

Final  
Wellfleet Conservation Commission  
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom  
Meeting Minutes  
November 1, 2023

**In attendance:** Chair Leon Shreves, Clerk Michael Fisher, Barbara Brennessel, Robert Stewart, John Cumbler, Committee Secretary Jennifer Elsensohn.

**Also present:** Denny O'Connell, Nancy Civetta, Diane Brunt (Zoom).

**Business Meeting**

4:01 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

**Mail/Discussion:**

**Wellfleet Conservation Trust – Conservation Restrictions**

The President of the Wellfleet Conservation Trust, Denny O'Connell, presented two Conservation Restrictions to the Commission. He noted that several layers of approval, including the Wellfleet Select Board, must be obtained before a Conservation Restriction can be created between a landowner (the grantor) and a grantee. State laws dictate that when a Conservation Restriction is acquired by a corporation the owner of the property can claim tax credits. In both of these applications, the grantee is The Compact of Cape Cod Conservation Trusts, Inc. The two Conservation Restrictions that O'Connell presented are mostly upland: a parcel of land on Hamblin Farm, Pole Hill (149 Hamblen Farm Road, part of Map 12, Parcel 47), and a parcel of land next to the Herring River Overlook (970 Chequessett Neck Road, part of Map 19, Parcel 81). Together, these parcels will add an additional 1.5 acres in Conservation Restricted land within the Town of Wellfleet. The Commission agreed that this is a worthwhile pursuit.

Barbara Brennessel moved to recommend both these applications to the Select Board for its approval. John Cumbler seconded. A roll call vote was taken: Barbara Brennessel, aye; John Cumbler, aye; Robert Stewart, aye; and Leon Shreves, aye. Michael Fisher recused himself since he is a Trustee of the Wellfleet Conservation Trust. The motion was approved 4-0.

**Nancy Civetta—Culching Report**

Shellfish Constable Nancy Civetta presented the Shellfish Department's comprehensive culching report for the years 2020-2023. Civetta explained that the Town had been culching in areas of Wellfleet harbor since 1908. The two most senior employees of the Department have been culching in those traditional areas for over twenty years, predating the appointment of Civetta. Consequently, the Department did not realize that this activity needed renewed approval by Town and State agencies. When shellfishermen requested culching in specific areas, the Shellfish Department acquiesced without formally obtaining approval for the request(s). Working over the past months with the Conservation Commission and informed by public comment, Civetta has moved the Department to conform to the appropriate processes of obtaining and executing Orders of Conditions and State permits. The Commission acknowledged that there had been unclarity about what was required.

Recently, GIS technology has assisted the Shellfish Department in being more accurate in the placement of culch. A visit to Area 5<sup>1</sup> was made last Thursday by Commissioners and National Park Service employees, guided by Civetta and Assistant Shellfish Constable John Mankevetch. Civetta provided the GPS coordinates of a location where 600 shell bags had recently been placed. In the future, the Shellfish Department will make annual official reports to the Conservation Commission about the location and volume of culching. Further, the expansion of the culching program will include assistance from the firm Coastal Engineering Co., Inc. and the Massachusetts Environmental Protection Agency (MEPA), which will alert other government agencies to the applications made by the Shellfish Department. Thus, all the proper channels will be followed.

Leon Shreves asked how the general public would be made aware of future culching projects. Civetta stated that abutters are always notified via public notice in a local newspaper and on appropriate Town websites, Shreves inquired whether the Shellfish Advisory Board and the Select Board would also be consulted. Civetta said that they would be informed and that she does seek input from local fishermen. Commissioners stated that the Town would soon have a new Conservation Agent to assist with supervising these culching processes as well.

Diane Brunt was invited to speak. Brunt said that the Zoom connection had been cutting out, that participants on Zoom were unable to hear a good deal of what was said, and that Zoom makes it very difficult to know who is present. Shreves provided a recapitulation of the discussion. Brunt asserted that future proposed culching areas should be advertised with sufficient public notice and that the Shellfish Advisory Board should have input into what areas are culched. Shreves reminded Brunt that the Shellfish Advisory Board is an advisory body—not a regulatory body—and that comments from the Shellfish Advisory Board would be welcome at the Select Board and Conservation Commission meetings. Shreves restated his frustration at the poor communications technology in the meeting room.

#### **Minutes:**

Barbara Brennessel moved to approve the October 18, 2023 Meeting Minutes. Michael Fisher seconded. A roll call vote was taken: Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye; John Cumbler, aye. The minutes were approved 5-0.

#### **Herring River**

Barbara Brennessel reported that she had attended a meeting about herring runs at which Conservation Commissioners and Town Herring Wardens from many towns were present. It is the responsibility of the Commission to oversee the Wellfleet Herring Warden, Ethan Estey. Because most of the Wellfleet herring run is within the National Seashore, the Commission's authority is limited to supervising work like clearing paths. The Wellfleet Herring Warden last reported to the Commission on March 16, 2016, but may have also been communicating directly with the National Park Service and the former Conservation Agent Hillary Greenberg-Lemos. Shreves noted that our new Agent should supervise Estey. Jen Elsensohn reported that Estey was in the office a couple of weeks ago to retrieve a copy of the Order of Conditions for this project and said that he is looking forward to meeting his "new boss," the Conservation Agent. The new

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<sup>1</sup> Area 5, as well as other permitted culching areas, are shown on Coastal Engineering drawing C3.1.1, "Plan Showing Town Shellfish Propagation Sites," revised 2/21/20, scale 1 inch = 600 feet. MADEP File No. SE 77-1417.

Agent should become familiar with the Herring River Restoration project, and report to the Commission on what is currently being done and what needs to happen going forward.

### **Boat at Powers Landing**

John Cumbler stated to the Commission that an aluminum boat has been sitting on the vegetated dune at Powers Landing for some months. The boat has been marked with a violation but has not been removed. The plants on the dune are vital to preventing nitrates and phosphates from getting into the water. Elsensohn had already emailed the Harbormaster, William Sullivan, requesting him to confiscate the boat. Vessels should also not be placed on vegetation near ponds.

The question was raised about the status of the town project to map all of the septic systems around the ponds. Former Conservation Agent Hillary Greenberg-Lemos had been working on mapping all septic systems in Wellfleet, so the new Agent should ask Lemos about this project. The Commission has not been able to make a lot of improvement near the ponds because there is so little turnover in properties there; consequently these properties have not needed to report to the Commission or Health Departments.

### **Herring Count**

Barbara Brennessel reported that this year yielded the highest herring count in Wellfleet's Herring River since this project began in 2009. The counts vary from year to year—sometimes higher, sometimes lower. The Commissioners speculated that the high count may be attributed to the extensive rains last spring. Rain brings more Herring River water volume for the fish as well as more oxygen.

### **State of Wellfleet Harbor Conference 2023**

The annual State of Wellfleet Harbor Conference will take place on November 4, 2023, in person at the Adult Community Center and online via Zoom. Registration is necessary for either format. Six presentations will be made at this event.

Diane Brunt asked to be recognized again. She reported that a similar event was upcoming on November 9, she thinks in Truro, to discuss pesticide reduction. She stated that Orleans has had great success in pesticide reduction, and in order to get State support, Orleans needs other towns to join them in their efforts. The Commission stated that it can support a petition about this from townspeople or the Wellfleet Natural Resource Advisory Board. The Commission also noted that efforts need to be made regarding fertilizer reduction as well.

### **Jurisdictional Opinions:**

None

4:50 p.m. Barbara Brennessel moved to adjourn the Business Meeting. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 5-0.

### **Public Hearings:**

5:00 p.m. Chair Leon Shreves opened the Public Hearings.

**Present:** Chair Leon Shreves, Robert Stewart, Barbara Brennessel, John Cumbler, Clerk Michael Fisher, and Committee Secretary Jennifer Elsensohn.

**Also Present:** Stephen Douglass, Gordon Peabody, Kevin McHugh, Jay Norton (Zoom), Theresa Sprague (Zoom), John Scheible (Zoom).

**Douglass, 925 Chequessett Neck Rd, Map 19, Parcel 100,** Request for Determination of Applicability, remove three cypress and two pitch pines that are dead or dying (Continued from October 18, 2023).

A site visit was made by Commissioners. This case had been presented as a Jurisdictional Opinion on October 18, 2023, but is now resubmitted as a Request for Determination of Applicability. Theresa Sprague spoke about the proposed work. The homeowner would like to remove three dead cypress trees and one dead pitch pine within the Buffer Zone. Most trees are located on an artificial berm constructed of sand under which is the septic system. Sprague's plan is to flush cut the trees, but to leave roots to preserve stability of the berm. The removal of these trees will allow the smaller trees in that area to flourish and create even more stability. A small, dead tree outside the Buffer Zone also needs to be removed. When the time comes for the septic system to be upgraded, native plants will be planted in place of the invasive species currently there. John Cumbler made note of a broken large branch that should also be removed. Steven Douglass said that he will have it removed.

Michael Fisher moved to identify this Request for Determination of Applicability as Negative 3 ("The work described is in the Buffer Zone, as defined in the Regulations, but will not alter an Area subject to protection under the Act. Therefore, the said work does not require the filing of a Notice of Intent, subject to the following conditions, if any."). John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 5-0.

**Korgen, 20 Ryder Ct., Map 14, Parcel 11,** Request for Determination of Applicability, unexpected change to protect porch by installing a 20-foot retaining wall.

This case had been discussed at the October 18, 2023 meeting when Michael Fisher updated the Commissioners on the project. Gordon Peabody briefly presented the case. In addition, all of the trees in the planting plan had been planted yesterday. Interim Conservation Agent Meredith Ballinger had asked that the change in location of a small bridge be noted on the site plan. This has been done.

Barbara Brennessel moved to identify this Request for Determination of Applicability as Negative 3 ("The work described is in the Buffer Zone, as defined in the Regulations, but will not alter an Area subject to protection under the Act. Therefore, the said work does not require the filing of a Notice of Intent, subject to the following conditions, if any."). Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0

**Little Neck Cove, LLC, 215 Gull Pond Road, Map 8, Parcel 63,** Request for Determination of Applicability, two parking spaces on gravel at edge of 100-foot buffer zone.

A site visit was made by Commissioners. Gordon Peabody spoke on behalf of the owner, commenting that the site plan did not identify this property as “river front,” which is an error, but he has marked “river front” at the site. When proposing the project, he had analyzed three alternatives and the least disruptive alternative is the one being presented. Peabody noted that stormwater must be a priority for the site, and the presented option will add a 20-foot x 20-foot area of gravel to an already graveled driveway, which will allow for drainage. Before this project had been submitted to the Commission, a neighbor had called the Committee Secretary with a concern about work being done there. A split rail fence was being installed to prevent parking on top of the septic area. Barbara Brennessel called the Realtor of the property, who put her in touch with the owner, who was willing to do whatever was asked by the Commission. The Commissioners credited Peabody with creating an excellent project. John Cumbler noted that there is an outdoor rinsing station that is in need of nitrogen remediation. Michael Fisher shared his screen to show a photograph of the station. Peabody had not been aware of this, as it was not relevant to his project, but will correct it. Peabody also stated that a different project he had been working on recently did not have remediation for an outdoor shower in the Order of Conditions, but he provided it anyway. If an item is not specifically in the Order of Conditions, it cannot be required.

Michael Fisher moved to identify this Request for Determination of Applicability as Negative 3 (“The work described is in the Buffer Zone, as defined in the Regulations, but will not alter an Area subject to protection under the Act. Therefore, the said work does not require the filing of a Notice of Intent, subject to the following conditions, if any.”). John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0.

**Coates & Scheibler, 10 1<sup>st</sup> Ave., Map 30, Parcel 120,** Extension of Order of Conditions, native plant monitoring and maintenance of the view corridor.

This project had begun with a Notice of Intent approved August 7, 2019, and then there was another Notice of Intent approved March 17, 2021, but more pruning is necessary. John Scheibler presented the project. The Commissioners asked for clarification about whether the proposed pruning was new, or completing what had been approved previously. Scheibler stated that they are not doing any pruning beyond what was approved, and he believes that all of the planting had been done. He added that irrigation had been installed, and that if any of the plants died, they would be replaced. Michael Fisher is the Supervisor on this project, but has not been informed about current conditions. Jennifer Elsensohn will email Scheibler and Fisher so that they can arrange to meet at the site. There was confusion about which of the two current Orders of Conditions for this property was in question, and the timing of its expiration. Michael Fisher noted that with the Covid extension, the more recent Order of Conditions may not be in danger of expiration.

Michael Fisher moved to continue this case indefinitely to give the owner time to complete the work and for a site visit. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler,

aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 5-0.

**Gifford, 41 Crest Ave., Map 35, Parcel 87.2**, Certificate of Compliance, completion of a project including patio, wall with firepit, a deck and plantings.

John Scheibler presented this project. The project is complete with the exception of two items: a path that was to be planted with grass from the Area of Critical Environmental Concern to the deck of the house; and a proposed paddleboard storage rack was not installed. The grass approved in the Order of Conditions was not sustainable on the path, so the homeowner placed mulch on it instead. The owner is requesting that keeping the mulch on the path be permitted. The owner decided not to build the paddleboard rack, but will leave their paddleboards on the stairs instead. The Commissioners expressed concern that the owner might be tempted to leave the paddleboards on the dune or vegetation. John Scheibler reported that there is a small deck on the stairs on which the paddleboards could easily be placed.

Barbara Brennessel moved to grant the Certificate of Compliance with the Conditions that no vessels are to be left on the grass and that mulch must be maintained on the path to prevent erosion. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 5-0.

**Town of Wellfleet, Lt. Island Road**, Notice of Intent, Repairing and repaving the road (Continued from October 4, 2023, and October 18, 2023).


Kevin McHugh of Coneco, representing the Town of Wellfleet, shared that the project has received both a case number (SERO#) from the Massachusetts Department of Environmental Protection (MADEP) and also the letter from the National Heritage and Endangered Species Program (NHESP); both were needed to move forward with the project. All the abutters have been notified. McHugh and Wellfleet Department of Public Works Director Jay Norton met with abutters who were concerned about runoff. Jay Norton reported that the Town would receive grant funding of \$1.8 million and that they intend to begin the project in the Spring.

Barbara Brennessel moved to approve the Notice of Intent. John Cumbler seconded. Michael Fisher has an apparent conflict of interest, but he is able to perform his official duties objectively and fairly in this case. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0.

#### **Adjournment:**

At 5:45 pm, Michael Fisher moved to adjourn the Public Hearings. Leon Shreves seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

**Documents:**

**Minutes**—October 18, 2023

**Douglass**—Request for Determination of Applicability and supporting documents

**Korgen**—Request for Determination of Applicability and supporting documents

**Little Neck Cove, LLC**—Request for Determination and supporting documents

**Coates & Scheibler**—Request for Extension of Order of Conditions and supporting documents

**Gifford**—Request for Certificate of Compliance and supporting documents

**Town of Wellfleet**—SERO# Letter and NHSEP Letter

