



Massachusetts Department of Environmental Protection

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Transaction ID: **1570787**

Document: **WPA Form 5 - OOC**

Size of File: **135.01K**

Status of Transaction: **Submitted**

Date and Time Created: **5/26/2023:10:16:16 AM**

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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:
 MassDEP File #:286-0298
 eDEP Transaction #:1570787
 City/Town:SHUTESBURY

A. General Information

1. Conservation Commission SHUTESBURY

2. Issuance a. OOC b. Amended OOC

3. Applicant Details

a. First Name	MARY ANNE	b. Last Name	ANTONELLIS
c. Organization	TOWN OF SHUTESBURY		
d. Mailing Address	10 COOLEYVILLE ROAD, PO BOX 256		
e. City/Town	SHUTESBURY	f. State	MA
		g. Zip Code	01072

4. Property Owner

a. First Name	MARY ANNE	b. Last Name	ANTONELLIS
c. Organization	TOWN OF SHUTESBURY		
d. Mailing Address	10 COOLEYVILLE ROAD, PO BOX 256		
e. City/Town	SHUTESBURY	f. State	MA
		g. Zip Code	01072

5. Project Location

a. Street Address	66 LEVERETT ROAD		
b. City/Town	SHUTESBURY	c. Zip Code	01072
d. Assessors Map/Plat#	O	e. Parcel/Lot#	32
f. Latitude	42.45099N	g. Longitude	72.41545W

6. Property recorded at the Registry of Deed for:

a. County	b. Certificate	c. Book	d. Page
FRANKLIN		4708	107

7. Dates

a. Date NOI Filed : 5/5/2023 b. Date Public Hearing Closed: 5/25/2023 c. Date Of Issuance: 5/26/2023

8. Final Approved Plans and Other Documents

a. Plan Title:	b. Plan Prepared by:	c. Plan Signed/Stamped by:	d. Revised Final Date:	e. Scale:
WETLAND RESTORATION OVERVIEW (FIGURE 2)	FUSS & O'NEILL		May 2023	
BVW RESTORATION PLAN (FIGURES 3-1 AND 3-2)	FUSS & O'NEILL		May 2023	

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the 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.

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Check all that apply:

a. <input checked="" type="checkbox"/> Public Water Supply	b. <input checked="" type="checkbox"/> Land Containing Shellfish	c. <input checked="" type="checkbox"/> Prevention of Pollution
d. <input checked="" type="checkbox"/> Private Water Supply	e. <input checked="" type="checkbox"/> Fisheries	f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat
g. <input checked="" type="checkbox"/> Ground Water Supply	h. <input checked="" type="checkbox"/> Storm Damage Prevention	i. <input checked="" type="checkbox"/> Flood Control

2. Commission hereby finds the project, as proposed, is:

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.

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 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 interests of the Act, 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 310CMR10.02(1)(a). a. linear feet

Inland Resource Area Impacts:(For Approvals Only):

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u> </u> a. linear feet	<u> </u> b. linear feet	<u> </u> c. linear feet	<u> </u> d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>1355</u> a. square feet	<u>1355</u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
6. <input type="checkbox"/> Land under Waterbodies and Waterways	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
	<u> </u> e. c/y dredged	<u> </u> f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
Cubic Feet Flood Storage	<u> </u>	<u> </u>	<u> </u>	<u> </u>

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	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u> </u>	<u> </u>		
	a. square feet	b. square feet		
Cubic Feet Flood Storage	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u> </u>	<u> </u>		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	g. square feet	h. square feet	i. square feet	j. square feet

Coastal Resource Area Impacts:

Resource Area	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>	<u> </u>		
	a. square feet	b. square feet		
	<u> </u>	<u> </u>		
	c. c/y dredged	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>	<u> </u>	<u> </u>	<u> </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
14. <input type="checkbox"/> Coastal Dunes	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
15. <input type="checkbox"/> Coastal Banks	<u> </u>	<u> </u>		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u> </u>	<u> </u>		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u> </u>	<u> </u>		
	a. square feet	b. square feet		
	<u> </u>	<u> </u>		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	a. square feet	b. square feet	c. square feet	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>	<u> </u>	<u> </u>	<u> </u>

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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 : "286-0298"

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 Mass DEP.
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.
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.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order(the "Project") is (1) is not (2) subject to the Massachusetts Stormwater Standards. If the work is subject to 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 Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 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

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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; *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 19(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 Pollutant 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 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(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.
- 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.

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- 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:

SEE ATTACHED FINDINGS AND SPECIAL CONDITIONS FOR ORDER OF CONDITIONS FOR 286-0298, 5/26/23.

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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No

2. The Conservation Commission hereby (check one that applies):

a. DENIES the proposed work which 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 or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. APPROVES the proposed work, subject to the following additional conditions.

SHUTESBURY
GENERAL
WETLANDS
PROTECTION
BYLAW

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:
SEE ATTACHED FINDINGS AND SPECIAL CONDITIONS FOR ORDER OF CONDITIONS FOR 286-0298,
5/26/23.

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E. Signatures

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions. 5/26/2023
1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission. 5
2. Number of Signers

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.

Signatures:	_____	Scott Kahan	_____
Miriam DeFant	_____	Beth Willson	_____
Mary David	_____		_____
Robin Harrington	_____		_____
<input type="checkbox"/> by hand delivery on	_____	<input type="checkbox"/> by certified mail, return receipt requested, on	_____
Date	_____	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.

G. Recording Information

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

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subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

SHUTESBURY
Conservation Commission

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

To:
SHUTESBURY
Conservation Commission

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

66 LEVERETT ROAD
Project Location

286-0298
MassDEP File Number

Has been recorded at the Registry of Deeds of:

<u>County</u>	<u>Book</u>	<u>Page</u>
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for:
Property Owner MARY ANNE ANTONELLIS

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

<u>Book</u>	<u>Page</u>
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In accordance with the Order of Conditions issued on:

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

Rev. 4/1/2010

CERTIFICATE OF VOTE AUTHORIZING SIGNATURES PURSUANT TO M.G.L. c.110G

On May 14, 2020, the Shutesbury Conservation Commission met in open session through publicly accessible video-conference software, pursuant to the "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20," issued by Governor Charles D. Baker on March 12, 2020. At this duly held meeting, the following action was taken:

Motion: Shutesbury Conservation Commission hereby recognizes and accepts the provisions of M.G.L. c.110G regarding electronic signatures and that its members will henceforth execute documents either with electronic signatures or with wet ink signatures and that both will carry the same legal weight and effect. Motion was seconded.

Roll Call vote:

Commissioner Penny Jaques: aye
Commissioner Russ Mizula: aye
Commissioner Robin Harrington: aye
Commissioner Liam Cregan: aye
Vote was Unanimous

The above is a true and accurate account of the proceedings of the Conservation Commission.

Title/Signature: Alice P. Jaques Date: 20 May, 2020

Commonwealth of Massachusetts
County of Franklin, ss.

On this 20 of May, 2020, before me, personally appeared Alice P. Jaques, Chair of said Conservation Commission, as aforesaid, and proved to me through satisfactory evidence of identification, which was Personally Known to me to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Town of Shutesbury.

Susan Mosher
Notary Public

My Commission Expires: 4/1/2022

Certified by Town/City Clerk:

Susan Mosher Date: May 20, 2020
Susan Mosher



SPECIAL CONDITIONS for Notice of Intent for 66 Leverett Road/Lot O-32

DATE: 5/26/2023

DEP File Number: 286-0298

LANDOWNER: TOWN OF SHUTESBURY

FINDINGS OF FACTS

1. The Shutesbury Conservation Commission (hereafter, “the Commission) finds that the proposed project lies within jurisdictional Resource Areas as defined by the Wetlands Protection Act (MGL Chapter 131, § 40), the Rivers Protection Act (MGL Chapter 268, Acts of 1996), the Wetlands Protection Act Regulations (310 CMR 10.00), and Shutesbury General Wetlands Protection Bylaw and Bylaw Regulations.
2. On March 10, 2023, the Commission issued an Order of Resource Area Delineation for this property, based on the figure set *"Wetland Flag Locations 66 Leverett Road Shutesbury, Massachusetts" Figure 3-1 and 3-2 and "Wetland Delineation Overview 66 Leverett Road Shutesbury, Massachusetts" Figure 2 prepared by Fuss and O'Neill February 2023 (last revised.)* These following findings are hereby incorporated. The following findings concern jurisdictional areas protected by both the Massachusetts Wetlands Protection Act (“WPA”) and the Shutesbury General Wetland Protection Bylaw (“the Bylaw”). Based on the figure set *"Wetland Flag Locations 66 Leverett Road Shutesbury, Massachusetts" Figure 3-1 and 3-2 and "Wetland Delineation Overview 66 Leverett Road Shutesbury, Massachusetts" Figure 2 prepared by Fuss and O'Neill February 2023 (last revised),* the Commission issued the following Findings in its March 10, 2023 Order of Resource Area Delineation:
 - a. The Commission approves the boundary of 100-foot Buffer Zone (also known as the Adjacent Upland Resource Area or AURA) within the ANRAD Review Area boundary, including the no-contest Buffer Zone boundaries, but **excluding** the Buffer Zone boundary associated with the BVW boundary between flags wf 3a-114 and wf 3a-115. The BVW boundary between flags wf 3a-114 and wf 3a-115 has not been established, reviewed, and approved. Therefore, the associated Buffer Zone boundary has not been established, reviewed, and approved.
 - b. The Commission approves the boundary of the Bordering Vegetated Wetland BVW 2 extending from the property lines and demarcated by flags wf 2a-101 through and including wf 2a-105.
 - c. The Commission approves the boundary of the Bordering Vegetated Wetland BVW 3 extending from the property lines and demarcated by flags wf 3b-101 through and including wf 3b-113 (joins wf 3a-100); wf 3a-100 through and including wf 3a-114; and wf 3a-115 through and including wf 3a-117. The Commission does **not** approve the BVW boundary between flags wf 3a-114 and wf 3a-115.
 - d. Bordering Vegetated Wetlands BVW 2 and BVW 3 are Protected Resource Areas under the WPA and the Bylaw, and their associated Regulations.
 - e. The AURAs of BVW 2 and BVW 3 are Protected Resource Areas under the Shutesbury General Wetlands Protection Bylaw and its Regulations. Any significant alterations of the AURA must be approved by the Commission.

3. The Commission finds that the BVW 2 has been impacted by the unauthorized, post-1965 and 1972 placement of a fill pile within the BVW as noted on Page 5 of the “*Massachusetts Inland Resource Area Delineation Report*” prepared by Fuss and O’Neill (last revised February 1, 2023). The Commission finds that the BVW 2 must be restored.
4. The Commission finds that the BVW proximal to flags wf 3a-114 and wf 3a-115 has been impacted by the unauthorized, post-1965 and 1972 placement of fill within the BVW. The Commission finds that the BVW proximal to flags wf 3a-114 and wf 3a-115 must be restored and the BVW boundary established per 310 CMR 10.55(2)(c)3.
5. The Commission finds that the AURA of BVW 2 contains unauthorized, post-1965 and 1972 placement of fill which the Applicant chooses not to restore at the present time. The fill consists of buried trash and debris. The Commission finds that the AURA of BVW 2 must be restored at some later time.
6. The Commission finds that BVW 3 and the surrounding AURA contain additional unauthorized, post-1965 and 1972 placement of fill in the vicinity of flags 3a-114 and wf 3a-115 which the Applicant chooses not to restore at the present time. The fill consists of solid waste, buried trash and debris. The Commission observed on a May 24, 2023 site visit that there is considerable debris, both surficial and buried, in BVW 3, and in the AURA of BVW 3. The Commission finds that this portion of BVW 3 must be restored at some later time.
7. The Commission finds that there is a large slash pile of brush, stumps, roots, and logs in the vicinity of BVW 3, near the BVW 3 flag wf 3a-115. The Commission finds that this debris has been deposited without approval by the Commission and constitutes an alteration of a protected Resource Area under the Bylaw. The Commission further finds that this material must be removed from any area subject to the jurisdiction of the Commission under the WPA or Bylaw, including the AURA of any wetland.
8. The Applicant proposes to remove up to 1,355 square feet of fill from BVW 2 (630 square feet of restoration) and BVW 3 (up to 725 square feet of restoration) as part of a Wetland Resource Area Restoration/Enhancement Project. Proposed restoration includes removal of fill, installation of native trees and shrubs, and native plant seeding. Prior to planting, the Applicant proposes to amend the topsoil in the excavated portion of BVW 2 and BVW 3 with six (6) inches of amended soils composed of a mix of loam and leaf compost.
9. As part of the project, the Applicant proposes to investigate the extent of fill in BVW 3 and to document the wetland boundary between BVW 3 flags wf 3a-114 and wf 3a-115 via soil test pits and investigation of the boundary of any buried hydric soils, should they be discovered.
10. Work permitting under this Order of Conditions shall conform to the following plans and documents: “Wetland Restoration Overview (Figure 2),” “BVW Restoration Plan (Figure 3-1),” and “BVW 3 Restoration Plan (Figure 3-2),” prepared by Fuss & O’Neill, dated May 2023.
11. The Commission finds there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests identified in M.G.L. c. 131 § 40 and the Shutesbury General Wetlands Protection Bylaw.

12. The Commission finds that the Applicants have rebutted the presumption of an adverse effect on the Protectable Resource Areas, contingent upon this Order of Conditions with the Special Conditions below.

GENERAL CONDITIONS

1. A member of the Conservation Commission or its agent may enter and inspect the property and the activity that are the subjects of this Order at all reasonable times, with or without probable cause or prior notice, and until a Certificate of Compliance is issued, for the limited purpose of evaluating compliance with this Order.
2. The term “Applicant” as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and these Special Conditions/Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance.
3. This document shall be included by reference in all contracts, plans and specifications dealing with the activity that is the subject of this Order, and that are created or modified after the issuance date of this Order, along with a statement that this Order shall supersede any conflicting contractual arrangements, plans or specifications.
4. The Applicant shall provide a copy of this Order to the person or persons supervising the activity that is the subject of this Order and shall be responsible for ensuring that all persons performing the permitted activity are fully aware of the terms and conditions of this Order.
5. Any person performing work on the activity that is the subject of this Order is individually responsible for understanding and complying with the requirements of this Order, the Act, 310 CMR 10.00 (and Shutesbury General Wetlands Protection Bylaw and local Wetland Bylaw Regulations).
6. This Order authorizes only the activity described on the approved plan(s) and approved documents referenced in this Order. If any change is made in the above-described plan(s) which may or will alter an area subject to protection under the Wetlands Protection Act, 310 CMR 10.00 (and the Shutesbury General Wetlands Protection Bylaw and Bylaw Regulations), the Applicant shall inquire from this Commission or its agent, prior to implementing the change in the field, whether the change is significant enough to require the filing of a new Notice of Intent or an Order of Conditions. Any errors in the plans or information submitted by the Applicant shall be considered changes and the above procedures shall be followed.
7. The Commission shall receive in writing a letter with an original signature from the Applicant, no later than 30 days from the issuance of this Order and before the commencement of any work under this Order, stating that they have read the Order of Conditions and understand the Conditions.
8. Prior to work commencing on the project, the Applicant shall submit to the Commission the credentials and proof of a contract with a qualified Environmental Professional, with expertise in wetlands delineation, soils science, and wetland restoration, who shall be responsible for overseeing and monitoring all activity within wetland Resource Areas and

AURAs under this Order of Conditions, including establishment of erosion controls, removal and disposal of fill, planting and seeding, mitigation of invasive species, and monitoring revegetation success. The terms of said contract shall ensure that the Environmental Professional is available to oversee this project until the Commission determines that the revegetation/restoration process has met the required standards for revegetation success in Condition # 34. The Commission must review and approve the choice of Environmental Professional. The Environmental Professional shall submit regular monitoring reports to the Conservation Commission per Conditions # 33 and # 35 below. The Environmental Professional shall immediately notify the Conservation Commission of any matter that requires review or approval by the Commission. The Applicant shall be responsible for ensuring that there is an ongoing contract with an approved Environmental Professional.

PRE-CONSTRUCTION PHASE CONDITIONS

9. Prior to any work commencing on the site, the applicant shall display the DEP file number for this Order on a sign with minimum dimensions of two feet by two feet at a location clearly visible from the street. The sign shall remain in place and visible until a Certificate of Compliance is issued for the activity.
10. Prior to the commencement of any activity on this site, erosion controls shall be installed as indicated on the approved site plan. The Applicant shall contact the Commission to arrange a Pre-Construction Site Visit to inspect the erosion controls. No other work may proceed until the Commission approves the erosion controls.
11. Additional straw bales shall be added as appropriate. No hay is permitted. Soil stabilization erosion matting shall be installed on all disturbed slopes greater than 3:1.
12. No clearing of vegetation or disturbance of soil shall occur prior to the approval of the erosion controls by the Commission. Minimal disturbance of shrubs and herbaceous plants is allowed if absolutely necessary to place erosion control where required.
13. The Applicant shall notify the Commission at least seven (7) days before the commencement of the excavation work so that the Commission or its representative can observe the excavation work for the restoration. The Applicant shall provide the name(s) and telephone number(s) of all person(s) responsible for compliance with this Order.

CONSTRUCTION-PHASE CONDITIONS

14. Wetland flagging of all Resource Areas shall be maintained on the site for the duration of the project. Flagging shall remain or be refreshed before any Certificate of Compliance may be granted by the Commission.
15. Limited tree and vegetation removal within the Resource Areas is approved by this Order. Removal of existing vegetation shall be kept to the minimum amount necessary for installation of erosion controls and removal of unpermitted fill. Removed vegetation, slash, or wood chips must be disposed of in a location outside of any jurisdictional area protected by the WPA or the Bylaw, including the AURA.

16. The approved erosion controls and flagged restoration areas shall serve at the limit of all work. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil, or construction activity is to occur beyond this line at any time.
17. Erosion controls shall remain in place in good condition for the duration of the project and until the site is fully stabilized and revegetated.
18. No trash dumpsters shall be allowed within any Resource Area or its AURA, subject to protection under the WPA or the Bylaw.
19. Erosion controls shall be routinely inspected by the Applicant and replaced/maintained as necessary to ensure they are functional for the duration of the project and until the site is fully stabilized. An adequate stockpile of erosion control materials shall be on site at all times for emergency or routine repairs.
20. Excavation and vegetation removal shall be scheduled for a period with no significant rain expected within 48 hours.
21. The approved Environmental Professional shall be on-site during the fill removal for the BVW 2 and BVW 3 restoration and to determine the extent of hydric (wetland) soils in the BVW 3 restoration area.
22. **30-Day Initial Report:** The Environmental Professional shall document at least two soil profile descriptions in the area between BVW 3 flags wf 3a-114 and wf 3a-115. The Environmental Professional shall also observe, note, and photo document (in color) the quantity of fill removed, the quality of the fill as it is removed, and any signs of potentially unclean fill (i.e., waste materials, trash, petroleum odors, etc.). Within thirty (30) days of the completion of the initial restoration work (i.e., excavation and planting/seeding), the Applicant shall submit to the Commission, a report by the Environmental Professional to the Commission with all the above-identified information.
23. Should the excavated fill be found to be saturated at the time of its removal, the fill shall be dewatered on-site for an appropriate length of time, sufficient to allow turbidity to settle out, before removal from the site. Dewatering shall be accomplished by placing the saturated fill atop staked filter fabric or tarp, surrounded by staked erosion socks or straw wattles. At no time shall saturated fill be “live-loaded” onto a truck or placed in a dumpster for disposal.
24. All construction materials, earth stockpiles, landscaping materials, waste products, refuse, debris, or excavate may only be stockpiled or collected in areas outside of the demarcated limit of work. All debris, either pre-existing or due to construction, shall be removed from the site by the time the construction is completed and appropriately disposed of.
25. Unconsolidated materials shall remain under double-tarps (top and bottom) and shall be surrounded by a staked straw wattle or erosion sock (with no hay), to prevent contact with rainwater. Any opening to the pile area shall be on the opposite side, away from the Bordering Vegetated Wetland.
26. No material of any kind may be buried, placed, or dispersed in areas within the jurisdiction of the Commission by activities that are the subject of this Order, except as are expressly permitted by this Order or the plans approved herein. The disposal of any construction refuse or other waste material is prohibited in the AURA and any other Resource Area on this property.

27. No fuel, oil, or other pollutants shall be stored in any Resource Area or AURA. Refueling or repair of any heavy machinery shall be accomplished outside of any AURA or wetland Resource Area protected by the WPA and Bylaw.
28. The Applicant is responsible for disposing of all excavated fill in accordance with all relevant local, state, and federal regulations. The Applicant shall dispose of all removed fill outside of any jurisdictional Resource Area protected by the WPA or Bylaw, including the AURA.
29. Should the activities approved under this Order of Conditions result in any suspected or known releases of hazardous materials or pollutants into a protected Resource Area or its AURA, the Applicant shall document said release and notify the Commission within 24 hours.
30. No soil enhancements are approved under this Order of Conditions except for the use of leaf litter. None of the excavated fill shall be used for the restoration area. For topsoil replication, the Applicant shall only use a sandy loam soil, the source of which shall be provided to the Commission in the 30-day Initial Report outlined in Condition # 22 above. The Applicant shall submit a request to the Commission should the need for additional soil augmentation arise.
31. Seeding in the Restoration Areas shall occur within (5 - 30) days of final grading. Additional re-seeding, or an alternative approved by the Commission, shall be applied to Restoration Areas as needed until site is fully vegetated per the requirements of Condition #34 below.

POST-CONSTRUCTION

32. Within 30 days of the initial restoration work and planting, and before any twice-annual monitoring reports per Conditions # 33 and 35 below, the Applicant shall contact the Commission to arrange a Post-Construction Site Visit with the Applicant's Environmental Professional responsible for monitoring reports.
33. **Post-Construction Monitoring:** The Applicant shall be responsible for monitoring the Restoration Areas for two full growing seasons from the issuance of this Order of Conditions or until the Commission determines that the restoration project has achieved revegetation success. Monitoring shall include site inspections and reports, produced by an approved Environmental Professional, twice a year, no later than May 15 and October 15, beginning in October, 2023. Monitoring reports shall include inspection of the site, assessment of the restoration progress, and remediation for revegetation failure or the establishment of invasive species.
34. The Commission requires that the Restoration Area achieve at least 50% revegetation overall with native wetland plants before issuing a Certificate of Compliance. The 50% reestablishment standard may include volunteer hydrophytic species as well as replacement plantings and seedings. Should the project not achieve the revegetation this 50% standard at the conclusion of this monitoring period, the Commission reserves the right to require additional monitoring and replanting. The line-intercept method shall be used to assess revegetation progress.
35. **Final Monitoring Report:** At the conclusion of the monitoring period, the Applicant shall submit a Final Monitoring Report, accompanied by an as-built plan that demonstrates that the Restoration Area was constructed according to the plans submitted with the Notice of Intent.

The Final Monitoring Report should indicate the conditions at the site and describe in detail how the functions of the wetland have been enhanced.

- 36.** The Commission reserves the right to conduct site visits during the monitoring period to inspect the restoration progress.
- 37.** Pesticides, herbicides, and fungicides shall not be used within 100 feet of any protected Resource Area on this land parcel. Organic pesticides, herbicides, or fungicides may be used subject to the review and approval of the Conservation Commission. This Condition shall survive the expiration of this Order and shall be included as a continuing Condition in perpetuity on the Certificate of Compliance.
- 38.** Only slow-release organic granular type fertilizers shall be used within the AURA. This condition shall survive the expiration of this Order and shall be included as a continuing Condition in perpetuity on the Certificate of Compliance.