

November 7, 2023

To: Shutesbury Conservation Commission
Re: ORAD extensions

Dear Commissioners,

I see that you have another busy agenda this Thursday night. I am not able to join you, so am writing you a few of my thoughts about the extension of the ORADs on your agenda.

First, I want to thank you all for all the time and effort you put into your volunteer work on the Conservation Commission (CC). You have so much to do for such a small town and very limited staff. It is important work, and not easy. I offer my thoughts as only suggestions in your process of decision making.

1. Requests for Extensions are required by the DEP Wetland Regulations (310 CMR 10.05 (6)(d)) to include “...written confirmation by a professional with relevant expertise that the resource area delineations remain accurate.”

The Requests for Extensions of the ORADs for Pratt Corner East (DEP # 286-276) and Leverett West (DEP # 286-282) do not seem to include any *written confirmation from a wetland professional* that the flagging is still there and accurate for the present ground conditions.

Besides the very rainy weather this year, in the 3-4 years since the delineation, beaver might have come in, impounded areas and totally changed the wetland boundaries. *How does the CC know that the flagging is still there and accurate?* That is what you would be signing off on, for another 1-3 years.

2. Recording the ORADs at the Registry of Deeds

Recording the ORADs is required before any work begins on the property. But it is also necessary before you can complete the Extension Form 7 for these ORADs, if you were to approve them. Form 7 page 1 requires the Registry Book and Page information for each of the properties involved. This is always necessary with any Order, ORAD or Certificate of Compliance, to maintain the legal title and conditions with the properties. Since these two ORADs do not appear to have been recorded at the Registry of Deeds, the paperwork can't be completed. I don't believe the Registry will accept the documents without that important information.

3. The Shutesbury Wetlands Bylaw Regulations (Article V, section 15.1) state “A DOA or ORAD shall be valid for three (3) years from the date of issuance and may not be extended or renewed.”

The reasoning behind this is that field conditions can change in the three years since the issuance of the ORAD, which is usually based on delineations a year or two older than the actual permit. With the changes in our weather patterns, that may mean wetter than previous conditions.

4. There are changes in the Shutesbury Wetlands Bylaw Regulations which provide more protection for wetlands than previously.

Wetland protection has been improved through better definitions of Vernal Pools, Intermittent (& sometimes stretches of underground) Streams, & Isolated Wetlands under 1000 sq ft. Some of these features were not considered during the review process a few years ago, but should be now, since any work on these sites in the next few years could otherwise ignore them. The Bylaw Regulations went through a lot of review, and now that they are in place, they should be followed. It would be a bad precedent for the Commission to ignore their own rules. If you do it with one applicant, you would have to do it with all applicants.

5. A possible scenario of what could happen without *confirmed* or *new* delineations.

In Amherst a large project is being proposed that excluded review by the Conservation Commission, even though there are wetlands on the property. This was because the applicant used the wetland delineations approved previously and kept all clearing and disturbance back 100 feet from those wetland boundaries. While it isolates wetlands and destroys wildlife corridors, it is legal under the Wetlands Protection Act (& also our Wetlands Bylaw I believe). Because all the proposed clearing and development were outside the CC's jurisdiction, the CC had no role to play in assuring that there was adequate erosion and sedimentation control surrounding and upslope of several wetlands and a cold-water stream.

If the present applicant in Shutesbury receives an extension on their 2019 wetland delineations, and they stay 100' back from wetlands and 200' from perennial streams, they do not need to come back to the Conservation Commission for a permit. Any Vernal Pools, Intermittent Streams or Isolated Wetlands that were not considered before the change in the Bylaw Regulations would not be considered then either. *This might be the Shutesbury CC's last chance to confirm wetland boundaries that would be used for future new development. Again, this possible scenario applies to all extensions coming before you from now on.*

6. Timing

Lastly, it appears the Leverett West ORAD does not expire until 4/3/24, so you may have some time to work with the Applicant to get the wetland delineation checked and confirmed, and the ORAD recorded at the Registry before it expires.

Thank you for reading my letter. I believe you will do what you think is best.

Sincerely,

Janice Stone

Volunteer Consultant