

**Shutesbury Conservation Commission**  
**Minutes – 11/11/21**  
**(approved 1/13/22)**  
*Virtual Meeting*

**Meeting start:** 7:10 pm.

**Commissioners Present:** Miriam DeFant (Chair), Mary David, Robin Harrington, Scott Kahan

**Commissioners Absent:** Beth Willson

**Others Present:** Janice Stone, Don Wakoluk, Bridget Likely (Kestrel Land Trust), Willa Jarnagin, Wm Levine, Grace Bannasch, Jeff Lacy, Penny Jaques, Anna Mancebo, Kate Wilkins (Tighe & Bond), Kent Whitney, Jay Whitney, Sally Fairfield, Joseph Salvador

**10/28/21 meeting minutes:** Motion to approve: David; Harrington seconded; approved by unanimous vote 4/0.

**Proposed Purchase of Conservation Parcel on Pelham Hill Road:** The SCC considered a proposal brought forward by Jeff Lacy and the Kestrel Land Trust (KLT) to purchase a 34-acre parcel using a mixture of funds, including CPA funding, USFS (US Forest Service) Forest Legacy Program funds, and other sources. Sale price is \$275,000. The property includes wetlands that are the headwaters of Amethyst Brook, has value for drinking water supply protection and forest protection. Property increases forest connectivity with bordering forest tracts, wildlife corridor, has high ecological value. Likely: KLT is looking to take a leadership role on the acquisition, with KLT providing a \$210,000 contribution toward the total \$275,000 (plus addition administrative costs) cost of the acquisition. The Forest Legacy Program requires a 25% match. These funds are only available through July 2022. Stone inquired if rare species habitat was on the parcel. Likely will need to investigate this. Jaques indicated this proposal's timing would not allow for the SCC to apply for a LAND Grant. CPA funding would not be available until July 2022. SCC has a Land Trust Fund, but it has taken 15 years to accumulate this; would be difficult to spend it all on one acquisition but is possible; SCC could apply for a LAND Grant; is it possible to have funds fronted by KLT with plan for later reimbursement? Likely: it is possible KLT could front the funds. Jaques: maybe the Conservation Trust Fund could be used with plan for reimbursement later as a backup plan. Likely: LAND Grant is reimbursable; you can spend the money and get reimbursed later by the state. Jaques: a current Open Space Plan must be in place for a LAND Grant. The update on the Open Space Plan is underway. Plan for this proposal would be for the Town to hold the deed for the land and KLT would hold the CR. Likely: plan would be for either Shutesbury or Amherst to own the land in fee and KLT would hold the CR. Kahan: could other private entities be a fee owner, could KLT be the owner. What is driving the proposal for Shutesbury to purchase it instead of other fee owners? Is there a plan to direct land acquisitions? DeFant: If Amherst would hold the deed, would it allow for passive recreation, other Amherst town properties in the watershed are not open to the public, would this one be? Likely: yes, public access would be considered. The Forest Legacy Program has stipulations such that a town or state must hold the deed. DeFant: Cows owns land that is in the Forest Legacy Program. Kahan: I believe private entities can be part of the Forest Legacy Program. DeFant stated she found this property interesting because of its wetlands, potential for passive recreation and value for forest connectivity. DeFant: it's a

beautiful piece of property with steams, stone walls, and an old, dismantled dam. Jaques: town residents have expressed a desire for publicly available and marked hiking trails; she supports its acquisition with a passive recreation management plan. DeFant: for CPA, an application for determination of eligibility is due in early December. Jaques and Likely will work with the DeFant on this. SCC meets on 12/2/21 and can review the proposal then.

**Site visits to be scheduled:** need to be scheduled earlier in the day due to light conditions.

DeFant to email schedule.

--585 West Pelham Road: BPA

--KJS Realty/cell tower BPA

### **Public Meeting for Request for Determination for 585 Wendell Road Utility Pole**

**Installation-National Grid/Mass. Electric Company:** Proposal to install new utility poles on Wendell Road to allow for #585 Wendell Road to be electrified. It currently has no electricity access. Project will replace one pole and install 7 new poles along Wendell Road with some tree removals and trimming. SCC conducted a site visit. This does not include the lines to the house. Those lines will be underground conduit. Wilkins from Tighe and Bond explained that the RDA is under the town wetlands protection bylaw because the activity is exempt under the WPA. Stone: minor exemptions in the regulations do not apply to new pole installations. Minor activities only are exempt if solely in buffer zones, but this location is Riverfront Area. Wilkins: there is a Riverfront minor activity exemption. Stone: regulations allow for maintenance and repair, but not enlarging. Wilkins: we reviewed the regulations; they indicate that installation of utility poles in the right of way are exempt as long as they are at least 10' from the resource areas. Wakoluk: understand they will be auguring the poles; this location is subject to flooding; they will be anchoring the poles along the stream bank; I reviewed the tree removal plan; it is good they are not removing an old oak because that would require further review; how will the poles be stabilized in soft ground? Wilkins: they will auger about 8' down to set the anchors. Wakoluk: if it's an unstable area, is this creating a hazard? Wilkin: our engineers feel it is OK; pole anchors have to get a certain amount of tension; they would reevaluate if the poles are not secure. DeFant: one of the poles is perched above the flood zone; we would not want to see it moved closer to the flood zone. Wakoluk: there is limit space; have you thought about push braces instead of cables; plan seems boilerplate. Wilkins: can't talk about the engineering side; we can suggest it and have the engineer come back with more detail. Kahan: our responsibility is to protect wetlands; I suggest leaving the engineering details to National Grid; I don't have a concern about the poles' impact to the wetlands; the road has more impact on the stream than the poles. DeFant: does the SCC have enough information? David agreed. She is not concerned about the anchoring. Harrington agreed. DeFant: any public comments? Levine: as the consumer here footing the bill, this is a very expensive project; it is \$47,000 to electrify the property; assume the engineering is complete; would a report from Tighe and Bond suffice to satisfy the SCC if we were to trench from poles? DeFant: I think that would be a different project because it is more ground disturbance. Wilkins: trenching for that length would be more expensive from my experience. Stone: what kind of special conditions would the SCC consider? DeFant: we would ordinarily discuss conditions after the close of the meeting. **David moved to close the Public Meeting. Kahan seconded, approved unanimously 4/0.** Stone recommended that they adhere to no work within 10' of South Brook as the limit of work on the bank or BVW. If they

had to go closer than 10', it should be reviewed through another RDA. If they must go within 10', they could make a new request under the WPA and submit a new RDA.

**David moved to issue a Determination of Applicability with a Negative Determination #3, with Special Conditions as approved, under the Shutesbury Wetlands Protection Bylaw.** Conditions include that the work must be no closer than 10' from the Bank or BVW. **DeFant seconded, approved unanimously 4/0.** The Commission agreed to allowing DeFant to sign the Determination digitally.

**Public Meeting for Request for Determination for 24 Lake Drive/Whitney driveway paving project:** DeFant: this is a driveway paving project. The SCC conducted a site visit. It is a flat area with no wetlands aside from the lake. Storm drain across the road that empties into the lake. Whitney: we have a gravel driveway; can't plow or snow-blow it in the winter; want to pave so that we can park by the house; currently too icy on the slope; water will not drain toward the lake; there is a small stormwater swale before the lake; water from the road drains across the road. Jaques: will you be increasing the footprint of the driveway? Whitney: No, just using existing layout, some grading and additional gravel will be required to make sure water doesn't go on road. DeFant: this seems straightforward. Jaques: there is a trend of properties on the lake increasing quantity of impervious surfaces with driveway paving; something to think about. DeFant: will there be any berming at the junction with the road? SCC would like to see homeowners to avoid berming to not concentrate stormwater runoff. Whitney: we can make sure there is not. DeFant: we would want it to be even with the road, so that it doesn't change water flow patterns. Whitney: that is fine. **David moves to close the Public Meeting; DeFant seconded; approved by unanimous vote 4/0.**

The SCC reviewed conditions for a DOA, based on a draft circulated by DeFant. Draft is based on model conditions from MACC. The SCC discussed a variety of potential conditions for future Determinations of Applicability, including many standard ones that have typically been used. The need for brevity was considered as well as using conditions to educate the applicant about ongoing obligations that they must meet. DeFant suggested that it would be helpful to have draft orders and conditions prepared before a hearing to save time.

Mancebo inquired about the Commission's policy regarding site visits after a recent visit to her home. The site visit policy, including landowner prior notification, was clarified.

The SCC considered Special Conditions for a Negative Determination. Conditions including standard conditions, the use of erosion sock, a limit of work, no change in the footprint of the existing driveway, and no berming of the driveway near the road. **DeFant moved to issue a Determination of Applicability with a Negative Determination #3 with Special Conditions as approved. David seconded, approved unanimously 4/0.** The Commission agreed to allowing DeFant to sign the Determination digitally.

**Public Meeting for Request for Determination for 105 West Pelham/Jarnigan paving existing driveway:** Applicants are seeking to pave a gravel driveway. Two site visits by SCC found a wetland area near the house and driveway. Willson, Wakoluk, and Harrington attended the 2<sup>nd</sup> site visit. Willson and DeFant attended the first site visit. Wakoluk reported that the site

visits observed a steep gravel driveway with wetlands indicators at the base of the driveway, near the home, water is draining at the bottom of the driveway. Numerous wetland vegetation indicators were present, jewelweed was predominant. Plan describes a channel or culvert or drywell at the bottom of the driveway for a catchment basin. It needs to be elaborated. The area has wetlands characteristics. Wakoluk wondered if plantings and riprap could be added at the bottom to filter runoff from the driveway. DeFant: looks like water is being directed to the south side of the driveway; why not create a rain garden on the north side, east of the turnaround. Jarnagin: we don't get a lot of runoff; water drains to the south now. DeFant: concern is that the wetland is to the south and all the road and driveway runoff is heading to that area; why not direct some to the north? Wakoluk: a rain garden shouldn't be an additional cost; they can tilt the water in either direction when doing the work. DeFant: wouldn't it be better to distribute the water in both directions? Jarnagin: we would be concerned that water would reach the house. Jaques suggested putting a water garden in the wetland area would protect it. Wakoluk: the landscaper doing the work could create this easily. Jarnagin: our main issue is to level the bottom and make it more accessible and easier to maintain; there isn't that much rain runoff reaching the bottom of the driveway now. DeFant: if you get a 1-inch or 2-inch storm, there could be significant amount of water; currently the driveway is pervious and is absorbing some water; paving it will create a smooth, impervious surface which will accelerate the water flow. Jaques: in a heavy rain, even a gravel driveway acts like an impervious surface. DeFant: looks like you are changing the slope of the driveway. DeFant: what is meant by the term culvert at the end of the driveway. Jarnagin: pile of gravel will be redistributed onto the driveway; riprap will be placed to slow down the water; he will dig down and fill with 4-6" of riprap to the driveway edge; will add hay bales to filter the water. Jaques: you could require a narrow-vegetated border be planted; low shrubs. Wakoluk likes the idea of a rain garden. Jarnagin expressed concern about costs. Wakoluk: these ideas should have minimal costs, probably wouldn't cost more than \$100; would want native grasses. Jaques: landowner should pick their own plants, can plant in the spring. DeFant: we can add a condition that you would come back to us with a planting plan for the spring. Jaques: this will be a minor cost; shouldn't cost more than \$100; SCC can provide information about rain gardens. Wakoluk: rain garden is riprap and plants. Jaques: plants can go around the edges of the riprap. DeFant: what size should this be? Jarnagin: riprap will be on the sides and end of the driveway. **DeFant moved to close the Public Meeting. David seconded, approved unanimously 4/0.**

The Commission reviewed the plan and draft conditions for the project. DeFant provided a draft template including conditions about the applicant's ongoing responsibilities for complying with the wetland protection regulations. DeFant suggested including these so that landowners are fully informed. Approved Special Conditions include construction of a 13'x6' rain garden at the bottom of the driveway and the addition of erosion controls on a revised site plan. The applicant would submit a planting plan for the rain garden with native plants to the Commission for approval no later than 3/1/22. The Commission will conduct an inspection of the erosion controls and a final post-construction site inspection. **DeFant moved to issue a Determination of Applicability with a Negative Determination #3 with Special Conditions as specified. David seconded, approved unanimously 4/0.** The Commission agreed to allowing DeFant to sign the Determination digitally.

**31 Lakeview Road/Salvador follow-up:** Salvador: plans for NOI will be submitted soon by engineer.

**Certificate of Compliance Request for 27 January Hills Road/Waldinger:** DeFant consulted with Mark Stinson from DEP. His recommendation was to issue an Enforcement Order under the original Order of Conditions from 1994 for the necessary driveway repair work. The SCC has expressed a desire to decouple the Certificate of Compliance from the required repair work. The landowner contacted DeFant; she is eager to get the COC and believes the property was originally in full compliance with the original order. The landowner recognizes that there are repairs needed for the driveway but believes those are related to maintenance issues, not the original construction work. DeFant expressed concern about how the SCC can ensure the site is brought back to the condition necessary to protect the resource areas; could the landowner agree to file an RDA? Stone: it is faster to do it through an Enforcement Order; don't see how a complete certification is possible; could give a partial completion certification. Wakoluk: that won't be enough to satisfy the bank as the landowner seeks to refinance her home; suggest the SCC grant the COC and treat the driveway as a new problem. Kahan: agree with decoupling the two issues; original violation took place decades ago with construction; new questions now in play with recent work; doesn't make sense to tie this to original Enforcement Order; more interested in a path forward. DeFant: the Enforcement Order from 1996 was resolved; original Order of Conditions references the driveway design; Enforcement Order was due to construction-phase activities; documentation is incomplete for that Enforcement Order; the landowner indicates that the driveway issues from the Enforcement Order were resolved a long time ago, but the swales have silted up over the years; the SCC could determine that the original construction was completed. David: there is enough to give the COC and ask the landowner to submit an RDA. DeFant: we denied the original COC because paperwork was completed incomplete; the request form was completed incorrectly and there was no as-built certification from an engineer attached to the request, as required by the regulations. The landowner has not yet resubmitted the COC request because she is waiting for the as-built certification. The SCC need to coordinate with the engineer to get him the site plans from our file. DeFant: does the SCC want to issue an Enforcement Order separately for the driveway issues? DeFant will check with the landowner about how she wishes to proceed and will draft an Enforcement Order for the next meeting. The Commission agreed to hold off on any decisions until the landowner has r

**South Brook Conservation Area:** DeFant spoke with the grant officer for the LAND Grant office, Melissa Cryan from the Division of Conservation Services, the office that issued the original Self-Help Grant (now called LAND Grant) for the conservation land acquisitions. The terms of the grants are that the properties must remain under the management of the Conservation Commission. The official also indicated that non-essential motor vehicle (e.g., public safety vehicles) use on conservation land under this grant program is not a permitted use. The properties can only be used for passive recreation. The properties are supposed to be posted for these uses. If the Town became out of compliance with the terms of the grant program, it might jeopardize the Town's eligibility for future grants. Kahan: seems clear that the SCC has jurisdiction over these properties and is empowered to set policy for these properties. DeFant expressed confusion over recent email received from the Town Administrator that stated that a new bylaw is required for posting these properties; such a requirement would seem to conflict with the fact that Town Meeting already approved the acquisition of the property under the terms

of the state grant program. The original Town Meeting warrants reference the Conservation Commission's role; more clarification is needed from Town Counsel. David: the documentation of the SCC's jurisdiction seems very clear. Wakoluk: should have a coherent policy for all conservation properties in town. Stone: all conservation properties are listed in the Open Space and Recreation Plan; are mapped as well; it is not correct that a bylaw is required to post land for unauthorized vehicles; the grant requires that the land be posted for only authorized motor vehicle use. DeFant: Cryan indicated that it is common for conservation properties to have physical barriers or gates blocking vehicle access to hiking trails. Bannasch: the SCC does not need to go to Town Meeting for a bylaw to post conservation land; to the best of my knowledge, that has not been seriously proposed; a lot of this conversation should happen at the Select Board meeting. DeFant clarified that the SCC's discussion was in response to an email (from the Town Administrator) that a bylaw was needed.

**Motion to adjourn: David; seconded by DeFant; approved unanimously.**

**Meeting adjourned at 9:54 p.m.**

**Next Meeting: 12/2/21 @ 7 p.m.**

**Documents Used:**

- Agenda
- 10/28/21 Minutes
- Draft Template for Special Conditions for Determinations of Applicability
- Draft Determination of Applicability for 105 West Pelham Road
- Draft Determination of Applicability for Wendell Road Utility Pole Installation-National Grid
- Draft Determination of Applicability for 24 Lake Drive
- Draft Enforcement Order for 27 January Hills Road
- Town Beach Conservation Area and South Brook Conservation Area Land Acquisition documents

*Respectfully Submitted by Miriam DeFant, Chair, 1/14/22*