

Town of Ayer

SPECIAL TOWN MEETING WARRANT

Ayer Shirley Regional High School Auditorium
141 Washington Street, Ayer, MA 01432
October 28, 2019 @ 7:00 P.M.

Commonwealth of Massachusetts
Middlesex, ss.

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Ayer qualified to vote in Town Elections and Affairs to meet at the Auditorium in the Ayer Shirley Regional High School located at 141 Washington Street, Ayer, Massachusetts on Monday, the Twenty-eighth (28th) day of October, 2019, at seven o'clock in the evening (7:00 p.m.) then and there to act on the following articles:

Hereof fail not and make due return of this warrant with your doings thereof to the Town Clerk before the date appointed for said meeting.

Given under our hands this 1st day of October AD 2019.

Scott A. Houde, Chair

Jannice L. Livingston, Vice Chair

AYER BOARD OF SELECTMEN

Any persons needing disability related assistance (such as signing, etc.) at the Town Meeting please contact the Selectmen's Office at 978-772-8220 before October 18, 2019. We shall make every reasonable effort to assist you. Large print version of the text of this warrant is available upon request.

ARTICLE 1: PAYMENT OF PRIOR YEAR BILLS

To see if the Town will transfer from Free Cash and appropriate the following amount to pay unpaid bills of Fiscal Year 2018 and Fiscal Year 2019, as authorized under General Laws Chapter 44, or take any action thereon or in relation thereto:

<u>Department</u>	<u>Vendor</u>	<u>Fiscal Year</u>	<u>Amount</u>
Police	Terranova Auto Body	FY 2018	\$200.60
DPW-Solid Waste	Casella Recycling	FY 2019	\$4,972.31

Explanatory Note: This Article would authorize the Town to pay two prior year bills.

Sponsor: Board of Selectmen (Recommends 2-0; 10/1/19)

Finance Committee: To Report at Town Meeting

9/10ths Vote Required

ARTICLE 2: TRANSFER BORROW AUTHORIZATION FOR SPECTACLE POND WATER TREATMENT PLANT-IMPROVEMENTS FOR REMOVAL OF PERFLUORINATED ALKYL SUBSTANCES (PFAS)

To see if the Town will vote to transfer the unexpended borrowing authorization totaling \$3,570,000 as voted under Article 14 of the May 14, 2018 Annual Town Meeting, Grove Pond Water Treatment Plant – Improvements for the Removal of Perfluorinated Alkyl Substances (PFAS) to pay for the improvements needed for the removal of PFAS at the Spectacle Pond Water Treatment Plant, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Finance Committee: To Report at Town Meeting

Simple Majority Vote Required

Explanatory Note: This Article would transfer the unexpended borrowing authorization totaling \$3,570,000 from Article 14 of the May 14, 2018, Annual Town Meeting for the Grove Pond Water Treatment Plant Improvements for PFAS removal and transfer it for the purposes of the Spectacle Pond Water Treatment Plan Improvements for PFAS removal. Since the May 14, 2019, Annual Town Meeting, the U.S. Army has entered into a grant agreement with the Town to pay for the construction of the Grove Pond Water Treatment Plant Improvements for PFAS removal.

ARTICLE 3: BORROW AUTHORIZATION FOR THE PARKS AND RECREATION BUILDING

To see if the Town will vote to authorize the Treasurer, with the approval of the Board of Selectmen, to borrow the sum of \$250,000 for the purpose of funding the construction of the Parks and Recreation Building to be located at Pirone Park, including demolition and site preparation costs and costs incidental or related thereto. Any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to

the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Finance Committee: To Report at Town Meeting

Two-Thirds Vote Required

Explanatory Note: This Article would authorize the borrowing of up to \$250,000 for the purposes of funding and awarding the bid to construct the Parks and Recreation Building to be located at Pirone Park. The Parks Commission voted to endorse this funding on 9/19/19.

ARTICLE 4: AMEND SECTION 10.1 OF THE AYER ZONING BYLAW (Yield Plan Requirements)

To see if the Town will vote to amend the Ayer Zoning Bylaw, Section 10.1, Open Space Residential Development, by deleting the strikethrough bold text and inserting the **underlined bold text** as follows:

10.1.1 Purpose

The primary purpose of this Section 10.1 is to preserve the open space resources of the Town of Ayer. This is necessary for the protection of the Town's water resources and other unique environmental assets. This Section 10.1 is also intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design.

The Town encourages the use of Open Space Residential Development (OSRD) because it results in the preservation of contiguous open space and important environmental resources, while allowing design flexibility. OSRD reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, hilltops, and historically significant areas.

To encourage this type of development, OSRD is allowed by right, subject ~~only~~ to this Section, **applicable provisions of the Ayer Zoning Bylaw**, and the requirements of the Planning Board's Regulations Governing the Subdivision of Land. An OSRD that does not require approval as a subdivision is allowed by right subject to Site Plan approval by the Planning Board. In order to encourage small subdivisions to follow OSRD principles, there is no minimum parcel size or number of lots required for an OSRD.

10.1.4 Maximum Number of Dwelling Units

The maximum number of residential units in an OSRD is determined through submission of a "Yield Plan," which is essentially a plan meeting most of the standards of a Preliminary Subdivision Plan according to Ayer's Rules and Regulations Governing the Subdivision of Land, with some additional information as described below. The Yield Plan shall show the maximum number of lots and/or dwelling units ("base lot / unit yield") that could be placed upon the site in a

conventional subdivision, in full conformance with all applicable provisions of the Ayer Zoning Bylaw, Subdivision Regulations, state and local health laws and regulations, the Massachusetts Wetlands Protection Act, local Wetlands Protection Bylaw and other applicable requirements.

The Yield Plan and Preliminary Subdivision Plan may be submitted at the time of Preliminary Plan application, or, in cases when a Preliminary Subdivision Plan is not submitted, the Yield Plan shall be submitted with the Definitive Subdivision Plan application. In cases where a proposed development does not involve subdivision of the original tract of land in an OSRD application, a Yield Plan shall still be required.

No land that is unusable for building due to being subject to an easement, or otherwise legally restricted, shall be included as land available for development. The applicant shall have the burden of proof to demonstrate that the maximum number of lots and dwelling units resulting from the design and preliminary engineering specifications shown on the Yield Plan is feasible.

10.1.4. A. Yield Plan Requirements

1. Title and Name of Subdivision

2. A locus plan at a scale of one-inch equals 1,000 feet (1" = 1,000')

3. The zoning classification of the parcel being subdivided, including any zoning district boundaries.

4. The boundaries of the parcel being subdivided, reference point north, date, datum (NAD 83 and NAVD 88), scale and legend.

5. The names, addresses and telephone numbers of the record owner(s), the applicant, and the names, addresses, telephone numbers, stamps and signatures of the engineer and surveyor and/or landscape architect responsible for the preparation of the Plan.

6. Prominent landscape elements that might be contributory to the site's preserved open space network, including topographic features, open landscapes, woodlands, water and wetlands, as well as man-made cultural and historic resources. Publicly-available sources such as the MA Natural Heritage series, MA GIS Wetlands Resources mapping, MA Historical Commission and other sources, may be employed in this assessment. In cases where a professional wetland delineation has been prepared, such formal wetland delineation is preferable to general wetland locational information from publicly-available sources.

7. Locations of all existing and proposed features and amenities including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off-street parking areas.

8. All proposed lot lines with lot dimensions and land area, as well as proposed common areas. In cases where the proposed OSRD development involves any type of attached dwellings, the units shall be depicted with their approximate layout, location and applicable lot lines to the extent known at this preliminary stage. For the purpose of this item, "land area" is "lot area" as defined in the Ayer Zoning Bylaw. To facilitate this calculation on properties containing bodies of water or other areas excluded by the Bylaw from lot area calculations, applicants shall show gross parcel area and the area of any bodies of water, in addition to lot areas.

9. Topography of the land at two (2) foot contour intervals, based upon field survey. At the discretion of the Town Planner, and with the concurrence of the Planning Board, applicant may request submission of wider contour intervals, based upon US Geological Survey data, Natural Resources Conservation Service soils maps, MA Geographic Information System layers, or other publicly-available sources, as well as any existing topographic survey.

10. Existing and proposed lines and widths of streets, rights of way, sidewalks, access and utility easements, and other known encumbrances on the property.

11. Proposed roadway grades, which may be approximate if general topographic data per requirement 9. above is being used.

12. The approximate location and type of stormwater management facilities, drawn at the conceptual engineering level without design detail and data. All proposed major elements of the site system shall be indicated in their approximate future locations, whether closed collection and discharge, open retention/detention, natural stormwater flow, or bio-retention components. A narrative shall be provided summarizing the general approach to stormwater management on the site.

13. The proposed sanitary sewer system and water distribution system, drawn to a conceptual engineering level, accompanied by any available soils and hydrological information.

The Planning Board shall review the Yield Plan and make a Finding as to the base lot yield and/or dwelling units upon accepting a Preliminary Plan for consideration, or at the first meeting of the Public Hearing in cases where a Preliminary Plan is not submitted. The Planning Board shall provide its findings on lot and/or unit yield in writing to the applicant.

To be counted towards the base lot yield, a proposed building lot must meet applicable lot area, frontage and other dimensional requirements, and have enough non-wetland area, based on the information required by Section 10.1.4 A, to accommodate a dwelling while meeting all dimensional requirements.

Or take any action thereon or in relation thereto.

Planning Board: To Report at Town Meeting

Explanatory Note: The Planning Board has discovered that the existing formula, adopted as part of the comprehensive Zoning Bylaw Update of March 2018, is not serving the Town well in that it results in many more lots on a parcel undergoing subdivision than would be possible in a conventional subdivision plan, resulting in crowded subdivisions with greater use of common driveways, longer roads, and less flexibility in designating the best land to be preserved as open space. This Article would replace the existing formula used to calculate the number of lots within Open Space Residential Development (OSRD) subdivisions with provisions for a yield plan to do the same. Presentation to be made at Town Meeting.

ARTICLE 5: ZONING BYLAW AMENDMENT OF SECTIONS 2.0 DEFINITIONS; SECTION 5.3.2; AND APPENDIX A, TABLE OF USE REGULATIONS (Accessory Apartments)

To see if the Town will vote to amend the Ayer Zoning Bylaw, Section 2.0 Definitions; Section 5.3.2; and Appendix A, Table of Use Regulations by deleting the strikethrough bold text and inserting the **underlined bold text** as follows:

Add the following definition to Section 2.0 Definitions:

ACCESSORY APARTMENT: a dwelling unit subordinate in size and accessory to a detached single-family dwelling, which may be located within an owner-occupied single-family dwelling or in a structure accessory thereto, such as in an attached or detached garage or barn, upon the issuance of a Special Permit from the Zoning Board of Appeals (ZBA).

5.3.2 Residential Accessory Uses

The following shall be deemed accessory residential uses under this Bylaw:

- A. An accessory building, such as a garage for parking and storage of up to three (3) vehicles, not more than one of which shall be a commercial vehicle; or a barn, shed, or greenhouse.
- B. An accessory structure, such as gazebos, tennis courts or above-ground or below-ground swimming pools.
- C. ~~Home occupation~~ **Accessory apartment**, subject to the following requirements:

1. An accessory apartment is allowed only by Special Permit from the Zoning Board of Appeals;

2. There shall be not more than one accessory apartment on a lot;

3. The owners of the dwelling or property with the accessory apartment shall occupy one of the units as their principal residence, except for temporary absences of not more than six months. For the purposes of this Bylaw, "owners" shall be one or more individuals holding title to the property, and "principal residence" shall mean the owner's residence for voting and tax purposes;

4. The gross floor area of the accessory apartment shall not exceed twenty-five (25) percent of the gross floor area of the existing dwelling to a maximum of 750 sq. ft.;

5. The accessory apartment shall be designed so as to preserve the appearance of the existing single-family dwelling on the lot;

6. There shall be provided at least one off-street parking space for the accessory apartment in addition to parking for the principal dwelling. Off-street parking shall be located in a garage or carport, or in the driveway. In order to be eligible for an accessory apartment, the principal dwelling must be able to provide the required number of off-street parking spaces as required in Section 9.1.2 A. of the Ayer Zoning Bylaw. In no event shall off-street parking for an accessory apartment be located within a required yard area;

7. The accessory apartment shall not be held in, or transferred into separate ownership from the principal residence under a condominium form of ownership or otherwise;

8. Owners of Accessory Apartments approved under this section must file an affidavit with the Building Commissioner each year stating that the requirements of any Special Permit issued under this section, and any conditions of approval issued by the Zoning Board of Appeals, are still being met. Such affidavit is due within one month of the anniversary date of the decision of the Zoning Board of Appeals; and

9. Accessory apartments shall be discontinued and reincorporated into the principal residence if the property owner dies or transfers ownership of the principal dwelling, or when the accessory apartment ceases to be occupied; unless the Zoning Board of Appeals (ZBA) grants a new Special Permit for the changed circumstances.

10. Prior to submitting a Special Permit application with the ZBA, applicants must consult with the Building Commissioner to show that they have the ability to install an accessory apartment in conformance with this section. The letter of the Building Commissioner to the ZBA shall be considered part of the necessary application package for a Special Permit application.

Amend Appendix A, Table of Use Regulations, to incorporate Accessory Apartments as follows:

Under **RESIDENTIAL USES**, Accessory Apartments are allowed in the various zoning districts as follows:

A1: SPZ, A2: SPZ, GR: SPZ, DFBCD*: SPZ, MUT: SPZ, GB: SPZ, LI: N, I: N, HCS: N

**(DFBCD = Downtown Form-Based Code District that replaced 'Downtown Business' / DB)*

Where SPZ = Special Permit needed from the Zoning Board of Appeals

P = Permitted Use and N = Not Permitted

Or take any action thereon or in relation thereto.

Planning Board: To Report at Town Meeting

Board of Selectmen: (Recommends 2-0; 10/1/19)

Two-Thirds Majority Vote

Explanatory Note: This Article would provide provision for Accessory Apartments/Dwelling Units in the Ayer Zoning Bylaw. This is needed to help the Town fulfill its various housing needs. Presentation to be made at Town Meeting.

ARTICLE 6: ZONING BYLAW AMENDMENT OF SECTION 10.3 (Inclusionary Housing)

To see if the Town will vote to amend the Ayer Zoning Bylaw, Section 10.3, Affordable Housing, by deleting the strikethrough bold text and inserting the **underlined bold text** as follows:

10.3 ~~Affordable Housing~~ Inclusionary Housing

10.3.1 Purposes

The purposes of this section are to create housing that is affordable to low- or moderate-income households; ensure a diverse and balanced community, with housing available for households of all income levels as a matter of basic fairness; and provide reasonable cost offsets to developers who provide new affordable units.

10.3.2 Applicability and Density Bonuses

- A. This Section 10.3 applies in all districts to any development for five (5) or more townhouse or multi-family dwelling units. Developments shall not be segmented to avoid compliance with this Section 10.3. "Segmentation" shall mean divisions of land that would cumulatively result in an increase by five (5) or more dwelling units above the number existing on a parcel of land or contiguous parcels in common ownership twenty-four (24) months prior to the date of application. Where such segmentation occurs, it shall be subject to this Section 10.3.

- B. This Section 10.3 shall not apply to the rehabilitation or reconstruction of any building or structure that has been substantially destroyed or damaged by fire or other casualty, provided that any such rehabilitation or reconstruction that results in the addition of five (5) or more dwelling units above the number that previously existed on the lot shall be subject to this section.
- C. ~~For any other development~~, The Planning Board may approve up to two (2) additional market-rate units for each affordable unit provided by the applicant. For example, in a development that would normally be allowed to have ten (10) units under the district's dimensional and density requirements, two (2) shall be affordable units, and in exchange for providing two (2) affordable units, the applicant shall be eligible to request four (4) additional market-rate units, for a combined total of fourteen (14) units in the development. ~~In granting a special permit under this Section 10.3~~, The Planning Board shall have authority to modify the dimensional and density requirements that apply to the development in order to accommodate the additional units.

10.3.3 Basic requirements

- A. Minimum affordable housing requirement. In any development subject to this Section 10.3, at least one of every five (5) units shall be affordable housing.
- B. Affordability standards. Each affordable unit created under this Section 10.3 shall be sold or rented to and occupied by a household with income at or below eight (80) percent of area median income, as determined by the U.S. Department of Housing and Urban Development (HUD).
- C. Methods of providing affordable housing. Any development subject to this Section 10.3 shall provide affordable housing through one or more of the following methods, or any combination thereof:
 - 1. On-site units: affordable housing constructed on the same site as the proposed development. This is the preferred method of complying with the inclusionary housing requirement.
 - 2. Off-site units: affordable housing provided on a different site in the Town of Ayer.
 - 3. Payment of a fee in lieu of units: in lieu of providing on-site or off-site units, the applicant may make a cash contribution to the Ayer Housing Authority or another public, quasi-public, or non-profit housing development organization approved by the Planning Board. The fee per affordable housing unit shall be 2.5 times the HUD income limit for a qualified household of four persons.
- D. Location and comparability of affordable units.

1. On-site units shall be dispersed throughout the buildings and the floors of each building such that no single building or floor therein has a disproportionate percentage of affordable units.
 2. Affordable units, whether on-site or off-site, shall be comparable to market-rate units in exterior building materials and finishes, overall construction quality, energy efficiency, and amenities.
- E. Development Schedule. On-site and off-site affordable units shall be constructed in proportion to the number of market-rate units in the development. For every five (5) units for which a building permit has been issued, the applicant shall apply for and obtain a building permit for at least one (1) affordable unit, and the affordable unit shall meet the requirements for a certificate of occupancy before any additional building permits shall be issued for market-rate units. For example, if the applicant obtains building permits for four (4) units, the building permit for the fifth unit must be for an affordable unit, and so forth. When the applicant has been approved for a payment in lieu of units, the full payment may be made prior to the issuance of any building permits or paid in equal installments prior to the issuance of each building permit. The Planning Board may approve an alternative production schedule if it determines that such alternative serves the purposes of this Section 10.3.
- F. Affirmative Marketing. The selection of eligible homebuyers or renters for the affordable units shall be in accordance with an affirmative marketing plan approved by the Planning Board prior to the issuance of any building permits for the development. The affirmative marketing plan shall comply with DHCD regulations and guidelines that are in effect within six (6) months of the date that the affordable units will be ready for occupancy.
- G. DHCD Requirements. The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to approve the affordable units for listing on the Chapter 40B Subsidized Housing Inventory.

H. ~~Density Bonus.~~

- ~~1. For an OSRD, the density bonus for affordable units shall be as set forth in Section 10.1.~~**
- ~~2. For any other development, the Planning Board may approve up to two additional two (2) market-rate units for each affordable unit provided by the applicant. For example, in a development that would normally be allowed to have ten (10) units under the district's dimensional and density requirements, two (2) shall be affordable units, and in exchange for providing two (2) affordable units, the applicant shall be eligible to request four (4) additional market-rate units, for a combined total of fourteen (14) units in the development. In granting a special permit under this Section 10.3, the Planning Board shall have authority to modify the dimensional~~**

~~and density requirements that apply to the development in order to accommodate the additional units.~~

- I. Procedures.
 - 1. No building permit shall be issued for a development that is subject to this Section 10.3 unless the Planning Board **has granted any necessary approvals.**
 - 2. The ~~special permit~~ application shall include the information necessary to demonstrate compliance with all requirements of this Section 10.3:
 - a. Computation of the minimum required number of affordable units;
 - b. Computation of the density bonus;
 - c. A plan showing the proposed location of the affordable units in the development;
 - d. A table showing the proposed unit sizes and configurations of all units in the development, demonstrating substantial comparability between the proposed market-rate and affordable units;
 - e. The proposed affirmative marketing plan; and
 - f. The proposed affordable housing restriction and, for homeownership units, the proposed affordable housing deed rider, which may be DHCD's model deed rider.
- J. The special permit application, review, and decision procedures shall be in accordance with Section 3.4.
- K. Preservation of Affordability
 - 1. Affordable housing units shall be subject to an affordable housing restriction, which shall be in force in perpetuity or for the maximum period allowed by law, and shall be enforceable under the provisions of G.L. c. 184, §§ 31-32.
 - 2. No building permit for the development shall be issued unless an affordable housing restriction has been approved by the Planning Board and DHCD.
 - 3. For an affordable homeownership unit, no certificate of occupancy shall be issued until the applicant submits documentation acceptable to the Building Inspector that an affordable housing deed rider has been signed by the homebuyer and recorded at the Registry of Deeds.

10.3.4 Affordable Housing Regulations

The Planning Board may adopt rules and regulations in order to administer this Section 10.3. Such rules and regulations shall be on file in the Ayer Planning Department and the office of the Town Clerk.

Or take any action thereon or related thereto.

Planning Board: To report at Town Meeting

Board of Selectmen: (Recommends 2-0; 10/1/19)

Two-Thirds Vote Required

Explanatory Note: The purpose of this Article is to clarify that the provisions of the Affordable Housing section of the Zoning Bylaw apply to development proposals permitted by-right as well as by Special Permit.

ARTICLE 7: WETLANDS PROTECTION BYLAW AMENDMENT

To see if the Town will vote to amend the existing Wetlands Protection Bylaw (Bylaw 26) by deleting the entire existing Wetlands Protection Bylaw and replacing it with the following:

WETLANDS PROTECTION BYLAW

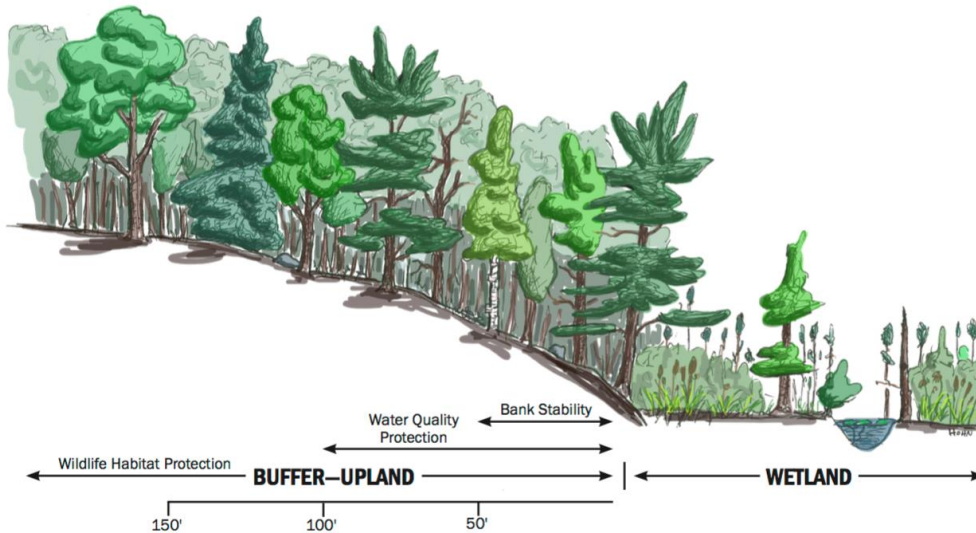
PREAMBLE

Wetlands are critically essential natural resources, performing numerous invaluable and irreplaceable ecological functions: protecting and improving water quality by filtering out sediments and pollutants; creating vital fish and wildlife habitats, including habitats for rare and endangered species; acting as a natural sponge to store floodwaters, reduce erosion, and protect or minimize flood damage to man-made structures and properties. These are in addition to the scenic values and recreational opportunities (swimming, fishing, boating, hiking, birding, hunting) provided by wetlands that shape and color the character of a community.

Of Ayer's total land area (approximately 6082 acres or 9.6 sq. miles), approximately 13.5% or 829 acres consist of surface wetlands and open water. Ponds are a dominant feature in Ayer, including Sandy Pond, where the Town Beach is located, and notably pristine Long Pond, both classified by the Commonwealth as 'Great Ponds'. Some of the ponds form a chained network that bisects Ayer. Several important streams also run through the town, with Nonacoicus Brook connecting the last of the chained ponds (Plow Shop) to the Nashua River – this portion of which was officially designated by Congress in 2019 as part of the National Wild & Scenic Rivers System – that forms most of Ayer's western boundary. Complex hydrological conditions below the surface add to this vast water system, tying surface wetlands to groundwater, river watersheds, aquifers, and floodplains.

Most importantly, all of Ayer's drinking water comes from its wetland resources. With all of the valuable functions and ecosystem services that wetlands and their adjacent upland

areas provide, their healthy preservation is critical to the maintenance of Ayer’s ecosystem, community character, and even the preservation and enhancement of property values for individual residents. Passage of the Massachusetts Wetlands Protection Act in 1972 laid a basic groundwork for protection, but as development pressures increase throughout the Commonwealth, individual communities benefit from added protections to best meet their own specific needs.



Wetland resource areas are defined by the presence of highly specific soils and plant communities. The first 50’ of upland buffer adjacent to a wetland provides soil or bank stability. The first 100’ adjacent to a wetland provides water quality protection. The entire upland buffer and beyond provides important wildlife habitat protection. This graphic for information only.

SECTION 1: PURPOSE

- A. The purpose of this bylaw is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas in the Town of Ayer by managing activities determined by the Ayer Conservation Commission (the “Commission”) as likely to have a significant or cumulative adverse impact on resource areas. This includes but is not limited to the protection of the following interests and values: public or private water supply, aquifer and groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, wildlife and wildlife habitat, rare plant or animal species and habitat, agriculture and aquaculture, and recreational and aesthetic values deemed important to the community (collectively, the “**resource area values protected by this bylaw**”). This bylaw is intended to use the Home Rule authority of the Town of Ayer to protect additional resource areas, interests and values to a greater degree than the Wetlands Protection Act (G.L. c. 131, § 40, the “Act”), and to implement, through local regulations and permits, additional standards and procedures stricter than those in the Act and its regulations (310 CMR 10.00 et seq.).

- B. The Commission will consider the environmental standards set forth by broader federal agencies (such as the U.S. Environmental Protection Agency or U. S. Army Corps of Engineers) and legislation protecting wetlands and wetland habitat (such as the Clean Water Act and the Endangered Species Act). The Commission will consider environmental standards and permitting requirements put forth by other state agencies– such as MassWildlife, the Natural Heritage & Endangered Species Program (NHESP),the Massachusetts Environmental Species Act (MESA), and the Massachusetts Environmental Policy Act (MEPA) and review process. Finally, the Commission will work to coordinate policies, regulations, and permitting standards with other Town of Ayer bylaws and regulations.

SECTION 2: JURISDICTION

- A. Except as permitted by the Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands, wet meadows, bogs, swamps, vernal pools, springs, banks, lakes, ponds of any size, beaches, and lands under water bodies; intermittent streams, brooks and creeks; or within the 100 foot Buffer Zone of any of the aforesaid resource areas; perennial rivers, streams, brooks and creeks, including Buffer Zone lands adjoining these resource areas out to a distance of 200 feet, known in the Act as the Riverfront Area; or any land subject to flooding (collectively the “**resource areas protected by this bylaw**”). Said resource areas shall be protected whether or not they border surface waters.
- B. The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Act’s regulations (310 CMR 10.04). Neither applications nor permits are therefore required in the case of this usage.
- C. An activity proposed or undertaken outside the resource areas and buffer zones protected by this bylaw is not subject to regulation and does not require the filing of a Notice of Intent unless and until that activity actually alters or detrimentally impacts a resource area subject to protection. In the event that such activity has in fact altered a resource area protected by this bylaw, the Commission shall impose through enforcement action such conditions on the activity or any portion thereof as it determines necessary to protect resource area interests.

SECTION 3: PRESUMPTIONS

- A. In reviewing activities proposed within the 100 foot Buffer Zone, the Commission shall consider the Buffer Zone as a resource area in its own right, and shall presume the Buffer Zone is important to the protection of adjacent resource areas because activities undertaken in close proximity to those areas have a high likelihood of

adverse impact, either immediately as a consequence of construction, or over time as a consequence of daily operation. Further, the Commission shall recognize the inner portion of the Buffer Zone as having a higher ecological value than the outer portion. Adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, alteration of hydrological or stormwater flow patterns, and loss of wildlife habitat.

- B. In reviewing activities proposed within the Riverfront Area, the Commission shall presume the Riverfront Area is important to the resource area values protected by this bylaw unless demonstrated otherwise. Applicants must prove by a preponderance of evidence that (1) there is no practicable or substantially equivalent economic alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant or cumulative adverse impact on the areas or values protected by this bylaw.
- C. The Commission shall presume that all areas meeting the definition of “vernal pools” under Section 9 of this bylaw, including the adjacent upland area, perform essential and valuable habitat functions that merit protection.

SECTION 4: EXEMPTIONS AND EXCEPTIONS

- A. The applications and permits mandated by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- B. The applications and permits mandated by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by, or has been ordered to be performed by, an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- C. The Commission also may specify “minor activities” within the 100-foot Buffer Zone to wetland resource areas and within the 200-foot Riverfront Area as exempt from the application and permitting process. Further details and specifications will be found in 310 CMR 10.02(2)(b)1 & 2 and the Commission’s regulations.
- D. Prior to the commencement of a project, if there is a question as to whether an activity is in fact minor in scope, an informal assessment by the Conservation Administrator or a Commission review through a Request for Determination of Applicability (“RDA”) is recommended.
- E. This bylaw and the regulations adopted by the Commission shall apply in all instances where they are more stringent than the provisions of the Wetlands Protection Act (G.L. c. 131, §40) and the Department’s regulations (310 CMR 10.00, et seq.).

SECTION 5: APPLICATIONS AND FEES

- A. Review and permit applications, including but not limited to:
 - a. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may submit a written RDA to the Commission. An RDA is a request for the Commission to review a proposed activity and issue a Determination of Applicability (“DOA”) stating whether the activity is subject to this bylaw.
 - b. A Notice of Intent (“NOI”) is an application for an Order of Conditions (“OOC”) permit to conduct an activity subject to this bylaw.
 - c. An Abbreviated Notice of Resource Area Delineation (“ANRAD”) is a request for the Commission to certify through an Order of Resource Area Delineation (“ORAD”) the location and extent of a resource area as defined under this bylaw.
 - d. An Amendment to an Order of Conditions is an application to modify the scope of a previously permitted activity.
- B. Written applications shall be filed with the Commission to perform activities in or affecting resource areas, as set forth in Section 2 of this bylaw. Permit applications shall be filed with the Commission in accordance with the procedures and requirements of the Act and 310 CMR 10.00 et. seq., as well as any further procedures adopted by the Commission through this bylaw and/or its regulations. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

- C. An application will not be considered complete, unless and until the applicant pays the appropriate filing fee in accordance with 310 CMR 10.03(7) and 310 CMR 4.00 et seq. Applications may be subject to a local filing fee, as imposed by the Commission through its regulations.
- D. Coordination with other boards: In order for a permit application to be considered complete, the Commission and/or its Administrator reserve the right to exercise a 14-day period for the solicitation of feedback and comments from other Town departments and officials including, but not limited to, any of the following: the Board of Selectmen, Town Planner, Planning Board, Zoning Board of Appeals, Board of Health, Department of Public Works, Town Engineer, Building Inspector, and Office of Community and Economic Development. In addition, comments may be solicited by the Commission from an adjoining municipality's conservation commission if the application or RDA pertains to property within 300 feet of that municipality. In the case of large and complex project applications, applicants may be required to provide additional copies of applications and plans to other departments and officials for this purpose.
- E. Outside consultants:
- a. Upon receipt of a permit application or RDA, or at any point during the hearing process, the Commission may require the imposition of reasonable fees upon an applicant for the employment of outside consultants, engaged by the Commission, for expert assistance in the review of proposed projects so as to assist the Commission in reaching a final decision on an application. Outside consultants can include engineers, wetlands scientists, wildlife biologists, and other professionals, and their services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeological and drainage analysis; advising on environmental or land use law; and to aid in the ongoing monitoring or evaluation of a particularly complex project. The cost for the outside consultant shall be borne by the applicant as provided in G.L. c. 44, §53G.
 - b. Pursuant to regulations adopted by the Commission, as well as the "Rules for Hiring Outside Consultants under G.L. c. 44 §53G" adopted as policy by the Commission in May 2017, consultant fees shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. The entire fee must be received before the initiation of consulting services.

- c. Additional consultant fees may be requested where the required review is more expensive than originally calculated or where new information requires additional consultant services.
 - d. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal.
 - e. An applicant may appeal the selection of an outside consultant to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified.
 - f. The Commission shall return any unused portion of the consultant fee to the applicant upon completion of the consultant's services.
- F. The Commission may waive the filing fee, consultant fee, and/or costs and expenses for a permit application or RDA filed by, or for, a town department.
- G. Any application can be withdrawn by an applicant at any time, without prejudice.

SECTION 6: NOTICE AND HEARINGS

- A. Any person filing a permit or other application (i.e. NOI, ANRAD) or other request (such as an Amendment to an OOC) with the Commission at the same time shall give to all abutters (as described below) written notice thereof, by certified mail (return receipt requested), by certificates of mailing, or by hand delivery (with signed and dated receipt), to their mailing addresses shown on the most recent applicable tax list of the Assessor's office. These abutters include owners of bordering land, owners of land opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property lines of the applicant, including any in another municipality or across a body of water. Excluded from the abutter notification process are RDAs, Extensions to Orders of Conditions and Requests for Certificates of Compliance.
- B. The notice shall briefly describe the project and state where copies of the applications and plans may be examined or obtained by abutters. It shall include the date of any Commission hearing or meeting if known. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.
- C. When an applicant is someone other than the property owner, the application, the notice of the hearing or meeting, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

- D. Upon receipt of a completed permit application, the Commission shall open the public hearing or meeting within 21 days from receipt of a completed permit application, NOI, Amendment to OOC, RDA, or ANRAD unless an extension is determined to be necessary, and agreed to in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its own discretion or in response to comments and recommendations that it deems persuasive as received from abutters or concerned residents, from the boards and officials listed in Section 5D above, or from outside consultants (Section 5E above). If permission for a continuance or postponement is not granted, the Commission may deny the permit if it believes the applicant cannot provide sufficient information to the Commission for purposes of conducting a proper review of a project subject to this bylaw.
- E. The Commission shall conduct a public hearing on any permit application, NOI, ANRAD, or Amendment to an Order of Conditions with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality.
- F. An RDA does not require abutter notification or the publication of written notice in the newspaper.
- G. The Commission shall issue its decision on the application in writing within 21 days of the close of the public hearing or meeting unless an extension is authorized in writing by the applicant, or pending confirmed receipt of other forthcoming and required state and/or federal permits.
- H. The Commission may combine its hearing under this bylaw with the hearing conducted under the Act and its regulations. Notice of a hearing so combined shall not be considered defective solely because it fails to make reference to this bylaw.

SECTION 7: PERMITS AND CONDITIONS

- A. If the Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water use which will result therefrom, are likely to have a significant individual or cumulative adverse effect upon the wetland resource area values and interests protected by this bylaw, the Commission shall, within 21 days of the close of said hearing, issue or deny an OOC or other permit for the activities requested. No conditions shall be imposed, nor shall the Commission, in reference to this bylaw, render any determination unless the Commission meets with a quorum present.
- B. The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this bylaw. The Commission may also deny a permit or Order of

Conditions: a) for failure to submit necessary information and plans requested by the Commission; b) for failure to comply with the procedures, design specification, performance standards, and other requirements in regulations of the Commission; c) for failure to avoid, minimize or mitigate unacceptable significant or cumulative adverse effects upon the resource area values and interests protected by this bylaw; d) for where, in its judgment, such denial is necessary to preserve environmental quality of either or both to the subject lands and contiguous lands; or e) for where it finds that no conditions are adequate to protect such values and interests. The Commission in its sole discretion may consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

- C. In any permit or OOC it approves, the Commission shall impose conditions which it determines necessary or desirable to protect said resource area values and interests, and all activities shall be done in compliance with those conditions. In imposing conditions, the Commission shall consider the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, which have resulted from past activities, permitted and exempt, or which may result from foreseeable future activities.
- D. To prevent resource area loss, the Commission shall require applicants to avoid wetlands alteration whenever feasible; to minimize wetlands alteration; and, where alteration is unavoidable and has been minimized, to provide required mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure long-lasting success in light of historically common rates of replication failure.
- E. The Commission may also grant an OOC for projects within wetland resource areas if it determines that the granting of such an OOC will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations and/or proposed mitigation measures, the interests of this bylaw will be maintained.
- F. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, regardless of the type of resource area, natural vegetation, or the amount or type of alteration proposed. The imposition of a wildlife habitat study may be based upon the Commission's determination of the importance of the habitat area, with consideration of, but not limited to, proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who meets the qualifications set out in 310 CMR 10.60.
- G. At its own discretion, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in

writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

- H. A permit, OOC, DOA, or ORAD shall expire three years from the date of issuance. At its discretion, the Commission may renew any such permit for one or more additional periods of up to three years, provided that a request for a renewal is received in writing by the Commission at least 21 days prior to expiration.
- I. A permit may identify requirements which shall be enforceable for a stated number of years, in perpetuity, or until permanent protection is in place, and these requirements shall apply to current and subsequent owners of the land affected thereby. Amendments to permits, OOCs, DOAs, or ORADs shall be processed in accordance with the procedures of the Act, 310 CMR 10.00 et seq. and MassDEP Policy 85-4.
- J. The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, OOC, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.
- K. For good cause the Commission may revoke any permit, OOC, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to Section 6A and B above, and after a public hearing.
- L. No work proposed in any application shall be undertaken until the permit, OOC, or ORAD issued by the Commission with respect to such work has been recorded in the Middlesex County South Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded.

SECTION 8: REGULATIONS

After public notice and public hearing, the Commission shall enact regulations to carry out the purposes of this bylaw, effective when approved by vote of the Commission and filed with the Town Clerk. Failure by the Commission to put forward such rules and regulations, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and establish procedures, design specifications, performance standards, and other measures and safeguards. Stricter standards may also be employed for jurisdictional lands and

waters within the Petapawag and Squannissit Areas of Critical Environmental Concern (ACEC), as designated by the Massachusetts Executive Office of Energy and Environmental Affairs.

SECTION 9: DEFINITIONS

Unless otherwise defined in this bylaw or regulations promulgated by the Commission, the definitions set forth in the Act and 310 CMR 10.00 et seq. shall apply to this bylaw.

The following definitions shall apply in the interpretation and implementation of this bylaw:

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION (ANRAD)

This form (WPA Form 4A) provides a public hearing procedure for an applicant to confirm the precise boundaries of bordering vegetated wetlands (BVW) or other resource areas. The permit issued under an ANRAD is an Order of Resource Area Delineation, or ORAD, which must be recorded at the Registry of Deeds.

ABUTTER

Shall mean, owners of land bordering the subject property, owners of land directly opposite on any public or private street or way, and abutters to abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.

ADJACENT UPLAND RESOURCE AREA

Shall include lands within 100 feet of any freshwater wetland; marsh; flat; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake or pond of any size; creek; intermittent stream; beach or land under water bodies; and lands within 200 feet of perennial rivers and streams.

AGRICULTURE

Shall refer to the definition as provided by GL c. 128 §1A.

ALTER

Shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- 1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- 2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- 3) Drainage, or other disturbance of water level or water table;
- 4) Dumping, discharging, or filling with any material which may degrade water quality;
- 5) Placing of fill, or removal of material, which would alter elevation;

- 6) Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
- 7) Placing of obstructions or objects in water;
- 8) Destruction of vegetation including cutting, trimming, or removal of trees and shrubs;
- 9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- 10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- 11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas and values protected by this bylaw.

AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC)

Areas crossing multiple towns and given special recognition for the quality, uniqueness and significance of their natural and cultural resources are designated as ACECs by the Mass. Executive Office of Energy and Environmental Affairs. In order to better preserve, restore, and enhance critical environmental resources/resource areas in the Commonwealth, ACECs receive increased environmental oversight through additional state permitting standards, elevated performance standards, and lowered thresholds for review.

BANK

Shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

BUFFER ZONE

See definition for **ADJACENT UPLAND RESOURCE AREA** above.

FRESHWATER WETLAND

Shall include all wetlands whether or not they border on a water body. For the purposes of this bylaw, lakes or ponds of any size, all bordering vegetated wetlands, as well as isolated vegetated wetlands shall be protected.

LAND SUBJECT TO FLOODING

Shall include lands subject to the temporary inundation of water, whether by stormwater, groundwater or surface water, including a rise or expansion in the surface of an existing body of water, such that land not usually covered by water is flooded.

MINOR ACTIVITIES

Shall refer to those activities within the Buffer Zone (but not within other resource areas identified as jurisdictional by this bylaw) that are temporary in nature, have negligible immediate impact, and do not have adverse impacts to adjacent resource areas. Per the guidance established in 310 CMR 10.02(2)(b)1 & 2, the Commission

shall, in its regulations, provide examples of minor activities that do not require Commission review. Factors to consider when measuring the potential for adverse impacts include the extent of the work and/or ground disturbance, the proximity to adjacent resource areas, the need for erosion controls, and the measures employed to prevent adverse impacts to resource areas during and following the work.

NOTICE OF INTENT (NOI)

This form (WPA Form 3) is filed by an applicant who proposes to do work within 100 feet of a wetland resource area or within 200 feet of a river or stream protected by the Massachusetts Wetlands Protect Act or the Ayer Wetlands Protection Bylaw. The permit issued under an NOI is an Order of Conditions, or OOC, which must be recorded at the Registry of Deeds.

PERSON

Shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

POND (Inland)

Per 310 CMR 10.04, shall refer to any open body of fresh water, either naturally occurring or human-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended ‘advisory’ or ‘severe’ drought, per the Massachusetts Executive Office of Energy and Environmental Affairs. The following human-made bodies of open water shall not be considered ponds:

- 1) Basins or lagoons which are part of wastewater treatment plants;
- 2) Swimming pools or other impervious human-made basins;
- 3) Individual gravel pits or quarries excavated from upland areas at active construction sites, unless inactive for five or more consecutive years;
- 4) Stormwater impoundments such as retention or detention basins.

RARE SPECIES

Shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA)

This form (WPA Form 1) is filed by a person desiring to know whether or not a proposed activity, or an area, is subject to this bylaw. An RDA can also be filed by any person, as defined above that wishes to know if wetlands exist within 100 feet of a site proposed for development. Minor projects within the 100-foot buffer zone are also considered under this filing category. The permit issued under an RDA is a Determination of Applicability or DOA.

VERNAL POOL

- 1) Shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.
- 2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or ½ of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this bylaw.

WILDLIFE HABITAT

Shall mean those areas that due to their plant community, composition and structure, hydrological regime, or other characteristics, provide important food, shelter, migratory or over-wintering areas, or breeding areas for wildlife.

Except as otherwise provided in this bylaw or in associated regulations of the Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (GL c. 131 §. 40) and regulations (310 CMR 10.00).

SECTION 10: SECURITY

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or both of the following methods:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- B. By accepting a Conservation Restriction, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Ayer, acting through the Commission.

SECTION 11: ENFORCEMENT; SITE INSPECTIONS

- A. No person without written authorization from the Commission shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.
- B. In order to carry out its duties under this bylaw, whether reviewing an application submitted for permitting or monitoring compliance with an Order of Conditions or other permit, the Commission and/or its agents, will need to perform site inspections from time to time by entering land privately owned by an applicant or serving as a project site. When site inspections, surveys or sampling are determined to be necessary, the Commission and/or its agents shall enter the privately owned subject land at reasonable times and with the prior notification and consent of the property owner. Failure to provide consent may be grounds for the Commission to a) deny a permit application on the grounds of inadequate review; b) seek an administrative search warrant for permission to enter; or c) revoke an open OOC if it is determined to be necessary. Such site inspections shall at all times be subject to the constitutions and laws of the United States and the Commonwealth.
- C. The Commission is authorized to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, administrative orders/warrants, non-criminal citations under GL c. 40 § 21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- D. In addition to any other remedy available in law or in equity, any person who violates any provision of this bylaw, regulations, permits, or administrative orders issued thereunder, may, at the option of the Commission, be subject to noncriminal prosecution and fines up to a maximum of \$300, pursuant to GL c. 40 § 21D and adopted by the Town of Ayer in Article LIII of its general bylaws. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall also constitute a separate offense.
- E. As per Article LIII of the general bylaws, the provisions of this bylaw and regulations, or of any permit or order issued thereunder, may be enforced by the Commission, by its agents, by a Commissioner so authorized by vote of the Commission, or by any police officer of the Town. The Commission may request the Board of Selectmen and Town Counsel to take legal action for enforcement under

civil law. The Commission may request the Chief of Police to take legal action for enforcement under criminal law.

SECTION 12: BURDEN OF PROOF

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative adverse effects upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or at the Commission's discretion, to continue the hearing to enable the applicant or others to present additional evidence.

SECTION 13: APPEALS

A decision of the Commission shall be reviewable in the superior court in accordance with GL c. 249 § 4.

SECTION 14: RELATION TO THE WETLANDS PROTECTION ACT

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Act and regulations thereunder. It is the intention of this bylaw that the purposes, jurisdiction, presumptions, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Act and regulations.

SECTION 15: SEVERABILITY

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

Or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Conservation Commission: Recommends (9/26/2019) Simple Majority Vote Required

Explanatory Note: This Article would strike the Town's existing Wetlands Protection Bylaw and replace it with the bylaw set forth in this Article. Presentation to be made at Town Meeting.

ARTICLE 8: COMMUNITY PRESERVATION ACT SURCHARGE

To see if the Town will vote to amend its acceptance of the Community Preservation Act, General Laws Chapter 44B, Sections 3 through 7 inclusive, originally approved under Article 2 of the February 15, 2001, Special Town Meeting and accepted at the April 23,

2001, Annual Town Election; by increasing the surcharge on real property from 1% to 3% beginning in Fiscal Year 2021, such amendment to become effective upon the approval by the voters at the 2020 Annual Town Election; or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)
CPC: (Recommends 9/24/19)

Simple Majority Vote Required

Explanatory Note: This Article is the first step of a two-step process to increase the Town's Community Preservation Act Surcharge on real property from the existing 1% to 3%. Increasing to 3% makes the Town eligible for additional State matching CPA funds. If this Article passes, then voters will have to pass the increase by a ballot at the 2020 Annual Town Election.

ARTICLE 9: ZONING BYLAW AMENDMENT FOR THE WEST AYER VILLAGE FORM-BASED CODE

To see if the Town will vote to amend the Ayer Zoning Bylaw and Zoning Map by deleting the West Main Street General Business ("GB") District, and replacing it with a Form-Based Code District ("FBC"), and amending all Sections of the Ayer Zoning Bylaw, Sections 1.0 through 10.0 inclusive, including all Table headings, titles, etc. that reference the subject West Main Street General Business "GB" District throughout the Bylaw, so as to accommodate the proposed new West Ayer Village Form-Based Code District "FBC" as necessary throughout the Ayer Zoning Bylaw; Section 5.2 Table of Use Regulations and Section 6.2 Schedule of Dimensional Requirements, will also be amended to replace references to the subject West Main Street General Business District with the Form-Based Code District and address allowable uses and requirements; and further, to amend Section 5.2, Table of Use Regulations as follows to accommodate the proposed Form-Based Code district: Residential Use: 1.1 from (SPZ) to (SPB); 1.3 from (SPZ) to (P); 1.5 from (N) to (SPB); 1.9 from (SPZ) to (SPB); 1.10 from (SPZ) to (SPB); 1.11 from (SPZ) to (SPB); 4.3 from (P) to (SPB); 5.2 from (P) to (SPB); 5.14 from (P) to (N); with the full text of the proposed West Ayer Village Form-Based Code Zoning Bylaw on file in the Town Clerk's office; or take any action thereon or in relation thereto.

Planning Board: To Report at Town Meeting
Board of Selectmen: (Recommends 2-0; 10/1/19)

Two-Thirds Vote Required

Explanatory Note: The full text of the proposed West Ayer Village Form-Based Code Zoning Bylaw can be found on the Town of Ayer website at <https://www.ayer.ma.us>; and paper copies can be obtained at the Town Clerk's Office at the Ayer Town Hall. Presentation to be made at Town Meeting.

ARTICLE 10: STREET ACCEPTANCE – NASHUA STREET EXTENSION

To see if the Town will vote to accept as a Town public way, Nashua Street Extension, in the Town of Ayer, County of Middlesex, Commonwealth of Massachusetts, as heretofore laid out by the Board of Selectmen, as shown on a plan entitled "Lotting Plan prepared by Goldsmith, Prest and Ringwall," a copy which is on file with the Town Clerk.

And to see if the Town will further vote to authorize the Board of Selectmen to acquire by eminent domain, purchase, gift or otherwise the fee to or easements in said roadway, together with all related drainage, utility and other easements, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Simple Majority Vote Required

ARTICLE 11: STREET ACCEPTANCE – NORWOOD AVENUE

To see if the Town will vote to accept as a Town public way, Norwood Avenue, in the Town of Ayer, County of Middlesex, Commonwealth of Massachusetts, as heretofore laid out by the Board of Selectmen, as shown on a plan entitled “Elizabeth Estates Definitive Subdivision Plan prepared by David E. Ross Associates,” a copy which is on file with the Town Clerk.

And to see if the Town will further vote to authorize the Board of Selectmen to acquire by eminent domain, purchase, gift or otherwise the fee to or easements in said roadway, together with all related drainage, utility and other easements, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Simple Majority Vote Required

ARTICLE 12: STREET ACCEPTANCE – HAYMEADOW LANE; HOLLY RIDGE ROAD; AND APPLEBLOSSOM DRIVE

To see if the Town will vote to accept as a Town public ways, Haymeadow Lane from Station 9+00 to Station 20+73.53; Holly Ridge Road from Station 0+00 to Station 13+68.54; and Appleblossom Drive from Station 0+00 to Station 5+00 in the Town of Ayer, County of Middlesex, Commonwealth of Massachusetts, as heretofore laid out by the Board of Selectmen, as shown on a plan entitled “Ridge View Heights’ Definitive Subdivision Plan of Land in Ayer as prepared by David E. Ross Associates,” a copy which is on file with the Town Clerk.

And to see if the Town will further vote to authorize the Board of Selectmen to acquire by eminent domain, purchase, gift or otherwise the fee to or easements in said roadways, together with all related drainage, utility and other easements, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19)

Simple Majority Vote Required

ARTICLE 13: STREET ACCEPTANCE – HICKORY WAY AND HEMLOCK DRIVE

To see if the Town will vote to accept as a Town public ways, Hickory Way from Station 8+5 (Old Farm Way) to Woodland Way and Hemlock Drive from Station 0+00 (Littleton Road) to Station 9+50 (Hickory Way) in the Town of Ayer, County of Middlesex, Commonwealth of Massachusetts, as heretofore laid out by the Board of Selectmen, as shown on a plan entitled "Ridge View Heights' Definitive Subdivision Plan of Land in Ayer as prepared by David E. Ross Associates," a copy which is on file with the Town Clerk.

And to see if the Town will further vote to authorize the Board of Selectmen to acquire by eminent domain, purchase, gift or otherwise the fee to or easements in said roadways, together with all related drainage, utility and other easements, or take any action thereon or in relation thereto.

Board of Selectmen: (Recommends 2-0; 10/1/19) Simple Majority Vote Required

ARTICLE 14: BYLAW AMENDMENT – CHANGE DATE AND TIME OF ANNUAL TOWN ELECTION

To see if the Town will vote to amend Section 3 of Bylaw I (Town Meetings) by deleting the strikethrough bold text and inserting the **underlined bold text** as follows, said amendment to take effect on July 1, 2020:

ARTICLE I – TOWN MEETINGS

SECTION 1. The Annual Town Meeting shall be held on the fourth Monday of April each year. The Annual Fall Meeting shall be held at 7 o'clock in the evening on the fourth Monday in October of each year.

SECTION 2. Every Town Meeting shall be notified by Posting attested copies of the warrant calling the same in Three or more public places, one of which shall be the Town Hall, seven days at least before the day appointed for said Meeting.

SECTION 3. ~~The annual Meeting shall be called at seven o'clock in the forenoon and the polls shall remain open from five minutes past seven o'clock in the forenoon until eight o'clock in the afternoon. All business except the election of such officers and the determination of such matters as by law or vote of the town are required to be elected or determined by official ballot, shall be adjourned until seven o'clock on the evening of the second Monday of May each year for action thereon.~~ **The Annual Town Election shall be held on the second Tuesday of May with the polls open from 7am to 8pm.**

SECTION 4. The number of voters necessary to constitute a quorum at Town Meetings, except such parts of meeting as are devoted exclusively to the election of town officers, shall be fifty.

SECTION 5. Attendance at Town Meetings shall be limited to registered voters except that other specifically named persons shall be admitted upon request of any election officer of the Town, or by vote of the meeting, and school children of the Town may be admitted to a separate section reserved for them when space is available therefor.

SECTION 6. Authority of the Town Moderator: If in consideration of a warrant article at Town Meeting a two-thirds vote is required by statute for passage of such article, the Moderator may declare the vote to be a two-thirds vote without a count, provided, however, that if the vote is immediately questioned by one (1) or more voters, a count shall be taken; or take any action thereon or in relation thereto.

Sponsor: Board of Selectmen (Recommends 2-0; 10/1/19) Simple Majority Vote Required

Explanatory Note: This Article would change the date of the Annual Town Election from the current fourth Monday in April to the second Tuesday in May. This Article would take effect on July 1, 2020.

ARTICLE 15: BYLAW AMENDMENT – CHANGE DATE AND TIME OF THE ANNUAL TOWN MEETING

To see if the Town will vote to amend Section 1 of Bylaw I (Town Meetings) by deleting the strikethrough bold text and inserting the **underlined bold text** as follows, said amendment to take effect on July 1, 2020:

ARTICLE I - TOWN MEETINGS

SECTION 1. The Annual Town Meeting shall be held on the fourth ~~Monday~~ **Saturday** of April each year ~~commencing at 10 o'clock in the morning~~. The Annual Fall Meeting shall be held at 7 o'clock in the evening on the fourth Monday in October of each year.

SECTION 2. Every Town Meeting shall be notified by Posting attested copies of the warrant calling the same in Three or more public places, one of which shall be the Town Hall, seven days at least before the day appointed for said Meeting.

SECTION 3. The Annual Meeting shall be called at seven o'clock in the forenoon and the polls shall remain open from five minutes past seven o'clock in the forenoon until eight o'clock in the afternoon. All business except the election of such officers and the determination of such matters as by law or vote of the town are required to be elected or determined by official ballot, shall be adjourned until seven o'clock on the evening of the second Monday of May each year for action thereon.

SECTION 4. The number of voters necessary to constitute a quorum at Town Meetings, except such parts of meeting as are devoted exclusively to the election of town officers, shall be fifty.

SECTION 5. Attendance at Town Meetings shall be limited to registered voters except that other specifically named persons shall be admitted upon request of any election officer of the Town, or by vote of the meeting, and school children of the Town may be admitted to a separate section reserved for them when space is available therefor.

SECTION 6. Authority of the Town Moderator: If in consideration of a warrant article at Town Meeting a two-thirds vote is required by statute for passage of such article, the Moderator may declare the vote to be a two-thirds vote without a count, provided, however, that if the vote is immediately questioned by one (1) or more voters, a count shall be taken; or take any action thereon or in relation thereto.

Or take any action thereon or in relation thereto.

Sponsor: Board of Selectmen


Simple Majority Vote Required

Explanatory Note: This Article would change the date and time of the existing Annual Town Meeting from the second Monday in May at 7pm to the fourth Saturday in April at 10am. This Article would take effect on July 1, 2020.

A True Copy Attest: 
Susan E. Copeland, Town Clerk

Date: October 2, 2019

As directed in the foregoing warrant, I have this day posted three attested copies in three public places, one of which was the Town Hall, at least fourteen days before said meeting, all as herein directed.


Constable

Date: October 2, 2019