

Shutesbury Conservation Commission

Minutes – 10/13/22
Approved – (12/9/22)
Virtual Meeting

Meeting Start: 7:00pm

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

Commissioners Absent: none

Other Staff: Carey Marshall (Land Use Clerk)

Others present: Janice Stone (SCC Consultant), Michele Regan-Ladd, Amanda Alix, Brad Foster, Craig Martin, Don Wakoluk (Tree Warden/SCC Consultant), Donna MacNicol (Town Counsel), Elaine Puleo, Eric Stocker (Select Board), Gail Fleischaker, Glenn Stockton, Jan Rowan, Jeff Lacy, Jill Marland, Jim Hemingway, Joan Hanson, John Buonaccorsi, Jon Lawless, Kate Cell, Kenneth Holt, Leslie Luchonok, Linda Bills, Linda Seidman, Lynmarie Thompson, Mark Rivers, Mary Anne Antonellis, Mary Lou Conca, Matt Kissane (Fuss and O'Neil), Christopher Stoddard (Stoddard Engineering), Matteo Pangallo, Melinda LeLacheur, Meryl Mandell, Michael Broad, Michael Vinsky, Molly Moss, Paul Lyons, Penelope Kim, Penny Jaques, Rita Farrell (Select Board), Steven Sullivan, Stephen Dallmus, Steve Bressler, Susie Mosher, Timothy Logan, Tom Siefert, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

Continued Public Hearing for 70 Lake Drive/Rivers Notice of Intent: retaining wall restoration, DEP File # 286-0294:

Rivers: Wildlife Habitat Evaluation Assessment was completed and sent to SCC via email. Wildlife Habitat Evaluation Assessment determined there would be no impact to wildlife habitat caused by his proposed project. He emailed the Natural Heritage and Endangered Species Program with the proposed plans and photos to which they responded and saw no issues with the proposed work, has not been sent an official letter yet. SCC has no further questions. No comments from the public. DeFant: has it been 30 days since you have submitted it? Rivers: he sent it out September 26th so it has not been 30 days. **Motion: David moves to close the Public Hearing for 70 Lake Drive, Harrington seconds. Vote: David -Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.** DeFant shares the drafted Order of Conditions for 70 Lake Dr for SCC to review via screenshare. All members of SCC grant DeFant to sign for them electronically. **Motion: Willson moves to approve and issue the OOC for 70 Lake Dr, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

27 January Hills Road/Waldinger: Enforcement Order Restoration Plan:

DeFant: SCC conducted a site visit at 27 January Hills Rd to view a driveway that needs repairs as part of an open Enforcement Order issued back in December 2021. There were delays due to landowner having difficulties getting a wetland delineation done and finding an engineer to do the design work – Ward Smith did some of the delineation and Chris Stoddard has been hired to

do the design work. From looking at the delineation, she believes Smith did not do a complete delineation of the property because there is an intermittent stream present in the back of the property that is not marked on his delineation – still an active wetland but not relevant for this project. She spoke with Stoddard after the site visit to share some runoff patterns observed. Stoddard shares the site plan for 27 January Hills Rd for SCC to review via screenshare. Stoddard: After feedback from the site visit, he revised the site plan and shared it with SCC earlier today before the meeting. The first change he did was expand out the swale to the end of the existing asphalt berm so that runoff can sheet flow into the swale off from the asphalt berm – added two stone check dams to control the rate of flow. The runoff in the swale will flow down to the infiltration BMP – first section will allow any sediments to settle out and then the water will flow over a stone weir where it will fill and slowly infiltration into the ground. The parking lot will be reduced from 27 feet wide to 22 feet wide and reduced the length to 18 feet. Using Smith’s flagging and delineation, he located the disturbed/migrated soils that were caused by excessive runoff from the driveway. For both the driveway work and soil disturbance work he is proposing using straw wattles and silt fence for erosion controls. To address the disturbed soils, they are proposing to remove the excess soils from the runoff area and add vegetation to area following their proposed planting plan – fiddlehead ferns, sensitive ferns, and highbush blueberry bushes. He has provided an operation and maintenance plan for the infiltration basin for the homeowner such as after 2 inches or more of rain they must check on it and after every six months they will need to remove the built-up sediment. DeFant: if this were an NOI the maintenance plan would be perpetual conditions – should the applicant send a letter to SCC acknowledging they have read and understand the maintenance plan? Stoddard agrees. SCC has no further questions. DeFant shares a draft Enforcement Order follow-up letter with conditions for required restoration work for SCC to review via screenshare. Edits are considered. Chair experienced technical difficulties while reviewing the letter. **Motion: David moves to approve and send the letter as reviewed for 27 January Hills Rd Enforcement Order, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

Public Hearing for 66 Leverett Road/Lot O-32/Town of Shutesbury: Abbreviated Notice of Resource Area Delineation (ANRAD), approval of wetland boundaries, 286-0297:

DeFant: open the Public Hearing for an ANRAD, a wetland delineation project being proposed by the Town, conducted by Fuss & O’Neill on behalf of the Town. Matt Kissane with Fuss & O’Neill present to discuss project. DeFant: will discuss how we will proceed; will delay any discussion about the wetlands delineations if the SCC wishes to hire a Third Party Reviewer (TPR). SCC has the right, under both state law (MGL Chapter 44, Section 53G) and local Wetlands Protection Bylaw, to retain an independent TPR to review wetland delineation. This was discussed with the Select Board. DeFant has reached out to other consultants including MassDEP to ensure that SCC has the authority to do so. It was confirmed that Commissions can and do hire TPRs when reviewing Town applications to ensure they are being independent and to avoid any undue accusations of self-dealing (i.e., giving the Town preferential treatment). SCC is ensuring it is doing its due diligence – ensuring the wetland delineations are correct to guide future projects and permit decisions. David agrees with getting a TPR. Kissane agrees. Kahan, Willson, and Harrington agree. DeFant clarifies that doing this does not mean the SCC does not have confidence in the work done by Fuss & O’Neill. There are concerns about how to do delineations under difficult conditions, including a drought and mowing of a meadow. SCC was

given a proposal from Emily Stockman of Stockman & Associates, a wetland scientist who has been a consultant for SCC in past, including the solar ANRADs. SCC must approve the proposal by vote and the applicant must make the funds available – once the funds are moved into an appropriate account then Stockman can begin the review. **Motion: David moves to approve Emily Stockman’s Third Party Review proposal for the 66 Leverett Rd/Lot O-32 ANRAD, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

DeFant will sign the proposal and return it to Stockman via email – Stockman has set aside a few potential dates for site visits. DeFant had a phone conversation with Library Director and Kissane to inform them of those dates and times. After the site visit, Stockman will give SCC written comments that will be shared with the applicant; the applicant can respond in writing; then have a final meeting where Stockman presents her final recommendations including draft language for the Order of Resource Area Delineation (ORAD). The town wishes to get this done as soon as possible; SCC may want to schedule an extra meeting in early November in order to be responsive to Town’s schedule. She will discuss meeting dates with SCC and Stockman. Applicant agrees to continue. **Motion: David moves to continue the 66 Leverett Rd ANRAD Public Hearing to October 27th, 2022 at 7:45 p.m. Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

Farrell: how much is proposed for the TPR? DeFant shared proposal with the Library Director earlier in the week; had hoped that the Select Board would have reviewed it. David: where will funds come from? Antonellis: there is a Lot O-32 environmental site work account; funds will be transferred next week. Farrell: confirming that Stockman will not be paid until work is completed? DeFant: yes, but she can’t begin work until funds are deposited in an escrow account. Farrell: that will happen next week.

DeFant experiences technical difficulties with computer and must restart computer, switches to using phone.

Public Meeting for 66 Leverett Road/Lot O-32/Town of Shutesbury: Request for Determination of Applicability (RDA), environmental investigations

DeFant: opening the Public Meeting for RDA project is being presented by the Town and their consultant, Matt Kissane, from Fuss & O’Neill, in order to do environmental investigations on the property. We will want to have Fuss & O’Neill to describe the project, also be mindful of any questions from the SCC or public.

DeFant: before proceeding with discussion about the project, there was a question raised as to whether SCC can review this RDA, Request for Determination of Applicability, when SCC has also just determined they do not have enough information to issue an approval of the wetland delineation. When SCC approves a Determination of Applicability permit for an RDA, SCC is making a ruling about jurisdiction – a ruling on which wetlands exist in the vicinity of the project area and what jurisdiction SCC has (Wetlands Protection Act, WPA, or local Wetlands Protection Bylaw).

DeFant: spoke with a few consultants who advised SCC should delay any determination until SCC has an approved wetland delineation first, because it is putting cart ahead of the horse. If SCC were to issue a determination, then SCC would be making a ruling about a wetland delineation they just said in the ANRAD Public Hearing that they didn't have enough information to make a ruling on. DeFant invites discussion about this matter.

Kahan: it is a good point, but it would create any timing problems for the applicants. DeFant: SCC wants to move things along as much as is possible to assist the Town; discussed this issue with Kissane, Antonellis, and Penny Jaques earlier this afternoon; later with an agent from MassDEP, and also a consultant from Massachusetts Association of Conservation Commissions (MACC) and a Conservation Agent from another town. The consensus was that issuing a Determination of Applicability is a ruling from SCC; that is problematic in this circumstance when don't have an approved wetland delineation. Kissane: in our RDA under the determinations request section on the form, they did not check off to request whether the boundaries of the Resource Area depicted on their maps referenced in the application are accurately delineated – we are not requesting through the RDA for their delineation to be approved for accuracy. We submitted both the RDA and ANRAD concurrently with the idea that the ANRAD is more forward-looking for a future NOI application for the construction of the library, the ANRAD wasn't submitted for the RDA; doesn't think an ANRAD needs to be in hand for an RDA; can SCC explain how having the Order of Resource Area Delineation (ORAD) issued would ensure more protection for Resource Areas during the RDA project when they are already implementing best management practices including erosion controls, scheduling outside of rainfall, offer to mat the Isolated Vegetated Wetland (IVW) for the access road to get back to their environmental assessment area south of the property. They want to be in compliance with the WPA and the town's local Bylaw but they are also working under the DEP's MCP (Massachusetts Contingency Plan) to address the Release Tracking Number (RTN; for ground contamination) that already exists for the site and which includes time constraints for reporting; they are also trying to proceed with their investigations to close the now-removed Underground Injection Control (UIC) floor drain that was removed from the garage structure at the site – we understand that many members of the public are keen on them proceeding; worried this delay may run the risk of them being out of compliance with the MCP and delay work with the UIC structure. All of the work that is being proposed is outside of the Buffer Zone; need to move through the access road that is part of an Isolated Vegetated Wetland (IVW) that is the main cause for the submission of this RDA. This approval is being sought primarily under the Bylaw, not the Wetlands Protection Act.

DeFant: dilemma is thus: Fuss & O'Neill has delineated two resources that are in the vicinity of the investigation – an alleged IVW (Isolated Vegetated Wetland) that is near the 3-bay garage that was demolished, and the investigation being proposed in the alleged Buffer Zone. The proposed investigation that is occurring in the south part of the site that includes crossing over another alleged IVW that resides on the sides of the access road being traveled on. To clarify for the public, SCC jurisdiction is defined by two laws – WPA and local Wetland Protection Bylaw. Bylaw protects some protections and protected Resource Areas that are not listed within WPA. If a resource area is only IVW and it is at least 1,000 square feet in area, then that Resource Area and its Buffer Zone are only jurisdictional under the Bylaw. If it is a Bordering Vegetated Wetland (BVW), a perennial stream, or any number of other Resource

Areas, then they are also protected by WPA and the Bylaw. This is a meaningful difference. For example, if this work were to be approved assuming that it was only involving Isolated Vegetated Wetlands, then if appealed, it could only be handled through the courts and not through DEP, because it is only protected in our local bylaw; DEP will not entertain any appeals that are jurisdictional only under the Bylaw. If it turned out later through the ANRAD process that it was a Bordering Vegetated Wetland (BVW), not an IVW, then it would have two conflicting orders issued within a small time frame regarding the same parcel – this is where it can be problematic if this outcome occurs; don't know what the outcome of the ANRAD process will be. When it comes to the Determination of Applicability form that needs to be filled out by SCC, she doesn't see a good way to fill it out without prematurely approving a delineation; the Determination of Applicability will include an attachment with Findings regarding jurisdiction; we have to explain which statute gives us jurisdiction.

Antonellis: has a lot of concerns about delaying the RDA beyond tonight's meeting. They have been working on this for about 3 months – she was getting quotes for wetlands delineations in July 19. She believes that SCC can write in the OOC that SCC doesn't agree with the wetland delineation and can state SCC is permitting the work but not making a formal determination about the wetland boundaries and/or types of wetlands. We all agree there are wetlands. They are going to be following best practices to protect the wetlands and the Buffer Zone while they do this work. She spoke to MassDEP and when she told them her efforts to get the environmental testing done they told her to just allow Fuss and O'Neil to do their work. If this is delayed, then our best hope is that the ORAD confirmed by mid-November – she doesn't see how changes the work that has to be done. The environmental testing has to be done regardless of what the status wetlands and buffer zone are – work has been ordered/required by MassDEP. The work at the former radio tower has been ordered by Mass DEP and has to be completed by the middle of January – very tight timeline. Three months is not a lot of time when it comes to the environmental testing. The work around the garage is required by MassDEP to be in compliance with the Underground Injection Control Program (UICP) – it's testing that a lot of the public is concerned about. It has to be done regardless of what the status is. If there is a way that the ORAD changes the testing or protections for the Resource Areas as the testing occurs then that could be written into the RDA tonight. Winter and holidays are coming – even though not impossible but make it much harder to complete. It would risk not being in compliance with MassDEP and making the work harder and possibly longer. Stone: DeFant explained the situation to her this earlier in the day and she agrees that it is a difficult situation because even if SCC is not specifically approving the wetland boundaries or designations on the Determination of Applicability, for the work to be done, it still establishes the Town Bylaw jurisdiction versus MassDEP jurisdiction, which cannot be reversed once issued. If the ORAD turns out saying that any of these wetlands that are near the proposed work are protected by MassDEP as well, then it would require different kinds of permitting. She isn't sure how to do both – legitimately, it would be best to wait and hold onto the RDA until the wetlands are approved and an ORAD is issued, so that everything could be wrapped up together. DeFant: that was the guidance given by Mary Grover (MassDEP) as well as the MACC consultant. By issuing a Determination of Applicability where the only delineation available to SCC has not been approved, then we may be locking SCC into making a decision that would affect future permitting. Kahan: just as a point of practicality, not talking about the specifics of the proposal, he knows that for many of the permits SCC has entertained here where wetlands were being crossed. there was a condition stating that

it should only be crossed in frozen soil conditions. When Antonellis talked about not being able to do it later on during the winter, it grabbed his attention because moving forward SCC would possibly have waiting for frozen soils as a condition to protect the wetlands from any soil impacts; maybe the timing would work better to wait. DeFant: would like to move things along; has been looking at the Determination of Applicability paperwork today in an effort to find a way to facilitate a faster resolution; can't see how to appropriately write the Determination; we have to do it and can't have the applicants telling us how to fill it out; we have to be independent; had hoped DEP would provide guidance but they did not have any because the Town chose to submit both an ANRAD and a RDA application at the same time. Usually, ANRADs are applied to assist with planning for future permits, so the applicants know where the wetland boundaries are before submitting other applications. In this instance, with the time constraints noted, the Town submitted both applications simultaneously, thus creating this dilemma for SCC; we understand there are time constraints and we would like to help the Town; we have no desire to interfere with the very important investigations you are attempting to conduct; feels like SCC is stuck.

Kissane: the issue of jurisdiction has been raised and under the WPA the activities of environmental investigation would be exempt. DeFant: except that a wetlands crossing is not exempt. She understands that environmental investigations within the Buffer Zone are considered to be a minor exempt activity under WPA but if crossing over a BWV then it could be covered under the Minor Exempt Activities under the Wetlands Protection Act (WPA) – crossing over a Bordering Vegetated Wetland would require a permit; it has not yet been determined what is a Bordering Vegetated Wetland or an Isolated Vegetated Wetland; the Town Bylaw also does not have the same exemptions. Kissane understands. DeFant: whether it is an Exempt Minor Activity or not is not exactly the problem; the problem is that our Findings have to define our jurisdiction; we have to decide whether or not our Determination is to be issued only under the Bylaw or whether it is also under the Wetlands Protection Act; if we rule that it is jurisdictional only under the Bylaw, then MassDEP has no jurisdiction and the area's delineations is locked into place for three years; we can't go back and change that during the ANRAD process if an Isolated Vegetated Wetland is later found to be a Bordering Vegetated Wetland. SCC has to base our Findings on a preponderance of credible evidence from competent sources; have to have at least 51% credible evidence to support a Finding or Determination. SCC made a determination in the last hearing that the ANRAD submission did not meet that evidence threshold; therefore, SCC is requiring a Third Party Review. To undo that here, is where she believes the two permit activities are in conflict with one another.

Jaques (43 Old Orchard Rd): she believes this conversation is “lost in the weeds”, rather than talking about the important aspects. Fuss and O'Neil has proposed precautions addressing all the concerns that have been raised tonight. They are not asking SCC to determine what wetlands are present or where they are in this RDA permit – just asking to move forward with a minor project. It is unfortunate that this conversation started by getting lost in the weeds rather than letting Fuss and O'Neil present their proposed work to the public listening tonight. As Kissane said this is exempt under the WPA, the town is required to do this, there are precautions placed for crossing the wetlands whether it's under the local Bylaw or WPA. In SCC's findings, she believes there is a way to address this by saying that the final delineation is being determined through the ANRAD process. DeFant: then should we issue it under the Wetlands Protection Act and give

the DOA to MassDEP? Jaques: she believes SCC can do that. She believes that the way Fuss and O'Neil has presented their activities that their precautions would be accepted by MassDEP – should be acceptable by SCC. Conversation is stuck on words that don't make a difference in the end; this discussion won't protect the wetlands any more than how is it currently protected. What is really concerning to her is will SCC require applicants who do a project under an RDA to do a full delineation under an ANRAD as a result of this discussion? She believes that would be onerous. DeFant: she doesn't believe SCC would ever make that a requirement or set a precedent for future project; this circumstance is unique because there is an ANRAD application submitted already at the applicant's discretion; concurrently with the RDA. Jaques: SCC has a wetland delineation; SCC would normally never ask for anything more from a typical applicant; believes going down a dangerous path. Willson: the Determination is good for three years but really only good for the work being proposed; therefore, whatever is being proposed, once completed, then that Determination is also considered "done." The ORAD can still be done and could change that IVW to a BWV if approved as such; doesn't affect the Determination. DeFant: how would the Determination of Applicability be filled out? Under the Bylaw, the WPA or both? Willson: right now, it would be under both because the application submitted by Fuss & O'Neill has referred to both as an IVW and BVW; submitting a Determination based only on what SCC knows at this point and strictly only for this proposed work; ORAD can change things but doesn't matter because this work will be completed. Alix (16 Lakeview Rd): she wants to speak to the timeline issues; that last year the Licensed Site Professional (LSP) that they used O'Reilly, Talbot & Okun (OTO), who did the testing, which ended up being positive for VOC (Volatile Organic Compounds) and the Release Tracking Number they have to now deal with, they managed to get a whole report to the town in a month of walking the site with Town officials; got the report in on November 5th 2021; the Town didn't report the results to MassDEP until the last allowed day which was January 28th of this year. She is sure that Fuss & O'Neil can manage to get things done as efficiently as OTO did and if it's not going to be report until the last day anyway then what difference does it make anyways. As far as the Underground Injection Control Well goes, that should have been done correctly over a year ago, which is why we are here today; she believes a bunch of people, including herself, would rather it be done correctly. Assuming it will be more difficult to do now which the disturbance that has occurred on the site; she does not want to see be rushed. She likes the idea of some of this work being done when the ground being partially frozen; from what she has read it causes less trauma to Resource Areas.

Farrell: at the last meeting, Select Board and SCC had agreed that this is the way we were going to proceed; doing the ANRAD and RDA. So, to hear tonight that the RDA is going to be deferred and to wait for the ANRAD is problematic to her. She doesn't understand why the recommendation was made and its being presented tonight as if this is news– this is what was agreed along at this meeting; it is what they have the Town's engineers have worked on and presented, at the recommendation/agreement from SCC. What we are proposing is taking soil samples where the Underground Injection Control Well was and then getting to B-9 which is not in a wetland but having to cross a wetlands to fulfil their obligation to report back to Mass DEP by mid-January. As Antonellis has mentioned, they are up against a timeline so by delaying the RDA the town is then in jeopardy of not meeting the DEP guidelines. RDA is very straightforward – doing soil samples and doing a test soils boring back at B-9. It is minimal disturbance to the wetlands; they are crossing a wetland which she believes arrangements have made with the engineers to make the upmost precautions – no major disruption. Kissane: to build

on Farrell's comments, the Underground Injection Control investigation that they are proposing to do are a few small test pits that will be 2-3 feet in depth all within previously disturbed area all within the IVW Buffer Zone. They have proposed to line the entire working area with straw wattles, to stockpile the removed soil immediately adjacent to the holes which will be replaced into the hole the same day; will also loam and seed the area at grade to recreate the area as they found it. In the south/back of the lot, the investigation will happen outside of Resources Areas and Buffer Zones as they have mapped in their delineation – it is just the crossing of the Isolated Vegetated Wetland which is currently an active access road that has been used in the past. They have offered to mat across that with their small track-mounted equipment that will be doing the soil investigation, out of an abundance of precaution, even though there will be rutting from the tracks moving though they still want to mat to be overly cautious about the IVW. Other discussion was made before he was able to present the proposed work in detail – wanted to build upon what has been discussed and make everyone aware of what the scope of work would look like. Both events would take place on different days but each event would only take one day to complete – no disturbance would be left over night. They are proposing to leave the erosion controls in place until the areas they have seeded are vegetated; leave erosion controls in place until site is revegetated and stabilized.

Vinsky (321 West Pelham Rd): he is in favor of getting the wetlands delineated first before additional work is done for the testing. It is concerning to him that situation the Town is in now is due to things being done incorrectly or incompletely. He is concerned that the welfare of a majority of residents is being overlooked except by SCC, which he thanks them doing their due diligence. He is not convinced that the time constraint is realistic, there is talk about how quickly the work can be done once its authorized, and he believes it's not an aspect that needs to be considered. Jaques: to Vinsky's comments, the wetlands have been delineated already; there might be some minor adjustments based the Peer Review but to stated that he believes the wetland delineation should be done first before anything else is not an accurate comment. DeFant: important for us all to be respectful of one another even if we disagree. Wakoluk: the driveway area is disturbed soils, there are wetlands on the MassDEP wetland layer (mapped) that end on the driveway, there is a mysterious disappearance of wetlands on the site - could be that these wetlands are attached to the wetlands across the street much like they are east and west of the site. He believes SCC needs a wetland delineation, and it has to be reviewed. If SCC proceeds with the RDA, it doesn't matter whether or not SCC is approving a delineation or not. RDA is talking about the area of applicability for where jurisdiction is – jurisdiction may exceed the current delineation that exists currently. He believes SCC needs the reviewer comments in order for them to say any kind of clarity. DeFant: comments have been raise about whether this issue is trivial; hypothetically, if SCC were to issue an Determination of Applicability and later discovered that the work was done in a Resource Area, where that the work would have required a NOI (then ordinarily the RDA would had resulted in a Positive Determination and SCC would have required an NOI). By issuing a Determination before knowing where the Resource Areas are exactly, are we then precluding those kinds of late Findings? Mary Lou Conca (105 Wendell Rd): she supports Vinsky's thoughtful input. DeFant: want to move the discussion along and consult with the Commission; asks speakers to not just restate points already made. Antonellis: she would like to point out that the front of the parcel that is close to Leverett Road (up to the tree line), those wetlands have delineated three times over the past 12 years. While they do show some differences, they are not remarkably different. The past findings delineated the whole

parcel because they had to get to B-9 and after three delineations that have been similar, she believes they won't find anything remarkably different that would change what they need to do; feels the testing at B-9 is very critical due to DEP deadlines. DeFant: thanks, Antonellis. Kissane: he worries about the use of hypotheticals in an RDA circumstance and what they would mean to any other RDA that would be filed in front of SCC; job of the SCC is to make a determination about where the wetlands are; if they were to submit this RDA without the concurrent ANRAD, then SCC would likely visit the site to do a site walk; see the two locations where the locations are occurring are clearly not in Resource Area (obviously in Buffer Zones); but from an untrained eye that it is clear that two investigation areas themselves are not within Resource Area. We are acknowledging we're tracking through Resource Area, but they are implementing BMPs (Best Management Practices) for that purpose. There will always be hypotheticals to any RDAs filed about maybe it is a BWV and etc. but part of that is making that informed determination is based off SCC's abilities to think what is the likely scenario. DeFant: sometimes SCC talks about hypotheticals in order to understand what the consequences are of our deliberations and decisions; SCC has to be basing final determinations on the evidence that is before us. In this circumstance, SCC does have a ANRAD before us, so this is not a common; the applicants have created this dilemma by submitting both an ANRAD and an RDA concurrently; we are discussing the conflict created by that. She wants to point out that while there have been a number of other delineations on this site, there have also been comments made to SCC in the last few meetings, back in July from the Town, calling in the question a July 2021 Determination of Applicability for this property. The Town Administrator, Becky Torres, did not believe that SCC had jurisdiction in the area of the 3-bay garage, even though it was not appealed. There has been a debate about where wetlands are, and Torres shared that night she had multiple delineations that conflicted with one another; she also raised questions about SCC's ability to recognize the wetland delineation. All of this is to say this is not simple in this particular case, and she doesn't believe this sets a precedent to local applicants in other situations; unique situation because the applicant is the Town and there has been prior debates about the accuracy of other wetland delineations; that is why SCC wants to have the Third Party Review in the ANRAD.

DeFant asks SCC their thoughts on proceeding. David: this is work that needs to be done and she isn't quite convinced that SCC couldn't issue the Determination of Applicability with the exception written in stating that SCC has agreed that the delineation hasn't been completed [reviewed]. She believes that even if the delineation changes, that the work they are proposing with the precautions they are taking would be met. Why couldn't SCC specifically write in the Determination of Applicability that this work is approved without approving the delineation, and that the work that needs to be done be done in the manner it needs to be; the further delineation will be determined by the ANRAD. DeFant: suggests SCC go over the draft DOA Form very carefully to see how to proceed; once the Public Meeting is closed, then SCC will have to issue a permit in 21 days; we should be clear about whether we can do this before we close the Public Meeting; if we proceed has such, even though they have applied only under the Bylaw, then SCC would state that it is actually under both Bylaw and WPA, because the 3-bay garage, even on their own wetlands delineation map, is in the Buffer Zone of a Bordering Vegetated Wetland (BVW), meaning that, assuming it is correct, it would be jurisdictional to under the WPA, believes that part of their application is incorrect, but does not bar us from issuing a Determination of Applicability, does it? Willson: she agrees that the Determination would be

both under the WPA and the bylaw and she agrees that the Determination of Applicability can be issued; SCC can do it; the BMPs are protective of the wetlands that have been identified by this point. If the rest of SCC feels comfortable with that, then technically she believes SCC can't not issue a DOA; also, doesn't set a precedent for what's going to happen at this site going forward. Kahan: he agrees with the point that Willson has raised; and the earlier point stating that this Determination would be specific to this particular project and investigation; and could be subject to change later – doesn't believe SCC would be hemmed in or find it problematic afterwards if SCC were to issue it tonight. He agrees with issuing it under both the WPA and Bylaw and Kissane's proposal of using the landing mats to safeguard the wetlands – mitigates the concerns he had about soil compaction or other impacts to the wetlands that would technically be done during frozen conditions. DeFant: feels persuaded that SCC can move forward with issuing the Determination of Applicability; invites public questions in regards to the investigation; SCC doesn't have the jurisdiction to dictate to the Town how they test; for example, if the town wants to do only 4 test pits, then SCC doesn't have the jurisdiction to say they want the town to do more; our role is to only review wetland impacts.

Willson recommends that Kissane present his project. SCC and Kissane agree. Kissane screenshares the site plan for SCC to review via screenshare. Kissane: There is two pieces of the investigation that they are working on – will start with the B-9 environmental investigation. This is related to an existing Release Tracking Number (MassDEP) on the site; there was some Phase 2 Environmental Assessment done by OTO (O'Reilly, Talbot, and Okun Environmental Consultants) back in the fall of 2021 where they found a reportable condition at the location of B-9 and reported the release (Volatile Organic Compounds); once the Release Tracking Number (RTN) is issued, Town has 365 days or a year to either retract the RTN or to Tier Classify the site. Under their delineation, there is no mapped resource area in the vicinity of the investigation area – it is adjacent to what was an old radio tower that was associated with Westover Air Force Base that is no longer there. The only way they can access this location (they have looked at possible other alternatives to avoid the Isolated Vegetated Wetland) is to use this current access road that is located at the site.

There was wetland indicative species that were found throughout a portion the access road. To do their investigation, they need to place soil borings that could be done with different types of equipment – the one they choice was the Track Mounted Geo-Probe which they believe have the least amount of impact compared to other equipment. It is a remote controlled and the size of a tractor (smaller than most cars) which is track-mounted to distribute the weight evenly. They are going to mat through the Isolated Vegetated Wetlands as they move through and the machinery will go back out the same day (will mat back out as well); they will observe once they pull up the matting to ensure there was no damage done to the underlying material. The second part of the investigation is related to the Retroactive Permitting and Closure of a floor drain that was located at the now demolished 3-bay garage that was located on the site. They have been in contact with a MassDEP and their UIC person throughout our planning process, but what this will look like is the collection of 4 to 8 small test pits to observe subsurface soil conditions and then collect representative samples in support of a Retroactive Permit and Closure of that floor drain. He was earlier referring to it as an Underground Injection Control Point (UICP) because that is how it is classified by MassDEP. They will be placing straw wattles area in the vicinity of their work area; they will be staging of each site pit immediately adjacent to the excavation. Immediately

following that and samples the soils in be place in kind back into the excavation; the test pits will be then be loamed and seeded at the end of the work. They will leave the erosion controls in place to ensure that there is no run-off into any of the Resource Areas from the disturbed areas within the Buffer Zone. Additionally, they have provided another BMP that we will do that work in dry period/day to eliminate the rest of having to deal with saturated or soft soils; limit the disturbance of their work. DeFant: thanks, Kissane.

Farrell: Kissane is using terminology that not many people are familiar so could you [Kissane] briefly explain what they mean? Kissane: An RTN is a Release Tracking Number which is how MassDEP tracks sites that have had reportable contaminant releases; once a reportable release has been called into MassDEP it is assigned a RTN which is way for the entity/consultant/the public to track the process of that site through the MCP, Massachusetts Contingency Plan (which are the state Regulations that the site now has to operate under).

DeFant: regarding the test pits near the demolished 3-bay garage, how was it determined that the depth of the soil pits were to be 3-4ft based on what data? How will it be determined to advance from 2 to 8 test pits? Given the previous investigations that have determined high ground water, if you encounter high ground water, how will that affect the compositing of the samples?

Kissane: the depths and locations of the investigation were determined by and in conjunction with discussion with MassDEP/ Joe Cerruti (Director of UIC program). Generally, what they mandate is that when investigating the pit should be dug down to the interface between disturbed and native soils; take a sample from that interface with the thinking that if there was discharge to the subsurface from one of these elements then the most pronounced impact would in the soils closest to the structure itself, so by sampling from those soils which would be at the bottom of the native soil and disturbed soil interface (native meaning that it has not been disturbed), it would capture what would be the worst if there had been any discharge from the structure. Before this investigation could even occur, there will be a submission to the MassDEP and it will have to be approved by the (our Scope of Work). They have been in discussion with Cerruti that what they are proposing it will be agreeable to MassDEP, but they will ultimately review and approve our plan; then they will have to submit a closure report of their findings to them for them to accept as well – multiple steps to the process. DeFant: have you ever done this kind of investigation after the fact; after well had been removed? Kissane: doesn't generally come up; because generally no one knows about it; if people demolish a garage behind their home, then they general don't even know there is a UIC permitting process. This is a unique case which is why they have proposed to do the test pits rather than soil borings because, while they believe they have an accurate idea where they floor drain was, they will test pits that are stepping out from the proposed location so they can capture if it was 2 feet to the side. If it was something whose location we knew within an inch, then we would most likely do just one soil boring, but they have chosen to go with a larger investigatory area to ensure we are capturing where that UICP once was.

Marland: what is the connection between this floor drain and the drain pipe which was removed prior to the take down of the garage. She doesn't understand what the relation of the drain pipe, how long it was, where it once was and what its purpose was; should testing include terminus site. Kissane: there was a drain pipe that led to the east of the exterior to the 3-bay garage. There is a figure from a 2021 done by Cold Springs Consultants which has an aerial view in which they

investigated the soils right at the end of that drainage point; they have an aerial figure and they know exactly where that drainage point ended based off their investigation (there is going to be a test pit in that area). There were previous soil borings from Cold Springs and OTO in that vicinity that returns results non-detect across the board, but there is a specific range of perimeters that need to be tested under the UIC Permitting Disclosure Program which is how they are going to proceed in this investigation. We are aware of that outfall/drainage pipe that enter from the floor drain to the outside of the footprint of the building and our investigation is going to encapsulate where that drainage point was; a test pit will be done there as well.

Marland: can you clarify what the purpose of the drain pipe was? Kissane: it was to drain the floor drain to the outside of the garage; not aware of what it used for besides then just drainage of any fluid from inside the building. DeFant: would like to wrap up with three more public comments. Wakoluk: what is the range of contaminants they will be looking for; all he has seen is a mention of PCBs from the rear of the site of B-9. He would think that a floor drain from an automotive garage, Perchloroethylene looking for, and other contaminants in the soils there and how you could expect to find those chemical by digging with a backhoe? Kissane: the digging with a backhoe is to expose the soils and then there will be a process of logging the lithologies of the soils, screening with a handheld meter that looks for VOCs (Volatile Organic Compounds); samples will be submitted to an analytical laboratory to look for a suite of analytical parameters that includes petroleum compounds, a target list of metals. MassDEP has designed a list that looks for those compounds you would expect in an automotive type setting. He doesn't know if PCBs are required under the UIC, but they are proposing to test for that because there was a history on that site that they are seen in some of the historical reporting(s). This investigation is prescribed whereas the RTN is up to the purview of the Licensed Site Professional. This is something that explicitly dictated by the MassDEP; how the investigation should be done, how it should be sampled, and how they need to permit it and close it.

Alix: concerned that about whether the proposed testing at the former 3-bay garage site is going to be adequate or not due to some information she got from the town. She requested the invoices for the dates the excavator was used to take down the garage which according to Tim Hunting affidavit was August 11th, 12th and 16th, and what she was sent was invoices for August 30th through September 2nd – which means to her there was multiple clean-up activities at this site not just when they took down the garage. Invoices from waste management shows 4 full dumpsters in total with the last one being brought down the land fill which was on September 7th, 2021. She added up the tonnage which was over 47 tons worth of stuff and that's doesn't even include the concrete garage floor which according to Tim Hunting was loaded into trucks and taken to god knows where. She wonders how anyone generates that much waste without excavating. Also, when she asked for the invoice for the loam that Town Administrator said was trucked in to fill in the site after the demolition, I was told that there was no records – there is no way to know how much loam was place in there. “Truck loads”, I guess, I don't know. How do we know? Does Matt Kissane know? Does anyone know? How far do we go down? She isn't sure how you are supposed to know this stuff. Also, that mysterious 30-foot drain pipe which was there in 2012; disappeared according to a neighbor somehow. It disappeared before the demolition of the garage. Who saw this happen? Was it leaking? Where did it go? Was the sludge inside tested? Isn't that the law? Are they going to do any test pits along there? That seems outrageous to me. It seems to me there needs to be along more testing done there then what F & O is doing and maybe they are not aware of some of this stuff. I don't know, but it seems to me that DEP needs to oversee this.

Diane Jacoby (230 Leverett Rd): she has been reading about the Underground Injection drain and how that needs to

be closed; what does that involve/look like? Kissane: what is actually being done is a Retroactive Permitting and Closure; it has been closed/removed from the site, but what has been brought to light and what they are actively doing is a process that should have been employed previously where it was permitted; an application for closure was submitted and then a closure report was submitted. In this instance, the only path forward, this is conjunction with DEP, is to a Retroactive Permitting of the structure (there is a way to indicate on their permit that it doesn't exist anymore) where they lay out a detailed sampling protocol to MassDEP in which they give permission to proceed with closure. The closure in this case is going to be our environmental investigation to ensure that when it was removed and when it was operating as a floor drain, that there was no release of harmful contaminants to the subsurface. Closure is the term DEP uses but we are talking about something that is no longer there, so it gets confusing in that regard. Jacoby: it sounds like the process you are going to go through is going to make sure that the mess this drain was carrying away is no longer on the site? Kissane: yes, and to investigate if there is any mess; there is the potential that there is no impact to the environment; what they are doing to ensure that is the case. They are not only investigating where the floor drain was itself but also proposing some test pits along the length of that outfall pipe; we don't know what the integrity of that floor pipe was so they will be testing the length of it including the area of discharge; to capture if anything occurred between its point source and outfall. We do soil investigations all the time as part of our due diligence work across all sites. He is a geologist and when to school for 6 years for it. They have a good idea where the difference between native soils and disturbed soils; they can see that in their excavation cuts and side walls cuts where they can see the differences in layering; they can do this with high confidence. In this instance it will be fully reviewed by the DEP; they won't proceed until that approval is received. SCC has no further questions. DeFant: going to end public comments so we can proceed with drafting the permit. SCC and applicant agree.

DeFant screenshares the draft Determination of Applicability with Special Conditions for 66 Leverett Rd for SCC to review via screenshare. Edits are considered. **Motion: David moves to close the Public Meeting for 66 Leverett Rd Request for Determination of Applicability, Willson seconds. Vote: David -Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.** All members of SCC grants DeFant to sign for them electronically. **Motion: Willson moves to approve and issue the Determination of Applicability as written with a Negative Determination #3 with Special Conditions for 66 Leverett Rd, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.** Stone: the Determination had some positive determinations. **Edited Motion: Willson moves to approve and issue the Determination of Applicability with a Positive 2b, a Positive 5, and a Negative 3, as written with Special Conditions for 66 Leverett Rd, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

Sumner Mountain CR Report Review

Motion: Willson moves to approve the 2022 Sumner Mountain CR Report, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.

Consider Draft Minutes

08/25/2022 – SCC has reviewed the draft minutes from 08/25/2022; Harrington noted she was not present and edits were made to reflect such. **Motion: David moves to approve the 08/25/22 meeting minutes, Willson seconds. Roll Call Vote: David- Aye, DeFant- Aye, Harrington- Abstain, Kahan- Aye, and Willson- Aye. So moved.**

Minutes for 9/8/22 not ready for review.

Site Visit Follow-Ups

Dudley Pond beaver dam Emergency Certification – DeFant: there is a future Emergency Certification that SCC will issue for a beaver dam removal at the Dudley Pond Dam; waiting to send Emergency Certification as landowner is currently looking for a contactor.

16 Gass Lite Lane Emergency Certification, septic repair – DeFant: property down by the lake that has a leaking septic pipe - Board of Health ordered this to be repaired immediately. Landowner also has two fallen trees that are hanging into lake with the root balls in the air; landowner has found a contactor to cut, truck it all out and regrade where the trees once sat.

Motion: David moved to ratify the Emergency Certification for 16 Gass Lit Lane, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.

Montague Road culvert repair site visit – DeFant: culvert on Montague Rd near Dudley Pond where the headwall is collapsing; she emailed Superintendent of the Highway Department, Tim Hunting, who agrees it should be repaired but didn't say how he planned to get it permitted. She believes SCC should be clear with the Highway Department what kind of permit is required; she has a phone set up with Rita Ferrell, Select Board Chair, to talk about it tomorrow. Does SCC want the permit to done under and RDA or Emergency Certification? Willson recommends that it should be an RDA because the issue has not been declared as an emergency. SCC agrees. DeFant: historically in town Linda Scott, former Land Use Clerk, aided the town in their applications, but she believes Town needs a better process; borders on the edge of self-dealing; would be good to have a standing Maintenance Order of Conditions. Willson: RDAs are not that complicated; need a design and a little narrative. DeFant: narratives need to be comprehensive enough to describe all of the proposed work. Stone: Land Use Clerk should not help with writing the permits if the SCC has to rule on it. DeFant feels it creates a conflict of interest. Willson agrees. SCC recommends that DeFant inform Farrell during their phone call that the Highway Department should look into having someone create and submit their RDA and future applications.

38 Egypt Road BPA, mudroom addition – DeFant: during site visit no wetlands were found; BPA is recommended to be signed.

31 Pelham Hill Road BPA, garage addition – DeFant: during site visit no wetlands were found but landowners have created an artificial pond; BPA is recommended to be signed.

678 Pratt Corner Road Enforcement Order, inspection of wetlands restoration – DeFant and Harrington did a site visit and then DeFant, Harrington and David conducted another site visit; the site plan that was approved had a border of boulders that was to separate the house/lawn and the restored wetlands, but they observed that the border of boulders had been

extended 15-20 feet longer (is routing any water from the wetland off to the side where the original drain was). She is concerned that it is altering drainage patterns and it wasn't on the approved plan; SCC only approved 15-foot perimeter of maintained lawn, but they seeded everything below the boulder line which is about 40 feet long - landowner said they have removed some boulders and plan to remove more. It was observed that the erosion controls were also in bad condition and erosion was occurring from the area of disturbed soils across the driveway and into another wetland; landowner had erosion sock that was insufficient and sloping side yard did not have any straw laid down which created a large muddy area. DeFant recommends that SCC needs to keep a close eye on it to ensure property results in being stabilized. Harrington: landowner did fix the erosion controls; she believes it's because SCC continues to do site visits. DeFant: does SCC want the landowner to do any wetland restoration of the side yard? She is willing to sacrifice that area as long as the boundary of rocks doesn't turn into a coffer dam to redirect the water way off to the side of the property; landowner agreed to move the rocks; recommends SCC does another site visit in a month. SCC agrees.

11 Pine Drive RDA, septic repairs – DeFant: the property is on a small inlet with the house and septic being close to the bank of the lake; new proposed septic tank will be a tight tank. Public Hearing has been rescheduled to next meeting.

Site Visit Scheduling:

Old Peach Orchard CR Monitoring Visit: 10/15/22

Updates:

ECAC Liaison – Discussion postponed

Pearson Acquisition – Discussion postponed

Dudley Pond dam – DeFant: she has reviewed the history/literature in the files; dam has been deemed to be unsafe and failing for years; landowner has been ordered by the Office of Dam Safety to remove it, but landowner does not have the funds to do so. Landowner is interested in resolving this issue including even if it means selling the property. There has been discussion of funding options including Eversource; they will be submitting permit application soon and have interested in having a mitigation project; they like the idea of a dam removal as mitigation project. Stone: how would that work with private land? DeFant: with consent of landowner; perhaps with an acquisition of the property by another party to put it into conservation protection. Kestrel Land Trust might be interested in the land but do not want to deal with the dam. Stone has consulted on the property. Landowners attempted to repair dam in the 1990s but were never able to complete the work. Part of the training wall of the dam was excavated but never reinforced. DeFant visited it with the Leverett Conservation Commission the dam and raised the idea of having a combined mitigation project with the removal of Dudley Pond dam – both Eversource and Leverett are interested. David expresses concern of using the mitigation project on the dam – should explore all options first.

Unanticipated business

David's LWAC Report

David: LWAC approved purchasing an 18" by 24" sign from Amherst Copy and Design to be placed at the boat ramp; to read as "boat traffic is to be counterclockwise and speed limit is 30

mph” – these are in the regulations but no one is following them. DeFant: Mark Rivers has talked about getting permanent marker buoys for the lake and she had asked if he is going to get Chapter 91 licenses for them (her understanding is that is what would be needed) but she didn’t receive a response. David: buoys are placed by LWA when they put out the beach rafts – buoys are to mark the 150 feet to ensure the safety of swimmers. They want to make it 200 feet because it is recommended that it won’t erode the bank; the buoys aren’t new, and they aren’t permanent. DeFant: this is for the 3 private beaches from LWA? DeFant: have these been permitted by DEP? David: as far as I know, for those three beaches and from her understanding they are because they have been used for the past 20 years, but the question is if they can move to 200 feet from 150 feet to address some of the complaints about the erosion of the banks and wake boats. Jaques: SCC worked with LWAC several years ago to consolidate all signs into a kiosk at the boat launch; recommends that this new proposed sign be added to the one at the kiosk and not a new separate sign and that half of the sign is to be used for SCC posting; historically, there were many signs all over the parking lot and boat launch. Jaques: the kiosk was built by the SCC and LWAC to consolidate the signs; half of the kiosk is supposed to be for the SCC. David will attend new LWAC meeting and share this information.

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

Meeting Closed: 10:07 p.m.

Next Meeting: Thursday, October 27, 7:00 pm

Documents Used:

- Agenda
- 8/25/22 Draft SCC Minutes
- 70 Lake Dr NOI
- 70 Lake Dr Wildlife Habitat Evaluation Assessment
- Draft Order of Conditions for 70 Lake Drive
- Email from Natural Heritage and Endangered Species Program
- 27 January Hills Road Site Plan
- 27 January Hills Road Planting Pan
- Draft Enforcement Follow-Up Letter for 27 January Hills Road
- 66 Leverett Rd ANRAD Application, Fuss and O’Neill, September 30, 2022
- Third Party Review Proposal, Stockman and Associates, Lot O-32 ANRAD
- 66 Leverett Rd RDA
- 66 Leverett Rd RDA Site Plan
- 66 Leverett Rd DOA + Special Conditions
- FY22 Sumner Mountain Conservation Restriction Report

Respectfully submitted by Miriam DeFant, Commissioner, 12/8/22