

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



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TOWN OF AYER
TOWN CLERK

4:50pm

(CO)

MEETING AGENDA (In Person) Thursday, September 22, 2022

7:00 PM GENERAL BUSINESS / OPEN SESSION

- Approval of Meeting Minutes for September 8, 2022
- Public Input

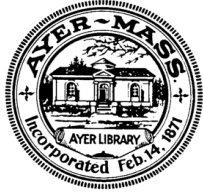
Continued Public Hearing: Notice of Intent (NOI) – Spectacle Pond Water Treatment Plant, between Willow Road and Nemco Way, Town of Ayer Department of Public Works, represented by Tighe & Bond, Charles Gore, MassDEP File #100-XXX, Assessors Map 24 & 17 Parcel 1& 7

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

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM ADJOURN

Next Scheduled Meeting: 7 PM, October 13, 2022



Town of Ayer Conservation Commission

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Minutes for **9/8/2022**

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

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

Not Present: Jon Schmalenberger (Chair)

APAC Recorded: Yes

7:01 PM – Open Meeting

- **Confirmation of Agenda**
 - G. Bacon moved to confirm the agenda as posted; J. Amaya 2nd.
 - Motion approved unanimously by Roll Call Vote 40.
- **Approval of Meeting Minutes**
 - Regarding the Ayer Solar II violations discussion, M. Phillips suggested some edits to add clarity.
 - G. Bacon moved to accept the minutes for 8/25/2022 as amended; J. Amaya 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.
- **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)
 - Present via Zoom were DPW Director Dan Van Schalkwyk and Charles Gore, of Tighe & Bond.
 - The project proposes to replace an approximately 750-ft. long portion of corroded pipe carrying water out of the Spectacle Pond Water Treatment Plant, a pipe of critical importance as it is the only pipe delivering water from Spectacle Pond into the Ayer water distribution system.
 - The Conservation Commission did a site walk on 9/3/2022 and observed it was a straightforward project.
 - Mr. Gore addressed comments received from MassDEP when the file number was issued.
 - His response to DEP included clarifying that while the whole area for the project is within BLSF (Bordering Land Subject to Flooding), all of the project work is within the existing roadway, not in the resource area itself.
 - He also clarified that the replacement pipe ends at the nearby culvert; work on the culvert is not part of this project.
 - Mr. Van Schalkwyk referenced the 8/30/2022 comment letter received from NHESP (Natural Heritage & Endangered Species Program, NHESP Tracking No. 22-41259).



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- The NHESP letter permitted the project on the basis of compliance with 7 conditions to be included in the Order of Conditions (OOC) in order to ensure no adverse effects to Resource Area habitats of state-listed wildlife species, and no prohibited 'Take' of state-listed species.
- Many of the 7 conditions are based on condition #1, the 'Time of Year Restriction'.
 - If the project work takes place over the winter, from October 16 to April 15, no state-listed turtle protective measures are required.
 - However, if work takes place between April 15-October 15, then the project must comply with additional conditions to ensure protection of endangered turtles.
- Other NHESP conditions included details regarding the use of any seed mixes to disturbed soils, an authorization duration deadline of 5 years, and a condition requiring submission of a Compliance Report within 30 days of the completion of the project.
- Mr. Van Schalkwyk indicated that a turtle protection plan will be submitted to NHESP for their approval.
- It is hoped that the project will be completed outside of the Time of Year Restriction period anyway.
- G. Bacon moved to approve the drafting of an OOC for 100-0480; J. Amaya 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.
- All seven of the NHESP conditions should be cut-and-pasted into the draft OOC verbatim.
 - H. Hampson will work with Mr. Gore and the DPW to adjust other conditions in the boilerplate that may not be workable for this project.
 - If there are no concerns about the draft OOC, the applicant need not be present at ConCom's next meeting to vote on issuing the OOC and close the Public Hearing.
- G. Bacon moved to continue the Public Hearing to 9/22; J. Amaya 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.
- **Discussion: Conservation Recommendation for Stratton Hill Open Space Residential Development (OSRD)**
 - Per the OSRD Zoning Bylaw (Section 10.1), the Conservation Commission is tasked with providing the Planning Board with a written Conservation Recommendation based on the Conservation Analysis submitted by applicants for proposed OSRD subdivisions.
 - Fox Meadow Realty submitted a Conservation Analysis for Stratton Hill that was primarily based on data collected by Oxbow Associates in 2003-2005 when a non-OSRD subdivision was initially proposed, then halted in 2008 until the project was recently reactivated.
 - A revised plan was submitted to the Planning Board in 2021 in the form of a definitive OSRD subdivision, an application that was subsequently withdrawn without prejudice at the beginning of 2022.



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- It was then re-submitted to the Planning Board in June 2022 in the form of a preliminary OSRD subdivision application.
- The Commission then had the proposed project and the Conservation Analysis evaluated by a third party peer reviewer, Matt Burne, of BSC Group.
- Commissioners have individually sent their suggested recommendations to H. Hampson who is now working on drafting a final document.
 - She has also reached out to Groton's Planning Board and Conservation Commission to see how they approved development on their side of the parcel back in 2005.
 - (NHESP issued a Conservation Management Permit (CMP) jointly to Groton and Ayer in 2005 since the proposed open space was contiguous and both areas for development were being considered at the time.)
- H. Hampson reported meanwhile on the areas of apparent consensus, and general discussion followed:
 - ConCom members are broadly in agreement that development north of the powerline Right-of-Way (ROW) should strongly be discouraged or, at the least, reduced.
 - At the same time, the Commission wants the ROW itself treated as valuable High Priority habitat, and is also in agreement that the slope down to Long Pond south of the ROW is High Priority as well and should be left undisturbed rather than used for stormwater management structures.
 - Discussion took place as to how to nuance this to allow for bargaining room if necessary.
 - The presence of Commissioners at the Planning Board meeting on 9/27 might help.
 - It was suggested that house lots south of the ROW could be reduced in size to allow the relocation of houses from north of the ROW to its south.
 - J. Gugino noted that the issue of traffic from 35 new residences, wherever located, will still be a contentious issue for residents along Wright Road and its side streets.
 - Regarding Dark Sky friendly street lighting to reduce adverse impact on wildlife/habitat, M. Phillips and the rest of the Commission were in agreement that this area should have no requirement for street lights.
- G. Bacon said that if, after ConCom submits its Recommendation, the applicant does not agree, it is up to the applicant to prove why the Commission is wrong.
- Resident Annie Reed, of Wachusett Avenue East, spoke to the importance of emphasizing Mr. Burne's position that the 2005 CMP expired in 2012.
 - She also noted that it is her understanding that State permitting supersedes Town permitting, and therefore asked if the CMP has expired, does this not also apply to Town permits issued at the time, i.e., the Planning Board approval of the original subdivision design?



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- Shaker Mill Pond footpath along shoreline
 - H. Hampson provided an update on her walk along the pond's shore with representatives from the Shaker Mill OSRD currently under construction.
 - The terms of the project's permitting included putting in a footpath along the shoreline to allow residents access to the open space.
 - The natural path already there can be enlarged a bit using hand shears to cut back brush.
 - M. Phillips suggested the trail is further defined by painted blazes on the trees.
 - J. Amaya asked if there were ADA (Americans with Disabilities Act) requirements for the footpath?
 - H. Hampson has been checking on this but said she did not think so – ADA requirements only come into play if State money has been used to purchase land.
- **8:25 PM – Adjourn Meeting**
 - ConCom's next meeting will take place on 9/22 and will return to an in-person format in Town Hall.
 - G. Bacon moved to adjourn; J. Amaya 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: _____

ATTACHMENT A
SPECIAL CONDITIONS
Spectacle Pond Transmission Main Replacement, 4 Willow Road
Ayer Assessor’s Map 24, Parcel 1, and Map 17, Parcel 7
DEP File # 100-0480

FINDINGS:

Under the Order of Conditions (“the Order”) issued under MassDEP File Number 100-0480 Dan Van Schalkwyk Wetzel, Town of Ayer Water Department (“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 entails the replacement of the existing 16-inch diameter ductile iron water transmission main within the Spectacle Road easement from the Spectacle Pond Water Treatment Plant. The pipe will be replaced with a 18-inch diameter high-density polyethylene pipe. There will be approximately 700 feet of pipe replaced using an open-cut depth of 9.5 feet below surface grade. Excavation support and dewatering is required. The work also includes a new valve and hydrant on the southwest side of the Project Site. A turtle protection barrier is required per the Turtle Protection Plan if work is to take place between April 15th and October 15th of any given year and any other requirements listed per the letter dated August 30, 2022 from Mass Wildlife

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 offence.

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: Dan Van Schalkwyk
Property Owner: Town of Ayer Water Department

Project Location: 4 Willow Rd and 0 Nemco Way
Ayer, MA 01432

Prepared by: Tighe & Bond
Stamped by: Charles Core, P.E.

- b. Site Plan: Spectacle Pond Transmission Main Replacement
Final Rev. Date/Sheet Name: July 2022 Sheets G-002 & G-003 & C-101, C-102, C-501 through C-503

The approved wetland boundaries pertaining to this Order are only valid for the particular project associated with DEP #100-0480, and not for any future projects.

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 # 100-0480 and not for any future projects.
4. Any violation of these Conditions will make the Applicant subject to an Enforcement Order or a fine.
5. 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.
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. 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 Environmental Monitor, 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 Environmental Monitor, 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, wetland buffer zone, or riverfront area 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 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, 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 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:
 - a. The wetland boundaries 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, Environmental Monitor, 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. Resource Areas and Buffer Zones within the designated work area are not to be used for overnight parking of any vehicles.

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. The *minimum* required erosion control barriers shall consist of a staked compost filter sock/wattle, as inspected and approved by the Commission or its

Agent before work commences. Temporary erosion and sediment control products that are not fully biodegradable should be promptly removed upon issuance of the Certificate of Compliance.

- b. Erosion control measures shall be installed and maintained in accordance with the Plans listed in Special Condition 2.
- c. 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.
- d. 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).
- e. Erosion controls shall be inspected weekly and immediately following storm events. Damaged or non-functioning erosion control devices shall be maintained, reinforced, or replaced as necessary.
- f. 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 Commission at (978) 772-8220 ext.143 or to concom@ayer.ma.us .
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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 the wetlands or riverfront buffer zone.

- l. 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).
 - m. 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, other than that fill which is explicitly allowed by this Order and as shown on the referenced plans.
- 25. All fill not drawn from the site itself, stumps, brush, logs, rubbish, construction debris, excavated materials, construction equipment and vehicles, and construction materials (i.e. gravel, bentonite, etc.), if permitted to be stored on-site, shall be stored in a designated location approved by the Commission.
- 26. Stockpiled earth and other materials shall be piled outside the 100-foot Buffer Zone and/or the 200-foot Riverfront Area, and shall be stabilized to prevent erosion into wetland resource areas and/or prevent any runoff off-site.
- 27. Any soil stockpiles that will remain on site for longer than thirty (30) days must be seeded with the same mixture of seeds already intended for use within the replication area and/or the upstream area that will be seeded in accordance with Special Condition 22(l).

DURING CONSTRUCTION CONDITIONS: STORMWATER MANAGEMENT

- 28. 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.

29. 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) 772-8220 ext. 143 or via email to concom@ayer.ma.us.

PROJECT SPECIFIC CONDITIONS:

30. NHESP has determined that a turtle protection plan for the State listed Blandings Turtle is required for this project. The Permit Holder shall comply with all requirements of the Massachusetts Division of Fisheries and Wildlife (MassWildlife) including, but not limited to, implementation of a state-listed turtle protection plan. The Permit Holder will submit an application for a turtle protection plan to NHESP in the spring of 2021. The Commission shall be copied on all correspondence with the MassWildlife documenting the application for compliance with their requirements.

END OF CONSTRUCTION CONDITIONS:

31. Upon completion of this project, the owner or his designee shall submit the following to the Conservation Commission to receive a Certificate of Compliance per Condition 12:
- a. A letter from the owner or his designee requesting a Certificate of Compliance for DEP File # 100-0480.
 - b. A written statement from a registered professional engineer of the Commonwealth of Massachusetts certifying that the work has been completed in compliance with this Order of Conditions and the approved plans referenced herein (or approved revisions). Any discrepancies shall be noted. Phrases such as: *“The project has been completed in general compliance...”* will NOT be acceptable. If the work completed differs significantly from the work proposed in the Notice of Intent and approved by the Commission, the Commission may require the Applicant implement measures necessary to comply with this Order.
 - c. An as-built topographic plan signed and stamped by a registered professional land surveyor of the Commonwealth of Massachusetts, for the public record. This plan will include as-built elevations of all drainage ways constructed within 100 feet of any wetland or 200 feet of a perennial stream, and distances to all structures and elevations within 100 feet of wetlands and 200 feet of perennial streams.

PERPETUAL CONDITIONS:

Special Condition 4 is also a perpetual condition.

32. 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, wetland buffer area, or riverfront 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.

33. No vehicles or equipment are to enter or cross a Resource Area or Buffer Zone, unless the location of the disturbance is first marked on a plan and approved by the Commission. ***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. 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.***
35. 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.***
36. 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 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.***
37. 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.***
38. 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.***
39. 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.

40. 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.***
41. 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.***
42. 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.***
43. 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>);

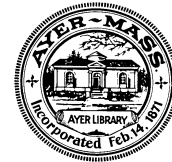
NY List: (http://www.dec.ny.gov/docs/lands_forests_pdf/islist.pdf)

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

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

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

Town of Ayer CONSERVATION COMMISSION



Town Hall ♦ One Main Street ♦ Ayer, MA 01432
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Date: September 22, 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. 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 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 project as well.

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.

The Conservation Commission strongly agrees with BSC Group Peer Reviewer Matt Burne's overall criticism that the data contained in the Conservation Analysis submitted by Fox Meadow Realty for the Stratton Hill OSRD subdivision has not been used in any meaningful way in relation to the preliminary plan designs submitted to the Planning Board in June 2022. 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 adequate consideration by the 2022 submitted Conservation Analysis.

“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)

There is general consensus 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, 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.

Right-of-Way (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 other waterbodies in Ayer. Careful consideration of what development occurs on its eastern shore is therefore imperative in order to maintain this 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 abut 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 take note 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 ‘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 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.

North of the ROW

The whole of the area north of the ROW should, in our opinion, 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.
- If it is not realistically feasible to prohibit housing development north of the ROW, the Planning Board should at least seek to reduce the number of houses in order to limit impact. This would also serve to reduce daily traffic passing under the powerlines.

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 the 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 endangered 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 of 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 permitted, 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 curbing that would inhibit turtle movement should be considered. Long-term maintenance needs 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 completely 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.
- 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 and 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 would hope that complete protection of this slope be regarded as non-negotiable.
- The Planning Board should also urge the applicant to use more modern techniques of stormwater management, for example rain gardens or bioretention areas located on each property or in shared green areas.

General Recommendations and Considerations

- The Commission encourages the Planning Board, where possible, to reduce the size (i.e. number of lots) and overall impact of the subdivision, especially north of the ROW. One suggestion would be to reconsider the Planning Board’s 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.

- If development is to take place north of the ROW, the Planning Board should seek to have this area developed and finalized first in any proposed construction sequence. The reason for this is to shorten and minimize the impact from construction disturbance on wildlife in the adjacent undeveloped forest.
- Regarding blasting, the Planning Board itself raised the possibility of considering the use of chemical blasting as an alternative to the use of conventional explosives. Given the prevalence of ledge throughout this site and the sensitivity of its habitats, including Long Pond, the introduction of new chemicals should be discouraged. If this course is pursued, a heavy burden of proof should be placed on the applicant to thoroughly demonstrate there would be no adverse impact specific to this location from such a technique.
 - In addition, the Commission recommends that the Planning Board, to the extent possible, impose time-of-year limitations on blasting to avoid adverse impacts during active breeding seasons for birds as well as – given nearby ponds, vernal pools, and wetlands – outside of fish/amphibian spawning seasons.
- 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 especially valuable for turtles. Any re-disturbance of this area should now be carefully considered by the Planning Board.
- The Commission recommends that the Planning Board establish a direct conversation with NHESP (Natural Heritage & Endangered Species Program) to ensure that NHESP is fully aware of Town concerns, especially regarding Long Pond and the slope to it south of the ROW. The BSC peer reviewer takes the stance that the 2005 Conservation Management Permit (CMP) expired in 2012, and the Planning Board should therefore hear from NHESP directly, on its letterhead, confirming any new permitting or consideration of extensions.
- Although out of the Town of Ayer’s jurisdiction, the Planning Board should take into account the failure of the applicant to fulfill the terms of the CMP on the Groton side of the parcel by not following through on the construction of a turtle-nesting area at a previously-designated location in that town. This was a point directly made to the Commission by Mass Audubon’s Tom Lautzenheiser at our 8/25/2022 meeting. All efforts should be made to ensure that the applicant cannot similarly avoid compliance with the expired CMP’s requirement for the provision of a nesting area on the Ayer side as well. The Planning Board might also consider

whether it is feasible to delay construction in Ayer until both turtle nesting areas have been satisfactorily completed.

- Can restrictions be placed on the 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?
- Are there other LID (Low Impact Development) measures that could be productively employed throughout the site, such as the use of porous paving?

The Commission is happy to discuss with the Planning Board any questions or concerns that may arise from these recommendations.

Sincerely,

Jon Schmalenberger,
Chair, Ayer Conservation Commission