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TOWN OF AYER /
TOWN CLERK

12:20 pm
[Signature]

μTown of Ayer
CONSERVATION COMMISSION
Town Hall ♦ One Main Street ♦ Ayer, MA 01432
P: 978-772-8220 x 143

MEETING AGENDA
Thursday, March 24, 2022

Due to the ongoing COVID-19 Pandemic, in accordance with Chapter 20 of the Act of 2021, 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 March 10, 2022
- Public Input

Public Meeting: Request for Determination of Applicability (RDA) (amended) – 8 Standish Avenue, Ron and Colleen Krieser

Discussion: Beaver Solutions annual maintenance contract

Discussion: Review of draft contract, North County Land Trust, Conservation Restriction management

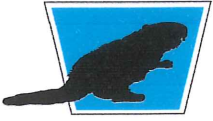
Discussion: Waterways Signs Project

Discussion: Review of Special Conditions Boilerplate

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM ADJOURN

Next Scheduled Meeting: 7 PM, April 14, 2022



BEAVER SOLUTIONS

14 Mountain Rd; Southampton, MA 01073

Phone: (413) 695-0484

Email: info@beaversolutions.com

February 16, 2022

Dear Jo-Anne,

As per our agreement, we completed the 2021 routine maintenance on the flow device(s) we installed for the Commission which includes inspections, cleanings and repairs at least twice annually and as needed. We are pleased to report that all but one flow device continues to be effective at controlling beaver damming and preventing flooding. We trust you are satisfied with the results of our work.

As you are aware, last fall the Long Pond beavers blocked the Pond Leveler pipe that was installed in 2014. We suspect the failure was due to corrosion but the water was too cold to do investigate thoroughly or do any repairs. Trapping and dam notching were the only options to restore normal flow. Even though corrosion after more than 6 years is not covered by our guarantee, as a Goodwill gesture we tried trapping at no cost to the town.

Unfortunately our trapping ended due to two separate incidents of vandalism to the legally set traps. Therefore, the situation remains unresolved.

In late March we should be able to investigate the cause of the pipe blockage more thoroughly and work with you to develop a plan moving forward. We will contact you to set up an on-site meeting with you and any interested Commission members.

After all the ice melts beavers will become active again. Uninterrupted routine maintenance at the other flow device sites should continue to prevent beaver-related flooding damage. A 2022 Maintenance Plan Renewal proposal is enclosed for your review. However, if you would like to take responsibility for this maintenance work, we are willing to answer any questions you may have at no charge. Note, with renewal of your low cost, annual maintenance agreement you will continue to receive our comprehensive Beaver Solutions "Worry-Free Guarantee" at no additional expense. See attached.

We offer this Guarantee because your satisfaction and our reputation are extremely important to us, and we want to continue to provide long-term, cost-effective solutions to beaver problems. We appreciate the opportunity to continue to work for you. Please contact us at your convenience to confirm your Maintenance Plan renewal and we look forward to meeting with you this spring.

Sincerely,



Mike Callahan and John Egan
Beaver Solutions LLC
"Working With Nature"

BEAVER SOLUTIONS

Michael Callahan
14 Mountain Road
Southampton, MA 01073
www.beaversolutions.com

INVOICE

Date	Invoice Number
2/16/2022	01105602

Bill To
Jo-Anne Crystoff Ayer Conservation Commission Ayer Town Hall 1 Main Street Ayer MA 01432

Project Location
Ayer, MA

Project Description
Flow Device Maint. Plan

Due Date	Date Completed
3/15/2022	12/31/2022

Description	Number	Rate	Amount
Optional Annual Maintenance Agreement and Guarantee - In 2022 Beaver Solutions will inspect and perform routine maintenance on all flow devices at least twice annually and as needed to ensure effectiveness. Price includes our comprehensive Beaver Solutions "Worry-Free Guarantee" for every site we maintain. The labor and materials for any minor repairs are also included. 5 Flow Device Sites Covered: Nonacoicus Brook dam W. Main St. Easement culvert Rod and Gun Club / Utility ROW Dams x2 Shaker Road dam 1 Flow Device Site Not Covered: Long Pond Spillway (to be billed separately) Multi-Site Maintenance Plan Discount: 10% for 2 sites, 20% for 3 - 4 sites, 25% for 5 - 6 sites, and 30% for 7 or more sites.	5	330.00	1,650.00
		-25.00%	-412.50

Balance	\$1,237.50
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Beaver Solutions is licensed and fully insured.

Please make check payable to Beaver Solutions

Beaver Solutions LLC
Maintenance Guarantee

If a Culvert or Flexible Pond Leveler pipe
we maintain is blocked by beavers
we will either fix the problem at no charge,
or refund double your Maintenance fee.

This Maintenance Guarantee does not cover damage from other dams,
vandalism, catastrophic events, or corrosion after 6 years.
Minor repairs are included with routine maintenance at no additional cost.

Beaver Solutions LLC
Maintenance Guarantee

*If a Flexible Pond Leveler pipe
we maintain is blocked by beavers
we will either fix the problem at no charge,
or refund double your Maintenance fee.*

*This Maintenance Guarantee does not cover flooding from other dams,
vandalism, catastrophic event damage, or corrosion after 6 years.
Minor repairs are included with routine maintenance at no additional cost.*

BEAVER SOLUTIONS

Michael Callahan
 14 Mountain Road
 Southampton, MA 01073
 www.beaversolutions.com

PROPOSAL

<i>Date</i>
10/17/2021

<i>Project Location</i>
Long Pond Spillway

<i>Project Description</i>
Pond Level Control

<i>Proposal for</i>
Ayer Conservation Commission Ayer Town Hall 1 Main Street Ayer MA 01432

<i>Description</i>	<i>Quantity</i>	<i>Cost</i>	<i>Total</i>
Beaver Colony Trapping - The total cost to trap an entire colony of beavers which includes the set-up of beaver traps, daily trap checks, trap resets as needed, as well as the removal and disposal of up to 6 beavers. If more than 6 beavers are caught, there is an additional charge of \$175 per additional beaver. Note: Beaver colonies usually do not exceed 5-6 beavers. Trapping will continue until every beaver in the pond is gone which typically takes up to 10 days.	1	1,200.00	1,200.00
Install a New Flexible Pond Leveler Pipe System - Total labor and material costs (excluding pipe) to install a new Flexible Pond Leveler with a 15" diameter pipe through the spillway exclusion fence. Price includes digging out the old Pond Leveler pipe, and reinstallation.	1	1,300.00	1,300.00
Total			

BEAVER SOLUTIONS

Michael Callahan
 14 Mountain Road
 Southampton, MA 01073
 www.beaversolutions.com

PROPOSAL

<i>Date</i>
10/17/2021

<i>Project Location</i>
Long Pond Spillway

<i>Project Description</i>
Pond Level Control

<i>Proposal for</i>
Ayer Conservation Commission Ayer Town Hall 1 Main Street Ayer MA 01432

<i>Description</i>	<i>Quantity</i>	<i>Cost</i>	<i>Total</i>
Note: The 40 feet of 15" diameter pipe and 3 split couplers will be supplied by the town if we are unable to reuse the existing pipe.			
Credit: Client credit of double the flow device annual maintenance fee (\$240.00) as part of our Beaver Solutions Maintenance Guarantee.		-480.00	-480.00
Permits - If needed, unless otherwise arranged any permits will be obtained by the client.	0	0.00	0.00
		Total	\$2,020.00

ENVIRONMENTAL MONITORING SUMMARY INSPECTION REPORT



<input type="checkbox"/> Weekly <input type="checkbox"/> Storm Event <input checked="" type="checkbox"/> Reduced Frequency Date: 3/16/22 Time: 8:15 AM to 9:00 AM	Project Name: Ayer Solar IIB
Inspector name(s), title(s) and qualifications: Rhianna Sommers, Senior Scientist, Epsilon Associates Others present/affiliation(s): Solar Express MA Weather conditions (since last inspection): site has experienced snow/rain storm events, followed by freezing, and recent thawing since the last inspection on 3/2/22. Snow has completely melted from the site. Weather conditions (time of inspection & future outlook): 42 degrees F, overcast. Future outlook: temperatures are predicted to stay above freezing over the next week, with highs in the 50s, and a high of 70 predicted for Friday 3/18. Site is predicted to receive 0.4" of rain on Saturday 3/19.	Project Location: Ayer, MA

Inspection Notes:

- Trenching for the electrical work associated with the solar array is occurring, along with erection of the solar panels and support structures. This work is outside of the 100-foot buffer zone.
- The ground is muddy and beginning to thaw. Snow has completely melted from the site.
- No work in the culvert area has occurred since the last inspection.
- Epsilon recommends stabilizing the strip of exposed soil between the culvert and the sediment barriers in this area with straw mulch or stone to provide additional protection. The contractor indicated that they plan to remove this accumulated silt and stabilize this area with additional stone.
- Epsilon also recommends that the haybales in the vicinity of the culvert crossing be staked into the ground as the haybales are no longer sitting flush with ground. Some of the deteriorated bales should be replaced with new bales, and staked accordingly.
- Additionally, several sections of downed silt fence along the northern perimeter of the site were observed. These areas should be maintained as necessary.
- Accumulated silt has been washed out and deposited along the southern side of the access road near STA 13. This area should be monitored to prevent and mitigate further sedimentation.

EROSION PREVENTION AND SEDIMENT CONTROL COMPLIANCE

Are controls compliant with Order of Conditions? YES NO If not, explain:

Other Comments & Observations

Authorized Signature

Date

3/16/22

PROJECT MANAGER

Name: Rohit Garg, Prometheus Power Group
 Phone: (248) 872-3068
 Email: rohit@prometheuspowergroup.com

CONTRACTOR

Name: David Stanley, Solar Express of MA
 Phone: (810) 282-9138
 Email: solarexpressoofma@gmail.com

ENVIRONMENTAL CONSULTANT

Name: Rhianna Sommers, Epsilon
 Phone: (603) 721-1642
 Email: rsommers@epsilonassociates.com

Environmental Monitor Inspection Report

General Information

Name of Project	Ayer Solar Development	MassDEP File No.:	100-0444	Inspection Date	3/16/22
Weather conditions during inspection	42 degrees F, overcast	Inspection start time	8:15 AM	Inspection end time	9:00 AM
Inspector Name, Title & Contact Information	Rhianna Sommers, Senior Scientist, Epsilon Associates, (603) 721-1642				
Description of Work in 100-ft Buffer Zone:	No work is currently occurring in the 100-foot buffer zone. The electrical contractor is staging a construction trailer in the 100-foot buffer zone near STA 10.				
Anticipated Work in 100-ft Buffer Zone Next Week:	Repair of sediment and erosion controls.				
Inspection Locations	Perimeter of project site				
Inspection Frequency: Every 7 days					
<p>Unsafe Conditions for Inspection</p> <p>Did you determine that any portion of your site was unsafe for inspection? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes", complete the following:</p> <p>- Describe the conditions that prevented you from conducting the inspection in this location:</p>					

Environmental Monitor Inspection Report

Condition and Effectiveness of Erosion and Sediment (E&S) Controls				
Type/Location of E&S Control	Maintenance Needed?*	Corrective Action Required?*	Date on Which Maintenance or Corrective Action First Identified?	Notes
1. Sediment control barriers and Emergency Supply	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	12/22/21	<p>1. We recommend stabilizing the strip of exposed soil between the culvert and the sediment barriers in this area with straw mulch or stone to provide additional protection when conditions permit. The contractor indicated that they plan to remove this accumulated silt and stabilize this area with additional stone. Epsilon recommends that the haybales in the vicinity of the culvert crossing be staked into the ground as the haybales are no longer sitting flush with ground. Some of the deteriorated bales should be replaced with new bales, staked accordingly, also when ground conditions permit.</p> <p>Additionally, several sections of downed silt fence were observed along the northern perimeter of the site during today's inspection. These areas require maintenance.</p> <p>Accumulated silt has been washed out and deposited along the southern side of the access road near STA 13. This area should be monitored to prevent and mitigate further sedimentation.</p> <p>2. No sediment tracking was observed onto Washington Street.</p> <p>3. Areas are still being actively worked/graded and are not yet ready for stabilization.</p> <p>4. Excavated soil that will be used to backfill the retaining wall is being temporarily stored along the southwest edge of the site, in front of the perimeter sediment controls. Stockpiles are contained within the limits of project site.</p>
2. Stabilized construction Entrance & Street Sweeping	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
3. Slope stabilization	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
4. Temporary stockpile areas	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Environmental Monitor Inspection Report

Condition and Effectiveness of Pollution Prevention Practices				
Type/Location of Pollution Prevention Practice	Maintenance Needed?*	Corrective Action Required?*	Date on Which Maintenance or Corrective Action First Identified?	Notes
1. Solid waste management	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Dewatering and concrete washout were not occurring at the time of the inspection.
2. Concrete washout areas	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		There is a port-a-John on site near STA 10, just outside of the 100-foot buffer zone.
3. Dust control	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Dust control was not needed.
4. Dewatering areas	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Stabilization of Exposed Soil			
Stabilization Area	Stabilization Method	Have you initiated stabilization?	Notes
N/A			

Environmental Monitor Inspection Report

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Description of Discharges	
Was a stormwater discharge or other discharge occurring from any part of your site at the time of the inspection? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "yes", provide the following information for each point of discharge:	
Discharge Location	Observations
1.	<p>Describe the discharge: Water from the intermittent stream was flowing out of the culvert and into the adjacent wetland. The water was primarily clear. A coating of fine silt is visible outside the project limits, which is believed to be from a past discharge event.</p> <p>At points of discharge and the channels and banks of surface waters in the immediate vicinity, are there any visible signs of erosion and/or sediment accumulation that can be attributed to your discharge? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No from past event, as noted above</p> <p>If yes, describe what you see, specify the location(s) where these conditions were found, and indicate whether modification, maintenance, or corrective action is needed to resolve the issue: We recommend stabilizing the strip of exposed soil between the culvert and the sediment barriers in this area with straw mulch or stone to provide additional protection when conditions permit. The contractor indicated that they plan to remove this accumulated silt and stabilize this area with additional stone. Epsilon recommends that the haybales in the vicinity of the culvert crossing be staked into the ground as the haybales are no longer sitting flush with ground. Some of the deteriorated bales should be replaced with new bales, and staked accordingly.</p>

Environmental Monitor Inspection Report

Summary Status of Other Project Activities

Wetland Replication Status: N/A

Permanent Stormwater Management System Status: N/A

Environmental Monitor Signature and Certification



Signature of Environmental Monitor:



Date: 3/16/22

Printed Name and Affiliation: Rhianna Sommers, CESSWI, Epsilon Associates

Environmental Monitoring Photographs

		PHOTOGRAPHIC LOG
Photo No.: 1	Date: 3/16/22	
<p>Description: View of straw bales near STA 4. Some of the bales have toppled over and are not secure or flush with the ground. Epsilon recommends that the bales be replaced (as necessary) and staked into the ground to secure them in place.</p>		



		PHOTOGRAPHIC LOG
Photo No.: 2	Date: 3/16/22	
<p>Description: View of another section of straw bales near the culvert crossing requiring repair/replacement. Epsilon recommends that the bales be staked into the ground to secure them in place and keep them in contact with the ground.</p>		

Photo No.: 3 Date:
3/16/22

Description: View of perimeter controls northwest of the culvert crossing. Straw bales require repair/replacement.



Photo No.:4 Date:
3/16/22

Description: View of silt fence requiring maintenance near STA 6.



Photo No.: 5

Date:
3/16/22

Description: View of accumulated silt that has been washed out along the southern side of the access road near STA 13. This area should be monitored to prevent and mitigate further sedimentation.



AGREEMENT BY AND

BETWEEN

**TOWN OF AYER,
MASSACHUSETTS AND
NORTH COUNTY LAND TRUST, LLC**

This Agreement made as of _____, by and between the TOWN OF AYER, 1 Main Street, Ayer, MA 01432 (hereinafter referred to as the "TOWN"), and NORTH COUNTY LAND TRUST, LLC 325 Lindell Ave, Leominster, MA 01453 (hereinafter referred to as "NCLT").

WITNESSETH THAT:

WHEREAS, the TOWN is seeking professional consultant services to formalize its Conservation Land Stewardship Program including gathering all necessary documents for existing Conservation Restrictions (CRs), providing the baseline report (as needed), and implement an annual monitoring program that will comply with best management practices for conservation land stewardship;

WHEREAS, the NCLT was selected to provide these

services; NOW, THEREFORE, THE PARTIES DO AGREE

AS FOLLOWS:

1. **Engagement of the Consultant:** The TOWN hereby engages the NCLT to perform the duties associated with the thorough completion of the services set forth herein, and the NCLT hereby accepts the engagement.
2. **Scope of Services:** The NCLT shall perform the necessary professional services to complete the Conservation Land Stewardship Program:
 - 2.1. **Baseline Documentation, Monitoring, and Records Management.** Using the information provided to us on the existing CRs, NCLT will:
 - a. Identify needed documents
 - b. Gather said documents
 - c. Put together a complete baseline document according to the current LTA standards along with all back up documents necessary
 - d. Review existing baseline documentation, supplementing as necessary and scanning/backing up information. We will translate the information into a standard format for record-keeping purposes.
 - e. Conduct the annual monitoring for Kohler Place.
 - 2.2. **Policy and Admin Set Up.** NCLT will, as necessary:
 - a. Draft policies for Monitoring and Enforcement
 - b. Create Conservation Restriction project review check lists and acceptance policies

- c. Review of current OSRD by-law requirements and analysis of oversight within the Town structure
- d. Draft Enforcement letter templates
- 2.3. All work will be done closely with the town Conservation Administrator and Commission with the Town Manager or other town committee or department as needed. Policies will be drafted to tailor to the town's needs and preferences.
- 2.4. The NCLT will assign Jassy Bratko, NCLT Land Protection Director, as the project lead to manage the project work. Emily Merlino, Stewardship Coordinator, will be responsible for the monitoring site visits and will assist Mrs. Bratko with duties as assigned. Mrs. Bratko will bring to the Conservation Administrator's attention any potential conservation restriction violations.
- 2.5. If small tasks related to this work, but not specifically outlined here, are requested by the Commission, NCLT will undertake them in consultation with the Town Manager as part of this contract. Larger requests will be negotiated as an amendment to this contract.
- 2.6. The NCLT's Executive Director, Anna Wilkins, will provide oversight of the project and contract.
- 2.7. Upon the completion of the items as outlined above Mrs. Bratko will submit a summary of work to the Ayer Conservation Agent Jo-Anne Crystoff, and will, if requested, present the work to the Conservation Commission at a regular meeting.
- 3. **Responsibility of the TOWN:** The Town shall assume responsibility for assisting NCLT insofar as possible for the purposes of efficiency and furnishing NCLT with information needed to satisfactorily complete the services. The TOWN shall designate a representative, such as the Conservation Administrator, as authorized to act on its behalf with respect to the project.
- 4. **Reporting:** The NCLT will submit status reports to the TOWN on the status of the professional services on a monthly basis, or at such reasonable time and frequency as may be required by the TOWN.
- 5. **Time of Performance:** The anticipated completion date is no later than June 30, 2022.
- 6. **Compensation:** The TOWN shall pay NCLT fee not to exceed sixteen thousand dollars (\$16,000). This compensation shall be paid half (\$8,000) upon signing of this contract, and half, upon completion and submittal of the summary of work completed.
- 6.1. The Town Manager has authorized the work on this project undertaken by Mr. Futterman.
- 6.2. The compensation to be paid shall include all incidental costs with the performance of the contract work (i.e. mileage, parking, etc.), except as may be expressly authorized by the TOWN.

- 6.3. There shall be no further costs, fees or reimbursable charges due the NCLT under this Contract unless said fees and/or costs are so set forth in writing.
- 6.4. Final payment, including any unpaid balance of NCLT's compensation, shall be due and payable when the summary of work has been completed and no later than June 30, 2022.
7. **Termination:** Either party may terminate the Agreement without cause upon thirty (30) days written notice. In the case of termination, all finished and unfinished documents shall become the property of the TOWN. In the event of termination, NCLT will be compensated at the time of termination for all services provided to the date of termination. The compensation to be provided to NCLT in the event of termination prior to completion shall include compensation for all work performed and expenses incurred prior to termination. NCLT shall submit a final invoice no later than thirty (30) days after termination.
8. **Force Majeure:** Neither party shall be liable to the other nor be deemed to be in breach of this Contract for failure or delay in rendering performance arising out of causes factually beyond their control and without their fault or negligence. Such causes may include, but are not limited to: Acts of God, or the public enemy, wars, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Unless otherwise provided by law, or unless otherwise specified by the parties elsewhere in this contract, the performance dates of this Contract are of the essence and important to the implementation of essential work, and continued failure by NCLT to perform for an extended period, even for causes beyond the control of the NCLT, shall afford the TOWN the right to immediately terminate this Contract upon NCLT's receipt of written notice of termination. An extended period shall be any period aggregating thirty (30) or more calendar days.
9. **Obligation in Event of Termination or Suspension:** the notice of termination or suspension from the TOWN shall state the circumstances of the termination or suspension, identify any alleged breach, a reasonable period of not less than sixty (60) days to cure any alleged breach, and any instructions or restrictions concerning any allowable activities or costs during this notice period. If the NCLT is not in default or breach of the terms of this Contract, the TOWN shall promptly pay the NCLT for all services provided up until the date of termination or suspension, provided the NRWA submits invoices for payment with any supporting documentation, utilizing the formula described in paragraph 7 above.
10. **Amendments:** This Agreement may be amended provided such amendment is evidenced in writing by the signatories hereto prior to its effective date. Any authorized alternative provisions or additional terms and conditions to this Contract shall be specified in an Attachment or Amendment, and shall not replace any boilerplate language, and shall clearly and specifically establish the understanding, intent, obligations, responsibilities and expectations of the parties

under this Contract.

11. **Assignability:** The NCLT shall not assign nor in any way transfer any interest in this Agreement without the prior written consent of the TOWN.

12. **Indemnification:** The NCLT shall indemnify and hold the TOWN harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses caused by or arising out of the NCLT's breach of this agreement or the negligence or misconduct of the NCLT's agents or employees.

13. **Severability:** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

In witness whereof, the TOWN and NCLT have executed this Agreement under seal in duplicated as of the date above written.

Town of Ayer

North County Land Trust, LLC

By: _____ Date: _____

Robert A. Pontbriand, Ayer
Town Manager

By: _____ Date: _____

Anna Wilkins, Executive
Director, North County Land
Trust

Conservation Commission comments re North County Last Trust draft contract:

**It was noted during the discussion that the State currently does not have a CR reviewer – that person left the position last year and to our knowledge, it has not yet been filled. NCLT will undoubtedly know more. The Planning Board, per Geoff Tillotson, is now writing into their approvals of OSRD subdivisions that the completed CR must be in hand before any Certificates of Occupancy can be issued. They are aware they may need to come up with a reasonable contingency plan in case the situation with the State vacancy does not resolve itself soon – a situation beyond both the developer’s and the Town’s control. This may or may not become an issue with the Shaker Mill Pond OSRD.

Re the draft contract:

1. On p. 1, Item 5 (“Expenses”) – this was confusing to all of us. What does it mean in terms of who is responsible for paying expenses? **This just means that NCLT can’t pass off expenses to the town or vice versa, unless we have agreed to it in this agreement. For example, NCLT may decide to get a market analysis on a property of interest in Ayer to see what the appraisal might come in at. If the town didn’t ask us to order it for them, it can be rejected as a covered expense under this agreement.**

2. The Table on p. 3 (Exhibit A) should be amended to also include Conservation Restrictions (CRs) for: **Ok, thank you. Added.**

- Orion Place
- Panther Place (note, the name for this subdivision will likely change at some point)
- Ayer Solar IIB (not to be confused with Sandy Pond II)

3. The 4th column in the Exhibit A table refers to “M&E plan implemented” – we are wondering what this means? Is there a work product/documentation that would result from this? **This stands for “Monitoring and Enforcement Plan Implemented”. The documentation associated with this would be a monitoring report, and a “potential incident report” or “incident report”(if needed). I think when we drafted this up with Jo-Anne, this was one of the items she wanted to make sure we covered.**

4. Also In the paragraph immediately underneath the Exhibit A table, given the Planning Board’s plans to write into their approvals certain requirements for new CRs **going forward**, it was suggested that the wording on the 4th line down be amended to “...following through on implementing Conservation Restrictions on applicable OSRD developments...” Changing the word ‘new’ to ‘applicable’ since 3 OSRD projects have now gone through the Planning Board, and NCLT may need to do more on those.

5. Scope of work/services to be provided – Our understanding is that NCLT will be:

1. Working with developers to draft new CR documents

OR

Where a developer doesn’t exist (eg. Pine Meadow Conservation Area, Tooker Property, Minnie French) or no longer exists in the picture (eg. Mountain Laurel/Sandy Pond II), will NCLT be working with us and the State to create a CR document and/or resolve issues so that a CR can then be created?

Yes.

2. Creating the baseline documentation for each of the CRs that need them? **We’re happy to do the baselines that are needed for the town-held CRs. If the homeowner’s association is the client (owner of the CR or open space), then they will be responsible for the costs associated**

with monitoring and enforcement. I recommend that homeowner's associations are NOT the holders of the OSRD open space or CR's that cover that open space.

Note, given the new OSRD Zoning Bylaw that requires the creation of CRs, the Planning Board will be doing everything it can to make sure the cost of preparing baseline documentation will be funded by the developer. I'm not sure to what degree annual monitoring costs will likewise be funded, or if some of this will be turned over to a future homeowners association. But assuming that for the annual monitoring, however funded, this will be done by NCLT once things are in place? (Exception, at least for now, is Autumn Ridge – they seem to be handling everything, including annual monitoring, just fine.)


3. Annual monitoring – and enforcement if necessary, once CR and baseline documentation are in place. Annual monitoring all of the Town's conservation properties can be accomplished. During that time, we will report any issues with potential incident or incident reports to the Commission (or Conservation Administrator). We can also draft enforcement letters to the violators. These letters should be signed by a commission representative. We can track, follow up on, and be present at site visit meetings but we do not have the authority to enforce. The decision of what resolves an issue will fall to the commission and/or town counsel (should that be necessary. Heaven forbid!) We're happy to opine or advise. Happy to talk about the process of all this in more detail if that helps.

6. Should details be added on p. 3 to the "Required Deliverables, if Any" section that is currently blank?

I think of this as an operational plan. I didn't want to list items that wouldn't or couldn't be accomplished this year. If there's no baseline for an existing conservation property, that should be first priority. After that, annual monitoring can happen.

If there is a baseline, we can conduct the annual monitoring and begin to address any enforcement issues present.

As far as drafting CRs are concerned, we will need more information on prioritization and timelines on those.

For Deliverables, it might be best if we meet to come up with a plan of accomplishments for this year recognizing we are a small organization as well. What are the commission's priorities, and do we have all of the information we need to proceed? Jo-Anne had agreed to provide us with digital copies of the records for existing properties. 





Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Ayer
City/Town

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

Important:

When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Applicant:

Ronald Krieser Name rkrieser@fitchburgstate.edu E-Mail Address
8 Standish Avenue Mailing Address
Ayer City/Town MA State 01432 Zip Code
(978)-609-1059 Phone Number
Fax Number (if applicable)

2. Representative (if any):

Firm
Contact Name E-Mail Address
Mailing Address
City/Town State Zip Code
Phone Number Fax Number (if applicable)

B. Determinations

1. I request the Ayer Conservation Commission make the following determination(s). Check any that apply:

- a. whether the area depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
b. whether the boundaries of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
c. whether the work depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any municipal wetlands ordinance or bylaw of:

Ayer Name of Municipality

- e. whether the following scope of alternatives is adequate for work in the Riverfront Area as depicted on referenced plan(s).



WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

8 Standish Avenue	Ayer
Street Address	City/Town
	15-46
Assessors Map/Plat Number	Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

Waterfront area of Sandy Pond and embankment leading to Sandy Pond as depicted in attached photographs.

c. Plan and/or Map Reference(s):

Title	Date
Title	Date
Title	Date

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

A very large pine tree was struck by lightning in September 2021 and needed to be removed. Due to the tree having a hollow base, the tree service expert determined that the only way to safely remove the tree was to fall it over the staircase leading to the water. There is another large pine tree at the bottom of the staircase that is not healthy. This request is to replace the demolished staircase with another staircase. THE request is also to remove remove the dying pine tree which is 1 foot above the high water line (at the shoreline) and leave a stump.

The construction for the stairs will include the following (from the contractor's quote):

- Frame new set of stairs 20' long to be one continuous run.
- Install 6 precast footings to tie stairs into.
- Cut and install 8 4x4 pressure treated posts evenly spaced and lag into place.
- Cut and install pressure treated decking to each step.
- Cut and install 2x6 lumber to construct rail sections.
- Cut and install decking to cap top.
- Cut and install pressure treated balusters evenly spaced.
- Install handrail with brackets.
- Clean area. The material will be pressure treated lumber or a material such as Trek (depending on cost)



WPA Form 1- Request for Determination of Applicability

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C. Project Description (cont.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.

- Single family house on a lot recorded on or before 8/1/96
- Single family house on a lot recorded after 8/1/96
- Expansion of an existing structure on a lot recorded after 8/1/96
- Project, other than a single family house or public project, where the applicant owned the lot before 8/7/96
- New agriculture or aquaculture project
- Public project where funds were appropriated prior to 8/7/96
- Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
- Residential subdivision; institutional, industrial, or commercial project
- Municipal project
- District, county, state, or federal government project
- Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)



WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

Ronald Krieser
Name

8 Standish Avenue
Mailing Address

Ayer
City/Town

MA
State

01432
Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.


Signature of Applicant

3/7/2022
Date

Signature of Representative (if any)

Date

Project title

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 Article XXVI, Section 2A. Under the Bylaw, the Buffer Zone is considered to be a Resource Area (Section 3A).

INSERT NARRATIVE OR PROJECT, DESCRIPTION, WETLANDS IMPACT, WORK PERMITTED

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. The Commission designates the “limit of work” (LOW) under this Order as the erosion control barriers concurrent with the LOW line depicted on the referenced plan(s) listed in Special Condition 2. [SHOULD THIS BE HERE OR AS A CONDITION?????]

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 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 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.

ADMINISTRATIVE CONDITIONS

Project title

ATTACHMENT A
SPECIAL CONDITIONS
Order of Conditions

**0 & 31 Central Avenue, Ayer Assessor’s Map 27, Parcel 33 & Map 26, Parcel 352
DEP File #100-0451**

FINDINGS:

Under the Order of Conditions (“the Order”) issued under MassDEP File Number 100-0451 to John Hillier, Central Realty Trust (“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”) as codified in 310 CMR 10.00 (“the Regulations”). “Resource Areas” are enumerated under 310 CMR 10.02(1), and “Buffer Zone” is defined in 310 CMR 10.04, as amended. Any violation of these Conditions is considered a breach of the Wetlands Protection Act, which may make the Applicant subject to an Enforcement Order or a fine from this Commission and from MassDEP.

The project at 0 & 31 Central Avenue was filed as a Notice of Intent (NOI) following the issuance of multiple Enforcement Orders (EOs) to property owner John Hillier:

2/19/2019: EO and Cease & Desist (C&D) for tree-clearing in the buffer zone to an intermittent stream without notification or approval of the Ayer Conservation Commission - asked to install erosion controls and to file an NOI, with an engineered plan, prior to any further work done on site;

3/21/2020: EO issued for continuing to do work (excavation, stump removal, grading) on parcel with existing unresolved EO and C&D (2/19/2019) - included a 6/15/2020 deadline for Mr. Hillier to submit an NOI and engineered plan to redress previous unpermitted work, work done in violation of 2/19/2019 C&D still in effect;

4/17/2020: EO issued in part for failure to respond appropriately to the previous EOs, including failure to submit a plan and an NOI.

[Note: a separate EO was also issued on 3/4/2020 for unpermitted paving of a narrow strip of land, owned by a different property owner and used for crossing from Central Avenue to access the area where cars are being parked on Mr. Hillier’s parcel. This EO was resolved with the removal of the paving material.]

Because of continued lack of compliance with resolving the above EOs, the Commission began issuing Violation tickets fining Mr. Hillier \$300/day: Violation Nos. 2852-2872 and 2874-2912, dated June 16, 2020 to July 20, 2020. As was agreed with Mr. Hillier’s attorney, David McCay, at ConCom’s 7/9/2020 meeting, the Commission would stop issuing tickets upon receipt of an NOI. This was finally submitted on 7/23/2020. The Commission further agreed that it would *consider* not ratifying the existing ticket fines should agreement be reached on the NOI. At

its meeting on November 5, 2020, the Commission voted to issue an OOC pursuant to the NOI and to voluntarily dismiss Violation Nos. 2852-2872 and 2874-2912.

The history of this lot is that, prior to Mr. Hillier's purchase in 2013, it was owned by the railroad, which used a small cleared access area, comprised of dirt and loose gravel, to park vehicles on the lot while performing periodic maintenance work on the tracks that abut this parcel. On purchase, Mr. Hillier's understanding was that he was required to keep the intermittent stream that crosses his lot clear of sediment build-up that could cause flooding on the adjacent rail tracks. (The intermittent stream begins at the top of Washington Street, draining downhill, crossing Central Avenue, Mr. Hillier's lot, the railroad tracks, and so on to where it outlets at School House Pond.) Mr. Hillier was initially issued an Enforcement Order in 2013 for preparatory work, without an Order of Conditions, to clear the lot for expanded parking to his adjacent facility, Compassionate Care. At that time, Mr. Hillier was advised that the proper path to expand parking was through submitting a Notice of Intent. Mr. Hillier did not do any further work on the parcel from then until early 2019, when the tree-clearing was done without notice and the EO and C&D were then issued. Mr. Hillier continued parking cars in the railroad's previously used area throughout this time. Up to 10 cars had been observed at various times and Mr. Hillier was advised by a 6/4/2020 letter from Ayer Town Planner Mark Archambault, and by an 8/28/2020 letter from Conservation Commission Chair Jon Schmalenberger, that parking more than 4 cars on this parcel would require Site Plan Review by the Planning Board, pursuant to Ayer Zoning Bylaw Section 3.5.1.A.2. Since the August letter, no more than 4 cars have been observed parking in the previously-used area.

Following meetings with the Commission over the summer and early fall, Mr. Hillier and his attorney, with Ayer Town Counsel Amy Kwesell also present on two meeting occasions, Mr. Hillier submitted an NOI and plan for which the Commission is issuing this Order of Conditions. Mr. Hillier has agreed to plant 12 trees to redress the previous tree-clearing. The NOI also sought permission for Mr. Hillier to use hand tools to clean-out the accumulated sediments in the intermittent stream - down to the existing armored channel - in order to fulfill his agreement with the railroad. A good part of the sediment build-up comes from stormwater runoff from Central Avenue. The NOI also seeks an Order of Conditions that permits regular maintenance going forward in order to ensure unimpeded flow of the intermittent stream channel.

Mr. Hillier plans no further work on site at this time. He has stated in Commission meetings that he understands that additional work on this parcel would require submission of a new NOI. While the Commission would have liked to have seen the addition of material such as crushed stone in the area where up to 4 cars are still being parked, it also understood that this area had been in such use previously by the railroad as well. Given the protracted nature of the proceedings in order to reach this point, the Commission did not choose to pursue this requirement further. In addition, because proposed Resource Area work is now limited to cleaning out and maintaining the stream channel, the Commission did not insist upon the creation of a separate replication area.

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. The Commission designates the “limit of work” under this Order as the erosion control barriers concurrent with the limit of work line depicted on the referenced plan(s) listed in Special Condition 2.

According to the Bylaws of the Town of Ayer, Article LIII (Enforcement), the Conservation Commission is considered an enforcement officer for Article XXVII (Wetlands Protection). While the Wetlands Bylaw does not specify a fine amount for a violation, Article LIII specifies the fine to be three hundred dollars per violation. Each day a violation exists shall constitute a separate offense.

ADMINISTRATIVE CONDITIONS

General Conditions 1-20 on the DEP WPA Form 5 are in force under this Order, and are all required for compliance, without exception. These Administrative Special Conditions are expanding upon General Condition 1.

1. All work must be in compliance with DEP General Conditions 1-20, and all Special Conditions from the Ayer Conservation Commission herein.
2. The work shall conform to the following plans and documents, unless otherwise specified in this Order. All of these plans will be submitted to the Conservation Administrator in an agreed upon electronic format, if that office does not possess them already:

a. WPA Form 3/Notice of Intent:

Submitted on behalf of: Central Realty Trust
Property Owner: John Hillier

Project Location: 0 and 31 Central Avenue
Ayer, MA 01432

Prepared by: Goldsmith, Prest, and Ringwall
Stamped by: Nicholas M. Pauling, P.E.

b. Site Plan: C1.0 Commercial Development Existing Conditions

C2.0 Commercial Development Notice of Intent,
Drain Maintenance and Restoration Plan

Final Rev. Date: 9/24/20

The approved wetland boundaries pertaining to this Order are only valid for the particular project associated with DEP # 100-0451, and not for any future projects.

3. **This Order shall apply to any successor(s) in interest or successor(s) in control and shall survive the issuance of the Certificate of Compliance.** All future deeds shall reference this Order and the recording information for the same in the following format “This property may be subject to an Order of Conditions issued by the Town of Ayer Conservation Commission, which Order is recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____, of which some conditions therein survive the issuance of a Certificate of Compliance”. Within ten (10) calendar days inclusive of the transfer of ownership of the subject parcel, in whole or in part, including lots or buildings conveyed under individual deeds, the Commission shall be notified in writing by the seller of the name and address of the new owner.

Within ten (10) calendar days inclusive of such transfer, a written and notarized affidavit signed by the Seller and Buyer shall be filed with the Commission by the seller, stating that:

- The Seller has provided the Buyer with a copy of this Order of Conditions and the Buyer has read this Order of Conditions;
 - The Buyer certifies that the Buyer understands all terms applicable to the project site;
 - The Buyer certifies that the Buyer understands that any work within Resource Areas and Buffer Zones pursuant to definitions in 310 CMR 10.00, as amended, requires a permit from the Conservation Commission;
 - In addition, this affidavit shall include the following sentence: “I, _____, the new owner of _____, understand that any work within Resource Areas and Buffer Zones pursuant to definitions in 310 CMR 10.00, as amended, requires approval by the Ayer Conservation Commission and that dumping of yard waste, brush, or other materials in said areas is not allowed.”;
 - This affidavit shall also include a plan of the lot indicating the wetland boundary, building(s), and any other features.
4. All current and future new tenants shall be provided with a copy of this Order and a signed affidavit as described above acknowledging receipt shall be provided to the Commission. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be referred to in all future deeds to this property.***
5. Any violation of these Conditions will make the Applicant subject to an Enforcement Order or a fine.
6. Members and agents of the Commission shall have the right to enter and inspect the premises at reasonable times, in reasonable intervals, with reasonable notification to the Site Supervisor, to evaluate compliance with the Conditions, up to such a time that the Certificate of Compliance is issued. Because of the environmental sensitivity of this site, these inspections may occur on a daily basis during the active constructive phase of this project. The Commission may require the submittal of additional data (such as work or data logs, purchase receipts, or product specifications) reasonably deemed necessary by the Commission to determine whether the project is in compliance with the Conditions. Potential violations of perpetual Conditions shall not grant the Commission or its agents’ passage over private property.

7. **The Applicant (or Applicant’s representatives, who in this instance may be any of the Site Superintendent, the Contractor, or design project Engineer) is responsible for the Project’s completion in accordance with the Plans and these Conditions, and shall have on site at all times a copy of this Order, including all referenced documents, while activities regulated by this Order are being performed.**
8. Any change in the Plans approved under this Order, including those due for review by other boards or resulting from the aforementioned conditions, must be submitted to the Commission in writing for approval prior to implementation. The Commission will then decide whether the change is substantial enough to require a new Notice of Intent filing or a request for an amendment to this Order of Conditions. Any errors found in the Plans or information submitted by the Applicant shall be considered as changes. If any unforeseen problem occurs during construction of the Project which affects any of the seven statutory interests of the WPA, the Applicant shall notify the Commission, and shall convene an immediate meeting between the Commission and/or the Agent, the Applicant (or the Applicant’s representative(s) which may include the Engineer, Site Supervisor, or Contractor), and other invited parties to determine and agree upon the appropriate corrective measures. In the event of a dispute amongst the participants of any meeting, the Commission’s view shall prevail.
9. The Site Supervisor is responsible for ensuring all parties on site abide by the Conditions set forth in this Order. This oversight responsibility extends to any sub-contractors, and persons delivering items or materials to the project.
10. 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.
11. Pumps, generators, or other stationary equipment containing fuel, oil, hydraulic fluid, or other potential contaminants shall not be stored or operated within the wetland resource area, or wetland buffer zone without written approval of the Commission, the Agent, or a Commission-approved consultant/contractor. Equipment shall be located in a containment area on an impervious barrier. The barrier shall be of light color to allow observation of any liquid spillage. If spillage is observed, the equipment shall be taken out of service immediately.
12. All inorganic debris from work approved under this Order shall be removed from the site, including pre-existing and construction related debris. The Applicant or his designee shall be responsible for removing and disposing of such materials and surplus soils promptly and properly to an off-site disposal area which complies with all federal, state, and local requirements and regulations. Records as to the destination of all materials, including stumps, brush, and excess fill, shall be kept on file by the Contractor and supplied to the Commission if requested.
13. 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.
14. Non-organic fertilizers, pesticides, and herbicides shall not be used. Organic fertilizers used shall be slow-release. Additionally, soil and plant fertilization must be done in

accordance with the Act Relative to the Regulation of Plant Nutrients (Act) (330 CMR 31.00). The Act includes, but is not limited to, the following provisions:

- a. 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;
 - b. Do not apply plant nutrients to sidewalks or other impervious surfaces. Plant nutrients that land on these surfaces must be swept back onto the grass or cleaned up.
 - c. No applications of plant nutrients shall be made: – between December 1 and March 1; – to frozen and/or snow covered soil; – to 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 a Zone I of a public water supply well or within 100 feet of surface waters that are used for public drinking water supply.
15. The Commission reserves the right to require additional conditions if deemed necessary to protect the Resource Areas, Buffer Zones, and environmental interests as defined in MGL Chapter 131 Section 40 (310 CMR 10.00) with proper notification of all parties.
16. No vehicles or equipment are to enter or cross a Resource Area or Buffer Zone outside of the limits of work for this Order, unless the location of disturbance is marked on the Plans referenced in this Order, submitted for review to the Commission with a plan for restoration of the Resource Area disturbance, and shall be approved by the Commission prior to the entry or crossing. Equipment is considered anything motorized, or that may potentially leak harmful materials such as fuels or lubricants into Resource Areas or Buffer Zones.

PRE-CONSTRUCTION CONDITIONS: These Pre-Construction Special Conditions are an expansion of General Conditions 8, 9, and 10.

17. Prior to commencement of any work on site, the Commission shall be notified in writing whenever maintenance work is to be performed for clearing sediment from the stream channel and:
- a. The wetland boundaries and the jurisdictional Banks on both sides of the stream channel in the area of proposed sediment removal shall be clearly marked. All re-flagging, as needed, shall be made with biodegradable flags/stakes so that said areas are clearly distinguishable, and shall be confirmed by the Commission or its Agent. Degradable, photodegradable, UV-degradable, oxo-degradable, or oxo-biodegradable flags/stakes are not acceptable and shall not be used. **The Applicant shall maintain wetland flagging until the Certificate of Compliance is issued.**
 - b. The Applicant shall submit in writing to the Commission the names, addresses, and telephone numbers (both business and 24-hour emergency numbers) of the person(s) responsible on-site for compliance with this Order and his/her alternate. The Applicant shall also notify the Commission in writing of any changes to this information.

- c. The Applicant, or designee, shall hold a pre-construction meeting with the Agent, Engineer, Site Superintendent, and Contractor (if different), prior to the start of any work to ensure this Order is fully understood by all parties. At this meeting, a Method of Procedures (MOP) shall be outlined, discussed, and written down for submitted to the Commission. The MOP shall address protocols and contingencies for protecting Resource Areas during construction, responding to unforeseen conditions, and reporting back to the Commission. This MOP shall be established therewith and implemented throughout construction.
- d. **All erosion and sedimentation control measures shall be installed for inspection and approval by the Commission or its Agent.** The Commission must be notified at least 7 days in advance of the need for an inspection of work, for scheduling purposes.
- e. Proof of recording of this Order at the South Middlesex Registry of Deeds must be presented to the Commission or its Agent.
- f. The approved Limits of Work (LOW) from the Plans shall be survey-located and approved by the Commission or its Agent prior to the commencement of work. The LOW should be demarcated using orange construction snow fence staked in the ground to ensure that work is contained to the locations approved on the Plans throughout the duration of the Project construction.

DURING CONSTRUCTION CONDITIONS: INVASIVE SPECIES MANAGEMENT

- 18. Any fill brought on site must be clean, debris-free, and be devoid of invasive plants, their parts, or their seeds.
- 19. 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 method approved in advance by the Commission.
- 20. 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 unavoidable, vehicles shall be washed or cleaned prior to leaving the infested portion of the site.
- 21. Construction vehicles to be stored overnight on site within the Buffer Zone are to be inspected daily for any sign of oil, gasoline, or other fuel leakage. The Commission is to be notified immediately of any such occurrence, so that a solution is discussed and approved by the Conservation Administrator.

DURING CONSTRUCTION CONDITIONS: SEDIMENT AND EROSION CONTROLS

These During Construction Special Conditions are an expansion of General Condition 18.

22. Soil erosion and deposition into wetland resource areas shall be prevented at all times by effective control methods. The Applicant shall implement the methods indicated in the referenced Notice of Intent and as specified below:



- a. Erosion control measures shall be installed and maintained in accordance with the Plans listed in Special Condition 2.
- b. The limit of work shall be the staked orange snow fencing, beyond which no work shall occur. These limits are laid out in the approved plan set listed in Special Condition 2.
- c. The Commission may require the Applicant to employ additional erosion and/or damage prevention measures as it reasonably deems necessary. Supplemental erosion controls deemed necessary shall be implemented in accordance with the Massachusetts Erosion & Sediment Control Guidelines for Urban and Suburban Areas (2003).
- d. Erosion controls shall be inspected by the applicant weekly and immediately following storm events. Damaged or non-functioning erosion control devices shall be maintained, reinforced, or replaced as necessary.
- e. Upon the discovery of any failure of erosion control measures resulting in deposition of soils into Resource Areas, the incident shall be **immediately** reported to the Site Superintendent, and then reported to the Commission at (978) 772-8249 and to concom@ayer.ma.us.
- f. The Applicant shall take steps as soon as reasonably practical to control any erosion that occurs on site that impacts areas under jurisdiction of the Wetlands Protection Act and the Ayer Wetlands Bylaw and Regulations.
- g. Any sedimentation that takes place beyond the limit of the erosion control barriers shall be removed using hand tools. The cause of the erosion/sedimentation shall be addressed as soon as reasonably practical with reasonable measures.
- h. All accumulated sediment shall be removed from the face of the erosion control barriers using hand tools (e.g. shovels, rakes, and wheelbarrows) whenever the level of sediment is within six (6) inches of the top of the barrier.
- i. The Applicant shall maintain a reserve of the approved erosion control product(s) equal to at least 15% of the maximum extent of erosion control materials used on site. This reserve shall be easily accessible for the duration of the project, and be explicitly dedicated to emergency repairs.
- j. Soil, sediment, debris, or other material removed during maintenance or repair of erosion control barriers, or remediation of erosion damage, shall be disposed of offsite.

- k. Exposed soils shall be stabilized as soon as practical following disturbance. Slopes and other disturbed areas not subject to construction activities shall be stabilized (either temporarily or permanently) immediately following excavation/grading. Temporary stabilization shall consist of seeding with **annual oats** or other approved species, or the use of erosion control products that meet the requirements set forth in Special Condition 17(a).
 - l. As soon as reasonably practical following any storm event, or significant warming period when snow/ice is present on the ground, the Applicant shall inspect all stabilized areas for erosion, wash-out, rills, or other damage caused by flowing water. Any noted damage shall be repaired as soon as reasonably practicable using the original stabilization method, or a pre-approved alternative method.
23. **Erosion control devices and wetland flags shall remain in place until all disturbed surfaces have been permanently stabilized and a Certificate of Compliance is signed by the Commission.** The erosion control devices may only be removed once the Applicant has submitted a Request for a Certificate of Compliance AND the Commission and/or its Agent has conducted a site visit and granted permission to do so. Biodegradable erosion controls may be broken up and spread on site, but not within any wetland resource area(s) or Conservation Easement. Any non-biodegradable material approved for use must be removed and discarded off-site.

DURING CONSTRUCTION CONDITIONS: SOIL STOCKPILES AND FILL STORAGE

- 24. At no time shall debris or other material be buried or disposed of within the buffer zone.
- 25. No material resulting from work within the Limit of Work under this Order shall be stockpiled onsite.

DURING CONSTRUCTION CONDITIONS: STORMWATER MANAGEMENT

- 26. There shall be no direct discharge of stormwater runoff into streams or other wetland 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.
- 27. The Applicant or his designee shall report any runoff problems/concerns immediately upon discovery of such conditions to the Ayer Conservation Commission office at (978) 772-8249 and via email to concom@ayer.ma.us.

PROJECT SPECIFIC CONDITIONS:

- 30. The twelve trees that are to be planted in accordance with the approved plan shall be planted prior to June 1, 2021. Failure to complete the tree planting by this date shall result in the issuing of fines of up to \$300 per day, each day being a separate offense.
- 31. Parking of no more than four passenger vehicles is permitted in only the location shown on the plan.

END OF CONSTRUCTION CONDITIONS:

There are no End of Construction Conditions.

PERPETUAL CONDITIONS:

Special Condition 4 is also a perpetual condition.

32. Prior to commencement of any work on site, the Commission shall be notified in writing whenever maintenance work is to be performed for clearing sediment from the stream channel and:
 - a. The wetland boundaries and the jurisdictional Banks on both sides of the stream channel in the area of proposed sediment removal shall be clearly marked. All re-flagging, as needed, shall be made with biodegradable flags/stakes so that said areas are clearly distinguishable, and shall be confirmed by the Commission or its Agent. Degradable, photodegradable, UV-degradable, oxo-degradable, or oxo-biodegradable flags/stakes are not acceptable and shall not be used. **The Applicant shall maintain wetland flagging until the Certificate of Compliance is issued. This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4**
33. No alterations to soil, waterbodies, or vegetation both alive and deceased, except as approved by the Commission and shown on approved plan(s), shall be conducted within any wetland resource area, or wetland buffer area. **This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.**
34. No vehicles or equipment are to enter or cross a Resource Area or Buffer Zone outside of the limits of work for this Order, unless the location of disturbance is marked on the Plans referenced in this Order, submitted for review to the Commission with a plan for restoration of the Resource Area disturbance, and shall be approved by the Commission prior to the entry or crossing. Equipment is considered anything motorized, or that may potentially leak harmful materials such as fuels or lubricants into Resource Areas or Buffer Zones. **This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.**
35. Any runoff resulting from washing of vehicles or equipment shall neither be directed to, nor dumped into, any on-site drainage system, Resource Area or Buffer Zone. Runoff shall be managed in accordance with the stormwater management plan developed for this project. **This condition shall extend beyond the issuance of the Certificate of**

Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.

36. Equipment fuel storage, refueling, and lubrication operations shall be situated in an upland area outside Resource Areas and Buffer Zones. The Commission shall be notified immediately of any leakage of contaminants from this area and all fueling operations shall be suspended. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
37. Pumps, generators, or other stationary equipment containing fuel, oil, hydraulic fluid, or other potential contaminants shall not be stored or operated within Resource Areas or Buffer Zones associated with work under this Order without written approval of the Commission, its Agent, or a Commission approved consultant/contractor. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
38. No debris may be deposited within Resource Areas or Buffer Zones. This includes concentrated stockpiles of soils, vegetation, cuttings, leaves, or otherwise “natural” materials that would impede natural ecological functions. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
39. No oil, calcium chloride, or other salt shall be used for the control of dust. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
40. Non-organic fertilizers, pesticides, and herbicides shall not be used. Organic fertilizers used shall be slow-release. Additionally, soil and plant fertilization must be done in accordance with the Act Relative to the Regulation of Plant Nutrients (Act) (330 CMR 31.00). The Act includes, but is not limited to, the following provisions:
 - a. 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;
 - b. Do not apply plant nutrients to sidewalks or other impervious surfaces. Plant nutrients that land on these surfaces must be swept back onto the grass or cleaned up.
 - c. No applications of plant nutrients shall be made: – between December 1 and March 1; – to frozen and/or snow covered soil; – to 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 a Zone I of a public water supply well or within 100 feet of surface waters that are used for public drinking water supply. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
41. No underground storage of fuels is allowed within Resource Areas or Buffer Zones. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in***

perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.

42. Whenever maintenance work is to be performed for clearing sediment from the channel, the Commission shall be notified in writing when any maintenance functions that may impact Resource Areas are to be performed, such as, but not limited to, replacing leach fields, repairing drains, road maintenance/repaving, and cleaning of stormwater appurtenances. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
43. The Applicant/current owner or his designee shall maintain all elements of the drainage systems within any areas subject to the Commission’s jurisdiction under 310 C.M.R. 10.00 and M.G.L. Chapter 131, Section 40, as amended, unless put into an easement to the Town of Ayer, 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. ***This condition shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***
44. 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 shall extend beyond the issuance of the Certificate of Compliance, in perpetuity, and shall be included in the required affidavit detailed in Special Condition 4.***

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>)

FOR DISCUSSION: THE SUCCESSOR IN INTEREST/CONTROL CONDITION

Mass DEP's General Condition # 16:

This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

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OUR problematic boilerplate Special Condition # 3:

1. **This Order shall apply to any successor(s) in interest or successor(s) in control and shall survive the issuance of the Certificate of Compliance.** All future deeds shall reference this Order and the recording information for the same in the following format "This property may be subject to an Order of Conditions issued by the Town of Ayer Conservation Commission, which Order is recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____, of which some conditions therein survive the issuance of a Certificate of Compliance". Within ten (10) calendar days inclusive of the transfer of ownership of the subject parcel, in whole or in part, including lots or buildings conveyed under individual deeds, the Commission shall be notified in writing by the seller of the name and address of the new owner.

Within ten (10) calendar days inclusive of such transfer, a written and notarized affidavit signed by the Seller and Buyer shall be filed with the Commission by the seller, stating that:

- o The Seller has provided the Buyer with a copy of this Order of Conditions and the Buyer has read this Order of Conditions;
- o The Buyer certifies that the Buyer understands all terms applicable to the project site;
- o The Buyer certifies that the Buyer understands that any work within Resource Areas and Buffer Zones pursuant to definitions in 310 CMR 10.00, as amended, requires a permit from the Conservation Commission;
- o In addition, this affidavit shall include the following sentence: "I, _____, the new owner of _____, understand that any work within Resource Areas and Buffer Zones pursuant to definitions in 310 CMR 10.00, as amended, requires approval by the Ayer Conservation Commission and that dumping of yard waste, brush, or other materials in said areas is not allowed.";
- o This affidavit shall also include a plan of the lot indicating the wetland boundary, building(s), and any other features.

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This Order of Conditions remain in force until a Certificate of Compliance has been issued by the Commission and recorded by the Applicant at the Middlesex South District Registry of Deeds, proof of which shall be provided to the Commission. The Certificate of Compliance shall

note any of the Conditions contained herein that will be held to be perpetual, extending beyond the issuance of the Certificate, and to be referenced in all future deeds.

and shall apply to any successor(s) in interest or successor(s) in control