

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 Thursday, July 14, 2022

Due to the ongoing COVID-19 Pandemic, in accordance with Chapter 22 of the Acts of 2022, suspending certain provisions of the Open Meeting Law (OML), public bodies otherwise governed by the OML are temporarily relieved from the requirement that meetings be held in public places, open and physically accessible to the public, so long as measures are taken to ensure public access to the bodies' deliberations "through adequate, alternative means." This meeting will be live on Zoom. The public may participate remotely by joining Zoom (**Meeting ID# 840 4058 0886**) or by calling (**929-205-6099**). For additional information about remote participation, please contact Conservation Commission at concom@ayer.ma.us or by calling 978-772-8220 ext. 143 prior to the meeting.

7:00 PM GENERAL BUSINESS / OPEN SESSION

- Approval of Meeting Minutes for June 23, 2022
- Public Input

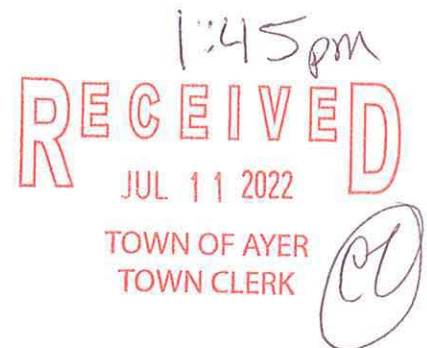
Discussion: Request for Proposal (RFP) Stratton Hill Conservation Analysis

Discussion: Review Draft Special Conditions

Discussion: Waterways Sign Project Update

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM ADJOURN



Next Scheduled Meeting: 7 PM, July 28, 2022



Town of Ayer Conservation Commission

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

Minutes for **6/23/2022**

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

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

APAC Recorded: Yes

7:00 PM – Open Meeting

- **Confirmation of Agenda**
 - G. Bacon moved to confirm the agenda as written; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - G. Bacon moved to accept the minutes for 6/9/2022 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Input**
 - A question was raised by Anne Gagnon, of Mass. Fish & Wildlife, about some members of the public having difficulty joining the meeting via Zoom.
 - IT Director Cindy Knox, monitoring the meeting, responded that it is better to request a link to the meeting from the Commission than to have it posted on the Town website as otherwise this opens meetings up to the risk of spammers and inappropriate material.
- **Discussion: Contract with North County Land Trust (NCLT) to manage Conservation Restrictions**
 - Anna Wilkins, Executive Director of NCLT, Emily Merlino, also of NCLT, and Town Manager Robert Pontbriand were present via Zoom.
 - NCLT has agreed to contract with the Town to take over much of the preparation and management of Conservation Restrictions (CRs).
 - This includes preparation of baseline monitoring documentation, participating in the drafting process of CR documents, scheduling and implementing monitoring/reporting/enforcement of CR properties – essentially making sure all of the legal responsibilities are up-to-date for CRs that the Town has accepted.
 - Ms. Merlino will be the coordinator who does much of the field work and baseline monitoring.
 - This will be a multi-year project as ConCom has a backlog of CRs that are incomplete and need a lot of work.
 - Mr. Pontbriand also said this would now be a standing item in ConCom’s annual budget going forward.
 - Spring Town Meeting on 4/25/2022 approved spending \$10,000 on the first year of the contract.



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- The final contract draft for 2022-2023 was reviewed with some corrections and amendments made.
 - M. Phillips asked that the contract include specific reference to ConCom's priorities for the first year(s).
 - From previous discussions, the Commission had agreed on its first year priorities to be the following:
 - John Carroll Reserve subdivision
 - Ayer Solar II
 - Shaker Mill Pond subdivision
 - Panther Place subdivision
 - Kohler Place, to begin monitoring (CR and baseline documentation already complete)
- H. Hampson had also prepared an information sheet on each of these 5 showing the status of all of the elements required (CR status, baseline monitoring documentation status, owner and holder information on CRs, etc.).
 - The preparation of the initial draft CR document usually begins on the developer/property owner's side, with back-and-forth then between the developer's side (as CR owner), the future holder of the CR, and the State, resulting in a final version agreed to by all parties.
 - (Currently, the State has not filled its vacant position for CR reviewer, so there is a backlog at the State level for final acceptance.)
- While the Town/ConCom will be the holder for most CRs in Ayer, NCLT's role will be taking over much of this process on behalf of the Town.
 - The Commission and the Town still retain ultimate authority over CRs.
 - In the drafting process, material should be circulated to ConCom through H. Hampson.
 - Ms. Wilkins said the Land Trust Alliance has templates for monitoring standards and practices that can be tailored to specific municipalities and CR properties.
- It was agreed that the edits to the contract would be finalized and that that revised draft would be circulated to ConCom members for final comments.
 - If there are no problems, it is anticipated that the contract will be signed by NCLT and Mr. Pontbriand by the end of the following week so that it can go into effect with the new fiscal year on July 1st.
- **Discussion: Request for Proposals (RFP), Stratton Hill Conservation Analysis**
 - J. Gugino presented revised drafts of the RFP and cover letter for review.
 - The RFP was previously issued in December 2021 but then was cancelled when the Open Space Residential Development (OSRD) subdivision project was withdrawn before the Planning Board early in 2022.
 - The RFP for seeking third-party review of the OSRD plans was updated now than it has been resubmitted to the Planning Board as a preliminary subdivision plan.



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Minutes for **6/23/2022**

- Anne Gagnon said Attorney Bob Collins, for Stratton Hill developer Dave Moulton, has talked to her about the open space for this parcel being ‘set aside in fee’ to Mass. Fish & Wildlife rather than as a traditional CR.
 - J. Gugino noted that the OSRD bylaw language specifically mandates the creation of a Conservation Restriction, so this requirement would probably have to be waived by the Planning Board – for which she had no objection.
- Resident Marion Stoddart asked why Stratton Hill was included as one of the properties in the NCLT contract discussed previously, since the project’s acceptance as a subdivision is far from complete.
 - ConCom members felt they would rather leave the reference to Stratton Hill in the NCLT contract listing of properties as this did no harm.
- G. Bacon moved to approve the RFP for issuance for a third party peer review of the Conservation Analysis for Stratton Hill; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Conservation Commission Office and Member Updates**
 - Site Walk, Stratton Hill Open Space Residential Development (OSRD) Subdivision, off Wright Road
 - H. Hampson spoke to Stan Dillis, of Dillis & Roy Civil Design Group, Inc., about his availability for a site walk with the Commission.
 - The site walk was scheduled for 8 a.m. on Saturday, July 9.
 - H. Hampson has asked Mr. Dillis to stake the center line for the location of proposed new stormwater detention basins.
 - Waterways Signs Project
 - M. Phillips will contact Dig Safe to check and mark proposed sign locations.
 - Drafting information for each waterway for the website, to link to the QR codes on the signs, was divvied up:
 - J. Amaya will do Sandy Pond.
 - J. Schmalenberger will do Flannagan Pond.
 - H. Hampson will do Shaker Mill Pond.
 - J. Gugino will do Grove Pond and Long Pond.
 - M. Phillips will do Nonacoicus Brook.
 - G. Bacon will do Pine Meadow Pond.
 - Ayer Solar II
 - J.. Schmalenberger, H. Hampson, and J. Gugino joined members of the Planning Board , the Town Planner, and representatives of the engineering firm for Solar II for a site walk earlier in the morning on 6/23.
 - J. Schmalenberger said there are things to discuss in the future, and that more work needs to be done on maintaining and fixing their erosion controls.



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Minutes for **6/23/2022**

- H. Hampson will be sending an email to Cal Goldsmith & Kyle Burchard, of Goldsmith, Prest & Ringwall, to follow-up on some things observed, and will forward that on to Rohit Garg as well.
- Pine Meadow Conservation Land Trailhead Sign
 - Resident Marion Stoddart brought to the Commission's attention that the trailhead sign off Groton-Harvard Road is in tough shape and needs refurbishment.
- **8:52 PM – Adjourn Meeting**
 - G. Bacon moved to adjourn; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: _____

Not to Exceed (NTE) Agreement

This Agreement for professional services will be by and between BSC GROUP, INC. (hereinafter "CONSULTANT") a Massachusetts corporation, with a place of business at 803 Summer Street, Boston, MA 02127, and the Client (hereinafter "CLIENT") and will consist of the following Sections and, as applicable, any exhibits thereto:

A. CLIENT INFORMATION

Client Name	Town of Ayer Conservation Commission
Client Address	Ayer Town Hall, One Main Street Ayer, MA 01432
Client Contact	Heather Hampson, Conservation Agent

B. EFFECTIVE DATE: 7/8/2022

C. PROJECT INFORMATION

Project Name	Peer Review of Conservation Analysis
Project Address (the "Site")	Stratton Hill OSRD Subdivision

D. SCOPE OF SERVICES (PHASE/TASK)

Attached as Exhibit D.

E. SCHEDULE OF SERVICES (MILESTONES)

Attached as Exhibit E.

F. FEE FOR SERVICES

BSC has estimated a not-to-exceed amount of \$10,250

G. TERMS AND CONDITIONS

Attached as Exhibit G.

BSC Group, Inc.

Client

Signature:  _____

Name: Matt Burne, PWS _____

Title: Senior Ecologist _____

Date: 7/8/2022 _____

Signature: _____

Name: _____

Title: _____

Date: _____

JULY 8, 2022

Heather Hampson
Ayer Conservation Commission
Ayer Town Hall
1 Main Street
Ayer, MA 01432

RE: Proposal for Peer Review Consulting Services
Conservation Analysis for Stratton Hill Open Space Residential Development (OSRD) Subdivision

Dear Ms. Hampson and Members of the Commission,

BSC Group, Inc. (BSC) is pleased to submit this revised proposal for Peer Review Services of a Conservation Analysis presented in support of an application before the Ayer Conservation Commission (ACC) for an Open Space Residential Development (OSRD) subdivision in the town of Ayer. A preliminary Subdivision Filing for Stratton Hill OSRD was received by the Town of Ayer on June 9, 2022 which includes a Conservation Analysis conducted pursuant to Section 10.1 of the Ayer Zoning Bylaws by Dillis & Roy Civil Design Group (June 30, 2021 and revised August 18, 2021) that includes a 2004 "Rare Herpetological Investigation, Sandy Pond Road, Groton, Massachusetts," prepared by Oxbow Associates, Inc. and additional watershed, soil, wetland resource area, and topographic materials. The site was subject to a 2005 MA Division of Fisheries & Wildlife (DFW) Conservation Management Permit (CMP), Conservation Permit Number 005-042.DFW, that resulted from a combined review of the subject site and a residential subdivision on a neighboring parcel in Groton referred to as "the Rocky Hill Residential Development." The subject site in Ayer is approximately 151 acres in size, with 132± acres to be subject to a permanent Conservation Restriction and the remaining 19± acres developed with up to 35 house lots with driveways, roadway, and infrastructure including stormwater management.

BSC Senior Ecologist/Project Manager Matt Burne, PWS, will lead the review of the subject Conservation Analysis. Matt has extensive experience in environmental review and is an expert in the evaluation of wildlife habitat and vernal pool ecosystems. He has published peer-reviewed articles, popular field guides, and a wide variety of educational materials pertaining to wetlands and wildlife, especially in the context of the Massachusetts Wetlands Protection Act and its regulations. Matt brings additional pertinent experience to this review having served as the Conservation Director for a land trust in eastern Massachusetts for 15 years. He has experience in evaluating ecosystems at the landscape scale and in the preparation and long-term monitoring of Conservation Restrictions, including creating baseline documentation and fulfilling annual monitoring and reporting requirements. Matt routinely assists municipalities with peer reviews, teaches MACC's Fundamentals Unit on Buffer Zones, and has presented a workshop on vernal pool protection at the MACC Annual Environmental Conference for over 20 consecutive years. BSC engineering and climate resiliency staff will contribute to the review of the Conservation Analysis and concerns raised about stormwater management system components proposed within close proximity to Long Pond, and we will evaluate available information to address questions pertaining to blasting in the development area relative to impacts to wildlife. BSC has been made aware that wetland lines shown on the plans appear to be different than what was approved in the ORAD, issued November 2020, so BSC has included a review of the ANRAD plans relative to the plans under review for this submission.

BSC's qualifications and Matt's resume are attached hereto.

BSC has prepared this proposal based upon the following understanding of your needs and circumstances that have affected the Scope of Services:

- The Ayer Stratton Hill OSRD Subdivision parcel is 151± acres in size and a large portion (around 132 acres) will be subject to a permanent Conservation Restriction as an outcome of the permitting process
- The site was included in a permitting process that resulted in the issuance of a DFW Conservation and Management Permit, which expired in 2012 but remains relevant to the current proposal
- A preliminary subdivision plan has been submitted to the Planning Board with proposed stormwater management features
- The ACC seeks a review of the Conservation Analysis presented by the Applicant relative to the 18 analysis tasks laid out in Section 3 of the OSRD Regulations and Guidelines
- The ACC requires an evaluation of the subject Conservation Analysis relative to providing a basis for future Conservation Restriction monitoring
- The ACC seeks review of stormwater basins as shown in available project submissions
- The ACC is requesting evaluation of the priority ranking resulting from the applicant's Conservation Analysis relative to the Conservation Analysis Guidelines
- The ACC seeks an evaluation of the potential impacts of blasting on wildlife including to state listed turtles and nesting bird species
- The ACC seeks a review of the potential ecological impacts of the subdivision road crossing the National Grid Right of Way relative to state listed turtles and other sensitive wildlife
- The ACC seeks review of wetland lines as shown on the current plans relative to the 2020 ANRAD filing subject to an ORAD (MassDEP #100-0445)
- The ACC requests a permitting status evaluation for the proposed project relative to MEPA, MESA and other relevant permitting processes

Exhibit D1: Scope of Services

BSC, the *Company*, proposes to provide the Ayer Conservation Commission, the *Client*, the following specific services in accordance with the attached Terms and Conditions and Fee Schedule that are made a part of this Agreement.

1.1 Document Review

BSC will conduct a thorough review of the Applicant's Conservation Analysis prepared by Dillis & Roy Civil Design Group, dated June 30, 2021 and as revised dated August 18, 2021, pursuant to Section 10.1 of the Ayer Zoning Bylaws, as amended, and the OSRD Regulations and Guidelines for preparing Conservation Analysis for the Ayer Open Space Residential Development Subdivision Design Process. BSC will consider the "Rare Herpetofaunal Investigation, Sandy Pond Road, Groton, Massachusetts," prepared by Oxbow Associates Inc. and dated January 30, 2004 and supporting watershed, soil, wetland resource area, and topographic materials submitted by the Applicant. BSC will also review publicly available Geographic Information Systems (GIS) data for the site to supplement submitted materials.

BSC will review the 2005 DFW Conservation and Management Permit referenced above and will seek to review historic documents that may provide context to the development of the CMP and its requirements. BSC will also perform a high-level permitting assessment for the project to inform the Town of potential permitting requirements that may be in process or outstanding.

BSC will review the stormwater management features shown on preliminary subdivision plans relative to state and local wetlands protection laws and regulations and the OSRD Regulations and Guidelines. BSC will provide analysis of proposed location of stormwater management relative to sensitive resources on the site such as Long Pond.

BSC will review available literature and state regulation pertaining to potential impacts of blasting on wildlife, including rare turtles and nesting birds. We will also review materials relative to ecological impacts of the proposed subdivision road and the National Grid utility easement intersection.

BSC will review wetland resource areas shown on current site plans against those approved in the ORAD issued November 2020 for consistency.

1.2 Site Visit

The BSC Senior Ecologist will conduct a site visit to review the existing conditions on the site, evaluate the extent of identified resource areas, and to understand the general site conditions that contribute to a complete and robust Conservation Analysis as defined in the Ayer Zoning Bylaws and OSRD Regulations and Guidance document referenced above.

The primary goal of BSC's site visit shall be to evaluate the Conservation Analysis against the 18 analysis tasks defined in the Guidance document to determine whether data presented in the Applicant's analysis adequately addresses the information requested in the document. BSC will also be able to provide the Ayer Conservation Commission an evaluation of whether the 18 tasks are sufficient to fully analyze the conservation values of the Site and inform the basis of a long-term monitoring program for Conservation Restricted sections of the property, and will evaluate the Applicant's conclusions pertaining to the Conservation Priority Ranking of the Site.

1.3 Meeting Attendance and Coordination

The BSC Senior Ecologist will prepare for and attend two (2) virtual (Zoom or equivalent) meetings with the Ayer Conservation Commission. BSC will also coordinate with the Ayer Conservation Commission, other town officials, and the Applicant and/or representatives as needed during the review of this Conservation Assessment.

For the purposes of preparing a budget for this proposal, BSC assumes three (3) hours of effort for each remote meeting and assumes an additional three (3) hours for coordination tasks. In-person meetings would require additional budget for travel.

1.4 Written Memo Report

Within BSC's written report, we will identify any deficiencies in the Conservation Analysis that affect the purposes of such analysis including sufficiency of the 18 tasks laid out in the OSRD Regulations and Guidelines and the resultant Conservation Priority Ranking. We will present an evaluation of the suitability of the Conservation Analysis to serve as a basis for future Conservation Restriction annual monitoring.

Consideration of the adequacy of data used for the analysis will be presented in our report. Data that is nearly 20 years old has been included in the report and a variety of changes occur over that span of time. Two of the rare herptile species identified in the Oxbow report are no longer listed by the state under the Massachusetts Endangered Species Act (MESA) and Natural Heritage & Endangered Species Program records expire after 25 years. The age of some material presented in the Conservation Analysis may be of concern in the current application and its conclusions.

BSC will seek any information available pertaining to the projected locations of stormwater management features on the site and provide analysis and comments pertinent to the protection of a regionally significant Great Pond. We will also provide an assessment of the potential ecological impacts of the subdivision roadway crossing under the National Grid utility line as requested in the RFP.

BSC will present a synthesis of available information pertaining to impacts of blasting on wildlife, including the Blanding's Turtle and nesting birds, as well as an analysis of regulatory control of such work that may be required or that may benefit populations of sensitive wildlife on the site. We will discuss potential benefits of time of year restrictions on such work relative to the protection of wildlife.

Exhibit D2: Additional Services

The following services are not included as a part of this Agreement. These services may become necessary based upon the conclusions derived from the performance of the proposed scope above. If required, these services will be

performed for an additional fee to be paid on an hourly basis in accordance with the attached BSC Fee Schedule and in coordination with the Ayer Conservation Commission.

- Prepare a Conservation Restriction Baseline Document consistent with baseline documentation as described in *Protecting Wetlands and Open Space: MACC’s Environmental Handbook* and the *Massachusetts Conservation Restriction Stewardship Manual*, Massachusetts Audubon Society, 2006
- Review flagging of wetland resource area boundaries
- Delineate vernal pool(s) or other wetland resources
- Attend additional meetings beyond the one (1) site visit and two (2) meetings budgeted herein under Task 1.3
- Review additional or revised materials beyond those specified above
- Any services not specifically listed in Section 1.0

Exhibit E: Schedule of Services

BSC Group, Inc. proposes to begin the services identified in Section 1.0 of this Agreement upon receipt of written authorization to proceed from the Ayer Conservation Commission, and on a schedule to be coordinated with the Client. Due to previously planned vacation, the BSC Senior Ecologist/Project Manager has a potential conflict with the proposed meeting schedule of July 28. While remote attendance may be feasible, access to internet cannot be guaranteed which may affect attendance.

Exhibit F: Fee for Services

BSC has estimated a budget of **Ten Thousand Two Hundred Fifty (\$10,250) Dollars** inclusive of any and all direct reimbursable expenses for the services described in Section 1.0 of this Agreement. BSC proposes to provide these services on an hourly basis in accordance with the attached BSC Fee Schedule. BSC’s estimated budget for proposed services shall not be construed to be a not-to-exceed amount by line item. The Company shall inform the Client as soon as practical if it becomes necessary to exceed the budget in order to perform all proposed and additional services required. BSC will not exceed the estimated budget without mutual agreement with Client.

The following is a breakdown of the estimated budget described in Section 1.0 of this Agreement. The budget for individual tasks shall not be construed to be separate limiting fees.

Task 1.1	Document Review	\$1,750
Task 1.2	Site Visit	\$1,800
Task 1.3	Meeting Attendance, Coordination	\$1,500
Task 1.4	Written Memo Report	\$5,200
Total		\$10,250

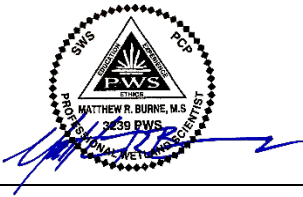
The Client shall provide BSC with any specific billing format required for prompt payment of invoices. The mailing address for all payments is:

BSC Group, Inc.
803 Summer Street
Boston, MA 02127

Please sign and return this Agreement and initial the attached Terms and Conditions and return one (1) copy with an original signature for our records. BSC welcomes the opportunity to provide professional services for this project.

Sincerely,

BSC GROUP, INC.



Matt Burne, PWS
Senior Ecologist

EXHIBIT G: NTE Terms and Conditions

These Terms and Conditions are part of a proposed agreement submitted to the Client for its consideration (the “Proposal”). Unless otherwise specified, all references herein to “Sections” are to Sections of the Proposal and any exhibits incorporated therein, and all other capitalized terms are as defined in the Proposal. The Proposal is valid for a period of thirty (30) days after being offered by Consultant and will be considered revoked if not accepted within that period, unless the Consultant agrees to an extension in a separate writing. If the Client accepts the Proposal within the applicable period, the Proposal, including these Terms and Conditions, shall constitute the parties’ Agreement.

Article 1 - Term

This Agreement shall commence on the Effective Date identified in Section B and remain in effect until the completion of the Consultant’s services hereunder, unless extended or terminated in accordance with these Terms and Conditions.

Article 2- Scope of Consultant Services

The Consultant will perform the services outlined in Section D (the “Consultant Services”).

If the Consultant Services include construction phase services and/or administration of the contract between the Client (or the owner of the Site) and its contractor(s) for the Project (the “Contractor”), the Consultant will become generally familiar with the progress and quality of the work of the Contractor (the “Contractor’s Work”) and will endeavor to guard the Client against defects and deficiencies in the Contractor’s Work. However, the Contractor will remain solely responsible for the construction means, methods, techniques, sequences and procedures for the Project, for safety programs and for the acts and omissions of itself and its subcontractors.

Unless otherwise provided in Section D, the Consultant and its subconsultants and independent contractors shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials in any form at the Site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl, or other toxic substances (“Hazardous Materials”), provided, however, that the Consultant shall report to the Client the presence and location of any Hazardous Materials observed by the Consultant or suspected to exist. If asked by the Client to provide consulting services relating to Hazardous Materials, the Consultant shall carry no liability for Hazardous Materials but shall require any subconsultants providing such services to carry such insurance as the parties may negotiate hereinafter and, in any event, insurance meeting the requirements set forth in Article 9.

Article 3 - Schedule of Consultant Services

The Consultant will perform the Consultant Services in accordance with the schedule set forth in Section E; however, the Consultant will not be responsible for delays caused by other parties or by other circumstances outside its reasonable control, including but not limited to force majeure events.

Article 4 - Changes and Additions

The Consultant shall review the Project costs and shall report in writing to the Client any conditions which would warrant a change in the scope of the Contractor’s Work, the Project budget, methods of investigation,

and/or the Consultant Services. The Client reserves the right at any time to make changes or additions to the scope of the Contractor's Work and/or the Consultant Services. Such changes shall be agreed to and authorized in writing by the Client and the Consultant. The Consultant shall not perform any services beyond the scope of this Agreement, or subsequent amendment, without written approval of the Client.

Article 5 - Compliance with Laws

The Consultant shall use reasonable efforts and judgment, consistent with professional standards in the locale of the Project, to identify and interpret present Federal, State and local laws, rules, codes and regulations as they apply to the Project ("Legal Requirements"), and to require its directors, officers, employees, agents, suppliers, sub-consultants, independent contractors, volunteers, members, guests, invitees and vendors (collectively, "Consultant Responsible Parties") to use reasonable efforts to comply with such Legal Requirements.

Article 6 - Use of Subconsultants.

The Consultant may utilize the services of subconsultants, subcontractors or other independent contractors subject to the Client's approval, which approval will not be unreasonably withheld.

Article 7 - Compensation

The Consultant's compensation shall be one or more payments computed as a multiple of actual hourly salary attributable to the time each person actually provides services under the relevant scope, the total of which payment(s) shall not exceed the "Not to Exceed" Amount provided in Section F.

Compensation for the Consultant's employees shall be computed at the employee's actual hourly salary times a multiplier as per an agreed-upon fee schedule. See Section F.

The Client will reimburse the Consultant for its expenses which are actually made or incurred in a not-to-exceed aggregate amount identified in the Agreement. See Section F. Expenses will be subject to a ten percent (10%) markup.

The Consultant's compensation shall be equitably adjusted if the Consultant Services are suspended, delayed, extended, or otherwise materially changed due to causes outside of the Consultant's reasonable control.

In the event the Client approves additional Consultant services as provided in Article 4, the Client shall compensate the Consultant for such additional services by such adjustment to the Not to Exceed Amount or other compensation as the parties may agree to in writing.

Article 8 - Payment Provisions

Payments shall be made upon time and expenses expenditures. Unless otherwise agreed to in writing, the Client's payment of all invoices will be due within thirty (30) days of receipt of an invoice for all undisputed amounts.

Article 9 – Insurance

9.1. Professional Liability Insurance Coverage

The Consultant shall maintain at all times required under this Agreement professional liability insurance

coverage for professional errors and omissions arising out of the performance of services under this Agreement in an amount not less than \$1,000,000.

9.2. Deductible

The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Client.

9.3. Worker's Compensation, General Liability, Automobile and Other Insurance

The Consultant shall carry, and shall ensure that each of its subconsultants and independent contractors carries, the following coverages:

- a) Worker's compensation insurance as required under federal and applicable State law.
- b) Employer's liability insurance with a minimum limit per accident or disease of \$1,000,000.
- c) Commercial general liability insurance for bodily injury and property damage in the combined single limit of \$1,000,000.
- d) Comprehensive automobile liability insurance for bodily injury and property damage in the combined single limit of \$1,000,000.

9.4. Limitations of Professional and Contractual Liability

- a) Consultant Obligation for Successful Claim. In recognition of the risks, rewards and benefits of the Project available to the Client and the risks and total fee of the Consultant, the Consultant and the Client have agreed that, notwithstanding any other provision of this Agreement, the total liability at law or otherwise of the Consultant and the Consultant Responsible Parties for any and all injuries, claims, losses, expenses or claims expenses, including but not limited to claims by the Client against the Consultant for indemnification and/or contribution due to third party claims against the Client, relating to the Project or arising out of this Agreement from any cause or causes shall not exceed the Consultant's aggregate fee for Consultant Services rendered on the subject project. Such causes include but are not limited to the Consultant's or any of the Consultant Responsible Parties' alleged breach of contract, breach of warranty, strict liability, or negligent acts, errors, or omissions.
- b) Consequential Damages. Under no circumstances shall the Consultant or the Consultant Responsible Parties be liable to the Client under any theory of liability for any consequential damages, including but not limited to loss of use or rental, loss of profit or cost of any financing however caused including the Consultant's or any of the Consultant Responsible Parties' fault or negligence, regardless of whether the Consultant has been advised of the possibility of such consequential damages.
- c) Timely Notification of Claims. The Client shall report to the Consultant any errors or omissions arising out of the Consultant's services that the Client becomes aware of within two (2) weeks of discovery. The Client agrees to require the same of its contractor. Should legal liability for such errors or omissions exist, failure by the Client or its contractor to notify the Consultant as provided above shall relieve the Consultant from the costs of remedying such errors or omissions above what the remedy would have cost had notice been provided

within two (2) weeks of discovery.

- d) Client Obligation for Unsuccessful Claim. In the event that the Client makes a claim against the Consultant, at law or otherwise for any alleged error, omission or act arising out of the performance of the Consultant's services, and the Client fails to prove such claim upon final adjudication, then the Client shall pay all costs incurred by the Consultant in defending itself against the claim, including, without limitation, court costs, and other claim-related expenses, including, without limitation, costs, fees, and expenses of experts.

Article 10 – Non-Discrimination

The Consultant shall not discriminate against any person, employee, or applicant for employment because of that person's membership in any legally protected class, including but not limited to that person's race, color, gender, religion, creed, national origin, ancestry, age (40 years and over), sexual orientation, pregnancy, citizenship, gender expression and identity, handicap, disability, genetic information, or veteran status. The Consultant shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in, a uniformed military service of the United States, including the National Guard, on the basis of that membership, application, or obligation

Article 11 – Client Responsibilities; Timely Communications

The Client shall furnish in a timely manner reasonably full information concerning its objectives, schedule constraints, budget and other applicable requirements for the Project, as they may change from time to time. The Client will render decisions and directions as needed to avoid unreasonable delay in the orderly and sequential progress of the Consultant Services and, as applicable, of the Contractor's Work.

Article 12 – Right of Entry

The Client hereby grants to the Consultant, or represents and warrants (if the Site is not owned by Client), that permission has been duly granted for a Right of Entry by the Consultant and other Consultant Responsible Parties, upon the Site for purpose of performing and with the right to perform all acts, studies, and research, including without limitation the making of test boring and other soil investigation, in connection with the Consultant Services. Should the Client not own the Site, the Client warrants and represents by acceptance of the Proposal that it has authority and permission of Site owner and any site occupant to grant the Consultant and the Consultant Responsible Parties this right of entry. The Consultant may require evidence of such authority in a form reasonably satisfactory to the Consultant.

Article 13 – Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by the Consultant as instruments of services, shall remain the sole property of the Consultant. All reports and other work preparation by the Consultant for the Client shall be utilized solely for the intended purposes and Site described in this Agreement. The Consultant will retain all pertinent documents for a period of three (3) years following the submission of the Consultant's final report to the Client. Such documents will be available to the Client upon request at the Consultant's office during office hours on reasonable notice, and copies will be furnished by the Consultant to the Client for the total cost of reproduction of the same, including but not limited to staff time and copying costs.

Article 14 – Public Responsibility

The Client acknowledges that the Client or the Site owner as the case may be, is now and shall remain in control of the Site for all purposes at all times. The Consultant does not undertake to report to any Federal, State, county or local public agencies having jurisdiction over the subject matter any conditions existing at the Site from time to time which may present a potential danger to public health, safety, or the environment. The Client, by acceptance of this Agreement, agrees that Client will timely notify each appropriate Federal, State, county, and local public agency, as required by law, of the existence of any condition at the Site, which may present a potential danger to public health, safety, or the environment.

Article 15 – Standard of Care; Disclaimer of Warranty

The Consultant agrees the services provided hereunder shall conform to generally accepted industry standards of care and practice exercised by organizations engaged in performing comparable services in the same locate and under similar circumstances; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice. No warranty, express or implied, shall apply to Consultant's services or its Instruments of Service.

Article 16 – Suspension and Termination

Either party may suspend or terminate this Agreement for cause in the event of a material breach upon thirty (30) days' written notice and opportunity to cure.

Notwithstanding any other provision of this Agreement, if the Client suspends or terminates this Agreement in whole or in part without cause, the Client agrees to pay the Consultant for work performed through and including the effective date of the suspension or termination.

In the event the Client suspends the Agreement in whole or in part without cause, the Consultant's compensation may be equitably adjusted upon resumption of the Agreement, including but not limited to address expenses incurred in connection with the interruption and resumption of services and to address increases to the salaries of the Consultant's personnel granted in the ordinary course of its business. Without waiver of any of its other rights, the Consultant may terminate the agreement on thirty days' notice, without further opportunity to cure, if the Client suspends the Agreement without cause for a period of six (6) months or longer.

Without waiver of limitation of its right to terminate for cause, the Consultant may suspend this Agreement in the event that any of its invoices remain unpaid more than sixty (60) days after receipt.

Article 17 - Conflict of Interest

The Client shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person, or persons so long as such person(s) shall be employed by the Consultant.

The Consultant, its subconsultants and independent contractors shall conduct themselves at all times in a manner reasonably calculated to avoid any conflict of interest relating to this Agreement under Federal, State or local law.

Article 18 - Amendments

This Agreement may be amended only by a written instrument specifically referencing this Agreement

executed by authorized representatives of the parties

Article 19 – Choice of Law; Legal Proceedings

This Agreement shall be governed by and enforceable in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the State or Federal Courts sitting in Suffolk County, Massachusetts and the parties irrevocably submit to such exclusive jurisdiction and venue. In the event the Consultant brings a successful claim for payment of compensation due under this Agreement, the Consultant shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which the Consultant may be entitled.

Article 20 – Integrated Agreement; Severability

This Agreement is the complete and integrated agreement between the parties, superseding any prior written or oral communications and agreements between them relating to the Project and the subject matter of the Agreement. In the event that any provisions of this Agreement shall be deemed invalid or unenforceable, the other provisions herein shall remain in force and effect and binding upon the parties hereto as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

Fee Schedule

CLASSIFICATION

HOURLY RATE

Professional Staff

Principal: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$235.00 to \$310.00
Managing: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$180.00 to \$250.00
Senior Project: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$140.00 to \$205.00
Project: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$125.00 to \$190.00
Staff: Designer, Planner, Landscape Architect, Land Surveyor, Scientist	\$90.00 to \$130.00
Expert Witness Testimony/Court Appearance	\$300.00 to \$350.00

Technical Support Staff, Specialists

Senior: Calculator, Chief of Party, Drafter, Instrument Operator, Technician, Text Processor, Administration, Support, Analyst	\$95.00 to \$175.00
Staff: Calculator, Drafter, Instrument Operator, Technician, Text Processor, Administration, Support, Analyst	\$75.00 to \$125.00

Field Survey Party*

3-person Field Crew	\$280.00 to \$390.00
2-person Field Crew	\$180.00 to \$265.00
1-person Field Crew	\$150.00 to \$220.00

Expenses

Direct Expenses will be billed with a 10% markup. Direct Expenses include cost of transportation, shipping/courier service, printing and reprographics, telecommunications, presentation graphics, project supplies, subcontractors, subconsultants and other costs directly applicable to the individual project.

* Premium rates apply for overtime hours, night shifts and weekend work.

Environmental Review Qualifications

STRONG EXPERIENCE SERVING LOCAL CONSERVATION COMMISSIONS

BSC Group provides as-needed consulting services to municipalities as well as to regional and state agencies, including the Massachusetts Division of Capital Planning and Operations, the Massachusetts Port Authority, the Massachusetts Department of Environmental Protection, and the Massachusetts Department of Transportation. Our staff provides on-call consulting services to Massachusetts Conservation Commissions with respect to a broad range of issues including natural resources assessment, wildlife habitat assessment, climate resiliency planning and assessment, wetland resource area delineation, wetland mitigation, environmental engineering, and interpretation of applicable regulations.



BSC's wide range of wetland science services include restoration/replacement design and implementation, and long-term monitoring plans.

Services Available Through BSC Group

With a broad variety of personnel resources available "under one roof," BSC offers municipal clients comprehensive experience in project evaluation. Specialized services available through BSC are discussed below.

ENVIRONMENTAL ASSESSMENT/ PERMITTING

BSC approaches all projects from a science-based perspective, evaluating impacts and feasible alternatives, then determining regulatory strategy and requirements. BSC's professional staff have established a high level of credibility with local, state, and federal regulators. We are skilled in reviewing the applications of other consultants and regularly provide the following services:

- Natural resource assessment
- Wildlife habitat assessment
- Wetland resource area delineation review
- Wetland replication and mitigation review and assistance
- Application reviews (ANRAD, RDA, NOIs)
- Preparation of OOCs
- Attendance at hearings and public meetings
- Climate resiliency planning and assessment
- Engineering review, stormwater management review and construction monitoring

BSC is recognized for our expertise in environmental assessment and MEPA/NEPA processes, the Wetlands Protection Act (MGL Chapter 131, Section 40), including amendments pertaining to the Riverfront Area, regulations implementing 401 Water Quality Certification, water quality studies, vegetation and wildlife surveys and assessments, difficult soils analyses, habitat evaluation studies, rare and endangered species analysis, wetland mitigation planning and design, and aquifer protection programs. BSC has also assisted communities during adjudicatory hearings and appeals.

WETLAND SCIENCE

BSC maintains current knowledge of on-going research in the field of wetland ecology by continually expanding our knowledge of changing regulations and technical advisories. By staying up-to-date on issues and regulations, BSC is able to advise commissions on the best methods to review and permit proposed projects at all levels of complexity and bring wetland-related issues to successful conclusion. BSC staff includes recognized experts in natural resource and wildlife habitat assessment, climate resiliency planning and assessment, and wetland ecology who provide services in wetland delineation/assessment, wetland mitigation plan development/assessment, wetland restoration/replacement design and implementation, and long-term monitoring plans.

For example, BSC recently completed the research and preparation of a comprehensive guidebook on behalf of the Massachusetts Association of Conservation Commissions (MACC) on the science and regulation of wetland resource area buffer zones and Riverfront Areas under the Massachusetts Wetlands Protection Act and local bylaws and ordinances. This entailed close collaboration with the MACC's Buffer Zone Guidebook Review Team. The guidebook is intended to be the primary reference for Conservation Commissions when they review projects in the Buffer Zone, and incorporates recent science on the importance of wetlands and their buffers in providing climate resiliency and carbon storage ecosystem services, as well as how climate change impacts wetlands and buffers.

WATER QUALITY STUDIES/BMPS/ ENGINEERING

BSC is expert in water quality investigations, including field sampling and analysis for routine and unusual parameters. We also have a full understanding of the state and federal regulations and criteria applying to water quality. BSC assists clients in the development and selection of Best Management Practices

(BMPs) to provide environmental protection with minimal cost and effort and prepares accurate site assessments to develop (33 U.S.C. 1251) et seq.) pollution prevention plans under the National Pollutant Discharge Elimination System (NPDES) stormwater regulations. BSC's professional engineers have also designed and reviewed hundreds of stormwater management systems for development sites throughout New England. Each BSC stormwater system uses an integrated system of BMPs to comply with DEP guidelines for removal of Total Suspended Solids (TSS), infiltration for groundwater recharge, and peak velocity and flood controls. In addition, BSC has several USGBC LEED-accredited staff.

WILDLIFE HABITAT EVALUATIONS

BSC wildlife biologists use the following field methods for conducting wildlife population and habitat studies, including those for endangered, threatened, or species of special concern:

- Breeding bird transects to identify resident bird populations and assess overall habitat quality
- Drift fences and pitfall traps to determine amphibian and reptile population diversity, density and migration routes
- Radiotelemetry studies to determine turtle population densities and home ranges
- Mark-recapture studies of specific populations (e.g., rare species) to define critical habitats and devise Habitat Conservation Plans
- General meander surveys for all species
- Habitat cover-type assessments

Our habitat evaluation methods include components of the U.S. Army Corps of Engineers Highway Methodology (1995), and the U.S. Fish and Wildlife Service's Habitat Evaluation Procedures (HEP). New England Wildlife: Habitat, Natural History and Distribution (DeGraaf and Yamasaki, 2001) serves as our primary reference for this work. Using these procedures, BSC biologists identify, locate, and document a community's most valuable wildlife habitats.

Relevant Project Experience

This section includes examples of recent projects we've performed on behalf of Conservation Commissions throughout Massachusetts. BSC Group has provided peer review services for several communities throughout Massachusetts, some being the City of Boston, the City of Worcester, the Town of Kingston, the Town of Amesbury, the Town of Georgetown, the City of Gloucester, and numerous others. Brief summaries of our most relevant experience are provided below.

CLIENT: TOWN OF SHERBORN CONSERVATION COMMISSION

BSC provided peer review services for the Notice of Intent for a proposed 40B project in the town of Sherborn in 2021. The project entails a three building, 120-unit multifamily residential apartment community located on a 15.2-acre site with impacts to Buffer Zone and a site compromised with extensive invasive plant issues. Through a robust public meeting process and work with the Applicant and Conservation Commission, BSC assisted in improving mitigative measures for wildlife on the site, improvement of planting plans and achieving local goals for invasive species control and long-term landscape and stormwater management.

CLIENT: TOWN OF BELLINGHAM CONSERVATION COMMISSION

BSC has provided peer review consulting services to the Bellingham Conservation Commission and Planning Board for several years. Peer review services have included review of ANRADs, NOIs, and complicated engineering review of large residential subdivisions in challenging locations with extensive wetland resource and buffer zone impacts.

CLIENT: AMESBURY CONSERVATION COMMISSION

BSC has provided wetlands and engineering peer review services to the City of Amesbury for many years. Peer review has included review of ANRADs, NOIs, representation of the Conservation Commission in MassDEP appeal processes where results have supported Conservation Commission positions, construction and compensatory wetland construction monitoring, stormwater management, Riverfront Area evaluations, vernal pool issues, difficult wetland delineations, abutter concerns, implementation of city Ordinance and regulatory advice.

CLIENT: GEORGETOWN CONSERVATION COMMISSION

For a number of years, BSC has been providing peer review consulting services to the Town of Georgetown. Projects have included review of ANRADs, NOIs, enforcement issues, stormwater management, Riverfront Area evaluations, vernal pool issues, difficult wetland delineations, abutter concerns, implementation of town Bylaw and regulatory advice.



BSC is adept at the identification of rare species pursuant to the Massachusetts Endangered Species Act (M.G.L. c. 131A). Pictured above: a Blue-spotted Salamander (*Ambystoma laterale*).



Matt Burne, PWS

Senior Ecologist

YEARS OF EXPERIENCE

28

EDUCATION

MS, Wildlife and Fisheries
Conservation
University of Massachusetts
Amherst

BS, Environmental
Science/Wetland Ecology,
Botany
University of Massachusetts
Amherst

CERTIFICATIONS

- Professional Wetland
Scientist
- Invasive Plant Management -
Massachusetts

AFFILIATIONS

- Vernal Pool Association
Founder, Vice President
- Society of Wetland Scientists
- Association of Massachusetts
Wetland Scientists

GOVERNMENT SERVICE

- MA Department of
Conservation and Recreation
Forest Futures Visioning
Process Technical Steering
Committee
(2009–2010)
- City of Malden Conservation
Commission
(2020–present)

MEET MATT

Matt has expertise in wildlife biology, conservation science, management, and policy. He has extensive field experience conducting wildlife and rare species surveys, vernal pool evaluations as well as in wetland permitting review. Throughout his career, Matt has developed skills in several areas, including conservation planning, land protection, land management, facilitation, and communication. He applies these skills in educating the public, conservation professionals, and natural resource agency personnel on wildlife habitats and protection strategies.

Matt spent 10 years as an ecologist with the Massachusetts Division of Fisheries and Wildlife's Natural Heritage & Endangered Species Program as a Wetland Environmental Reviewer and Vernal Pool Ecologist focused on vernal pools, state-listed reptiles, amphibians, and invertebrates. During that time, he oversaw the state's Vernal Pool Certification Program and created the Massachusetts Potential Vernal Pool Survey, a state-wide aerial photographic interpretation of potential vernal pools. He also spent 15 years as the Conservation Director for a non-profit land trust in Lincoln, MA. He is the author of several publications and conducts public outreach and education on a regular basis.

PROJECT EXPERIENCE HIGHLIGHTS

Conservation and Management Permit, National Grid 315/327/303/3520 Line Refurbishment, Southeast MA

Senior Ecologist

Responsible for preparation of project permit under Massachusetts Endangered Species Act (MESA). Matt conducted extensive negotiation for successfully mitigating project impacts through land transfer to municipal conservation and designed and produced the Rare Species Field Issue to provide contractors with detailed information needed for impact avoidance during construction.

**THROUGHOUT HIS CAREER, MATT HAS
PUBLISHED A VARIETY OF BOOKS AND PEER
REVIEWED PUBLICATIONS AS WELL AS
CONTRIBUTING TO THE DESIGN AND PRE-PRESS
PREPARATION OF SEVERAL WORKS.**

Matt Burne, PWS

Wildlife Tracking Survey, Concord, MA

Senior Ecologist

Contributed to long-term wildlife tracking and road mortality survey for Massachusetts Department of Transportation Route 2 Wildlife Underpass project. Surveys provide data on wildlife species utilizing built mitigation infrastructure.

Peer Review Services

Senior Ecologist

Provides peer review of Notice of Intent and Abbreviated Notice of Resource Area Delineation applications before Conservation Commissions. Peer review services encompass evaluations relative to both state and local wetlands regulations.

Bellingham Conservation Commission, Bellingham, MA

Red Mill on the Charles – Matt reviewed Notices of Intent for an 85-acre subdivision proposal in former gravel pit with extensive wetlands resources, including Riverfront Area, Land Subject to Flooding, Bordering Vegetated Wetlands, Buffer Zone and Vernal Pools.

Curtis Apartments 40B – Matt provided peer review of vernal pool habitat determination and documentation of wildlife indicators for subsequent submission for official certification by the Massachusetts Division of Fisheries & Wildlife.

180 Paine Street ANRAD – Matt led the peer review of an Abbreviated Notice of Resource Area Delineation for a 120-acre initial phase of a municipal golf course proposed for residential development.

Bungay Brook Residential Subdivision – Matt provided peer review of a Notice of Intent for residential development on an existing golf course involving Riverfront Area, Bank and Land Under Waterbodies and Waterways and Buffer Zone resources.

Falmouth Zoning Board of Appeals, Falmouth, MA

Responsible for providing review of 40B project proposed on parcel of land with a state-certified vernal pool. Matt conducted on-site evaluation of habitat and the project as proposed and provided comments which led to project modifications that enhanced protection of natural resources on site.

Acton Conservation Commission, Acton, MA

Piper Lane – Supported Senior Ecologist's peer review with evaluation of wildlife habitat function for Bordering Vegetated Wetland containing a vernal pool and Buffer Zone.

Bridgewater Conservation Commission, Bridgewater, MA

Vernon Street ANRAD – Matt led the peer review of an Abbreviated Notice of Resource Area Delineation for a 28-acre site including perennial streams, Bordering Vegetated Wetland, Isolated Land Subject to Flooding, and Vernal Pools.

Georgetown Conservation Commission, Georgetown, MA

Carlton Way – Matt provided wildlife habitat evaluation support to Senior Ecological Scientist leading peer review of Notice of Intent. Matt's role involved developing requirements for an extensive wildlife survey of the subject site and peer review of the survey work.

Amesbury Conservation Commission, Amesbury, MA

91 Macy Street – Matt led the peer review of an Abbreviated Notice of Resource Area Delineation for a site that has been historically altered by topsoil removal and regular mowing of jurisdictional resources. Review involves a contentious debate over the perennial status of a stream bordering the site and the expiration of observational data presented by an applicant.

Amesbury Conservation Commission, Amesbury, MA

Estes Street Residential Subdivision – Matt led the peer review of a Notice of Intent for a proposed subdivision of an estate property and redevelopment of several adjoining parcels.

Hadley Conservation Commission, Hadley, MA

Russell Street (Route 9) Reconstruction – Matt provided peer review of a Notice of Intent for a MassDOT project involving redevelopment of a 3.2-mile section of highway. The project included temporary and permanent impacts to Riverfront Area, Bordering Vegetated Wetland, Bank and Land Under Waterbodies and Waterways. This challenging project review was complicated by tight timelines and a major shakeup of the Conservation Commission board composition during the review.

PRIOR TO JOINING BSC, MATT CONTRIBUTED TO THE FOLLOWING PROJECTS:

Blue-spotted Salamander Survey, Northeastern Massachusetts

Principal Investigator

As part of a state-wide effort to improve documented species distribution information, Matt provided intensive, Blue-spotted Salamander (*Ambystoma laterale*) surveys for breeding adults using trapping and visual

Matt Burne, PWS

encounter survey techniques, and visual encounter surveys for egg masses in northeastern Massachusetts. Trap data and visual encounter survey data were synthesized for reporting to the Natural Heritage & Endangered Species Program.

Comprehensive Reptile and Amphibian Survey of Camp Curtis Guild, Massachusetts Army National Guard, Reading, MA

Principal Investigator

Designed and executed a comprehensive reptile and amphibian and vernal pool habitat survey of the Camp Curtis Guild Army National Guard base in eastern Massachusetts under contract with the Massachusetts Natural Heritage & Endangered Species Program. Field surveys included baited trapping for amphibian adults, larvae, and turtles, visual encounter surveys for adult and larval amphibians, snakes and turtles, and cover board surveys for upland snakes. Documentation of 50 vernal pools, as well as populations of state-listed Blue-spotted Salamanders (and hybrid Jeffersonianum complex), Spotted Turtles, and vernal pool-dependent invertebrates resulted from the project.

Vernal Pool Evaluation, Municipal Conservation Commissions, MA

Ecologist

Town of Bolton –Responsible for providing the Town of Bolton Conservation Commission with an independent review and analysis of suspected vernal pool habitat and impacts that were believed to have resulted from unpermitted work. Matt conducted a site visit with Conservation Commission members and project representative and provided written comments to the Commission based on evaluation of the site.

Town of Wayland – Responsible for evaluating an atypical site for vernal pool function as part of an ongoing review of redevelopment plans for a Town-owned open space parcel. Matt conducted two site visits to sample spring-breeding amphibians and other wildlife using the site and provided written comments to the Conservation Commission for use in negotiations among Town agencies with competing interests in the site.

Wildlife Habitat Assessment, Private Client, Wayland, MA

Ecologist

Responsible for wildlife habitat assessment and StreamStats review of wetland resources on development site. Matt conducted independent StreamStats analysis of intermittent stream and provided expert opinion concerning wildlife

habitat values of wetlands on project site for consideration by the Conservation Commission.

Bear Garden Trail Loop, Walden Woods Project, Concord, MA

Ecologist

Responsible for planning, building, and maintenance of half-mile trail loop for passive recreational use on Bear Garden Hill property in historic Walden Woods. Matt developed and designed plans for establishing a passive recreational trail through an inaccessible forested parcel of land in Concord, MA. The trail was built over the course of one spring, working with a local Eagle Scout candidate and volunteer groups from the Appalachian Mountain Club and local schools. Matt established a trail camera monitoring program that showed the trail received extensive usage in the weeks following installation.

Invasive Species Management on Brister's Hill, Walden Woods Project, Concord, MA

Ecologist

Responsible for developing and executing an invasive species management plan. Brister's Hill is an 18-acre parcel of conservation land with a self-guided interpretive trail that received heavy passive recreational use. The site is relatively clear of invasive plants but had a significant stand of glossy buckthorn in one concentrated ¼-acre hillock on this site. The project spanned a period of five years, with Matt overseeing volunteer groups to contribute to the hand-pulling effort to remove glossy buckthorn plants. The infestation was reduced by over 90% over the course of the project.

Where's Your Walden? Exhibit, Walden Pond Visitor Center, Concord, MA

Designer

Responsible for the design, installation, and management of an interactive digital exhibit in the Walden Pond State Reservation Visitor Center. Matt was the lead developer of an exhibit designed to engage visitors at the newly renovated Walden Pond State Reservation Visitor Center. Working with park staff and other stakeholders, an interactive experience was designed to engage visitors in thinking about special places with personal connections to provide a connection to Henry David Thoreau's sense of place at Walden Pond in the middle-1800s. Matt worked with software developers, designers, hardware vendors, and installation contractors to build and install the exhibit.

Matt Burne, PWS

Preliminary Wildlife Habitat Evaluation, National Grid 394/397 ACR, Tewksbury to West Newbury, MA

Senior Ecologist

Responsible for conducting a comprehensive survey of important wildlife habitat features for state listed turtle and amphibian species along a 35-mile electric powerline right of way. Matt developed parameters for ArcView Dashboard project to share field observations and evaluation results with state regulators.

THROUGHOUT HIS CAREER, MATT HAS PROVIDED EDUCATION AND OUTREACH TO THE GENERAL PUBLIC, NATURAL RESOURCE PROFESSIONALS, AND THE SCIENTIFIC COMMUNITY ON THE FUNCTIONS AND VALUES OF VERNAL POOLS THROUGH PRESENTATIONS AT PROFESSIONAL MEETINGS, SYMPOSIA, AND CONFERENCES. MATT HAS ALSO DEVELOPED AND DELIVERED FULL-DAY PROFESSIONAL DEVELOPMENT WORKSHOPS FOR CONSERVATION PROFESSIONALS, REGULATORY AGENCY STAFF, AND FOR TEACHERS AND EDUCATORS.

PUBLICATIONS

Jones, M. T. and L. L. Willey, eds. The Biology of the Wood Turtle, *Glyptemys insculpta*.

Jones, M. T. and L. L. Willey, eds. 2012. Eastern Alpine Guide; Natural History and Conservation of Mountain Tundra East of the Rockies. Beyond Ktaadn, Inc. and Boghaunter Books.

Kenney, L. P. and M. R. Burne. 2009. A Field Guide to the Animals of Vernal Pools. Massachusetts Division of Fisheries & Wildlife and the Vernal Pool Association.

Burne, M. R. and R. G. Lathrop. 2007. Remote and field identification of vernal pools. In A.J.K. Calhoun and P. deMaynadier (eds.) Science and Conservation of Vernal Pools in Northeastern North America. CRC Press, Boca Raton, FL, USA.

Burne, M. R. and C. Griffin. 2005a. Protecting vernal pools: A model from Massachusetts, USA. Wetlands Ecology and Management 13(3).

Burne, M. R. and C. Griffin. 2005b. Habitat associations of pool-breeding amphibians in eastern Massachusetts, USA. Wetlands Ecology and Management 13(3).

Kenney, L. P. and M. R. Burne. 2004. Salamanders, Frogs, and Turtles of New Jersey's Vernal Pools, A Field Guide. New Jersey DEP, Division of Fish and Wildlife, Endangered and Nongame Species Program.

Nikula, B., J. L. Loose, and M. R. Burne. 2003. A Field Guide to the Dragonflies and Damselflies of Massachusetts. Massachusetts Division of Fisheries & Wildlife.

Burne, M. R. 2001. Massachusetts Aerial Photo Survey of Potential Vernal Pools. Massachusetts Division of Fisheries & Wildlife Technical Report, Westboro, MA.

Burne, M. R. 2000. Conservation of Vernal Pool-breeding Amphibian Communities: Habitat and Landscape Associations with Community Richness. M.S. Thesis. University of Massachusetts, Amherst.

PROFESSIONAL DEVELOPMENT WORKSHOPS

Vernal Pools for Conservation Professionals. 2004–2015. Produced in association with NHESP, MACC, Vernal Pool Association, and Walden Woods Project

Vernal Pools for Educators Professional Development Series. 2004–2015. A state-wide series produced in association with the Vernal Pool Association, presented to nearly 1,000 teachers in Massachusetts and the northeast

Vernal Pools for Federal Regulators workshop. 1997–2000. Presented to EPA and Army Corps of Engineers staff

**ATTACHMENT A
SPECIAL CONDITIONS
Order of Conditions
Project title, Ayer, MA
DEP File # 100-0XXX**

FINDINGS:

Under the Order of Conditions (“the Order”) issued under MassDEP File Number 100-0XXX to XXXXXXXXX (“the Applicant”), the Ayer Conservation Commission (“the Commission”) hereby finds that in addition to the preceding General Conditions #1-20, Special Conditions listed herewith are necessary to achieve Performance Standards set forth in the Wetlands Protection Act (“WPA,” MGL Chapter 131, Section 40) as codified in 310 CMR 10.00 (“the WPA Regulations”) as well as the Town of Ayer Wetlands Protection Bylaw (“the Bylaw,” Article XXVI) and local regulations (“Bylaw Regulations”). “Resource Areas” are enumerated under 310 CMR 10.02(1) and Bylaw Article XXVI, Section 2A. Under the Bylaw, the Buffer Zone is considered to be a Resource Area (Section 3A).

INSERT NARRATIVE: PROJECT DESCRIPTION, TYPES OF WETLANDS/RESOURCE AREAS PRESENT AND PROPOSED IMPACT, WORK PERMITTED (including means of access?), Special Concerns?

The Commission orders that all work shall be performed in accordance with said General and Special Conditions, the referenced Notice of Intent, and all other relevant documents listed below in Special Condition 2.

Any violation of these Conditions is considered a breach of the WPA and/or the Bylaw, which may make the Applicant subject to an Enforcement Order, a Cease & Desist Order, and/or a fine from MassDEP and/or this Commission. Under Article LIII (Enforcement) of the Bylaws of the Town of Ayer, the Commission is considered an enforcement officer for the Act and the Bylaw. Article LIII specifies the fine to be up to three hundred dollars per violation, with each day a violation exists constituting a separate offense.

In the Conditions below, all references to Resource Area/s shall be assumed to include Wetlands, Buffer Zones to Wetlands (100 ft.), and Riverfront Areas (200 ft.) subject to the jurisdiction of the Commission, unless otherwise specified.

Commented [j1]: Or... do we continue with the language differentiating wetlands, riverfront, and buffer zones separately?

ADMINISTRATIVE CONDITIONS

- 1. All work must be in compliance with DEP General Conditions 1-20 as well as all Special Conditions from the Ayer Conservation Commission herein, as checked below:**

2. The work shall conform to the following approved Plans and key documents unless otherwise specified in this Order. All documents will be submitted to the Conservation Agent in both paper and electronic formats:

WPA Form 3/Notice of Intent: DEP File # 100-0XXXX
Submitted on behalf of: XXXXX
Property Owner: XXXXX
Project Location: XXXXXXXXXXXXXXXX
Ayer, MA 01432
Prepared by: XXXXXXXXXXXXXXXX
Stamped by: XXXXXXXXXXXXXXXX
Site Plan: XXXXXXXXXXXXXXXX
Final Revision Date/Sheet Name: XXXXXXXXXXXXXXXX

Other significant documents: (eg NHESP permit letter, stormwater plans, O&M plans, wetland mitigation plans, planting plans...)

3. This Order, including these Special Conditions, shall apply to the Applicant or any successor(s) in interest or successor(s) in control of the property subject to this Order, including all current or future tenants, and shall survive until the issuance and recording of the Certificate of Compliance. Some conditions may be designated as “perpetual” in the COC and therefore survive this Order.

The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property where activity has occurred under this Order, and that takes place prior to the issuance and recording of a Certificate of Compliance.

The approved wetland boundaries pertaining to this Order are only valid for the specific project associated with DEP # 100-0XXXX, and not for any future projects.

or

The approved wetland boundaries pertaining to this Order were determined by an Order of Resource Area Delineation (ORAD) previously issued by the Commission on [DATE], DEP File # 100-0XXXX, and recorded at the Middlesex South District Registry of Deeds in Book XXXX, Page XXXX. These boundaries are only valid for this project, not for any future projects.

Proof of recording of this Order at the Middlesex South Registry of Deeds must be submitted to the Commission prior to the commencement of any work within areas jurisdictional under the Act or the Bylaw.

This Order authorizes **only** the activity described on the approved Plans and documents referenced in this Order.

Commented [J2]: This is also covered more briefly in DEP condition 16, though I added the phrase specifying the Special Conditions as well. And also the notation that some conditions may be identified as Perpetual in a COC.

Project title

The Applicant and the Applicant’s designated representatives (including but not limited to site supervisors, contractors, subcontractors, and engineers) are responsible for the project’s completion in accordance with the approved Plans and this Order. **To ensure compliance, a copy of this Order and the approved plans shall be easily accessible to the site at all times while activities regulated by this Order are being performed.**

Commented [j3]: kept on site?

Any **changes** to the Plans approved under this Order, including those resulting from review requirements by other Town boards/departments or from unforeseen site conditions, and which may or will alter an area subject to protection under the Act and/or the Bylaw, must be submitted to the **Commission or its Agent** in writing for approval prior to implementation. The Commission/Agent will then determine if such alterations to the Plans may be treated as a Field Change, as an Amendment to this Order requiring a Public Hearing, or if such alterations are substantial enough to require the filing of a new Notice of Intent. Any errors found in the Plans or information submitted by the Applicant shall be considered as **changes**.

Commented [j4]: Here and elsewhere.... ‘Commission or its Agent’? Or just ‘Agent’?

Commented [j5]: This expands on DEP condition 14, gives more info.

For the limited purpose of evaluating compliance with this Order under the Act and/or the Bylaw, members of the Commission or its Agent may enter and inspect the property and the activities that are subject to this Order at all reasonable times, with or without probable cause or prior notice, and until such time as a Certificate of Compliance has been issued and **recorded**.

Commented [j6]: This condition is pretty much the same, word for word, as DEP’s condition 15 — which identifies this as a right for both ConCom/Agent and DEP representatives. Do we need it?

PRE-CONSTRUCTION CONDITIONS. [Note: most of these would be for large projects, eg subdivisions, solar fields – just a few for Orders for individual homeowner or small projects]

Throughout the duration of the project and until the issuance of the Certificate of Compliance, wetland boundaries shall be clearly marked with flags/stakes so that said areas are clearly distinguishable at all **times**. Such markers are to be repaired or replaced as necessary.

Commented [j7]: Redundant to DEP condition 17.

The Applicant or designated representatives must provide the Commission with the names, addresses, and telephone numbers (both business and 24-hour emergency numbers) of the person(s) responsible for compliance with this **Order**. The Commission shall also be notified in writing of any changes or updates to this information.

Commented [j8]: Add ‘or alternates’?

Signage to be exhibited on site, visible from the street, shall include the **2-3 square foot** sign required to display the MassDEP File Number (General Condition 10, WPA Form 5) as well as any such additional signage as required by the Commission. All such signage shall remain in place until the issuance of a Certificate of Compliance. []

Commented [j9]: Note: we had minimum dimensions of 2x2, or 4 sq. Ft. — but MassDEP condition 10 for the file no. sign requires ‘not less than 2 square feet or more than three square feet in size...’

The Applicant and/or designated representative(s) – including but not limited to the site/project superintendent, engineer, contractor(s), environmental consultants – shall hold a pre-construction meeting with the Agent prior to the start of any work to ensure this Order is fully understood by all parties. The Applicant shall also submit in writing for the Commission’s approval the following items as checked:

ATTACHMENT A – SPECIAL CONDITIONS

DEP FILE # 100-0XXX

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- o Sequence of construction activities and time table;
- o Method of Procedures (MOP) detailing:
 - a clearing plan showing areas to be cleared and areas to be left in a natural state;
 - protocols and contingencies for protecting Resource Areas during construction;
 - response plan for encountering unforeseen conditions or emergencies;
 - protocols for reporting problems to relevant entities, including the Agent;
 - a set of photographs depicting the project site in pre-activity condition.

Following the pre-construction meeting, erosion controls shall be installed with minimal disturbance of shrubs and herbaceous plants. **These controls must be inspected and approved by the Agent prior to the commencement of any work on site. The Commission must be notified at least 7 days prior to the commencement of work for such inspection.**

EROSION AND SEDIMENTATION CONTROLS

The erosion and deposition of soils, silt, and sediments into Wetland, Riverfront and Buffer Zone Resource Areas beyond the approved LOW shall be prevented at all times by effective control measures as specified in the referenced Notice of Intent and Plans, and in accordance with conditions noted below:

The LOW shall be the erosion control barriers beyond which no work shall occur. Erosion control barriers shall not be placed within 50 ft. of an undisturbed wetland boundary without written permission of the Commission.

OR
Prior to construction activity on site, the LOW shall be clearly marked or survey-located, beyond which no work shall occur. Erosion controls generally signify the LOW but the Commission may also require staked orange snow fencing to be installed in some areas as well. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil, or construction activity is to occur beyond this line at any time.

Temporary erosion control methods, as approved by the Commission, shall consist of any combination of silt fencing, staked haybales, compost filter sock, or straw wattles. Again, their installation must be inspected by the Conservation Agent prior to work beginning. Controls should comply with MassDEP's Complete Erosion and Sedimentation Control Guidelines.

The Commission or its Agent may require the Applicant to employ additional erosion controls as they reasonably deem necessary or where conditions indicate that existing control methods are insufficient to protect the Resource Areas.

While construction is active on a project site, controls shall be inspected regularly to ensure they remain in good working order. Controls must also be inspected following storm events to check

Order of Conditions approved XXX XX, 2022

WPA Form 5, Section D, Number 3

Commented [j10]: This is also mentioned in DEP condition 18.... Erosion controls as LOW unless another LOW line is approved in Order.

Commented [j11]: Older condition said 'not be placed within 25 feet of the wetland boundary without written permission of the Commission.' But... our regulations with 50 ft. No Disturb of previously undisturbed Buffer Zone? Distinguish with disturbed Buffer Zone?

Commented [j12]: Survey located?

Commented [j13]: DEP condition 18 specifies controls be inspected daily, and requires notification of ContCom of any failures.

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for signs of erosion, wash-out, rills, or other damage caused by flowing water. Controls should also be inspected in the spring following a significant warming period when snow/ice has been present on the ground.

Upon the discovery of any failure of erosion control measures resulting in the deposition of run-off materials into protected Resource Areas beyond the LOW, the incident shall be immediately reported to the Commission at (978)-772-8200 ext. 143 and to concom@ayer.ma.us.

All accumulated sediment shall be removed from the face of the erosion control barriers using hand tools (e.g. shovels, rakes, wheelbarrows) whenever the level of sediment is within six (6) inches of the top of the barrier.

Any unforeseen accumulation of sedimentation that takes place beyond the erosion control barriers/LOW shall be removed immediately using hand tools. The cause of the failure shall be immediately addressed as soon as reasonably practical.

Soil, sediment, debris, or other material removed during maintenance or repair of erosion control barriers, or remediation of erosion damage, shall be disposed of outside of the Resource Area/LOW.

For the duration of the project, the Applicant shall maintain a reserve of the approved erosion control products for emergency repairs. For large projects, this shall be equal to at least 15% of the maximum extent of erosion control materials used on site.

Commented [j14]: Old condition re this also had sentence that this reserve "is not to be used for daily maintenance of erosion controls." I think that was Brian.

Erosion controls and wetland flags must remain in place until all disturbed surfaces have been permanently stabilized and a Certificate of Compliance has been issued by the Commission. Biodegradable material may be broken up and spread on site within the LOW, but not within any Resource Areas or Conservation Easement. Non-biodegradable materials, such as plastic twine, must be removed and discarded off-site. All erosion control material must be dismantled and/or removed prior to final issuance of the Certificate of Compliance.

Commented [j15]: The dance of compliance?! COC requested, Agent inspects, ConCom votes to issue, controls removed BEFORE Agent releases the COC?

GENERAL SITE CONDITIONS

Exposed soils within the Buffer Zone shall be stabilized (either temporarily or permanently) as soon as practical following disturbance (e.g. excavation and grading). This includes slopes and other disturbed areas not subject to further construction activities. Temporary stabilization shall consist of seeding with annual oats, ryegrass, or other approved species, or through the use of products such as erosion control blankets, geotextile fabrics, etc.

The use of vehicles or equipment (anything motorized or that may potentially leak harmful materials such as fuels or lubricants) shall be operated, parked, and maintained so as to minimize impact to Resource Areas and limit alterations to those areas clearly identified on the Plans. Pumps, generators, or other stationary equipment containing fuel, oil, or other potential

ATTACHMENT A – SPECIAL CONDITIONS

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contaminants, may not be stored or operated within Resource Areas without written approval of the Commission or its Agent. If permitted, equipment shall be contained within or on an impervious barrier, and inspected daily for any sign of leakage. No underground storage of fuel or other hazardous substances is permitted in areas within the jurisdiction of the Commission.

Commented [j16]: Light-covered so as to easily detect leakages?

No vehicles or equipment are to enter or cross a Resource Area or Buffer Zone outside of the LOW for this Order (e.g. temporary access road, construction mats) unless the location of disturbance is marked on the Plans referenced in this Order and submitted with a plan for restoration of the Resource Area/Buffer Zone disturbance.

Commented [j17]: In Exec. Session with Devan Braun *8/12/21), she said this condition would likely get overturned?

There shall be no pumping of water from wetlands without written permission from the Commission.

Commented [j18]: Devan Braun had also said this condition was also problematic... Not sure why since it specifies outside the LOW but WITHIN jurisdictional resource areas???

No oil, calcium chloride, or other salt shall be used within Resource Areas or Buffer Zones during any construction phase for the control of dust. (FORMER PERPETUAL)

Cement trucks shall not be washed out in Resource Areas or deposited into any drainage system. Any deposit of excess cement or concrete products shall be immediately removed.

There shall be no dumping of leaves, grass clippings, brush, Christmas trees, or other debris into the wetland Resource Areas. (FORMER PERPETUAL)

The use of deicing chemicals such as sodium chloride is prohibited on driveways located with Wetland Resource Areas and Buffer Zones.???

No hazardous waste shall be introduced or discharged into or toward Resource Areas or into the sewage/stormwater systems in such a manner as to impact Resource Areas unless previously identified and approved by the Commission, Board of Health, MassDEP, and/or the United States Environmental Protection Agency.

The removal and remediation of hazardous waste, from an area subject to protection under the Act and/or the Bylaw, shall be conducted under the direction of the Massachusetts Department of Environmental Protection, Environmental Protection Agency, or other applicable state or federal agencies.

Any material placed in Resource Areas beyond the LOW by the Applicant without express authorization under this Order shall be removed by the Applicant upon demand by the Commission or its Agent.

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GRADING, LANDSCAPING, SLOPES

Where possible, site grading and construction shall be scheduled to avoid periods of high surface water. Once begun, grading and construction shall continue in an expeditious manner to minimize the opportunity for erosion.

Grading shall be accomplished so that runoff is not directed onto the property of others, except as indicated on the approved Plans.

No proposed earthen embankment in the buffer zone shall have a slope steeper than 2:1 (horizontal:vertical) without prior written approval of the Commission.

Commented [j19]: Alex Weisheit (KP Law) said in Exec. Session 12/16/2021 that this condition should be removed from the Hillier OOC.... Is this okay as a general condition though?

SOILS, STOCKPILES, FILL, RIPRAP, TEMPORARY ROADS

All construction or landscaping materials, waste products, grubbed stumps, soil, slash, slurry pits, inorganic debris, etc. shall be stockpiled or deposited outside of all Resource Areas unless otherwise specified in this Order and shown on the approved Plans.

At no time shall debris or other material be buried or disposed of within the Buffer Zone other than that fill which is explicitly allowed by this Order and as shown on the referenced Plans.

Any fill brought on site must be clean, debris-free, and devoid of invasive plants, their parts, or their seeds.

Commented [j20]: We've had this as a condition, but it pretty much duplications DEP Condition 7, except for the reference to invasive species/seeds

Only crushed stone of uniform size or erosion control mats shall be used for temporary construction roadways.

Riprap material shall be clean and free of trash, tree stumps, roots, and other deleterious material.

STORMWATER MANAGEMENT / DEWATERING

In addition to the requirements laid out in General Condition # 19, the Commission also requires:

The storm drainage system, detention basins, and compensatory flood storage areas shall be constructed and functioning to the best degree possible and practical as part of the initial project phase.

There shall be no direct discharge of stormwater runoff into streams or other Resource Areas. Runoff from the site shall be directed overland to maximize groundwater recharge and cleansing of the runoff through contact with natural soils and vegetation.

Commented [j21]: DEP condition 19 is long and detailed on stormwater management, so much of this is redundant. That being said, it bears us paying note to #19 as it answers some questions we've had. Eg. Pingry Hill.... Who is responsible for maintenance of sw basins? Re 19c and e, it is the Applicant UNTIL ConCom, as issuing authority, has been notified that another party has legally assumed responsibility. How to enforce this?

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Discharges from perimeter drains shall be at least 25 feet from any wetland resource area. All discharge pipes shall have rip-rap at the outlet to distribute velocity and minimize erosion.

All existing and/or new catch basins and oil traps on streets adjacent to the project shall be protected by silt sacks to prevent sediment from entering the drainage system. Silt sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order have been permanently stabilized and the Commission and/or Agent have formally approved their removal.

Unless put into an easement to the Town of Ayer, the Applicant or designee shall maintain all elements of the drainage systems within any areas subject to the Commission’s jurisdiction in order to avoid blockages and siltation which might cause failure of the system. Vegetative cover shall also be maintained on-site to ensure the proper functioning of the drainage system.

This Condition shall in no way impede the control of invasive species, should a conflict arise.

Commented [j22]: A lot of this is also in General Condition 10

Any runoff resulting from washing of vehicles or equipment shall neither be directed to, nor dumped into, any on-site drainage system or Resource Area. Runoff shall be managed in accordance with the stormwater management plan developed for this project.

If necessary, dewatering activities shall be conducted as shown on the approved plans and shall be monitored daily to ensure that sediment-laden water is appropriately settled prior to discharge toward Resource Areas. No discharge of water is allowed directly into an area subject to jurisdiction under the Act or the Bylaw.

OR

Any dewatering, and/or stream diversion, required on site shall be performed in accordance with the details and procedures approved by the Commission. Any and all dewatering or diversion shall take place under the supervision of the project superintendent. Water pumpage shall be directed into an on-site basin to settle out sediment and to direct flows away from wetlands, and to prevent siltation of resource areas from fine particulate material discharged from the well. Prior to dismantling temporary dams or sedimentation basins, the project superintendent shall have all accumulated sediment and debris contained by such structures manually removed and disposed of off-site. Stored water shall be released gradually so as not to cause erosion or flooding downstream.

INVASIVE SPECIES MANAGEMENT

All construction vehicles must be cleaned of accumulated soil or plant matter from other sites prior to entering the site, through washing, brooming, or other methods approved in advance by the Commission.

In order to prevent the spread of invasive species from one portion of the project site to another, construction vehicles may not enter locations infested with invasive species. If this is

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unavoidable, vehicles shall be washed or cleaned prior to leaving the infested portion of the site.

No plants listed on the Massachusetts Invasive Plant Advisory Group’s “Invasive”, “Likely Invasive”, or “Potentially Invasive” lists; New York’s “Prohibited & Regulated Invasive Species List”; or on New Jersey’s “Target Species Spotlight”, within the Invasive Species fact sheet library, or on the “Do Not Plant” List; may be brought onto or planted anywhere on the property. ***This condition may be noted in perpetuity and extend beyond the issuance of the Certificate of Compliance.***

Invasive Species List Websites:

MA lists (<http://www.massnrc.org/mipag/index.htm>);

NY List: (http://www.dec.ny.gov/docs/lands_forests_pdf/islist.pdf)

NJ Lists: (<http://www.njisst.org/target-species-spotlight.asp>),

(<http://www.njisst.org/fact-sheets.htm>),

(<http://www.njisst.org/documents/DoNotPlantList.pdf>)

FERTILIZER USE

Within areas jurisdictional to the Commission, non-organic fertilizers, pesticides, and herbicides shall not be used. Organic fertilizers used shall be slow-release granular types of fertilizer within Buffer Zones. Additionally, soil and plant fertilization must be done in accordance with the Act Relative to the Regulation of Plant Nutrients (330 CMR 31.00) and in compliance with the requirements issued by the Mass. Department of Agricultural Resources (MDAR). This includes, but is not limited to, the following provisions:

- Phosphorous-containing fertilizer may only be applied when a soil test indicates that it is needed or when a lawn is being established, patched or renovated;
- Plant nutrients that land on sidewalks, roads, or other impervious surfaces must be swept back onto the grass or cleaned up.
- Per MDAR, plant nutrients may not be applied between December 1 and March 1 to:
 - frozen and/or snow covered soil;
 - saturated soil or soils that are frequently flooded;
 - within 20 feet of waterways if using a broadcast method, or 10 feet if using a more targeted application method, such as a drop spreader;
 - within Zone I of a public water supply well or within 100 feet of surface waters that are used for public drinking water supply.

Commented [j23]: This used to be noted as a Perpetual Condition. Not sure necessary ... MDAR has continual authority, as we discovered, with the failure of our fertilizer bylaw....

ONGOING MAINTENANCE

Whenever maintenance work within Resource Areas or that may impact Resource Areas is to be performed, the Commission shall be notified in writing in advance. This includes, but is not limited to, clearing sediment from a stream or drainage channel, replacing leach fields, repairing drains, road maintenance/repaving, and the cleaning or maintenance of

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stormwater/drainage structures. **This condition shall be noted in the Certificate of Compliance as a perpetual condition.**

PROJECT SPECIFIC

Special

Signage [No Dumping signs or Conservation Restriction signs, posts used?]

Boulders and/or Vegetation Barriers

Progress Reports

At least once during each **week/month** in which construction activity occurs on site and for as long thereafter as ground remains unstabilized, the Applicant shall **submit a report from a registered professional engineer, registered professional land surveyor or professional wetland scientist to the Commission**, following site inspection, certifying that all work is being performed in compliance with this Order. These reports shall include an update on the status of the erosion controls, problems encountered, what work within the Resource Area(s) has been completed to date, and what work is proposed for the next **week/month**.

Natural Heritage & Endangered Species Program (NHESP)

No work may commence until the Applicant has received whatever permits or approvals are required by NHESP and has provided the Commission with copies of such approvals. The Commission shall also be copied on any reports submitted to NHESP (e.g. **construction of turtle nesting areas**).

Wetland Replication

See Attached Addenda

Conservation Restriction (CR)

[parallel Planning Board requirements]

The drafting of the formal CR must be well underway prior to the commencement of work approved under this Order. This includes the survey-located bounds of the CR which, in the vicinity of construction activities, must be clearly demarcated by erosion control barriers or orange construction fencing to prevent any impact or encroachment into the CR.

Prior to the sale of any lot abutting the CR, proper signage must be displayed permanently at intervals and locations agreed upon by the Commission.

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CERTIFICATE OF COMPLIANCE

Upon completion of construction and final soil stabilization, the Applicant shall submit the following to the Commission in order to request a Certificate of Compliance (COC):

Commented [j24]: One earlier version had 'Upon completion of this project [or within one year of the issuance of an occupancy permit]...?'

- o A completed Request for a Certificate of Compliance (WPA Form 8A);
- o A written statement from a Registered Professional Engineer certifying that the work has been completed in compliance with this Order, the Plans, and any approved revisions if applicable. Substantial deviations and their potential impact must be described in detail. If the work completed differs significantly from the work approved by the Commission, the Commission may require the Applicant to implement measures necessary to comply with this Order or seek an amended Order of Conditions.
- o An 'As-Built' plan signed and stamped by a Registered Professional Engineer or Land Surveyor showing post-construction conditions within all jurisdictional areas under the scope of the project as permitted under this Order. The As-Built shall include at a minimum:
 - all Resource Area boundaries (wetlands, buffer zones, riverfront) and regulatory setback areas taken from the approved Plans;
 - distances of any structures (buildings, septic system components, wells, utility lines, fences, retaining walls, roads/driveways, pools, etc.) to wetland Resource Areas and Buffer Zone or Riverfront lines;
 - line depicting the limitation of yard/lawn expansion without new review/approval by the Commission;
 - the location of any required signage or boulders;
 - locations and elevations of all stormwater management conveyances, structures, basins, rain gardens, and other Best Management designs, including foundation drains and outlet pipes;
 - wetland replication areas constructed under this Order and confirmed successful after two growing seasons;
- o Post-construction photographs for comparison with pre-construction photographs if required.



Include a preferred sequence of construction: (or put in Regulations????)

1. Installation and inspection of sediment and erosion controls
2. Replication work
3. Stormwater basins
4. Utility and road construction
5. Other approved project construction (e.g. house or other structures)