



Town of Shutesbury, Massachusetts 01072

September 23, 2022

VIA EMAIL AND HAND DELIVERY

Select Board  
Town of Shutesbury  
1 Cooleyville Road, Shutesbury, MA

RE: Lot O-32/66 Leverett Road Enforcement Order

Dear Select Board,

We want to thank you and Matthew Kissane of Fuss & O'Neill for meeting with the Shutesbury Conservation Commission (hereafter, "the Commission") on September 22 to review the 8/12/22 Enforcement Order regarding Lot O-32. We also want to thank the Town Administrator for sending the Commission on September 21 a written summary of the mowing and other work conducted on Lot O-32. This was very helpful.

This letter hereby releases the Town from the 8/12/22 Enforcement Order. We do note below, however, continuing concerns and priorities for the property.

The Commission has reviewed the Fuss & O'Neill Wetlands Delineation Report, dated 9/6/22, and visited the property on 9/3/22 and 9/10/22. We appreciated the opportunity to review the site with Ms. Doroski. This wetlands delineation submission meets our requirements for **Condition #6** of the Enforcement Order, which we required due to questions raised about the 2021 Determination of Applicability. As we discussed with you at our joint 9/22/22 meeting, however, the Commission's dismissal of Condition #6 does not mean any final approval of wetlands delineations until there is a permit before us to consider. This delineation does, however, allow us to have preliminary dialogue regarding planning for future permits and projects.

The Town may proceed with the 21E Tier Classification activities, provided that it submits appropriate applications for any work in areas that are regulated by the Wetlands Protection Act and Shutesbury General Protection Bylaw.

We are very glad to hear that the Town plans to submit an ANRAD application and a Request for Determination of Applicability for 21E Tier Classification work. We want to make sure the

Town is aware that the Commission will not review Resource Area Delineations in the winter if there is snow cover or other conditions that interfere with review. We hope the Town can factor this into its planning and submit the ANRAD as soon as possible if the hope is to get an ORAD before winter.

In response to the citizen complaints regarding work conducted without permits in Protected Resource Areas on Lot O-32, the Commission has reviewed past permits, multiple wetland delineation reports, site visit notes and photographs, and various environmental assessment reports. We also have consulted extensively with the MassDEP offices involved in waste site clean-up, Underground Injection Control, and wetlands regulation. We offer the following findings and determinations:

**Demolition of the 3-bay garage:** The Commission issued a Determination of Applicability on July 22, 2021, authorizing the Town to remove the roof, windows, and walls of this garage which was in the Buffer Zone of two jurisdictional wetland Resource Areas. The Shutesbury General Wetlands Protection Bylaw treats the 100-foot Buffer Zone as a Protected Resource Area. The Town excavated the foundation without following the Underground Injection Control Regulations that govern the removal of a floor drain for an automotive garage. The Commission did not approve the slab excavation or floor drain closure because these activities were not in the original application to the Commission, nor did it approve filling the excavated area. The Commission is pleased to learn that the Town is working to remedy this situation with additional testing by Fuss & O'Neill, your retained LSP. We look forward to reviewing the results of your investigations.

**Alleged Alteration of a Bordering Vegetated Wetland (BVW) and Buffer Zone:** Based on the report that the Town has provided, automotive and household debris were removed from several areas on the property, including a Wetland Resource Area, its Buffer Zone, and perhaps other Protected Resource Areas. While the effort to clean up the property is laudable, the Commission requires a permit for this kind of work, which is regarded as an "alteration" of a Protected Resource Area under the Wetlands Protection Act and the Shutesbury General Wetland Protection Bylaw. By applying for permits for this kind of work, the Town allows the Commission (in conjunction with MassDEP, our Consultants, and the public) to review proposed work and develop conditions based upon reliable scientific evidence and best practices. In our inspection of this area, we observed that the cleanup efforts have not removed all waste materials that were previously dumped in the wetland area. We ask that the Town submit an application to the Commission so that the Commission can review and condition the completion of the cleanup effort. This application may be combined with other requests if that is most efficient.

**Mowing of fields on Lot O-32:** The Commission was made aware that fields on the northern end of this property were mowed during the last week of July of this year, during a period characterized as Significant Drought. Some residents raised concerns that the mowing may have hampered the professional wetlands delineation work scheduled for early August as professional delineators often rely upon the identification of wetland vegetation. The Commission will defer any comments about the impact of the drought and mowing on delineation methods until an ANRAD application is before us.

We do wish to observe, however, that some of the meadow areas on this property fall within the boundaries of Bordering Vegetated Wetlands and their 100-foot Buffer Zone, which is a protected Resource Area under the Shutesbury General Wetland Protection Bylaw. Wetland meadows provide important habitat resources for a variety of wildlife. This includes pollen-producing wildflowers that support pollinator species, cover and riches of seeds for a variety of species (small mammals, snakes, frogs and salamanders, turtles, birds, insects, and others). Wet meadows can also contain highly specialized wetlands plants such as carnivorous plants, bog orchids, and others. Additionally, the wet meadow on Lot O-32 contains an abundance of milkweed plants, the sole host plant for Monarch caterpillars. In 2022, Monarch butterflies were internationally designated an endangered species by the International Union for the Conservation of Nature. The Commission, along with many conservation groups and Mass Wildlife, support increasing Monarch habitat.

Mowing in this environment is sometimes desired to protect a view or vista from becoming encroached upon by successional woody plants such as shrubs and trees. Mowing, however, can have an adverse impact on wildlife and the health of the wetland if it is undertaken during species breeding seasons or when the habitat is already stressed, as in the case of the drought. We ask the Town to submit an application to the Commission for future mowing of the wetland meadow and at least a 30-foot Buffer Zone around the boundaries of the BVW. The Commission wholeheartedly supports appropriate efforts to develop pollinator meadows outside of jurisdictional Protected Resource Areas in Shutesbury.

The Commission meets next on October 13, and we require enough time for our Consultants and Commissioners to review any submittals. We understand the Town has the right to decline to take any voluntary action regarding the cleanup of this wetland, but the Commission would like to see some action taken on it. We wish to remind the Town that it is required to submit applications for future work in jurisdictional areas, except to the extent that such work is subject to an emergency order from another public agency and would require an Emergency Certification by the Commission.

In closing, the Commission wants to reaffirm support for the Town's efforts to develop this site into a new library. The restoration of the BVW and other permitting activities should not necessarily impact that development; rather, the proper restoration of these wetlands and general environmental improvements will enhance the public use of the site. We thank the Town of Shutesbury for making good faith efforts to improve environmental conditions on Lot O-32. We look forward to working with you going forward.

Sincerely,

The Shutesbury Conservation Commission