

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249

Minutes for 8/25/2022

Location: Remote Meeting via Zoom, accessible to public, due to ongoing COVID 19 Pandemic

Present: Jon Schmalenberger (Chair), Mark Phillips (Vice-Chair), George Bacon (Member), Jessica Gugino (Clerk), Heather Hampson (Conservation Agent)

Not Present: Jennifer Amaya (Member)

APAC Recorded: Yes

7:00 PM – Open Meeting

- **Confirmation of Agenda**

- G. Bacon moved to confirm the agenda as posted; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.

- **Approval of Meeting Minutes**

- G. Bacon moved to accept the minutes for 8/11/2022 as written; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.

- **Public Input**

- None received.

- **Public Hearing: Notice of Intent (NOI) – Transmission Main Replacement, Spectacle Pond Water Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-TBD**

- Assessor's Maps 24 & 17, Parcels 1 & 7 (project between Willow Road and Nemco Way)
- Present via Zoom were DPW Director Dan Van Schalkwyk and Charles Gore, of Tighe & Bond.
- Mr. Van Schalkwyk and Mr. Gore summarized the project to replace a portion of the water main carrying water from the Spectacle Pond Water Treatment Plant.
 - A portion of the existing 16" ductile iron pipe developed leaks from corrosion in April 2021.
 - An approximately 700-750 ft. portion of the water main needs to be replaced with a new 18" HDPE pipe.
In addition, a new valve and hydrant are to be installed at the southwestern end of the project site.
 - This is a high-criticality project since this is the only pipe leaving the Spectacle Pond Water Treatment Plant to provide water to Ayer residents.
 - All of the replacement project will take place within the existing unpaved access roadway.
 - An open-cut excavation of a 5-ft. wide trench, up to 9.5 ft. deep, will be used to replace the pipe.



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- The resource areas within buffer zone to the roadway were delineated and consist of Bordering Land Subject to Flooding (BLSF) and Riverfront Area (Bennett's Brook and an unnamed intermittent stream).
- Erosion control barriers (straw wattles or mulch logs) will be installed and are to be inspected by H. Hampson.
- The project is expected to take approximately 3 weeks.
- The Treatment Plant will need to be shut down temporarily for a day in order to finalize the connections for the new pipe.
- A dewatering sediment trap will be used as necessary in excavated areas.
- If the work takes place from April 15 to October 15, necessary turtle protection barriers will also be installed in accordance with the requirements of NHESP (Massachusetts Natural Heritage & Endangered Species Program).
- At the completion of the project, disturbed areas will be stabilized and restored to match their pre-construction conditions.
- In response to a ConCom question, while replacement of a water main is typically considered an exempt activity, because some of the work is within Riverfront, this triggers MESA (Mass. Endangered Species Act) review by NHESP, and this in turn triggers the need for an Order of Conditions (OOC).
 - The project is currently awaiting a permitting response from NHESP.
- The project is already out for bid and once permitted, Mr. Van Schalkwyk is hoping to do the project this fall or winter.
- In answer to a question from M. Phillips, re-lining the existing pipe, instead of replacing it, would require a dry pipe with no bends, neither of which exists in this area.
 - In addition, replacing the corroded pipe section with new pipe will maintain hydrological integrity of the system with no additional losses in water pressure.
- A site walk was scheduled for 9 a.m. on Saturday, September 3.
- G. Bacon moved to continue the Public Hearing to 9/8/2022; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.
- **Discussion: Construction Update (in response to letter of Violation Notice), Ayer Solar II, Rohit Garg, MassDEP # 100-0444**
 - Present via Zoom were Rohit Garg as well as Calvin Goldsmith and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR).
 - J. Schmalenberger began the discussion by outlining ConCom's primary concerns that what is being built at Solar II does not match the plans that were approved, and that the Commission is not being notified of significant changes, as required by the OOC, nor, at times, have responses to H. Hampson's legitimate queries been timely or satisfactory.
 - It has sometimes been a challenge to reach people as well.
 - The Commission is seeking a list detailing what has been changed, and asked to have a face-to-face meeting scheduled between H. Hampson and Mr. Garg so that ConCom's Agent can develop a better understanding of the project and its time-schedule in light of all of the changes.
 - Specific ConCom concerns or areas of interest that were discussed:



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- Timelines
 - M. Phillips wanted it emphasized that taking 4 days for representatives of Solar II to respond to H. Hampson over violations is not acceptable, especially if the violations are ongoing.
- ConCom is still seeking a letter from NHESP, in writing and on their letterhead, confirming that they understand all of the changes that have been made and that they approve of them.
- The turn-around's location has been changed from outside of the 100-ft. buffer zone to within, both in response to encountering more ledge as well as the fire department's preference that the turn-around be located outside of the solar array's fencing.
- Work on the replication areas has yet to commence although the project has been underway since the OOC was issued in late fall 2020.
 - Mr. Goldsmith said that, given the current severe drought, Oxbow Associates has recommended waiting now until the end of September or early October.
- Erosion controls in some areas still need replacement.
 - Mr. Goldsmith said the erosion controls seemed good to him and complained that wholesale replacement of the controls was unnecessary, and that they were going by the recommendations of the Erosion Control Monitor.
 - It was pointed out that ConCom was nowhere asking for wholesale replacement of erosion controls, and that ConCom and its Agent were also going by the weekly reports from the Monitor in making its requests for fixing damaged or deteriorating erosion controls.
 - H. Hampson showed some recent photos from her site inspections, including one where the silt fencing could no longer be seen.
 - M. Phillips asked Mr. Goldsmith if the controls in that photo looked okay, indicating strongly that they were not okay in his view.
 - J. Schmalenberger reiterated that controls should not be falling down as depicted in the photos.
- H. Hampson showed another photo of the proposed replication area where the haybales have significantly deteriorated.
 - Per the OOC, erosion controls will need to be removed at the end of the project, and H. Hampson pointed out that this will be much easier to accomplish if the haybales have not completely deteriorated and become very heavy.
 - Mr. Goldsmith agreed these haybales needed to be replaced.
 - Mr. Garg said part of the recent problems stem from the shortage of labor, with workers not showing up, and that the project is therefore taking longer than expected.



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- The number of tree-box filters in the originally approved plans have been reduced from 6 to 3.
 - Mr. Burchard explained that this is because the beginning of the access driveway that enters from Groton Harvard Road has been straightened and steepened.
 - The steeper road grade has shortened the distance to where the initial impervious surface transitions to pervious gravel.
 - With less pavement, there is less need for as many tree box filters to clean runoff.
 - In response to a question from J. Gugino, DPW Director Van Schalkwyk confirmed that he was contacted to review these changes, including in terms of stormwater calculations, and that they were reasonable.
 - He added, however, that it would be good to have a one-page summary in writing stating why the original number of tree box filters was no longer needed.
 - Mr. Burchard said he would provide that summary.
- H. Hampson requested that written comments from Oxbow Associates to GPR or Mr. Garg be copied to the Conservation office as well.
- J. Schmalenberger said many of these changes now make sense, but stressed ConCom needs to hear about such changes much sooner than has been the case.
- Abutting resident Ken Diskin, of 180 Washington Street, said many of the changes seem to have been made on the fly,
 - He is also concerned that good loam and seed mix need to be used on the entire site, rather than the re-used “junk” (roots, broken down trees) that seems to currently be being used.
 - In addition, he is concerned that invasive weeds are already taking over portions of the site, which would be avoided if the proper soil and seed mix were being used – as was done on Ayer Solar I nearby.
 - Mr. Diskin also added a side-note that a separate screening plan that was part of the settlement with abutters (and not part of the Town’s permits) required that additional screening plantings between Ayer Solar II and abutters be put in at the beginning of the project, and that this has not yet been done.
- M. Phillips asked about one of the changes, as depicted on sheet C.4.2, that appears to relocate the NHESP-required turtle nesting area.
 - He asked if the nesting area shouldn’t be in a drier area as originally proposed?
 - Mr. Burchard said it is still several feet above the wetlands and Mr. Goldsmith said it was 6-9 feet above the wetlands.
 - H. Hampson said the revised plan shows the nesting area starting at just 2 feet above the wetlands.
 - M. Phillips said the distance might *seem* okay, but would it in actuality be suitable to the turtles?



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- H. Hampson said this area was part of the original NHESP approval permit and that this is why she is asking that the proponents for Ayer Solar II provide something in writing from NHESP, on their letterhead, confirming that they fully understand the proposed changes and are okay with it.
 - Mr. Garg and Mr. Burchard said they will reach out to NHESP to see what they can provide in terms of the requested confirmation.
- J. Schmalenberger said this would conclude the discussion of problems with Ayer Solar II for the time being.
- At Mr. Goldsmith's request, the Commission agreed to withdraw the Notice of Violation.
- **Discussion: Final Report, Peer Review, Stratton Hill Conservation Analysis, Matthew Burne, BSC Group**
 - Present via Zoom was Matthew Burne, of BSC Group, the third-party peer reviewer selected by the Commission for the proposed Open Space Residential Development (OSRD) subdivision.
 - The preliminary plan for the OSRD subdivision is currently before the Planning Board.
 - As part of the OSRD review process, ConCom is tasked with providing a Conservation Recommendation to the Board, in part based on the Conservation Analysis submitted by the applicant.
 - Mr. Burne submitted 3 pdf documents for his report:
 - The basic Peer Review of the Conservation Analysis for the 2022 Preliminary Subdivision Plan;
 - Appendix A with site photos and a key map;
 - Appendixes B, C and D
 - Appendix B, Blasting Impacts
 - Appendix C, Conservation Restriction Baseline Documentation
 - Appendix D, Literature Cited
 - Mr. Burne began by commending the OSRD Guidelines developed by the Town (Planning Board and Conservation Commission) as a great framework for landscape-scale planning and an exemplar for use in evaluating big undeveloped tracts of land.
 - Mr. Burne's general criticism of the Conservation Analysis as submitted by Fox Meadow Realty is that it has some wonderful (if dated from nearly 20 years ago) data collected by Oxbow Associates, but also some missing or deficient data.
 - As a whole, the Analysis does not really apply the Oxbow data to evaluating the overall impact of the project to the existing ecosystem or buffer zones.
 - The report states "data are presented but not analyzed in any meaningful way."
 - The Analysis, including in particular its ranking of High, Medium, and Low Priority conservation areas, appears to be "conveniently aligned" with the existing roughed-in loop road (from the work done on the previously approved plan in 2005-2008).



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- He stressed that the existing loop road from the previous work period should not rule the re-design of the project today.
- Highlights from Mr. Burne's comments:
 - Wildlife habitat
 - One deficiency is the way wildlife habitat was generally addressed (or not addressed).
 - The Analysis does not adequately identify beaver habitat, nor some of the prime areas for turtle nesting.
 - No discussion of invasive species is included in the Analysis.
 - Blasting
 - As Appendix B indicates, state regulations pertaining to the protection of wildlife and wildlife habitat from the effects of blasting are scant and do not go beyond dealing with material storage, handling, and transport safety.
 - Little data can be found on the impact of chemical blasting.
 - BSC Group's recommendation includes restrictions on when blasting occurs relative to fish spawning periods or active breeding bird season.
 - Wetland Delineation
 - BSC Group found no discrepancies between the wetland delineations approved under the 2020 Order of Resource Area Delineation (MassDEP # 100-0445) and the lines shown on the preliminary subdivision plans as submitted.
 - Conservation Priority Ranking
 - The bottom line is that the priority ranking provided by the applicant does not flow from the data in the Analysis.
 - While the Guidelines ask that High, Medium, and Low ranks be assigned, Mr. Burne said that for this particular site, it makes more sense to only use High and Low.
 - Mr. Burnes also noted that the Analysis does not provide any sense of the percentage of land included in each of the applicant's use of High, Medium, and Low designations.
 - In addition, the report notes that the entire ROW is designated as Low Priority in the Analysis, completely discounting the conservation value of the uncommon habitat underneath the power lines.
 - It also designates the beaver impounded wetland Low Priority as well, whereas it should be considered one of the more valuable wetland features on the site.
 - Mr. Burne agrees with the general consensus that the area north of the powerlines, where some development is proposed, is obviously important.



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- However, the significant value of the scrub/shrub habitat directly underneath the power lines has not been addressed at all in the Conservation Analysis.
 - Additionally, the importance of Long Pond, and the forested slope down to it, has not been addressed either.
- J. Gugino reiterated that the initial Analysis submitted by the applicant in 2021 depicted the south end of Long Pond, which is closest to the proposed development, as “Low” priority (and mislabelled as “agricultural” as well in spite of being marsh).
 - Despite ConCom questioning this ranking in 2021, the next revision submitted by the applicant in fall 2021 made no changes to its depiction of the conservation value of this area.
 - After the definitive subdivision application to the Planning Board was withdrawn in early 2022, then re-submitted in June 2022 as a preliminary rather than definitive plan, it is notable and a disappointment that the priority ranking for this important area has still not been addressed by the applicant.
- Conservation Restriction Baseline Documentation Report (BDR)
 - The material submitted provides a good start, but while there will be overlap, the Analysis should not be expected to provide all the material necessary for a comprehensive BDR per State guidelines and requirements.
- Right-of-Way (ROW) under Power Lines
 - As noted above, the habitat values for the ROW need to be addressed.
 - In addition, this ROW on the Ayer project site was not included in Oxbow’s data study in the early 2000s.
 - ROWs provide valuable habitat as “early successional habitats,” habitats that are more uncommon in the wider landscape.
 - As such and given the value of this kind of habitat, to the extent that crossing it can be avoided, that would be ideal.
 - However, if it is unfeasible to prevent a roadway crossing, then mitigating factors should be looked at more thoroughly, such as limiting the number of crossings or incorporating wildlife underpasses.
 - Going from two crossings (as proposed) to a single crossing would likely result in less mortality for turtles.
 - One suggestion would be to keep the loop design to the south side of the ROW and just have a dead-end cul-de-sac for housing north of the power lines.
 - Also regarding the Stratton Hill ROW, Mr. Burne remarked on the lack of pervasive invasive vegetation growth,

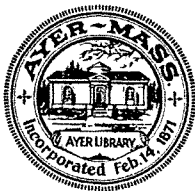


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- He also noted the evidence of turtle nesting under the ROW (as well as on an exposed soil slope at the north end of the existing loop road, upland from a beaver impoundment pond).
- Slope down to Long Pond, south of the ROW
 - One approach is to start with looking at the features that are already protected by law – i.e. wetlands and floodplain – but this was not done with this area.
 - If it was done correctly, then Long Pond gets more protection, in particular from the floodplain associated with the pond on its south shore.
 - If this area is instead labeled High Priority, the Commission will get somewhere in terms of increasing protection for Long Pond.
 - In addition, the report notes that the east side of Long Pond is already developed, with concurrent habitat fragmentations.
 - Habitat and wildlife corridor fragmentation of the western side of the pond is therefore to be avoided or minimized to the extent possible.
- Stormwater
 - The current plan proposes locating some stormwater basins on the slopes down to Long Pond.
 - However, since this is still a “preliminary” plan, stormwater management can only be addressed in the abstract.
 - Stormwater structures, from an engineering standpoint, haven’t been definitively designed enough to be evaluated.
 - Overall, however, the goal for ConCom should be to recommend the maximization of the distance between stormwater structures and important features like Long Pond and its floodplain.
 - The recommendation of the use of Low Impact Development (LID) features, such as rain gardens or porous paving, should be considered.
- Permitting Evaluation
 - In Mr. Burne’s view, the project needs to resubmit to NHESP for MESA review, especially if NHESP takes the position that a new Conservation Management Permit (CMP) is required.
 - (The original CMP jointly covered the contiguous open space for two subdivisions, one in Groton and the other in Ayer, the latter having been postponed from 2008 to the present day.)
- General discussion continued:
 - M. Phillips asked about the use of porous pavement in some areas, especially north of the ROW, and if, in light of its higher cost, it would be effective given the amount of ledge in the area.



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- Mr. Burne said this should be on the table as a question for an engineer, but also noted that maintaining porous pavement longterm is more of a challenge.
- Tom Lautzenheiser, Central/West Regional Scientist for Ecological Management, Massachusetts Audubon Society, asked to read into the record his comment letter (attached to these minutes).
 - His comment letter included:
 - Noting the large, contiguous habitat area between Groton and Ayer and the need to 'avoid, minimize, or mitigate' adverse impacts.
 - The endangered Blandings turtle which is both long-lived and slow breeding.
 - The issue of road mortality for this turtle is huge.
 - ROW crossings should therefore be minimized and no vertical curbing should be used.
 - Mass. Audubon is willing to offer technical assistance and land to facilitate turtle nesting areas.
 - Mr. Lautzenheiser emphasized that the original CMP required the construction of two turtle nesting sites, one in Groton at a designated location, and a second in Ayer at an as-yet undesignated location (in 2005).
 - He stressed that Fox Meadow Realty has not lived up to the terms of the original CMP in that the Groton nesting area has yet to be constructed.
 - He suggested it would be good to ask the applicant why this is the case, and suggested NHESP may be able to exercise some control over this deficiency.
 - H. Hampson said she would reach out to NHESP on this.
 - Mr. Lautzenheiser also stated that this population of Blandings turtles, in the contiguous Stratton Hill and Groton area (Rocky Hill Sanctuary), is one of the prime populations in the State, and therefore a unique feature of this site.
 - This further underscores the need for proper nesting habitat within this conservation block of land.
 - The (unconstructed) proposed nesting area in Groton is not ideal, having south-facing slopes and being far from wetlands), however the Ayer land offers very good nesting area opportunities.
 - Mr. Burne agreed with this, noting the evidence of turtle nesting both under the power lines and on the soil pile at the south edge of the beaver pond beyond the end of the existing loop road.
 - Mr. Diskin said, having read the existing (but expired) CMP, that ConCom can make a recommendation to the Planning Board that nothing happens in the Ayer OSRD until both turtle nesting areas have been completed.
- G. Bacon asked how ConCom proceeds from here, given the problems or gaps as noted with the existing Analysis.



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- Via Zoom, Ken Diskin, as a member of the Planning Board, said that there was no sense that the applicant was in a rush, and Jonathan Kranz, Chair of the Planning Board, agreed saying the applicant seemed amenable to giving the Town more time if needed.
- Resident Marion Stoddart asked Mr. Burne if there was a need for a better Conservation Analysis than what was provided by the developer.
 - Was this something the Planning Board or Conservation Commission could request?
 - Ms. Stoddart also emphasized the importance of protecting Long Pond.
- Mr. Burne said there was information that was important for the Analysis to identify, for example the beaver habitat and the nesting habitat for turtles.
 - But the Analysis as submitted just plugged in the information gathered by Oxbow Associates in the early 2000s without actually using the data to address wildlife habitat, etc. on the site at all.
- M. Phillips said he did not think a new Analysis would affect ConCom's recommendation.
 - What was important was that Mr. Burne's report identified the flaws in the submitted Analysis for ConCom to take into account.
 - ConCom's recommendation will likely say what a new Conservation Analysis would say if it were done.
- Mr. Burne said procedurally, if ConCom disagreed with the Conservation Analysis, it could put this before to the Planning Board to take into account – which still puts the burden on the applicant rather than would be the case if ConCom were to do its own Analysis.
 - It was also noted that the OSRD bylaw allows the Planning Board to request more information or studies.
- H. Hampson said she had serious concerns about the ROW and its function as a wildlife corridor, to which Mr. Burne agreed that the Analysis was subpar in its dealing with that.
- Mr. Burne also stressed that, in his view, every permit in place for the original project (on which work ended in 2008) has expired.
 - Mr. Diskin, however, said that the subdivision approved back in the early 2000s was still in effect.
 - The lots from the original design have been being assessed since then as developable land.
 - When asked why that plan would still be in effect, Mr. Diskin said that most permits include a clause that work must be completed within a certain period of time.
 - That wasn't done by the then-Planning Board for the earlier version of the project.
 - In addition, when Ayer's Zoning Bylaw was revised in 2017, none of the zoning in the Stratton Hill area (A1) was changed, which would also have impacted the current status of the original approved plan.



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- There is therefore no document that renders the original subdivision plan as having expired.
- Resident Annie Reed, of Wachusett Avenue East, said that the original CMP, issued by NHESP via Fish & Game, required the two turtle nesting areas and that that document had an expiration date of 2012.
 - She asked Mr. Burne whether, if that CMP has expired, the project needs a new CMP from NHESP to develop the site regardless of whether previous Town permitting has expired or not.
 - Mr. Burne said that that was his understanding, that work authorized under the 2005 CMP from NHESP needed to be completed within 7 years of the CMP's issuance date.
 - Therefore, he said, the applicant in his view needed to go back to NHESP "*de novo*" (as if from the start).
 - Ms. Reed said the Town needs to go to NHESP directly, and that this should also go to Town Counsel.
- Moving forward, ConCom members are to provide H. Hampson with their thoughts and recommendations by email.
 - Mr. Kranz said the Planning Board would like a Conservation Recommendation in time for their September 27 meeting if possible.
 - This could include ConCom's recommendation that the slope down to Long Pond be considered High Priority rather than Low Priority, as well as requests for new locations for stormwater structures and new testing.
- **9:47 PM – Adjourn Meeting**
 - M. Phillips moved to adjourn; G. Bacon 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: 9/8/2022 Jessica G. Gugino



August 25, 2022

Jon Schmalenberger, Chair
Conservation Commission
Town of Ayer
1 Main Street
Ayer, MA 01432

Via Email: concom@ayer.ma.us

Dear Chair Schmalenberger and Members of the Conservation Commission,

On behalf of Mass Audubon, I submit the following comments regarding the proposed development known as Stratton Hill, located off of Wright Road, based on the Preliminary Subdivision plan submitted on June 9, 2022.

Our organization has been involved in the many phases of this development on the Groton/Ayer town line for over a decade. Mass Audubon's Rocky Hill Wildlife Sanctuary in Groton was a negotiated result of an earlier phase of this development project. This same sanctuary abuts the Stratton Hill project.

There are several points that Mass Audubon would like to raise to the attention of the Conservation Commission and Planning Board.

The project site is part of a large, contiguous habitat area that is important for many native species, most notably the Blanding's turtle, a state-listed Threatened Species. It is important that all feasible measures be taken in the project design, construction and operation to avoid, minimize and mitigate potential harms to the Blanding's Turtle population present in this area. This population is among the most important in the state for this species, and its conservation is a high priority for the state and local environmental community. Blanding's turtles, are long-lived and reproduce very slowly. One of the greatest threats to their populations is road mortality, and females are most vulnerable as they travel across uplands seeking nesting sites. The loss of even one breeding female can be highly detrimental to the long-term persistence of a population such as the one present in the area of Stratton Hill. Subdivision designs that minimize the potential for road crossings are essential. When road construction is unavoidable, the design must facilitate the safe movement of turtles across roads, (e.g. no vertical curbing).

To reduce the risk of road mortality, it is essential that Blanding's turtles be able to meet all of their habitat needs within the undeveloped lands including Rocky Hill Wildlife Sanctuary. Extensive wetlands and numerous vernal pools in the Rocky Hill area provide excellent habitat





for most of the population's requirements, except, critically, only limited or marginal-quality nesting habitat. Recognizing the high mitigation value of nesting habitat, the Natural Heritage and Endangered Species program (NHESP) required Fox Meadow Realty Corp. to construct two turtle nesting sites within the area under the terms of their 2005 Conservation and Management Permit for the earlier subdivision phase. The subdivision in Groton was constructed but the turtle nesting areas have not been created. Nesting areas should be provided as part of this new phase of development. To facilitate the construction of ecologically important (and NHESP-mandated) turtle nesting sites, Mass Audubon offers technical assistance and land to host these features. Consultation on siting and design details would be needed prior to finalization of any permit conditions (from the town or the state) associated with such mitigation. We welcome these anticipated discussions and hope that all parties can coordinate to support the Blanding's turtle population in the area.

We appreciate the Conservation Commission's careful consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Madson".

Jennifer Madson
Regional Director - Central
Mass Audubon

Cc: Lauren Glorioso, Endangered Species Review Biologist, NHESP
Jonathan Kranz, Chair, Ayer Planning Board

