

# 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](mailto:concom@ayer.ma.us)



## MEETING AGENDA (In Person) Thursday, October 13, 2022

RECEIVED  
OCT 07 2022  
TOWN OF AYER  
TOWN CLERK

11:50am  
PC

### 7:00 PM GENERAL BUSINESS / OPEN SESSION

- Approval of Meeting Minutes for September 22, 2022
- Public Input

**Discussion** – Conservation Recommendation for Stratton Hill Preliminary Subdivision and Conservation Analysis

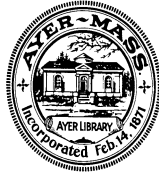
**Discussion** – Special Order of Conditions Template

**Request for Certificate of Compliance** – DEP File number 100-0092 San-Vel Concrete c/0 Peter Allsopp

### CONSERVATION OFFICE AND MEMBER UPDATES

### 9:00 PM ADJOURN

Next Scheduled Meeting: 7 PM, October 27, 2022



## **Town of Ayer Conservation Commission**

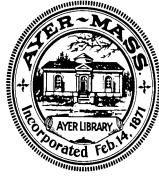
Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for **9/22/2022**

Location: Ayer Town Hall, 1st Floor

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

### **7:00 PM – Open Meeting**

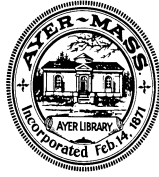
- **Confirmation of Agenda**
  - G. Bacon moved to confirm the agenda as posted; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **Approval of Meeting Minutes**
  - G. Bacon moved to accept the minutes for 9//8/2022 as written; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **Public Input**
  - None received.
  
- **Public Hearing (cont'd.): Notice of Intent (NOI) -- Transmission Main Replacement, Spectacle Pond Water Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-0480**
  - Assessor's Maps 24 & 17, Parcels 1 & 7 (project between Willow Road and Nemco Way)
  - H. Hampson prepared a draft Order of Conditions (OOC) and has had it reviewed by Charles Gore, of Tighe & Bond.
    - Mr. Gore only questioned one Special Condition (#19), regarding washing vehicles to prevent the spread of invasives.
    - Commission members were in agreement that the condition should remain.
  - G. Bacon moved to approve and issue the OOC for 100-0480; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously and the OOC was signed.
  - G. Bacon moved to close the Public Hearing for 100-0480; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **Discussion: Conservation Recommendation to Planning Board for Stratton Hill OSRD Subdivision**
  - Within the hour prior to the meeting, J. Gugino received a number of texts from resident Annie Reed, of Wachusett Avenue East, about the Conservation Recommendation to be discussed.
    - J. Gugino read the texts into the record so that she would not be the only recipient of their contents (see attached transcript).
  - Regarding one of the texts about rainwater leaving Stratton Hill, during heavy rain events, and crossing Wright Road, J. Schmalenberger said the civil engineer for the project, Stan Dillis (of Dillis & Roy) had already said on a site walk that when the project was abandoned in 2008, the stormwater system was not, is still is not, finished.



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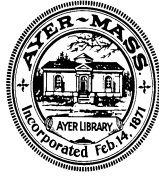
- M. Phillips said the runoff crossing the road needs to be addressed.
- G. Bacon said if runoff is having negative effects on Sandy Pond, the Commission can take action at any time to address that.
- H. Hampson said that her understanding was that stormwater would be addressed during construction, and is under the purview of the DPW and the Planning Board.
- Ken Diskin, as a member of the Planning Board, said that if the cause of the runoff is the roughed-in gravel road in Stratton Hill, the Commission should require the installation of wattles and haybales immediately, in order to close off the front of the site from the road.
- J. Gugino also gave Chair Schmalenberger a print-out of the email letter received from Annie Reed at 5:31 PM, an hour-and-a-half prior to this meeting's commencement (letter attached).
  - J. Schmalenberger said the Commission was generally not in the habit of entertaining information that came in that late.
- Review of existing draft Conservation Recommendation
  - J. Gugino said she had made changes to the recommendation paragraph on construction sequencing, and had also added the following new recommendation:
    - “Regarding the final disposition of the OSRD ‘Open Space’ – whether to the Town in a traditional Conservation Restriction, to Mass. Fish & Wildlife, or to another agreed-upon-party – the Commission recommends that the Planning Board require this disposition be as close to complete as reasonably possible prior to the commencement of work on the site.”
  - H. Hampson and M. Phillips asked for stronger language to make clear the Commission strongly recommends NO development north of the power lines/Right-of-Way (ROW).
  - In talking about the possibility for the redistribution of house lots from north of the ROW to its south, M. Phillips asked that the Recommendation state the Commission believes there is more than enough space south of the ROW to build an economically viable development without having to also develop north.
    - J. Gugino said that the Commission should not take a stance on encouraging more dense housing to the south of the ROW as neighborhood residents have voicing concerns to the Planning Board about such things as increased traffic impact.
      - For the record, J. Gugino is also a resident within the general Wright Road neighborhood.
  - On the question of whether the 2005 Conservation Management Permit (CMP) was still valid, a Zoom meeting has been scheduled for Monday morning, 9/26, with Lauren Glorioso, of NHESP (Natural Heritage & Endangered Species Program, the State issuer of the CMP), together with the Town Planner, Conservation Agent, and up to two members each from ConCom and the Planning Board.



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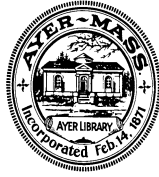
- This discussion will hopefully clarify the status of the CMP, given BSC Group peer reviewer Matt Burne’s assumption that the CMP would have expired in 2012. (See 8/25/22 ConCom minutes)
- M. Phillips asked about whether the Recommendation should simply eliminate any reference to the possibility of development north of the ROW.
  - As far as currently known, there is also the risk that the developer could simply return to the original subdivision permit issued by the Planning Board in 2005, with its larger footprint; the developer has maintained that the 2005 permit is still valid should they choose to go that route.
  - Mr. Diskin clarified that one of the pages submitted in the 2022 preliminary plan application, showing many more house lots south of the ROW, was just a “yield plan,” an exercise requested by the Planning Board, not a realistic design, and therefore not something that should be considered as viable.
  - J. Amaya said ConCom should leave in the reference to its preference of at least reduced number of lots and road changes north of the ROW if the Planning Board were to allow development there – so that ConCom would still have a voice on the matter.
- J. Gugino will incorporate the edits suggested into a revised Recommendation.
- Public Input
  - Anne Gagnon, of Mass. Fish & Wildlife, suggested the Recommendation be revised to support the use of Cape Cod berms throughout the subdivision, as opposed to the use vertical granite curbing that would impede the movement of turtles off the roadway.
    - Mr. Diskin said another option that might be considered is to super-elevate the road so that one side is higher than the other, avoiding the need for as much curbing.
  - M. Phillips asked whether the current draft Recommendation includes support for Dark Sky compliant lighting: J. Gugino will add that into the next draft.
  - Ms. Gagnon stated her appreciation that the Commission is supporting the disposition of the open space to Fish & Wildlife, as well as its request to the Planning Board that the disposition be completed prior to construction work.
    - Mr. Diskin said that an amended CMP will need to adjust the language so that it doesn’t limit the disposition of the open space just to the Town.
- Annie Reed comments
  - Ms. Reed, who arrived to the meeting at 7:21 PM, was able to address her concerns directly to the Commission, including reading much of the email she had sent the Commission two hours prior:
  - In her view, it is premature for the Commission to submit a Recommendation to the Planning Board without retaining legal services to ensure that environmental permits are in place.
  - In her view, ConCom should follow all of the recommendations made by Matt Burne, of BSC Group, in his peer review.



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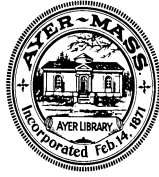
- In her view, more data needs to be collected – identification of specimen trees, habitat, wildlife corridors.
  - She said her comments were addressed specifically to those areas proposed for development on the parcel.
  - She referred to a stand of mature hemlocks, within the bounds of the existing loop road, and criticized the developer for seeking a waiver from the Planning Board in order to not have to survey trees.
  - J. Schmalenberger asked Ms. Reed for the specific citation in the BSC report that she was referring to.
    - Mr. Burne wrote (p. 20, “Peer Review of Conservation Analysis” (August 2022):
      - “Comment 19: BSC recommends that the Conservation Commission provide significant guidance on how to assess all of the data requested as part of the Conservation Analysis process **or** that ecological professionals be required to contribute (at least) to the final analysis and ranking.”
      - “Comment 20: ... Given the complicated nature of ecological evaluations that are the basis of the Conservation Analysis, BSC recommends that the Conservation Commission require a trained ecologist with suitable expertise and experience to certify the results of the procedures leading to the prioritization of conservation areas within a large development site.”
  - In Ms. Reed’s view, the Commission was ignoring Mr. Burne’s recommendations; in the Commission’s view, the draft Recommendation does not.
- Ms. Reed referred to Mr. Burne’s contention that the 2005 CMP has expired.
  - Ms. Reed acknowledged that she had heard Town representatives were meeting directly with NHESP the following week to address this question.
- Ms. Reed stated she did not think the Commission had the legal expertise to evaluate permitting matters.
- Chair Schmalenberger asked G. Bacon for guidance on the Commission’s ability to seek Town Counsel opinions.
  - Decisions about the use of Town Counsel must be arranged and approved through the Town Manager’s office.
  - G. Bacon said the question was whether this was in the Commission’s purview.
    - Currently, there is no formal application before the Commission related to Stratton Hill.
    - All the Commission is tasked with currently is providing the Planning Board with a Conservation Recommendation.



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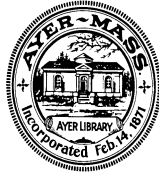
- What the Commission can do, G. Bacon said, is pass recommendations on to the Planning Board regarding the seeking of additional professional ecological and/or legal expertise.
- Ms. Reed asked that the Commission make a formal request to have Town Counsel review the Stratton Hill documents.
- Ms. Reed referred to her comment on p. 3 of the Recommendation draft: “The commission can & should require retainment of a trained ecological professional to survey, collect, and quantify floral & fauna data for the southern portion of the parcel....”
  - Ms. Reed referred to the “Rules for Hiring Outside Consultants under G.L. Ch. 44 §53G,” adopted by the Commission effective May 11, 2017, and included as an attachment to her 5:31 PM email.
    - She argued this gave the Commission the authority to engage additional professional/expert services.
    - It was pointed out that this policy is applicable when an application is before the Commission pursuant to the requirements of the Wetlands Protection Act.
      - There is no application before the Commission on which it would have applicable jurisdiction under the Wetlands Protection Act.
- Regarding blasting, Ms. Reed said that the Commission should require that there be no further blasting on the site.
- Regarding the failure of the developer to, as yet, comply with the CMP’s requirement for the construction of two turtle nesting areas, one in Groton and one in Ayer, Ms. Reed said the Commission and the Planning Board should notify the State of this failure.
  - It was again noted that a meeting with the State (NHESP) was already scheduled for the following Monday.
- Ms. Reed stated that the 2018 Preservation Priority Report prepared by the Town, with the assistance of MRPC (Montachusett Regional Planning Commission), listed the Stratton Hill parcel as the #1 priority area for preservation in Ayer.
- Continuing discussion
  - Mr. Schmalenberger thanked Ms. Reed for expressing her concerns and the amount of effort she has made to do so.
  - Mr. Diskin thanked the Commission for all its work and said additionally that it would be a misunderstanding to think that Town Hall has not been looking at every aspect of this project and plans.
  - The Commission agreed that J. Gugino would incorporate various edits as suggested into a new revised draft that ConCom would revisit at its next meeting on Thursday, October 13.
    - Additional comments on the existing draft should be sent to J. Gugino by 9/30.



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- M. Phillips reiterated his support for having Town Counsel's opinion on the status of existing permits.
  - Mr. Diskin asked M. Phillips what specific permits needed looking at.
  - M. Phillips referenced the NHESP permit which Mr. Diskin said the Town Planner is working on.
  - Ms. Reed said that the Town Planner has not indicated that Town Counsel is involved and again asked that the Commission (and the Planning Board) officially request Town Counsel review.
    - Chair Schmalenberger said he would make a request.
- Ms. Reed brought up the issue of her observance of stormwater leaving the Stratton Hill site during heavy rains, crossing Wright Road, then flowing down Standish Avenue, across a lawn, and into Sandy Pond.
  - Prior to her arrival at the meeting, J. Schmalenberger said the Commission had looked at the video Ms. Reed had sent to J. Gugino's cellphone.
    - He reiterated that the project was not done and also referenced Mr. Diskin's suggestion of haybales.
- Ms. Reed began to refer to the alleged illegality of stormwater leaving a site, citing a conversation with H. Hampson weeks earlier, but H. Hampson cut her off and asked that her words not be used out of context.
  - H. Hampson has clarified that the control of stormwater is under the purview of the DPW and the Planning Board, and applies to an active construction site.
- **Conservation Commission Office and Member Updates**
  - Water & Wetlands 2022 Pond Management Program
    - H. Hampson said an email was received earlier in the day from Joe Onorato, of Water & Wetlands.
      - Because Sandy Pond is under an official Public Health Advisory – closed to swimming and recreation – Water & Wetlands cannot perform the scheduled treatment for overgrowth of water lilies and phragmites this year until the Advisory closing Sandy Pond has been lifted.
        - Currently Sandy Pond is undergoing a toxic blue-green algae bloom (cyanobacteria).
  - Town website
    - H. Hampson handed out a draft , for review, of a 'living with wetlands' brochure she wants to post to the ConCom webpage.
      - The possibility of also doing a mailing of this, included perhaps in the Town's water/sewer bills, was mentioned.
  - Tree policy
    - As other towns have done, H. Hampson is working on drafting a tree policy document to serve as a guideline to clarify and streamline the process when residents want to remove trees.



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- Ayer Solar II update
  - During site inspections, H. Hampson has been observing areas at the top of some slopes that are beginning to show signs of cracking.
    - This is in the area closer to the solar array itself and H. Hampson will keep monitoring to see if it becomes a problem.
  - Rohit Garg told H. Hampson that he would be talking to Oxbow Associates in the following week in order to get started on the wetland replication areas.
  - While compliance has improved, H. Hampson is still seeing areas where sediment is piling up against the face of haybale controls.
    - M. Phillips highlighted that one of the Special Conditions in the Solar II OOC mandates that a supply of extra haybales (minimum 15% of existing use) be maintained on the site.
    - Better communication with ConCom from the site also still needs to be worked on.
  - Ken Diskin, here as an abutter to the solar array, asked if ConCom was going to vote to accept changes made to the original plans by the contractor.
    - H. Hampson said it is not just a question of the Commission being informed of changes when the ‘as-built’ is eventually submitted; per the OOC, the Commission is supposed to be notified of significant changes **at the time** they are being considered.
      - Among other things, this would allow the Commission to evaluate whether an official amendment to the OOC might be necessary.
      - Meanwhile, the Commission cannot take any vote on accepting changes thus far because the requested list of changes has still not been provided.
  - Mr. Diskin also noted that there has still not been any placement of topsoil and seeding.
    - He also noted that the tree box filters still do not have any trees planted within them – nor have trees been planted anywhere else on the site where they were supposed to be planted.
  - Geoff Tillotson, as a member of the Planning Board, said that the proponents of the project (i.e. Rohit Garg et. al.) cannot collect/remove electricity from the property until Solar II has final approval from the Planning Board.
- **9:08 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

**Minutes Recorded and Submitted by Jessica G. Gugino, Clerk**

**Date / Signature of Approval:** \_\_\_\_\_



Transcript of texts received by J. Gugino on personal cellphone from resident Annie Reed on Thursday, 9/22/2022, prior to the Conservation Commission meeting in Town Hall less than an hour later, at 7 PM:

6:07 PM -- Ms. Reed: Hey I hope you all have a chance to check your con come [sic] email before the meeting. I sent you and CCed Heather and John [sic] with my comments regarding your recommendations and comments on the peer review report etc. I hope it's not too late for you guys to discuss these issues and concerns. I am hoping you will not make any recommendations until more information is gathered.

6:08 PM – J. Gugino: I'll make sure we take a look at your comments but I am pretty sure we are finalizing our recommendation tonight. As Mark Phillips has said previously, new information is unlikely to change the recommendations we are already making. But I'll read your letter.

6:10 PM – Ms. Reed: I agree with your recommendations but not sure how they can be finalized until the applicant includes more required data for the area of development. Matt [Burne, BSC Group peer reviewer] found evidence of two turtle nesting sites on his site walk in the area of development. How do you even know what kind of turtles are there and if they're an endangered species or not when no evaluation has been done for the area of development.

6:11 PM – J. Gugino: I'll read your email to the Commission...See what everybody says.

6:12 PM – Ms. Reed: I don't understand why you would finalize recommendations before following the recommendations of the peer reviewer. What is the point of hiring him and paying him and then ignoring his recommendations. What's the rush? The planning board can continue this project and postpone further review until the applicant properly surveys the ecological value and documents all the species that are in the area where he's proposing putting houses down.

6:14 PM – Ms. Reed: And FYI, I took a 4 ½ minute video today in the rain of water pouring down the gravel road, traversing [W]right road missing the storm drains cutting a new swatch through the berm next to Standish Avenue running down Standish into a giant standing pond at the bottom, and then cutting a path through the neighbors lawn and gravel to the beach and threw [sic] a plastic 12 inch diameter diverter pipe directly into Sandy Pond. And I have video proof. And I'm not sure what I'm gonna do with this yet.

6:17 PM – Ms. Reed: Heather told me it is illegal for any water from that site to be leaving the site, never mind running unobstructed and unfiltered directly into Sandy Pond. I would think that the applicant would be required to immediately address that and to fix the retention pond so it functions properly. I don't know why any [board or] commission would entertain any further review of this project. He hasn't cleaned up his mess from 16 years ago.

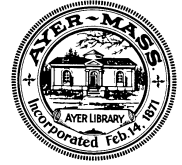
6:17 PM – J. Gugino: I'm getting ready to go to meeting now. I'll read your texts on this as well.

6:18 PM – Ms. Reed: I'll try texg u the video. It's large tho & might not go thru

6:21 PM – [Video comes through showing Wright Road] – Ms. Reed: Stratton Hill runoff directly into Sandy Pond.

6:39 PM – Ms. Reed; FYI – I'm driving to the mtg now and I'll try to get there by 7:20. I see another project on the agenda first. I feel it's critically important to not make recommendations until more ecological info is gathered for the area where development is proposed. And I guess I need to b[e] there in person to reiterate that.

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Date: October 13, 2022  
To: Ayer Planning Board  
From: Ayer Conservation Commission

## CONSERVATION RECOMMENDATION TO THE AYER PLANNING BOARD STRATTON HILL OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) PRELIMINARY SUBDIVISION PLAN

Ayer's OSRD Zoning Bylaw (Section 10.1) requires a minimum of 50% of land to be set aside as open space within a proposed subdivision. The open space is to be permanently protected by means of a Conservation Restriction or like mechanism. In accordance with the Bylaw, the Conservation Commission is required to provide a Conservation Recommendation for OSRD projects in order to assist the Planning Board in shaping subdivisions so that the land with the highest conservation value is permanently protected. **As such, central to the recommendation process is the Commission's role in confirming that priority areas for conservation have been correctly identified.** As part of the OSRD permitting process, the Applicant must submit a Conservation Analysis that includes a ranking of High, Medium, and Low Priority Areas for conservation. The Analysis is then carefully studied by the Commission. The Commission also conducts its own site walk observations before preparing its Recommendation. In the case of Stratton Hill, the Commission conducted two site walks on the property, on July 9 and August 5, 2022. And while the Commission is cognizant that the Applicant's proposed plan sets aside considerably more than the 50% required, it is also cognizant of the unique ecological importance of this particular site (approximately 160 acres). Because of this, the Commission hired Matt Burne, of BSC Group, to provide a third-party peer review of the Conservation Analysis and the preliminary project design proposal.

Materials reviewed by BSC Group included the "Preliminary Subdivision & Open Space Residential Development Plan in Ayer" (last revised 7/22/2022); Attorney Robert L. Collins's "Application Narrative" (June 1, 2022); Dillis & Roy's "Conservation Analysis" (June 30, 2021, revised August 18, 2021); Oxbow Associates Inc.'s "Rare Herpetofaunal Investigation, Sandy Pond Road, Groton, Massachusetts" (January 30, 2004); and other pertinent data. In addition to reviewing the above material, the Commission asked BSC Group to evaluate other considerations, such as the potential for blasting to have an adverse impact on wildlife or the potential of the preliminary proposed locations for stormwater management structures to have serious adverse impacts to Long Pond.

**It should be underscored right away that the Commission is in full agreement with BSC Group Peer Reviewer Matt Burne's assessment that the Conservation Analysis submitted by Fox Meadow Realty is clearly incomplete, contains out-of-date information and "important deficiencies," is missing relevant layers of BioMap 2 data, and is not in compliance with the 18 submittal requirements for a Conservation Analysis (OSRD Regulations and Design Guidelines, 2022). Nevertheless, the Commission is confident that it has enough information and guidance from the BSC peer review – in**

**addition to its own observations on the layout and previous disturbances of the existing site – to provide the recommendations contained herein.**

The Conservation Commission strongly agrees with Mr. Burne’s key assertion that the data contained in the Conservation Analysis has not actually been used in any meaningful way in relation to the preliminary plan designs submitted to the Planning Board in June 2022. As Mr. Burne said when presenting his report at the Commission’s August 25 meeting, the existing loop road from the previous work period (2005-2008) should not rule the re-design of the project today, as if the Analysis data had absolutely no bearing.

While much of the data collected by Oxbow Associates in the 2003-2004 period is of great value, most of it pertains to the Groton side of the parcel rather than the Ayer side. For example, the New England Power Company (NEP)/National Grid powerline Right-of-Way (ROW) that bisects Stratton Hill was not part of the original Oxbow study area and should therefore be considered uninvestigated. The floodplain to Long Pond south of the ROW was similarly not taken into serious consideration by the 2022 submitted Conservation Analysis.

**You will therefore see in the Recommendations section below that our first recommendation emphatically expresses our strong disagreement with the validity of the “Priority Conservation Areas Map” submitted by the applicant for this project.**

## **OVERVIEW OF THREE KEY AREAS OF CONCERN**

### **North of the Right-of-Way (ROW)**

The unanimous consensus of the Commission is that the area north of the ROW/powerlines is of obvious great importance, in particular as it is directly contiguous to already-protected land in Groton. The open space to be set aside in Ayer will add to the enlargement of a valuable undeveloped tract of forest, protecting habitat and preserving wildlife corridors.

However, what should not get lost in the discussion is the vital importance also of the unique and uncommon habitat underneath the powerlines, and just as importantly, the forested slope down to Long Pond south of the ROW where it is in close proximity to the proposed development. **All three** of these key areas (north of ROW, ROW, slope to Long Pond south of ROW) that would be impacted by the current design should therefore be carefully considered by the Planning Board before issuing its decision on the preliminary plan.

In addition, keep in mind that the entire Stratton Hill parcel is within the Petapawag Area of Critical Environmental Concern (ACEC). To the north, it directly abuts Mass Audubon’s Rocky Hill Sanctuary in Groton. The entire project parcel is Priority Habitat re Natural Heritage & Endangered Species Program (NHESP), and nearly the entire site is located within Critical Natural Landscape re NHESP’s BioMap2. As noted by BSC Group in reviewing the Analysis, important NHESP BioMap2 data layers were missing that should have been included in order to more adequately evaluate the ecological functions and values of various Core Habitats: Wetlands; Critical Natural Landscape Upland Buffer; Vernal Pools; and Forest.

### **National Grid ROW**

This area should be considered as a valuable early successional scrub/shrub habitat characterized by low-growing vegetation. While these conditions have arisen from vegetation management undertaken regularly by NEP, this should not detract from this area’s high conservation value. This sort of

landscape, as Mr. Burne noted, is uncommon in the wider landscape of Massachusetts and therefore particularly valuable for wildlife.

### **Long Pond**

In 2015-2016, the Town of Ayer spent a great deal of money to fund a biological assessment of Ayer's ponds, including Long Pond (aka Lower Long Pond). The Geosyntec Consultants final report ("Biological Survey, Assessment and Management Recommendations for Ayer's Ponds") described Long Pond as a pristine pond that "could be considered a regionally significant example of a healthy and diverse aquatic plant community." (p. 57, 81). It is not currently listed as an impaired waterbody in Massachusetts – in contrast to many other waterbodies in Ayer. Careful consideration of what development occurs on its eastern shore is therefore imperative in order to maintain this unimpaired status and protect Long Pond's ecological integrity. Long Pond is a 50-acre "**Great Pond,**" a kettle pond naturally formed from the retreat of glaciers and given protection under MGL Ch. 91. It transitions from Open Water north of the ROW to Deep Marsh at its southern end, a transition process that begins shortly after the powerlines cross over the pond. Although wetlands and beaver activity about the north end of the pond, no clearly delineated stream of surface water flows into Long Pond and this likely contributes to its current pristine condition and lack of invasive aquatic vegetation. Long Pond is also the beginning point in Ayer for the chain of ponds that eventually flow into the Nashua River: Long Pond flows into Sandy Pond, which flows into Flannagan Pond, then Balch, Grove and Plow Shop ponds, then Nonacoicus Brook and the Nashua. **Through the Planning Board, this is Ayer's opportunity to protect this Great Pond while it can.**

## **RECOMMENDATIONS**

### **"Priority Conservation Areas Map" and Proposed Development**

For the purpose of its project review, the Planning Board should understand that the **Conservation Commission strongly disagrees with the Priority Conservation Areas Map** submitted by the applicant to rank High, Medium and Low Priority areas on the parcel. It is its recommendation that the Planning Board regard the submitted map as unacceptable. The land north of the ROW, underneath the ROW, and on the forested slope down to Long Pond south of the ROW should be regarded as High Priority areas. Note Mr. Burne's comment below:

"The 'Low Priority' area shown on the Applicant's Priority Conservation Areas Map appear to be too focused on the previously delineated lot lines and road alignment, rather than an objective evaluation of conservation values based on the data." (BSC Review, p. 19)

- If the Planning Board is not comfortable with the Commission's assessment related to the priority ranking, the Commission recommends that the applicant be required to retain a trained ecological professional to contribute new and directly applicable data to support their current prioritization and ranking of conservation areas. It is within the rights of the Planning Board, per the OSRD Bylaw (10.1.3.B.3), to require that the applicant provide "sufficient information" and it should do so if it is as concerned as the Commission that the current assessment of these areas is subpar.

**This would also be in line with Mr. Burne's general recommendation #19 (BSC Report, p. 20) where he maintains that a trained ecologist be required to "certify the results of the procedures leading to the prioritization of conservation areas" as represented by the applicant in submitting the Analysis:**

“BSC recommends that the Conservation Commission provide significant guidance on how to assess all of the data requested as part of the Conservation Analysis process or that ecological professionals be required to contribute (at least) to the final analysis and ranking.”(20)

Because this is part of the Planning Board’s OSRD review and not part of an application directly before the Commission and under the jurisdiction of the Wetlands Protection Act, the Commission cannot directly require this. It is our guidance, however, that the Planning Board should do so if it disagrees with the Commission’s position on the validity of the submitted map or it if needs a means of resolving the differing assessments on this matter between the Commission and the applicant.

#### North of the ROW

The whole of the area north of the ROW should be regarded as High Priority. However, given the size of the open space proposed for conservation (130 acres +), it will be up to the Planning Board to determine the feasibility of the extent to which it can seek to protect all of this land. If no development is permitted north of the ROW, then the issue of protecting the habitat underneath the ROW becomes moot. If the Planning Board permits limited development north of the ROW, then it will have to consider all means of minimizing adverse impacts to the ROW itself, as noted below.

- The Planning Board should do all in its power to discourage housing development north of the ROW/powerlines in order to best preserve and protect the undeveloped forest and wildlife corridors in that area that are contiguous to Mass Audubon’s Rocky Hill Sanctuary as well as other undeveloped forest parcels adjacent in Ayer.
- The reasonable redistribution of house lots to the south of the ROW should be strongly pursued. Our position is that there is enough space to the south to construct an economically viable subdivision, and the value of protecting the habitat to the north should outweigh development pressure.
- If the Planning Board is compelled to permit some development north of the ROW, it should seek a reduction in the number of houses in order to limit overall impact from construction and blasting. Fewer houses north would also reduce the amount of daily residential traffic passing under the powerlines where turtle populations are at great risk.
- Also, if redistribution north of the ROW is unavoidable, the Planning Board should require a new professional ecological survey of this area than was provided by the applicant.

#### Powerline Right-of-Way (ROW)

- The ROW should be regarded by the Planning Board as both significant and uncommon habitat and a wildlife corridor with High Priority conservation value. All efforts should be made to ‘avoid, minimize or mitigate’ adverse impacts from development to this area. This is important for the protection of the Blanding’s turtle, especially given that this area has been identified as the location of one of the prime populations of this threatened species in Massachusetts (comment letter received from Tom Lautzenheiser, Mass Audubon’s Central/West Regional Scientist for Ecological Management, BioMap2). Road crossings present a particular risk to the endangered Blanding’s turtle which is both long-lived and slow-breeding, with roadway

mortality disproportionately affecting female turtles and therefore a significant risk-threat to the integrity of the population as a whole.

- Please note: Mr. Burne's review included photographic documentation of turtle nesting having recently taken place in the ROW (as well as on the north-facing slope of the soil pile at the northern tip of the existing loop road, adjacent to the impounded beaver pond).
- If development north of the ROW is unavoidable, the Planning Board should consider the feasibility of reducing the roadway crossings underneath the powerlines to one rather than two, eliminating a looped roadway on the north side.
- In addition, the installation of wildlife underpasses, with appropriate fencing protection, and the avoidance of the use of vertical granite curbing that would inhibit turtle movement should be considered. Long-term maintenance needs for such structures should be considered as well.

#### Forested slope to Long Pond, south of ROW

- The distance between the proposed loop road north of the ROW and Long Pond is much greater, with heavy forest and vegetation in between, than from the roadway south of the ROW to the pond. It is this latter area, south of the ROW, that is of critical concern to the Conservation Commission and should be considered to have High Priority conservation value (noting it was incorrectly designated Low Priority and has been wrongly designated as "Prime farmlands" in the Conservation Analysis). Not far off the roadway, the grade of the forested slope changes to a steep drop-off, then flattens out at the base into floodplain (FEMA Flood Zone A) that abuts the southern marsh end of the pond. Stormwater basins have been proposed in this area on the slope or base of the slope. Mr. Burne's review was clear that neither the floodplain aspect of this area, nor the impact to Long Pond, appears to have been taken into consideration in the Analysis or the plan design. It is likely, given the general topography of the area, that ledge shallowly underlies this floodplain – this has not been adequately investigated to say otherwise. In addition, stormwater basins must have both sufficient size and depth in order to function effectively. It is unclear how a basin with sufficient depth could be constructed at the base of the slope without bringing in fill, something that would be highly problematic in this sensitive area.
  - The Planning Board should also be mindful of the ease with which contaminated runoff could reach Long Pond in this area, if allowed to be disturbed for stormwater management, both from **surface flow** as well as **subsurface groundwater flow**, particular if ledge shallowly underlies the floodplain soils. Technical compliance with State Stormwater Standards does not provide guarantees of protection to this pristine Great Pond that we argue it deserves.
- The Commission therefore strongly recommends that all of the forested slope down to Long Pond, south of the ROW, remains untouched (both the older growth trees/vegetation pre-dating the 2005-2008 construction activities as well as the new growth that has taken place in the intervening years), and that all efforts be made by the applicant to redesign stormwater management in such a way as to avoid direct impacts to this area. Per the BSC review, all efforts should be made to maximize the distance between stormwater structures and Long Pond and its floodplain. We recommend that complete protection of this slope be considered non-negotiable.

- The Planning Board should also urge the applicant to investigate more modern techniques of stormwater management, for example rain gardens, bioretention areas, swales, detention basins located on each property or in shared green areas. (See BSC Report, Comment 8)

### **General Recommendations and Considerations**

- In recommending that the Planning Board, where possible, eliminate or at least reduce the number of house lots north of the ROW, the Commission suggests the Board reconsider its previous request for the construction of a playground. This seems excessive and unnecessary for an area that will have so much natural recreation available. Instead, please consider whether some house units north of the ROW could be relocated south to the areas closer to the Wright Road entrance, or to the location where a playground was envisioned.
- Because of the extensive surrounding habitat for wildlife in this area, the Planning Board should consider what requirements it might seek in terms of the sequence of construction. The reason for this is to shorten the duration and/or minimize the impact from construction disturbance on wildlife in the adjacent undeveloped forested area. For example, consideration might be given to whether adverse wildlife impacts would be lessened if the areas to be developed first and then completed first – including roadway, infrastructure, and final houses – were at the back of the site (either just south of the ROW or, if permitted for development, the area north of the ROW) rather than starting with the lots closest to Wright Road.
- With an abundance of wildlife habitat surrounding this site, Dark Sky compliant lighting should be required. Because of the likelihood of adverse impact to wildlife, the Commission prefers to recommend no required street lighting in this subdivision.
- The Commission recommends the use of 'turtle-friendly' Cape Cod berms, rather than vertical curbing, along the roadway throughout the subdivision in order to provide better protection for turtles who will inevitably cross roads in this area. The Planning Board should also consider other means of designing the roadway to lessen adverse impacts to the valuable and relatively abundant turtle population in this area (notably the Blanding's Turtle).
- The Commission supports the use of sidewalks on only one side of the roadway.
- Wherever possible, existing trees and native shrubbery should be preserved in both common areas and private house lots, in part to inhibit the introduction of non-native plantings.
- The Commission recommends that the Planning Board turn down the applicant's request for a waiver from documenting specimen trees with diameters greater than 12 inches.
- The turtle nesting area(s) in Ayer must be completed prior to home site construction. (See comments further below re the issue of noncompliance on this matter in Groton and Ayer.)
- The Commission recommends the use of alternatives to impervious surfaces where possible, such as the use of porous paving or gravel for driveways. (See BSC Report, Comment 8)
- The Commission recommends the installation and maintenance of oil and grease separators for pre-processing stormwater, especially from roads and driveways where vehicle leaks are more likely. (See BSC Report, Comment 8)

- The Commission recommends the planting of trees and native vegetation rather than lawn/turf areas in shared green spaces. (See BSC Report, Comment 8)
- Regarding blasting: Given the considerable amount of ledge throughout this site, the sensitivity of its habitats, and the potential for adverse impact to wildlife, the Planning Board should do all within its power to eliminate or reduce the amount of blasting.
  - The construction of basements rather than slab foundations seems questionable given the particular nature of this site and the predominance of ledge throughout.
  - Any consideration for the use of chemical blasting as an alternative to the use of conventional explosives should be given intense scrutiny. Little literature could be found by BSC Group on potential impacts in a ledge-infused environment with Long Pond downhill to its east and Sandy Pond downhill to its west. The introduction of new chemicals should therefore be discouraged.
  - In addition, the Commission recommends that the Planning Board, to the extent possible, impose time-of-year limitations on unavoidable blasting in order to avoid adverse impacts during active breeding seasons for birds and spawning seasons for fish/amphibians given nearby ponds, vernal pools, and wetlands.
- Regarding the 18 items in the OSRD Guidelines – given the size of the land donation proposed by the applicant (approximately 132 acres), the Commission is not concerned that all of these items have not been addressed for the entire 150+ acre tract. The Commission’s primary concern at this stage is for the areas close to or including proposed development activities.
- The beaver-impounded wetland north of the existing loop road should, per the BSC review, be regarded as one of the more valuable wetland features on the site and treated accordingly. This should also include evaluation of the soil pile between the roadway and the beaver pond to its south as there is now clear evidence this area is being used for turtle nesting. This use is likely new, resulting from this area having been disturbed by previous construction activities and then left to sit when construction ceased in 2008. Ironically, in the intervening years, this disturbance wound up creating new habitat that is attractive for turtles.
  - NHESP has suggested this area would be ideal for the Planning Board to require a Restoration Plan that involved the careful spreading of the soil and the introduction of native plantings. Because of proximity to the road, NHESP does not want to encourage turtle activity in this area. Regardless, any re-disturbance of this area should be carefully considered by the Planning Board.
- We recommend that restrictions be placed on this subdivision regarding the application of road salt on the road or private driveways, especially south of the ROW, in terms of potential adverse impact to Long Pond, wetlands, and the environment. This should also include the use of so-called “eco-friendly” deicing products that BSC Group states may have higher toxicity than normal road salt. (See BSC Report Comment 9)



- Are there other LID (Low Impact Development) measures that could be productively employed throughout the site, such as the use of porous paving? (See BSC Report, Comment 8)
- Regarding the final disposition of the OSRD 'Open Space' – whether to the Town in a traditional Conservation Restriction, to Mass. Fish & Wildlife, or to another appropriate and agreed-upon party – the Commission recommends that the Planning Board require this disposition be as close to complete as reasonably possible prior to the commencement of work on the site.
- In recent (9/26/2022) consultation with Lauren Glorioso, of NHESP, the Commission understands that while the existing 2005 joint CMP may have expired, as Mr. Burne had noted, NHESP considers this to be merely a “procedural violation,” especially given that work continues into the present under the same CMP in Groton. NHESP recommends strongly that the best course of action going forward is to amend and extend the original CMP with regard to the OSRD re-design in Ayer. For NHESP, mitigation of adverse impact to wildlife is through land protection. The existing joint CMP provides more robust protection of open space than any other course of action would.
  - The Commission also understands that NHESP will not issue an amended/extended CMP until the project is brought into compliance with the existing CMP. This is in reference to the Commission having heard from Tom Lautzenheiser, of Mass Audubon, that the applicant has not constructed the turtle-nesting area in Groton that it was required to do at the beginning of the project. NHESP was already well aware of this failure in compliance and has now made it clear it will not issue a revised CMP until compliance in the construction of turtle nesting areas in Groton as well as Ayer has been accomplished.
  - NHESP, through Ms. Glorioso, does not see a need for additional herpetofaunal investigation for the Ayer portion of the parcel – they do not need further confirmation of the presence of animals they already know are there. NHESP stressed that the Rare Herpetofaunal Investigation included by the applicant with the Conservation Analysis was part of the data that NHESP requested when issuing the original CMP. The applicant had been told by NHESP not to share this document publically and its inclusion was therefore a mistake. No additional information in this regard should be sought.
  - In addition, the Commission learned from NHESP that if the applicant seeks to amend the existing CMP, this will trigger the requirement of a new MEPA filing (Mass. Environmental Protection Act), as Mr. Burne had suggested was probable. NHESP would therefore not issue an amended/extended CMP until it received a Certificate from the Secretary of Energy & Environmental Affairs following completion of the MEPA review process and its public comment period.
  - One outstanding point of confusion remains and has to do with whether the applicant could, as was suggested by Attorney Robert Collins, withdraw the OSRD submission if they so chose and return to the original subdivision plan – with its larger development footprint and the existing roughed-in road – that

was permitted by a previous Planning Board in 2005. Whether this permit is still valid should be clearly resolved, once and for all, and as soon as possible. The Planning Board should seek a clear statement from Town Counsel on this matter. NHESP made clear that, if the applicant did not change the footprint of the subdivision from the 2005 plan, the applicant would only have to seek an extension of the original CMP from NHESP – and that NHESP would grant it (provided the above forementioned compliance was accomplished). In that case, there would be no need for a new MEPA review.

These recommendations are herewith respectfully submitted to the Planning Board. The Commission will be happy to discuss further any questions or concerns that may arise.

Sincerely,

Jon Schmalenberger,  
Chair, Ayer Conservation Commission

Draft

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

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

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

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

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

**ADMINISTRATIVE CONDITIONS**

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

Project title

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

WPA Form 3/Notice of Intent: DEP File # 100-0XXX  
 Submitted on behalf of: xxxxx  
 Property Owner: xxxxxx

Project Location: xxxxxxxxxxxxxxxx  
 1. Ayer, MA 01432

Prepared by: xxxxxxxxxxxxxxxx  
 Stamped by: xxxxxxxxxxxxxxxx  
 Site Plan:  
 Final Revision Date/Sheet Name: xxxxxxxxxxxxxxxx

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

- 3. This Order, including these Special Conditions, shall apply to the Applicant or any successor(s) in interest or successor(s) in control of the property subject to this Order, including all current or future tenants, and shall survive until the issuance and recording of the Certificate of Compliance. Some conditions may be designated as “perpetual” in the COC and therefore survive this Order.
- 4. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property where activity has occurred under this Order, and that takes place prior to the issuance and recording of a Certificate of Compliance.
- 5. The approved wetland boundaries pertaining to this Order are only valid for the specific project associated with DEP # 100-0XXX, and not for any future projects.

**OR**

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

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

**Project title**

7. This Order authorizes **only** the activity described on the approved Plans and documents referenced in this Order.
8. The Applicant and the Applicant's designated representatives (including but not limited to site supervisors, contractors, subcontractors, and engineers) are responsible for the project's completion in accordance with the approved Plans and this Order. **To ensure compliance, a copy of this Order and the approved plans shall be kept on site at all times while activities regulated by this Order are being performed.**
9. Any **changes** to the Plans approved under this Order, including those resulting from review requirements by other Town boards/departments or from unforeseen site conditions, and which may or will alter an area subject to protection under the Act and/or the Bylaw, must be submitted to the Agent or the Commission in writing for approval prior to implementation. The Agent/Commission will then determine if such alterations to the Plans may be treated as a Field Change, as an Amendment to this Order requiring a Public Hearing, or if such alterations are substantial enough to require the filing of a new Notice of Intent. Any errors found in the Plans or information submitted by the Applicant shall be considered as changes.
10. 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. 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.

**PRE-CONSTRUCTION CONDITIONS.**

11. Throughout the duration of the project and until the issuance of the Certificate of Compliance, wetland boundaries shall be clearly marked with flags/stakes so that said areas are clearly distinguishable at all times. Such markers are to be repaired or replaced as necessary.
12. The Applicant or designated representatives must provide the Commission with the names, addresses, and telephone numbers (both business and 24-hour emergency numbers) of the person(s) responsible for compliance with this Order. The Commission shall also be notified in writing of any changes or updates to this information.
13. Signage to be exhibited on site, visible from the street, shall include the 2-3 square foot sign required to display the MassDEP File Number (General Condition 10, WPA Form 5) as well as any such additional signage as required by the Commission. All such signage shall remain in place until the issuance of a Certificate of Compliance.

Project title

14. The Applicant and/or designated representative(s) shall hold a pre-construction meeting with the Agent –jointly with other Town departments if appropriate – prior to the start of any work to ensure this Order is fully understood by all parties. The Applicant shall also submit in writing for the Commission’s approval the following items as checked:
  - a. Sequence of construction activities and time table;
  - b. Method of Procedures (MOP) detailing:
    - i. a clearing plan showing areas to be cleared and areas to be left in a natural state;
    - ii. protocols and contingencies for protecting Resource Areas during construction;
    - iii. response plan for encountering unforeseen conditions or emergencies;
    - iv. protocols for reporting problems to relevant entities, including the Agent;
    - v. a set of photographs depicting the project site in pre-activity condition.
15. Following the pre-construction meeting, erosion controls shall be installed with minimal disturbance of shrubs and herbaceous plants. **These controls must be inspected and approved by the Agent prior to the commencement of any work on site. The Commission must be notified at least 7 days prior to the commencement of work for such inspection.**

## **EROSION AND SEDIMENTATION CONTROLS**

16. The erosion and deposition of soils, silt, and sediments into Wetland, Riverfront and Buffer Zone Resource Areas beyond the approved LOW shall be prevented at all times by effective control measures as specified in the referenced Notice of Intent and Plans, and in accordance with conditions noted below:
17. Prior to construction activity on site, the LOW shall be clearly marked or survey-located, beyond which no work shall occur. Erosion controls generally signify the LOW but the Commission may also require staked orange snow fencing to be installed in some areas as well. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil, or construction activity is to occur beyond this line at any time.
18. Temporary erosion control methods, as approved by the Commission, shall consist of any combination of silt fencing, staked haybales, compost filter sock, or straw wattles. Again, their installation must be inspected by the Conservation Agent prior to work beginning. Controls should comply with MassDEP’s Complete Erosion and Sedimentation Control Guidelines.
19. The Commission or its Agent may require the Applicant to employ additional erosion controls as they reasonably deem necessary or where conditions indicate that existing control methods are insufficient to protect the Resource Areas.

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20. While construction is active on a project site, controls shall be inspected regularly to ensure they remain in good working order. Controls must also be inspected following storm events to check for signs of erosion, wash-out, rills, or other damage caused by flowing water. Controls should also be inspected in the spring following a significant warming period when snow/ice has been present on the ground. Upon the discovery of any failure of erosion control measures resulting in the deposition of run-off materials into protected Resource Areas beyond the LOW, the incident shall be immediately reported to the Commission at (978)-772-8200 ext. 143 and to [concom@ayer.ma.us](mailto:concom@ayer.ma.us).
21. All accumulated sediment shall be removed from the face of the erosion control barriers using hand tools (e.g. shovels, rakes, wheelbarrows) whenever the level of sediment is within six (6) inches of the top of the barrier.
22. Any unforeseen accumulation of sedimentation that takes place beyond the erosion control barriers/LOW shall be removed immediately using hand tools. The cause of the failure shall be immediately addressed as soon as reasonably practical.
23. Soil, sediment, debris, or other material removed during maintenance or repair of erosion control barriers, or remediation of erosion damage, shall be disposed of outside of the Resource Area/LOW.
24. For the duration of the project, the Applicant shall maintain a reserve of the approved erosion control products for emergency repairs. For large projects, this shall be equal to at least 15% of the maximum extent of erosion control materials used on site.
25. Erosion controls and wetland flags must remain in place until all disturbed surfaces have been permanently stabilized and a Certificate of Compliance has been issued by the Commission. Biodegradable material may be broken up and spread on site within the LOW, but not within any Resource Areas or Conservation Easement. Non-biodegradable materials, such as plastic twine, must be removed and discarded off-site. All erosion control material must be dismantled and/or removed after the issuance of the Certificate of Compliance.

## GENERAL SITE CONDITIONS

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

## Project title

27. The use of vehicles or equipment (anything motorized or that may potentially leak harmful materials such as fuels or lubricants) shall be operated, parked, and maintained so as to minimize impact to Resource Areas and limit alterations to those areas clearly identified on the Plans. Pumps, generators, or other stationary equipment containing fuel, oil, or other potential contaminants, may not be stored or operated within Resource Areas without written approval of the Commission or its Agent. If permitted, equipment shall be contained within or on an impervious barrier, to be inspected daily for any sign of leakage. No underground storage of fuel or other hazardous substances is permitted in areas within the jurisdiction of the Commission.
28. No vehicles or equipment are to enter or cross a Resource Area or Buffer Zone outside of the LOW for this Order (e.g. temporary access road, construction mats) unless the location of disturbance is marked on the Plans referenced in this Order and submitted with a plan for restoration of the Resource Area/Buffer Zone disturbance.
29. There shall be no pumping of water from wetlands without written permission from the Commission.
30. 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.
31. Cement trucks shall not be washed out in Resource Areas or deposited into any drainage system. Any deposit of excess cement or concrete products shall be immediately removed.
32. There shall be no dumping of leaves, grass clippings, brush, Christmas trees, or other debris into the wetland Resource Areas.
33. The use of deicing chemicals such as sodium chloride is prohibited on driveways located with Wetland Resource Areas and Buffer Zones.
34. No hazardous waste shall be introduced or discharged into or toward Resource Areas or into the sewage/stormwater systems in such a manner as to impact Resource Areas unless previously identified and approved by the Commission, Board of Health, MassDEP, and/or the United States Environmental Protection Agency.
35. The removal and remediation of hazardous waste, from an area subject to protection under the Act and/or the Bylaw, shall be conducted under the direction of the Massachusetts Department of Environmental Protection, Environmental Protection Agency, or other applicable state or federal agencies.
36. Any material placed in Resource Areas beyond the LOW by the Applicant without express authorization under this Order shall be removed by the Applicant upon demand by the Commission or its Agent.



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### **GRADING, LANDSCAPING, SLOPES**

37. Where possible, site grading and construction shall be scheduled to avoid periods of high surface water. Once begun, grading and construction shall continue in an expeditious manner to minimize the opportunity for erosion.
38. Grading shall be accomplished so that runoff is not directed onto the property of others, except as indicated on the approved Plans.
39. 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.

### **SOILS, STOCKPILES, FILL, RIPRAP, TEMPORARY ROADS**

40. All construction or landscaping materials, waste products, grubbed stumps, soil, slash, slurry pits, inorganic debris, etc. shall be stockpiled or deposited outside of all Resource Areas unless otherwise specified in this Order and shown on the approved Plans.
41. At no time shall debris or other material be buried or disposed of within the Buffer Zone other than that fill which is explicitly allowed by this Order and as shown on the referenced Plans.
42. Only crushed stone of uniform size or erosion control mats shall be used for temporary construction roadways.
43. Riprap material shall be clean and free of trash, tree stumps, roots, and other deleterious material.

### **STORMWATER MANAGEMENT / DEWATERING**

44. Runoff shall be managed in accordance with the stormwater management plan developed for this project.
45. The storm drainage system, detention basins, compensatory flood storage areas, and wetland crossings shall be constructed to the extent practical as early in the project timeline as possible.
46. There shall be no direct discharge of stormwater runoff into streams or other Resource Areas. Runoff from the site shall be directed overland to maximize groundwater recharge and cleansing of the runoff through contact with natural soils and vegetation.

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47. All existing and/or new catch basins and oil traps on streets adjacent to the project shall be protected by silt sacks to prevent sediment from entering the drainage system. Silt sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order have been permanently stabilized and the Commission and/or Agent have formally approved their removal.
48. Unless or until put into an easement to the Town of Ayer, the Applicant or designee shall maintain all elements of the drainage systems within any areas subject to the Commission's jurisdiction in order to avoid blockages and siltation which might cause failure of the system. Vegetative cover shall also be maintained on-site to ensure the proper functioning of the drainage system. This Condition shall in no way impede the control of invasive species, should a conflict arise.
49. Any runoff resulting from washing of vehicles or equipment shall neither be directed to, nor dumped into, any on-site drainage system or Resource Area.
50. If necessary, dewatering activities shall be conducted as shown on the approved plans and shall be monitored daily to ensure that sediment-laden water is appropriately settled prior to discharge toward Resource Areas. No discharge of water is allowed directly into an area subject to jurisdiction under the Act or the Bylaw.

**INVASIVE SPECIES MANAGEMENT**

51. All construction vehicles must be cleaned of accumulated soil or plant matter from other sites prior to entering the site, through washing, brooming, or other methods approved in advance by the Commission.
52. 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.
53. No plants listed on the Massachusetts Invasive Plant Advisory Group's "Invasive", "Likely Invasive", or "Potentially Invasive" lists; New York's "Prohibited & Regulated Invasive Species List"; or on New Jersey's "Target Species Spotlight", within the Invasive Species fact sheet library, or on the "Do Not Plant" List; may be brought onto or planted anywhere on the property. ***This condition may be noted in perpetuity and extend beyond the issuance of the Certificate of Compliance.***  
Invasive Species List Websites:  
MA lists (<http://www.massnrc.org/mipag/index.htm>);  
NY List: ([http://www.dec.ny.gov/docs/lands\\_forests\\_pdf/islist.pdf](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>)

Project title

## FERTILIZER USE

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

- 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. Plant nutrients that land on sidewalks, roads, or other impervious surfaces must be swept back onto the grass or cleaned up.
- c. Per MDAR, plant nutrients may not be applied between December 1 and March 1 to:
  - i. frozen and/or snow covered soil;
  - ii. saturated soil or soils that are frequently flooded;
  - iii. 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;
  - iv. within Zone I of a public water supply well or within 100 feet of surface waters that are used for public drinking water supply.

## ONGOING MAINTENANCE

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

## PROJECT SPECIFIC

56. Natural Heritage & Endangered Species Program (NHESP) – Tracking No.: XXXXXXXX  
No work may commence until the Applicant has received whatever permits or approvals are required by NHESP and has provided the Commission with copies of such approvals. The Commission shall also be copied on any reports submitted to NHESP. In addition, the following Conditions imposed by NHESP will apply:

- a.
- b.
- c..

57. Special

**Project title**

- a.
- b.
- c.

**58. Signage**

- a.
- b.
- c.

**59. Boulders and/or Vegetation Barriers**

- a.
- b.
- c.

**60. Progress Reports**

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

**61. Wetland Replication**

- a. See Attached Addenda

**62. Conservation Restriction (CR)**

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

**CERTIFICATE OF COMPLIANCE**

63. Upon completion of construction and final soil stabilization, or within one year of the issuance of an Occupancy Permit, the Applicant shall submit the following to the Commission in order to request a Certificate of Compliance (COC):

- a. A completed Request for a Certificate of Compliance (WPA Form 8A);
- b. A written statement from a Registered Professional Engineer certifying that the work has been completed in compliance with this Order, the Plans, and any approved revisions if applicable. Substantial deviations and their potential impact must be described in detail. If the work completed differs significantly from the work approved by the Commission, the Commission may require the Applicant to implement measures necessary to comply with this Order or seek an amended Order of Conditions.

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- c. An 'As-Built' plan signed and stamped by a Registered Professional Engineer or Land Surveyor showing post-construction conditions within all jurisdictional areas under the scope of the project as permitted under this Order. The As-Built shall include at a minimum:
  - i. all Resource Area boundaries (wetlands, buffer zones, riverfront) and regulatory setback areas taken from the approved Plans;
  - ii. distances of any structures (buildings, septic system components, wells, utility lines, fences, retaining walls, roads/driveways, pools, etc.) to wetland Resource Areas and Buffer Zone or Riverfront lines;
  - iii. line depicting the limitation of yard/lawn expansion without new review/approval by the Commission;
  - iv. the location of any required signage or boulders;
  - v. locations and elevations of all stormwater management conveyances, structures, basins, rain gardens, and other Best Management designs, including foundation drains and outlet pipes;
  - vi. wetland replication areas constructed under this Order and confirmed successful after two growing seasons;
- d. Post-construction photographs for comparison with pre-construction photographs if required.