

## Shutesbury Conservation Commission

Minutes – 05/25/2023

Approved – (6/22/23)

*Virtual Meeting*

**Meeting Start:** 6:00pm

**Commissioners Present:** Miriam DeFant, Mary David, Robin Harrington, Scott Kahan, Beth Willson

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

**Other present:** Hannah Kowalski (Applicant consultant), Gregor McGregor (Select Board Special Counsel), Nate Heard (Applicant), Don Wakoluk (SCC consultant), Jon Lawless, Elisabeth Goodman (SCC Special Counsel), April Doroski (Fuss and O’Neil Wetland Scientist), Meryl Mandell, Amanda Alix, Mary Anne Antonellis (Library Director/ Applicant), Penny Jaques, Penelope Kim, Jim Hemingway, Mary Lou Conca, John Buonaccorsi, Elaine Puleo, Tom Siefert, Rita Farrell (Select Board Chair), Eric Stocker (Select Board Member), Matthew Kissane (Fuss and O’Neil consultant), Cliff Read, Ziporah Hildebrandt, Gail Fleischaker, Susie Mosher, Arleen Read, Deboraha O’Brien, Joyce Braunhut, Joseph Salvador, Weezie Houle, Dale Houle, Steven Bressler, Meg Gebhard, Catherine Hilton, Mike Vinskey, Becca Wheeler, and all other unidentified individuals.

Chair’s Call to Order at 6:00pm

Meeting is being recorded

### **Public Hearing for Amended Order of Conditions for 64 Cushman Road/Heard-Dandelion Energy, geothermal energy system, DEP File # 286-0288**

Kowalski shares the site plan for the geothermal system project for 64 Cushman Rd for SCC to review via screenshare. Kowalski describes that project as originally having two boreholes with a 75-foot trench that would have been parallel to the existing driveway along with a spoils container on the property during construction. The new plan they are proposing is to have the same two boreholes with a similar trench, but it would be across the driveway; therefore, requiring asphalt cutting; resulting trench would be 65 feet instead of 75 feet. Also proposing to use a Camacchio drill rig instead of their typical drill rig with an attachment that collects the spoils during the drilling and moves it through a hose into a smaller spoils container; container could then be moved off site. If they encounter excess water, they have a plan to place silt bags in the front of the property to allow the water to infiltrate and filter out any sedimentation. DeFant asks if they proposed alterations to Buffer Zone and Riverfront area is 150 square feet; Kowalski confirms it is correct. Kowalski confirms that staked erosion socks will be placed around the well digging area and soils container. DeFant understands that in the previous application that non-driveway area would be treated after disturbance with woodchips and asks if this will stay the same; Kowalski confirms they still plan to use woodchips. SCC has no further questions. There is no public comment.

**Motion: David moves to close the public hearing for 64 Cushman Rd OOC Amendment Request, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. *The motion carries.***

DeFant shares the Amended OOC with SCC to review via screenshare; edits considered.

**Motion: David moves to approve the OOC Amendment for 64 Cushman Rd as reviewed, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. *The motion carries.***

**Review draft minutes for 11/10/22 (Executive Session), 1/30/23, 4/27/23, and 5/11/23**  
**11/10/2022 (Executive Session)**– SCC has reviewed the 11/10/2022 Executive Session minutes.  
**Motion: David moves to approve the 11/10/2022 Executive Session minutes, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. *The motion carries.***

*Scott Kahan joins late at 6:15pm via cell phone*

**1/30/2023** – SCC has reviewed the 1/30/2023 minutes; meeting was joint meeting with Leverett and Wendell Conservation Commissions. **Motion: David moves to approve the 1/30/2023 minutes, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Abstain, Kahan- Aye, and Willson- Aye. *The motion carries.***

**4/27/2023** – SCC has reviewed the 4/27/2023 minutes. **Motion: Willson moves to approve the 1/30/2023 minutes, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Abstain, Kahan- Aye, and Willson- Aye. *The motion carries.***

*Carey Marshall, Land Use Clerk (LUC), is still working on 5/11/2023 draft minutes, matter will be revisited next meeting June 8<sup>th</sup>, 2023.*

**Emergency Certification (Lake Wyola State Park/DCR, demolition of a deck/dock)**  
Emergency Certification request submitted by DCR to demolish an accessible dock that has now collapsed and is now a safe hazard. DCR plans to rebuild it in the future but for now want to demolish it because of the hazard it presents. DeFant and David conducted a site visit and attached photos to the site visit form that was shared with SCC.

**Motion: David moves to ratify the Emergency Certification for the demolition of a deck/dock at Lake Wyola State Park, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries.***

### **Site Visits**

**2 Lakeview Road BPA/Shapson** – DeFant and David conducted a site visit where they identified an isolated wetland that was more than 100 feet away from the proposed project; BPA approved.

**530 West Pelham Road/Damon (BPA/ground-mounted solar system)** – DeFant and David conducted a site visit and identified a large isolated wetland in the tree line of the property; unsure if it is outside the 100' Buffer Zone. Willson suggest that SCC recommend the homeowner to get a wetland delineation done to clarify whether the property but be within the 100' Buffer Zone; SCC agrees.

**Lake Wyola State Park/DCR** – Please view Emergency Certification (Lake Wyola State Park/DCR, demolition of a deck/dock) for more information.

**678 Pratt Corner Road/Mitchell** – Discussion Tabled (visit cancelled)

**Dudley Pond and Montague Road Culvert** – Please view Emergency Certification (Montague Road Culvert at Dudley Pond/Highway Department, beaver dam breaching) for more information.

**Lot O-32-66 Leverett Road/Town of Shutesbury** – Please view Public Hearing for Notice of Intent for 66 Leverett Road/Lot O-32 Wetland Restoration Project/Town of Shutesbury, DEP File # 286-0298 for more information.

### **Site Visit Scheduling**

**678 Pratt Corner Road/Mitchell** – May 31<sup>st</sup>, 2023 at 4:30pm

**Camel Brook Bridge/DCR** – June 7<sup>th</sup>, 2023 at 3:45pm

**13 Cove Road-tree removal request** – TBA

**45 Schoolhouse Road/Sweeney (BPA/studio addition)** – TBA

### **Lakeview Road Culvert/Highway Department follow-up**

Tim Hunting, Highway Department Superintendent, and the Highway Department want to install a stone diversion structure in the area upstream of the Lakeview Rd culvert; would be placed within Fiske Brook near Pine Brook Camp. The structure would be composed of a single line of large boulders in the pond to divert the beavers from the culvert. SCC agree to recommend an NOI permit be submitted for this project.

### **FRCOG Lake Wyola Watershed Plan Meeting with Select Board**

The FRCOG Lake Wyola Watershed Plan Meeting with Select Board has been scheduled on Tuesday June 6<sup>th</sup>, 2023 (time TBA).

### **Public Hearing for Notice of Intent for 66 Leverett Road/Lot O-32 Wetland Restoration Project/Town of Shutesbury, DEP File # 286-0298**

DeFant opens the public hearing for an NOI submitted by the town for Lot 0-32 wetland restoration; SCC job is to review the application and determine whether a permit can be issued under the Wetlands Protection Act (WPA) and the Shutesbury Bylaw - both protect water quality, water quantity, wetland habitat and other wetland resources related to those interests. SCC will be gathering information from the applicant and asking questions for any needed clarity with the goal of coming to a determination based on a preponderance of evidence; meaning 51% or more evidence is needed. DeFant reviewed SCC policy for public comments.

Doroski introduces herself as a professional wetland scientist working for the Town on the project. Before the application was submitted, there was an internal review process of the application done at Fuss & O'Neill by her colleague Dr. Julian Nusa; a professional wetland scientist.

Doroski screenshares the Lot O-32/ 66 Leverett Rd Wetland Restoration site plan for SCC to review via screenshare. Doroski: the proposed project is to restore two Bordering Vegetated Wetlands (BVWs) located at 66 Leverett Rd, on the Lot O-32 parcel. These wetland areas were discussed during the ANRAD process that occurred. BVW-2 has a mounded fill pile within the wetland. There are invasive species growing within and around the mounded fill pile but also native shrubs and trees - there is a tree that is about 8 inches in diameter of breast height (DBH) indicating the pile has been there for years. BVW3 has an area of potential fill between flags 3a-114 and 3a-115 as indicated on the site plan. During the peer review process for the ANRAD, Emily Stockman of Stockman Associates identified this area between flags 3a-114 and 3a-115 appeared to be more recently disturbed and there is potential of wetland fill. Because of the potential fill being too deep (about 3 feet), heavy equipment would be needed to allow restoration and identification of any fill in this area. DeFant asks Doroski to clarify what fill means for the public and if she could characterize it. Doroski: discussing soil is placed on top of a wetland that would be considered fill. In this location specifically there is a minor slope of soil where there is a presence of trash buried with the soil along the boundary of the wetland - this led the peer reviewer, SCC and herself to believe there is potential that there was a placement of soil within the wetland. The area can only be investigated with the use of heavy equipment because the soil is too deep to move with manual tools such as a shovel or soil auger.

DeFant: at wetland point 3a-113/3a-114 during their site visit yesterday, they were looking at an area of exposed slope where there is clearly buried household debris (a variety of different kinds of household solid waste) that is coming out of the bank. What inclines you [Doroski] to suggest that the fill right next to it is soil and not more of that solid waste they observed? Doroski: she believes that buried trash can indicate that there was placement of material in that location. There is a mature tree with a possible 10-inch DBH at that location; restoration would be removing the soil in the vicinity of the tree but no tree removal is proposed at this location. Stockman mentioned that there appeared to be more recent disturbance between the two flags 3a-114 and 3a-115 including that area which will be investigated. DeFant: At the site visit you [Doroski] said the fill DeFant was referring to would not be investigated. Doroski: it will be dug around the base of the tree but the tree will not be removed. DeFant: SCC observed fill underneath the tree roots. Doroski: she understands and they will explore around the tree roots, but because the mature tree appears to be healthy and providing habitat and benefits in that area, it would be her preference to allow the tree to remain.

Doroski: BVW-2 restoration would start with the installation of the erosion control around the boundary of the fill pile, remove the vegetation which requires some tree removal that is growing within the pile, and removal of some shrubs and invasive species. Excavator will be able to enter the wetland and remove the fill pile to the level of the surrounding wetlands; it is possible that the fill removed will be temporarily stockpiled on site as indicated on site plan. DeFant asks how fill will be dewatered if it is saturated. Doroski: it will be temporarily be stockpiled as previously discussed to allow for the water to evaporate from the pile; spreading the soil out to allow for faster evaporation. DeFant: any use of filter fabric? Doroski: yes there can be filter fabric geotextile or a tarp under the soil as the water evaporates; fill may be live loaded directly loaded into a dump truck and removed immediately from the site.

Doroski: Once these steps are completed, the plantings will be installed. These plantings include three Red Maple trees and a combination of native shrubs such as High Bush Blueberries, Silky Dogwood, Arrowwood Viburnum, and Witch Hazel. These species were selected based on their presence on site in this specific wetland and, based on their expectations, they will be able to survive within this wetland area (based on the soil, shade, and sun condition). The native shrubs and trees will be placed in locations to allow them to spread out and the wetland area will be seeded with wetland seed mix; straw mulch will be placed over it once seeded. some minor tree removal that might be required to access the wetland so for more upland species the Witch Hazels are proposed. If there are areas that are in uplands and are disturbed by the equipment such as ruts or exposed soils, then these areas will be leveled and flattened to the existing grade and upland seed mix will be spread with straw mulch covering. Another benefit of these native species selected is they produce berries which provide feed for wildlife and benefit pollinators species. They are expected to survive well in this location and replacing the invasive species with this assortment of native species will be an improvement over existing conditions. This fill area is not currently functioning as a wetland; it's mounted up four to five feet high.

Willson: when excavating down to a level that is even with the topography of the wetland around it, what will applicant be looking for a change in the soil? Will the goal to able to locate the original soil? Doroski: yes that is the expectation; there will be an obvious distinction between this material that was placed there and what would be the historical top layer. Willson: is any long term monitoring proposed to observe plant growth and make sure the wetland does well over a couple of seasons? Doroski: not as this time but that is something that can be discussed with SCC and the applicants. Goodman: the DEP comments for this application referred to the new Wetland Restoration Guidelines. In the new guidelines, the standard is that at least 75% of the replacement area/new wetland must reestablished with indigenous wetland plant species within two growing seasons. She is wondering that if the three trees and shrubs that are proposed to be planted are expected to meet that standard. Doroski: yes absolutely, in addition to those plantings, the wetland seed mix being spread in that area which will provide an emergent layer, a shrub layer, and a tree layer; between all those species and the stratification of vegetation they're expected to survive. DeFant: what is the expected success of the seeding going to be, assuming the work begins in June, this growing season? Was any translocation considered, a methodology that involves removal of plugs of existing vegetation on site with its soil structure and mycorrhizal networks intact, and placed in a different location on the same site? Research suggests that methodology is more successful than using nurse plants. Doroski: in terms of the seed mix, this seed mix is more successful after one or two growing seasons thus, she does expect some herbaceous plants to establish but it does take time for that establishment. That area right now, based on the last site visit, has a lot of sensitive fern but not many grasses or other species, so she is hoping that that native sensitive ferns and other surrounding area vegetation also expand in this area. In terms of transplanting or translocating, it is a potential way to restore wetland but by removing/relocating these native plants from a wetland itself or Buffer Zone, it would degrade the area from which the plants were removed. Kahan: who will be on site when the fill is being removed to determine when the work is done? Doroski will be present. DeFant: do you have an agreement with the Town for any ongoing monitoring at this point after the restoration? Doroski does not at this moment.

Doroski: BWV-3 restoration more complicated because of the limits of potential fill are not defined; once the erosion controls are installed, she will be using a couple different methodologies of determining where the limits of fill are. One option is to dig a trench starting from the boundary of the wetland heading towards the tree line through the east. The trench would allow her to view an exposed soils horizon; essentially a test pit where she can enter and describe the soil horizons to determine if there is any fill and the extent of fill if present.

DeFant: there is a large pile of slash, roots and logs somewhere in the vicinity of the work; how will you get access without moving the slash pile? Doroski: the access is clear for the most part; the slash pile is closer to the tree line. DeFant: one possible approach is to get two transects: one clearly in upland and one clearly in what is believe to be wetland; how will you do this using one test pit? Doroski: the first test pit would be dug closer the 3a-114 flag because it the furthest/most southern part of the area; depending on the results of the first test pit there will/can be a test pit going through the center and/or doing across the top most part of the area to determine the easterly or northerly extent of the fill. There is another option where instead of test pits, if she determines that the fill is about 3 feet deep, then they could excavate the top 2 feet of this area, or 2.5 feet; she could then make multiple test holes using a soil auger to further refine that limit.

DeFant: hypothetically, would what occur if upland soils are not found? Doroski: that would be determined on site, she doesn't expect for that to be the case. The tree line is pretty mature and during the site visit with the peer reviewer, she and Stockman believed it's not expected that the wetland would be in the area of more nature trees. There is a pine tree with a DBH of maybe 1-1.5 feet and multiple mature trees. DeFant: would Fuss & O'Neill come back to SCC for further removal if she [Doroski] is unable to establish the upland line? Doroski: that will be determined based on the circumstances; she cannot say exactly what would happen no tree removal is proposed because it is not in this wetland's benefit or site's benefit to start deforesting to chase a wetland line that may have been fill historically.

DeFant: SCC wants to facilitate the completed delineation as it is important for future projects ; wondering if it makes sense to add a condition that Fuss & O'Neill would come back and discuss with SCC if for some reason there is something unexpected that happens resulting in not being able to establish that line. Are you planning to come back to SCC for approval of the wetland line once you've collected the data? Doroski: for future projects that come before SCC, the wetland line would be discussed at that point. DeFant: wouldn't you want to have the wetland line approved for planning purposes? Doroski: wetland boundaries are very commonly approved during an NOI process; no plan to submit an ANRAD for this. DeFant: could the applicant come back under this permit for a review of the wetland line? McGregor: we recommend you condition the permit based on any data collected during the restoration process because you have an abiding interest in what's found in the soil or any waste found. If there is a peer reviewer involved, then there would not be a delay in the project because the peer reviewer would be observing the test pits. He has not seen a condition on a small waste cleanup project on town land that requires a delineation for a future project. However, it would be fine to request data be submitted to SCC to make judgments on it and decide whether SCC wants something between the project being completed and the next project if there is one. As Doroski said that he fully supports, the delineation of all resources that are within any future projects will be done and will be given to SCC as part of the eventual project NOI.

David: wants to discuss the bunches of cut trees and debris that was observed during the site visit; she is still concerned that Fuss & O'Neill will not be able to get under or through that to determine anything in relation without moving those piles if the wetlands extend through that; it was suggested at the site visit that the debris pile could be removed at the time of the work. Doroski: they are not proposing to remove those trees at this time; they provide wildlife habitat and the carbon storage within the site. The project is mainly focused on restoring these two wetland areas. The project NOI was sent to MassDEP; it was reviewed the Mark Stinson the Circuit Rider. She wants to make sure that SCC and the public understand that the comments were issued by Stinson at DEP raised no compliance issues with this NOI. This project is being proposed based on recommendations of SCC and the town is voluntarily going forward to carry out this restoration that not only meets the performance standards but also enhances the interests of the WPA specifically for public and private water supply, protection of groundwater supply, prevention of pollution, and protection of wildlife habitat. Removing these historic piles and replacing invasive species with native species will be a net benefit and also supports the purpose of the Shutesbury Wetlands Bylaw.

Goodman: David, did you mean the cut trees that have been left as slash or do you mean living trees that are at the edge of this pile? David: yes; question is that is whether there is any fill underneath that it has not been examined; she believes that it is a barrier to the wetlands; piles are going to need to be removed; while the equipment is in there for this project, wouldn't it be better to remove them now rather than at a future point? Otherwise, it will mean bringing equipment back in to take away these piles. DeFant: those piles were presumably placed there by the Town; SCC doesn't know if there is a wetland under them, but they are clearly in Buffer Zone and SCC would prefer not to have woody debris like this in the Buffer Zone, which is a Protected Resource Area; they should be disposed of in areas that are not under the jurisdiction of the Commission.

DeFant: our understanding was that this NOI was the intended to do a delineation. SCC knows this is a disturbed site with an altered landscape and that delineation in other parts of the property have been complex; trying to think of a way to make this process more streamlined to benefit the applicant. If the applicant doesn't want SCC to approve a wetland under this permit and wishes to wait until a future project then that their right. Goodman: believes that Mr. Gregor was clear that delineation is not the purpose of this project; just removing those fill piles as identified and then restoring those wetlands areas that they can find. When they come back with the NOI for the building project, they will identify any wetland areas that are within the project area; is that correct Mr. Gregor? McGregor: that was a good summary. On the other hand, if you would like that slash removed from the edge of the wetland then you could ask so now. Doroski can say what she thinks; you could make it a condition if you wanted. That's for the applicant and Doroski. Doroski: appreciates DeFant's idea of trying to streamline this NOI and the approval of the wetland delineation line because defining the boundary of that area is part of this project. If there is a summary memorandum, the applicant can provide information based on photos and a summary taken during the site visit and wetland delineation. She believes that as long as Antonellis is okay with it, then Fuss & O'Neill is willing to provide that information to receive SCC's approval of the line.

DeFant asks SCC if they wish to hire a Third Party Reviewer to review the wetland delineation under this NOI; reviewer could observe the excavation and advise SCC as to whether they concur with the applicant report. Willson: application is to do the restoration only; SCC would issue a permit to give them permission to do the restoration only; doesn't make sense to allow them to come back to get wetland line approved under this permit; they'll come back with their NOI for the building later and present data regarding their delineation; at this point she doesn't believe a Third Party Reviewer is needed because SCC would be wanting them to review the NOI at a later point. David: would a Third Party Reviewer review the wetland delineation and how much fill must be removed to establish it? Willson: this project is a restoration project, they're doing the excavation as they have proposed to do; it is up to them to then bring that information back to SCC to prove to SCC where that wetland line is when they submit the next NOI. Goodman: she believes SCC could ask Fuss & O'Neill to document what they did; give a report, and photos within a period of time after the work is done. They could give notice of when they plan to do the work, so SCC can observe if it wishes. Willson agrees SCC could add that report as a condition.

DeFant: the Shutesbury Wetlands Bylaws has a Resource Area that protects subsurface streams and want to ask Doroski her opinion whether there is any evidence of any subsurface streams. SCC, from past discussions, has regarded this Resource Area to mean intermittent streams; subsurface streams being the subsurface component of intermittent streams. Doroski: based on her observations, she doesn't expect to run into subsurface streams or buried streams. DeFant asks if Kahan has any questions. Kahan: he doesn't have any questions and he concurs with Willson's comments about in terms of a Third Party Review; he believes the most important part is to have a professional wetland scientist/soil scientist on site to determine the extent of fill and he is confident Fuss & O'Neill will be able to do that.

DeFant: what SCC has done during other restoration projects is require a monitoring period and monitoring reports by a qualified wetland scientist; SCC might want to consider putting in monitoring component to permit that would require that there be a consultant involved in the project over time in order to provide that information. MacGregor: this being a project on Town land, SCC can come and go as they please and can have members individually or collectively come to the site visits because it is not private property. Fuss & O'Neill is open to communications during, after or before outside of the work she is doing; he doesn't believe a paid environmental monitor is needed which is more appropriate for a commercial site, a problem site, or a hazardous waste cleanup. This is a voluntary cleanup of Town property. At best, this project is a household solid waste cleanup and foreign soils cleanup of the sort that in his experience the DPW does on a Saturday morning and with the Commission watching; it's already heavily scrutinized. He believes SCC has already outlined a wonderful plan for making it sure it goes accordingly. We invite SCC to put in the usual condition to make it demonstrable after two growing seasons that all layers of vegetation have successfully taken. Antonellis: she would like to suggest that SCC could partner with the Town and do the monitoring itself instead of the Town incurring another expense, plus the Commission is local.

SCC has no further comments or questions.

Mary Lou Conca (Wendell Rd): she understands site was at one point it was declared a 21E site and is looking for clarification regarding this status. DeFant: her understanding is that the area that is slated for restoration is not part of 21E process; it is a different part of the parcel and SCC has no jurisdiction over 21E. Conca: is Lot O-32 being discussed as two separate pieces of land? DeFant: we are discussing a project on Lot O-32, but SCC doesn't have any role permitting anything related to the MassDEP 21E process. Kissane: the Massachusetts Contingency Plan is a set of regulations for a release-based program; it is not a parcel-based program; thus the RTN 1-21489, which is located on the southern end of the property has a defined disposal site boundary. Within that disposal site boundary is what is being governed under the MCP (MGL Chapter 21E) process; the entirety of the site is not a 21E-listed site; you can have a release condition that doesn't encompass the entirety of the property; the release condition is a couple thousand feet behind the front portion of this property that is being currently discussed.

DeFant: suggests discussing some of the possible permit conditions so that the SCC can have a dialogue with applicant before SCC closes the public hearing; once the public hearing is closed, SCC is not allowed to have any discussion or accept any new information from the applicant or public around this permit decision; question has come up around monitoring; her personal preference is that SCC put a monitoring component into the permit as SCC has done with other applicants/ landowners where restorations were involved; in such cases, the applicant/landowner was required to retain a specialist and provide reports, mitigation for any invasive species, and any additional planting or re-seeding if 75% revegetation success was not accomplished.

While she appreciates desire to do things in a cost-efficient way and wants to acknowledge that SCC has decided to not retain a Third Party Reviewer which will save the Town an expense, part of SCC's decision must be based on what SCC feels it can handle in terms of monitoring. SCC is mindful it is expensive to hire a specialist, but with that mind, having a monitoring component would typically involve the town keeping a wetland specialist in the mix for periodic monitoring; SCC would specify the frequency of the reporting and what would be in the report until a certificate of compliance (COC) is issued. Willson: she agrees and likes DeFant's suggestion; usually monitoring requires twice-annual inspections and a brief report, to evaluate revegetation and any invasive problems. usually over two years. DeFant: In Amherst, the CC requires a three-season; since work is beginning in the middle of this growing season, do we want a limit that will cover two full growing seasons? David: does the time limit have to be growing seasons or does it need to be until it achieves the 75%? DeFant: it could be either; in her understanding, a permit could be issued saying a minimum of a monitoring period with a condition that the success level much be reached and it could be extended if the vegetation standard isn't met. At this point, if it was two growing seasons and it was now issued in May, it would be into 2025 because this growing season is underway – it would have to be of the end of the growing season of 2025.

Goodman: looking at the Inland Wetland Replacement Guide that Stinson of MassDEP provided, which he directed the town applicant to review, it does speak about need for an environmental monitor and specifically says that requiring an environmental monitor for the project will help ensure the project is built and avoids the most common causes of failure. They're recommending SCC have a monitor and want the monitor a month after planting and seeding to see it is in place, again after one growing season to observe vegetation development and regulatory

compliance, and again after two growing seasons; therefore you can't get after one growing season until possible the fall of 2023. DeFant: to get two full growing seasons would take us to the fall of 2025. Goodman: SCC could say after the first and second growing seasons, they should review.

DeFant: suggests, as SCC has done with another project that was a similar size, that SCC consider twice a year reports in May and November; if SCC wants, they could schedule site visits to inspect after receiving those reports and then discuss at a meeting. If there is any changes, for example if SCC believed there needed to be some mitigation for invasive species or needs additional planting, SCC would then inform the applicant about what needs to happen – there would be some agreement and discussion about it at that stage at a public meeting.

Doroski: the Inland Wetland Replacement Manual is for wetland mitigation; this project is restoring what was previously wetlands and they will be restored to functioning wetlands; it could certainly be used as background information for help in making decisions but it does not match the proposed restoration. DeFant: this manual is for replication/replacement standards, but her understanding is that scientific standards are essentially the same whether you're replicating or restoring. The best practices for replication also hold for restoring, in terms of monitoring, because even with restoration, there can be a fairly high failure rate in terms of re-vegetative success. Doroski: agrees with DeFant; wants to make sure the SCC and the public understands that there is a distinction between mitigation and restoration; creating a brand new wetland where there was only an upland is more difficult of a process than removing fill and restoring a wetland to what it once was; other piece she wanted to mention if there was to be conditions related to vegetated success. Doroski attempts to share a document via screenshare for SCC to review but experiences some technical difficulties.

David: what is Fuss & O'Neill's plan for monitoring? She didn't see anything outlined in the NOI about a monitoring plan. Doroski: there is no proposed monitoring in the NOI. The piece regarding monitoring she wanted to discuss is that BVW-3 area closest to the restoration area is currently sparsely vegetated and restoration is designed to recreate that. Sometimes wetlands in forested areas are sometimes sparsely vegetated and that's the case in this area thus she doesn't expect to revegetate to 75% if this wetland area were to be restored. She asks the SCC to reconsider the re-vegetative coverage percentage for that area based on the adjacent natural area functioning with minimal vegetation. DeFant: Stockman in her ANRAD Peer Review discussed that BVW-3 is highly altered and disturbed. SCC understands that fill was removed from BVW3 in the restoration area in 2021 by the Highway Department; not sure how much was removed, so SCC doesn't know if this is a healthy wetland that's kind of functioning as a vernal pool and is not largely vegetated, or whether it is an emergent wetland that will develop a fully vegetated wetland in time. Doroski: there is no certainty about this, but the way that the wetland is functioning now it can be seen MassDEP MassMapper online GIS system; there is a hydrological connection exactly where that line is between 3a-114 and 3a-115; that means to her is that this is a headwater wetland where the groundwater is emerging, thus it's not surprising it is sparsely vegetated because this area seems to function similar of a vernal pool which can also be sparsely vegetated. It will be seeded with a New England wetland seed mix that may take hold, but if it's inundated for too long, then that seed mix will not vegetate well. If a wet summer were to occur this year, then she would imagine that area to have standing water.

DeFant: some Commissions use a 50% standard instead of 75%; is that more realistic? Doroski confirms it would be more realistic. David: she recommends that when the applicants come to the decision that they believe that the area is fully vegetated that SCC take a site visit to agree upon if it is or isn't. DeFant agrees.

Penelope Kim: she has lived in the area for about 60 years and have driven past this site. She understands that the protection of natural resource areas is something we're all committed too. She is hoping that we can concentrate on our end goal and knows that SCC is charged with all of these details. She is impressed and overwhelmed but hopes we can keep sight of the forest figuratively.

Willson: could Doroski describe what success would look like for these wetlands? Doroski: for wetland monitoring, she would be looking at vegetative cover for wetland species; 50% versus 75% vegetation has been mentioned; if the understory was 75% or more vegetated, that would be the goal, less vegetated if the area is already sparsely vegetated.

In terms in the number of species, she knows that there been 50% and 75% mentioned because if this wetland restoration is looking to restore the wetland areas to match the surrounding wetlands then that is what she would be using as a reference point; BWV-3 has more shrub plantings around its borders to add some more vegetation. DeFant: what are you expecting for the resulting grade to be for the slopes around the excavation area? Doroski: the goal for the grade is as shallow as possible to minimize erosion, but in the case the slope needed be a bit greater, than there are provisions for erosion control blankets to be added around that area and stay there. DeFant: SCC usually require erosion control blankets for any slopes that are 3:1 or more; is that kind of slope to be expected? Doroski: she would expect for them to aim for something more gradual than 3:1 slope.

DeFant: the plan is to create 6 inches of top soil with some top soil and leaf litter. SCC received an email from the Highway Department asking if the SCC would consider allowing the Highway Department to recycle the fill that was removed; she is assuming that part of the intent was that to recycle it for the use of this project – is this correct? Doroski: no, the soil that is removed will not be reused on site; the material will be removed and properly disposed of. DeFant: what kind of soil will be used to make those 6 inches of top soil? Doroski: a loam amended with organic material; 5-7% organic material. DeFant: sandy loam? Doroski: could be a sandy loam or loam itself. If she recalls correctly, that area around BVW-3 is a sandy loam. DeFant: what source will be used to obtain the leaf litter and sandy loam/loam? Doroski: that will be determined; she can't recall at this moment but someone recommended a local farm that produces clean topsoil but will be based off costs that would be explored by the Town.

SCC has no further questions. There is no further public comments/questions.

**Motion: David moves to close the public hearing for the 66 Leverett Rd/ Lot 0-32 Wetland Restoration NOI, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries.***

DeFant shares the drafted OOC for the 66 Leverett Rd/ Lot 0-32 Wetland Restoration NOI for SCC to review via screenshare; edits are considered.

**Motion: Willson moves to approve the OOC for the 66 Leverett Rd/ Lot 0-32 Wetland Restoration as reviewed, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries.***

*SCC verbal grants DeFant consent to sign for them digitally for this permit and previous permits they approved of during tonight's meeting.*

**Emergency Certification (Dudley Pond Dam/Brown, beaver dam breaching and flow protection device installation)**

The Emergency Certification was requested by Lois Brown, landowner of the Dudley Pond Dam for the beaver dam breaching and the installation of a flow protection device. The work has been completed and the flow protection has been successful in bringing down the impounded water.

**Motion: David moves to ratify the Emergency Certification for Dudley Pond Dam beaver dam breaching and flow protection device installation, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries.***

**Emergency Certification (Montague Road Culvert at Dudley Pond/Highway Department, beaver dam breaching) + discussion about installing a flow protection device at the culvert**

There was anticipated heavy rain coming recently, and DeFant reached out to Becky Torres, Town Administrator, and Tim Hunting, Highway Superintendent, with concerns about the current water level before the rain. DeFant and David met with Torres and Sullivan (Hunting was away from work at this time) at the Montague Rd culvert and Sullivan was able to breach the dam using hand tools; no heavy machinery needed.

**Motion: David moves to ratify the Emergency Certification for Dudley Pond beaver dam breaching, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries.***

DeFant informs SCC that Hunting has reached out that the beaver dam was rebuilt causing the water level to raise again and impound water; requested the Emergency Certification be extended another 10 days. DeFant has reached out to the Board of Health for an extension and awaiting a response. She asks SCC to ratify a second Emergency Certification for the future work; Hunting is also working with Mike Callahan of Beaver Solutions to get a quote for the installation of a flow protection device. David asks that this Emergency Certification be conditioned to have the dam breached using hand tools since it has been demonstrated that it can be done that way without heavy machinery; SCC agrees.

DeFant asks SCC what permit they should recommend the Highway Department file for the installation of the flow protection device. Willson suggests an Emergency Certification due to this issue being frequently reoccurring; Callahan has been successful in other location and is accustomed to working in emergency situations. SCC agrees.

**Motion: David moves to ratify the Emergency Certification Extension for Dudley Pond beaver dam breaching, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. *The motion carries***

### **Shutesbury Wetlands Protection Bylaw Regulations Updates**

DeFant received edits to the draft of the Shutesbury Wetlands Protection Bylaw Regulations from Patrick Garner, Peer Reviewer Consultant; she had reviewed the edits and incorporated them into a version of the draft with help from Janice Stone, former SCC Chair and SCC consultant. DeFant proposes to release the draft to SCC members and post it on the SCC webpage within next week; noting that it would be made clear that this is draft that is subject to change. SCC agrees.

DeFant suggest SCC deliberate on revisions in June with Garner, and then again with Garner in a public hearing; noting that the allocated funds given to SCC from the Finance Committee will be taken back by the Town if not used by the end of June (July 1<sup>st</sup> marking beginning of FY24). Willson suggests asking Goodman for guidance on how SCC should appropriately structure SCC's review of the draft with the public. DeFant: SCC in previous meetings discussed having a hearing on a Wednesday so Stone can attend; suggest SCC have a discussion during their June 8 meeting and then have another meeting on the following Wednesday to accept public comments. Goodman states there is no prescribed methods for a Commission adopting regulations other than it needs to be conducted in a public meeting; suggest having a working session in a public meeting and then accept public comment at a later meeting. DeFant asks if posting the public hearing date two weeks in advance would be sufficient; Goodman confirms.

*SCC agrees to have the public hearing to review the Shutesbury Wetlands Protection Bylaw Regulations Revisions on **June 21<sup>th</sup>, 2023 at 7pm.***

### **Shutesbury Wetlands Protection Bylaw Revision Updates**

*Discussion Tabled*

### **Chair Updates**

*None*

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

**Meeting Close: 8:45pm**

**Next Meeting: June 8th, @ 6pm**

### **Documents Used**

- Agenda
- 64 Cushman Rd NOI
- 64 Cushman Rd OOC (2022)
- 64 Cushman Rd Amended OOC
- Lake Wyola State Park/DCR Site Visit Form
- Emergency Certification for Lake Wyola State Park/DCR

- 66 Leverett Rd/ Lot 0-32 Wetland Restoration NOI
- Draft 66 Leverett Rd/ Lot 0-32 Wetland Restoration OOC
- Shutesbury Wetlands Protection Bylaw Regulations Draft
- Emergency Certification Dudley Pond Dam/Brown
- Emergency Certification Montague Road Culvert/Breaching

*Respectfully submitted by Carey Marshall, Land Use Clerk, 6/19/23*