

Shutesbury Conservation Commission

Minutes – 09/22/22

Approved – (11/10/22)

*Virtual Meeting*

**Meeting Start:** 7:00pm

**Commissioners Present:** Miriam DeFant, Mary David, Beth Willson

**Commissioners Absent:** Scott Kahan, Robin Harrington

**Other Staff:** Carey Marshall (Land Use Clerk)

**Other present:** Janice Stone (SCC Consultant), Leslie Luchonok, Linda Avis Scott (Admin. Secretary), Eric Stocker (Select Board), Catherine Hilton (Board of Health), Rita Farrell (Chair, Select Board), Penelope Kim, Brad Foster, Melissa Makepeace-O'Neil (VP, Select Board), Susie Mosher, Don Wakoluk (SCC Consultant), Jeremy Mailloux, Matt Kissane (Fuss & O'Neil), Savanna Ouellette, Becca Wheeler, Michael Broad, Michael DeChiara, Matteo Pangallo, Tim Hunting (Shutesbury Highway Superintendent) , Linda Bills, Elaine Puleo, April Stein, Katie Eagan, Hannah Kowalski (Dandelion Energy, applicant) , Garrett Simonsen, Jill Marland, Elizabeth Fernandez-O'Brien, Penny Jaques, Robert Kibler, Mark Rivers, Jim Hemingway, Jan Rowan, Joyce Braunhut, Jon Lawless, Gail Fleischaker, Paul Lyons, Molly Moss, Mary Lou Conca, Amanda Alix, Tracy McNaughton, Joan Hanson, Michael Vinskey, Sharon Weizenbaum, Melissa Warwick, Mary Anne Antonellis, Michael Hootstein, Jamie Burns (applicant), Tom Kalt (applicant), Nathan Murphy, Bob Douglas (applicant), Frank McGinn, Steven Sullivan, George Abdow, and all other unidentified individuals.

Chair's Call to Order at 7:00 p.m.

Meeting is being recorded

**Enforcement Order Lot O-32 Follow-Up with Select Board and Fuss & O'Neill**

DeFant: Tonight's meeting is a joint meeting with the Select Board and Conservation Commission. Farrell: calling the Select Board meeting to order on September 22, 2022 – joint meeting with the SCC.

DeFant: since there are many members of the public present, would like to comments on behalf of SCC and summarize the process of far. SCC is not here to talk about the pros and cons about the library project – not SCC purview and want to stay focused on what SCC role. SCC supports the Town, its projects, its decision to build a new library – discussion tonight is not to undermine or interfere with that process. SCC believes protecting wetlands benefits the property and community. SCC and Selectboard are having a discussion tonight because SCC received credible complaints about work being conducted without a permit within wetlands – falling within the jurisdictional areas for SCC's regulatory and statutory role. SCC has an obligation to investigate credible complaints and be responsive to individuals about those complaints and landowners if there is concern about working being done within wetland area. If a wetland is either defined--by the Wetlands Protection Act (WPA) and its Regulations or our Shutesbury Wetlands Protection Bylaw and its Regulations--as a Protected Resource Area, then a permit is required for work directly in the wetland or within the Buffer Zone(s) – unless in case of an Emergency Certification. SCC is tasked with enforcing the WPA and the Shutesbury Wetlands Bylaw –

these two statutes outline a number of interests and values of wetland resources. SCC's scope of work is protecting water quantity, water quality and wildlife habitat; ensuring work done within and around the wetlands are protecting those interests. Tonight, for this particular property they will most likely be discussing two types of Resource Areas: Bordering Vegetated Wetlands, BVW, and Isolated Vegetated Wetlands, IVW. Under Shutesbury's Bylaw, if a IVW is more than 1,000 sqft, it is protected. There is a 100-foot Buffer Zone area each Resource Area; Shutesbury's Bylaw treats that Buffer Zone as a Protected Resource Area. Wetland permits are developed with the purpose of ensuring that certain steps are followed before work occurs in Protected Resource Areas – steps include that Mass DEP's wetland division has an opportunity to comment on projects, SCC has time to gather enough scientific evidence to support the interests we are tasked with protecting, public has the opportunity to contribute to the hearing process if they have meaningful comments/information to share, and SCC can deliberate to develop conditions for projects based on best practices that may include monitoring and certification of compliance. If work is happening outside of these Resource Areas and Buffer Zones, then SCC does not have jurisdiction. The issue with Lot O-32 began last summer when SCC issued a permit in July 2021 – authorizing the town to demolish the 3-bay garage. The permit asked permission to demolish walls and remove windows of the project. In June of this year, SCC received a complaint from Michael Hootstein claiming that the town had improperly demolished and excavated the foundation of that garage – not following proper state regulations for removing a floor drain for an automotive garage and filling in the excavated area with fill. He also claimed that the town had used heavy machinery to excavate within an IVW. A later complaint came from Amanda Alix alleging the town had improperly mowed a wet meadow (a Resource Area) during a time of drought. SCC began looking at these issues in June – did an initial site visit, in July informed the Town SCC wanted to review this project at their July 28, 2022 meeting. At this meeting, an in-depth discussion about the issue occurred with Becky Torres, Town Administrator. Torres confirmed that the foundation had been excavated and filled - questions were raised if SCC had jurisdiction in that area. SCC learned there was a previous professional wetland delineation report that was not shared with SCC. SCC had numerous concerns, but mainly concerned about questions about whether SCC has jurisdiction. SCC concluded that when SCC issued a Request for Determination of Applicability (Determination of Applicability) in 2021, it determined that the project was conducted in a Resource Area it has jurisdiction over. Regardless of whether SCC's judgment is agreed with or its qualifications recognized, the SCC has a statutory role in making determinations that have the force of law (unless appealed). SCC did further investigations, including reaching out to MassDEP, Massachusetts Association for Conservation Commissions (MACC) Board members, and an attorney. SCC couldn't consult with Town Counsel, Donna MacNicol, because she is advising the Town. On 8/11/22, SCC voted to issue an Enforcement Order, staying within its jurisdiction and summarizing what SCC knew had happened, and what information it lacked to make any determinations at the time. SCC knew that, as reported by Torres, the foundation of the 3-bay garage was excavated and filled, and it was not a part of the permit issued in July 2021. SCC discussed the most equitable and reasonable treatment for SCC, both as a Town board but also in its regulatory role working with the Town as an applicant/landowner. The challenge is SCC wants to work with the Town and not be adversarial, we trust the Town and want to be trusted by the Town, but SCC has to maintain neutrality and independence especially when in position of reviewing permits or reviewing work done without a permit. SCC's Enforcement Order was to reaffirm what the process is if work is going to be done in Resource Areas – not to be punitive.

Because questions were raised about whether SCC had jurisdiction on this part of the property, SCC want to ensure a wetland delineation was reviewed by them to clarify where jurisdiction is. A limited Enforcement Order was issued to define SCC's lines more clearly without it costing the town any funds or time – defining SCC's jurisdiction clearly moving forward. An Enforcement Order is preliminary step in order to meet with applicant to gather more information that later leads to either a rapid resolution, further investigation, or requirements before it can be dismissed. SCC issued the Enforcement Order due to being troubled by some issues that had been brought up before it – troubled about the communication issues and questions raised about SCC jurisdiction. SCC felt these issues need to be addressed going forward so that permitting for the library can occur without issue. Earlier this month, SCC conducted site visits and created an Google Drive album of photos that documented condition, available to anyone who asks for access. SCC had originally asked for the wetland delineations by September 1<sup>st</sup> but after discussion with the Town it was acceptable to have it submitted on 7<sup>th</sup>. SCC has received the wetland delineation but did not review them at last meeting, September 8<sup>th</sup>, 2022, because there wasn't enough time to do a site visit. SCC did a site visit on September 10<sup>th</sup> with representatives of the Library Building Committee as well as Fuss & O'Neill's wetland scientist, April Doroski. At the September 8<sup>th</sup>, 2022 meeting, Steven Sullivan from the Highway Department came and shared the BVW that had been an area of concern had been excavated – the Town had engaged in a cleanup operation last summer in August where they excavated debris – debris pre-existing before the town purchased the property. When SCC went out on the September 10<sup>th</sup>, SCC determined that a lot of debris had been removed but the BVW continues to have debris in it, some of which is surficial and some buried, unknown to what degree. SCC would like to discuss this further with the Town because it is in SCC's jurisdiction – want to make clear the discussion is in the interests of protecting the wetland and is separate from the library permitting (project is in different location on the lot, would not be affected by this particular wetland in her opinion).

Farrell: Selectboard has not met to review comments she is reading tonight but she believes they reflect the sentiments of the Select Board. She will not discuss the Enforcement Order except to say that it would have been preferred to have a conversation before the Enforcement Order was issued rather than having a dialogue afterwards – as was requested by the Select Board. She has written a prepared statement as reads 'I believe the jobs of the Select Board and Conservation Commission are to look forward rather than spending a lot of time looking back at what was done or was not done on Lot O-32. As a Select Board, we are committed to carrying out the will of the majority of the Shutesbury voters; and what the voters want is for us to address any environmental issues on Lot O-32 through permitting, testing, and any necessary remediation and they want us to build a library. The Shutesbury Select Board is committed to doing anything it takes to make ensure Lot O-32 is a safe site on which to build a library. We are going to do that by working with our licensed site professionals who are on board, Fuss and O'Neil, Massachusetts Department of Environmental (Mass DEP), and Conservation Commission to develop the appropriate plans for permitting, testing and follow-up. We have not and will not ask for special treatment but what we ask that Commission work with the Select Board in recognizing our common interests - resolving the issues with Lot O-32 in a timely, cooperative manner so that we can get our library built. Tonight, we have two experienced and knowledgeable environmental scientists from Fuss and O'Neil - Matt Kissane (Environmental Geologist) and April Doroski (Environmental). We are in very competent hands. A wetlands

delineation has been completed and Fuss and O'Neil is in the process of preparing the necessary applications so we can move forward with permitting Lot O-32. We also have with us tonight from the Town is Tim Hunting (Highway Superintendent), and Mary Anne Antonellis (Library Director) who has been instrument in moving investigation of Lot O-32 forward. (Doroski was unable to attend meeting due to scheduling conflict). She would now like to turn over to Matt Kissane to talk about how we want to move forward with permitting this site, with your permission DeFant.

DeFant: want to make some comments that might help focus our discussion. SCC had initially discussed the ANRAD to be applied for. In the Enforcement Order, SCC wrote that they would be approving a wetlands delineation – want to make clear that the purpose of approval is to establish where SCC has jurisdiction for the purpose of the Enforcement Order (not for future permitting applications). Wetland delineation can only be approved for a site during an application process. SCC may approve that the Town has met the Enforcement Order requirement, so that it can be discharged, but the SCC has to withhold judgement about the final wetland delineation. Because of that, not worth spending a lot of time talking about the delineations which will be reviewed through a future application. Farrell and Kissane agrees. DeFant: she has informed Antonellis in an earlier conversation that SCC does not approve wetland delineations if there is snow cover or other weather conditions that would interfere with SCC reviewing it, want to inform Town the sake of scheduling. SCC appreciates the Town has communicated they are submitting a Request for Determination of Applicability (RDA) to do the 21E testing for the south side of the lot, because it requires crossing a newly delineated wetland area.

DeFant: The two remaining issues are around the BVW discussed earlier, suggests Town voluntarily submit a permit application for the previous cleanup work done without a permit and for the additional cleanup needed. SCC prefers not to do this under enforcement, asks the Town to come up with a proposal and application. The last issue is the mowing of the wet meadow. SCC has discussed this (and during other site projects elsewhere in Town) that mowing wetland meadows affects wildlife habitat particularly when done during breeding seasons and it affects habitat for pollinators, would like to have a discussion of what those mowing practices can be through either a permit or an agreement with SCC, if the Town wishes to keep that site as a meadow.

Farrell: Select Board and Kissane have had some discussion, turns to Kissane for explanation. Kissane: am a project manager with Fuss and O'Neil located in Springfield, MA, geologist by training. Mostly his world is environmental investigation but also crosses over into WPA area as well. As mentioned, his colleague, Doroski, completed the wetland delineation, did a site walk with SCC to help explain her approach in delineating the site. No work has occurred on site since the issuance of the Enforce Order. Regarding the Underground Injection Control (UIC) compliance matter, have been in contact with Joe Cerruti (MassDEP UIC Program); they are in the process of putting together a BRWOS6 (application) to send to MassDEP to retroactively register the drain as an Underground Injection Control Point (UICP); then will apply for retroactive closure authorization; discussed with MassDEP who to get back into compliance; have to do an assessment of area where they believe floor drain and outfall were; hope to include that work in their RDA that will also cover the environmental investigation on the south side of

the property. For the southern portion of the lot, they need to get their soil sampling equipment down access road. It is a developed access road but during Doroski's delineation she found indication of wetland species at a small portion of the access road; therefore the only way to get to that portion of the property is to travel down that road with their drill rig. For the former garage to comply with the UIC Registration and Well Closure, need RDA for work in Buffer Zone of an IVW; will do a small very scale excavation (test pit) to assess the environmental conditions of those soils. We also had a discussion about submitting a concurrent RDA for the cleanup, including work already done and work still needed, to clean the BVW area; happy to hear from SCC as well; Town is committed to address the environmental issues; the debris is an environmental concern but wish to separate it from the current RTN (21E) and Underground Injection Control Well issues. Intend to submit an Abbreviated Notice of Resource Area Delineation (ANRAD) concurrent with RDAs to cement delineation; going through an ANRAD process which will mean a peer review which would put more faith in interpretation of a wetlands delineation map. Once RDAs are approved, aim to conduct investigations quickly; there has been constant contact with MassDEP and with DeFant; asks what allotted time is for SCC to review applications before approval; hope to get permit soon. DeFant: SCC meets twice a month; if SCC were to hire a peer reviewer, SCC would need to get a proposal from a peer reviewer then would SCC need to approve it; peer reviewer would do the site work with Fuss & O'Neill; then report back. SCC will try to do this as quickly as possible but will need to approve the peer review proposal in an Open Meeting. In some instances, SCC will post an extra meeting for 15 minutes to approve a proposal to get things moving faster – can look into this option if needed.

DeFant: really appreciate the thought process Kissane presented for work for property but for the remedial work on BVW, SCC would need to discuss if an RDA would be the appropriate permit given that this project includes soil disturbance and excavation; this activity usually requires a Notice of Intent (NOI). Asks SCC if they would like to have a preliminary discussion about this? Willson: if there will be an NOI for the library down the road which involves wetland impacts so mitigation would be required, the cleanup wetland to the south of the building site could be proposed as mitigation combined with the bigger NOI for the library. Kissane: he believes that is a great idea; understands that there is probably desire by some to have the cleanup done sooner than that NOI process. Notes that a previous environmental investigation by O'Reilly, Talbot, and Okun (OTO) did do a soil investigation in 2021 in the area of the debris pile; the report includes non-detect for all constituents of concerns tested. DeFant: did they do test in that BVW? Kissane: they saw the bore holes when they were out there; might have been right along the border but it was in the low spot next to where that larger debris pile was. Based off their review of the previous report, we believe it represented beneath debris pile. Back to Willson's comment, he thinks that would be an acceptable outcome with the Town agrees; in order to limit the number of permits submitted to SCC; mitigation will most likely be a requirement of the NOI for the building of the library; good opportunity for mitigation to address known issue at the site. The Release Tracking Number (21E) that is open on the site has deadlines that need to be met; have one year to Tier Classify site or retract Notification; need to do testing this fall; also need to do the UIC Well Closure testing and reporting. Ferrell: Select Board accepts Kissane's recommendations. DeFant: thanks Kissane; notes Kissane may be talking about a different area where testing was done in the past near a wetland; SCC saw where previous boreholes were tested; SCC is concerned about debris in a BVW that is not near the boreholes on the OTO site

plan; area of concern is on the western side of the property; needs to be clarified in the permitting process.

Farrell: has a question about the peer review of the delineation, if SCC were to hire a 3<sup>rd</sup> Party Reviewer, can hiring process start in advance of the actual meetings? SCC have had excellent success with Emily Stockman of Stockman Associates for other Peer Review projects for ANRADs, she did the Peer Review for the solar ANRADs along with others; suspects that SCC would be interested in getting a proposal from her. DeFant: Stockman has to see the ANRAD submission in order to develop Scope of Work; SCC would receive the ANRAD application and send it right over to her; SCC could approve proposal when Public Hearing opens, then would continue the Hearing; most likely wouldn't be able to approve the ANRAD until after at least two Hearing dates. Stockman would have to do site work and then give SCC a report; sometimes there is some give and take between the applicant and Peer Reviewer until wetland delineation is agreed upon by all; Order of Resource Area Delineation (ORAD) would then be issued. SCC can start right away once ANRAD application has been received. Kissane: the intent to have that submitted by the end of next week.

[Small pause to open and continue Public Hearing for 58 Lake Drive Notice of Intent]

DeFant: For the RDA and NOI SCC will have to discuss the idea of having a 3<sup>rd</sup> Party Reviewer to consult with, but without permit applications submitted, the decision for the 3<sup>rd</sup> Party Reviewer can't be decided tonight. David: in order to keep this process moving, if Kissane is going to be the lead, requests that anyone else involved (Select Board members, Town Administrator, Library Director, or Highway Department) shares any new information about the site with SCC. DeFant: have written a draft letter to the Select Board in regard to status of the Enforcement Order; shared draft with the Commissioners so they could review it before the meeting; wish to review again later this meeting.

Leslie Luchonok (61 West Pelham Rd): this property has a sketchy history and he is applauding the efforts of SCC to hold the Town and Select Board to doing the right thing regarding the environmental conditions of the property. Steve Sullivan (444 Wendell Rd): he would to the clarify the statement that he heard a number of times, that the Highway Department excavated that trash spot, that's not what he said and that's not what they did. DeFant: would you like to add to what you did do? Sullivan: he will let the Highway Superintendent, Tim Hunting, do that. DeFant: Hootstein had his hand raised first so he'll speak first and then Tim Hunting. Michael Hootstein (423 Wendell Rd): he appropriates SCC and the Select Board who have hired a professional; we are dealing with jurisdiction of the SCC over making determinations on laws – laws that give us citizens the right to file complaints and have due process to have SCC consider our complaints, hear testimonies and evidence. He submitted a second complaint that has been shared with everyone; he has made allegations of what considered very serious violations of the Wetland Protection Act (WPA) and our local Wetlands Protection Bylaw. He is willing to let go of that complaint and cease all discussion of it, but it is very important for him and other people that take their time, love their Town and in his case protect drinking water and human health, to do not get demeaned by town officials anymore when we are exercising their constitutional rights and looking out in the best interest for protecting drinking water and human health. There are 6 homes/properties that have been shown to be contaminated with PFAS in their drinking

water; the town has provided filtration systems for these properties, some of which are directly downgradient from Lot O-32. It is a very serious matter when we get to 21E. All he is asking is that if he drops his complaint, asks for some good will from the Town and allow us to voice our honest opinions and show our evidence; SCC has jurisdiction with our local Bylaw and the WPA and will have discretion over the decisions made. Both the Town and himself, including a group or residents he is involved with, have the right to challenge decisions. DeFant: interrupting because we are getting away from what SCC tasks are for tonight. Hootstein: it is important to talk about the complaints instead of just dropping them. DeFant: she understands that, SCC is taking complaints seriously; that's why SCC is taking all the necessary steps. SCC appreciates the information shared and is taking it seriously; rather than SCC making a decision right now about who did what on Lot O-32 during the cleanup, SCC could review all of this through a permit application where they can go out on a site visit; expresses concern that everyone may not be talking about the same areas on the property; suggests tabling further discussion.

Tim Hunting (Shutesbury Highway Superintendent): there were a few statements which are not correct; he won't address them because of time restrictions but there is an issue of a drain, excavation, and other issues; Highway Department did the work and he has signed a sworn affidavit. We can talk about it another time but he would like to go on the record and say there are some false statements here. DeFant: is there a reason why SCC hasn't been given the affidavit? Hunting: he provided it to the Town Administrator, Becky Torres. DeFant: SCC was recently given report from Torres but not the affidavit; expresses concern about reports that heavy machinery was used in a Resource Area; it becomes a concern of alteration of Resource Areas; don't want to get into difference between excavating and just moving things; doesn't make a difference for our jurisdiction but sounds like it did happen; there are solutions on the table; don't want to focus on past. Hunting: agree but would like the false statements to be kept to a minimum. DeFant: don't think SCC is doing this; basing our conclusions on information given to us and language used; SCC was given information that a mini-excavator was used in the area which SCC presumes is a BVW, perhaps it wasn't and that can be discussed at another point. Farrell: words are very important when words like excavation are being stated by SCC when in fact there wasn't excavation– it's important to bring up.

DeFant shares the draft letter to Select Board regarding Enforcement Order to the Select Board for SCC to review via screenshare. Edits considered by SCC. Farrell: the "Alleged Alteration of a Bordering Vegetated Wetland" was not in the original Enforcement Order, how is SCC releasing Select Board from the Enforcement Order if this wasn't in the Order? DeFant: SCC is describing complaints and concerns; Enforcement Orders can be followed up with clarifications, additional requirements, or releasing applicants from certain conditions; SCC explored this BVW; concerned about need for cleanup. Farrell: this was not in original Enforcement Order (EO); seems like it does not belong in letter. DeFant: letter about all of SCC concerns in context of complaints filed; EO was a preliminary step; SCC trying to move on from that; letter would release Town from any requirements that have been satisfied or that would hinder Town from doing the investigations that need to happen; this was just discussed and agreed upon; we agreed that an application needs to be submitted; SCC is documenting what it would like to see happen. Farrell: I thought we were talking about the EO; agrees to move on. DeFant; this letter summarizes SCC concerns; including mowing wetland meadow habitat, including importance of pollinator meadows; site was observed to have abundance of milkweed and Monarch caterpillars

in September. Edits made to reflect “Alleged Alteration of a Bordering Vegetated Wetland.” DeFant: due to conflicting reports, recommends removing language about excavation, but SCC understands Town removed automotive debris and household trash from several areas, including Resource Area and Buffer Zone. DeFant asks Select Board if have any questions. Farrell: do not but agenda said we were discussing the Enforcement Order. DeFant: if SCC does not issue this letter, the Enforcement Order remains in place and the Town would be subject to a cease and desist order preventing you from doing work on the property; we need to resolve these conditions for the Town. Farrell: agrees but objects to adding the language about the work done in a Bordering Vegetated Wetland, that was new; you were talking about amending the Enforcement Order in your first draft.

**Motion: Willson moves to approve and issue letter regarding Lot O-32, as amended,**

Willson: assume this is the official release of the Enforcement Order. DeFant adds wording to reflect this. DeFant reviews language in letter including statements reaffirming the Town’s obligations to apply for permits in the future for work in jurisdictional areas. **David seconds.**

**Vote: David- Aye, DeFant- Aye, and Willson- Aye. So moved.**

**Motion: Makepeace-O’Neil moves to adjourn, Stocker seconds. Vote: Farrell- Aye, Makepeace-O’Neil- Aye, and Stocker- Aye. So moved.**

**Public Hearing for 58 Lake Drive, NOI/Burns, retaining wall repair; DEP File Number**

**286-0296:** DeFant: Due to the requirement that the application be submitted for review by the Massachusetts Natural Heritage & Endangered Species Program (NHESP), permit cannot be approved until 30 days have passed since it was submitted. Public Hearing will need to be continued and applicants agree. **Motion: David moves to continue the Public Hearing for 58 Lake Drive NOI on October 27, 2022 at 7:00 pm, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye.**

**86 Sand Hill Road/Kalt NOI Public Hearing: Geothermal Energy System, DEP File 286-0293:**

SCC has reviewed the more recent vision of the NOI for 86 Sand Hill Rd received on September 21, 2022. DeFant: what is the length of the trench? Kowalski: about 60 feet long. DeFant: what erosion controls will be used and is there a plan to treat the area once the conduit is buried? Kowalski: they plan to mulch part that will not be used as a gravel driveway. Most of the trench goes under the current gravel driveway; DeFant: what material will be used for mulching? Kowalski: they planned to use regular mulch or woodchips but are willing to use anything SCC recommends. DeFant: SCC doesn’t have a preference but suggests not using hay because it may contain seeds. Kowalski: they will plan to use woodchips. DeFant: SCC has your plan for erosion controls as described in your submittal. Kowalski: on their erosion letter of their submittal, page 50, there is a couple of described methods of erosion control; they would like to use the silt fence for the trench, but for holding the materials from the drilling they would like to use sealed silt container. They are willing to have to mud separator on site if SCC suggest it. DeFant: what would be the benefit of the mud separator? Kowalski: the mud separator separates the fluids for the solids which is a faster process then holding the materials in the sealed silt fence and waiting for the fluid to evaporate; allows them to use the left over material to fill in the trench/holes. DeFant: does SCC have preference? Willson: believes can be done either way;



water might infiltrate better in the silt pen so that may be preferred. DeFant: suggests leaving it up to the installer. No public comments. **Motion: David moves to close the Public Hearing for 86 Sand Hill Rd NOI, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye.** DeFant shares the drafted Order of Conditions (OOC) for 86 Sand Hill Rd NOI for SCC to review via screenshare. SCC grants DeFant permission to sign for them electronically. **Motion: David moves to approve and issue the OOC for 86 Sand Hill Rd, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye.**

**Continued Public Hearing for 66 Lake Drive/Douglas Notice of Intent, DEP File 286-0295**

Douglas: when we last met, SCC asked him to submit a more detailed restoration plan which he did. It is a simple project as he is looking to eliminate the scour damage from the runoff across his property. He would be filling it lightly with gravel and then covering it with top soil – to then be seeded with long-rooted fescue for the area that will remain long grass but for the area designated as restoration, will have conservation seed mix applied. The conservation seeds mix he is looking at is commonly applied to drainage basins to handle both wet and dry conditions – believes to be a perfect for for the area. DeFant: what is that produced? Douglas: it is from New England seed called semi-wet mix. In his application, he mentioned the property also has a large population of jewel weed surrounding the designated restoration area that he believes will begin to grow into the restoration area. There is a good active seed bank and he will be pulling soil from the root ball of a tree that fell during a storm while back. DeFant: are you planning on maintaining any un-mowed, vegetated buffer along the bank? Douglas: from historical documents of the house, before the ditch formed, there was a vegetated buffer strip up until the fence was constructed by the abutter; he plans to store a vegetated buffer and keep the one on the opposite side as well; looking to the plant 3 Hemlock trees to one side and some blueberry bushes on the other side. DeFant: what the minimum distance of work from the Bank? Douglas: It is about less than a foot because of the restoration work; the scour goes all the way to the Bank and then drops off; will be putting straw waddles along the line of the Bank and then reseeding. DeFant: you are not considering this an alteration of Bank project? Douglas: he believes that since the Bank is a retaining wall to the lake and he is not going past it, it shouldn't be considered as a Bank project. DeFant: you're not altering the Bank therefore it is a Buffer Zone project. Douglas agrees. SCC agrees with the proposed restoration plan.

DeFant screenshares the revised driveway plan for SCC to review via screenshare. Douglas: this revision was corrected to show the changes he was proposing. It is an unusual parking space that tapers to the back - it is meant for a single vehicle or for his boat trailer to be tucked back there. He wants a wall along the existing stairwell which is to the right of the black line shown on the plan. He wants to slope down to the line of shrubs on the left side. While it is 20 feet wide when entering the extra parking space, the back of it will be 15 feet or less. DeFant: what is the change of the overall square footage? Douglas: it ends up being 480 square feet but will taper so it likely won't be that much. The current is 450 square feet. DeFant: you are proposing berming this along the road? Douglas: yes, hardening the front of the parking area and protecting the stairs and property with the berm and the planter he is proposing to add. David: you are talking about berming the driveway to the road? Douglas: correct. DeFant: what will the planter be made out of? Douglas: it will be made up of pressure treated wood. David: if you are berming that, then how are you addressing water coming off the road on the side of the property? Douglas: the idea is to protect the property – there would be a space there to left where water from the road would

be allowed in. His thesis has been the road and the entire watershed needs to be treated in a different way than dumping all of the water onto an individual homeowner. He submitted a letter from an engineer that supports this; for an area this size, all stormwater on road shouldn't be funneled all into one place because it increases the volume, turbidity and so on. David: why are we not letting any water that comes down that side naturally? Not the side of the drain we were talking about. Douglas: he could perhaps taper down the berms to allow water go on that area to what would be left side of his home. He doesn't want to get into the drain business for the neighborhood because that should be the responsibility of the road owner. David: she is not talking about the drainage but the normal runoff that will occur if the drain is closed off. What is the add on area of the driveway? Douglas: that is a slope that would have the level of the driveway but taper down. On the left drive of his home, he has traprock that drops off to a lower elevation - as it get to his yard he has some landscape timbers; currently there is a subsurface drain that taps into French drain that goes around the house starting from the front.

DeFant: had a conversation with Mary Grover, MassDEP, this morning and went to the Board of Health (BOH) last night to discuss this property. It turns out the storm drain as it exists now does not meet the current Title 5 setback requirement for the Soil Absorption System (leach field) and may not even meet the setback requirements for the well but she is unsure. It means that the drain as it now is unallowable by Title 5 and was never permitted by BOH or the SCC; drain needs to be removed. SCC has no further questions. DeFant: the question is where SCC sees their jurisdiction when outside of the 100' Buffer Zone when discussing stormwater management. SCC has discussed berming with other properties and she believes the problem is that it is a standard that has been applied differently in different situations; not sure how SCC can exercise their jurisdiction when outside the 100-foot Buffer Zone. David: she believes SCC has done it on some of the other projects – SCC has been not approving berming on other projects mostly because it is altering the flow of water into different areas. DeFant: SCC has done so, but she is mindful that different properties have different environmental conditions and in some of those instances, there were unique circumstances such as adding impervious driveway surface or increasing the amount impervious surfaces due to expanding house footprint, which Douglas is not doing. This is also a much smaller lot with smaller side yard(s) to management stormwater with tight setbacks; he's not proposing any changes to pervious surfaces. David: he's looking to do a berm and that is a change – SCC is not asking him to. DeFant: the question is does it make sense to prohibit or reject that part of the application and on what basis? SCC has required no additional berming on other applications where changes were proposed as a compensatory measure; but there are other bermed properties in this section of road and SCC is not asserting any jurisdiction over those berms. If the SCC does not allow him to berm this section, he will continue to have an excess stormwater problem (which could affect septic system, well, and lake); also, problematic for SCC to determine that no berming is allowed anywhere on this section of road, SCC is not issuing Enforcement Orders on neighboring bermed properties which have altered stormwater flow with berms along the road. David: this could be an opportunity to have Douglas do something on that side of his property because he is going to have some runoff. DeFant: there is very little space in that area to deal with runoff; no room for a rain garden as has been used on other nearby properties; there is also an abutter's property and it may have an effect on the abutter's property. Douglas: he is perfectly willing to handle the 40 feet of water that lands on the roadway in front of him, the problem is overwhelming because he has about 500 feet surrounding him of bermed neighbors which cause all the water to flow onto his property. It

is a tiny lot that is being forced to take all the water from the entire neighborhood, including Great Pines Drive where it cuts in. He needs to protect his property and he has been cited by the SCC for having sediment not originating on his property contaminating the lake; he would like to protect both the lake and his property by placing a berm until the Lake Wyola Association (LWA) or someone else takes on the problem of the ramped runoff. DeFant: this property also has a highly sensitive Innovative/Alternative septic system on the property and the leach is also an Innovative/Alternative System that is also sensitive, both are in the Buffer Zone and need to be protected to avoid lake contamination. Tracy McNaughton: believe that Douglas has a well in a spot that needs to be protected from the excess water. There is too much at risk. Douglas: to clarify, his well is down in the bottom right corner. He had a sanitation engineer send a letter to SCC suggesting that both the well and septic tank have to be protected in this case by removing the drain. DeFant confirms SCC has received the letter. David: she wasn't suggesting not berming this but asking whether there was an opportunity on that other side to direct some of the rainwater. Douglas: to solve the whole problem would require changes to be made to the watershed. He could shed some water to the left side of his home. DeFant: there was a variance granted for your septic system because it is less than 100 feet from Evan Jones's well, closer to 55 feet from the well. Douglas: correct; it is a contained system that cycles things through a bottomless sand filter. DeFant: has there been any discussion or communication with about the drain inlet on the road? Douglas: there has not; he has reached out to Lake Wyola Association (LWA; owners of Lake Drive) and his neighbors to see if there were alternatives; nothing has been proposed. DeFant: she is concerned about the information that the Title 5 setback requirements for a storm drain and a soil absorption system is 10 feet, in this case, the drain is about 6 feet from the septic system. George Abdow (56 North Laurel Dr, President of Lake Wyola Association): he reached out to Douglas a few weeks ago and asked if he could meet with him to look at the property and discuss alternatives but Douglas said he was not available. He asked if Douglas would allow him to walk his property without him present, to which he said no. As stated earlier, the storm outlet drain is not within standards and installed with approval from anyone, the preexisting swale was also removed when the septic tank was installed. Given the nature of this plot, should that system have even been approved – should they have put on a tight tank? DeFant: it was permitted by the Board of Health; it is an Innovative/Alternative System that was determined to be Title 5-compliant. SCC is not allowed to second-guess the legality of a system that has already been permitted by BOH and installed. The problem is that the alternatives/repairs/upgrades to this drain system, proposed in a recent letter submitted by Abdow to the SCC, would not eliminate the difficulties or risks of sediment entering the Lake Wyola which is what SCC is mainly concerned with. This is not a permissible type of stormwater system given the distance to the septic tank and leach field; what this property looked like in the past is not relevant because SCC is dealing with what the property conditions are now. She is unsure that there is a way SCC could permit any kind of stormwater conveyance in this area even if it was designed that another; the landowner is not interested in having a sediment treatment bay down by his well which may not even be allowed due to the setback on wells (unsure what the standards are). There are a lot of problems with the property as it exists; it is not meeting the interests of the WPA, not protecting the lake, and the concerns of the stormwater runoff on the roads. The road is not this landowner's property and is outside the 100-foot Buffer Zone so she is unsure how the SCC has jurisdiction. Abdow: he believes that one of the Commissioners (David) went to the site during the hard rain the other day to observe the flows; the pictures that were shown by Douglas were taken previous to any of the improvements that have been done to road

drainage in the area. DeFant: she understands that; believes it's great that LWA is doing any work that can be done to improve stormwater in that watershed area. It is not SCC's jurisdiction and if the SCC decided it did have jurisdiction, then SCC would have to look at every property on Lake Drive outside of the Buffer Zone; she doesn't believe this is proper. Abdow: he understands that but the concern he sees is that Douglas is going to put up berms and walls and the neighbors will put up bigger berms and walls. Unfortunately, the property is the lowest point in the road so unless he puts up large berms and walls he is still going to get the blunt of stormwater; if there ever super storm he doesn't know what it is going to happen to the septic tank or the lake. DeFant: it comes down to the authority for SCC to tell a landowners what to and not to do on their properties. One of the conditions that she has considered in the draft Order of Conditions (OOC) that she will be sharing with SCC tonight is requiring two years of monitoring before considering a Certificate of Compliance, so SCC can do site visits to investigate if everything is holding up. David: she has gone to the site overall 3 times during a rain event, including this morning; has visited since that the improvements made on the road which have decreased the amount of water flowing; not sure what the impact of this would be. Douglas: he has sent photos of the water flow during a recent rain event and it shows how the water flow uninterrupted goes along the berms along Lake Drive 200 feet in either direction of his home, concentrates the water like light through a magnifying glass; not fair because the water entering his property doesn't generate from near his property; it is dirty with sediment and contaminants which goes into the lake. He believes that the relief has to come from the bigger property owner which is the LWA. It is often repeated that the water can only be taken off from the lowest point, but he would like to point out that Mark Rivers had a wall reconstructed at his house and created a drain that leads to the property directly across the street which isn't the lowest point but it works. The existence of these berms are interrupting the natural flow of water. DeFant: it is neither here or there for this permit, but she is troubled and concerns if LWA has not yet voluntarily agreed to remove this drain's inlet on the road footprint; SCC cannot at this time order them to do so; am concerned because this inlet is too close to Douglas' septic system; this may be a matter for BOH.

Willson: she agrees in the terms of discussion about SCC's jurisdiction – looking at just the property lines and Buffer Zone. Much of the stormwater drainage needs to be dealt with on a larger basis and certainly by the people who own the road. She is concerned that when this drain disappears, where is the water going to go? If the water gets high enough and if it goes over the berms that Douglas intends to place, then it is a concern, along with what will happen to that inlet. Water will sit in that inlet and will create a large lake. She agrees that dealing with the water from upland is no part of this application. DeFant: if this was larger parcel, then she would be thinking more about would could be possible for additional stormwater features, but there is no space for stormwater drainage compared to the previous parcels SCC has recently reviewed. An applicant asking for room for a vehicle and trailer isn't unreasonable especially when they have agreed to keep it pervious and not increase the amount of impervious surface. Willson: this project isn't going to change the drainage in this parcel itself much at all. SCC agrees it has received enough information.

**Motion: David moves to close the Public Hearing for 66 Lake Drive NOI, Willson seconds.**

**Vote: David- Aye, DeFant- Aye, and Willson- Aye.** DeFant shares the drafted Order of Conditions for 66 Lake Drive NOI for SCC to review via screenshare. SCC grants DeFant

permission to sign for them electronically. **Motion: Willson moves to approve and issue the OOC for 66 Lake Drive, David seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye.**

**Consider draft minutes for 7/28/22, and 8/11/22**

**07/28/22 Minutes** – SCC has reviewed the draft minutes for 07/28/22. **Motion: David moves to approve the 07/28/22 minutes, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye. So moved.**

**08/11/22 Minutes** – SCC has reviewed the draft minutes for 08/11/22. **Motion: David moves to approve the 08/11/22 minutes, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye. So moved.**

**Approve Sumner Mountain CR Monitoring Proposal with Charles Eiseman**

SCC wishes to hire Charles Eiseman to conduct the Conservation Restriction Monitoring Report for the SCC as he has done in the past. **Motion: David moves to approve the proposed CR Monitoring Proposal with Charles Eiseman, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye. So moved.**

**Site visit Follow-Ups:**

**155 High Point Drive, Emergency Certification for hazard tree removal** – DeFant: did a site visit with Board of Health, Catherine Hilton, to review a hazardous fallen tree – signed an Emergency Certification. **Motion: David moves to ratify the Emergency Certification for a hazardous tree removal, Willson seconds. Vote: David- Aye, DeFant- Aye, and Willson- Aye. So moved**

**58 Lake Drive NOI Site Visit** – DeFant, David and Harrington went on the site visit. It is a small project to fix a portion of their retaining wall.

**Site Visits to Schedule:**

**Old Peach Orchard CR Monitoring Site Visit** (Date TBD)

**South Brook Conservation Area CPA Project Site Visit-** October 30 (tentative)

**Dudleyville Dam Site Visit- DeFant:** Lois Brown has a site visit set up with an engineer on October 26, 3:30 pm and invited SCC to attend.

**16 Gass Lite Lane-** DeFant: Emergency Certification required for a ruptured septic pipe – landowner is going to give her times for when they can do a site visit with the professional doing the work.

**Updates and New Issues:**

**ECAC Liaison** – discussion postponed

**Pearson Acquisition** – discussion postponed

**Eversource Transmission Right-of-Way Reliability Program**

DeFant attended the Leverett Conservation Commission last week; she was invited by their Conservation Agent, Adam Kohl. They were having a conversation about Right-of-Way Reliability Program and are drafting comments regarding the MEPA review; were discussing in general how their Commission would approach permitting of the project. One of the concerns from both the Wendell and Leverett Conservation Commissions is the segmentation of the project – not looking at the full impact all together because MEPA is reviewing it in chunks. Also, permitting with each town is separate. Both other Commissions both expressed in interest in having a dialogue about approaching these NOIs. One of the ideas was to hire a 3<sup>rd</sup> party reviewer – possibly Emily Stockman.

### **FRCOG Shared Conservation Agent Feasibility Study**

DeFant: when talking to Kohl, she learned FRCOG is doing a feasibility study for a county-wide shared Conservation Agent/Department, however Shutesbury is not participating in this study. The SCC was not informed of study as the request for participation apparently was sent to the Town Administrator.

### **Enforcement Issues:**

**678 Pratt Corner Road Enforcement Order Monitoring Reports** – DeFant: received the newest report, SCC should do a site visit in October – she will email Commissioners for scheduling.

**27 January Hills Road Enforcement Order status update** – DeFant shares 27 January Hills Road Enforcement Order Letter for SCC to review via screenshare. DeFant: SCC has fallen behind on this Enforcement Order and she has emailed the landowner who indicated she was going to submit something new; haven't heard back since. SCC agrees to send the letter.

**Review draft letter regarding tree cutting on Shore Drive** – DeFant shares letter regarding tree cutting on Shore Drive for SCC to review via screenshare. SCC agrees to send the letter

**Meeting Close: 9:50 p.m.**

**Adjourn:** David moves to adjourn, Willson seconds. **Vote: David- Aye, DeFant- Aye, and Willson- Aye.**

**Next Meeting:** Thursday, October 13, @ 7 pm

### **Documents Used:**

- Lot O-32 Enforcement Order, 8/12/22
- Fuss and O'Neil Lot O-32 Wetland Delineation Report, 9/2022
- Lot O-32 Site Visit form + Google Photo Album
- Complaints #1 and #2, Lot O-32, submitted by Michael Hootstein
- Complaint, Lot O-32, submitted by Amanda Alix
- Draft Lot O-32 Enforcement Order Dismissal Letter
- 58 Lake Dr NOI
- 86 Sand Hill Rd NOI
- 86 Sand Hill Rd Site Plan
- 86 Sand Hill Rd draft Order of Conditions

- 66 Lake Dr NOI
- 66 Lake Dr Site Plan (Driveway)
- 66 Lake Dr draft Order of Conditions
- MassDEP Notice of Responsibilities, Lot O-32, RTN 1-21489, Release of Petroleum, 2/1/22 (21E)
- Letter from Thomas Carbone, Registered Sanitarian, regarding 66 Lake Drive, 9/18/22
- Letter from Christopher Cronin, Civil Engineer, regarding 66 Lake Drive, 9/22/22
- Letter and photos submitted by Robert Douglas, 66 Lake Drive, 9/21/22
- Email from George Abdow, President of Lake Wyola Association
- Email from Mark Rivers, 70 Lake Drive, 9/2/22
- Email from Janice Rowan, 55 Lake Drive, 8/26/22
- Email from Tracy McNaughton with IRS Audit Document regarding Lake Wyola Association's responsibility for private road maintenance, 9/20/22
- 310 CMR 15.211, Title 5 Setback Requirements Regulations
- 27 January Hills Rd Enforcement Order Letter
- Draft Shore Drive Enforcement Notice Letter

***Respectfully submitted by Miriam DeFant, Commission Chair, 11/11/22***