

**PEMBROKE CONSERVATION COMMISSION (CC)**  
**Approved Minutes of March 8, 2010 Meeting**

**Present:** David Baril, Alternate; Carol Bertsimas, Vice-Chair; Ammy Heiser, Chair; Stetson Heiser; Kevin Krebs, Planning Board (PB) Representative; Brian Mrazik, Secretary; and Ayn Whytemare.

**Not Present:** Lea Anne Atwell; and Board of Selectman (BOS) Representative.

**Others Present:** Henry Huntington, New England Flower Farms.

**1. Call to Order** – Ammy called the meeting to order at 7:09 pm.

**2. NHDES Correspondence**

- a. New England Flower Farms (NEFF) – N. Pembroke Road** – Henry Huntington from NEFF attended to answer questions regarding this alteration of terrain (AOT) permit application. NHDES transmitted copies of the application to the Town for comment by letter dated February 17, 2010. The alteration involved adding two greenhouse extensions, of approximately 23,500 square feet each, and a total terrain disturbance of approximately 78,000 square feet. The CC was concerned that the site was in an aquifer district and wanted information on what mitigating measures were being taken to avoid contamination of groundwater by pesticides and fertilizer. Henry explained that the greenhouse extensions would be replacing outdoor growing space that currently uses drip irrigation. The existing greenhouses and the proposed extensions employ an irrigation-water recycling system. The greenhouses have concrete floors with drains and pump systems that move irrigation water, containing fertilizer, from 10,000-gallon tanks up through the floor and back, thus fully containing water and nutrients that are not taken up by the plants. Henry also stated that NEFF employs Integrated Pest Management (IPM) to minimize the amount of pesticides used in the farming process.
- b. Pembroke School District – Pembroke Academy** – The School District has applied for a permit to operate a wood-fired boiler system to replace an oil-burning system. NHDES provided a copy of the draft permit for review. The CC noted that the proposed system employs a pollution control device to reduce particulates and that emissions will comply with State and Federal requirements.
- c. Dennison Cabinets** – Map 559, Lot 12-4 – The AOT permit has been approved by NHDES.
- d. Silver Hill** – Map 559, Lots 12 and 12-1 – The wetlands dredge-and-fill permit for the site access road (3,700 square feet) has been approved by NHDES. The permit requires compensatory actions along French’s Brook and the Soucook River.

### 3. Conservation Land Updates

- a. **Second Annual Monitoring Day** – This event is scheduled for April 11 starting at 9:00 AM at the Town Hall. The CC prioritized sites and assigned teams for each site as follows:

<u>Site(s)</u>	<u>Team</u>
<b>First Priority:</b> Beck, Butterfield, Clark Brittany, Gamelin Keniston, Taylor White Sands, Richard, Stony Brook Schuett	Bertsimas Mrazik Krebs Baril Heiser, A. & S.
<b>Second Priority:</b> Girard Baxter Belfry CT	Heiser, A. & S. Whytemare Whytemare
<b>Low Priority (Recently Completed):</b> Ames Brook AG NE Bragfield Pond Whittemore	Krebs Heiser, S. & Mrazik Atwell Baril

- b. **Belfry Court** – Ayn requested that this site visit be postponed until after the April 11 Monitoring Day
- c. **White Sands** – On March 1, Dave conducted a special monitoring visit to assess damage from the February 25 windstorm. Dave noted that a CC sign near the pumping station had been pulled out and replaced it. CC signs were also missing at the northernmost corner of the property and at the northern end of the railroad bed. Motor bikes were being used on the property and there was evidence of ATV and snowmobile use behind the pumping station. Except for areas near the logging road, tree damage was minimal.
- d. **Richard** – On March 1, Dave conducted a special monitoring visit to assess damage from the February 25 windstorm. He noted significant damage to trees and recommended that a CC sign be placed on the southern end of the property.
- e. **Whittemore** – Dave conducted a special monitoring visit on March 4 to assess damage from the February 25 windstorm. Most tree damage was on abutting properties. Several CC signs need to be replaced as identified in Dave's report.

### 4. Range Roads Discussion

Brian circulated copies of a draft policy memorandum and ordinance for the closure of Class VI roads to motorized, wheeled vehicles during periods of high erosion-damage potential

(Attachment 1). Brian also compiled a folder of hard copies of all email correspondence developed as part of his research on this topic. The folder will be retained in the CC files. **ACTION ITEM:** All CC members should review the draft materials and be prepared to discuss them at the April meeting.

- 5. Hillman Parcel Acquisition, 553 Buck St.** – Ammy reported that the on-site visit and interview meeting with USDA-NRCS, the Five Rivers Conservation Land Trust (FRCLT), the property owners, and CC representatives was again postponed because of major damage from the wind storm on February 25. The meeting will be rescheduled for March 19 or 22 at 9:30 AM. The appraiser, Sherry Browning, complete the opinion letter (preliminary appraisal), concluding that the value of the conservation easement on 43 acres was \$580,000, which is very close to the \$600,000 that the CC has been using for planning purposes. **ACTION ITEM:** Ammy will contact Marilyn Bergevin in the next couple of days to discuss the appraisal and to advise her that initiation of the land survey and subdivision action are the next major steps in the acquisition process.
- 6. CTAP Open Space Planning Program** - Ammy reported that the meeting of the Open Space Committee on February 25 was attended by 7 people and was very productive. The Committee ranked the natural resources of the Town, and drinking water was identified as number one. The next meeting will be held on March 25 at 6:30 PM, with the objective of designating a green infrastructure to protect land with high natural-resource values through mechanisms, such as purchases, easements, zoning regulations, etc.
- 7. Review and Approve Minutes of February 8th Meeting** – Carol motioned to approve the draft minutes. Ayn seconded. Five voted in favor (David voting in Lea Anne’s stead), Kevin and Stetson abstained, none opposed. The motion passed.
- 8. CC Members** – Kevin Krebs has rejoined the CC as the PB representative. Fred Kline has resigned as selectman, leaving the BOS representative vacant. Jeff White has expressed interest in rejoining the CC as an independent member. The CC membership is limited to 7 and we currently have 6. One option might be to move David from alternate to full membership and invite Jeff White as an alternate member. The CC agreed to address this at the April meeting.
- 9. Memberships and Dues** – The CC’s \$275 dues for membership in the New Hampshire Association of Conservation Commissions are due. Ayn motioned that the CC continue this membership and pay the dues. Stetson seconded. Seven voted in favor, none opposed. The motion passed.
- 10. Correspondence** – Ammy noted receipt of the Tree Farm Association and Conservation newsletters, and an announcement of the Turf and Grounds Conference sponsored by UNH Cooperative Extension. The CC also received a request for contribution from the Society for the Protection of New Hampshire Forests. The CC decided to postpone action on a contribution pending the outcome of our budget request.
- 11. Other Business**
  - a. Cavallaro property** – No further action has been taken by the Cavallaro’s regarding their interest in a conservation easement for this property.

**b.** Pine Grove – No further action has been taken by Steve Fowler regarding his interest in a conservation easement for this property.

**c.** Green Gold Farm - **ACTION ITEM:** Ammy will contact Keith Richard and Rose Galligan to advise that the appraisal for the conservation easement on the nearby Hillman property was \$13,500 per acre, and that the CC is only interested in a conservation easement on the 20 acres of the Green Gold Farm that will remain in a fully undeveloped condition.

**12. Adjournment:** Carol made a motion to adjourn the meeting at 9:43 PM. Stetson seconded. Seven voted in favor, none opposed. The motion carried.

Submitted by Brian Mrazik, Secretary.

Next Meeting – April 12, 2010

Attachment 1

**DRAFT**

MEMORANDUM

To: Board of Selectmen, Town of Pembroke

From: Chairman, Conservation Commission, Town of Pembroke

Subject: Proposed ordinance for closure of Class VI roads during periods of high damage potential

**Background**

The Town of Pembroke contains more than 16 miles of Class VI roads. Class VI roads are defined by statute as those that have been discontinued subject to gates and bars, as well as those that have not been maintained and repaired by the town in suitable condition for travel for five successive years or more. (See RSA 229:5, VII.)

Pembroke's Class VI roads are, for the most part, remnants of a grid system of roads created at the time of settlement to support farmsteads laid out across the Town in 'ranges'. These range roads provided access to each of the farmsteads and supported primarily agricultural activities. With the decline in agriculture in New England following the industrial revolution, many of the Town's range roads were only rarely used. Today, the primary uses of the Town's Class VI roads are for forestry and recreation activities, including timber harvesting, hiking, hunting, horseback riding, cross-country skiing, snowmobiling, and use by off-highway recreational vehicles (OHRVs).

As the Town of Pembroke and surrounding areas have grown in population, the recreational use of Class VI roads has increased dramatically, including use by recreational vehicles from out of town and out of state. These roads were never designed for heavy use by today's powerful recreational vehicles, and such use makes them particularly vulnerable to damage during spring and other wet periods. Class VI roads, by definition, are also unmaintained which means that once damaged, roadway surfaces and drainage infrastructure continue to deteriorate.

Well established, sound forestry practices generally avoid timber harvesting and use of Class VI roads during spring runoff and other extremely wet conditions. However, no such best-management practices are in place for OHRV use or use by other wheeled vehicles during periods of severe damage and erosion potential. In fact, some OHRV users actually seek out wet and muddy conditions as opportunities to further enhance their recreational experience. Use of the Town's Class VI roads in this manner, and under such conditions, is highly detrimental for the following reasons:

1. Motorized, wheeled vehicles compact soil and concentrate the surface flow of water resulting in decreased soil stability and increased erosion. Ruts from tire tracks form gullies that continue to widen and deepen from the erosive force of

water during subsequent storms or spring runoff. These actions cause direct damage to the road surface and failure of road banks that can make them hazardous or impassable to subsequent users, including fire and emergency vehicles.

2. In addition to road damage, significant environmental damage can be caused by motorized, wheeled vehicles operating under inappropriate conditions. Increased erosion caused by vehicles results in sediment runoff to streams and wetlands, degrading water quality and habitat for macroinvertebrates, fish, amphibians, and other aquatic animals and plants. Vehicle disruption of water courses at road crossings, particularly where bridges or culverts have not been maintained, can cause channel and bank erosion lowering the water table, decreasing the size and depth of wetlands, and further reducing and degrading water quality and habitat.

All of these damages are readily apparent along Pembroke's Class VI roads..

### **Recommendations**

The primary mission of the Pembroke Conservation Commission is to ensure the proper utilization and protection of the Town's natural resources and watersheds. Inappropriate use of the Town's Class VI roads, particularly during conditions of high vulnerability to erosion and sedimentation, warrants action by both the Commission and the Board of Selectmen. Accordingly, the Commission is recommending that the Board adopt an ordinance (example attached) restricting the use of Class VI roads by motorized, wheeled vehicles during the spring runoff season when soils are saturated, groundwater levels are high, and normally intermittent streams are flowing. In particular, the Commission is recommending that the Board close Class VI roads to use by motorized, wheeled vehicles from March 1 to May 31 each year and also during other periods of extended wet conditions.

### **Implementation and Protocols**

All entrances to Class VI roads should be permanently posted to notify potential users of the March 1 to May 31 prohibition on use by motorized, wheeled vehicles. For periods outside the normal spring-season closure, the Conservation Commission Chair will recommend to the Director of the Department of Public Works (DPW) the posting of a Class VI road(s). The recommendation will include the name of the road and the reason for closure. The Director, DPW will inspect the road(s) within 48 hours to determine if posting is warranted and notify the Town Administrator and Police Department when signs will be posted, similar to the system currently in place for weight restrictions. The Conservation Commission Chair will make a recommendation to the Director, DPW as to when the posting should be removed. Class VI roads will always remain open for law enforcement and emergency vehicles. The Director, DPW may issue access permits to individual property owners (or their agents) along closed Class VI roads for just cause shown. The Pembroke Police Department will be authorized to patrol closed roads and issue citations to violators.

## Authorities

The Conservation Commission has researched the authorities available to the Board of Selectmen under State statutes for implementing the recommended program. This research included obtaining legal opinions from attorneys at the NH Local Government Center and contacts with other towns who have implemented similar programs. In summary, the Board of Selectmen has the authority to regulate the use of Class VI highways, including 'range roads', in the same manner as Class V roads. This authority includes implementation of road closures, road disturbance prohibitions, weight limitations, and the exclusion of OHRVs. The authorities are summarized below:

“Unless regulated by the commissioner of the department of transportation as provided in RSA 236:1, the selectmen may regulate the use of all public highways, sidewalks, and commons in their respective towns and for this purpose may exercise all the powers conferred on city councils by RSA 47:17, VII, VIII, and XVIII, and by any other provisions of the laws upon the subject. “	RSA 41:11
“...the municipality shall have the same regulatory authority over such highways [Class VI highways] as is the case with class V highways, including but not limited to the authority to regulate their use pursuant to RSA 41:11 and RSA 47:17, VII, VIII and XVIII, to regulate the excavation or disturbance of such highways pursuant to RSA 236:9 through 236:11, to regulate driveways and other access pursuant to RSA 236:13, and to establish weight limits pursuant to RSA 231:191.”	RSA 231:21-a II
“...the classification as a Range Road does not alter the status of a Class VI road as a public highway under RSA 231:21-a.”	NHLGS Legal Opinion
“With bylaws or ordinances city or town councils and boards of selectmen may regulate the operation of OHRVs [off highway recreational vehicles] within city or town limits, providing they do not conflict with provisions of this chapter.”	RSA 215-A:15 I

Sample Ordinance

**TOWN OF PEMBROKE**

**ORDINANCE OF THE BOARD OF SELECTMEN**

The Board of Selectmen of Pembroke, New Hampshire, ordain as follows:

**SEASONAL RESTRICTIONS ON CLASS VI HIGHWAYS**

**1. Declaration of Purpose:**

The purpose of this Ordinance is to protect the Town's Class VI highways by authorizing the imposition, by means of posting, of access restrictions during the times and seasons when such highways are most vulnerable to damage.

**2. Title:**

This Ordinance shall be known and may be cited as the "Seasonal Restrictions on Class VI Highways of the Town of Pembroke".

**3. Authorities:**

RSA 41:11, RSA 47:17, RSA 215-A:15, RSA 231:21, and RSA 236:9-11.

**4. Seasonal Restrictions on Class VI Highways:**

- A. All unmaintained portions of Class VI highways within the Town of Pembroke shall be closed to all motorized, wheeled vehicles from March 1 to May 31 of each year. Such restrictions shall be imposed by the posting of permanent, legible signs by the Director of Public Works at points of access to Class VI highways from other public ways, which signs bear the legend "Road Closed to Motorized Wheeled Vehicles March 1 to May 31. Violators will be fined up to \$1,000 and may be held liable for damages to the roadway under RSA 236:38 and RSA 236:39".
- B. The Director of Public Works, or his or her designee, is authorized to impose temporary restrictions on the use of any Class VI highway, or portions thereof, by motorized, wheeled vehicles during such conditions of ground saturation, surface runoff, freezing, thawing, or other weather conditions that, in his or her judgment, have rendered the highway susceptible to damage if used by such vehicles. Such restrictions shall be imposed by posting temporary, legible signs at points of access to the highway, which bear the legend "Road Temporarily Closed to Motorized Wheeled Vehicles. Director of Public Works. Pembroke NH".

**4. Fines in the Event of a Violation:**

Any person who shall drive or cause to be driven a motorized, wheeled vehicle on a Class VI highway so posted, shall be guilty of a violation and fined \$150 for the first offense and \$300 for a subsequent offense within a calendar year, and shall be liable for any costs to repair, remedy, or otherwise return the road to an acceptable and stable condition as determined by the Director of Public Works.

**5. Exemptions:**

- A. Town or other government vehicles being used for official business, utility trucks servicing local utilities on an emergency basis, and emergency vehicles responding to an emergency, shall be exempted from the posted restrictions.
- B. At the request of a person whose property is accessible only by a Town Class VI highway with posted seasonal restrictions, the Director of Public Works may, at his or her discretion, grant an exception from such restrictions, if such a person has an immediate and urgent need for a specific and essential service which cannot reasonably be provided except as by a motorized wheeled vehicle.

**EFFECTIVE DATE**

Having held a public hearing, the Board of Selectmen voted to adopt this Ordinance on the \_\_\_th \_\_\_ day of \_\_\_, 2010, which shall be the effective date hereof.

IN WITNESS WHEREOF, a majority of the Board of Selectmen have hereunder set their hands.

TOWN OF PEMBROKE  
BOARD OF SELECTMEN

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