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August 6, 2018

Thomas Friedlander, Chairman  
Sudbury Conservation Commission  
275 Old Lancaster Road  
Sudbury, MA 01776

Re     **Abbreviated Notice of Resource Area Delineation**  
          **Sudbury- Hudson Transmission Reliability Project**  
          MassDEP File No. NE 301-1227  
          NAA File No. P4304.1

Mr. Friedlander and Commissioners:

Nover-Armstrong Associates, Inc. (Nover-Armstrong) has reviewed the revised Abbreviated Notice of Resource Area Delineation (ANRAD) Plan set relating to our peer review of the delineation of inland Bank and Bordering Land Subject To Flooding (BLSF) boundary. Based review of the plans, it is our opinion that the Commission can confirm the Bank and BLSF boundaries with the specific conditions noted below.

#### **Additional Documents Reviewed**

- *Existing Conditions Plan for ANRAD Submittal*, Sudbury-Hudson Transmission Reliability Project, Sudbury, Massachusetts; (46 Sheets) dated October 18, 2017, revised through July 24, 2018; Prepared by VHB, Inc., signed and stamped by Russell J. Bousquet, PLS, #35389.

Throughout the ANRAD hearing proceedings, Nover-Armstrong recommended that the Conservation Commission only approve the FEMA Based Flood Elevation (BFE) and not the Bordering Land Subject to Flooding (BLSF) boundary depicted on the ANRAD plans so that if topographic contours got revised during project design stages, the BLSF boundary would correlate to the more accurate topography. The Applicant decided to update the ANRAD plans to better depict the BLSF boundary using their calculated BFE. Nover-Armstrong reviewed progress prints of BLSF Plans (dated July 11, 2018) that depicted refined contours in places and a BLSF boundary shown where the BFE was found on the ground by field survey or along refined contours, whichever was appropriate. The Progress BLSF Plans did not depict any other resource area boundaries.

It should be noted, again, that FEMA has not yet agreed to the BFE calculated by the Applicant and therefore, Nover-Armstrong recommends that the Order of Resource Area Delineation (ORAD) be conditioned requiring that the BLSF boundary adhere to any changes to the BFE resulting from the FEMA review process.

The July 24, 2018 ANRAD Plan set now shows the revised contours and BLSF boundaries as shown on the July 11, 2018 plan set, as well as all other delineated resource areas.

## Summary

As stated at the beginning of the ANRAD peer review process, Nover-Armstrong's role has been to provide technical support for Bank and BLSF boundary peer review primarily at the two Hop Brook crossings, as well as at Station Road and Dudley Brook. Throughout the peer review process, we worked with Mr. David Burke, an outside consultant who evaluated Bank and BLSF at all culvert structures carrying intermittent and perennial stream flow, in addition to vegetated wetland and vernal pools, throughout the Project site.

Nover-Armstrong reviewed the Final ANRAD Plan Set for consistency and completeness. Overall, the plans appear to depict the Bank and BLSF boundaries subject to our review in accordance with the definitions stated in the Massachusetts Wetland Regulations, 310 CMR 10.00, and the Sudbury Wetlands Protection Bylaw.

The comments in italics below update the comments presented in our July 23, 2018 peer review letter to the Commission.

## BLSF Boundary

- *The final ANRAD Plan is stamped by a MA PLS and a note has been added to the plan with the date and field methodology used to locate the BLSF boundary by BFE.*
- The ORAD should state that if the corrected effective BFEs shown on the ANRAD Plan gets changed as the result of a LOMR submission to FEMA, the revised BFE shall supersede that confirmed by this ORAD and the BLSF boundary adhere to such changes.
- The Commission cannot confirm the limits of the Hop Brook and Dudley Brook FEMA Floodway by the ORAD as Floodway is not an Area Subject to Protection Under the Massachusetts Wetlands Protection Act and local Wetlands Protection Bylaw. We recommend that the Commission evaluate future projects for potential adverse impacts both downstream and upstream of the bridge crossings caused from placement of fill within the Floodway.

## Inland Bank Boundary

- The Bank flags depicted on the June 18, 2018 ANRAD plans were located by survey and although they don't follow the topography on the plans, the Commission can confirm Bank flag locations because final ANRAD Plan set is stamped and signed by a Massachusetts PLS.

Based on our review of revised and additional documents, it is our opinion that the Commission can issue an ORAD with specific wording recommendations, as identified above, as it relates to BLSF, BFE and Bank. Nover-Armstrong will be available at the August 6, 2018 public meeting to discuss our findings and recommendations with the Commission.

Sincerely,

**Nover-Armstrong Associates, Inc.**

A handwritten signature in black ink, appearing to read 'Marta J. Nover', with a stylized flourish at the end.

Marta J. Nover  
Principal



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

p: (508) 389-6300 | f: (508) 389-7890

MASS.GOV/MASSWILDLIFE

July 09, 2018

Concord Natural Resources Commission  
141 Keyes Road  
Concord MA 01742

Sudbury Conservation Commission  
275 Old Lancaster Road  
Sudbury MA 01776

Nashawtuc Country Club  
Attn.: Richard Schultz, GM  
1861 Sudbury Road  
Concord MA 01742

RE:      Applicant:                      Nashawtuc Country Club  
         Project Location:                1861 Sudbury Road  
         Project Description:            Golf Course Improvements  
         DEP Wetlands File No.:        Unavailable  
         **NHESP File No.:                09-26342**

Dear Commissioners & Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received two Notices of Intent with site plans (dated 06/28/2018) in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.59). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

### **WETLANDS PROTECTION ACT (WPA)**

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, **will not adversely affect** the actual Resource Area Habitat of state-protected rare wildlife species. Therefore, it is our opinion that this project meets the state-listed species performance standard for the issuance of an Order of Conditions.

Please note that this determination addresses only the matter of **rare** wildlife habitat and does not pertain to other wildlife habitat issues that may be pertinent to the proposed project.

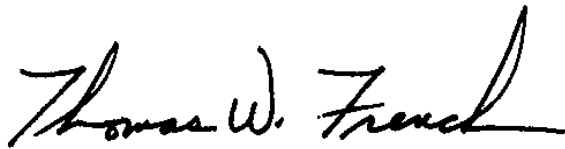
MASSWILDLIFE

**MASSACHUSETTS ENDANGERED SPECIES ACT (MESA)**

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, **will not result in a prohibited Take** of state-listed rare species. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Melany Cheeseman, Endangered Species Review Assistant, at (508) 389-6357.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. French". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas W. French, Ph.D.  
Assistant Director

cc: MA DEP Northeast Region  
Michael Toohill, BSC Group, Inc.

**GRANTOR:** Mark R. Hollyer and Robin Pendelton, husband and wife

**GRANTEE:** Sudbury Conservation Commission

**ADDRESS OF PREMISES:** One Washington Drive, Sudbury, MA 01776

**FOR GRANTOR'S TITLE SEE:** Middlesex County Registry of Deeds at Book 33893, Page 130;  
Plan Book 21426, Page 026

### **CONSERVATION RESTRICTION**

Mark R. Hollyer and Robin Pendelton, husband and wife, of 0 Washington Drive, Sudbury, Massachusetts 01776, being the joint owners, constituting all of the owner(s), for our successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the Inhabitants of Sudbury, a municipal corporation acting by and through its Conservation Commission with an address of 275 Old Lancaster Road, Sudbury, MA 01776, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land ("Property") located in Sudbury containing 3.8 acres of an approximately 4.32 acre parcel ("Premises"), and more particularly described in Exhibit A and the plan attached hereto entitled: "Plan of Land in Sudbury, 0 Washington Drive, Conservation Restriction Area", prepared by Everett M. Brooks Co., dated June 27, 2013 (the "Plan"), a copy of which is attached hereto as Exhibit B.

The Restricted Premises are comprised of a portion of Lot 1A, shown on a plan recorded in the Middlesex South District Registry of Deeds (the "Registry") in Plan Book 21426, Page 026. This Conservation Restriction shall apply exclusively to the Restricted Premises and not to the remaining unrestricted portion of Lot 1A.

For Grantor's title to said land, see deed dated October 24, 2001, recorded in the Middlesex South District Registry of Deeds in Book 33893, Page 130.

## I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be retained and maintained in perpetuity, in their natural, scenic, open and undeveloped condition, and to prevent any use of the Restricted Premises that will materially impair or interfere with its conservation and preservation values ("conservation values").

~~This Conservation Restriction is granted in connection with the issuance of a Certificate of Compliance for activities on the Property. This Conservation Restriction is required by the Orders of Conditions issued under the Wetlands Protection Act (M.G.L Chapter 131 section 40; DEP file #301-623; #301-1083; #301-1117, including conditions in these Orders required to comply with the Sudbury Wetlands Administration Bylaw.~~

### The Conservation Values Include The Following:

- Open Space Preservation. The undeveloped Premises contribute to the protection of the scenic and natural character of the Property and adjacent parcels and the protection of the Premises will enhance the open-space value of these and nearby lands.
- Flood Plain Protection. A portion of the Premises contains a pond and lies within an area subject to flooding. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- Scenic Protection. The Premises are located within a ~~significant~~ scenic and cultural landscape and are important for its natural and scenic features.
- Protection of Wildlife Habitat. The Premises falls within a pond area that provides habitat for fish and fowl. The Premises contains approximately 3.2 acres of wetlands, pond, adjacent upland, and open space.
- ~~• Core Habitat. The Premises consist of 3.8 acres that are critical for the long term persistence of a wide diversity of natural communities and intact ecosystems.~~
- ~~• Wetland Cores. The Premises include a large wetland area. The most intact wetlands within less developed landscapes are generally formed with intact upland buffers, little fragmentation, and minimal disturbance by other stressors associated with roads and development, are most likely to support critical wetland functions (i.e., natural hydrologic conditions, diverse plant and animal habitats, etc.) and are most likely to maintain these functions into the future.~~
- ~~• Critical Natural Landscape. The landscape overlaps Core Habitat, including large natural Landscape Blocks and buffering uplands around inland, wetland and Core Habitats to help ensure the long term integrity of this ecosystem.~~

- Landscape Blocks. The 3.8 acres provides habitat for wide-ranging native species, support intact ecological processes, maintain connectivity among habitats, and enhances ecological resilience. The pond and treed areas include predominately natural vegetation, consisting of contiguous, wetlands and ponds.
- Water Quality Protection. The protection of the 3.8 acres as natural habitat will assist in the vitality of the pond and its bordering vegetated wetlands, upland areas and lands adjacent to the wetlands. The Premises are located with Zone III of municipal drinking water wells.
- Upland Buffers of Wetland Cores – The Premises also includes limited upland areas adjacent to the wetlands. These upland areas will help support the functioning of the wetlands over the long-term.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform or allow other to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties;

- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

~~(8) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;~~

~~(9)~~(8) The disruption, removal, or destruction of any stone walls or granite fence posts on the Premises, but not prohibiting maintenance or replacement in kind;

~~(10)~~(9) Use of the Restricted Premises for commercial/recreational, business or industrial activities;

~~(11)~~(10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

#### **B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

~~(2) Vegetation Management. In accordance with generally accepted forest management practices, selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, invasive plant species, disease, insect or fire damage, or to preserve the present condition of the Premises, ~~including vistas, woods roads, fence lines and trails and meadows;~~ without the use of chemical herbicides or pesticides, and with the prior written permission of the Conservation Commission.~~

~~(2)~~

~~(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;~~

~~(4)~~(3) Composting. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will

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not have a deleterious impact on the purposes (including scenic values) of this Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this Reserved Right shall take into account sensitive areas and avoid harm to nesting species during nesting season;

~~(5)~~(4) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;

~~(6)~~(5) Maintenance of the weir structure and dam to maintain the pond at a level not to exceed elevation 152.4 feet.

~~(7)~~(6) Trails. The marking, clearing and maintenance of existing footpaths. Trails are to be not wider than four (4) feet;

~~(8)~~(7) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values;

~~(9)~~ Outdoor Passive Recreational Activities. Fishing, boating, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, ~~or do not involve more than minimal use for commercial recreational activities;~~

#### ~~C~~(8) Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

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### **III. LEGAL REMEDIES OF THE GRANTEE**

#### **A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **C. Disclaimer of Liability.**

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

#### **D. Acts Beyond the Grantor's Control.**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

#### V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this CR impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the CR under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

##### B. Proceeds.

Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction as entitled under the Internal Revenue Service Code “determined at the time of the gift.” bears to the value of the unrestricted property. Such proportionate value of the Grantee’s property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements

Commented [DD2]: Should this proportion be determined now?

**C. Grantor/Grantee Cooperation Regarding Public Action.**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden.**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

**B. Execution of Instruments.**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.

**C. Running of the Benefit.**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a Donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the

Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South District Registry of Deeds.

#### **XII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Sudbury Conservation Commission  
Department of Public Works Building  
275 Old Lancaster Road  
Sudbury, MA 01776

To Grantee: Mr. Mark R. Hollyer  
0 Washington Drive  
Sudbury, MA 01776

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

#### **XIII. GENERAL PROVISIONS**

##### **A. Controlling Law.**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

##### **B. Liberal Construction.**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

**C. Severability.**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

**D. Entire Agreement.**

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

**XIV. MISCELLANEOUS**

**A. Pre-existing Public Rights.**

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**B. Homestead.**

The Grantor attests that there is a residence on or abutting the Premises (including exclusions) that is occupied or is intended to be occupied as a principal residence by the Grantor or its successor, if the Premises is owned by a trust, on or abutting the Premises, who have signed and notarized a separate release and subordination of their Homestead rights to this Conservation Restriction which will be recorded herewith.

**C.** The Grantor agrees to subordinate all liens, mortgages, construction loans and home equity lines of credit to this Conservation Restriction.

**D.** Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor  
Grantee Acceptance  
Approval by Sudbury Board of Selectmen  
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: legal description

Exhibit B: sketch plan

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Mark R. Hollyer

\_\_\_\_\_  
Robin Pendelton

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally Mark R. Hollyer and Robin Pendelton, husband and wife, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**ACCEPTANCE OF GRANT BY TOWN OF SUDBURY  
CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Sudbury, Massachusetts, hereby certify that at a public meeting duly held on [ENTER DATE], the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C).

**SUDBURY CONSERVATION COMMISSION:**

\_\_\_\_\_  
Thomas Friedlander, Chairman

\_\_\_\_\_  
David Henkels, Vice-Chairman

\_\_\_\_\_  
Bruce Porter, Member

\_\_\_\_\_  
Kathleen Rogers, Member

\_\_\_\_\_  
Charles Russo, Member

\_\_\_\_\_  
Mark Sevier, Member

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Thomas Friedlander, David Henkels, Bruce Porter, Kathleen Rogers, Charles Russo and Mark Sevier, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

### APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of Sudbury hereby certify that at a public meeting duly held on \_\_\_\_\_, 20\_\_, the Select Board voted to approve the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, to the Sudbury Conservation Commission pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

### BOARD OF SELECTMEN:

\_\_\_\_\_  
Robert C. Haarde, Chairman

\_\_\_\_\_  
Leonard A. Simon, Vice-Chairman

\_\_\_\_\_  
Patricia Brown, Member

\_\_\_\_\_  
Daniel E. Carty, Member

\_\_\_\_\_  
Susan N. Iuliano, Member

### COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Robert Haarde, Leonard A. Simon, Patricia Brown, Daniel E. Carty and Susan N. Iuliano and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Matthew A. Beaton, Secretary  
Executive Office of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Matthew A. Beaton, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **EXHIBIT A**

### **Legal Description of Premises**

A portion of parcel of land shown as the "Conservation Restriction Area" and shown on a plan entitled, "Plan of Land in Sudbury, 0 Washington Street, Conservation Restriction Area", prepared by Everett M. Brooks Co., dated June 27, 2013 (the "Plan"), and being more particularly bounded and described as follows:

Beginning at a point, on the northeast boundary of the right of way of the cul-de-sac on Washington Drive;

THENCE, along the property boundary, Easterly, 338.68', to a point;

THENCE, along the property boundary, Easterly 395.49', to a point;

THENCE, Northerly a distance of 292.14' to a point;

THENCE, Westerly in three courses, distances of 100', 175.40' and 72.90', to a point;

THENCE, Southerly, a distance of 39.01' to a point;

THENCE, Easterly a distance of 40.00' to a point;

THENCE, Easterly a distance of 38.76' to a point;

THENCE, Easterly 48' to a point;

THENCE, Southeasterly 16' to a point;

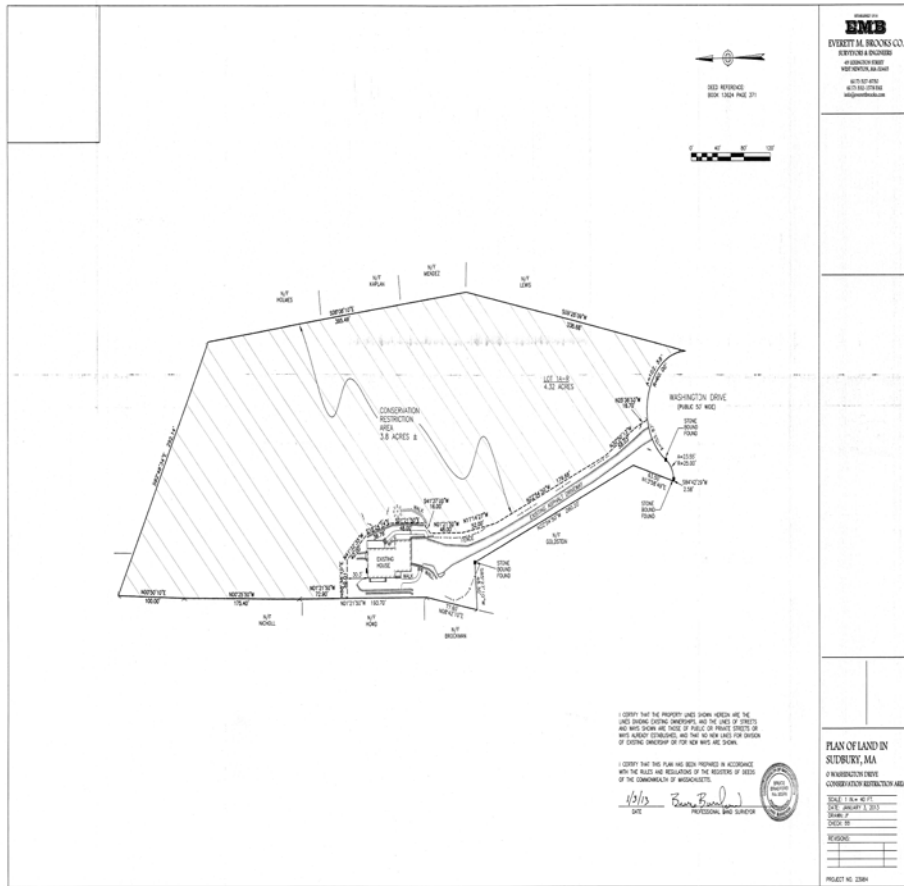
THENCE, Easterly along 4 courses roughly parallel to an existing driveway and fence, distances of 48.00', 52.00', 179.68' and 58.03' to a point on the Washington Drive right of way;

THENCE, along the radius of the right of way for the cul-de-sac to Washington Drive to the point of beginning.

Containing 3.8 acres +/- of the total area of the lot which contains 4.98 acres, as shown on the Plan. This description is subject to and with the benefit of easements and restrictions of record so long as the same are in force and applicable.

# EXHIBIT B

## Sketch Plan



**GRANTOR:** Mark R. Hollyer and Robin Pendelton, husband and wife

**GRANTEE:** Sudbury Conservation Commission

**ADDRESS OF PREMISES:** One Washington Drive, Sudbury, MA 01776

**FOR GRANTOR'S TITLE SEE:** Middlesex County Registry of Deeds at Book 33893, Page 130;  
Plan Book 21426, Page 026

### **CONSERVATION RESTRICTION**

Mark R. Hollyer and Robin Pendelton, husband and wife, of 0 Washington Drive, Sudbury, Massachusetts 01776, being the joint owners, constituting all of the owner(s), for our successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the Inhabitants of Sudbury, a municipal corporation acting by and through its Conservation Commission with an address of 275 Old Lancaster Road, Sudbury, MA 01776, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land ("Property") located in Sudbury containing 3.8 acres of an approximately 4.32 acre parcel ("Premises"), and more particularly described in Exhibit A and the plan attached hereto entitled: "Plan of Land in Sudbury, 0 Washington Drive, Conservation Restriction Area", prepared by Everett M. Brooks Co., dated ~~June 27, 2013~~ January 3, 2013 and revised March 15, 2017 (the "Plan"), a copy of which is attached hereto as Exhibit B.

The 2003 Restricted Premises are comprised of a portion of Lot 1A, shown on a plan recorded in the Middlesex South District Registry of Deeds (the "Registry") in Plan Book 21426, Page 026. This Conservation Restriction shall apply exclusively to the Restricted Premises and not to the remaining unrestricted portion of Lot 1A.

For Grantor's title to said land, see deed dated October 24, 2001, recorded in the Middlesex South District Registry of Deeds in Book 33893, Page 130.

## I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be retained and maintained in perpetuity, in their natural, scenic, open and undeveloped condition, and to prevent any use of the Restricted Premises that will materially impair or interfere with its conservation and preservation values ("conservation values").

~~This Conservation Restriction is granted in connection with the issuance of a Certificate of Compliance for activities on the Property. This Conservation Restriction is required by the Orders of Conditions issued under the Wetlands Protection Act (M.G.L Chapter 131 section 40; DEP file #301-623; #301-1083; #301-1117, including conditions in these Orders required to comply with the Sudbury Wetlands Administration Bylaw.~~

### **The Conservation Values Include The Following:**

- Open Space Preservation. The undeveloped Premises contribute to the protection of the scenic and natural character of the Property and adjacent parcels and the protection of the Premises will enhance the open-space value of these and nearby lands.
- Flood Plain Protection. A portion of the Premises contains a pond and lies within an area subject to flooding. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- Scenic Protection. The Premises are located within a ~~significant~~ scenic and cultural landscape and are important for its natural and scenic features.
- Protection of Wildlife Habitat. The Premises falls within a pond area that provides habitat for fish and fowl. The Premises contains approximately 3.2 acres of wetlands, pond, adjacent upland, and open space.
- Core Habitat. The Premises consist of 3.8 acres that are critical for the long-term persistence of a wide diversity of natural communities and intact ecosystems.
- Wetland Cores. The Premises include a large wetland area. The most intact wetlands within less developed landscapes are generally formed with intact upland buffers, little fragmentation, and minimal disturbance by other stressors associated with roads and development, are most likely to support critical wetland functions (i.e., natural hydrologic conditions, diverse plant and animal habitats, etc.) and are most likely to maintain these functions into the future.
- Critical Natural Landscape. The landscape overlaps Core Habitat, including large natural Landscape Blocks and buffering uplands around inland, wetland and Core Habitats to help ensure the long-term integrity of this ecosystem.

- Landscape Blocks. The 3.8 acres provides habitat for wide-ranging native species, support intact ecological processes, maintain connectivity among habitats, and enhances ecological resilience. The pond and treed areas include predominately natural vegetation, consisting of contiguous, wetlands and ponds.
- Water Quality Protection. The protection of the 3.8 acres as natural habitat will assist in the vitality of the pond and its bordering vegetated wetlands, upland areas and lands adjacent to the wetlands. The Premises are located with Zone III of municipal drinking water wells.
- Upland Buffers of Wetland Cores – The Premises also includes limited upland areas adjacent to the wetlands. These upland areas will help support the functioning of the wetlands over the long-term.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform or allow other to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties;



- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

~~(8) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;~~

~~(9)~~(8) The disruption, removal, or destruction of any stone walls or granite fence posts on the Premises, but not prohibiting maintenance or replacement in kind;

~~(10)~~(9) Use of the Restricted Premises for commercial/recreational, business or industrial activities;

~~(11)~~(10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

#### **B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

~~(2) Vegetation Management. In accordance with generally accepted forest management practices, selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, invasive plant species, disease, insect or fire damage, or to preserve the present condition of the Premises, ~~including vistas, woods roads, fence lines and trails and meadows;~~ without the use of chemical ~~herbicides~~herbicides or ~~pesticides~~pesticides, and with the prior written permission of the Conservation Commission.~~

~~(2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;~~

~~(4)~~(3) Composting. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will

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not have a deleterious impact on the purposes (including scenic values) of this Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this Reserved Right shall take into account sensitive areas and avoid harm to nesting species during nesting season;

~~(5)~~(4) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;

~~(6)~~(5) Maintenance of the weir structure and dam to maintain the pond at a level not to exceed elevation 152.4 feet.

~~(7)~~(6) Trails. The marking, clearing and maintenance of existing footpaths. Trails are to be not wider than four (4) feet;

~~(8)~~(7) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values;

~~(9)~~ Outdoor Passive Recreational Activities. Fishing, boating, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, ~~or do not involve more than minimal use for commercial recreational activities;~~

#### ~~C~~(8) Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

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### **III. LEGAL REMEDIES OF THE GRANTEE**

#### **A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **C. Disclaimer of Liability.**

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

#### **D. Acts Beyond the Grantor's Control.**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

#### V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this CR impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the CR under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

##### B. Proceeds.

Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction as entitled under the Internal Revenue Service Code "determined at the time of the gift," bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements

##### C. Grantor/Grantee Cooperation Regarding Public Action.

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

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## **VI. ASSIGNABILITY**

### **A. Running of the Burden.**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **B. Execution of Instruments.**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit.**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a Donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

#### **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South District Registry of Deeds.

#### **XII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Sudbury Conservation Commission  
Department of Public Works Building  
275 Old Lancaster Road  
Sudbury, MA 01776

To Grantee: Mr. Mark R. Hollyer  
0 Washington Drive  
Sudbury, MA 01776

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

### **XIII. GENERAL PROVISIONS**

#### **A. Controlling Law.**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

#### **B. Liberal Construction.**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

#### **C. Severability.**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

#### **D. Entire Agreement.**

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

### **XIV. MISCELLANEOUS**

#### **A. Pre-existing Public Rights.**

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**B. Homestead.**

The Grantor attests that there is a residence on or abutting the Premises (including exclusions) that is occupied or is intended to be occupied as a principal residence by the Grantor or its successor, if the Premises is owned by a trust, on or abutting the Premises, who have signed and notarized a separate release and subordination of their Homestead rights to this Conservation Restriction which will be recorded herewith.

**C.** The Grantor agrees to subordinate all liens, mortgages, construction loans and home equity lines of credit to this Conservation Restriction.

**D.** Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor  
Grantee Acceptance  
Approval by Sudbury Board of Selectmen  
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: legal description  
Exhibit B: sketch plan

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, [20172018](#)

\_\_\_\_\_  
Mark R. Hollyer

\_\_\_\_\_  
Robin Pendelton

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: \_\_\_\_\_



| On this            day of            , ~~2017~~2018, before me, the undersigned notary public, personally Mark R. Hollyer and Robin Pendelton, husband and wife, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE OF GRANT BY TOWN OF SUDBURY  
CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Sudbury, Massachusetts, hereby certify that at a public meeting duly held on [ENTER DATE], the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C).

**SUDBURY CONSERVATION COMMISSION:**

Thomas FriedlanderJamie Bullis, Chairman

David Henkels, Vice Chairman

M. John Dwyer, Member

Bruce PorterEllen Greendale, Member

Kathleen RogersKaren O'Reilly, Member

Charles RussoAndrew Snyder, Member

Mark Sevier, Member

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20172018, before me, the undersigned notary public, personally appeared Thomas Friedlander, David Henkels, Bruce Porter, Kathleen Rogers, Charles Russo and Mark SevierJamie Bullis, M. John Dwyer, Ellen Greendale, Karen O'Reilly and Andrew Snyder, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

### APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of Sudbury hereby certify that at a public meeting duly held on \_\_\_\_\_, 20\_\_, the Select Board voted to approve the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, to the Sudbury Conservation Commission pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

#### BOARD OF SELECTMEN:

\_\_\_\_\_  
Robert C. Haarde, Chairman

\_\_\_\_\_  
~~Leonard A. Simon~~ Daniel E. Carty, Vice-Chairman

\_\_\_\_\_  
Patricia Brown, Member

\_\_\_\_\_  
~~Daniel E. Carty~~ Leonard A. Simon, Member

\_\_\_\_\_  
~~Susan N. Juliano~~ Janie W. Dretler, Member

#### COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, ~~2017~~2018, before me, the undersigned notary public, personally appeared Robert ~~C.~~ Haarde, ~~Leonard A. Simon~~ Daniel E. Carty, Patricia Brown, Daniel E. Carty and ~~Susan N. Juliano~~ Janie W. Dretler and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Mark R. Hollyer and Robin Pendelton, husband and wife, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2017~~2018~~

\_\_\_\_\_  
Matthew A. Beaton, Secretary  
Executive Office of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017~~2018~~, before me, the undersigned notary public, personally appeared Matthew A. Beaton, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **EXHIBIT A**

### **Legal Description of Premises**

A portion of parcel of land shown as the "Conservation Restriction Area" and shown on a plan entitled, "Plan of Land in Sudbury, 0 Washington Street, Conservation Restriction Area", prepared by Everett M. Brooks Co., dated June 27, 2013 (the "Plan"), and being more particularly bounded and described as follows:

Beginning at a point, on the northeast boundary of the right of way of the cul-de-sac on Washington Drive;

THENCE, along the property boundary, Easterly, 338.68', to a point;

THENCE, along the property boundary, Easterly 395.49', to a point;

THENCE, Northerly a distance of 292.14' to a point;

THENCE, Westerly in three courses, distances of 100', 175.40' and 72.90', to a point;

THENCE, Southerly, a distance of 39.01' to a point;

THENCE, Easterly a distance of 40.00' to a point;

THENCE, Easterly a distance of 38.76' to a point;

THENCE, Easterly 48' to a point;

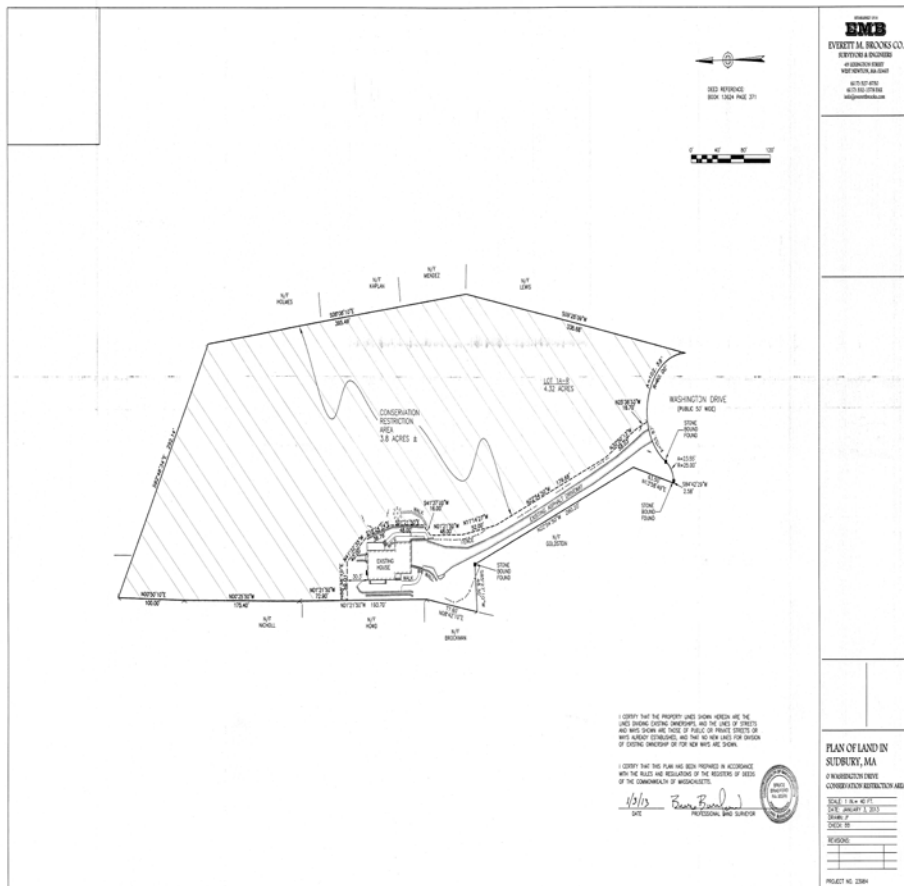
THENCE, Southeasterly 16' to a point;

THENCE, Easterly along 4 courses roughly parallel to an existing driveway and fence, distances of 48.00', 52.00', 179.68' and 58.03' to a point on the Washington Drive right of way;

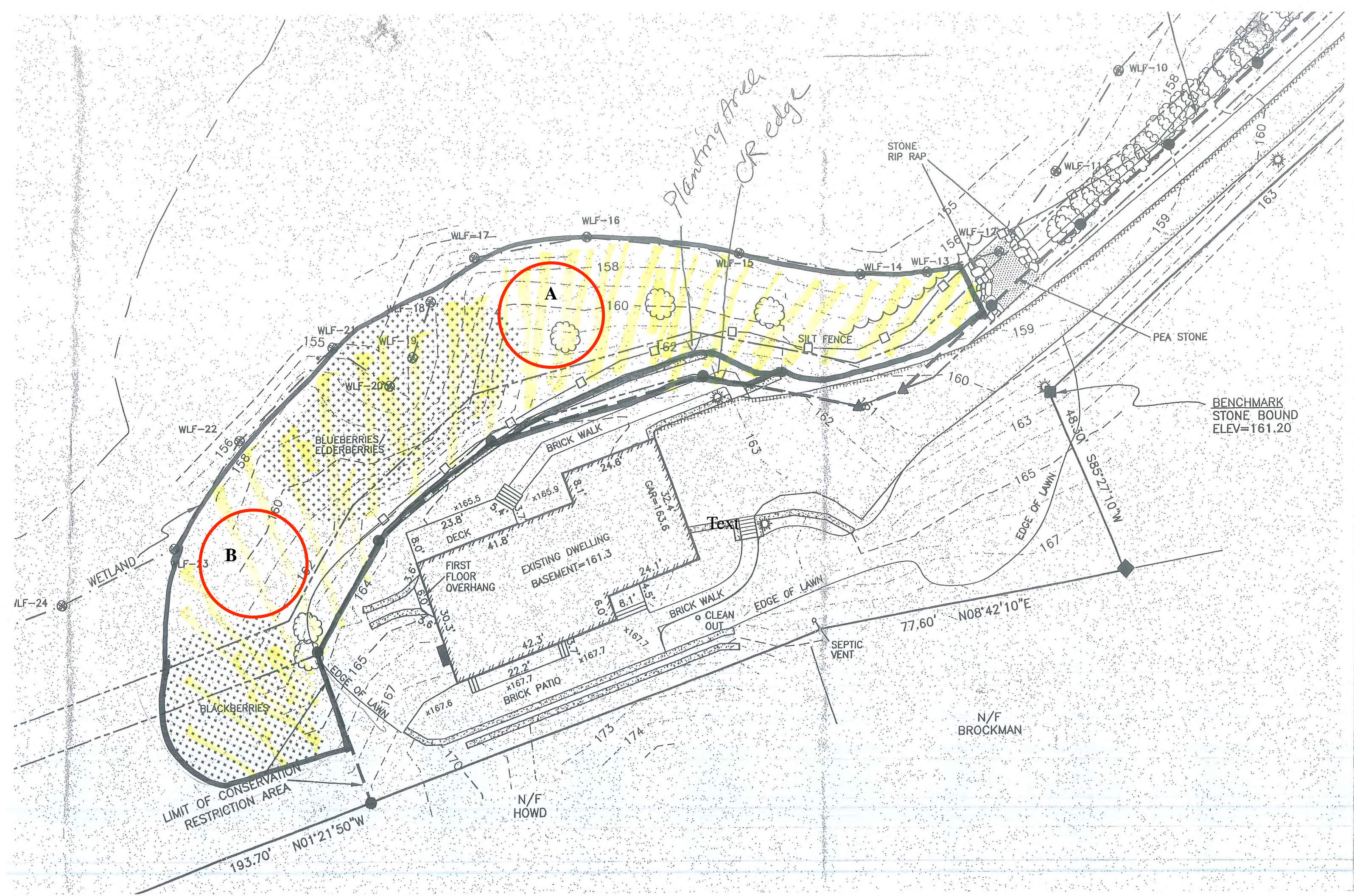
THENCE, along the radius of the right of way for the cul-de-sac to Washington Drive to the point of beginning.

Containing 3.8 acres +/- of the total area of the lot which contains 4.98 acres, as shown on the Plan. This description is subject to and with the benefit of easements and restrictions of record so long as the same are in force and applicable.

### Sketch Plan









***SUDBURY CONSERVATION COMMISSION***  
**Minutes of the Meeting Held Monday, July 23, 2018**  
**DPW Facility, 275 Old Lancaster Rd.**

Present: Tom Friedlander, Chairman; Dave Henkels; Vice-Chairman; Bruce Porter; Kasey Rogers; Charlie Russo (6:35 pm arrival); Debbie Dineen, Coordinator  
Absent: Mark Sevier; Richard Morse

**Minutes**

On a motion by B. Porter; 2<sup>nd</sup> K. Rogers; the Commission voted unanimously in favor of accepting the minutes of June 4, 2018.

On a motion by K. Rogers; B. Porter; 2<sup>nd</sup>; the Commission voted unanimously in favor of accepting the minutes of June 18, 2018

**WPA & Bylaw Abbreviated Notice of Resource Area Delineation ANRAD MBTA ROW**

Review of surveyed Bordering Land Subject to Flooding (BLSF)

On a motion by K. Rogers; B. Porter; 2<sup>nd</sup>; the Commission voted unanimously in favor of continuing the hearing to Aug. 6, 2018 to allow for review of final, stamped and signed plans.

**WPA & Bylaw: Notice of Intent: Eversource: Soil Borings on MBTA ROW**

Soil borings, soil samplings and other exploratory testing along the MBTA ROW from the Sudbury Substation at 183 Boston Post Road to the Sudbury-Hudson line

On a motion by B. Porter; K. Rogers 2<sup>nd</sup>; the Commission voted unanimously in favor of continuing the hearing to Aug. 6, 2018.

**WPA & Bylaw Request for Determination: 42 Village Rd., house addition reconstruction**

Present: Kerri Weinstein, applicant

Mr. Weinstein presented plans for house addition reconstruction and tree removal. He explained that a tree fell on an addition at the back of the house during the March storm. The addition was constructed in 1987, before he purchased the property, however it was just discovered that it did not meet code, had no foundation, and must be rebuilt. He plans to rebuild in the same footprint. He would also like to remove four trees that are overhanging the roof and are compromised at the base.

D. Dineen explained that the work is in the outer riparian area with a steep drop of approximately 30+- to the edge of bordering vegetated wetland (bvwt) associated with the stream. The work is well outside the adjacent upland resource of the bvwt.

On a motion by D. Henkels; 2<sup>nd</sup> B. Porter, the Commission voted unanimously in favor of issuing a negative Determination. C. Russo abstaining due to arrival timing.

**WPA & Bylaw Notice of Intent: Sudbury Water District, 199 Raymond Rd.**

Headquarters expansion

Present: Vin Roy, Sudbury Water District Superintendent; JP Parnas and Elena - of Weston and Sampson

Mr. Parnas of Weston & Sampson presented plans for the renovation and expansion of the existing Sudbury Water District headquarters facility. Stormwater has been designed to capture and treat runoff from the entire site with the exception of a small section of existing driveway.

Mitigation under the Bylaw for increased structures and activity was achieved with the relocation of the septic system and removal of impervious surface outside of wetland jurisdiction. Three areas of infiltration are provided. One is exclusively for roof runoff and does not include pre-treatment as it is not required.

The northern driveway entrance is the only area of impervious surface where runoff is not collected and treated or infiltrated. D. Dineen noted that this runoff flows along the side of Raymond Road and into the wetland within Zone I of a municipal drinking water well. She asked that the engineers take another look at providing some level of pre-treatment or infiltration so the runoff does not pick up particulates and pollutants from the side of the traveled way. The engineers thought it would be difficult to do so and did not offer a solution.

Mr. Parnas confirmed that on site test pits for soils data were done in the areas where infiltration is proposed.

D. Henkels questioned if there are any Estimated or Priority NHESP habits on the site. There are not.

B. Porter received confirmation that the septic system is currently within wetland jurisdiction and is being moved well outside jurisdiction.

C. Russo received confirmation that the vehicle storage garage will be on an impervious slab. He questioned if the northern part of the driveway could be constructed of permeable pavement. Mr. Parnas stated that maintenance of a small section of permeable pavement is difficult and costly. It is not recommended for this small area and type of use.

K. Rogers received confirmation that the existing shed will be removed.

D. Dineen asked what the plan was for stabilizing the cut into the steep slope just outside wetland jurisdiction. Should there be a slope failure, jurisdictional areas could be impacted. Mr. Parnas explained that the retaining wall will be constructed immediately after the cut is made. D. Dineen suggested jute netting if the slope will remain unstabilized during the winter as there will still be a large area of disturbed slope above the wall.

Commissioners agreed the wetland as delineated on the referenced plans will not be accepted by the Conservation Commission as a formal delineation at this time. All proposed work is to be located on already disturbed areas for the scope of the work covered by this Order.

On a motion by C. Russo; 2<sup>nd</sup> D. Henkels; the Commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2<sup>nd</sup> D. Henkels; the Commission voted unanimously in favor of issuing the Order as discussed.

#### **WPA & Bylaw Notice of Intent: 415 Boston Post Rd., Stormwater Discharge; OSPD Realty LLC**

Present: George Connors of Sullivan Connors & Associates

Mr. Connors presented plans for the redevelopment of the former town police station headquarters. The Notice of Intent was submitted for the redevelopment of this 0.63-acre parcel. The redevelopment has designed stormwater to provide overall improvements to the site through infiltration of most of the runoff from the proposed impervious surfaces. Impervious surface will be reduced by 2,000 sq. ft. over existing conditions with the new development. Infiltration is provided on

site in three separate areas with the new development. The design complies with the MA Stormwater Standards for redevelopment. Only a small section of runoff will flow to Boston Post Road.

Mr. Connors explained that due to grading and site constraints at the outfall, it is not possible to upgrade the discharge point. The current 36" outfall pipe overtops. A fore bay or other best management practice is not possible; however, the project reduces the volume of water being discharged in the 100-year storm by .06 cfs.

The Commission voted unanimously in favor of closing the hearing and issuing the standard drainage order as discussed.

**Request for Amendment to Order of Conditions: #301-1226; 98 Haynes Rd., Willow Hill School; increase in scope of work and footprint of disturbance**

Present: Tom Peterman, architect; Marilyn Reid, Willow Hill School; Andrew Fournier & Peter ? of C.E. Floyd contractors; and Willow Hill Building and Grounds Supervisor

Mr. Peterman stated that the school would like to begin construction in mid-August. They received an Order of Conditions several months ago, however adjustments now need to be based on the contractor's input. A revised plan has been submitted that shows a contractor parking and staging area for deliveries of materials, crane location and area for concrete truck aces. The proposed contractor parking is mostly outside the riverfront area. Toilets have been moved outside of the riverfront area. They plan to leave the existing loam and grass in place and install filter fabric and gravel on top. It will remain impervious. No overnight parking will be permitted in this new disturbance area. The concrete truck will only be accessing the site for several days. The crane will be on site for ten days.

T. Friedlander stated that he and the Coordinator were on site this afternoon. He expressed concern for construction equipment and spills or leaks from vehicles parked on the gravel. D. Dineen noted that the area has a high water table and contaminants could leach into the groundwater. Peter ? replied that a spill kit would be kept on site at all times and the parking area would be monitored daily for signs of spills and leaks. No overnight parking will be permitted.

D. Henkels questioned if dewatering will be required. The contractor replied that it is likely and a wash out box will be provided.

Compacting of loam will occur with the vehicle traffic on the gravel area. Snow may need to be hauled off site. No stockpiling of snow will be permitted within wetland jurisdictional areas. Deicing of the path may need to occur in the winter. The decision to deice will be decided on the Superintendent's walk through. Steel plates will be placed over the septic force main and the drainage pipe. D. Henkels further stated that the traffic should avoid the underground detention area.

B. Porter stated that no on-site vehicle maintenance or equipment maintenance should be permitted in wetland jurisdiction. D. Dineen added that this should include areas that drain to the wetland.

D. Dineen questioned the method of restoration of the field area as well as the plowing of the gravel area in the winter and the spread of gravel from the plows. The contractor stated all areas will be restored. D. Dineen suggested tall orange fencing in addition to the erosion control barrier to better clearly define the approved area for disturbance. She questioned how drainage off the existing building would be dealt with during construction as access to the infiltration pits will be unavailable.

Responding to K. Rogers, the contractor stated that approximately 30 concrete truck trips, 3 steel deliveries, deliveries of materials such as drywall, windows and other finishes will be necessary, as well as emptying the dumpster.

A pre-construction meeting and erosion control review will be required.

On a motion by D. Henkels; 2<sup>nd</sup> K. Rogers; the Commission voted unanimously to close the hearing.

On a motion by D. Henkels; 2<sup>nd</sup> K. Rogers; the Commission voted unanimously to issue an Amended Order to include the conditions discussed.

**WPA & Bylaw Notice of Intent: 267 Landham Rd., Gaston Safar**

Restoration after violation

Present: Dave Burke, Wetland Resource Specialist

The Notice of Intent was filed for restoration of a portion of the upland and wetland resource area disturbed without a permit. A retaining wall was required in DEP File #301-983 following removal of fill in a bordering vegetated wetland. The Conservation Commission accepted the location of this wall as shown on the referenced plans as in compliance with #301-983. The Notice of Intent was filed for additional unpermitted work at the base of the wall. Mr. Burke explained that an Order of Conditions has been requested to permit the removal of soil and debris at the base of the wall to restore the contours and native vegetation in the disturbed area. The request includes replacement of two gates.

Mitigation under the Bylaw was offered in the form of permanent protection of the area of land owned by the applicant beyond the limits of the retaining wall. C. Russo explained that the mitigation is required to offset the increase in use in close proximity to the wetland for better enforcement and to reduce the risk of further encroachment.

D. Henkels questioned if a performance bond should be required as the applicant has a history of non-compliance. D. Dineen stated that performance bonds are meant to provide funds for the Town to complete the work should the applicant fail to do so. She stated that even if the funds are received, without an easement of entry for the purpose of the Order, the Town cannot access the site. If it does obtain an easement for access to the site, liability for the Town could result if there are damages from the work. The Town is not in the business of wetland restoration on private property. C. Russo agreed and stated that the Order should make clear that no further alterations of any kind within jurisdictional areas, except as permitted in the Order may occur. Current site conditions may be maintained once the restoration area is completed.

Commissioners discussed the conditions for allowing the restoration work to occur. No equipment or machinery will be permitted in the area below the wall. Any use of equipment requires access from the top of the wall.

Following removal of excess soil and debris to the original contour below the wall, the area shall be loamed and seeded with a native seed mix of appropriate species that will thrive in the underlying soil conditions.

Within sixty (60) days of the date of issuance of the Order, the applicant shall have completed the soil and debris removal and have all disturbed areas seeded with the native seed mix.

The Conservation Commission reserved the right to require additional plantings to provide greater coverage, deter invasive plant species, or restore any wetland or upland protected values and functions impacted by the illegal disturbance at the base of the retaining wall.

Mike DiModica, speaking on behalf of his parents who are abutters, stated that the ZBA did not issue a special permit for an accessory apartment due, in part, to the outstanding wetland violations. The Commission will inform ZBA that an Order for restoration is being issued, however, they will request that the permit for the accessory use not be issued until the restoration work is complete and approved by the Commission. This will be an incentive to have the restoration work done within the required

timeframes. Mr. DiModica noted that the number of bedrooms for the septic design may not be as described by Mr. Safar to the ZBA. The Coordinator will inform the Board of Health of this concern.

A qualified professional Environmental Monitor shall supervise the soil and debris removal as well as the loaming and seeding of the area at the base of the retaining wall. Monitoring reports be submitted on the status of the restoration area in the spring and fall of each year, beginning in fall 2018, until a Certificate of Compliance is issued. The restoration shall be considered successful once the area is covered by 90% native plants from the Sudbury Native Plant List. Invasive plants within the restoration area shall be managed by regular hand removal without the use of herbicides.

The applicant has offered mitigation, required under the local Bylaw, in the form of permanent protection of the land owned by the applicant beyond the base of the wall. This includes parcel K10-0004, minus the area above the retaining wall.

The applicant may either 1) place a perpetuity Conservation Restriction on this land; or, 2) deed the land in fee to the Town of Sudbury for conservation purposes in accordance with M.G.L. Chapter 40 section 8C.

The applicant has thirty days (30) from the issuance of this Order to inform the Commission of the method of mitigation preferred (transfer in fee or Conservation Restriction). Following these thirty (30) days, the applicant has sixty (60) to present the plan of the land to be deeded/restricted and the recording information for the fully executed Conservation Restriction or present the Deed for recording.

On a motion by D. Henkels; 2<sup>nd</sup> B. Porter; the Commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2<sup>nd</sup> K. Rogers, the Commission voted unanimously in favor of issuing the order as discussed.

#### **WPA & Bylaw Notice of Intent: Nashawtuc Country Club Golf Course Improvements**

Present: Mike Toohill of BSC for applicant; Ric Schultz and Troy Noble for NCC; and Brian Vacasey, irrigation consultant for NCC

Mr. Toohill presented plans for the reconstruction of the golf course in both Sudbury and Concord. An NOI has been submitted to the Concord natural Resources Commission as well as both Zoning Board of Appeals. The work will involve the changing of the topography to improve course play. Existing to proposed topography was compared on a 1':1' basis. To accomplish the improvements, flood plain alteration is required. Compensatory storage will be provided that exceeds current site-wide flood storage. A total of five compensatory storage areas will be created site-wide with two in Sudbury. Twelve of the eighteen holes are located in Sudbury. They would like to completely replace the irrigation system and reconfigure the two man-made ponds. This will result in an increase in Land Under Water body. Bank and bordering vegetated wetland will remain the same, although under water shelves with plantings will be added to the new ponds for additional habitat and pollution attenuation.

C. Russo questioned if tree removal will occur. M. Toohill stated that they may need to remove up to four trees behind hole #10 for the compensatory storage area. They will try to save the trees on the mound at holes #10 and #11. The restored compensatory storage area will have additional trees planted plus a comprehensive planting of native shrubs and grasses.

No file # has been issued yet by DEP. D. Dineen suggested continued the hearing in this case as DEP may have some input into the floodplain alteration and compensatory storage creation.

D. Henkels motioned to continue the hearing to Aug. 6; C. Russo 2<sup>nd</sup>;

D. Dineen noted that the plan was developed using LiDAR to establish existing and proposed topography. Although it is not as accurate as an instrument survey, in this case it is establishing the difference between existing and proposed elevations in order to determine compensatory volume. This differs from other projects, such as the Eversource ANRAD, that is seeking to establish the extent of bordering land subject to flooding.

Motion passed unanimously

**Violation Status:**

**3 Goodnow Rd.**

Present: Sokrat Dishnica

D. Dineen informed the Commissioners that tickets have been issued for failure to meet the requirement of providing a timeframe by April 15, 2018 for performance of the required conditions. Mr. Dishnica had visited the Conservation office last week to discuss the ticket he received. At that time, they reviewed the requirements in the Order and she discovered that two additional violations of the Order have now occurred. Replanting was required by June 30, 2018 and the Order had not been recorded within thirty days of issuance. That brought the violation total to three. Mr. Dishnica has since recorded the Order and provided the recording information. Two violations remain.

Mr. Dishnica presented timeframes for approval. He had wall removal to begin immediately and completed by Aug. 31, 2018. Planting of the restoration area would begin Sept. 1 and occur between Sept. and Sept 30 as the plants become available. To take advantage of the fall growing season. The driveway infiltration system will be installed by Nov. 30. Commissioners suggested this date be moved up to Nov. 15 at the latest in case of an early frost. They felt it could be risky to wait until Nov. 30.

C. Russo reminded Mr. Dishnica that the plantings must be 90% established after two years. If this is not successful, the Commission can require additional plantings that must remain viable.

Mr. Dishnica questioned the issuance of the tickets. T. Friedlander stated that the project began as a violation and violations continue with the failure to adhere to the Order. D. Dineen stated that the ticketing policy is used as a last resort to get the attention of the violator. It now appears the Commission has Mr. Dishnica's attention and he is working on bringing the property into compliance with his most recent actions. She noted that the Commission has the option of placing ticket payment on hold and reactivate required payment of already issued tickets and possibly additional tickets for failure to perform per the Order. K. Rogers and C. Russo agreed and stated that would give the property owner a great incentive to comply. T. Friedlander countered that the property owner has had numerous opportunities to comply over the last several years without much response. C. Russo responded that if the failure to comply continues, the cost of the tickets will exceed the cost of the work to be accomplished under the Order. He would prefer the money went to on site correction of environmental harm. He suggested Mr. Dishnica reduce his risk and try for compliance by Nov. 1. D. Henkels agreed and suggested the Commission defer the collection of the ticket payments as an incentive to complete the work within the new timeframes.

On a motion by D. Henkels; 2<sup>nd</sup> B. Porter; the Commission voted unanimously to waive current due ticket payments until Aug. 31 to see if the first phase of work as outlined in Mr. Dishnica's timeframe is done on time, and to stop issuing additional tickets at this time.

159 Concord Rd.

D. Dineen reported that the Notice of Intent was received Friday but has not yet been reviewed for completeness. The hearing will be scheduled for Aug. 6, 2018.

168 Horse Pond Rd.

T. Friedlander stated that K. Rogers had reported work occurring within the fence in the backyard. D. Dineen went by the site and it appeared a new shed was being installed. The next day, the shed location was visible above the fence and appeared to be outside of wetland jurisdiction. The extent of total disturbance was not visible. She has sent an email to Mrs. Blank for confirmation that additional work did not occur with wetland jurisdiction. No response to date.

**Certificates of Compliance:**

**4 Powder Mill Rd., R. Newton**

D. Dineen reported that the confirmation was received from Cutler Construction stating that the dry well was installed according to the plan. The as-built had already been received. All appears to conform to the approved plan.

On a motion by D. Henkels; 2<sup>nd</sup> C. Russo; the Commission voted unanimously in favor of issuing the COC.

**Other Business:**

The Commission signed a duplicate Certificate of Compliance 36 Babe Ruth Drive at the request of the property owner for recording purposes.

**Reports for Commissioners and Staff**

D. Dineen reported that two appeals have been received. One is an appeal to DEP for a Superseding Order of Conditions on 137 Mossman Rd. No appeal under the bylaw has been received to date.

The second is a request for an Adjudicatory hearing by DEP on DEP's decision to take no action on the request for an appeal of the issuance of an Extension Permit for the ORAD for Sudbury Station. DEP had stated on the first appeal that an Extension Permit is not appealable.

On a motion by D. Henkels; 2<sup>nd</sup> B. Porter; the Commission voted unanimously in favor of adjourning the hearing. 9:30pm.

August 3, 2018

Town of Sudbury Conservation Commission  
Attn: Deborah Dineen, Conservation Coordinator  
DPW Building  
275 Old Lancaster Road  
Sudbury, MA 01776

Re: Certificate of Compliance for 301-1187  
Nashawtuc Country Club, Concord, Massachusetts

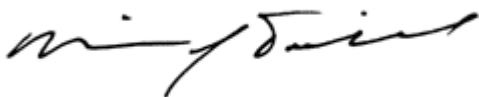
Dear Members of the Commission:

On behalf of the Nashawtuc Country Club, BSC Group, Inc. is requesting that the Commission issue a Certificate of Compliance for DEP File Number 301-1187 (copy attached). The Order of Conditions was issued by the Sudbury Conservation Commission on August 23, 2016 for restoration work near the 3<sup>rd</sup> and 13<sup>th</sup> golf holes tees at the Club. The Order of Conditions was recorded at the Middlesex County Southern District Registry of Deeds in Book 68274 Page 556 on October 26, 2016 (copy attached).

Attached is a WPA Form 8A Request for a Certificate of Compliance (CoC) for the project located on the golf course in Sudbury. Enclosed are one (1) original and one (1) copy of the Request for Certificate of Compliance package each containing Form 8A, a table detailing compliance with the Special Conditions, a memo stating compliance of the project with the Order, a copy of the label from the seed mix that was used, and a copy of the Order of Conditions.

If you have any questions, please feel free to contact me at 617-896-4519 or by email at [mtoohill@bscgroup.com](mailto:mtoohill@bscgroup.com).

Sincerely,



Michael J. Toohill, PWS CE CERP  
Senior Environmental Scientist

cc: Richard Shultz and Troy Noble; Nashawtuc Country Club

Engineers

Environmental  
Scientists

Custom Software  
Developers

Landscape  
Architects

Planners

Surveyors





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 8A – Request for Certificate of Compliance**

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

DEP File Number:

301-1187

Provided by DEP

**A. Project Information**

**Important:**

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



Upon completion of the work authorized in an Order of Conditions, the property owner must request a Certificate of Compliance from the issuing authority stating that the work or portion of the work has been satisfactorily completed.

1. This request is being made by:

Michael J. Toohill, BSC Group Inc.

Name

33 Waldo Street

Mailing Address

Worcester

City/Town

617-896-4519

Phone Number

MA

State

01608

Zip Code

2. This request is in reference to work regulated by a final Order of Conditions issued to:

Nashawtuc Country Club

Applicant

8/23/16

Dated

301-1187

DEP File Number

3. The project site is located at:

off Concord Road

Street Address

D13

Assessors Map/Plat Number

Sudbury

City/Town

0300

Parcel/Lot Number

4. The final Order of Conditions was recorded at the Registry of Deeds for:

Property Owner (if different)

Middlesex South

County

68274

Book

556

Page

Certificate (if registered land)

5. This request is for certification that (check one):

☒ the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.

☐ the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed (use additional paper if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ the above-referenced Order of Conditions has lapsed and is therefore no longer valid, and the work regulated by it was never started.



**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

**WPA Form 8A – Request for Certificate of Compliance**

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

DEP File Number:

301-1187

Provided by DEP

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**A. Project Information (cont.)**

6. Did the Order of Conditions for this project, or the portion of the project subject to this request, contain an approval of any plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor?

☐ Yes

If yes, attach a written statement by such a professional certifying substantial compliance with the plans and describing what deviation, if any, exists from the plans approved in the Order.

☒ No

---

**B. Submittal Requirements**

Requests for Certificates of Compliance should be directed to the issuing authority that issued the final Order of Conditions (OOC). If the project received an OOC from the Conservation Commission, submit this request to that Commission. If the project was issued a Superseding Order of Conditions or was the subject of an Adjudicatory Hearing Final Decision, submit this request to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region/findyour.htm>).

<b>To:</b>	Sudbury Conservation Commission	<b>Date:</b>	August 3, 2018
<b>From:</b>	Mike Toohill, PWS CE CERP	<b>Proj. No.</b>	89513.03
<b>Re:</b>	Restoration at the 3 <sup>rd</sup> and 13 <sup>th</sup> tees—Request for a Certificate of Compliance—Current Conditions		

The restoration of the four areas permitted under DEP 301-1187 (Areas A and B next to the 3<sup>rd</sup> hole tees and Areas C and D next to the 13<sup>th</sup> hole tees) were planted in the fall of 2016 and have been successfully re-vegetated. All the areas that were the subject of the restoration efforts are stable. The restoration plantings used have met with mixed success, however, as discussed below.

### Area A

This area (on the west side of Concord Road) begins at the outer edge of the 100-foot buffer zone to BVW and proceeds upland from there towards the cart path and turf areas of the golf course. This area was seeded with a conservation/wildlife mix (herbaceous plant mix from New England Wetland Plants; bag tag attached) and a fescue blend. Some of the plants from the mix are in evidence in Area A, but primarily the fescue mix was successful due to the shading in this area. Within that area a few of the grasses within the mix (Indian grass, switchgrass, and red fescue) have come up in spots, but very few of the wildflowers in the mix are in evidence. Part of Area A has been vegetated by recruits including thistle, grape vines, other old field species (goldenrods and ragweed), as well as a few invasives. Some of the invasives have returned into the sunny edge of the area but are currently in manageable quantities. The other item of note is that the shrub plantings (12 total) have met with mixed success. The elderberry shrubs have survived but the pussy willow have not. The area was just too shady for the willows to take hold.

For Area A we recommend ongoing “maintenance” consisting of periodic mowing to allow the herbaceous plants to take hold and hand cutting of the buckthorn, bittersweet, sumac, and blackberry that are beginning to return to this area. The area is near the large riparian zone of the Pantry Brook/Cold Brook system, and there is a substantial infestation of invasives within the river corridor. As such we expect continued recruitment of both natives and invasives into Area A. We do not recommend replanting the pussy willow shrubs and the elderberry shrubs need to be cleared of all vines to allow them to continue to grow.

### Area B

Area B is about 50% outside of the buffer zone and about 50% inside the buffer zone and is adjacent to and northwest of Area A. Prior to restoration this area was dominated by invasives/aggressive species, primarily sumac and blackberry canes, that form thickets and crowd out other species. Some of the invasives have returned into the sunny edge of the area but are currently in manageable quantities. Cutting the shrubs and blackberries in the sunlit areas will allow the herbaceous plants growth opportunity.

### Area C

Area C is near the 13<sup>th</sup> hole tees (east side of Concord Road) and contained a variety of invasive/aggressive species including oriental bittersweet, multiflora rose, and blackberry prior to restoration. This area is approximately 50% inside and 50% outside the 100-foot buffer zone to BVW and is within the 100-year floodplain. This area was seeded with a conservation/wildlife mix (herbaceous plant mix from New England Wetland Plants; bag tag attached). Some of the plants from the mix are in evidence in Area C (the area where the mix was applied). Within that area most of the grasses within the mix (big and little bluestem, switchgrass, and red fescue) have come up in spots, and there are a few asters, vervain, and goldenrod as well. Much of Area C has been overcome by recruits including impatiens, thistle, grape vines, other old field species (goldenrods and ragweed), as well as a few invasives. The invasives are buckthorn shrubs, and a few bittersweet vines, multiflora rose, and blackberry canes. The other item of note is that the shrub plantings (8 total) have met with mixed success. The elderberry shrubs have survived but the pussy willow have not.

Perhaps the area was just too shady for the willows to take hold.

For Area C we recommend ongoing “maintenance” consisting of periodic mowing to allow the herbaceous plants to take hold and hand cutting of the buckthorn and bittersweet. The area is near the large riparian zone of the Sudbury River, and there is a substantial infestation of invasives within the river corridor. As such we expect continued recruitment of both natives and invasives into Area C. We do not recommend replanting the pussy willow shrubs and the elderberry shrubs need to be cleared of all vines to allow them to continue to grow.

#### **Area D**

Area D is at the back edge of the rear tee on the 13<sup>th</sup> hole where the edge of the tee box falls off sharply down into the wooded area behind it towards Area C. This edge was starting to fail prior to restoration and we felt it could be stabilized by planting a row of shrubs behind the tee. The plantings (6 lowbush blueberry) are being somewhat crowded out by other vegetation that has taken hold on the slope. The slope in this area is stable and we recommend hand cutting back (but not removing) some of the vegetation that has grown up to and beyond the shrubs.

#### **Summary**

All 4 areas are stable but would benefit from some ongoing vegetation maintenance. In all areas we recommend periodic mowing and/or hand cutting (see above) to maintain vegetation height and species composition. We do not recommend the use of broadcast herbicides in any of these areas due to their proximity to resource areas.

**cc:** Troy Noble, Nashawtuc Country Club

**NEW ENGLAND WETLAND PLANTS, INC**  
**820 WEST STREET, AMHERST, MA. 01002**  
 ph 413-548-8000 fax 413-549-4000  
 email: info@newp.com

**NEW ENGLAND WETLANDS CONSERVATION/WILDLIFE MIX**

BOTANICAL NAME	COMMON NAME	PURITY	GERM	HARD	DORM	ORIGIN
ELYMUS VIRGINICUS	VIRGINIA WILDRYE	17.84%	95.0%			PA
FESTUCA RUBRA	CREeping RED FESCUE	15.71%	92.0%			CN
ANDROPOGON GERARDII	BIG BLUESTEM	15.20%	50.0%		45.0%	PA
SCHIZACHYRIUM SCOPARIUM	LITTLE BLUESTEM	12.32%	30.0%		63.0%	PA
CHAMAECRISTA FASCICULATA	PARTRIDGE PEA	6.98%	37.0%	46.0%		AL
PANICUM VIRGATUM	SWITCH GRASS	6.97%	55.0%		38.0%	PA
SORGHASTRUM NUTANS	INDIANGRASS	5.18%	91.0%			PA
HELIOPSIS HELIANTHOIDES	OXEYE SUNFLOWER	2.96%	87.0%		8.0%	PA
ASTER NOVAE-ANGIAE	NEW ENGLAND ASTER	2.47%	86.0%			CO
DESMODIUM CANADENSE	SHOWY TICKTREFOL	2.00%	94.0%			PA
VERBENA HASTATA	BLUE VERVAIN	1.39%	96.0%			PA
AGROSTIS PERENNANS	AUTUMN BENTGRASS	1.00%	96.0%			OR
EUTHAMIA GRAMINIFOLIA	GRASSLEAF GOLDENROD	0.49%	90.0%			PA
ASCLEPIAS SYRIACA	COMMON MILKWEED	0.45%	10.0%		72.0%	PA
EUPATORIUM PURPUREUM	PURPLE NODE JOE-PYE WEED	0.45%	2.0%		15.0%	IA
VERNONIA NOVEBORACENSIS	NEW YORK IRONWEED	0.41%	10.0%		80.0%	PA

OTHER CROP 0.45%  
 INERT MATTER 7.64%  
 WEED SEED 0.09%  
 TOTAL 100.00%

LOT NUMBER  
 DATE TESTED

NEWEO0205  
 Feb-16

NET WEIGHT (lbs)

6

**Nashawtuc Country Restoration at  
the 3<sup>rd</sup> and 13<sup>th</sup> Golf Hole Tees**  
**Request for a Certificate of Compliance**  
**DEP File No. 301-1187**

**Table 1—Compliance with Conditions—Attachment A**

No.	Comment	Note
<b>STANDARD CONDITIONS</b>		
1-20	Complied with Standard Conditions where applicable	
<b>SPECIAL CONDITIONS</b>		
1.a.	Complied with this condition—acknowledgement of resource areas and jurisdiction	Condition in perpetuity
1.b.	Complied with this condition—no fertilizers used in wetlands.	Condition in perpetuity
1.c.	Complied with this condition—only native plants have been used in the restoration areas.	Condition in perpetuity
II.Part I.a.	All conditions within the Order have been adhered to; no other permits were required for the work.	
I.b.	The Club is not seeking any extension to its property rights.	
I.c.	All applicable statues have been complied with.	
I.d.	Work began after the appeal period.	
I.e.	Condition absent.	
I.f.	The Order was recorded on 10/26/16.	
I.g.	Condition absent.	
I.i.	File number sign was displayed.	
Part II.a.	All work conformed to the Order.	
II.b.	No spoils or refuse were generated by the project. All equipment used is stored properly onsite in an upland area (the maintenance facility).	
II.c.	All work was accomplished by Nashawtuc Country Club staff.	
II.d.	A copy of the Order was kept onsite at all times.	
II.e.	There have been no transfers of title.	
II.f.	The property is still owned by the Nashawtuc Country Club.	
II.g.	No spoils or refuse were generated by the project.	
II.h.	All equipment used is stored and maintained properly onsite in an upland area (the maintenance facility). The Nashawtuc Country Club follows all regulations dealing with hazardous waste disposal.	
II.i.	Members of the Commission, and Commission staff, have the right of entry.	

II.j.	All equipment used is stored and maintained properly onsite in an upland area (the maintenance facility). The Nashawtuc Country Club follows all regulations dealing with hazardous waste disposal.	
II.k.	BSC Group, Inc. was the environmental monitor for the project.	
II.l.	Condition absent.	
II.m.	A timetable was submitted to the Commission. Reports from the environmental monitor were not prepared. We apologize for this oversight.	
II.n.	The area has reached 90% re-vegetation. We are assessing the coverage by natives planted, recruitment, and invasives.	
III.a.	Erosion controls were put in place prior to the restoration process.	
III.b.	Erosion controls were put in place prior to the restoration process and maintained throughout the stabilization of the area.	
III.c.	Erosion controls were put in place prior to the restoration process.	
III.d.	There was no disturbance beyond the restoration areas.	
III.e.	Erosion controls were put in place prior to the restoration process.	
III.f.	Wood chips and/or bark mulch were not used on this project.	
IV.a.	Plans presented in the NOI were not modified. The project was built as proposed.	
IV.b.	Plans presented in the NOI were not modified.	
IV.c.	There was no additional disturbance to any resource areas or buffer zones.	
IV.d.	The project was built as proposed.	
V.a.	Reports from the environmental monitor are attached.	
V.b.	N/A	



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Page: 1 of 17 10/26/2016 08:55 AM



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

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

Provided by MassDEP:  
301-1187

MassDEP File #

eDEP Transaction #

Sudbury

City/Town

**A. General Information**

Please note:  
this form has  
been modified  
with added  
space to  
accommodate  
the Registry  
of Deeds  
Requirements

1. From: Sudbury  
Conservation Commission
2. This issuance is for  
(check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions
3. To: Applicant:

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



a. First Name Nashawtuc Country Club b. Last Name \_\_\_\_\_  
c. Organization \_\_\_\_\_  
d. Mailing Address 1861 Sudbury Road  
e. City/Town Concord f. State MA g. Zip Code 01742

4. Property Owner (if different from applicant):

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_  
c. Organization \_\_\_\_\_  
d. Mailing Address \_\_\_\_\_  
e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

5. Project Location:

a. Street Address 1861 Sudbury Rd. b. Concord (filing pertains to portion of property in Sudbury)  
c. Assessors Map/Plat Number D13 d. Parcel/Lot Number 0300  
Latitude and Longitude, if known: 42d24'42m12Ns 71d22'30m63Ws  
d. Latitude e. Longitude

BSC Companies, Inc.  
15 Eikins St  
Boston, MA 02124





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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**A. General Information (cont.)**

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Middlesex

a. County

9613

c. Book

b. Certificate Number (if registered land)

242

d. Page

7. Dates: June 20, 2016 July 11, 2016 Aug. 8, 2016 (DD)

a. Date Notice of Intent Filed

b. Date Public Hearing Closed

c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Nashawtuc Country Club 3<sup>rd</sup> Tee Area Restoration

a. Plan Title

BSC Group

b. Prepared By

- (submitted with NOI)

d. Final Revision Date

c. Signed and Stamped by

e. Scale

Nashawtuc Country Club 13<sup>th</sup> Tee Area Restoration

f. Additional Plan or Document Title

g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution  
d. ☒ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat  
g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved** subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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**B. Findings (cont.)**

**Denied because:**

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) a. linear feet

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	e. c/y dredged 6465	f. c/y dredged 6465		
Cubic Feet Flood Storage	a. square feet 0	b. square feet	c. square feet	d. square feet
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet 5925	d. cubic feet 5925	e. cubic feet	f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront Area	a. total sq. feet 2900	b. total sq. feet 2900	2900	2900
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	3025	3025	3025	3025
	g. square feet	h. square feet	i. square feet	j. square feet



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**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
	<u>                    </u> c. c/y dredged	<u>                    </u> d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. nourishment cu yd	<u>                    </u> d. nourishment cu yd
14. <input type="checkbox"/> Coastal Dunes	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. nourishment cu yd	<u>                    </u> d. nourishment cu yd
15. <input type="checkbox"/> Coastal Banks	<u>                    </u> a. linear feet	<u>                    </u> b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
	<u>                    </u> c. c/y dredged	<u>                    </u> d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	<u>                    </u> a. c/y dredged	<u>                    </u> b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
22. <input type="checkbox"/> Riverfront Area	<u>                    </u> a. total sq. feet	<u>                    </u> b. total sq. feet		
Sq ft within 100 ft	<u>                    </u> c. square feet	<u>                    </u> d. square feet	<u>                    </u> e. square feet	<u>                    </u> f. square feet
Sq ft between 100-200 ft	<u>                    </u> g. square feet	<u>                    </u> h. square feet	<u>                    </u> i. square feet	<u>                    </u> j. square feet



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**B. Findings (cont.)**

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. The work is a maintenance dredging project as provided for in the Act; or
  - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on \_\_\_\_\_ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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**C. General Conditions Under Massachusetts Wetlands Protection Act**

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
"File Number            301-1187            "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1) ☐ is subject to the Massachusetts Stormwater Standards
  - (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

**If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
  - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
  - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
  - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

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

Provided by MassDEP:

301-1187

MassDEP File #

eDEP Transaction #

Sudbury

City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

n/a

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

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

Provided by MassDEP:

301-1187

MassDEP File #

eDEP Transaction #

Sudbury

City/Town

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Sudbury hereby finds (check one that applies):  
Conservation Commission

- a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Sudbury Wetlands Administration Bylaw

Art. XXII

1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See attached Special Conditions for both WPA and local wetlands bylaw



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

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

Provided by MassDEP:

301-1187

MassDEP File #

eDEP Transaction #

Sudbury

City/Town

**E. Signatures**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

*Aug. 23, 2016*

1. Date of Issuance

*5*

2. Number of Signers

Signatures:

*Cherie* *Cherie Pyss*  
*Myang (Armstrong)*  
*MARK SEVIER*

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

*Aug. 23, 2016*

Date

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

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

Provided by MassDEP:

301-1187

MassDEP File #

eDEP Transaction #

Sudbury

City/Town

**G. Recording Information**

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Sudbury  
Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To: Sudbury  
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

1861 Sudbury Rd  
Project Location

301-1187  
MassDEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex  
County

68274  
Book

556  
Page

for: Nashawtic Country Club  
Property Owner

and has been noted in the chain of title of the affected property in:

9613  
Book

242  
Page

In accordance with the Order of Conditions issued on:

8/23/16  
Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

**ORDER OF CONDITIONS - M.G.L. Chapter 131 s. 40 Wetlands Protection Act and  
Sudbury Wetlands Administration Bylaw  
DEP FILE #301-1187  
1861 Sudbury Rd., Concord MA  
Nashawtuc Country Club; applicant**

**July 27, 2016**

The Sudbury Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the Sudbury Wetlands Administration Bylaw and its corresponding regulations to protect those interests referenced in this Order. To aid in implementation, compliance, and enforcement the specific conditions are divided into several broad categories for reference.

The Sudbury Conservation Commission orders that all work shall be performed in accordance with said conditions and with the Notice of Intent. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

**Findings:**

The Notice of Intent was submitted for after-the fact restoration of several areas of encroachment into wetland jurisdiction of bordering vegetated wetland, adjacent upland resource area (AURA under the wetland bylaw), the WPA buffer zone, two riverfront area, and floodplain. The riverfront areas are associated with the Sudbury River on the east side of the property and Cold Brook on the west side. The encroachment consisted of vegetation removal including tree and shrub clearing. Most of the vegetation that was cut consisted of invasive species.

The Commission finds that the encroachment into wetland and upland areas regulated under the WPA and SWAB constituted a violation of both WPA and SWAB regulations. The applicant did not attempt to overcome the presumptions of importance of the regulated jurisdictional areas. The NOI proposes restoration and mitigation of the encroachment. Mitigation includes the removal of invasive plant species and the planting of native plants.

This Order does not confirm the locations of the wetland or upland resource areas shown on the referenced plans.

Therefore, the Sudbury Conservation Commission approves the referenced plans and accompanying NOI narrative, subject to conditions below. Specific conditions for the timing of the restoration are addressed in the Special Conditions below.

**SPECIAL CONDITIONS:**

**1. CONDITIONS IN PERPETUITY:**

The following conditions shall be recorded at the Registry of Deeds as part of this Order of Conditions and shall continue in perpetuity and be included on the Certificate of Compliance. Owners of this property shall be made aware of restrictions in perpetuity on the activities allowed on this property. If the property owner has good cause to request an amendment to the conditions in perpetuity, he/she shall have the right to make a request for an amendment to the issuing authority. If, in the judgement of the issuing authority, the proposed activities will not detrimentally impact the wetland resource area functions, this Order, or the Certificate of Compliance shall be amended.

- a. Wetlands are located on this property that are subject of the Massachusetts Protection Act (Chapter 131, section 40) and the Sudbury Wetlands Administration Bylaw. Any work within a wetland resource area or within 100' of a wetland resource area requires review and approval by the Sudbury Conservation Commission prior to the commencement of such work.
- b. No fertilization of any wetland resource area is allowed.
- c. Only native plants from the Sudbury Conservation Commission's Native Plant Species List may be installed within the restoration areas.

## **II. GENERAL PROJECT CONDITIONS:**

### **PART I**

These conditions apply to all projects permitted by the Sudbury Conservation Commission. They shall remain in force until issuance of a Certificate of Compliance by the Commission. A violation of any of these conditions shall constitute reason for enforcement action by the issuing authority:

- a. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
- b. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
- c. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, by-laws, or regulations.
- d. No work shall be undertaken until all administrative appeal periods from the date of issuance of this Order have elapsed or, if such an appeal has been filed, until all proceedings before Superior Court have been completed.
- f. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the final Order shall also be noted on the Land Court Certificate of title of the owner of the land upon which the proposed work is to be done.

The recording information shall be submitted to the Commission on the form at the end of the Order, or other form acceptable to the Commission, **within twenty days of the issuance of this Order or prior to the start of restoration work, whichever is sooner.**
- i. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File #301-1187".

### **PART II**

- a. All work must conform to the plans referenced, the Notice of Intent, and this Order of Conditions. In case of conflict, the requirements in this Order shall prevail.
- b. No spoils of construction, construction material, or equipment shall be stored, placed or operated in the wetland resource areas or the wetland buffer zone, except as authorized by this Order of Conditions.

- c. The project engineer, contractors, and all subcontractors must be informed of the conditions in this Order.
- d. A copy of this Order of Conditions and the referenced plans, must be available at all times at the construction site for reference.
- e. The applicant is held responsible for compliance with this Order of Conditions. The Sudbury Conservation Commission shall be notified, in writing, within forty-eight hours of any transfers of title on this property.
- f. This Order of Conditions shall apply to any successor in control, or successor in interest, of the property described in the Notice of Intent and accompanying plans.
- g. The site must be maintained in such a manner as to prevent any debris or refuse from entering the wetland resource area.
- h. Used petroleum products from the operation or maintenance of construction equipment shall be collected and disposed of off-site immediately in a manner consistent with all local, state and federal regulations.
- i. Members and agents of the Sudbury Conservation Commission shall have the right to enter and inspect the property to evaluate compliance with the conditions stated in this Order.
- j. Equipment shall be stored in such a manner so no pollutants are introduced into any wetland resource areas, or the 100' upland resource area.

#### **Environmental Monitor**

k. The applicant shall engage a qualified Environmental Monitor, approved by the Commission, to oversee the restoration process, including erosion control installation, replanting, invasive plant species removal; and monitoring of the site until a Certificate of Compliance is issued. The name and contact number of the EM shall be submitted to the Commission on or before **September 1, 2016, or prior to the start of restoration work, whichever occurs first.**

#### **Timing of Restoration Activities**

##### **Timeframes**

- m. A **timetable** for activities associated with the restoration of this property must be submitted to the Commission for review and approval **on or before Aug. 22, 2016.** At a minimum, this timetable **shall** include the following:
  - a. All replanting and invasive species removal completed and submission of a report of planting activity from Environmental Monitor due to the Commission by **October 30, 2016,** unless an extension is granted, in writing, by the Commission.
  - b. Reports from the Environmental Monitor **after each growing season** (spring and fall) until a Certificate of Compliance is issued.
- n. The native species restoration planting will be considered successful once the area is covered by 90% regrowth of appropriate native species and no invasive plants are growing within this area. The Commission reserves the right to require additional or alternative plantings with the goal of providing full coverage of the restoration area and discourage the colonization of this area by invasive plants in the future.

### **III. EROSION, SEDIMENTATION, STABILIZATION CONDITIONS**

- a. Siltation fencing and/or haybales, or other Conservation Commission approved form of erosion control shall be properly installed and maintained to prevent erosion into any wetland resource area. The erosion control shall be monitored to ensure it functions to prevent erosion. All sediments shall be removed regularly.
- b. All erosion and stabilization control measures shall be maintained to ensure their complete effectiveness for the duration of the project. Erosion control must remain in place until the issuance of a Certificate of Compliance, or the Sudbury Conservation Commission deems, in writing, that prior removal of erosion control measures is appropriate.
- c. All stabilization measures and runoff velocity controls shall be constructed in accordance with Soil Conservation Service guidelines and this Order of Conditions.
- d. There shall be no disturbance beyond any designated erosion control except as permitted under this Order..
- e. Erosion control shall be in place prior to the start of any activities on this property subject to this Order.
- f. No wood chips or bark mulch are to be used for temporary or permanent stabilization of slopes within a resource area.

#### **IV. PLAN MODIFICATIONS:**

- a. Any modifications or revisions to the plans referenced, or any new plans, must be submitted to the Commission for review and a determination as to whether a new Notice of Intent is required. If this procedure is not followed, this Order may be amended. No additional work not specifically allowed by this Order shall be accomplished on the site without the approval of the Sudbury Conservation Commission and the appropriate new filings or amendment requests are approved. Amendment procedures as described in the Wetlands Protection Act, the regulations, and the Department of Environmental Protection's Wetlands Program Policies shall be followed.
- b. The Commission reserves the right to require the filing of a new Notice of Intent for any plan changes or submittals for activities that fall under the jurisdiction of the Wetlands Protection Act.
- c. No additional new construction or disturbance of a wetland resource area, as defined in the Wetlands Protection Act and its regulations, or within the 100' wetland resource area buffer zone, not covered by this Order of Conditions, shall be permitted on this site until a determination has been made by the Commission as to whether a new Notice of Intent is required, and the new work or disturbance is incorporated into a new or amended Order of Conditions.
- d. Should the Sudbury Conservation Commission become aware of work on site being accomplished that was not approved as part of the Order of Conditions or subsequent amendments, the Commission reserves the right to require a new Notice of Intent. The plan filed with the new Notice of Intent must be based on an interim as-built plan prepared by a registered engineer. The new Notice must provide a detailed description of the discrepancies between the approved plan and the site conditions to date. The Commission reserves the right to require as part of the interim as-built plan, but not be limited to requiring, new topography survey, new drainage calculations, building footprints, and details or all disturbance within the wetland resource and the 100' wetland buffer zone.

#### **V. CERTIFICATE OF COMPLIANCE REQUIREMENTS:**

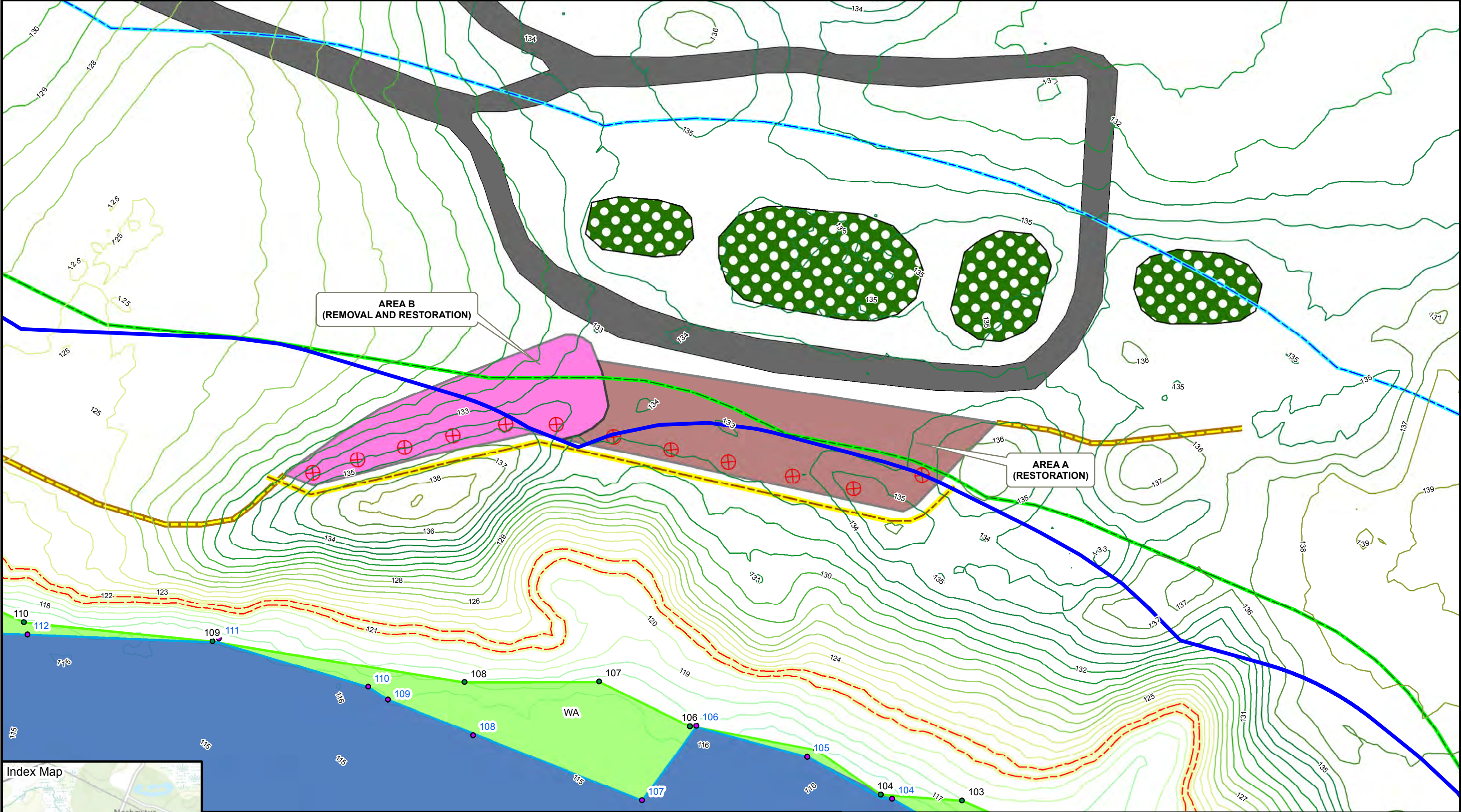
a. Following completion of restoration and stabilization of all disturbed areas within 100' of the wetland resources, a final report from the Environmental Monitor shall be submitted to the Commission at the same time as a written request for a Certificate of Compliance, and shall specify how the completed plan differs from that shown on the plans referred to in the Order of Conditions.

The report shall detail all changes or disturbances within the wetland resource area or within the 100' buffer zone/adjacent upland of the wetland resource area, including but not limited to changes in topography, limits of alteration, extent of lawn and landscaping, location of all structures, and the status of invasive plant species and the status of the restoration planting area..

b. The Sudbury Conservation Commission will consider issuing status or progress reports for projects under construction provided an interim as-built plan, an engineer's written report, and a site inspection can all be submitted or accomplished.

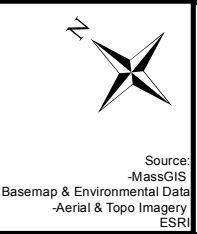
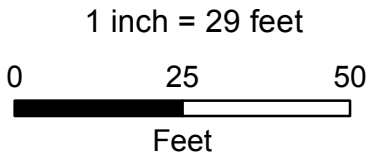
This Decision of the Sudbury Conservation Commission under the bylaw shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.





- Legend**
- Shrubs
  - Field Delineated Wetland Point
  - Field Delineated Riverbank Point
  - 121-122 ft LIDAR Contours
  - Existing Shrub/Tree Line
  - Erosion Controls
  - Field Delineated Riverbank
  - Field Delineated Wetland Line
  - Field Delineated Wetlands
  - 100ft Riparian Zone
  - 200ft Riverfront Area
  - 100ft Wetland Buffer Zone

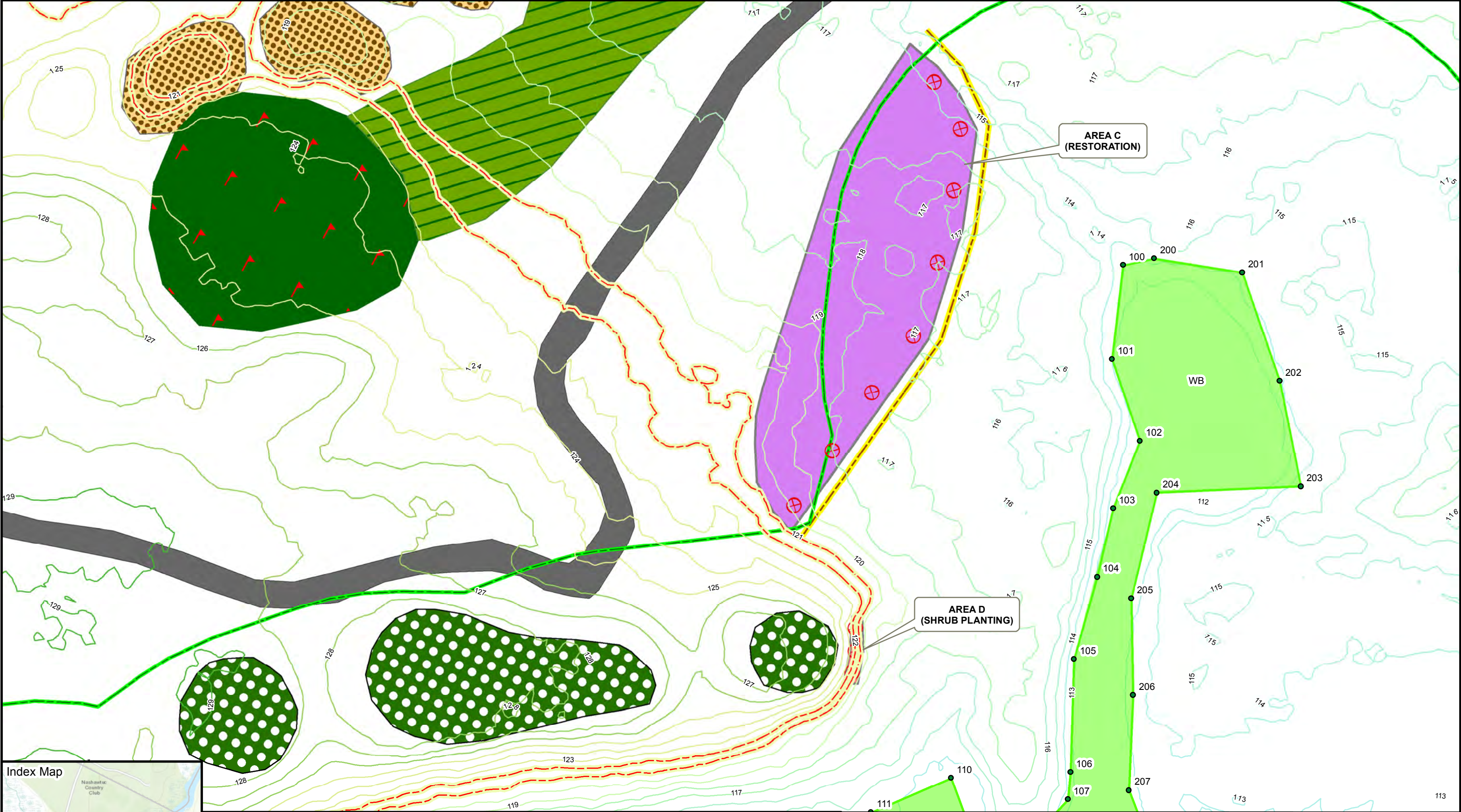
- Course Features**
- Tee
  - Cart Path



**NASHAWTUC COUNTRY CLUB**  
**3rd Tee Area Restoration**  
Sudbury, MA







**Legend**

- Shrubs
- Field Delineated Wetland Point
- 121-122 ft LIDAR Contours
- Erosion Controls
- Field Delineated Riverbank
- Field Delineated Wetland Line
- Field Delineated Wetlands
- 200ft Riverfront Zone
- 100ft Wetland Buffer Zone

**Course Features**

- Greens
- Cart Path
- Tee
- Fairway
- Green
- Bunker

1 inch = 30 feet

0 30 60 Feet

Source:  
-MassGIS  
Basemap & Environmental Data  
-Aerial & Topo Imagery  
ESRI

**NASHAWTUC COUNTRY CLUB**

**13th Tee Area Restoration**

Sudbury, MA

NASHAWTUC COUNTRY CLUB

BSC GROUP





July 31, 2018

Thomas Friedlander, Chairman  
Sudbury Conservation Commission  
275 Old Lancaster Road  
Sudbury, MA 01776

Re **Notice of Intent – Subsurface Investigation**  
**Sudbury- Hudson Transmission Reliability Project**  
MassDEP File No. NE 301- 1231  
File No. P4304.3

Mr. Friedlander and Commissioners:

Nover-Armstrong Associates, Inc. (Nover-Armstrong) reviewed the Notice of Intent (NOI), associated plans and documents for the subsurface investigation proposed along the MBTA Right-of-Way (ROW) / Central Mass Railroad in Sudbury, Massachusetts and provided comment in May 2018. Since then, the Applicant and their representatives from VHB met with members of the Commission, their Agent Deb Dineen and Nover-Armstrong on the MBTA right-of-way (ROW) in Hudson during the similar subsurface exploration activities to observe and have submitted a written response to the Commission's and our initial comments.

As described in the NOI and the July 16, 2018 *Response to Comments* prepared by VHB (the VHB Response), the subsurface exploration activities proposed within the ROW in Sudbury, extends from the Hudson town line east to the Sudbury Substation and includes the advancement of soil borings using various methods and construction of groundwater monitoring wells within selected bore holes. The documents explain that the work is necessary to gather geotechnical and potential contamination information to support the design of the proposed transmission line. As described in the VHB Response, the work will result in the removal of 36 trees, shrubs and saplings along the ROW including some sections of invasive species.

#### **Review Summary**

The VHB Response to Nover-Armstrong's May 24, 2018 written comments and concerns and questions expressed by the Commission were comprehensive. It reasonably presented existing and proposed conditions resulting from the work as well as providing updated information relative to the NHESP opinion decision and compliance with state and bylaw Performance Standards. Like all construction activities, situations will arise that will require deviations but it is assumed that if the Commission issues an Order of Conditions approving the work, they will have a representative on-site at all times to assess any such changes.

During the June on-site in Hudson, the Commission observed the advancement of a soil boring as well as the ROW section used by the equipment to access the drilling location. The VHB Response as well as verbal statements by VHB describes that the equipment / machinery will be the same or similar and the ground disturbance at the drill sites will be the same. There are sections of the ROW in Sudbury that are more densely vegetated than that observed by the Commission during the Hudson site visit, and those areas

are described in the VHB Response. The construction monitors should be able to limit additional vegetation clearing during the access and drilling activities.

While much of the subsurface work could be considered a Minor Project as defined in 310 CMR 10.02(2)(b)(2)(g), some of the work appears to involve work on bordering land subject to flooding (BLSF) and therefore, not exempt from the state Wetlands Protection Act. There is no exemptions for these activities under the local Bylaw.

The general performance standard for Commission's when reviewing a project and its effect on resource areas is to determine if the project could be avoided and if it can't be avoided, then minimizing impacts to the extent possible and practical. If the Massachusetts Energy Facility Siting Board (EFSB) does not approve the siting of the Sudbury-Hudson Transmission Reliability Project, then the work subject to this NOI could be avoided. However, the Commission should consider the timing of the work relative to best ground conditions, nesting, vernal pool breeding and general weather conditions when they are conditioning the project. Delaying the work until the EFSB makes their Siting decision could cause unintended consequences relative to the timing of the work.

Since the Applicant has not provided updated plans to depict the revised state and local resource area boundaries and 100-foot buffer zones, the Commission does not have sufficient information to describe the site, the work, and the effect of the work on the interests identified in the Act and Bylaw. Since the ANRAD hearing process is nearing completion and the limits of protection and jurisdiction is more accurately defined, the Commission should require that the Applicant use the updated resource area boundaries on the subsurface exploration NOI plans and where necessary, provide revised impact quantification numbers for the Commission to use in their Order of Conditions prior to approving the project with added Special Conditions.

### **Recommendations**

Once the Applicant updates the NOI plan set with the updated resource area boundaries based on the ANRAD proceedings, we believe the Commission will have sufficient information to issue an Order of Conditions. If the Commission votes to approve the project, we recommend the following Special Conditions in addition to other standard Conditions:

1. Require that the Applicant provide a third party construction monitor approved by the Commission who works directly under the Commission's and/or their Agents direction. This independent representative shall observe all equipment access and drilling activities to insure that no additional vegetation clearing or impact to state and/or local resource areas beyond that permitted by the Order of Conditions occurs.
2. Include time of year restrictions for the work to be performed to project nesting and breeding activities.
3. Any substantial deviations from the approved scope and project limits shall be approved by the Commission and / or their Agent as appropriate. If the Commission or their Representative determines the deviations cannot be approved as a field change, then an Amended Order of Conditions or new Notice of Intent may be required.
4. Trees to be removed shall be marked as described in the VHB Response. Tree marking paint shall be used.

5. Invasive species removal shall be conducted in a manner not to cause inadvertent spread of the invasive species on site or off-site. The Commission's representative should be experienced in invasive species management to ensure the Applicant is handling the removal and disposal properly. The Commission may also require that a site specific invasive species management specification be submitted for approval prior to conducting the work.
6. The Commission shall be notified of any documented DEP Reportable Condition resulting from soil or groundwater chemical testing conducted as part of the Order.
7. No discharge of groundwater or drill wash waters to the environment shall occur. All drill water shall be collected and disposed of off-site properly.
8. All materials used for "cribbing" as described at the Hudson site visit and in the VHB Response shall be delivered and removed so that no additional vegetation clearing results. All "cribbing" materials shall be placed so that there is no safety concern to the public and shall be removed immediately once the work is completed.
9. Trees, saplings and shrubs should be cut flush to the ground, to protect public health and safety for recreational users of the railroad platform trail.

We will be available at the August 6, 2018 public hearing to discuss our recommendations with the Commission.

Sincerely,  
**Nover-Armstrong Associates, Inc.**

A handwritten signature in black ink, appearing to read "Marta J. Nover". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marta J. Nover  
Principal

cc. Katie Kinsella, VHB  
Denise Bartone, Eversource Energy