

Town of Ayer CONSERVATION COMMISSION

Town Hall ♦ One Main Street ♦ Ayer, MA 01432
Phone 978-772-8220 ext. 143 ♦ Fax 978-772-8208 ♦ concom@ayer.ma.us



MEETING AGENDA (In Person) Thursday, April 27, 2023

RECEIVED
APR 24 2023

TOWN OF AYER
TOWN CLERK

10:20am

- 7:00 PM **GENERAL BUSINESS / OPEN SESSION**
- Approval of Meeting Minutes for April 13, 2023
 - Public Input

Request for Extension DEP File #100-0321 323 West Main Street, Ice House Partners

Public Hearing, Revisions to the Regulations for Administering the Town of Ayer Wetlands Bylaw

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM **ADJOURN**

Next Scheduled Meeting: 7 PM, May 11, 2023



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8220, ext. 143
Minutes for **4/13/2023**

Location: Ayer Town Hall, 1st Floor

Present: Jon Schmalenberger (Chair), George Bacon (Member), Jessica Gugino (Member/Clerk), Heather Hampson (Conservation Agent)

Not Present: Mark Phillips (Vice-Chair), Jen Amaya (Member)

APAC taped: YES

**All Public Hearings are opened under the Wetlands Protection Act (MCL Ch. 131, section 40)
and under the Ayer Wetlands Bylaw (Article XXVI)**

7:00 PM – Open Meeting

Confirmation of Agenda

VOTE: G. Bacon moved to confirm the agenda as posted; J. Gugino 2nd.
Motion approved unanimously 3-0.

Approval of Meeting Minutes

VOTE: G. Bacon moved to accept the minutes for 3/23/2023 as written; J. Gugino 2nd.
Motion approved unanimously 3-0.

Public Input

None received.

Discussion: Request for Certificate of Compliance (COC), Woodland Way, MassDEP # 100-0393

Mikael A. Lassila, from S. J. Mullaney Engineering, Inc., was present on behalf of the applicant, Ridge View Realty Trust, in reference to the Pingry Hill subdivision.

All construction activities are now complete in the Pingry Hill subdivision, and any remaining open OOCs are now being addressed.

The Order of Conditions (OOC) for 100-0393 was issued for the roadway and infrastructure work, and included a 7,236 sq. ft. wetland replication area.

Signed and stamped As-Built plans for the roadway and the replication area were submitted as required. The replication area was larger than the 6,000 originally approved.

Woodland Way already received its street acceptance at Fall Town Meeting, 2022.

G. Bacon moved to issue a COC for 100-0393; J. Gugino 2nd.

Motion approved unanimously 3-0 and the COC was signed.

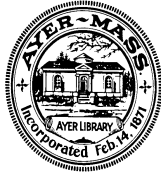
Discussion: Request for Certificate of Compliance, 138 Littleton Road, MassDEP # 100-0423

Mikael A. Lassila, from S. J. Mullaney Engineering, Inc., was present on behalf of the applicant, Ridge View Realty Trust, in reference to the Pingry Hill subdivision.

The OOC for 100-0423 was for the construction of a single-family house, driveway, retaining wall, drainage, subsurface utilities, grading and lawn at 138 Littleton Road.

This OOC also included 2,439 sq. ft. of wetland replication.

The replication area was monitored for 3 growing seasons by Dr. Desheng Wang, of Creative Land & Water Engineering, LLC., whose previous planting reports were included with the COC request.



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The signed and stamped As-Built was also included and noted small changes, such as the driveway installation further to the east and changed location of a retaining wall.

J. Gugino noted that the minutes for 4/12/2018 stated that the OOC required the installation of 5 conservation signs, 2 by the wetland area at the front of the property and 3 at locations to be determined by the Agent at the new replication area.

Mr. Lassila did not know if these had been installed and they were not referenced in the COC Request. H. Hampson will check on this.

G. Bacon moved to approve a COC for 100-0423, its issuance contingent on confirmation that the required conservation signage is already in place or, if not, is put in place; J. Gugino 2nd.

Motion approved unanimously 3-0 and the contingent COC was signed.

Autumn Ridge Conservation Restriction (CR) Annual Monitoring Report

Steve Smith, as volunteer Steward/Monitor for this CR, presented the Annual Report.

The CR was established in 2005; Baseline Documentation was completed in 2010; and Mr. Smith has thus far submitted two five-year photo updates to the Baseline Documentation – in 2015 and in 2020.

For this year's report, Mr. Smith was assisted on the field work trips by several Autumn Ridge residents – John Marion, John Cadigan, Keith Frederick, Marion Stoddard, Carl Formachetti, and Beverly Smith – on 10/21/2022, 11/25/2022, 12/20/2022, and 1/14/2023.

Several of the Autumn Ridge residents, led by Chuck Francis, also perform trail maintenance work every year.

No encroachments of any kind (by hunters, campers, fire builders, motorcycles, motorbikes, or boaters) were observed this past year.

The water levels in Rock Meadow Pond as well as Smith Pond (this one closer to the residential area) were reduced due to the serious drought.

The ongoing yearly record of wildlife observations was expanded this year to include eastern coyotes.

At Mr. Smith's query as to whether the Commission wished him to continue as CR Steward, the answer was an enthusiastic and appreciative "yes!"

While Mr. Smith was still present, J. Schmalenberger asked him if he had suggestions for the Commission's current effort to form a volunteer Friends of Pine Meadow group to help maintain and steward the Town's Pine Meadow Conservation Land.

Mr. Smith was very active with the Greenway Committee, back when it was still in existence to handle many of these tasks.

Mr. Smith said he had plenty of suggestions and would be happy to help and participate with a new volunteer group.

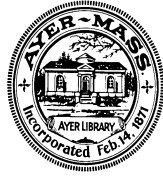
He also said he would send H. Hampson his electronic files that include the digitized version of the conservation land map (that Printing Solutions in Westford used to produce), as well as a list of standard duties that he has compiled over the years for monitoring other pieces of conservation land.

Conservation Commission Office and Member Updates

Vernal Pools

H. Hampson just completed a field session training in the certification of vernal pools.

Willow Road/Rte. 2A Intersection (MassDEP # 100-0477)



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The Mass. Dept. of Transportation (MassDOT) Willow Road/Rte.2A intersection improvement project, approved in February 2022, is starting to get underway.

H. Hampson has been out to the site.

To be do-able, she noted that the trees at the catchbasin outlet will have to be removed *before* the installation of the erosion controls can be undertaken.

MassDOT will have a public safety detail present when that is done, and the Tree Warden will also be notified.

West Main Street/ Department of Public Works (DPW)

H. Hampson met with DPW Director Dan Van Schalkwyk on West Main Street, where street improvements are taking place, to inspect an area where the DPW will need to reconstruct a catchbasin outlet by building up the ground below the outlet to lessen the drop-off.

She also noted that the DPW will be gearing up to move forward with plans to replace the bridge on West Main Street crossing over Nonacoicus Brook.

The DPW will need to submit new OOC for this project (previously approved in 2018 under MassDEP # 100-0424, now expired)) as the bridge and culvert design have changed substantially.

Pirone Park

H. Hampson met with Parks Director Jeff Thomas to approve the relocation of some of the erosion controls (for the Kiddie Junction playground remediation and rebuild) so that they do not obstruct the upcoming Little League season.

Earth Day, April 21st

H. Hampson will be setting up a table at the 2-6 p.m. McPherson Road event, with various flyers available to the public (including looking for volunteers for a new Friends of Pine Meadow volunteer group as well as a flyer providing tips for homeowners living by a lake).

She asked if any commissioners could cover the table from 2-3:30, until her return, and J.

Schmalenberger indicated that he would be able to.

Master Plan

The Planning Board is looking for updates of where Town departments and boards are on project goals laid out in the Master Plan.

H. Hampson will be reviewing those projects that had required Commission action.

Waterways Sign Project

H. Hampson sent the final grant report to the Nashua River Stewardship Council.

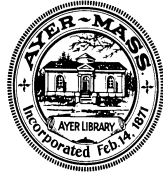
She is still waiting for one invoice from Liddell for the replacement signs, and will need to update the breakdown of costs for the Council as well, into their preferred format.

She also asked the Council about the procedure for returning unused grant money and found that it might be possible for the Commission to submit a request to use those funds in another way, if approved.

One suggestion, which she will explore, is whether the remaining funds could be used for something like new signage for the Pine Meadow Conservation Land trails.

2023 Invasive Aquatic Weed Treatments on Ayer Ponds

H. Hampson will let Joe Onorato, of Water & Wetlands (the company doing this year's treatments), know that there is a previously unnoted crescent of invasive phragmites mixed in with the native cattails at one end of Pine Meadow Pond.



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It was also noted that the Order of Conditions for the pond treatments will need to be amended to include contingency plans for additional treatment in the event of another toxic blue-green algae (cyanobacteria) bloom.

Grove Pond Water Chestnut Pull

The grant-supported volunteer invasive water chestnut pull at the eastern end of Grove Pond, organized by Laurie Nehring and PACE (People of Ayer Concerned about the Environment) will have its first scheduled pull on May 2.

H. Hampson will plan on participating in some of the pulls, as she did last year.

Ayer Solar II (MassDEP # 100-0444)

The site is relatively stable although H. Hampson and the Environmental Monitor, on their weekly visits, have noted that it appears people using mountain bikes have run over some of the erosion controls and inadvertently created some channels.

8:22 PM – Adjourn Meeting

VOTE: G. Bacon moved to adjourn; J. Gugino 2nd.

Motion approved unanimously 3-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: _____



April 5, 2023

Ayer Conservation Commission
 1 Main Street
 Ayer, MA 01432
 ATTN: Heather Hampson, Conservation Agent

**RE: DEP File Number 100-0321
 323 W Main Street, AYER, MA 01432**

Dear Ms. Hampson,

Please accept the attached FORM 7A Request for Extension for our hydroelectric project located on the Nashua River – with an address of 323 W Main Street, Ayer, MA 01432.

I've summarized our filing history with the Ayer Conservation Commission.

Orders	Issue Date	Expiration Date
Original Orders (100-0321)	4/23/2009	4/23/2012
→ MA Permit Extension Act of 2010 (updated 2012)		4/23/2016
Extension Orders	4/22/2016	4/23/2019
Extension Orders	2/14/2019	4/23/2022
→ COVID State of Emergency Extension		7/31/2023

Our site and activities at the dam are unique – given we are operating daily in and around the river. We had previously decided – in joint action with Ayer and Shirley Conservation Commissions that we would simply continue to keep our Orders perpetually open in both towns as a formal means for guidance, oversight and communication.

Just for background, in case any of the current Commissioners are not familiar with the regulatory oversight of a small hydroelectric power plant in Massachusetts, I have provided a list below of the various jurisdictional agencies with whom we have fairly regular interactions.

Federal Energy Regulatory Agency (FERC) → USFWS → Mass Endangered Species Act NH&ESP → MA Division of Fisheries & Wildlife (MassWildlife) → MA Historical Commission (MHC)	Exemption Order P-12769
MA Office of Dam Safety	NATDAM ID No. MA00809
Town of Ayer – Conservation Commission	OOC 100-0321
Town of Shirley – Conservation Commission	OOC 284-0472
Low Impact Hydro Institute (LIHI)	Certificate No. 44

If I can answer any questions or if I need to submit any additional information, please do not hesitate to reach out to me at (978) 772-3303 or by email at liisa@gradyresearch.com.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Liisa Marino". The signature is fluid and cursive, with the first name "Liisa" written in a larger, more prominent script than the last name "Marino".

Liisa Marino, VP/GM
ICE HOUSE PARTNERS, INC.

/enclosures



A. Project Information

1. This request is being made by:

Liisa Marino on behalf of Ice House Partners, Inc.
 Name
323 W Main Street
 Mailing Address
Ayer MA 01432
 City/Town State Zip Code
(978) 772-3303
 Phone Number

2. This request is in reference to work regulated by a final Order of Conditions issued to:

Ice House Partners, Inc.
 Applicant
4/23/2009 100-0321
 Dated DEP File Number

3. The project site is located at:

323 W Main Street Ayer
 Street Address City/Town
38 1
 Assessors Map/Plat Number Parcel/Lot Number

4. The final Order of Conditions was recorded at the Registry of Deeds for:

Ice House Partners, Inc.
 Property Owner (if different)
Middlesex South 53384 259
 County Book Page
 Certificate (if registered land)

5. This request is for an extension to the issued Order of Conditions (check one):

the following portions of the work regulated by the above-referenced Order of Conditions have been completed (use additional paper if necessary).

the following portions of the work regulated by the above-referenced Order of Conditions still need to be completed and are the subject of this extension request (use additional paper if necessary).

The Order Of Conditions covers ongoing and regular inspection and maintenance activities in and around the dam and powerhouse.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 7A – Request for Extension
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

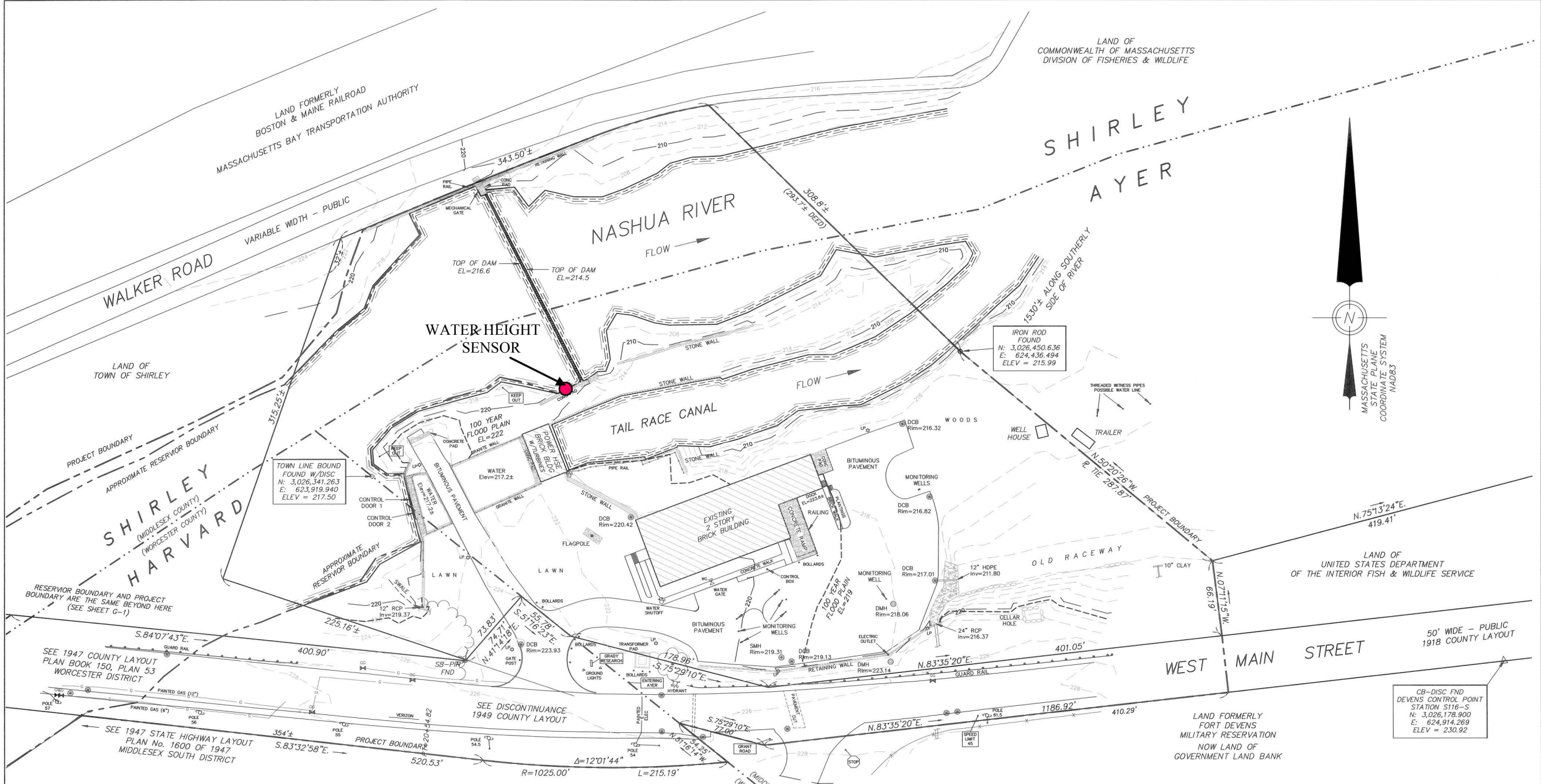
100-0321
Provided by DEP

A. Project Information (cont.)

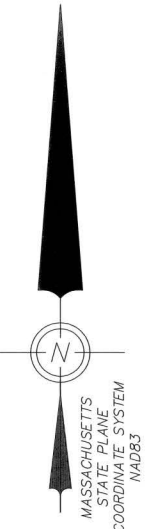
6. Attach a copy of the plan(s) referenced in the issued Order of Conditions for this project, or the portion of the project subject to this request highlighting what portion of the project is subject to this extension order.

B. Submittal Requirements

Requests for Extension should be directed to the issuing authority that issued the final Order of Conditions (OOC). If the project received an OOC from the Conservation Commission, submit this request to that Commission. If the project was issued a Superseding Order of Conditions or was the subject of an Adjudicatory Hearing Final Decision, submit this request to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region/findyour.htm>).



LAND OF COMMONWEALTH OF MASSACHUSETTS DIVISION OF FISHERIES & WILDLIFE



TOWN LINE BOUND FOUND W/DISC
N: 3,026,341.263
E: 623,919.940
ELEV = 217.50

IRON ROD FOUND
N: 3,026,450.636
E: 624,436.494
ELEV = 215.99

CB-DISC FND DEVENS CONTROL POINT STATION S116-S
N: 3,026,178.900
E: 624,914.269
ELEV = 230.92

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A FULL TITLE REPORT AND IS SUBJECT TO ANY AND ALL RIGHTS AND ENCUMBRANCES THAT SUCH A REPORT MAY DISCLOSE.

THE UTILITIES SHOWN ARE THE RESULTS OF FIELD LOCATIONS, OBSERVATIONS AND/OR VARIOUS PLANS. NO GUARANTY AS TO THEIR ACCURACY IS WARRANTED OR IMPLIED BY THIS PLAN.

HANNIGAN ENGINEERING INC. MAKES NO REPRESENTATION AS TO THE EXISTENCE OF ANY OTHER PRIVATE OR PUBLIC UTILITIES THAT MAY AFFECT THE SURVEYED PROPERTY.

THE PROPERTY LINES SHOWN HEREON ARE THE RESULTS OF VARIOUS PLANS AND DEEDS OF RECORD AND A PARTIAL ON GROUND SURVEY, IT IS NOT PURPORTED TO BE A COMPLETE PROPERTY LINE SURVEY OF THE LOCUS PROPERTY.

THE FIELD WORK WAS PERFORMED IN JULY 2008.

ELEVATIONS AND ORIENTATION ARE BASED UPON CONTROL INFORMATION PROVIDED BY FORT DEVENS.

HORIZONTAL DATUM IS NAD83
VERTICAL DATUM IS NGVD29

THE 100 YEAR FEDERAL FLOOD PLAIN IS BASED ON THE FLOOD INSURANCE RATE MAPS FOR THE TOWN OF AYER, COMMUNITY PANEL NO. 250180 0003 B, DATED JULY 19, 1982.

DEVENS CONTROL POINTS:
NAD83 & NGVD29
SEE SHEET G-1 FOR OVERALL LOCATIONS

STATION: T509-M
N: 3,026,248.774
E: 623,280.935
ELEV = 232.78

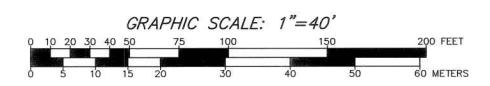
STATION: S116-S
N: 3,026,178.900
E: 624,914.269
ELEV = 230.92

STATION: S130-SM
N: 3,026,276.579
E: 623,636.837
ELEV = 233.60

STATION: S101-M
N: 3,017,719.233
E: 622,026.896
ELEV = 352.80

I HEREBY STATE THAT THE PROJECT BOUNDARY DELINEATION FOR THE ICE HOUSE PARTNERS PROJECT AS SHOWN ON THIS EXHIBIT G-2 IS DEVELOPED WITHIN REASONABLE ACCURACIES AS REQUIRED IN 18CFR4.41 TO THE GEOGRAPHIC LOCATION BASED ON A GRAPHICAL POSITIONING IN REFERENCE TO USGS QUADRANGLE MAPPING WITHIN ±40 FEET. THE PROJECT BOUNDARY LINE WAS ADJUSTED AND OR ROTATED TO BEST FIT WITHIN THE USGS QUADRANGLE MAP FEATURES GRAPHICALLY AND WAS NOT FIELD SURVEYED.

LAND FORMERLY FORT DEVENS MILITARY RESERVATION NOW LAND OF GOVERNMENT LAND BANK



FEDERAL ENERGY REGULATORY COMMISSION
PROJECT No. 12769-000-MA



Existing Condition Plan - Exhibit G2
IN
AYER, MASSACHUSETTS

PREPARED FOR: ICE HOUSE PARTNERS, INC. LISA DOWD 323 WEST MAIN STREET AYER, MASSACHUSETTS 01432 TEL: (978) 772-3303	CALC: LRS CHKD: MDH APPD: LRS	DRWN: LRS SCALE: 1" = 40' DATE: AUG 06, 2008
DWG: BASE SRV: JEF-JHG FB: E-2129.071508	HANNIGAN ENGINEERING, INC. CIVIL ENGINEERS & LAND SURVEYORS 8 MONUMENT SQUARE LEOMINSTER, MASSACHUSETTS 01453 (978) 534-1234 FAX (978) 534-6060	JOB NO: 2129 SHEET 2 OF 2 PLAN NO: C-7-31

NO.	DATE	REVISION DESCRIPTION	BY
1	01/29/10	US FISH & WILDLIFE BOUNDARY	LRS
1	10/20/09	RESERVOIR LOCATION	LRS
		REVISION DESCRIPTION	

Town of Ayer CONSERVATION COMMISSION



Town Hall ♦ One Main Street ♦ Ayer, MA 01432
Phone 978-772-8220 ext. 143 ♦ Fax 978-772-8208 ♦ concom@ayer.ma.us

The Ayer Conservation Commission will conduct a Public Hearing on Thursday, April 27, 2023, at 7:00 p.m. in the First Floor Meeting Room of the Ayer Town Hall at 1 Main Street, Ayer, for the adoption of revisions to the Regulations for the Administering the Town of Ayer Wetlands Bylaw. Copies of the revisions to the Regulations may be reviewed at the Conservation Office and Town Clerks office in Town Hall during normal business hours or by contacting the Conservation Agent, Heather Hampson at hhampson@ayer.ma.us.

Jon Schmalenberger, Chair
Ayer Conservation Commission

RECEIVED

APR 18 2023

TOWN OF AYER
TOWN CLERK

S. Ham



**REGULATIONS FOR ADMINISTRATION
THE TOWN OF AYER WETLAND BYLAW (ARTICLE XXVI)
In association with the
WETLANDS PROTECTION ACT
and RIVERS PROTECTION ACT**

**Approved by vote of the Ayer Conservation Commission
January 28, 2021**

April 27, 2023 proposed changes in red

SECTION 1 – GENERAL PROVISIONS

A. AUTHORITY

These Regulations are promulgated by the Town of Ayer Conservation Commission (“Commission”) pursuant to the authority granted to it under Section 8 of the Town of Ayer Wetlands Protection Bylaw (Article XXVI, “the Bylaw”). These Regulations shall complement the Bylaw and shall have the force of law upon their approval by vote of the Commission. Terms and definitions used herein are consistent with usage in the Bylaw.

The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of the Bylaw.

These Regulations shall not apply to any applications submitted prior to the effective date, nor is the Bylaw retroactive to existing conditions.

B. PURPOSE AND INTENT

The Bylaw identifies additional interests of the Commission that are not recognized by the Commonwealth of Massachusetts. The purpose of these Regulations is to define and clarify the process and standards applied under the Bylaw by establishing definitions, performance standards, and uniform procedures by which the Commission may carry out its responsibilities under the Bylaw.

Wetlands and their Buffer Zones contribute to a number of public interests including, but not limited to, prevention of water and soil pollution, erosion and sedimentation control, protection of fisheries and wildlife habitat, and preservation of recreation values. Where not otherwise specified in the Bylaw or in these Regulations, the presumptions, definitions and performance standards set forth in the Massachusetts Wetlands Protection Act and Massachusetts Rivers Protection Act (MGL Ch. 131 S.40, “the Acts”) and the Massachusetts Department of Environmental Protection (“MassDEP”) Wetlands Protection Regulations (310 CMR 10.00 *et. seq.*) shall apply.

C. JURISDICTION AND RESOURCE AREAS PROTECTED UNDER THE BYLAW

No person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter Resource Areas subject to protection under the Bylaw without a Determination of Applicability or an Order of Conditions from the Commission as provided by the Bylaw and these Regulations.

The Bylaw provides additional protections to wetland Resource Areas and, importantly, includes their Buffer Zones (Adjacent Upland Resource Areas) as Resource Areas subject to greater protection than under the Acts. The Bylaw also presumes the inner portion of a Buffer Zone to have a higher ecological value than the outer portion. All Resource Areas defined in the Bylaw are protected from any form of disturbance unless permitted by the Commission. These Resource Areas protected by the Bylaw include:

1. **Bordering Vegetated Wetlands (BVW).** This includes wet meadows, swamps, bogs, and isolated vegetated wetlands. The Buffer Zone shall extend 100 feet horizontally outward from the professionally delineated and flagged boundary of the wetlands.
2. **Riparian Waterways: Rivers, Streams or Brooks (Perennial or Intermittent), and their Banks.** Criteria for determining whether a particular stream or section of stream flows throughout the year is at the discretion of the Commission and may be based on (1) reference on a USGS topographic map to a perennial stream, (2) calculation of watershed size, or (3) observation on the part of experienced Commissioner(s) or resident experts that flow has historically been perennial except during times of drought.
 - a. The Buffer Zone to a perennial waterway shall extend 200 feet horizontally outward from the Bank, and be designated “inner riparian” (first 100 feet) and “outer riparian” (100-200 feet).
 - b. The Buffer Zone to an intermittent waterway shall extend 100 feet horizontally outward from the Bank.
3. **Ponds.** As per the definition in the Bylaw, this includes ponds of any size, the land under these waterbodies, and their bank or beach. The Buffer Zone for ponds shall extend 100 feet from the mean annual high-water line.
4. **Vernal Pools.** As per the definition in the Bylaw, this includes a basin or depression that holds water for a minimum two continuous months during 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 habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether certified by the Massachusetts Division of Fisheries and Wildlife. The Buffer Zone for a vernal pool shall extend 100 feet horizontally outward from the mean annual high-water line defining the depression, or half the distance between the vernal pool and any pre-existing house foundation, whichever is smaller.

D. ADVICE FROM TOWN STAFF

Any advice, opinion, or information given to an Applicant by a Commission member outside of a meeting, or by any agency, officer, or employee of the Town, shall be considered advisory only and not binding by the Commission.

SECTION 2 – PERFORMANCE STANDARDS FOR BUFFER ZONES PROTECTED UNDER THE BYLAW

A. PRESUMPTIONS OF SIGNIFICANCE

Where a proposed activity involves the removing, filling, dredging, building upon, discharging into, degrading, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone is significant to the interests specified in Section 1 of the Bylaw.

B. PERFORMANCE STANDARDS WITHIN THE BUFFER ZONE RESOURCE AREA

1. **Homeowners:** Waivers may be provided for proposed alterations on property which is the Homeowner's principle residence for the No-Disturbance Zones noted below.
2. **Inner 50-Foot No-Disturbance Zone for Undisturbed Lands**
 - Undisturbed Land is land determined by the Commission to be of a predominantly natural character or to have been altered after May 1996 without a permit from the Commission.
 - No alterations are allowed within 50-feet of a wetland resource area, except those alterations explicitly permitted as part of a pre-approved restoration plan approved by the Commission.
 - Prohibited alterations include, but are not limited to, grading, landscaping, clearing or cutting of vegetation, filling, excavating, and construction of roads or structures except as allowed under Minor Activities (see below).
 - Structures include, but are not limited to, single family houses, multi-family dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems, and sheds.
 - Driveways, roadways, fences, and facilities for stormwater management may be allowed in the 50-foot No-Disturbance Zone by waiver when no other feasible alternative exists; see Section 4.
3. **Outer 50-foot Resource Area Buffer Zone:** Activities outside the first ~~within the outer~~ 50 feet of a Buffer Zone shall not adversely affect the form or function of the wetland resource area or the Inner 50-foot No-Disturbance Zone.
4. **Grades:** Grades w/in 100' of wetland shall be 3 to 1 (horizontal to vertical) or less for grass or mulch; steeper must be engineered and PE stamped.
5. **Stream Crossing Standards:** Proposed steam crossings shall at minimum meet Mass DEP Stream Crossing Guidelines.

SECTION 3 – WAIVERS

The performance standards for wetland Resource Areas and their Buffer Zones have been adopted to ensure that the interests of the Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The applicant shall have the burden of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. The following paragraphs describe the waiver and its associated mitigation measures for the Buffer Zone performance standards.

Any request for a waiver must be submitted to the Commission in writing at the time of filing. The request must state why a waiver is desired or needed, and how it meets the relevant waiver criteria stated below. Grant of a waiver is at the discretion of the Commission, which may impose conditions on any waiver to protect the interests protected by the Bylaw.

The Commission may grant a waiver from these Regulations for an alteration of a Buffer Zone Resource Area in situations where no feasible alternative provides less impact to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no such feasible alternatives. The Commission may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements as it deems necessary. The applicant must show, clearly and convincingly, that:

1. There are no practicable conditions or alternatives that would allow a project to proceed in compliance with the Regulations; and
2. The project, or its natural and consequential effects, will have the least possible adverse effects upon any of the interests protected by the Bylaw.
3. In the case where a waiver is granted, the Commission may require mitigation measures to be implemented to offset potential impacts to the wetland resource areas. The mitigation must maintain or improve the natural capacity of a Resource Area to protect the interests identified in the Bylaw. See Wetlands Mitigation, Section 7, below.

SECTION 4 – MINOR ACTIVITIES

Activates noted in Section 10.02(2)(b) of the Act's Regulations (310 CMR 10.00)

SECTION 5 – PERMITTING APPLICATIONS AND PROCEDURES

A. Municipal Filings of Notices of Intent (NOIs)

For projects or subdivisions involving the new construction of more than two dwellings or houses on lots where Resource Areas and/or Buffer Zones are present, the applicant must submit individual NOIs for each housing lot. The same requirement of an individual NOI also applies for infrastructure associated with a subdivision project where wetlands or Buffer Zones

are present. In cases where the amount of Resource Area or Buffer Zone is so minimal, or the project's impact on same is deemed to be minimal or nonexistent, the Commission, in its discretion, may grant a waiver to allow a single NOI filing for a whole project.

B. SITE INSPECTIONS

Site inspections on properties for which an application has been submitted are scheduled at the discretion of the Commission. If the Areas Subject to Protection on the permitted property cannot be adequately viewed (for example, during periods of snow cover or when vegetation is not present), the Commission may determine that the Application is incomplete until the conditions change such that a meaningful site inspection can be conducted.

C. COMMISSION

The Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetland values and functions toward the goal of modifying the project to make it acceptable. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior suggestions or advice offered to applicants.

SECTION 6 – ORDERS OF CONDITIONS, DETERMINATIONS OF APPLICABILITY, AND CERTIFICATES OF COMPLIANCE

A. AMENDMENTS TO ORDERS OF CONDITIONS

1. Amending an Order of Conditions is at the discretion of the Commission. The Commission will make a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent, or whether the change is of a relatively minor nature and can be considered as an amendment to the original Order of Conditions. In making this determination, the Commission will consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets current relevant performance standards, and whether the potential for adverse impacts to the protected interests of the Acts or the Bylaw will be increased. Relatively minor changes which result in the same or decreased impact on the Resource Area(s), or interests protected by the Bylaw are appropriate for amendments. If the Commission determines that the project purpose or scope has changed substantially or that the interests specified in the Bylaw are not protected, it will not issue an amendment. This determination is not subject to appeal.
2. The applicant to whom an Order of Conditions has been issued may submit a written request for an amendment to the Commission, including a narrative description of what changes have been proposed and any pertinent plans showing the changes, with a copy to MassDEP's regional office. The Commission shall publish a newspaper notice (at the Applicant's expense) in the same general manner as required for Notices of Intent. In addition, the Applicant must follow the requirements of abutter notification as if filing a Notice of Intent.

B. PERMIT RECORDATION

No work proposed in any NOI shall be undertaken until the Order of Conditions has been recorded at the Registry of Deeds, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. Such certification shall include the book and page or instrument number and date.

SECTION 7 – WETLANDS MITIGATION

In order to meet performance standards set forth in MassDEP Regulations or in these Regulations, or to meet the conditions of a Waiver, it may be necessary to create Replacement Resource Areas to compensate for Resource Areas proposed to be altered. Mitigation is understood to include such activities as Bordering Vegetated Wetlands replication, Land Subject to Flooding compensatory storage, and wildlife habitat and/or riverfront area restoration, or other activities as permitted.

A. MITIGATION REQUIREMENTS

The Commission recognizes that the history of mitigation, and specifically vegetated wetland replication, is mixed. Scientific reviews conclude that for the most part, replications fail to reproduce the range of values of the wetlands they are intended to replace. Difficulties in replicating proper hydrological, soil, or vegetative conditions in a consistent and enduring fashion seem to be a major source of the problem. The Commission strongly discourages any plan that requires wetland replication. Projects that necessitate wetland replication to mitigate unavoidable impacts to Resource Areas shall meet the pertinent requirements of the MassDEP Regulations and the following additional requirements of the Commission:

1. Proposed Replacement Resource Area design shall:
 - Be submitted as part of the project NOI. Applicants are advised to appear before the Commission for preliminary review prior to submittal of the NOI.
 - Reproduce all the values and functions of the wetland(s) proposed to be altered, as determined by the Commission.
 - Provide a 2:1 area ratio of replacement wetlands to wetlands proposed to be altered.
 - Include details as outlined in the Massachusetts Inland Wetland Replication Guidelines.
2. The proposed Replacement Resource Area must be clearly flagged for the Commission's site inspection before the NOI filing shall be considered complete, and the numbering of said flagging shall correspond to that shown on the Plans.
3. Any Replacement Resource Area work that creates a new Resource Area on (an) abutting property(ies) shall require an easement from the affected property(ies) owner(s) covering the full extension of the associated resource area on the property prior to commencement of the work.
4. The Replacement Resource area shall be constructed, immediately after alteration of the existing wetland, to the extent possible, and during the same growing season. The

Replacement Resource Area must be conditionally approved by the Commission or its Agent prior to commencing any other construction.

5. The applicant must provide a construction sequence which includes progress reports on the construction, planting, and growth of vegetation within the Replacement Resource Area.
6. Replacement Resource Areas greater than 100 sq-ft must be designed & monitored by an accredited Professional Wetland Scientist employed by and at the expense of the Applicant.
7. Vegetation within the Replacement Resource Area must achieve, at the end of two growing seasons, at least 75% coverage of the same or comparable plant types as were lost.
8. The Commission will require a bond from the Applicant to be held to ensure completion of the Replacement Area in the event of an Applicant's default.
9. Replacement Resource Areas that do not properly perform the approved function and values as specified in the Order of Conditions, will not be deemed acceptable no matter how closely they adhere to approved plans. Monitoring reports shall be submitted at the end of each of the two growing seasons after installation of the replication area. If, after two growing seasons, the Commission determines that the replacement area has not satisfactorily developed into a wetland, the applicant or owner may be required to submit new plans to successfully replace said wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory Replacement Resource Area has been completed at the end of two growing seasons.

SECTION 8 – PERFORMANCE STANDARDS AND RESTRICTIONS

A. SECURITY

The Commission may require, as a permit condition, that the performance and observance of the Order of Conditions by one or both of the following methods:

1. Bond

By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Order of Conditions and the Commission may require that the applicant specify the time within which such construction shall be completed.

The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.

2. Covenant

By a covenant, executed and duly recorded by the owner of record, running with the land where by such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built upon or conveyed.

The deposit of monies, negotiable securities, bond, or covenant shall, in the case of the bond be given to the Town Treasurer, and in the case of a covenant, be recorded in the Registry of Deeds or Land Court, as the case may be, within 14 days of the granting of the Order of Conditions.

SECTION 9- SEQUENCE OF CONSTRUCTION

The Applicant shall provide a detailed sequence of construction to the Commission in the Application as part of the standard filing requirements. Said sequence shall be followed by Applicant, unless amended and approved by the Commission.

SECTION 10 – PLANS AND APPLICATION REQUIREMENTS

- A. Plans need to describe the proposed activity and its effect on the environment. Plans shall show all natural features such as large trees, waterways and water bodies, wildlife habitats and similar assets.
 - (1) The following items are minimal standards. The applicant may be required to submit further information that will assist the Commission in their review and deemed necessary to determine the proposed effect on the interests protected by the Bylaw. The Conservation Commission may waive any of these plan requirements it deems insignificant or irrelevant for a particular project.
 - (2) Plans should be submitted no smaller than 11 x 17 in size, with one full set of plans being submitted in color. In a scale ratio no greater than 1:40.
 - (3) Plans and application shall be submitted as a hard copy and in digital format
- B. Plan content
 - (1) The following information shall be provided.:
 - (a) The names and addresses of the record owner(s), the applicant(s) and of all abutters as determined by the most recent local tax list, unless the applicant have a more recent knowledge of such abutters.
 - (b) Description of any alteration to flood storage capacity on the site. Include calculations and watershed maps if necessary.
 - (c) Soil characteristics in representative portions of the site.

(d) Methods to be used to stabilize and maintain any embankments facing any wetlands, or show slope on plans of less than or equal to 3 to 1.

(e) Methods to control erosion during and after construction.

C. Plan specifications

- (1) Drawings for a Notice of Intent, Request for Resource Area Delineation and Abbreviated Notice of Intent shall be drawn to scale (one-inch equals 40 feet maximum) with the title designating the name of the project, location, the name(s) of the person(s) preparing the drawings and the date prepared, including all revision dates.
- (2) The Commission may require plans and calculations be prepared and stamped by a registered professional engineer or a registered land surveyor of the Commonwealth of Massachusetts, the Commission may waive this requirement if they feel the proposed work does not warrant such a professional certification. The Commission may also require preparation and submission of supporting materials by other professionals including, but not limited to, registered landscape architect, environmental scientist, geologist or hydrologist. Submission of requested materials does not imply approval of the project.
- (3) Drawings must include the boundary and location of all Resource Areas protected by the Bylaw on the project site and within 100 feet, regardless of whether or not the applicant believes the work is subject to M.G.L. c. 131, Section 40, the Wetlands Protection Act or the Ayer Wetlands Bylaw
- (4) Alterations
 - (a) Drawing must include a delineation of all alterations proposed in or adjacent to all Resource Area as indicated below:
 - i. Area to be dredged
 - ii. Area to be filled
 - iii. Area to be altered in any other way
 - (b) All alterations should be clearly explained in text or footnotes.
- (5) All drawings shall show the distance twenty-five (25), fifty (50), and one-hundred (100) feet from the resource areas including river front, and vernal pools
- (6) Calendar dates of measurements, samplings, contours and so forth should appear with such data. Contour intervals shall be no greater than two feet.
- (7) Indicate locations, sizes, and ratios of existing slopes and proposed culverts and pipes as well as discharge points
- (8) Include cross-section of all wetlands, showing slopes, bank and bottom treatments for wetland creation or replication.
- (9) Indicate existing stone walls, fences, buildings, historic sites, rock ridges, and outcroppings.

- (10) Indicate all existing trees greater than 6" caliper diameter measured at a height of 5 feet above existing ground located within 25 feet of the proposed work area on the plan.
- (11) Pre and Post-development overstory tree canopy line within the proposed work area.
- (12) Indicate property boundaries, rights-of-way, easements and restrictions
- (13) Indicate proposed on-site pollution control devices, such as catch basins, oil absorption pillows, detention/retention basins, or vegetated buffers.
- (14) Show location and details of all erosion controls.
- (15) Assessors Map and Lot number(s)
- (16) If location is within an Area of Critical Environmental Concern, Natural Heritage Priority Habitat or Flood Plain it should be indicated on the plan.