Cowls, Inc., applicant), Sharon Weizenbaum, Joseph Salvador, Laurel Pacey, Jane Urban, Carlos Fontes, Paula Moore, Jill Buchanan, Jenny Kallick, Bart Bouricius, David Kilroy, and all other unidentified individuals.

Chair's Call to Order at 6:00 pm Meeting is being recorded

Continued Public Hearing for Amended Order of Conditions, 26 Lake Drive, DEP # 286-0280:

DeFant: Anna Mancebo and her engineer, Chris Stoddard are here. SCC has received and reviewed the revised site plan provided by Stoddard. DeFant shares the site plan for 26 Lake Drive via screenshare. Stoddard: came into this project late but is hopeful new site plan will eliminate the concerns of the SCC for the request of Amended OOC – allowing the 24' x 55' parking park be paved. Plan includes site design for existing conditions versus proposed conditions. They have proposed having the surface flow from the proposed parking area be directed to a series of rain gardens – flattened areas that have plantings in them and depressions to allow infiltration. The flow will go from the left hand of the site to the right and go through the native areas along the property – there is an area with a foot of depression to allow infiltration into what he is calling a 6-inch diameter yard drain. The water would then flow into another leveled area which would continue to infiltrate – any additional runoff, which they are not proposing, will enter a third series of rain garden area. Down at the lake, which was in the original OOC, there is a 5-foot planting strip along the Bank. On page 2, he took the pre-development conditions, (includes building, gravel area, and the lawn), and calculated the runoff coefficient to be 0.66. The postdevelopment conditions have runoff coefficient to be 0.65 – slightly reducing the original conditions. To the left side of the proposed paved parking area is proposed plantings surrounding that corner of the proposed parking area to ensure any flow that was not directed to the rain garden would still be captured. On page 2 there is also a planting plan that includes Winterberry, Spicebush, Highbush Cranberry, Blueberry, Wild Lupine, North Sea-Oat and Broom Sedge – various plantings that would complement the property but also help the infiltration of the water before hitting the lake; provided some details about straw wattles, and silt fencing that could be used. Along the Bank, there are existing blueberry bushes; proposing silt fencing and straw wattles on the lake side of the proposed plantings – there are some wattles on the site currently, but they are proposing more. Once the site is fully stabilized and SCC has conducted a post-construction site visit, they will be removed. DeFant: what will be planted along the lake? Stoddard: Anemone Americana; about 1-2-foot-tall bush that would be spaced about 3 feet apart because they come in 3 gallon pots and grow up to 3 feet in diameter. They are native to the area and are a hardy plant. No trees are being removed – all trees and plants that currently reside

are staying (mostly located on the left side of the property). DeFant: there is a Japanese barberry shrub; SCC was wondering if the homeowners were planning to keep it or if they would be willing to remove it because it is an invasive species. Harrington describes invasive. Mancebo expresses willingness to remove it. SCC has no further questions. DeFant: have drafted an Amended OOC; wants homeowners to know, since the original OOC was issued, SCC has changed policy for writing OOC – there are conditions that are now considered standard conditions that they are requiring of all projects; for the sake of consistency, SCC may choose to add these conditions. Stoddard: what is the list – what is the difference? DeFant: conditions are based on the Massachusetts Association of Conservation Commission's standards for OOCs – they are mostly standard, stock things that have been individualized for the community of Shutesbury. For the lake, SCC has been requiring for perpetual conditions such as not using pesticides or synthetic fertilizers, if work is being done in the Buffer Zone, then applicants must use conservation grass seed mix, applicant provide a letter that they have read the OOC and understand them within 30 days of issuing of OOC, and conditions about erosions controls and good construction management practices. In original OOC, there is a condition for a 5-foot vegetated buffer strip but it is not clear whether it is a one-time condition or perpetual - SCC might consider making it perpetual for the sake of clarity. Mancebo: this is news to us in adding the work 'perpetual' to the OOC. She understands some of the basics, but she is concerned about anything going against their deed as perpetual – wants to understand that very carefully in case the property ever changes hands; wants to make sure that it is realistic and manageable for any new owners. DeFant: even if it was a perpetual condition, homeowner can always come back and request an Amended OOC if they find it to be unmanageable. Willson joining the meeting late; has no questions. DeFant: does SCC have enough information to close the Public Hearing? SCC agrees they do. Motion: David moves to close the Public Hearing for the Amended OOC for 26 Lake Drive, Harrington seconds. Vote: David-Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved. DeFant shares the drafted Amended OOC via screenshare for SCC to review. DeFant: have question about Finding #12 – questions whether it should be "partially rebutted" or "rebutted"; believes it should be "partially rebutted" because it provides reasoning for the 5-foot vegetated buffer strip perpetual condition; in the original OOC, this condition was compensation for the loss of pervious. Kahan: suggests tying the condition to the work that has been authorized; if these improvements that SCC is permitting on the site exist, the vegetated buffer strip requirement would remain – as mitigation for the work that is being done, as opposed to an ongoing perpetual condition that continues regardless of whether or not these improvements stay over time. DeFant: she is not understanding exactly. Kahan: from his understanding, perpetual conditions are being suggested which means this buffer strip would have to remain in perpetuity. DeFant: unless they came back and requested a modification. Kahan: yes, which in his mind is a bit ambiguity as what would the rationale for future requests and what would the future SCC be using as a condition. DeFant: the rationale for the original buffer strip was because the then SCC was approving, regardless of a significant loss of impervious surfaces and vegetation that was protecting the Bank. Kahan: suggest tying the condition to the existence of the impervious surfaces, so if the impervious surfaces remain, the vegetated buffer strip must remain. DeFant: but isn't that what this condition is saying? "Adverse effects include loss of impervious surfaces, loss of vegetated buffer strips, changes to grading, and changes to natural stormwater flow patterns." Kahan: yes, but he believes the concern that was raised by the applicant was the requirement of maintaining this in perpetuity; this would make it clear that really the requirement isn't perpetual but only exists if impervious surface remain. DeFant: if the impervious surfaces don't remain, the owner can always request a change, but SCC is permitting the OOC with the assumption at these are now the current conditions, including the loss of pervious surfaces, so the perpetual condition is based on current conditions and not a

hypothetical future condition. For example, if the house burns down or they demolish the house, allowing it to turn into grass land, they can come back modify the conditions. Kahan: was suggesting this language for the purpose of clarity. DeFant: if not a perpetual condition, we would need to state clearly under what conditions the buffer strip could be removed; either way, they would need to come back for SCC review. Willson: she agrees that the way it is written is fine and makes sense to her. Harrington and David agree. DeFant: if it is an unbearable condition - for example if the Bank is collapsing and they want to install a hardscaped retaining wall along the Bank, then they can come back SCC to review. Kahan: he understands and agrees with Commissioners but believes tying the vegetated buffer strip condition to the impervious surface improvements could provide clarity for future SCC is they have to review the amened OOC currently being drafted. DeFant: believes the way it is written does provide enough clarity for future SCC. David moves to approve the Amended OOC for 26 Lake Drive, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.

<u>Public Meeting for Request for Determination of Applicability, 74 Pratt Corner Road/Kibler-DeFant, septic system upgrade</u>

Miriam DeFant and Robert Kibler are the landowners of 74 Pratt Corner. DeFant recusing herself from acting as a Commissioner for the Public Meeting and Beth Willson will be the Acting Chair – as appointed on 03/24/22 (as recorded in approved minutes).

Stoddard Engineering has done the design work. Stoddard: this is an RDA for a replacement of a failed septic system. Ward Smith delineated the site earlier in the year and we have A-series with a culvert pipe and a B-series. The current failed leach field is in the front of the home towards the driveway and the tank system is located behind it - their well is in the backyard. They tested the soils on the left side of the failed leach system and were able to get a successful perc. They are proposing to abandon the failed leach field and install a new Title 5-compliant tank and leach field system in the area they tested. They are also proposing removing the old septic tank system and replacing it will a new one in the same location as the current one. There are some shrubs and trees that have to be removed in order for the new leach field to be placed in the proposed location and to allow room for septic breakout. Silt fencing and straw wattles would be placed around the work site as erosion control. Due to having to strip the topsoil to place the leach system, they are proposing having a stock pike next to the left side of the home with additional silt fence and wattles around it to prevent erosion. Access to the work site would be from the front yard off of the driveway. The current septic tank will be pumped, crushed and removed. The work site will be grass seeded once finished. Willson: what is the closest distance to the wetland line to the limit of work? Stoddard: roughly about 30-40 feet. DeFant: when the finished seeding and grading is done, the footprint of septic system is out of the 50' Buffer Zone line, but there is a small incursion of breakout area that goes within the 50' line. Harrington: she remembers from the site visit discussion that the excavation work would be outside of the 50' line. Stoddard: correct. DeFant: the overall footprint is moving farther away from the 50' line than where the current leach field is located. Stoddard: yes, and almost half of the current system resides inside the 50 ft Buffer as it is. It is a balance because there is an abutting well on the neighboring property so they can't push it too far out because they would then be too close to the neighbors' well. Willson: about how many trees will be coming down? Stoddard: he believes he has 4-5 trees flagged to be removed. DeFant: there may be more than that because if we were to remove only these trees it would like an awkward cove-like tree line - they would like to remove more trees starting from the section closest to the house (further away from the wetland) and blend it so the tree line isn't as awkward. They are mostly hemlocks and one birch tree. Stoddard: he believes it

would be a total of 7-8 trees. Willson: is there anything staying on site afterwards? DeFant: the hardwood would stay to be later used for firewood – softwoods, shrubs and stumps will be removed. Stoddard: any of the soils that would be dug out for the system would be used for septic breakout and anything additional to that would truck off. David: the old leach field would also be crushed and removed correct? Stoddard: the current leach field will stay because it will be less disruptive to leave it, but the tank will be crushed and removed – it is standard practice that we leave the leach field. Willson: as it says on the RDA, the site will be seeded with conservation seed mix and the erosion controls will remain until the site is stabilized. SCC has no further questions. There is no public comments. David moves to close the Public Hearing for the RDA for 74 Pratt Corner Rd, Harrington seconds. Vote: David- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. Willson shares the drafted DOA via screenshare for SCC to review. David moves to issue the DOA Negative #3 with Conditions for 74 Pratt Corner. Harrington seconds. Vote: David- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.

Consider Order of Conditions for 387 Locks Pond Road, DEP# 285-0290

DeFant shares the drafted OOC for 387 Locks Pond Rd via screenshare for SCC to review. David moves to approve the OOC for 387 Locks Pond Rd, Willson seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moved.

Approve minutes for 6/02/22

DeFant: has SCC reviewed the minutes from 6/02/22 meeting? SCC confirms they have reviewed the minutes. David moves to approve the 6/02/22 minutes, Willson seconds. Vote: David-Aye, DeFant-Aye, Harrington-abstain, Kahan-Aye, and Willson-Aye. So moved.

Bylaw Language Consultant Update

DeFant: Garner and Horsley would like to know if SCC would like to set up a site visit with them to look at example intermittent stream – would have to pay for their travel time. Kahan: do they need that for their original scope of work? DeFant: she believes that they believe it would help SCC. She personally believes she has a good understanding of what an intermittent stream is and if we are in doubt, we could look at the one that Kahan had found on our own. Harrington: was that video Kahan took of that intermittent stream sent to them so they know what SCC is thinking about? DeFant: yes. SCC agrees that they do not need a site visit with Garner and Horsley.

MACC Annual Dues

Motion: David moves to approve the payment for MACC dues, Harrington seconds. Vote: David-Aye, Harrington-Aye, DeFant Aye, Kahan-Aye, and Willson-Aye.

Pearson Land Acquisition CR Agreement

DeFant: she had email exchange with Bridget Likely, Kestrel Land Trust representative, about the CR agreement – she made revisions based on our input. She took out the language about the green energy section because it was a standard/ boiler plate condition. Did SCC want to review it together now or later in the meeting? David: she reviewed it and they made more but not all the revisions they had asked for. Harrington agrees. DeFant: had a conversation with Likely about their request regarding historical stone structures – did not want to include it in their survey because they did not have the expertise and not a part of the conservation plan. **Motion: David moves to approve the Pearson Land Acquisition**

CR Agreement as amended, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.

Continued Pubic Hearing for Montague-Carver ANRAD, DEP File# 286-0285

Firstenberg shares the revised site map for the Montague/Carver ANRAD via screenshare. Firstenberg describes changes in map based upon peer review and additional delineation conducted in an off-site location (with permission if the landowner) within Sheet 4 of the site map, and further field review with corrections were done in Sheets 18 and 23. Additionally, there had been question about the Isolated Land Subject to Flooding (ILSF) calculations for some of the isolated wetlands and these calculations were refreshed – one isolated wetland was updated to ILSF. DeFant asks Firstenberg to share to refreshed ILSF calculations, but Firstenberg is unable to do so. Firstenberg: during the field review, they noted one of the areas flooded more deeply than earlier estimated – resulted in an Isolated Wetland qualifying as Isolated LSF and a different area was less flooded than earlier estimated (but was left it at the conservative estimation as in the original). DeFant: can you show use the maps that have changed? Firstenberg: yes, on Sheet 4 there is the location of the off-site delineation that was conducted to confirm the Buffer Zone and direction of the wetland(s). On Sheets 23 and 24 show the wetland delineation that was reviewed and corrected as requested and Sheet 29 shows the isolated ILSF that was corrected – the flags did not change or move but the filling coloring did to reflect ILSF. DeFant: was the wetland delineation for the area that was possibly not subject for development completed? Firstenberg is unsure of the area being asked of. Stockman: to clarify she believes DeFant is discussing the new boundaries of WGR-2 which are depicted, as Firstenberg said, on Sheets 23 and 24. To confirm, yes those areas were reviewed in field – the delineation was expanded and is now reflected on these new maps. DeFant: is there a map that shows the difference of those boundaries? Firstenberg: no. Stockman: the substantial change to the recent delineation on WGR-2 is result of the area not being previously surveyed earlier in the ANRAD process. She had stated in her report that there were substantial gaps between the flags, when she previously visited the site with Mr. Russo, it had not been reviewed. When she went back to the site with Mr. Russo in early May, they were able to ascertain that the reason the area was not addressed was because it was not an originally the limit of delineation assigned to Mr. Russo – when he brought up his GIS Mapping he had a different limit of review line than was shown on the ANRAD. They were able to spend a decent amount of time on their site visit on May, 5th 2022 – Mr. Russo was able to flag the area and complete the boundaries. She reviewed the flags in the field and agreed with the placement and those flags are shown on Sheets 23 and 24. Firstenberg: she believes what is being discussed is that where the upland island is within the wetland – they did not originally have a boundary limit that went up into the wetland because they knew it was primarily wet and not an area of primary interest to the applicant. Because Russo and Stockman have added this area in, they have adjusted the line to include all of the areas that have been reviewed. DeFant: Stockman could you walk us through what your comments are? Stockman: the last peer review comments were issued June 15, 2022 and they reflect a review of the Isolated LSF calculations and the then revised site map dated May 18, 2022. On May 5th, 2022 she met Russo on site to review the delineated BVW boundary and the abutting property to the north, as shown on Sheet 4. They also returned to the boundary of WGR-2 as discussed earlier – Russo was able to complete a detailed delineation within that area based on soils, hydrophytic vegetation, and indicators of wetland hydrology. She reviewed the flagging and agreed with the placement. They also visited Isolated Wetland WGR-16 and WGR-17 so she could observe evidence of flooding more recently. She concurs with the new flagging for WGR-2. Her only comments on June 15th were that some of the flags numbers – the flag number sequence 116-123 were not consecutive (she recommended TRC to review it to see if it was an issue with post processing). TRC issued a revised site

plan that corrects that labeling. The only remaining issue, that we as delineators run into from time to time, is that there was a skip over a number, which is # 117, besides that all labeling has been corrected. She had another outstanding comment from prior letters questioning the accuracy of the 100' Buffer Zone assumed with flag #7 on Sheet 33 (appears to be a drafting issue). The revised site plane shows that the Buffer Zone boundary has now been adjusted and accurately reflected on the plans. The final comments from her letter focus on Isolated LSF; it is important for the Commission to remember that under 310 Mass Reg. 10.57(2)(b)3, the definition of the boundary is the perimeter of the largest observed or recorded body of water confined in said area. TRC, based on their documentation, determined the extent of the volume of flood storage for the areas in question based on direct observation and field measurements. Based on the documentation, the application field measurements to overall isolated areas was based on a conservative measurement. As you can imagine, an Isolated LSF is a confined basin so there is no uniform depth of flood waters, but rather you'd have a maximum depth and as you approach the rim of the basin the depth of water would decrease. However, TRC utilized the maximum absorbed depth to run their calculation(s) – this is what she is referring to when discussed conservative measurements. Using that methodology, they determined WGR-17 qualifies as Isolated LSF and she concurs with that. Using that same methodology, it was determined by TRC that W-GR-15 and W-GR-16 do not have the volume base necessary to be considered Isolated LSF. Given the conservative approach taken by TRC, she agrees with their determinations; however, should SCC dispute the determination Isolated Wetlands WGR-15 and WGR-16, the Regulations allow a procedure to address any conflict of opinion so the Commission does have the ability to require additional calculations if they disagree with TRC assessment. DeFant: to be clear if we didn't have a bylaw, this would be most relevant because Isolated Wetlands are not protected under the Wetland Protection Act, WPA, but these wetlands are still protected under our Wetland Bylaw because they are more than 1,000 sq. feet in area. Stockman: that is correct – all Isolated Wetlands (#s 15, 16, and 17) are currently protected under the Shutesbury Bylaw. In addition, Isolated Wetland 17 is now doubly protected in that it is also protected under the state Regulations as Isolated LSF. DeFant: thanks Stockman for comments. Does the Commission have any other questions for Firstenberg or Stockman before we open public comment? SCC has no further questions.

Carlos Fontes (359 Montague Rd): what the current area of WGR-17? If now the area is increased, what is the new area for that wetland? Does the current flagging reflect the area of WGR-17? Firstenberg: The wetland flags for that wetland did not change and the area for that wetland did not change – the observed depth changed. They had originally assumed the depth of 6 inches which is the minimum depth required based on their observation in the fall. Based on the flooding extent and what they measured in the spring, the depth they observed was 10-12 inches thorough out the wetland so they assumed 12 inch depth overall - pushing it over the .25 acre-feet requirement for Isolated LSF (brought it up to .28 acre-feet). Fontes: So, it was .28 acre-ft before that? Firstenberg: it was about half of that because it is double in depth to what they have originally. Fontes: if before it was half of .28 acre-feet -Firstenberg: it is acre-feet because it is volume. Fontes: it is a matter of volume and not area? Firstenberg: Yes, the area did not change, the volume changed because the flooding observed in the spring was deeper than originally observed. Carlos Fontes: he is under the impression that when volume changes, that the area is also subject to change. DeFant: the area could be a fixed measurement and the depth changed so the volume changed. Fontes: he had sent an email to SCC regarding the certification of a vernal pool within this area. He stated that given importance of vernal pools for species protection, he would request some consideration be given by SCC to assessing the need to certify all vernal pools identified within this ANRAD site.

DeFant: she does not know if SCC has the jurisdiction under the ANRAD to require a landowner to certify a vernal pool on their property. The way it was left in a previous meeting, it is not the landowner's policy to certify vernal pools; however, someone could go out and document those pools and submit the paper for their verification. SCC did not make a decision if they wanted to do it themselves, but it is too late in the season to do this. Stockman: this is a topic of discussion that has come up with other sites. It is her understand that it was conveyed by their representative that Cowls does not supply written permission allowing anyone to go onto the property for certification. However, in the past, several Cowls properties were open to the public. In terms of the Montague/Caver site, when she returned to the site this May with Russo to complete the site review, she observed the property is now posted and not allowing the public onto the land. DeFant: is it correct that SCC does not have the jurisdiction to require certification? Stockman: for the ANRAD process, SCC's authority is to pass judgment on the delineated boundaries provided by the applicant and/or requested by SCC. SCC does not have the authority to require the applicant to seek approval beyond what they are asking. What has been done in the past and what she is recommending now is the SCC to issue an ORAD for this parcel including a section in the findings acknowledging the certified vernal pool and the other identified vernal pools by TRC but which are not at this time certified. DeFant: that is laid out in the drafted ORAD you have given us? Stockman confirms it is. Fontes acknowledges his question shave been answered. There is no further public comments.

DeFant: does the Commission have enough information to close the Public Hearing? SCC confirms they have enough information and do not have any further questions. David moves to close the Public Hearing for the Montague/Carver ANRAD, Willson seconds. Vote: David-Aye, Harrington-Aye, DeFant Aye, Kahan-Aye, and Willson-Aye. DeFant shares the drafted ORAD for Montague/Carver via screenshare for SCC to review. SCC gives permission to DeFant to sign for them digitally. Motion: David moves to issue the ORAD for Montague/Carver, Harrington seconds. Vote: David-Aye, Harrington-Aye, DeFant Aye, Kahan-Aye, and Willson-Aye.

Site visit follow-ups

DCR stone bridge repair RDA-New Boston Road – DeFant: project is from DCR and they want to resurface the road on top of an antique bridge without dismantling the abutments – they are viewing it as an RDA. SCC agrees it should be and RDA. Motion: David moves to waive the fee for the stone bridge repair, Kahan seconds. Vote: David-Aye, Harrington-Aye, DeFant Aye, Kahan-Aye, and Willson-Aye.

SCC plans to visit these sites on Sunday June 26, 2022

- Ames Pond Kestrel Land Trust NOI
- North Beach, LWA, tree removal
- Enforcement concern regarding culvert on Pine Road

Updates

Top of the Lake Conservation Area – DeFant: sent SCC language sent by Penny Jaques regarding land use regulations for the Top of the Lake Conservation Area. DeFant schedules further discussion with Penny Jaques on July 14, 2022 meeting.

678 Pratt Corner Road Enforcement Order – SCC visited the site with Mary Grover, Mass DEP Agent, to document site condition thoroughly – DeFant will write up a site visit report. Willson notes the surveyor was also present – may receive a delineation soon. DeFant notes the appearance of possible work done after Enforcement Order was issued – no evidence to confirm.

Motion to Adjourn: Wilson moves to adjourn, Willson seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.

Meeting Close: 9:31 pm

Next Meeting: Thursday, July 14 at 7 pm

Documents Used:

- 26 Lake Drive OOC
- 26 Lake Drive request for Amended OOC emails to Chair
- 26 Lake Drive Infiltration Plan
- 26 Lake Drive Revised Site Plan by Stoddard
- 26 Lake Drive Draft Amended OOC
- SCC Draft 6/02/22 Minutes
- 74 Pratt Corner RDA and Site Plan, Septic Upgrade
- 74 Pratt Corner Determination of Applicability with Special Conditions
- 387 Locks Pond NOI
- 387 Locks Pond Road OOC
- Revised ANRAD, Montague-Carver
- Draft ORAD for Montague-Carver ANRAD
- Garner/Horsley emails to Chair regarding site visit
- MACC Annual Dues Invoice
- Likely emails to Chair regarding Pearson Land CR Agreement
- Pearson Land CR Agreement
- Revised site map for Montague/Caver ANRAD
- Montague-Carver ANRAD ILSF Calculations Sheet
- Emily Stockman's Peer Review comments, Montague-Carver ANRAD, 6/15/22
- Fontes email to SCC regarding request for vernal pool certifications

Respectfully submitted by Miriam DeFant, 7/29/22