

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, June 23, 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 9, 2022
- Public Input

Discussion: Conservation Restriction Management Plan - North County Land Trust (NCLT) and Town Manager, Robert Pontbriand

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

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM ADJOURN

Next Scheduled Meeting: 7 PM, July 14, 2022

RECEIVED
JUN 17 2022
10:50 am
TOWN OF AYER
TOWN CLERK



Town of Ayer Conservation Commission

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

Minutes for **6/9/2022**

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

7:01 PM – Open Meeting

- **Confirmation of Agenda**
 - G. Bacon moved to confirm the agenda as amended; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - G. Bacon moved to accept the minutes for 5/24/2022 (Special Joint Meeting with Planning Board) as written; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - G. Bacon moved to accept the minutes for 5/26/2022 as written; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Input**
 - None received.
- **Public Meeting: Request for Determination of Applicability (RDA) – Grove Pond Invasive Water Chestnut Pull, PACE (People of Ayer Concerned about the Environment)**
 - Laurie Nehring, President of PACE, was present via Zoom.
 - A growing patch of invasive water chestnuts has been under observation at the east end of Grove Pond (near the Community Garden off Barnum Road) since 2016.
 - Concerns about disturbing known contamination in Grove Pond sediments, largely from activities at Devens when it was an active military base, have hindered a response.
 - The RDA seeks permitting review of a proposed volunteer handpull of water chestnuts.
 - The goal is to pull the water chestnut plants before they have had a chance to drop their nuts and continue spreading, and to eradicate the existing patch over the next few years.
 - One plant can reproduce 10-14 new plants from its nuts.
 - Ms. Nehring received a grant this year from the Nashua River Wild & Scenic Stewardship Council and most of the grant money is being used to test water, sediments, and plant samples for contamination in order to determine if a volunteer handpull would be safe.
 - Chemical contamination being tested for includes arsenic, chromium, lead, and PFAS ('forever chemicals').



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Minutes for **6/9/2022**

- So far, water samples indicate safe levels of contaminants (i.e. low arsenic, no chromium, low lead, low for 7 different types of PFAS).
- Results from testing the sediments are forthcoming.
- Earlier this week, Ms. Nehring and a volunteer collected plant samples and have sent them off.
 - Results for those will take about 3 weeks.
- If results from all the testing indicate safe levels for dermal contact, then the water pull will proceed on several dates starting June 30 into July.
 - PACE is doing outreach for volunteers through its own organization, Facebook, the Nashua River Watershed Association, the Nashoba Paddler, and more.
- Disposition of pulled plant matter was then discussed.
 - Ms. Nehring has been in contact with Dan Van Schalkwyk, Director of Ayer DPW, who earlier on offered assistance in hauling away plant material.
 - Ms. Nehring was clear that if the results of the plant testing came back at levels qualifying the plants as ‘hazardous waste’, then the whole water pull would have to be cancelled and the plants left in place.
 - However, if the water pull is able to go forward, then Commission members were unanimous in preferring that the pulled plant matter be hauled away from the area rather than be left to dry out and decompose nearby the bank.
 - Ms. Nehring said she will now check to see if the DPW’s hauling offer is still good.
 - Depending on levels of contamination, it might also be suggested that the DPW – if it does haul away the material – segregate the plant matter to dry out and decompose on its own rather than add to the area where the DPW composts material for public use.
- H. Hampson said she’d be willing to join the proposed pull date of Thursday, July 7, in order to have ConCom presence/oversight on at least one of the dates.
 - All of this is still contingent on the results of all of the testing, but if the testing indicates safe levels, then it would be best if ConCom’s permitting was in place so that there would be no delays, timing being critical to pull the plants before they drop their nuts.
- G. Bacon moved to issue a Negative Determination of Applicability (DOA), with the condition that pulled plant matter be hauled away as soon as possible and then disposed of properly; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - H. Hampson will have the DOA issued and mailed to Ms. Nehring by Monday.
- **Public Meeting: RDA – 3 Trevor Trail, Rob Steeman**
 - Assessor’s Map 13, Parcel 9
 - Mr. Steeman was present via Zoom.
 - Two more trees near the wetlands at the back of his property have died and present a risk to both his house and his driveway.
 - The RDA asks for permitting to remove the trees, leaving the stumps in place.



Town of Ayer Conservation Commission

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Minutes for **6/9/2022**

- H. Hampson did a site visit on Tuesday, 6/7, and confirmed the trees are definitely dead and hazards.
- Mr. Steeman said he would be fine leaving taller stumps for habitat, and would discuss this with Flagg Tree Services.
- G. Bacon moved to issue a Negative DOA; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - H. Hampson will issue and mail the DOA by Monday.
- **Emergency Certification: Ayer Fire Station**
 - The Town was contacted by Chief Johnston on Friday, 6/3, over the need to take down a hazard tree in back of the Fire Station, next to a wetland area.
 - The trunk has been badly eaten into by beaver and is at risk of falling, which was also confirmed by the Tree Warden.
 - On Friday, J. Gugino sent an email to Chief Johnston confirming Emergency Certification permitting, and H. Hampson prepared the formal document for tonight's meeting.
 - G. Bacon moved to issue the Emergency Certification; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Field Change, 22 Hibiscus Lane, David Badger, MassDEP # 100-0439**
 - David and Jamin Badger were present via Zoom.
 - H. Hampson was contacted about changes to the plans approved under Order of Conditions #100-0439 in 2019.
 - The revised plan is to install a modular house that will have an overall smaller footprint than the original proposed house.
 - The change in the footprint configuration moves a few house lines around within the buffer zone but overall involves nearly 200 sq. ft. less work inside the buffer zone.
 - A pump chamber will be moved about 10 ft. closer to Long Pond based on the changed plan.
 - H. Hampson also did a site visit.
 - Based on the reduced impact inside the buffer zone, G. Bacon moved to approve the alterations to the original plan, as described, as a 'field change'; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Conservation Restriction (CR) Priorities**
 - ConCom will be meeting with Anna Wilkins, Executive Director of North County Land Trust (NCLT), and Town Manager Robert Pontbriand at its next meeting on June 23.
 - In preparation, ConCom members have been discussing what should be the priority tasks for the first year of the contract with NCLT.
 - Generally it was felt that CRs currently under development (i.e. Panther Place, Ayer Solar II, Shaker Mill Pond, perhaps John Carroll Reserve) should be worked on first, while all parties are still active and present.



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Minutes for 6/9/2022

- While the CR and Baseline Documentation are in place for Kohler Place, it would be good to start the annual monitoring for this CR as well.
 - Part of the discussion with NCLT will be to get a sense of what is reasonably possible to accomplish during the first year of the contract.
- **Discussion: Pre-management Survey, Water & Wetland, 2022 Pond Management**
 - Water & Wetland did the pre-treatment survey of Sandy, Flannagan, and Pine Meadow ponds on June 1.
 - This also included some isolated early Sonar treatments for fanwort in a few spots based on the post-treatment survey data from last fall.
 - The first full treatment of the ponds will take place on Wednesday, June 15.
 - H. Hampson confirmed with Parks Director Jeff Thomas that this date would not be a problem for the Parks Department regarding the Town Beach on Sandy Pond.
 - Mr. Thomas asked that Parks be given as much advance notice as possible for future dates, after school has been let out for the summer.
 - It was also noted that Water & Wetland has been doing a great job posting signs in advance of treatment dates, and related warnings, around the ponds.
- **Conservation Commission Office and Member Updates**
 - Conservation Agent
 - H. Hampson is adjusting to the ConCom office.
 - She will be attending a day-workshop on wetland delineation next Wednesday, June 15, through the Mass. Society of Municipal Conservation Professionals (MSMCP).
 - She also asked if the Commission was all right with her doing around one training workshop a month – some in person – with MSMCP, or MACC (Mass. Association of Conservation Commissions), etc., when available.
 - The Commission was fine with this, and if there are costs for particular trainings. H. Hampson will check with ConCom first.
 - IT Director Cindy Knox, via Zoom, said she'd also work with H. Hampson on showing her how to use, and update, the database started under previous Administrator Jo-Anne Crystoff.
 - Stratton Hill Open Space Residential Development (OSRD) Subdivision, off Wright Road
 - A preliminary subdivision plan was submitted to the Planning Board earlier in the day, 6/9.
 - This subdivision was under consideration by the Planning Board last year but, upon request of the Planning Board, was withdrawn without prejudice shortly after the new year, until such time as the proposed project was more ready for review.



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Minutes for **6/9/2022**

- This will be put onto the Commission's June 23 agenda for discussion of issuing a new Request for Proposals (RFP) for a third party peer review of the conservation analysis previously submitted.
 - This had had to be put on hold following the withdrawal of the previous application.
- Shaker Mill Pond Outlet
 - J. Gugino responded to a Littleton resident's inquiry as to the status of the outlet from Shaker Mill Pond, where beaver activity has been noted in the past.
 - The outlet is on private property, owned by Dan Aho (Shaker Mill Pond subdivision).
 - sMr. Aho has said he is not interested in expending funds to install a flow control device (aka 'beaver deceiver') here but had no objection to someone else doing so.
 - J. Gugino responded to the Littleton resident that this would be considered later in the summer, with the Town discussing whether the cost of installation and annual maintenance was something that was necessary and in the interests of the Town of Ayer.
- Waterways Signs Project
 - M. Phillips has ordered the signs from Liddell Co. and is waiting to hear back as to their estimated time of delivery.
- **8:23 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: _____

**Short Form Professional Services Agreement
(For Amounts under \$10,000)**

This services agreement (this “Agreement”) is made and entered as of the 23 day of June, 2022 by and between the **Town of Ayer, Massachusetts** (the “Town”), on behalf of its Conservation Department located at 1 Main Street, Ayer, MA and **North County Land Trust** (“Consultant”) located at 325 Lindell Ave, Leominster, MA 01453.

RECITAL:

Town and Consultant desire to enter into this Agreement to provide for each party’s responsibilities with respect to the services described on **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services”).

AGREEMENTS

In consideration of the recital and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

1. Consultant Responsibilities; Fees. Consultant will perform the Services to the reasonable satisfaction of Town. Assuming such satisfactory performance, the Town shall pay Consultant the amount set forth on **Exhibit A** within 30 days following the completion of the Services by check or in such other form as the Town may require. Consultant is an independent Consultant and shall be solely and personally responsible for all federal, state and local taxes, contributions and other liabilities with regard to such payments.

2. Term. The term of this Agreement shall be annual, from the date of this Agreement until the same date in the next year, or until the Services are no longer needed and payment therefor by the Town. Except for material breach of the Agreement by the other party, this Agreement may not be terminated by either party except that the Town may immediately terminate this Agreement upon the death or incapacity of Consultant. The contract may be revised and/or renewed annually.

3. Ownership of Work Product. Consultant hereby sells, assigns, grants and transfers to the Town all right, title and interest in any reports, documents, performances or other copyrighted materials authored or created by Consultant for the Town pursuant to this Agreement, including all copyrights, renewals and extensions thereof.

4. Relationship. The parties hereto are independent Consultants. Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership. Consultant shall in no way become an employee of the Town pursuant to this Agreement. Neither party shall have the authority to nor shall either party attempt to create or assume any obligation by or on behalf of the other party.

5. Expenses. Except as expressly provided to the contrary in this Agreement, all expenses incurred by the parties shall be the sole responsibility of the party who ordered the service or

incurred the particular expense.

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6. Indemnity. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Town, and their respective agents, officers and employees from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from any breach of this Agreement or false representation of Consultant under this Agreement, or any negligent acts or omissions or reckless or intentional misconduct of Consultant or any of Consultant's agents, officers, directors, employees or subconsultants. Without limiting the foregoing, Consultant shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Consultant or any of its agents, officers, employees or subconsultants.

7. Insurance. Consultant shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities under this Agreement, including, but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance. At Town's request, Consultant will provide Town with copies of the certificates of insurance evidencing such coverage.

8. Miscellaneous. This Agreement may not be assigned without the written consent of the other party. Consultant's services are personal in nature and may not be assigned or delegated to any other person. This Agreement represents the entire Agreement between the parties and supersedes any prior oral or written understandings with respect to the Services. This Agreement may only be amended by an agreement signed in writing by all of the parties hereto. Upon execution, this Agreement will be a valid and binding obligation of each party and enforceable in accordance with its terms. Consultant shall maintain insurance in such amounts and of such types as are customarily held by persons engaged in the same or a similar kind of business similarly situated.

TOWN OF AYER

By: _____

By: _____

Title: _____

Title: _____

Name: _____

Name: _____

EXHIBIT A

Description of Services:

| | CR in place | Baseline doc | Monitoring & Enforcement plan | M&E plan implemented |
|-------------------------------|-------------|--------------|-------------------------------|----------------------|
| Kohler Place | yes | Yes | | |
| Pine Meadow Conservation Area | no | | | |
| Tooker Property | no | | | |
| Minnie French | ? | | | |
| Mountain Laurel/Sandy Pond II | ? | | | |
| Pond View Estates | yes | | | |
| Autumn Ridge | yes | yes | yes | yes |
| John Carroll Reserve | no | | | |
| Shaker Mill Pond | no | | | |
| Groton School Road | no | | | |
| Stratton Hill | no | | | |

Assist Town Conservation Department staff with managing the Town’s conservation portfolio which includes compiling the required documents for proper record keeping, performing annual monitoring of existing conservation lands, drafting and following through on implementing Conservation Restrictions on new OSRD developments, and other duties aimed at keeping the Town in compliance with its conservation obligations.

Required Deliverables, if Any:

Payment for Services: \$ 10,000 agreement)(not to exceed \$10,000 if using this short form)

Billing schedule for services per/quarter will include Staff Time @ \$70/hr, sub-contracted resources at cost (pass through), and any related out-of-pocket expenses (if any).

| Service Period | Billing Date | Due By |
|----------------|--------------|------------|
| Q1- Jan-March | April 7 | April 30 |
| Q2- Apr-June | July 7 | July 31 |
| Q3- July-Sept | October 7 | October 31 |
| Q4- Oct-Dec | January 7 | January 31 |

Date(s) for Services: _____

Date Contract Expires: **June 30, 2023** _____

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SCOPE OF WORK FOR CONSERVATION ANALYSIS REVIEW / PEER REVIEW STUDY

For the “Stratton Hill” Open Space Residential Development (OSRD) Subdivision

Developed by the Ayer Conservation Commission (ACC). Reviewed and approved by the Ayer Conservation Commission.

June 23, 2022

| | |
|---|--|
| Proposal Due Date Noon, July 12, 2022 | ACC Reviews Proposals, Awards Contract July 14, 2022 |
|---|--|

| | |
|---|--|
| Reviewer’s First Meeting with ACC July 28, 2022 | Reviewer’s Second Meeting with ACC August 11, 2022 |
|---|--|

ATTACHMENTS

- Preliminary Subdivision Filing for Stratton Hill OSRD, received June 9, 2022 by Town of Ayer, including:
 - “Preliminary Subdivision & Open Space Residential Development Plan in Ayer – May, 2022”
 - “Application Narrative” from Attorney Robert L. Collins, June 1, 2022, on behalf of Fox Meadow Realty Corporation and Moulton Construction Corporation
 - “Conservation Analysis” pursuant to Section 10.1 of the Ayer Zoning Bylaws, Prepared by Dillis & Roy Civil Design Group, June 30, 2021, Revised August 18, 2021
 - With supporting documentation, including:
 - “Rare Herpetofaunal Investigation, Sandy Pond Road, Groton, Massachusetts”
Prepared by Oxbow Associates, Inc., January 30, 2004
 - Watershed, soil, wetland resource area, and topographic material
 - Additional documentation available at Town of Ayer website, <https://www.ayer.ma.us/strattonhill>
- Open Space Residential Development (OSRD) Regulations and Design Guidelines (adopted by Planning Board, June 2022)
- Section 10.1, Open Space Residential Development
Ayer Zoning Bylaws, March 19, 2018 (amended Oct. 22, 2018, June 10, 2019, Oct. 28, 2019)

- Conservation Management Permit (2005)
- Materials related to the ORAD (Order of Resource Area Delineation) issued after 11/19/2020 for MassDEP # 100-0445, for Stratton Hill

PROJECT SCOPE OF WORK

The Ayer parcel is approximately **151 acres in size**, with 131.9 acres to go into a Conservation Restriction, per State requirement, and the remaining **35 acres** to be developed into an OSRD subdivision of up to 35 house lots with driveways, roadway, and infrastructure that includes stormwater management. The Ayer Conservation Commission is tasked with providing the Planning Board with a Conservation Recommendation, per the OSRD Bylaw.

*ACC seeks review of the Conservation Analysis as it pertains to the **entire Ayer site**.* The Preliminary Subdivision Plans indicate where the subdivision is likely to be located – the already-disturbed area where a roughed-in loop road has been constructed, with some underground infrastructure, as well as adjacent clearing. Particular focus should be directed to this area, along with the forested slope down to the wetlands that open into Long Pond, where stormwater basins may be located, as well as where the rough roadway crosses under the power lines. At the same time, the ACC wants an Analysis that is robust enough, with data specific to the Ayer parcel, that it can provide much of the basis for Baseline Monitoring Documentation for the larger area that will go into a Conservation Restriction.

1. Conservation Analysis: Review the Conservation Analysis and supporting documents, submitted by Dillis & Roy Civil Design Group, and evaluate for completeness and responsiveness to the 18 analysis tasks laid out in Section 3 of the OSRD Regulations and Guidelines.
 - a. Given the ecological importance of this parcel, are these 18 tasks sufficient to analyze the conservation values and provide a robust enough Conservation Analysis of this particular parcel?
 - b. The Analysis submitted is based on both old (2003-2005) and new data. Is this sufficient or should, if feasible, the ACC seek a new and/or independently-produced Analysis? XXXXXX
2. Stormwater Basins: ACC seeks review of the projected locations of stormwater basins in close proximity to the wetland that opens into Long Pond, a Massachusetts “Great Pond” that was identified as a “regionally significant example” of a healthy pond in a biological survey of Ayer ponds performed by Geosyntec Consultants in 2016.
3. Conservation Priority Ranking: The Conservation Analysis Guidelines require identification by rank of High, Medium, and Low Priority conservation areas on the site.

The Analysis as submitted identifies the forested downhill slope to wetlands that open into Long Pond as Low Priority. Given the likely location of stormwater management basins in close proximity on the upper slope, with potential new clearing involved, ACC seeks an evaluation of this ranking as well as recommendations. Currently projected basin locations are outside of ACC's buffer zone regulatory jurisdiction, but Long Pond has been identified as a Massachusetts "Great Pond" in largely pristine condition ("regionally significant") and ACC wishes to protect this resource to the extent possible.

4. Blasting: Given the substantial amount of ledge on this parcel, ACC seeks evaluation of the potential for blasting in the development area to have adverse impact to wildlife, including the endangered Blanding's Turtle as well as nesting bird species. ACC seeks recommendations and advice as to if there are suggested limitations or requirements, such as timing restrictions, to minimize adverse impacts from blasting. ACC would also like to know of any pertinent scientific literature on this topic, as well as any Massachusetts regulatory guidelines, that could or should be considered.
5. National Grid Utility Line: ACC seeks review of the ecological impact of the proposed subdivision roadway crossing under the power lines, with housing development proposed to both the north and south sides of the lines. Questions have been raised as to the appropriateness of housing development on the northern side, closely abutting undeveloped forest. In addition, the endangered Blanding's turtle is known to nest often in the scrub environment found underneath power lines. This was also noted in the 2004 Rare Herpetofaunal Investigation provided with the Analysis. The habitat environment under these powerlines is largely undisturbed, with only 3 other roadway crossings of these lines inside of Ayer. The impact of a road crossing that could constitute a continuing risk of 'taking' of the turtle via future traffic should be considered.
6. Wetland Delineation: Confirmation that the current plans submitted June 2022 correctly use the wetland delineation lines as approved in the 2020 ANRAD filing (MassDEP # 100-0445), for which the Public Hearing was closed 11//19/2022 and the ORAD was issued shortly thereafter.
7. State Reviews Up-to-Date: Confirmation that all permitting reviews are up-to-date and complete (or satisfactorily in process) regarding MEPA, MESA, and/or NHESP reviews.

GENERAL

1. Review the above listed attachments in order to respond to the items listed in the Scope of Work.
2. Conduct a site visit of the entire Ayer parcel, with the focus on the proposed project site area and the land in close proximity, including the land under the power lines where the roadway crosses, and the forested slopes down to Long Pond. At the same time, has the

applicant provided sufficient documentation in the Analysis to provide much of the basis for the future Conservation Restriction's Baseline Monitoring?

3. Attend two (2) meetings with the Ayer Conservation Commission, the first to ask additional questions of, or to hear questions or concerns from, the Conservation Commission in response to preliminary review; the second, ideally, for the presentation of the final report and recommendations.
4. Please note that the Commission must be copied on any communications between the reviewer(s) and the applicant or representatives.
5. Prepare a written report in memo format outlining findings, concerns, and recommendations.

REQUIRED CREDENTIALS FOR REVIEWER(S)

Minimum of three years' experience, with background(s) as needed in wildlife biology, ecology, wetlands science, and stormwater management.

RFP EVALUATION METRICS AND CRITERIA

- Qualifications of Reviewer(s)
- Ability to meet deadlines as outlined above
- Price of contract

CONTACT INFORMATION

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