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TOWN OF AYER
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Town of Ayer
Board of Selectmen
Ayer Town Hall – 1st Floor Meeting Room
1 Main Street
Ayer, MA 01432



Tuesday January 7, 2020
Open Session Meeting Agenda

6:00 PM

Call to Order

Pledge of Allegiance; Review and Approve Agenda; Announcements

Public Input

6:05 PM*

Supt. Mark Wetzel, Dept. of Public Works

1. Contract for Wastewater Treatment Plant Upgrade
2. Update on East Main Street Reconstruction Project Right of Way Process
3. Payment of Prior Year Bill – Casella Waste – UDAG Fund

6:15 PM

**Public Hearing CDBG - Historic Ayer Fire Station Building, 14
Washington Street**

6:25 PM

Conservation Restriction – Kohler Place

6:30 PM

Vote to Open the 2020 Annual Town Election

6:35 PM

Town Manager's Report

1. Administrative Update/Review of Warrant(s)
2. FY '21 Budget Update
3. Health Benefits Buyout Program

6:45 PM

New Business/Selectmen's Questions

6:50 PM

Approval of Meeting Minutes

December 17, 2019

Adjournment

**Agenda times are for planning purposes only and do not necessarily constitute exact time*

DEPARTMENT OF PUBLIC WORKS

Mark L. Wetzel, P.E., Superintendent
Daniel Vas Schalkwyk, P.E. Town Engineer
Pamela J. Martin, Business Manager



25 BROOK STREET
AYER, MASSACHUSETTS 01432
T: (978) 772-8240
F: (978) 772-8244

MEMORANDUM

Date: January 2, 2020
To: Board of Selectmen
From: Mark Wetzel, Superintendent of Public Works
Dan Van Schalkwyk, Town Engineer
Subject: **Agenda Items for January 7, 2020 BOS Meeting**

1. **Contract for Wastewater Treatment Plant Upgrade** – Bids for Ayer Wastewater Treatment Facility - FY2019 Improvements were received and opened on December 5, 2019. This contract is a continuation of the Wastewater Treatment Plant Upgrade project and includes modifications to the existing Process Building to for the future sludge dewatering system, structural improvements, relocation of doors and windows, new walls, and HVAC, plumbing, and electrical improvements. The project also includes demolition of an existing belt conveyor system, modifications to the existing grit classifier, and site improvements.

We received two bids as follows:

Winston Builders Corp.	\$1,438,889.00
Waterline Industries Corp.	\$2,067,677.00

Winston Builders was determined to be the lowest qualified bidder. They are currently working on the Grove Pond PFAS Treatment Facility project and have previously worked on the Grove Pond Wellfield Upgrade project. We recommend that the Board execute the Contract Agreement with Winston Builders Corp. in the amount of \$1,438,889, for signature by the Chairman.

2. **Update on East Main Street Reconstruction Project Right of Way Process** – The East Main Street Reconstruction project is scheduled for bidding this spring. This project is funded and administered by MassDOT. As a project requirement, the Town must obtain construction easements from all abutters. I will give an update on the process, schedule, costs and required approvals.
3. **Payment of Invoice** - At Fall Town Special Town Meeting, Article 1 included Payment Of Prior Year Bills - DPW-Solid Waste Division- Casella Recycling FY 2019 \$4,972.31. It is my understanding that the Free Cash was not certified by this date so the Town Meeting Vote was not valid. Therefore I am requesting that the Board of Selectmen authorize payment with UDAG funds which will be replenished at the May Annual Town Meeting.

TOWN OF AYER, MA NOTICE OF PUBLIC HEARING (CDBG Grant 2020)

The Town of Ayer, through the Office of Community & Economic Development, will hold a public hearing at the Ayer Board of Selectmen's Meeting on Tuesday, January 21st, 2020 at 6:00 p.m. at Ayer Town Hall, 1 Main St., Ayer, MA 01432. The purpose of the Public Hearing is to provide opportunity for the residents of the Town of Ayer to discuss the proposed Federal FY 2020 Grant Application to the US Dept. of HUD Community Development Block Grant (CDBG) Program. Under the FY20 Community Development Fund-I grant proposal, the Town of Ayer intends to seek funding in the amount of \$800,000 related to the provision of six (6) additional low-to-moderate income housing units through the redevelopment of the (1934) Historic Ayer Central Fire Station Building located at 14 Washington Street, Ayer, MA, as well as, the advancement of a local Housing Rehabilitation Program. The grant application may include additional activities. The Public Hearing will also discuss possible target areas for grant activities.

The Public Hearing will be held at the Ayer Town Hall in the Selectmen's Meeting Room located at 1 Main Street, Ayer, MA 01432 for any person or organization so wishing will be afforded an opportunity to be heard. Suggestions for potential activities for future grant application, comments on the outcomes and the effectiveness of previous CDBG programs/projects awarded to the Town are encouraged. Comments can be made at the Public Hearing or prior to the Hearing by contacting the Ayer Office of Community & Economic Development in writing or in person at 1 Main Street, Ayer, MA 01432, and/or email at ahersey@ayer.ma.us/telephone at 978-772-8221. The Town encourages a broad spectrum of participation by residents and other interested parties in order to better understand and serve the needs of the community. The Hearing location is accessible to persons with physical disabilities. If you require a translator, an accommodation for a hearing impairment or other accommodation, contact the Ayer Community Development Office no later than 1:00 p.m., Wednesday, January 15th, 2020 by calling 978-772-8221.

The Town is an equal opportunity provider. To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Washington DC 20250-9410.

Alan S. Manoian AICP
Director, Ayer Office of Community and Economic Development
Town of Ayer, MA
978.772.8206
amanoian@ayer.ma.us

Town of Ayer

Office of Community & Economic Development

Town Hall ♦ One Main Street ♦ Ayer, MA 01432 ♦ 978-772-8206 ♦ Fax: 978-772-8208



To: Robert Pontbriand, Ayer Town Manager

From: Alan S. Manoian AICP, Dir. Community & Economic Development

Date: 12/2/2019

Re: Request Placement on Ayer BOS Agenda for January 7, 2020 to conduct Public Hearing on \$800,000 CDBG Grant Application for Ayer Historic Fire Station Redevelopment and thereby the provision of six (6) new affordable housing units in Downtown Ayer.

The Ayer Office of Community & Economic Development (AOCED) requests placement on the Ayer BOS Meeting Agenda for Tuesday, January 7th so as to conduct a brief Public Hearing required to proceed with an \$800,000 CDBG Grant application submission for the redevelopment of the Historic Ayer Fire Station Building and need for additional affordable housing in close proximity to public transportation in the Town of Ayer.

The completed \$800,000 CDBG grant application prepared by AOCED is due for submission to the Massachusetts Dept. of Housing & Community Development (DHCD) the last week of February 2020.



MEMORANDUM

TO: THE HONORABLE AYER BOARD OF SELECTMEN

FROM: AYER CONSERVATION COMMISSION

RE: CONSERVATION RESTICTION AT KOHLER PLACE

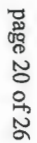
DATE: JANUARY 2, 2020

John W. and Stephanie C. Burns are granting a Conservation Restriction to the Town of Ayer on three parcels of land containing approximately 19.9 acres. The three parcels were created as part of the Kohler Place subdivision at the end of Wright Road. The land has frontage on Sandy Pond Road and on Sandy Pond. A plan of land is attached for illustration.

As a type of easement, a Conservation Restriction (CR) creates a permanent deed restriction on a parcel of land for the purposes of providing permanent protection against development and for the protection of shared public conservation values present on the land. A CR has monetary value, just as the restricted land has monetary value. The restricted land is owned separately from the CR. If these two interests in a parcel of land were owned by the same entity, they would instantly join back together through the legal principal of Merger. In the case of the Burns' conservation restriction, the Burns' will continue to own the restricted land and the Town, acting by and through its Conservation Commission, will own the CR itself. This CR does not include public access to the restricted land.

Owning a CR creates a legal responsibility for the Conservation Commission to monitor the boundaries of the restricted parcel annually and to address any encroachment by neighboring landowners. An example of encroachment is dumping grass clippings and other yard debris onto the restricted land. The Burns' CR boundaries with neighboring landowners are marked with "Land Under Conservation Restriction" signs mounted on posts on the property line. The signs provide a reminder to abutters that conservation land exists beyond the signs.

In Massachusetts, the Division of Conservation Services in the Executive Office of Energy and Environmental Affairs (EOEEA) oversees the creation of CRs by providing a model CR and technical assistance for the landowner and the holder of the CR. The Ayer conservation administrator worked closely with the Burns', the Conservation Commission, Town Counsel, and the Conservation Restriction Reviewer at the Division of Conservation Services to craft a CR that was acceptable to all parties involved. The final CR document is attached for review. The approval process for a CR includes gathering "local signatures" of the landowners (12/13/19), the Board of Selectmen (1/7/20), and the Conservation Commission (1/9/20). When the local signatures are in place, the CR goes onto the Division of Fisheries and Wildlife for the Director's signature. Fisheries and Wildlife will forward their signed document onto the Secretary of EOEEA for her signature. The document must then be recorded at the Registry of Deeds by the landowners.



Grantor: John W. Burns and Stephanie C. Burns
Grantee: Town of Ayer, acting by and through its Conservation Commission
Property Address: Sandy Pond Road, Ayer, Massachusetts
Grantor's Title: Book 65594, Page 153 in Middlesex South Registry of Deeds.

CONSERVATION RESTRICTION

We, John W. Burns and Stephanie C. Burns, a married couple (Owner of Land), both of 63 Wright Road, Ayer, Middlesex County, Massachusetts being all of the owners, for our successors and assigns holding any interest in the Premises as hereinafter defined (the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants to the Town of Ayer, with an address of 1 Main Street, Ayer, Middlesex County, Massachusetts, acting by and through its Conservation Commission pursuant to Chapter 40 Section 8C of the Massachusetts General Laws, its successors and permitted assigns (the "Grantee"), with quitclaim covenants, for consideration of \$10.00 paid, in perpetuity and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, on the entirety of a parcel of land containing approximately 19.9 acres, more or less, in the Town of Ayer, County of Middlesex, Commonwealth of Massachusetts (the "Premises"), which Premises is more particularly described in Exhibit A and shown on a plan entitled "Plan of Conservation Restriction in Ayer, Mass., owned by John W. and Stephanie C. Burns", Scale 1" = 100', dated June and August, 2016, prepared by David E. Ross Associates, Inc., and recorded in the Middlesex South Registry of Deeds herewith as Plan Book _____ as Plan _____ (the "Plan"), a reduced copy of which is attached hereto as Exhibit B. The Grantor and the Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction.

- I. PURPOSES: This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of the Conservation Restriction is to assure that the Premises will be retained in perpetuity substantially in its natural, scenic, and vegetated condition as set forth herein and to prevent any use of the Premises that will impair or interfere with the Conservation Values (as hereinafter defined) of the Premises. This Conservation Restriction supersedes but does not eliminate the Declaration of Restriction recorded on the Premises in the Middlesex South Registry of Deeds at Book 67898, Page 98. The conservation of the Premises will yield a significant public benefit for the following reasons:
 - a. Wildlife & Habitat Protection: Conservation of the Premises will protect habitat used by a variety of wildlife including, but not limited to, the Blanding's Turtle (*Emydoidea blandingii*), which at the time of this restriction is listed as Threatened pursuant to the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A:3 and its implementing regulations at 321 CMR 10.0). The Premises and their general vicinity have been delineated by the Massachusetts Division of Fisheries and Wildlife (hereinafter the "Division") as BioMap2

Core Habitat. BioMap2 Core Habitats are those areas of the Commonwealth of Massachusetts, which, if protected, will preserve state-listed rare species and exemplary natural communities for the future.

- b. Nearby Natural Areas: The Premises provide upland forest and wetland habitat for native wildlife and plant species and communities, including many species of native plants, lichens, mammals, birds, reptiles, amphibians, and invertebrates. The preservation of the forest and wetland resources on the Premises will protect these habitats. The Premises are adjacent to Sandy Pond and less than one half mile from Long Pond, both of which are classified by the Massachusetts Department of Environmental Protection as Massachusetts Great Ponds.
- c. Scenic Landscape Preservation: The Premises comprise part of a scenic landscape associated with a natural, undisturbed environment. The open space conservation land protected under this Conservation Restriction is an important public resource. The preservation of the Premises, by prohibiting significant alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment, and ecological value of the ponds.
- d. Flood Plain Protection: A portion of the Premises lies within a Federal Emergency Management Agency (FEMA) Regulated Floodway and within the FEMA 500-year floodplain between Long Pond and Sandy Pond. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- e. Water Quality Protection: Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas.
- f. Furtherance of Government Policy: Protection of the Premises furthers the Town of Ayer 2017 Open Space and Recreation Plan including the protection of the Town's most fragile resources, as the entirety of the Premises is identified as Core Habitat in the BioMap2 habitat assessment by the Division, as described above.
- g. Massachusetts Endangered Species Act ("MESA"): This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program ("Division") in a final determination pursuant to the MA Endangered Species Act dated August 30, 2011 and July 20, 2016 for File Number 05-17870 (hereinafter "Determination"). A copy of such Determination is attached hereto as Exhibit C-1 and Exhibit C-2.
- h. Other Relevant Purposes: The Conservation Values of the Premises and public benefits of this Conservation Restriction are described in more detail in the Baseline Documentation Report & Survey ("BDRS") to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that the BDRS provides an accurate representation of the condition and the objective information baseline at the time of the granting of this Conservation Restriction for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, in the event that the BDRS is unavailable, or is determined to be inadequate for resolving any issue that may arise after the granting of this Conservation Restriction, other evidence may be used to show the condition of the Premises at either the time of the grant or some subsequent point in time.

NHESP MESA Conservation Restriction

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the Conservation Restriction described herein is an appropriate means to ensure compliance with the Determination issued pursuant to MESA and achieve the community's open space goals and objectives, all of which thereby represent significant public benefits.

II. DEFINITIONS:

- a. Beach: shall mean the area of the shore or bank adjacent to and north of the Dock (see III(b)(xi), between mean low water and mean high water. The only activity permitted at the Beach shall be the hand-raking of debris blown against the shore or bank by wind action across Sandy Pond. No placement or replenishment of sand shall be permitted at the Beach.
- b. Conservation Values: shall mean, without limiting the generality of the term, those conservation attributes set forth above in Section I and as further described in the BDRS.
- c. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- d. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- e. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- f. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes motorized vehicles.

III. PROHIBITED USES & RESERVED RIGHTS:

- a. Prohibited Uses: Except as to reserved rights set forth in Section III(b.) below, the Grantor shall not perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:

- i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Premises;
- ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Premises, or the installation of underground storage tanks;
- iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users, which will not be unreasonably delayed or withheld.
- v. The application or use on the Premises of fertilizers, fungicides, herbicides or pesticides in any quantity;
- vi. The planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Premises, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
- vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
- viii. Any commercial recreation, other business or industrial use;
- ix. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Premises; and the storage or dumping of manure or other animal wastes; any agricultural use;
- x. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers and snowmobiles, except as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
- xi. The disruption, removal, or destruction of any stone walls or granite fences or posts;
- xii. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

- xiii. No person may damage, disturb or remove any part or portion of the Premises or any resource, real, natural, personal, cultural or historic, except through hunting, fishing, or trapping where permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife subject to MGL Ch 130, 101 and 321 CMR, or other written authorization from the Division of Fisheries and Wildlife; and
 - xiv. Any other use of the Premises or activity thereon which is inconsistent or interferes with, or that would materially impair the purposes or Conservation Values of this Conservation Restriction, unless necessary in an emergency for the protection of the Conservation Values that are the subject of this Conservation Restriction.
- b. Reserved Rights in the Premises: The Grantor reserves the right to conduct or permit the following activities provided they do not materially impair the Conservation Values or purposes of this Conservation Restriction or other significant interests:
- i. With prior written permission of the Grantee and Division, after consultation with and consistent with the advice of a professional biologist to ensure such use will not be detrimental to any state-listed species or other wildlife, the erection and maintenance of sight-pervious, non-enclosing, wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native species, provided, however, this will not impair the rights of Lots 1, 2, 3 and 4 to fence or landscape the perimeter or boundary lines of their respective properties and no permission is required for such perimeter control as long as the Conservation Restriction is honored;
 - ii. The right to install temporary or permanent boundary monuments; the right to erect and maintain small signs that provide information including identifying the Grantor and Grantee and Division provided that such signage is consistent with the purposes of this Conservation Restriction and does not identify the location or existence of any specific state-listed species on the Premises;
 - iii. The Grantor and its invitees are permitted to conduct non-commercial, passive recreational uses of the Premises, such as nature study, birding, wildlife observation, walking on existing trails, and similar passive recreation activities, provided such uses do not alter the topography, including, but not limited to the landscape or environmental qualities of the Premises;
 - iv. With prior written permission of the Grantee and Division, the right to remove or control hazardous trees, poison ivy, oriental bittersweet, other invasive or exotic species, insect infestations, diseases, and other types of pests by methods, including but not limited to, the use of spot-applied herbicides, fungicides and pesticides in a manner that minimizes damage to surrounding, non-target species and preserves water quality; such permission not to be unreasonably withheld or delayed.
 - v. With prior written permission of the Grantee and Division, the right to restore, maintain, enhance or otherwise manage biotic communities or habitats for native or rare species that include, but are not limited to, application of herbicide, selective planting of native species, cutting, prescribed burning or removal of native vegetation, forestry, and modification of soils. Where the Determination requires habitat restoration, maintenance or enhancement of rare species habitat, no written permission shall be required from the Grantee. All habitat restoration, maintenance

or enhancement of rare species habitat shall be done in accordance with the written permission of the Division, or applicable Determination requirements;

- vi. The marking, clearing, mowing or maintaining of footpaths and woods roads existing and shown on the Plan and described in the BDRS;

The right to continue to mow and/or clear existing cleared areas, only to the dimensions of the existing conditions, and only once per year, between October 1 and March 15, or except as otherwise approved in writing by the Grantee and Division. The intention of said mowing is to allow vertebrate and invertebrate species to complete their life cycles, and not to disturb nesting of birds, reptiles and other species during spring and summer;

- vii. With prior permission of the Grantee and the Division, the right to install, lay, maintain, repair, replace, upgrade, or service whenever necessary underground utility lines, specifically, without limitation, underground electric, gas and water lines from the cul de sac of Wright Road and Lots 1, 2, and 3 as shown on the Plan across the Conservation Restriction area to Sandy Pond Road, as shown on the Plan, and the right to use and access all of the utilities as herein described within the Premises, to maintain, service, repair, replace and upgrade or service as necessary and to permit access to the utilities by the Town of Ayer, the electric and gas companies, and by all means of vehicles necessary for said maintenance, service, repair, replacement and upgrading, for the benefit of providing all utility services to the homes on Lots 1, 2, 3, and 4 on Wright Road as shown on the Plan
- viii. The right to subdivide and convey the Premises no more than two (2) times only for the purposes of conveying Parcel XX-4 to Lot 4 and Parcel XX-3 to Lot 3, as shown on the Plan; the right to convey the Premises in its entirety.
- ix. All actions and activities required or authorized by the Determination, as the Determination may be subsequently amended and duly recorded with the Middlesex South County Registry of Deeds with reference to the Determination and this Conservation Restriction; and
- x. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the Commonwealth and (b) the State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00 with approval of the Grantee in consultation with Division; and (c) the Division in accordance with the requirements of MESA;
- xi. Access to Sandy Pond shoreline and Dock via Access Area
 - 1. The clearing, marking, and maintaining of a dirt or gravel, but not paved, path from Lot 1 to Sandy Pond in the general area shown as '5 Foot Wide Path' (hereinafter "Access Area") on the Plan, provided that the Access Area shall be no wider than five (5) feet;
 - 2. The right to construct and maintain a single dock only for non-commercial recreational access to Sandy Pond (hereinafter the "Dock") in compliance with a license issued by the Massachusetts Department of Environmental

Protection (DEP) (recorded at the Middlesex South Registry of Deeds in Book 53915, Page 102, hereinafter "Dock License"). The Dock shall only be located in the area shown on the Plan as the 'Dock Area'. The Grantor may use any equipment necessary, including motorized equipment, for the construction and maintenance of the Dock, and surrounding beach area, provided that the use of any equipment complies with the Dock License, that it does not materially impair the Conservation Values of this Conservation Restriction, and that all equipment used shall be confined to the Access Area, Dock Area, and Beach.

3. Up to three (3) motorized vehicle round-trips per year are allowed within and upon the Access Area, as needed, for the delivery or removal of Dock sections, floats, boats, or other such items directly associated with the Dock or its recreational use. No other use of any motorized vehicles is permitted as specified in paragraph III(a)(x).
 4. The right to maintain and use the Dock for non-commercial uses, and the right to use the Access Area and the Beach within the Premises along Sandy Pond for passive recreational activities pursuant to paragraph III(b)(iii).
 5. All access to the Dock from Wright Road shall be only over the Access Area.
 6. The right to apply for an amended license issued by DEP only in order to align the Dock with the Access Area in order to achieve a better environmental outcome.
- xii. Any work undertaken in conjunction with the reserved rights mentioned above in paragraph III(b.) shall seek to minimize disturbance to the Premises. Upon completion of any site work performed in conjunction with paragraph III(b.), any disturbed areas shall be restored substantially to the same condition with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right reserved by the Grantor under paragraph III(b.) shall be in compliance with the then-current Zoning By-Laws of the Town of Ayer, and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in paragraph III(b.) requiring a permit from a public agency does not imply that the Grantee or the Division takes any position on whether such permit should be issued.

IV. ADDITIONAL PROVISIONS:

a. NOTICE AND APPROVAL:

Whenever notice to or approval by Grantee and/or Division is required, Grantor shall notify Grantee and/or Division, as applicable, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question, unless such activity is necessary to prevent an imminent threat of harm. The notice shall describe the nature, scope, design, location, timetable, and MESA Tracking Number, if applicable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee and/or Division, as applicable, to make an informed judgment as to its consistency with the purposes of this Conservation Restriction and Determination. Where Grantee's or Division's approval is required,

Grantee and/or Division, as applicable, shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. The Grantee or Division may require the submittal of additional information necessary to evaluate the proposed activity. Grantee's and/or Division's approval, as applicable, shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

Failure of Grantee or Division to respond in writing within 60 days shall be deemed to constitute approval by Grantee or Division, as applicable, of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, is not in violation of any local, state or federal law, including but not limited to MESA, and the activity will not materially impair the Conservation Values or purposes of this Conservation Restriction.

b. LEGAL REMEDIES OF THE GRANTEE:

i. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the Conservation Values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

The Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division; and does not limit in any manner the Division's authorities or duties under G.L. c. 131 and 131A et. seq. or the implementing regulations for such statutory provisions.

ii. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

iii. Disclaimer of Liability.

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the gross negligence or willful conduct of Grantee or its agents.

iv. Acts Beyond the Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

c. ACCESS:

The Grantor hereby grants to the Grantee, its duly authorized agents and representatives, the right to enter the Premises upon reasonable notice and at reasonable times (except in the event of an emergency), for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey, at the Grantor's expense, of boundary lines.

There is expressly no grant of rights to the public with respect to this Conservation Restriction.

d. EXTINGUISHMENT:

- i. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs and the Division. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- ii. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- iii. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph IV(d)(ii), above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

e. ASSIGNABILITY:

- i. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- ii. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of themselves and their successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and their successors and assigns agree themselves to execute any such instruments upon request.
- iii. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

f. SUBSEQUENT TRANSFERS:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation

Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

g. ESTOPPEL CERTIFICATES:

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

h. NON MERGER:

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

i. AMENDMENT:

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction and the Determination, shall not affect its perpetual duration, shall be approved in writing by the Secretary of Energy and Environmental Affairs and Division, and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South Registry of Deeds.

j. EFFECTIVE DATE:

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South Registry of Deeds.

k. NOTICES:

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either be served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: John and Stephanie Burns
63 Wright Road
Ayer, MA 01432

NHESP MESA Conservation Restriction

To Grantee: Town of Ayer Conservation Commission
1 Main Street
Ayer, MA 01432

With a copy: Board of Selectmen
Town of Ayer
1 Main Street
Ayer, MA 01432

To Division: Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

1. GENERAL PROVISIONS:

- i. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- ii. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- iii. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- iv. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

m. MISCELLANEOUS.

- i. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- ii. Homestead
The Grantor hereby releases, agrees to waive, subordinate, and release any and all Massachusetts General Law Chapter 188 Homestead rights they may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by

this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to M.G.L. c. 188 10(e).

iii. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

iv. Attached hereto and incorporated herein by reference are the following:

SIGNATURE PAGES:

Grantor

Grantee Acceptance

Approval by Ayer Board of Selectmen

Approval of the Secretary of Energy and Environmental Affairs

Acknowledgement by the MA Division of Fisheries and Wildlife

EXHIBITS:

Exhibit A: Legal Description of the Premises

Exhibit B: Reduced Copy of the Plan

Exhibit C-1: Copy of Determination dated August 30, 2011

Exhibit C-2: Copy of Determination dated July 20, 2016

NHESP MESA Conservation Restriction

WITNESS my hand and seal this 13th day of Dec, 2019

John W. Burns
John W. Burns

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this day of December 13, 2019 before me, the undersigned notary public, personally appeared John W. Burns, and proved to me through satisfactory evidence of identification which was MA Drivers License to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Susan E. Copeland
Notary Public
My Commission Expires: May 21, 2021



WITNESS my hand and seal this 13 day of Dec, 2019

Stephanie C. Burns
Stephanie C. Burns

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this day of December 13, 2019, before me, the undersigned notary public, personally appeared Stephanie C. Burns, and proved to me through satisfactory evidence of identification which was MA Drivers License to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Susan E. Copeland
Notary Public
My Commission Expires: May 21, 2021



ACCEPTANCE OF GRANT BY AYER CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of Ayer, Massachusetts, hereby certify that at a public meeting duly held on _____, 20____, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from John W. Burns and Stephanie C. Burns pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8C and do hereby accept the foregoing Conservation Restriction.

TOWN OF AYER
Acting by and through its Conservation Commission

Jon Schmalenberger, Chair

Mark A. Phillips, Vice Chair

Jessica G. Gugino, Clerk

George D. Bacon, Jr., Member

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this . day of _____, 20____, before me, the undersigned notary public, personally appeared _____ and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL OF BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Ayer, hereby certify that at a public meeting duly held on _____, 20____, the Board of Selectmen voted to approve the foregoing Conservation Restriction from John W. Burns and Stephanie C. Burns to the Town of Ayer acting by and through its Conservation Commission in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

TOWN OF AYER
By Its Board of Selectmen

Scott A. Houde, Chair

Jannice L. Livingston, Vice Chair

Shaun C. Copeland, Clerk

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this . day of _____, 20____, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from John W. Burns and Stephanie C. Burns to the Town of Ayer acting by and through its Conservation Commission has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 20__

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this . day of _____, 20__, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the Town of Ayer acting by and through its Conservation Commission from John W. Burns and Stephanie C. Burns is acknowledged this _____ day of _____, 20__. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

Mark Tisa, Director

Date: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared Mark Tisa, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other _____, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

Notary Public
My commission expires:

EXHIBIT A

Legal Description of Premises

The land subject to this Conservation Restriction, referred to herein as the Premises, is a certain parcel of land on the northerly side of Sandy Pond Road, Ayer, Middlesex County, Massachusetts, more particularly bounded and shown as "Conservation Restriction Lot XX-1 \pm 19.9 Acres (Including Parcel XX-3 & Parcel XX-4)" on a plan of land entitled "Plan of Conservation Restriction in Ayer, Mass., owned by John W. and Stephanie C. Burns", Scale 1" = 100', dated June and August, 2016, prepared by David E. Ross Associates, Inc., and recorded in the Middlesex South Registry of Deeds herewith as Plan Book ____ as Plan ____.

A reduced copy of said plan is attached hereto as Exhibit B.

Copy

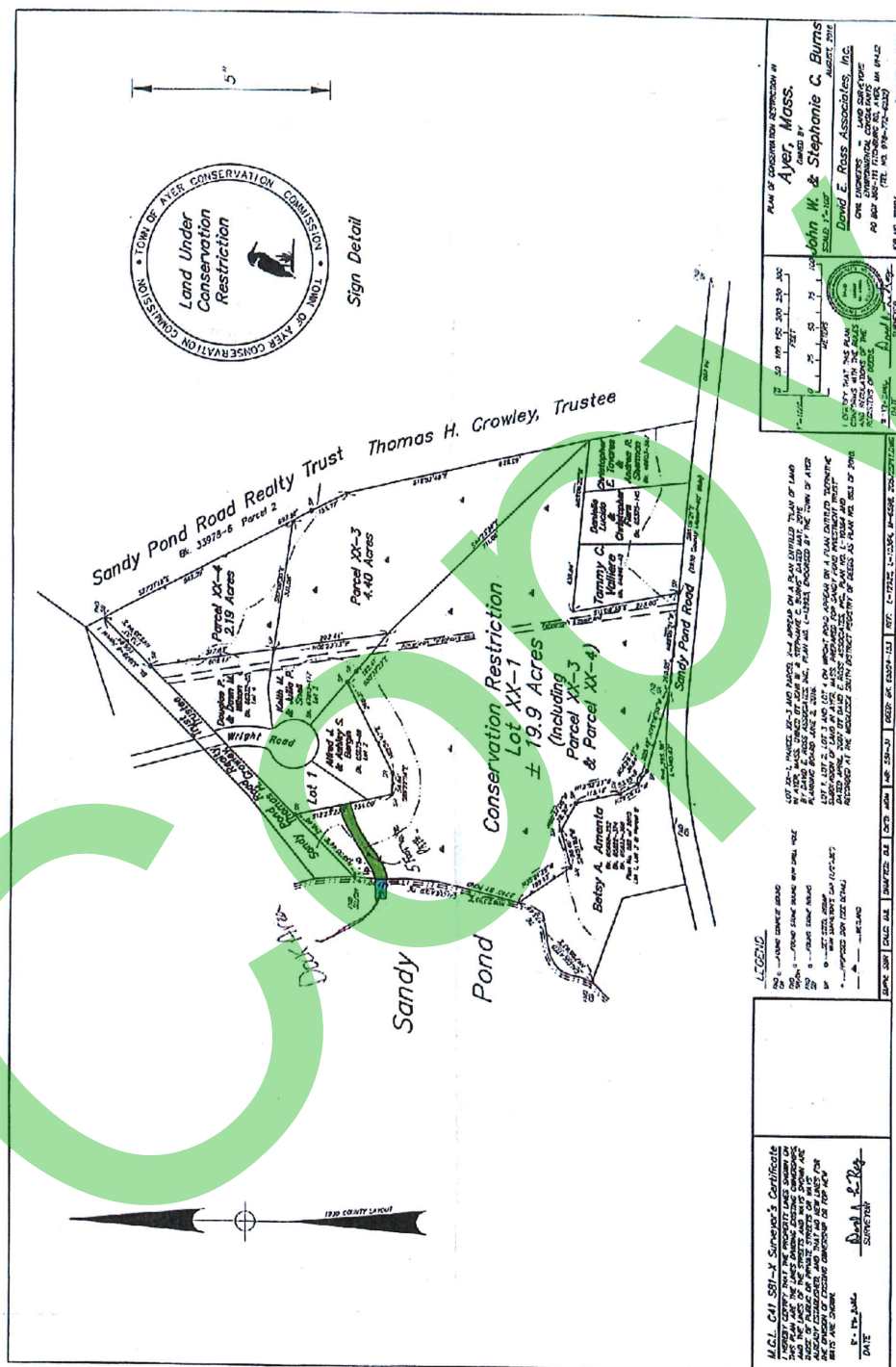
EXHIBIT B - Reduced Copy of the Plan

EXHIBIT C-1 – Copy of Determination Issued by the Division Dated August 30, 2011 (Page 1)



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

August 30, 2011

Terrence Cornellier
97 Sandy Pond Road
Ayer, MA 01432

Sandy Pond Investment Trust
Charles E. Cornellier
99 Sandy Pond Road
Ayer, MA 01432

RE: Applicant: Sandy Pond Investment Trust
 Project Location: Sandy Pond Road (Lots 1, 2, 3); Wright Road (Lot X including Parcel B)
 Project Description: Construction of 2 single family homes off Sandy Pond Road; construction
 of 4 single family homes off Wright Road (the "Project")
 NHESP Tracking No.: 05-17870

Dear Mr. Lynch:

The Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife received a MESA Review Checklist, fee, and supporting documentation for review pursuant to the Massachusetts Endangered Species Act ("MESA", M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00).

Based on the limited information provided to date, the proposed work appears to be within the actual habitat of the Blanding's Turtle (*Emydoidea blandingii*), a Threatened species. The Blanding's Turtle and its habitat are protected pursuant to the MESA. A fact sheet can be found on our website (www.nhesp.org).

As presently proposed, the Project would include the construction of 6 single family homes with associated site work, utilities, and a stormwater treatment system on a ±26.2 acre site. The total acreage of disturbance is 4.5 acres with 1.7 acres of disturbance associated with the 2 ANR lots off Sandy Pond Road and 3 acres of disturbance associated with the 4 single family homes with proposed stormwater basin off Wright Road. The limit of work is generally ± 25 feet from the wetlands on the site. The Applicant proposes to place an Executive Office of Environmental Affairs endorsed Conservation Restriction ("CR") over Lot X, including Parcel B, (total 20.2 acres) with the fee held by Charles E. Cornellier (Trustee of Sandy Pond Investment Trust) and the CR held by the Ayer Conservation Commission.

The NHESP finds that this project requires conditions to avoid a "take" of the Blanding's Turtle. In order to avoid a prohibited "take" pursuant (321 CMR 10.18(2)(a)), the Applicant must comply with the following conditions:

- 1) **FINAL PLANS** - Final project plans shall be substantially the same form as "Figure 3. Proposed Impact Kohler Place - Wright Road Ayer, Massachusetts" (revision date 7/30/10, 1 inch equals 160 feet, prepared by Oxbow Associates, Inc.) conceptual plans. Prior to work, the Applicant shall send the NHESP the final, engineered plans for review and written approval.

www.masswildlife.org

Division of Fisheries and Wildlife
Field Headquarters, North Drive, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7891
An Agency of the Department of Fish and Game

EXHIBIT C-1 – Copy of Determination Issued by the Division Dated August 30, 2011 (Page 2)

05-17870, Ayer, Kohler Place, 2 of 2

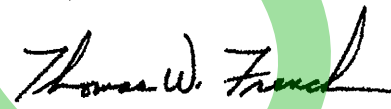
- 2) DECLARATION OF RESTRICTION - The NHESP has received and approved of the proposed Declaration of Restriction (received 7/5/11 by the NHESP). Proof of recordation of the NHESP-approved Declaration of Restriction is required prior to any work.
- 3) CONSERVATION RESTRICTION - The NHESP has received and approved of the proposed CR (received 7/5/11 by the NHESP).
 - a. Prior to start of work, proof of submission of the CR to the Executive Office of Affairs - Division of Conservation Services is also required prior to work.
 - b. Within 1 year of the initiation of work, the Applicant shall provide proof of recordation of the NHESP-approved Conservation Restriction.
- 4) RECORDABLE PLAN - The NHESP has received and approved of the recordable plan entitled "PLAN OF CONSERVATION RESTRICTION in Ayer, Mass. PREPARED FOR Sandy Pond Investment Trust" (dated June 2011, scale 1"=100', received 7/5/11, prepared by David E. Ross Associates, Inc.), showing the proposed CR boundaries, survey bound locations, and signage locations. Proof of recordation of the NHESP-approved plan is required prior to work.
- 5) CERTIFICATION OF MONUMENTATION - Prior to work, the NHESP must receive a written certification from a Massachusetts Registered Land Surveyor that all bounds and signs have been installed in accordance with the approved plan.
- 6) BLANDING'S TURTLE PROTECTION PLAN - Prior to start of work, a Blanding's Turtle protection plan shall be developed and submitted to the NHESP. The plan should consider the timing of work, minimizing the amount of time siltation/turtle barriers are in place, and level of effort for sweeps when necessary.

This evaluation is based on the most recent information available in the Natural Heritage database, which is constantly being expanded and updated through ongoing research and inventory. Please note that this determination addresses only the matter of state-listed wildlife habitat and does not pertain to other wildlife habitat issues that may be pertinent to the proposed project.

This conditional authorization does not relieve the applicant or any other persons of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations. We note that our records indicate that the Applicant may still need to file with the Conservation Commission pursuant to the Wetlands Protection Act. A copy of that filing must be sent to the NHESP for review pursuant to 321 CMR 10.59.

This project may be subject to further review if no physical work is commenced within five-years from the date of issuance of this determination, or if there is a change to the project. We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. If you have any questions about this letter, please contact Misty-Anne R. Marold, Endangered Species Review Biologist at: (508) 389-6365 (misty-anne.marold@state.ma.us).

Sincerely,



Thomas W. French, Ph.D.
Assistant Director

CC: Ayer Conservation Commission
Takashi Tada, Oxbow Associates Inc.
Nicholas Zavalos, MA MEPA Office

EXHIBIT C-2 - Copy of Determination Issued by the Division Dated July 20, 2016 (Page 2)

NHESP No. 05-17870, Ayer, 7/20/2016, Page 2 of 4

Road and the construction of four (4) single family homes off Wright Road. In order to avoid a "take" under the MESA, the Division required adherence to specific conditions prior to the commencement of work. Under the MA Wetlands Protection Act (WPA), Sandy Pond Investments obtained an Order of Conditions only for construction of infrastructure (road, grading, etc.) for the four (4) single family houses off Wright Road. The Division also issued a letter associated with that *Notice of Intent*, requiring adherence to conditions in order to avoid adverse effects to the actual Resource Area Habitat of rare wildlife resulting from the infrastructure work (see attached letter dated 9/30/2011; DEP 015-2307). On October 20, 2014, the Division issued an approval for a modification to the approved plan subject to the MESA (see attached letter). John W. and Stephanie C. Burns acquired Lot XX and Parcel A in June of 2015 (Deed Book 65594, page 154; Plan of Land in Ayer, Mass Plan 960 of 2014), which includes the entirety of the 4 lot subdivision and ±19.6 acres located south of the subdivision. Douglas and Dawn Wilson acquired Lot 4 from the Burns in March of 2016 (Deed Book 66932, page 82). The present Applicant, Alfred Bergin, has submitted a Notice of Intent to the Conservation Commission for construction of the houses located on Lots 1, 3 and 4 on behalf of the two owners noted above.

Status of Permitting

On June 14, 2016, the Division determined that construction on the Property commenced without compliance with the conditions required by the Division by way of determinations issued pursuant to the MESA and rare species provisions of the WPA (see attached). As of June 14, 2016, work was voluntarily ceased on the property in order to bring the project back into compliance with the conditions required under the rare species provisions of the WPA and the MESA. The Applicant has been working diligently and cooperatively to comply with the Division's conditions.

The Division has therefore allowed the continued construction of a single family home on the foundation located on Lot 2 (email from Misty-Anne Marold to Alfred Bergin, July 13, 2016), provided that the Applicant continue to make adequate progress to comply with the MESA. The Division has not authorized any disturbance, other than travel over the ground, on any other lots and the Division reserves to right to withdraw its approval of work of any kind (including work on Lot 2) during this interim period if adequate progress to comply with the MESA does not continue.

Under the MA Wetlands Protection Act, the Applicant has submitted three (3) Notices of Intent to the Ayer Conservation Commission to permit the construction of the houses located on Lots 1, 3 and 4 (DEP 100-0392; 100-0390; 100-0391). The proposed limits of work on house development plans are consistent with the previously submitted site plans reviewed by the Division, although the project is presently not in compliance with the Divisions' conditions issued under DEP 015-2307 and the MESA. The Division requires compliance with the same conditions previously issued for the infrastructure (see determination dated September 30, 2011), which have been updated herein to reflect revised timelines.

We note that issuance of an approving Orders of Conditions, town building permit, occupancy certificate, or any other permit or approval is NOT sufficient to allow work on Lots 1, 3 or 4 to commence/continue given the lack of compliance with the Division's conditions issued pursuant to 310 CMR 10.59 for the infrastructure and the MESA. The project must be in full compliance with the following conditions and the MESA before any additional work may occur, except for construction of the dwelling on Lot 2 as described and limited herein.

- 1) Recordable Plan: The NHESP received and approved a recordable plan entitled "Plan of Conservation Restriction in Ayer, Mass. Prepared for Sandy Pond Investment Trust" (dated June 2011, scale 1"=100', received 7/5/11, prepared by David E. Ross Associates, Inc.), showing the proposed CR boundaries, survey bound locations, and signage locations.

EXHIBIT C-2 - Copy of Determination Issued by the Division Dated July 20, 2016 (Page 3)

NHESP No. 05-17870, Ayer, 7/20/2016, Page 3 of 4

By September 1, 2016, unless otherwise approved in writing by the Division, proof of recordation of this plan in the chain of title for all four development lots and Lot X (also called Lot XX) must be submitted to the Division.

- 2) Declaration of Restriction, Lot X (aka Lot XX): The NHESP received and approved a draft Declaration of Restriction on 7/5/2011. This document has been provided to the Applicant for updating, and shall be re-submitted to the Division for final review and approval.
 - a. By September 1, 2016, the Applicant shall submit a draft Declaration of Restriction to the Division for review and approval.
 - b. Unless otherwise allowed in writing, proof of recordation of a Division-approved Declaration of Restriction must be submitted to the Division by September 1, 2016.
- 3) Conservation Restriction (CR), Lot X: The NHESP received and approved a draft proposed CR (received 7/5/11 by the Division). This document has been provided to the Applicant for updating, and shall be re-submitted to the Division and the Ayer Conservation Commission for final review and approval. Unless otherwise allowed in writing,
 - a. The Division shall receive proof of submission of the CR and its associated application materials to the Executive Office of Affairs - Division of Conservation Services (EEA-DCS) by September 1, 2016.
 - b. Within 60 days of approval of the CR by EEA-DCS, the Applicant shall provide proof of recordation of the Division-approved Conservation Restriction on Lot X.
- 4) Certification of Monumentation: By September 1, 2016, the a Massachusetts Registered Land Surveyor shall certify to the Division, in writing, that all bounds and signs have been installed in accordance with the Division-approved Recordable Plan.
- 5) Blanding's Turtle Protection Plan: As of the issuance of this determination, a turtle-proof barrier and moveable vehicle barrier - composed of entrenched siltation fencing taut between stakes - has been installed to the Division's satisfaction. The moveable barrier to allow vehicle access covers the opening to the site and shall be at maintained at two feet tall from all approaches of egress. However, the barrier was not properly installed during the 2016 nesting season, during which time piles of loose material (dirt/soil/sand) were accessible to and potentially used by state-listed turtles. Therefore, the Turtle Protection Plan submitted by Scott Smyers (Oxbow Associates, Inc. or "OA") on July 12, 2016 must be modified to include the following and resubmitted for Division review and approval:
 - a) Potential nesting materials shall remain undisturbed until hatching is completed (October 1);
 - b) Additional sweeps shall be conducted by OA during the peak hatching hatchling period; and
 - c) Given the lack of cover and access to the wetlands imposed by the barrier to keep adults out of the work limits, temporary cover shall be provided within the site for hatchlings until they can be retrieved by OA throughout the hatching period.

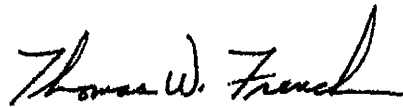
In order to address the ongoing MESA violation and avoid further enforcement action, which includes the potential for civil and criminal penalties as specified in 321 CMR 10.06, the above noted conditions and timelines must be complied with. We ask that the Conservation Commission send a copy of the final Order of Conditions, approving or denying the project, to the Division simultaneous with the Applicant. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the WPA.

EXHIBIT C-2 - Copy of Determination Issued by the Division Dated July 20, 2016 (Page 4)

NHESP No. 05-17870, Ayer, 7/20/2016, Page 4 of 4

No soil or vegetation disturbance, work, clearing, grading or other activities related to the subject filing shall be conducted anywhere on the project site, except as described herein. If you have any questions regarding this letter please contact Misty-Anne Marold, Senior Endangered Species Review Biologist, at (508) 389-6356.

Sincerely,

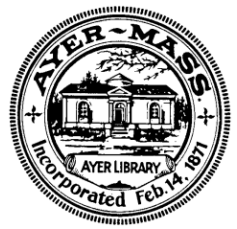


Thomas W. French, Ph.D.
Assistant Director

cc: Robert Oliva, David E. Ross Associates, Inc.
MA DEP Northeast Regional Office, Wetlands

Encl.: Division letter dated 8/30/2011 (MESA determination)
Division letter dated 9/30/2011 (WPA determination)
Division letter dated 10/20/2014 (MESA determination following project modification)

**Office of the Board of Selectmen
Office of the Town Manager**



Town of Ayer| Ayer Town Hall| 1 Main Street| Ayer, MA 01432|978-772-8220| www.ayer.ma.us

MEMORANDUM

DATE: January 3, 2020

TO: Ayer Board of Selectmen

FROM: Robert A. Pontbriand
Town Manager

SUBJECT: Town Manager's Report for the January 7, 2020 Board of Selectmen's Meeting

Dear Honorable Selectmen,

Happy New Year! It gives me great pleasure to transmit to you the following Town Manager's Report for the January 7, 2020 Board of Selectmen's Meeting. If you have any questions prior to the meeting, please do not hesitate to contact me directly. Thank you.

Administrative Update/Review of Town Warrant(s):

- I will offer a brief Administrative Update at the meeting regarding the various activities, initiatives, and project of the Administration since the Board of Selectmen last met on December 17, 2019.

Review of Town Warrant(s):

- I have reviewed, approved and signed the following Town Warrants since the Board of Selectmen last met on December 17, 2019:

Payroll Warrant #20-12 in the amount of \$415,471.91 was reviewed, approved and signed on December 17, 2019.

Payroll Warrant #20-12A (Senior Tax Work Off Program) in the amount of \$4,936.12 was reviewed, approved and signed on December 18, 2019.

Accounts Payable Warrant #20-12 in the amount of \$943,953.46 was reviewed, approved and signed on December 23, 2019.

Payroll Warrant #20-13 in the amount of \$343,585.72 was reviewed, approved and signed on December 30, 2019.

FY 2021 Budget Update:

- I will offer a brief FY 2021 Budget Update at the meeting.

Health Benefits Buyout Program:

- I will be joined by Kevin Johnston, Benefits & Payroll Manager who is respectfully recommending that the Board of Selectmen vote to renew the Health Benefits Buyout Program through FY 2023. Please see the attached memo. (See Attached).

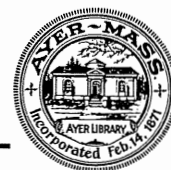
Thank you.

Attachment: December 27, 2019 Memo from Kevin Johnston, Benefits & Payroll Manager Regarding the Health Benefits Buyout Program

Town of Ayer

Benefits and Payroll Department

1 Main Street – Ayer, Massachusetts - 01432
Kevin A. Johnston, Benefits and Payroll Manager



Tel: (978) 772-8248
Fax: (978) 772-3017

Memorandum

Date: December 27, 2019

To: Mr. Robert Pontbriand, Town Manager

From: *KAS*
Kevin A. Johnston, Benefits and Payroll Manager

Subject: Health Benefits Buyout Program

The Town of Ayer Health Benefits Buyout Program is presented for renewal for fiscal years 2021 through 2023. I have enclosed a Financial Analysis of the program through FY 2023.

Since implemented in 2010 this program has generated over \$1.1M in health benefits savings for the Town; 2021 through 2023 project to save an additional \$686,000. Since the program inception 24 employees have participated in the program and 14 are current participants. Renewal of this program through FY 2023 will generate a projected overall budget efficiency of over \$1.8M since inception.

I recommend renewal of the Health Benefits Buyout Program through FY 2023.

I am available to answer any questions about the renewal of the Health Benefits Buyout Program.

Thank you.

Enclosure

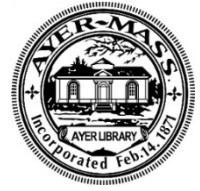
Health Benefits Buyout Program approved through FY20

**Total
Stipend Pmts**

Total		
<u>Stipend Pmts</u>		
\$	8,653.86	New 1/1/17; term 9/6/18
\$	42,884.62	Left employment 7/3/19
\$	22,307.72	New 1/6/19
\$	50,000.06	
\$	14,600.12	Term June 18
\$	45,000.00	
\$	33,600.06	
\$	62,916.75	
\$	50,000.06	
\$	22,500.06	Re-enroll 6/1/17
\$	17,500.06	Re-enroll 6/1/16
\$	26,730.88	Re-enroll 6/1/18
\$	50,000.06	
\$	28,076.99	Term Sept 17
\$	52,500.06	
\$	30,000.00	New 7/1/17
\$	52,500.06	
\$	3,415.47	New 1/1/17; re-enroll 6/1/18
\$	57,916.73	
\$	5,480.80	Term Nov 2015
\$	26,634.46	Retire Nov 2014
\$	25,000.00	New 7/1/18
\$	20,000.00	New 7/1/19
\$	9,415.44	New 7/24/19
\$	-	
\$	757,634.32	
\$	757,634.32	=proof

Total		
<u>Premium Savings</u>		
\$	24,567.00	New 1/1/17; term 9/6/18
\$	114,399.75	Left employment 7/3/19
\$	199,341.00	
\$	86,765.25	New 1/6/19
\$	29,565.00	Term June 18
\$	127,179.00	
\$	88,950.75	
\$	229,086.00	
\$	161,079.00	
\$	61,290.00	Re-enroll 6/1/17
\$	44,424.00	Re-enroll 6/1/16
\$	75,519.00	Re-enroll 5/1/18
\$	199,341.00	
\$	73,822.50	Term Sept 17
\$	199,341.00	
\$	108,685.50	New 1/1/17
\$	199,341.00	
\$	5,647.25	New 1/1/17; re-enroll 6/1/18
\$	229,086.00	
\$	15,834.75	Term Nov 2015
\$	76,545.75	Retire Nov 2014
\$	119,000.25	New 7/1/18
\$	79,052.25	New 7/1/19
\$	23,415.00	New 7/24/19
\$	-	
\$	-	
\$	2,571,278.00	
\$	2,571,278.00	=proof

**Town of Ayer
Board of Selectmen
Ayer Town Hall – 1st Floor Meeting Room
Ayer, MA 01432**



Broadcast and Recorded by APAC

Tuesday December 17, 2019
Open Session Meeting Minutes

BOS Present: Scott A. Houde, Chair; Jannice L. Livingston, Vice-Chair; Shaun C. Copeland, Clerk

Also Present: Robert A. Pontbriand, Town Manager
Carly M. Antonellis, Assistant Town Manager

Call to Order: S. Houde called the meeting to order at 6:00 PM.

Pledge of Allegiance: BOS members and meeting attendees stood and recited the Pledge of Allegiance.

Approval of Agenda:

Motion: A motion was made by J. Livingston and seconded by S. Copeland to approve the agenda. **Motion passed 3-0.**

Announcements: None

Public Input: None

Request for Change of Manager – Ayer Gun & Sportsmen's Club – 225 Snake Hill Road: Ayer Gun & Sportsmen's Club President Dennis Mahoney was in attendance. C. Antonellis informed the BOS that all alcohol establishments require a Manager of Record to meet requirements from the Massachusetts Alcohol Beverages Control Commission. The Ayer Gun & Sportsmen's Club is looking to change from Mr. Robert Briggs to Mr. Donald Anderson. Mr. Anderson has previously been listed as a Manager on the license.

Motion: A motion was made by J. Livingston and seconded by S. Copeland to approve the Change of Manager request as submitted. **Motion passed 3-0.**

Superintendent Mark Wetzel, Dept. of Public Works: *Municipal Vulnerability Preparedness (MVP) Workshop Reminder* – M. Wetzel informed the BOS of two upcoming workshops related to the MVP grant award. The workshops will be held on Thursday January 9, 2020 and Thursday January 16, 2020 from 4:00 PM to 8:00 PM. The MVP grant assists communities in building resiliency to climate change.

Approval of Change Order – Phase I Sanitary Sewer System Rehab – M. Wetzel presented Change Order 1 for the Phase I Sanitary Sewer System Rehabilitation with Insituform Technologies, LLC. The change order is for additional pipe rehabilitation because the Contractor's bid of \$174,700 was under the original budget of \$245,000. The amount of the Change Order is \$40,915.

Motion: A motion was made by S. Houde and seconded by J. Livingston to approve Change Order 1 between the Town of Ayer and Insituform Technologies, LLC in the amount of \$40,815, with signature by the Chair. **Motion passed 3-0.**

Contract for Main Street Light Upgrade Project – M. Wetzel reported that three bids were received for the Main St. Street Light Improvements on December 6, 2019. Bids ranged from \$58,400 - \$60,221. The project will continue the replacement of the original streetlamps on Main Street. The low bid of \$58,400 was submitted by Cullen Electrical Contractors from Mansfield, MA.

Motion: A motion was made by J. Livingston and seconded by S. Copeland to approve the contract between the Town of Ayer and Cullen Electrical Contractors in the amount of \$58,400, with signature by the Chair. **Motion passed 3-0.**

PFAS Treatment Update – M. Wetzel briefed the BOS on the latest relating to PFAS treatment. He reported that the temporary treatment for Grove Pond Well No. 8 is online and active. The permanent treatment plant is under construction and scheduled for completion in early summer of 2020. The Town continues to test the water at all wells and both water tanks quarterly. Relating to the Spectacle Pond Wellfield, design for the PFAS treatment facility is underway, stating that it is similar to the Grove Pond structure, but will be a “stand alone” building due to site constraints. The Town, with the assistance of the DEP is still looking into the source of PFAS contamination. M. Wetzel stated that the current the guidelines from the EPA for maximum contaminate level (MCL) of PFAS in drinking water is 70 parts per trillion for 5 PFAS compounds. The DEP has a proposed regulation for PFAS setting the MCL at 20 parts per trillion for 6 PFAS compounds.

S. Houde asked if there were implications relative to not achieving the MCLs. M. Wetzel stated that most communities will probably sign consent orders with DEP stating that there making certain efforts towards reducing the MCL in drinking water.

Town Manager’s Report: *Administrative Update/Review of Warrant(s)* - R. Pontbriand provided an administrative update of the various activities, initiatives, and projects of the Administration since the BOS last met. He also referenced the Meeting Packet for a list of Payroll and Accounts Payable Warrants that have been signed since the last meeting. He thanked the BOS for attending the Annual Tree Lighting Event. He also thanked all Town Staff that were involved in planning for the event. R. Pontbriand also thanked all BOS members for attending the Ribbon Cutting of the MART Commuter Rail Trail Parking Lot that took place on December 9, 2019. He also reported that the Town had received a \$30,000 grant relating to updating the Town’s ADA plan.

FY 2021 Budget Update – R. Pontbriand reported that all FY’ 21 budgets were submitted and he and the Finance Director, Ms. Gabree are compiling all of the information. He stated that the Clerical Union contract negotiations will start after the first of the year due to staffing issues at AFSCME. R. Pontbriand then wished everyone a happy and safe holiday season.

New Business/Selectmen’s Questions: *Executive Bi-Board Update (Selectman Houde)* – S. Houde reported that at the last Bi-Board meeting, the group laid out the preliminary agenda for the first of two public forums relating to the FY 21 budget that will be held on January 13, 2020. The Bi-Board is also recommending that the annual report and budget book be merged into one publication. S. Houde cautioned about an increase in printing costs. The Bi-Board will meet again on January 7, 2020.

Devens Jurisdiction Framework Committee (Selectman Livingston) – J. Livingston gave an update from the last DJFC meeting held on December 12, 2019. She stated that it was a productive meeting; they discussed a survey relating to outreach for the 6th DJFC stakeholder (Devens resident/business owners). She also reported that they are working on updating the map of Devens; what they have now is much better than what they had, but it remains a work in progress. The group discussed the former Moore Airfield; J. Livingston stated that there were no plans to use it for aviation again. J. Livingston thanked Town staff for assisting with the DJFC.

Town Study Committee (Selectman Livingston) – J. Livingston stated that since the last meeting, she was informed that a Town Government Study is not legally required and that the Town has completed most of everything from the past two studies done. R. Pontbriand then handed out the recommendations from the most recent Town Government Study Committee from 2010 and an accompanying memo that gave an update of where the Town was on implementation of those recommendations.

J. Livingston stated that given the additional information, she does not see the need to study the issue again at this time, being that most things were implemented less than 5 years ago. S. Houde and S. Copeland agreed.

Approval of Meeting Minutes:

Motion: A motion was made by J. Livingston and seconded by S. Copeland to approve the meeting minutes from December 4, 2019. **Motion passed 3-0.**

S. Houde then wished everyone a Merry Christmas and a Happy New Year and thanked all Town employees for their hard work.

Adjournment: A motion was made by S. Houde and seconded by J. Livingston to adjourn at 6:59 PM. **Motion passed 3-0.**

Minutes Recorded and Submitted by Carly M. Antonellis, Assistant Town Manager

Date Minutes Approved by BOS: _____

Signature Indicating Approval: _____

DRAFT