

Q. Affordability Requirements - Condominium Component

- Q.1 Number of Affordable Condominium Units: Twenty-five percent (25%) of the units within the Condominium Component of the Revised Project shall be made available for purchase by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the "Affordable Condominium Units").
- Q.2 Sale Prices: The Affordable Condominium Units shall be sold to qualified households at prices deemed affordable to a three-person household earning 70% of the area median income, utilizing cost assumptions developed by the Applicant's Subsidizing Agency or, in the absence of such cost assumptions, utilizing cost assumptions developed under the MassHousing Housing Starts Program. The maximum sale prices for the Affordable Condominium Units shall be reviewed and approved by the Monitoring Agent for the Condominium Component (which shall be the Acton Community Housing Corporation ("ACHC") unless a different entity is required by the Applicant's Subsidizing Agency) (the "Condominium Monitoring Agent"), at the time of lottery for the selection of buyers of the Affordable Condominium Units. Any modification or deviation from the designation of affordable units as designated herein shall be subject to approval by the Condominium Monitoring Agent or the Applicant's Subsidizing Agency.
- Q.3 Selection of Buyers for Affordable Condominium Units: The Applicant shall obtain the approval of the Applicant's Subsidizing Agency or the Condominium Monitoring Agent of a Buyer Selection Plan for the sale of the Affordable Condominium Units prior to putting the Affordable Condominium Units on the market. Buyers shall be selected through a fair lottery process (the "Lottery").

To the maximum extent permitted by law, first preference for the purchase of seventy percent (70%) of the Affordable Condominium Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

- (a) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4 and would be considered a resident under the United States Census Bureau's residency guidelines.

- (b) at least one member of the household is either a parent, son or daughter of an Acton resident.
- (c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.
- (d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

The selection of purchasers for the Affordable Condominium Units, including the Lottery, shall be administered by a consultant retained by the Applicant, subject to the approval of the Applicant's Subsidizing Agency or the Condominium Monitoring Agent. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Applicant's Subsidizing Agency or the Condominium Monitoring Agent. The Condominium Monitoring Agent shall oversee the lottery. In the event the Condominium Monitoring Agent is the ACHC or other board or official of the Town of Acton, the Applicant shall deposit the sum of \$2,500 into a municipal account established pursuant to G.L. c. 44, §53G, to cover the Condominium Monitoring Agent's expenses in overseeing the Lottery.

Selected purchasers shall complete a first-time homebuyer course prior to closing on the purchase of an Affordable Condominium Unit. The Applicant shall make available a list of such courses for purchasers to attend.

The Condominium Monitoring Agent may develop rules and guidelines (consistent with the requirements of this Decision and those of the Applicant's Subsidizing Agency) to carry out its responsibilities under the provisions of this section. Income eligibility shall be governed by the rules and regulations of the Applicant's Subsidizing Agency or, in the absence of such rules and regulations, by the rules and regulations of MassHousing under the Housing Starts Program, or in the absence of such rules and regulations, by the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning income qualification and the Acton connection qualification shall be resolved in the first instance by the Condominium Monitoring Agent. A party aggrieved by qualification-related decision of the Condominium Monitoring Agent may appeal the decision to the ZBA for a final determination.

The Local Preference provisions of this section Q.3 are intended to complement and not to override or supersede any applicable income eligibility rules and regulations of the Applicant's Subsidizing Agency, or any other applicable fair marketing regulations of any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- Q.4 Phasing-in of Affordable Condominium Units: The Affordable Condominium Units shall be built and sold contemporaneous with the market-rate units in the Condominium Component of the Revised Project. No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices (the "Market Rate Condominium Units") until at least one certificate of occupancy is issued for an Affordable Condominium Unit. Except for good cause shown, the proportion of Market Rate Condominium Unit certificates of occupancy issued to Affordable Condominium Unit certificates of occupancy issued shall at no time exceed 3:1.
- Q.5 Perpetual Affordability Restriction: Prior to the issuance of any building permits for the Revised Project, a Regulatory Agreement for the Condominium Component of the Revised Project shall be executed and recorded in accordance with Condition Q.7 below (the "Condominium Regulatory Agreement"). The Condominium Regulatory Agreement shall provide, among other things, that (a) 25% of the units in the Revised Project will be sold and resold subject to a Deed Rider, substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are necessary to conform to the requirements of this Decision and such further changes as are requested by counsel to the Town of Acton and acceptable to the Applicant's Subsidizing Agency, and (b) the profit of the Owner of the Condominium Component of the Revised Project shall be limited to 20% of the total development cost of the Condominium Component of the Revised Project as defined by the Regulatory Agreement and applicable regulations. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Condominium Unit in the Revised Project at the time of each sale and resale. The purpose of the Deed Rider is to restrict each such Affordable Condominium Unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, §§ 31-33.⁶ After obtaining the

⁶ Pursuant to G.L. c. 184, § 31, an affordable housing restriction means "a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a

ZBA's final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) ("DHCD"), if required pursuant to M.G.L. c. 184, § 32, or other law. The Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

In any event, as the Decision grants permission to build the Revised Project under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit, the Revised Project shall remain subject to the restrictions imposed by the Act so long as the Revised Project exists and is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing. Accordingly, the Decision and the Deed Rider shall restrict each such Affordable Condominium Unit so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized.⁷ It is the express intention of the Decision that the

restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families" (emphasis added).

7. See *Zoning Board of Appeals of Wellesley V. Ardmore Apartments Limited Partnership*, 436 Mass. 811 (2002) ("[I]t is anomalous to suggest, as the owner does, that the legislation provides a temporal, short-term fix of insufficient affordable housing at the expense of local autonomy. Rather, the Act reflects a legislative intent to provide an incentive to developers to build affordable housing in cities and towns that are deficient in affordable housing, and a developer's commitment to help a city or town achieve its statutory goal is the *raison d'être* for the override of inhibiting zoning practices. But if housing developed under a comprehensive permit is 'affordable' only temporarily (fifteen years in this case, according to the owner), a city or town may never achieve the long-term statutory goals: each time an affordable housing project reverts to market rentals, the percentage of low income housing units in a municipality decreases, the percentage of market rate units increases, and access to a new round of comprehensive permits is triggered. We see nothing to suggest that the Legislature had in mind such an endless revolving cycle, or contemplated that over time an ever increasing number of multi-family buildings could be constructed on vacant land in areas zoned for single-family

period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

In the event that the Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial; the Applicant shall (a) submit to the ZBA a proposed alternative form Deed Rider which, when approved by the ZBA and Town Counsel, shall be submitted to DHCD for such approval, and (b) grant to the Town of Acton or its designee in the Deed Rider a right of first refusal, in a form mutually acceptable to counsel for the Applicant and to Town Counsel, covering each Affordable Condominium Unit in the Revised Project which shall be triggered upon the expiration of the affordability period.

- Q.6 Profit Cap: To conform to the intent of the Act that profits from the Condominium Component of the Revised Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of development fees (the "Profit Cap"). The Monitoring Services Agreement shall provide that upon the closing of the sale of the last unit conveyed by the Applicant, the Condominium Monitoring Agent at the Applicant's expense shall cause a certified public accountant ("CPA") to review the financial records of the Revised Project to determine whether the Applicant has conformed to this specific Profit Cap requirement in accordance with the applicable regulations promulgated by the Applicant's Subsidizing Agency. The CPA shall submit to the ZBA and the Condominium Monitoring Agent a CPA certification that either the Applicant has conformed to the Profit Cap, or certifying the actual profit from the development. If the Applicant has exceeded the 20% Profit Cap, the Applicant shall donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.

In the absence of specific Profit Cap regulations promulgated by the Applicant's Subsidizing Agency, in determining whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision, the CPA shall be required to certify that (a) the total profit to the Applicant for the Condominium Component of the Revised Project does not exceed twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of

homes, as multi-family housing buildings were first added to and then subtracted from a town's statutory goal."

development fees; (b) the Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Condominium Component of the Revised Project in order to artificially inflate the costs of development of the Condominium Component of the Revised Project; (c) there have been no commissions charged on the Affordable Condominium Units which are required to be sold pursuant to a lottery selection process as provided by the Comprehensive Permit Decision; (d) for costs incurred for the benefit of both the Rental Component and the Condominium Component of the Revised Project, the Applicant has made reasonable cost allocations between the two components of the Revised Project consistent with generally accepted accounting principles, and (e) the CPA has been provided access by the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Revised Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant. The Applicant shall provide the CPA reasonable access to any financial information reasonably necessary to make these determinations.

All costs of successful enforcement of this Profit Cap condition, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

Q.7 Regulatory Agreement: Prior to applying for a building permit for any portion of the Revised Project, the Applicant shall submit to the Building Commissioner a copy of a fully executed Regulatory Agreement substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are necessary to conform to the Requirements of this Decision and such further changes as are requested by counsel to the Town of Acton and acceptable to the Applicant's Subsidizing Agency, which Regulatory Agreement shall be recorded and/or filed for registration (as applicable) by the Applicant with the Master Deed for the Condominium Component of the Revised Project, governing the protection and administration of the Affordable Condominium Units covered by this Decision.

Q.8 Monitoring Services Agreement: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement with the Condominium Monitoring Agent, in a form

substantially the same as the form used by the Applicant's Subsidizing Agency or, in the absence of such a form, by the MassHousing under the Housing Starts program, and approved by Town Counsel and counsel for the Applicant and the Applicant's Subsidizing Agency. The Applicant shall pay the reasonable monitoring services fee to the Condominium Monitoring Agent, which shall be deposited in an account established for this purpose.

- Q.9 Style and Distribution of Affordable Condominium Units: All Affordable Condominium Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Condominium Component of the Revised Project. To satisfy the requirement that the Affordable Condominium Units shall be evenly distributed throughout the Condominium Component of the Revised Project, the Affordable Condominium Units shall be those units designated as units 2, 4, 27, 30, 33, 35, 39, 41, 43, 46, 49, 52, 55, 57, 59, and 64, on the Unit Distribution Plan Sheet (Hearing Exhibit 181. In addition, all Affordable Condominium Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, and other amenities all as more fully shown in the Final Approved Plans.

R. Affordability Requirements - Rental Component

- R.1 Number of Affordable Rental Units: At the option of the Applicant, either (i) twenty percent (20%) of the units within the Rental Component of the Revised Project in Acton are to be restricted for occupancy by persons or households whose aggregate family income does not exceed 50% of the median gross income for the area, or (ii) twenty-five percent (25%) of the units within the Rental Component of the Revised Project in Acton are to be restricted for occupancy by persons or households whose aggregate family income does not exceed 80% of the median gross income for the area, as established by the United States Department of Housing and Urban Development, all in accordance with the applicable rules, regulations and guidelines of the Applicant's Subsidizing Agency.
- R.2 Affordable Rental Prices: Subject to the specific income percent requirements of the Applicant's Subsidizing Agency, the Affordable Rental Units shall be rented to households whose aggregate adjusted family income conforms to the applicable requirements of Condition R.1 above.
- R.3 Perpetual Affordability Restriction: As the Decision grants permission to build the Rental Component of the Revised Project under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the 'Act'), and as the Applicant has obtained the benefits of a comprehensive permit, the

Rental Component of the Revised Project shall remain subject to the restrictions imposed by the Act and the Affordable Rental Units shall remain affordable so long as the Revised Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing. Accordingly, the Affordability Requirements of this Decision shall restrict the Rental Component of the Revised Project so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized in perpetuity. Without limitation, so long as the Revised Project does not comply with the provisions of the Town of Acton's zoning requirements as aforesaid, in no event shall the period of affordability be less than ninety-nine years or the longest period allowed by law.

To ensure the survival of this affordability restriction, this Comprehensive Permit Decision shall be recorded ahead of any mortgage or other instrument capable of being foreclosed upon, such that its provisions, including without limitation the within Affordability Requirements, shall survive any foreclosure on all or any portion of the property comprising the rental component of the Revised Project. In the alternative, to satisfy this condition, the Applicant may provide for recording a duly executed Subordination, Nondisturbance and Attornment Agreement which provides equivalent protection and which is in a form satisfactory to Town Counsel.

- R.4 Regulatory Agreement: Prior to applying for a building permit for the Rental Component of the Revised Project, the Applicant shall submit to the Building Commissioner a copy of a fully executed Regulatory Agreement substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are requested by counsel for the Town of Acton and acceptable to the Applicant's Subsidizing Agency, which Regulatory Agreement shall be recorded and/or filed for registration (as applicable) by the Applicant with the applicable Registry(ies) of Deeds, governing the protection and administration of the Affordable Rental Units covered by this Decision which shall include, without limitation, the following types of provisions:
- a. Rental Monitoring Agent: Provisions acceptable to the Applicant's Subsidizing Agency to designate (and to replace if necessary) a suitable entity or entities acceptable to the Applicant's Subsidizing Agency to monitor (i) the administration of the Affordable Rental Units in the Revised Project, (ii) compliance with the Act's limited dividend requirements, and (iii) compliance

with the Applicant's Subsidizing Agency's affordability requirements.

- b. Local Preference: To the maximum extent permitted by law and by the requirements of the Applicant's Subsidizing Agency, a provision that first preference for the rental of seventy percent (70%) of the Affordable Rental Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:
- (i) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4, and would be considered a resident under the United States Census Bureau's residency guidelines;
 - (ii) at least one member of the household is either a parent, son or daughter of an Acton resident;
 - (iii) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline; or
 - (iv) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline.

The Town shall develop rules and guidelines to carry out the Local Preference provisions of this section, as necessary, including a provision that disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Applicant's Subsidizing Agency. A party aggrieved by qualification-related decision of the Applicant's Subsidizing Agency may appeal the decision to the ZBA for a final determination.

The Local Preference provisions of this section R.3.e are intended to complement and not to override or supersede any applicable income eligibility rules and regulations of the Applicant's

Subsidizing Agency, or any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, the Applicant's Subsidizing Agency, MassDevelopment, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- c. Phasing-in of Affordable Rental Units: Consistent with the requirements of the Applicant's Subsidizing Agency, a provision that Affordable Rental Units shall be constructed and rented contemporaneously with the market-rate units in the Rental Component of the Revised Project.
- d. Recording Requirement: The Regulatory Agreement shall be recorded and registered in the applicable Registry(ies) of Deeds and shall encumber the Rental Component of the Revised Project throughout its Term.
- R.5 Monitoring: The Rental Monitoring Agent designated by the Applicant's Subsidizing Agency shall be responsible for monitoring and certifying: (a) compliance with the Applicant's Subsidizing Agency's equity and limited dividend policy (or, in the absence thereof, MassDevelopment's equity and limited dividend policy), and (b) compliance with the applicable affordability requirements for the Affordable Rental Units. If the Applicant has exceeded the allowable profit under the applicable equity and limited dividend policy, the Applicant shall donate the excess profit to the Town of Acton pursuant to G.L. c. 44, § 53A, to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.
- R.6 All costs of compliance with and successful enforcement by the ZBA and/or the Town of Acton of the limited dividend and affordability requirements, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.
- R.7. Continuity of Regulatory Agreement: It is the intention of this Decision that the Rental Component of the Revised Project shall, in perpetuity and without interruption, be subject to a suitable Regulatory Agreement consistent with this Decision governing the Affordable Rental Units. Accordingly, at least one year prior to the expiration of the then current Regulatory Agreement, the then Owner of the Rental Component of the Revised Project shall commence and diligently pursue to conclusion negotiations with a qualifying Subsidizing Agency (or in the absence of such, with the Town) for a new Regulatory Agreement consistent with this Decision to commence immediately upon the termination of the then

current agreement. In the absence of a fully executed and recorded Regulatory Agreement at least ninety (90) days prior to the expiration of the then current agreement, the ZBA shall after a duly noticed public hearing promulgate such additional conditions and restrictions as are necessary to ensure that the Affordable Rental Units remain properly managed, administered, and affordable in accordance with this Decision. All reasonable legal fees incurred by the ZBA and/or the Town of Acton to effectuate Condition R.7 shall be borne by the Applicant

- R.8 Style and Distribution of Affordable Rental Units: All Affordable Rental Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Rental Component of the Revised Project. During the initial phase of renting units in the Revised Project, the Applicant shall use reasonable efforts to ensure that Affordable Rental Units shall be distributed throughout the Rental Component of the Revised Project in accordance with the requirements of the Applicant's Subsidizing Agency such that no rental building has less than 14% nor more than 36% of Affordable Rental Units at any given time. As rental units and market-rate units become vacant, the Applicant shall use reasonable efforts to ensure that the units will be re-occupied in a manner that trends toward 20% or 25% as the case may be (under Condition R.1 hereof) of the one- and two-bedroom units in each building in the Rental Component of the Project being occupied by income-eligible households. In addition, all Affordable Rental Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, and other amenities all as more fully shown in the Final Approved Plans.

S. Material Changes

- S.1 If, between the date the Decision is filed in the office of the Acton Town Clerk and the completion of the Revised Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Revised Project as reflected in and approved by the Decision, such changes shall be governed by 760 CMR 31.03(3). Without limitation, in the event any subsequent permitting process (such as the environmental review of the Revised Project by the Secretary of Environmental Affairs, the state wetlands review of the Revised Project by the Conservation Commission or DEP, the groundwater discharge permit review of the Revised Project by DEP, or other state or federal governmental approvals) results in a change to the Final Approved Plans which triggers the need for further waivers from local bylaws, rules or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 31.03(3) shall be followed.

- S.2 Except with respect to an application to the Acton Planning Board for a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a 64 unit Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the Condominium Component), in no case shall the Applicant be allowed to implement a Project change that increases the number of units, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, without submitting a new application and undergoing a new public hearing and decision process.
- S.3 In the event the Acton Planning Board issues a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the "Special Permit"), and in the event that portion of the Property in Acton designated as Lot 4 is developed in accordance with the Planning Board Special Permit, then (a) the provisions of the Special Permit shall govern the development and use of Lot 4 and shall supersede the provisions of this Comprehensive Permit as to the Condominium Component of the Revised Project, (b) all conditions of this Decision applicable to the Rental Component of the Revised Project shall remain in full force and effect, and (c) signage for the Revised Project shall be as approved by this Decision. To avoid uncertainty as to whether the provisions of this Comprehensive Permit or the Special Permit apply to the development of Lot 4, the Applicant shall, by virtue of recording the Special Permit at the Middlesex South District Registry of Deeds and filing the Special Permit with the Middlesex South District Land Court Registration Office, as applicable, be deemed to have waived the right to develop Lot 4 under this Comprehensive Permit and shall be bound by the requirements of the Special Permit with respect to the development of Lot 4.

T. **Expiration Date**

If construction authorized by a comprehensive permit has not begun within three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The ZBA may grant an extension of the three year lapse date for good cause shown, which shall include for example delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party

appeal of a governmental permit or approval required for the Revised Project.

U. Notice to Abutters

At least seven days prior to the start of construction, the Applicant shall provide written notice to the ZBA and to Nagog Woods Association of the anticipated construction start date and the anticipated construction schedule.

V. Highridge Way

Upon being recorded with the Registry of Deeds and filed in the Land Registration Office, as applicable, this Comprehensive Permit shall supersede and rescind the prior decision of the Acton Planning Board approving Highridge Way as shown on a plan entitled: "Highridge Definitive Subdivision Plan, in the Town of Acton, Middlesex County, Commonwealth of Massachusetts" dated August 21, 1989, revised September 11, 1989 and September 26, 1989, by Howe Surveying Associates, Inc., recorded in Book 20595, Page 356 and the Restrictive Covenant dated May 4, 1990 recorded in Book 20595, Page 366 associated therewith.

W. Dispute Resolution

- W.1 The evolution of the Revised Project and the provisions of this special permit represent a collaborative effort by the Applicant and the Town of Acton to expedite the construction of a substantial development of new rental and condominium affordable housing in the Town of Acton. Consistent with this intent, the ZBA encourages all interested parties to use their respective best efforts, through voluntary, timely, expedited dispute resolution, to resolve any material disputes that may arise as a result of this Comprehensive Permit, prior to litigation, time deadlines permitting.

X. Signs

The ZBA approves the four permanent signs identified in Exhibit G hereto. Any temporary signs (advertising units for sale or rent) and any directional signs for the Revised Project shall conform to the sign requirements of the Acton Zoning Bylaw unless the ZBA grants a minor modification to this Decision to allow additional temporary or directional signs requiring a waiver therefrom. All temporary signs shall be forthwith removed when the unit or units which they advertise have initially been sold or rented. In no case shall a temporary sign remain for longer than 6 months without advance permission of the ZBA.

Z. Self-Correcting Provision

In the event a typographical error renders this Decision and the Final Approved Plans inconsistent as to the number of units, number of bedrooms, or similar objective characteristic of the Revised Project, the provisions of the Final Approved Plans shall control on the point of inconsistency. Otherwise, this Decision shall be given full force and effect on its terms, unless amended by the ZBA in writing.

AA. Planned Production Plan

In accordance with 760 CMR 31.07(1)(i)(6), it is the intention of the ZBA that the Affordable Units approved by this Decision will be credited toward the Town of Acton's planned production of low and moderate income housing inventory when this Comprehensive Permit Decision becomes final in accordance with 760 CMR 31.04(1)(a). In order for the units authorized under the comprehensive permit to continue to be credited toward the Town of Acton's low and moderate income housing for the duration of the use restriction, nothing in this Decision shall prevent the issuance by the Building Commissioner of conditional building permits pursuant to 780 CMR 111.13, conditioned by the Building Commissioner upon conformance with the requirements of this Decision, the provisions of the State Building Code, and other applicable state and federal governmental requirements.

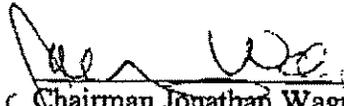
XI. CONCLUSION

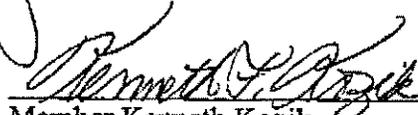
The Application for a comprehensive permit for the Revised Project as shown on the Final Approved Plans is granted for the reasons stated above, subject to the conditions provided herein. The Board disposes of the Applicant's requests for specific relief from local bylaws, rules and regulations in accordance with this Decision and its conditions and as summarized in Exhibits A-E attached hereto, which are incorporated herein by reference and made a part hereof. Exhibits F and G attached hereto are incorporated herein by reference for the purposes stated in this Decision.

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This concludes the Decision of the Board.

ACTON BOARD OF APPEALS


Chairman Jonathan Wagner


Member Kenneth Kozik


Member David Black

CERTIFICATION

I, Eva Bowen, Town Clerk of the Town of Acton, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals which was filed in the office of the Town Clerk on Dec 20, 2005 and no appeal has been filed with the Town Clerk.

Eva Bowen
Town Clerk
Acton, Massachusetts

LIST OF EXHIBITS

- Exhibit A Waivers from Acton Board of Appeals 40B Regulations
- Exhibit B Waivers from Acton Zoning Bylaw
- Exhibit C Waivers from Acton Wetlands Bylaw
- Exhibit D Waivers from Acton Board of Health Regulations
- Exhibit E Waivers from Acton Subdivision Regulations
- Exhibit F Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton
- Exhibit G Sign Requirements

EXHIBIT A**WAIVERS FROM ACTON ZBA 40B REGULATIONS**

The ZBA grants the following waivers from the following provisions of the Acton Board of Appeals 40B Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

1. **Waivers as to Timing of Compliance:**

The following waivers relate to the timing of compliance only. The Applicant shall achieve substantial compliance with the substance of the regulation, to the reasonable satisfaction of the Building Commissioner, prior to the issuance of a building permit for any portion of the Revised Project in Acton, except as otherwise specified:

- § 3.10 Earth Removal Calculations
- 3.12.2 Completed Designer's Certificate (The Certificate will be provided prior to recording of the subdivision);
- § 3.14.3 A recordable Plan Sheet suitable for recording;
- § 3.14.4.5 The perimeters of all proposed improvements;
- § 3.14.5.16 Access and utility easements;
- § 3.14.5.18 Proposed boundaries of each development phase;
- § 3.14.5.19 Location and type of stormwater drainage facilities, including notes on the construction;
- § 3.14.5.23 Location and type of other underground utilities;
- § 3.14.6.7 Detailed utility design, including rims, inverts, pipe slopes and sizing;
- § 3.14.7.4 Outdoor lighting details;
- § 3.14.8.7 Outdoor lighting installations;
- § 3.14.8.8 Proposed boundaries of each development phase.

2. **Waivers as to Substance:**

The ZBA grants the following substantive waivers from the Acton ZBA 40B Regulations:

- § 3.11 Water Balance Calculations. The design of the system will comply with DEP Stormwater Quality Standards.
- § 3.14.3.7 Location of affordable housing lots and units. No waiver is granted as to the Townhouses Condominium Units. (The Applicant has submitted and the ZBA has approved an affordable unit locator plan to the ZBA for the Condominium Component Portion of the Revised Project.) As to the Rental Component of the Revised Project, the ZBA grants a waiver, subject to conditions in Comprehensive Permit, for the Revised Project as shown on the Final Approved Plans. The Applicant shall use reasonable efforts to ensure that Affordable Rental Units are evenly distributed throughout the Rental Component of the Revised Project.
- § 3.14.10 Architectural Floor and Elevations Plan Sheet. A waiver is granted allowing certain plans to be submitted at a scale of $1/8 = 1'$.
- § 3.16 Affordable Housing Units. A waiver is granted from this Section as these items are addressed by conditions in the Decision and/or will be included in the required Regulatory Agreement(s).

EXHIBIT B**WAIVERS FROM ACTON ZONING BYLAW**

The ZBA grants the following waivers from the Acton Zoning Bylaw, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction and use of the Revised Project as shown on the Final Approved Plans:

- § 3.1 (Provisions for Table of Principal Uses and Principal Use Definitions) and § 3.2 (General Uses) to allow the multifamily dwelling use in the Office Park (OP-1 and OP-2) Districts and the Residence 10/8 District as shown on the Final Approved Plans.
- § 3.3 (Residential Uses) to allow more than one building per lot as shown on the Final Approved Plans.
- § 3.8.1.1 (Accessory use of private garage or carport for more than four motor vehicles) to allow an accessory use of a private garage or carport for more than four motor vehicles as shown on the Final Approved Plans.
- § 4.3.6.2 (Watershed Recharge) to allow storm water to be handled in compliance with the requirements of the DEP's Stormwater Management/Quality Policies.
- § 4.3.6.3 (Treatment and Renovation of Runoff) with respect to a portion of Lot 4 at the toe of the hill where the abutting land is being designated for conservation, to allow storm water to be handled in compliance with the requirements of DEP's Stormwater Management/Quality Policies.
- § 5.1 (Table of Standard Dimensional Regulations) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding the Bylaw's provisions requiring a minimum of fifty (50%) percent Open Space; a maximum floor area ratio of 0.2; setbacks of forty-five feet (45') for the front yard, thirty feet (30') for the side and rear yards; a sixty foot (60') offset abutting a residential district in the Office Park 1 (OP-1) zoning district; the maximum building height of thirty-six feet (36').
- § 5.3.1 (Location of Structures) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding the location of certain structures in the required yard offset areas.
- § 5.3.5.1 and § 5.3.5.2 (Height requirements) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding appurtenant structures being located upon the roof of a building extending to a maximum height of up to forty-five feet (45) when combined with the height of the building.

- § 6.2 (General Provisions) to allow parking for buildings to be located on lots other than those occupied by the building which the parking serves.
- § 6.3.1.1 (Parking per Dwelling Unit) to allow fewer than two (2) spaces for each dwelling unit as the overall project provides approximately 1.9 spaces per unit.
- § 6.7.1 (Parking Cells) to allow parking lot cells separated by a distance of less than thirty (30') feet as shown on the Final Approved Plans.
- § 6.7.2 (Set-Backs) to allow a parking lot less than thirty (30') feet from the front lot line as shown on the Final Approved Plans.
- § 6.7.3 (Access Driveways) to allow two access driveways into the site and to allow a looped driveway from the "y" configuration at the cul-de-sac location.
- § 6.7.6 & 6.7.7 (Perimeter Landscaping & Interior Area Landscaping Requirements) to allow landscaping as shown on the Final Approved Plans that may not meet all specific Bylaw requirements, (i.e. a landscaped perimeter screen with a minimum ten (10') foot width, interior landscaped island areas so that every parking space is not more than forty-five (45') feet from a landscaped island.).
- § 6.7.8 (Plantings for Perimeter and Interior Area Landscaping Requirements) to allow landscaping as shown on the Final Approved Plans that may adhere to all specific requirements listed under this section, sub sections 6.7.8.1 to 6.7.8.8, inclusive.
- § 7.4.5.1, § 7.5.10, § 7.8.1, § 7.9 (Signs) to allow three (3) signs as shown on Sheet L6 and a fourth sign as shown on Sheet L4 of the Final Approved Plans.

EXHIBIT C

WAIVERS FROM LOCAL WETLAND BYLAW, RULES AND REGULATIONS

The ZBA grants the following waivers from the Acton Wetlands Bylaw, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

- A waiver from § F.2 of the Wetlands Bylaw which provides, "No person shall remove, dredge, fill or alter any resource area except as provided in Section 4, without first filing a Determination of Applicability, or a written Notice of Intent under this Bylaw, and obtaining and complying with the terms of said Determination or with an Order of Conditions."
- A waiver from the required set-backs as follows (a) the 50 foot setback of undisturbed vegetation; (b) the 75 foot no-build setback to edges of driveways, and (c) the 50 foot chemical free area, all as necessary to construct the Revised Project shown on the Final Approved Plans.

EXHIBIT D**WAIVERS FROM LOCAL BOARD OF HEALTH RULES AND REGULATIONS**

The ZBA grants the following waivers from the following provisions of the Acton Board of Health Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

- With respect to the proposed Irrigation Well(s) serving the Revised Project, the ZBA grants waivers from Board of Health Regulations §§ 9.6.4⁴ and 9.6.5⁵, and § 9-7 (to the extent a Board of Health variance would otherwise be required with respect thereto), subject to the conditions applicable to Irrigation Wells.
- With respect to the "Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas," the ZBA grants a waiver from Article 11 of the Board of Health Regulations, subject to the conditions set forth in the Conditions section of the Decision including without limitation the conditions covering Common Infrastructure Agreements and the Sewage Treatment System.
- With respect to the requirements of § 16-4 of the local Board of Health Regulations applicable to the issuance of a permit for the Sewage Treatment System, the ZBA grants a waiver from § 16-4 of the Board of Health Regulations, subject to the conditions set forth in the Conditions section of the Decision. The ZBA does not grant a waiver, express or implied, from the provisions of the Board of Health Regulations requiring permits for the connection of the buildings in the revised project to the sewer collection system.

⁴ Section 9.6.4 provides in relevant part, "Private or semi-public well water systems or other sources of potable water shall not be approved where a public water line is accessible in an abutting way and where permission to tie in such water line can be obtained from the authority having jurisdiction over it. ..."

⁵ Section 9.6.5 provides, "A well must be located on the lot it serves. Service of more than one lot is prohibited."

EXHIBIT E**WAIVERS FROM ACTON SUBDIVISION REGULATIONS**

The ZBA grants the following waivers from the following provisions of the Acton Subdivision Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, and subject to any applicable requirements of the Acton Engineering Department as set forth in the Inter-Departmental Communication to the ZBA dated December 7, 2005 (the "IDC") (see Hearing Exhibit 186 and Condition A.2 above), to allow the construction of the Revised Project as shown on the Final Approved Plans. Where designated by an asterisk, the Applicant shall achieve compliance to the reasonable satisfaction of the Building Commissioner prior to the issuance of a building permit for any portion of the Revised Project in Acton:

Reg. Cite	Reg. Subject Matter	ZBA Action
4.0	Procedure for the Submission of Conceptual and Preliminary Subdivision Plan	√ = ZBA grants a waiver, subject to the conditions in the Comprehensive Permit, for the Revised Project as shown on the Final Approved Plans.
5.0	Definitive Plan	√, subject to Engineering Department IDC.
6.1 - 6.4	Performance Guarantees	√, subject to Conditions for performance guarantees in the Comprehensive Permit.
8.1.9.1	Intersections with four or more legs are not permitted	√, provided the Recycling Area shown on Sheet L-3 is reconfigured to match that shown on the Master Plan. (This waiver relates to the "four leg" intersection at the junction of the "Y" intersection for the access to the development and a separate 90° intersection of the alternate access drive to the Westford Apartment component of the 40B project.)
8.1.13 & 8.1.14	Superelevation of curves, sight distances & Grades of Streets	√, subject to Engineering Department IDC. (This waiver relates to the Exception to Table II "Vertical Design Standards" to allow vertical roadway design and site distances for a 25 mph speed limit.)
8.1.17	Residential SINGLE ACCESS STREETS and other DEAD-END STREETS, whether temporary or permanent, shall not be longer than 500 feet.	√ (This waiver allows the single access project drive longer than 500'.)
8.1.18.1	A CUL-DE-SAC STREET turnaround shall be designed in one of the two following ways.	√ (This waiver allows the construction of the proposed one-way counter-clockwise loop road as shown on the Final Approved Plans beginning at the condo project (Lot 4).)
8.1.25	ROADS or roadways in a SUBDIVISION shall not provide access to land in any other town unless there is also adequate access over STREETS in the	√ (This waiver allows a driveway from the cul-de-sac in Acton to the rear of the apartment buildings in Westford, as shown on the Final Approved Plans, for emergency access and maintenance purposes for the benefit of the three

Reg. Cite	Reg. Subject Matter	ZBA Action
	adjoining town.	buildings located in Westford.)
* 8.2.2.1	The design shall include the size, quality, and type of pipe...	A waiver is granted as to the timing of compliance only: the Applicant will comply with this requirement prior to the issuance of a building permit.
* 8.2.2.4	The rational formula (as described in Seelye's Design Data Book for Civil Engineers), based on a 10-year expectancy...	√, subject to Engineering Department IDC. (The Applicant will comply prior to the issuance of a building permit.)
*8.2.4 & 8.3.5	STREET drainage shall not be channeled into a wetland or water body with first going into a vegetated detention basin & Velocity Check Dams	√, subject to Engineering Department IDC. (The Applicant will comply prior to the issuance of a building permit. Substantively, this waiver is limited to the Westford Lane street drainage improvements' discharge to a wetland.)
8.5.4	Zones 1 - 4 of the Groundwater Protection District - hydrologic budget or water balance calculation	√, provided that, prior to issuance of construction documents and as part of its Notice of Intent to the Acton Conservation Commission, the Applicant will include a water balance calculation demonstrating compliance with the requirements of the DEP Storm Water Management Policies for recharge of runoff due to development.
8.7.6	A 10-foot wide "Utility, Construction and Slope Easement" shall be provided along each side of the STREET...	√
8.8	Open Spaces	√, provided that the Applicant shall provide the open space and recreational amenities as represented by the Applicant during the public hearing (including without limitation a community garden area, tot lots, pool, indoor basketball area, benches, etc.), as shown on the Final Approved Plans, and/or as described in Hearing Exhibit 94.
9.1.1	The construction of ALL STREETS and WAYS shall comply with the applicable standard cross-section, illustrated in the Design and Construction Standards, Town of Acton.	√, for sidewalks only, subject to Engineering Department IDC.
9.2.4	Open drainage trenches may be used 100 feet or more from the traveled STREETS or WAY only in cases of extreme hardship owing to conditions especially affecting the parcel and ...	√, subject to Engineering Department IDC and compliance with the requirements of the DEP Storm Water Management Policies.
9.3.1	Monuments shall be installed at	√, subject to Engineering Department IDC.

Reg. Cite	Reg. Subject Matter	ZBA Action
	all STREET intersections...	
9.4	Driveways	√
9.5.2	Sloped granite curbs, type SA as defined in section M9.04.2 of the Mass. Standard Specifications for Highways and Bridges shall be required...	√, subject to Engineering Department IDC and to the admonition that the Board considers sloped granite curbs are preferable from a maintenance and longevity standpoint.
9.6.2	A sidewalk shall be required along that portion of any existing public STREETS upon which the SUBDIVISION has frontage.	√ (This waiver allows sidewalks to be constructed on one side of the access drives.)
9.6.3	In general, sidewalks shall be constructed within the STREET layout at a line that is ...	√
9.6.4	A green strip shall be provided between the edge of the pavement and the sidewalk.	√
9.6.7	Bicycle PATHS shall be constructed to a minimum width of ten feet.	√
9.8.1	Deciduous shade STREET trees shall be planted on LOTS approximately 10 feet from the STREET sideline where trees are lacking.	√ (The Applicant shall consult with the Tree Warden as to the final size, number, placement and type of trees.)
11.2	Earth Removal	√ (The plans and accompanying construction information depict the removal of earth that is proposed as part of the development of the roadway and overall site development. The Erosion and Sedimentation Control Plan addresses the means to prevent erosion from affecting sensitive or offsite areas.)
11.8	Enforcement	√ (The Comprehensive Permit governs development of the Revised Project and is enforceable by Zoning Board of Appeals.)

EXHIBIT F

Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton

EXHIBIT G

Sign Requirements

This Decision approves the following permanent signs as shown on Sheets L4 and L6 of the Final Approved Plans, subject to the following conditions and requirements:

1. Community Entry Signs (option B) at the Laurel Hill Road entrance from Nagog Park Drive, one stating "Woodlands at Laurel Hill" and the other stating "Laurel Hill Condominiums," to be mounted side-by-side on a decorative field stone wall that also serves in part as a retaining wall. Each proposed sign, individually, shall meet the dimensional requirements of the zoning bylaw that allows freestanding residential development signs (§ 7.5.11) of up to 4 feet high with a 6 square foot maximum display area.
2. Entry Sign C at the upper end of Laurel Hill Road where it forks to form the loop through the Laurel Hill Condominiums. To match the Community Entry Sign, this sign shall read "Laurel Hill Condominiums" and shall be reduced in size to conform to the dimensional requirements of § 7.5.11 for freestanding residential development signs.
3. Entry Sign B on Great at the north side of Nagog Park Drive on the lot that has a restaurant (Bickford's) and an office building on it. Under the zoning bylaw, one freestanding sign is allowed on a lot to advertise the business or businesses on the lot. The zoning bylaw's maximum by-right dimensions for a freestanding business center sign (multiple businesses on one sign) are 10' in height and 24 square feet of display area. The proposed sign fits within the by-right dimensional constraints, but the residential signage does not advertise the businesses on the lot. This decision allows the proposed off-site residential development sign provided that (a) there shall be no other freestanding signs on the same lot (as the zoning bylaw does not allow more than one freestanding sign per lot), (b) all businesses on this lot – including future businesses - may use this sign as a business center sign and list their names on it, (c) the Applicant shall to the extent required apply for and receive the approval of the Massachusetts Outdoor Advertising Board prior to erecting the sign.
4. Entry Sign A on Great Road at the south side of Nagog Park Drive. The proposal is to replace the existing freestanding business center sign with a new business center sign to include the names for the proposed residential development. It appears that the proposed sign dimensions are nearly identical to those of the existing sign. This decision allows the proposed off-site residential development identifiers for the Woodlands' rental and condominium project components subject to the same conditions as Entry Sign B above.

Woodlands at Laurel Hill.

Special Permit Application – Senior Residence:

- Copies of Issued Permits- Orders of Conditions



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

DEP File Number:

85-922

A. General Information

From: ACTON
 1. Conservation Commission

2. This issuance is for (check one): a. Order of Conditions b. Amended Order of Conditions

3. To: Applicant:

Mark Brooks Recreational Realty Trust, LLC
 a. First Name b. Last Name c. Company
676 Elm Street, Suite 300
 d. Mailing Address
Concord MA 01801
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

SAME
 a. First Name b. Last Name c. Company
 d. Mailing Address
 e. City/Town f. State g. Zip Code

5. Project Location:

Westford Lane, Nagog Park Acton
NOI 2 - Woodlands at Laurel Hill (Lot 4) b. City/Town
B-5 Parcels 7, 9, 42
 c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known (note: 42.524469 -71.422185
electronic filers will click for GIS locator): e. Latitude f. Longitude

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

Middlesex South
 a. County b. Certificate (if registered land)
B44723-P420, B46778-P156, B19584-P263
 c. Book d. Page

7. Dates: January 17, 2006 May 3, 2006 May 3, 2006
 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):

See attached Page 10
 a. Plan Title
Places Site Consultants, Inc. c. Signed and Stamped by
 b. Prepared By
 d. Final Revision Date e. Scale
 f. Additional Plan or Document Title g. Date



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

DEP File Number:
85-922

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. 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.

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 these interests, 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).**

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

3. <input checked="" type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)				10'
				a. linear feet
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
	e. cu.yd dredged	f. cu.yd dredged		



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
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DEP File Number:

85-922

B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	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	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

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

10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
19. <input type="checkbox"/> Land Containing Shellfish	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			
	a. cu.yd dredged	b. cu.yd dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



WPA Form 5 – Order of Conditions

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

C. General Conditions Under Massachusetts Wetlands Protection Act

(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.
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.
6. 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.
7. 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.
8. 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 this 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.
9. 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, "MA DEP"]

"File Number 85-922"



C. General Conditions Under Massachusetts Wetlands Protection Act

10. 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 DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Special Conditions:

If you need more space for additional conditions, select box to attach a text document



WPA Form 5 – Order of Conditions

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

D. Findings Under Municipal Wetlands Bylaw or Ordinance

- 1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
- 2. The ACTON hereby finds (check one that applies):
Conservation Commission
- 3. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

a. Municipal Ordinance or Bylaw

b. 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.

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

Acton Wetlands Protection Bylaw, Chapter F

a. Municipal Ordinance or Bylaw

b. Citation

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.

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

SEE DECISION ISSUED BY THE ACTON BOARD OF APPEALS – Project filed under

MGL Chapter 40B.

If you need more space for additional conditions, select box to attach a text document



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

DEP File Number:
85-922

E. Issuance

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.

5/2/06
 1. Date of Issuance
5
 2. Number of Signers

Signatures:

Michael Ed
William Furburg
Julien Mella
John K...
Ceyl B. Jones

Notary Acknowledgement

Commonwealth of Massachusetts County of

Middlesex South

On this third Day of

May 2006
 Month Year

Before me, the undersigned Notary Public, personally appeared

Michael Edler
 Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

Shown to me
 Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of ACTON City/Town Conservation Commission

Andrea H. Ristine
 Signature of Notary Public
 Andrea H. Ristine
 Printed Name of Notary Public
 February 27, 2009
 My Commission Expires (Date)

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

by hand delivery on

by certified mail, return receipt requested, on

Date

Date 5/23/06



WPA Form 5 – Order of Conditions

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

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 DEP 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 of 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 Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

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.

Section G, Recording Information is available on the following page.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
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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 subject to the Order of Conditions. The recording information on Page 7 of this form shall be submitted to the Conservation Commission listed below.

ACTON
 Conservation Commission

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

To:

ACTON
 Conservation Commission

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

Westford Lane, Nagog Park (Woodlands NOI 2) 85-922
 Project Location DEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex South _____ _____
 County Book Page

for:

 Property Owner

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

 Book Page

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

ACTON NOI 2 FINAL PLANS - LOT 4 TOWNHOUSES

WOODLANDS AT LAUREL HILL

DEP FILE NO. 85-922

PLAN TITLE	DATED	SIGNED/STAMPED BY:
1 General Notes and Legend	10/19/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
2 Master Plan	1/13/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
3 Affected Parcels & Record Owners	1/13/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
4 Existing Conditions and Demolition Plan	10/17/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
5 Sequenced Stormwater Pollution Prevention Plan	1/13/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
6 Site Plans	1/13/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
7 Grading & Drainage Plans	1/13/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
8 Roadway Plan & Profile	10/19/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
9 Utility Plans	10/19/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
10 Construction Details	10/19/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
11 Erosion and Sedimentation Control Narrative Plan	10/19/05	<i>Denis J. McLaughlin III, Civil No. 40617</i>
12 Landscape Plans	10/19/05	<i>Bart J. Lipinski, Landscape Architect No. 1296</i>
13 Wastewater Treatment Plant Plans (Westford)	10/17/05	<i>Ian B. Catlow, Civil No. 48112</i>
14 Wetlands Restoration Plan (Acton)	10/19/05	<i>William E. Murray, Landscape Architect No. 1107</i>
15 PLAN No. 349-D-3	Revision date 4/27/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>
16 PLAN No. 349-D-2	Revision date 4/27/06	<i>Denis J. McLaughlin III, Civil No. 40617</i>



