

DEP File No. 85-971
Applicant Jeanson Homes, Inc.



DENIAL
Wetlands Protection Bylaw
Chapter F

From the ACTON CONSERVATION COMMISSION Issuing Authority

To Jeanson Homes, Inc., Mike Jeanson William & Deanne Angell
(Name of person making request) (Name of property owner)

Address 12 Kennedy Lane, Acton MA 01720 Address 643 Pleasant Hill, Acton MA 01718

This Order is issued and delivered as follows:

- by hand delivery to person making request on _____ (date)
- by certified mail, return receipt requested on 8/8/2007 (date)

This project is located at West of 8 Spring Hill Road (#12), Plate E-6, Parcel 6-1

The property is recorded at the Registry of Middlesex South

Book 24106 Page 522

Certificate (if registered) _____

The Notice of Intent for this project was filed on May 17, 2007 (date)

The public hearing was closed on July 18, 2007 (date)

Findings

The ACTON CONSERVATION COMMISSION has reviewed the above-references Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the ACTON CONSERVATION COMMISSION at this time, the ACTON CONSERVATION COMMISSION has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection under the Act (check as appropriate):

- | | | |
|--|---|--|
| <input type="checkbox"/> Public water supply | <input checked="" type="checkbox"/> Flood Control | <input type="checkbox"/> Land containing shellfish |
| <input checked="" type="checkbox"/> Private water supply | <input checked="" type="checkbox"/> Storm damage prevention | <input type="checkbox"/> Fisheries |
| <input checked="" type="checkbox"/> Ground water supply | <input type="checkbox"/> Prevention of pollution | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 300.00

Plans and documents submitted by the Applicant:

- 1) Notice of Intent Plan, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 1, dated 4/19/2007, Revised June 26, 2007 – Signed & Stamped by: Mark Donohoe, PE, Civil 27148
 - 2) Notice of Intent – Site Details, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 2, dated 4/19/2007 2007 – Signed & Stamped by: Mark Donohoe, PE, Civil 27148
 - 3) Notice of Intent – Site Notes, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 3, dated 4/19/2007 2007 – Signed & Stamped by: Mark Donohoe, PE, Civil 27148
 - 4) Supplemental Letter dated June 4, 2007, submitted by Acton Survey & Engineering
 - 5) Supplemental Letter dated June 12, 2007, submitted by Acton Survey & Engineering
 - 6) Supplemental Letter dated June 26, 2007, submitted by Acton Survey & Engineering
 - 7) Supplemental Letter dated July 13, 2007, submitted by Acton Survey & Engineering
 - 8) Supplemental Letter dated July 16, 2007, submitted by Caron Environmental Consulting
 - 9) Supplemental Letter dated July 17, 2007, submitted by Acton Survey & Engineering
-

**SEE ATTACHED DECISION FOR DENIAL ISSUED BY THE ACTON
CONSERVATION COMMISSION.**

Issued by the ACTON Conservation Commission

Signature(s)

Linda Serafini
Lou Portant
Terence Maitland William Froberg
John Medve

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

On this 23rd day of July, 2007, before me, the undersigned notary public, personally appeared Terence Maitland proved to me through satisfactory evidence of identification, which were known to me 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 Commissioner for the Acton Conservation Commission.

Andrea H. Ristine
Notary Public - Andrea H. Ristine

February 27, 2009
My Commission Expires

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the Department of Environmental Protection to issue a Superseding Order, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form as provided in 310_CM 10.03(7) within ten days from the date of issuance of this determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Detach on dotted line and submit to the **ACTON CONSERVATION COMMISSION** prior to commencement of work.

To ACTON CONSERVATION COMMISSION Issuing Authority

Please be advised that the Order of Conditions for the project at West of 8 Spring Hill Road (#12), Plate E-6, Parcel 6-1

File Number 85-971 has been recorded at the Registry of Middlesex South and

has been noted in the chain of title of the affected property in accordance with General Condition 8 on _____ 19 ____.

If recorded land, the instrument number which identifies this transaction is _____

If registered land, the document number which identifies this transaction is _____

Signature _____ Applicant



WPA Form 5 – Order of Conditions

85-971

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

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:

Michael Jeanson Jeanson Homes, Inc.
a. First Name b. Last Name c. Company
12 Kennedy Lane
d. Mailing Address
Acton MA 01720
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

William & Deanne Angell
a. First Name b. Last Name c. Company
643 Pheasant Hill, Village of Nagog Woods
d. Mailing Address
Acton MA 01718
e. City/Town f. State g. Zip Code

5. Project Location:

West of 8 Spring Hill Road (#12) Acton
a. Street Address b. City/Town
E-6 6-1
c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known (**note:** 42°29'59.32" N 71°23'36.88" W
electronic filers will click for GIS locator): e. Latitude f. Longitude

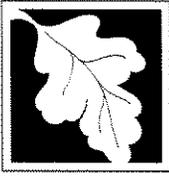
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Middlesex South
a. County b. Certificate (if registered land)
24106 522
c. Book d. Page

7. Dates: May 17, 2007
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 Page 10 of this document for "Plans & Documents Submitted by the Applicant"
a. Plan Title
Acton Survey & Engineering Mark Donohoe, PE, Civil No. 27148
b. Prepared By c. Signed and Stamped by
d. Final Revision Date e. Scale
f. Additional Plan or Document Title g. Date



WPA Form 5 – Order of Conditions

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

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. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)

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 checked="" type="checkbox"/> Bordering Vegetated Wetland	884 a. square feet	b. square feet	884 c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet e. cu.yd dredged	b. square feet f. cu.yd dredged	c. square feet	d. square feet



WPA Form 5 – Order of Conditions

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

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 85-971"



WPA Form 5 – Order of Conditions

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

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:

TOWN OF ACTON WETLAND PROTECTION BYLAW CHAPTER F
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:

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:

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



WPA Form 5 – Order of Conditions

85-971

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

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.

7/23/2007
1. Date of Issuance
-5-
2. Number of Signers

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.

Signatures:

Linda Seratini
Fran Portant
Terence Martland

William Fobry
Joe W. White

Notary Acknowledgement

Commonwealth of Massachusetts County of

Middlesex South

On this 23rd of

July
Month

2007
Year

Before me, the undersigned Notary Public, personally appeared

Terence Martland
Name of Document Signer

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

KNOWN 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

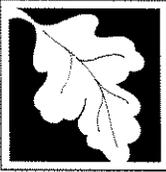
This Order is issued to the applicant as follows:

by hand delivery on

by certified mail, return receipt requested, on

Date

Date 8/8/2007



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.



WPA Form 5 – Order of Conditions

85-971

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

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:

West of 8 Spring Hill Road, Acton MA

Project Location

85-971

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



WPA Form 5 – Order of Conditions

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

H. Plans & Documents Submitted by the Applicant:

- 1) Notice of Intent Plan, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 1, dated 4/19/2007, Revised June 26, 2007
- 2) Notice of Intent – Site Details, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 2, dated 4/19/2007
- 3) Notice of Intent – Site Notes, Lots 2C & 3 Spring Hill Road, Acton MA - Sheet 3, dated 4/19/2007
- 4) Supplemental Letter dated June 4, 2007, submitted by Acton Survey & Engineering
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- 7) Supplemental Letter dated July 13, 2007, submitted by Acton Survey & Engineering
- 8) Supplemental Letter dated July 16, 2007, submitted by Caron Environmental Consulting
- 9) Supplemental Letter dated July 17, 2007, submitted by Acton Survey & Engineering

DECISION
NOTICE OF INTENT FILING
FOR
WEST OF 8 SPRING HILL ROAD
TOWN ATLAS PLATE E-6, PARCEL 6-1
DEP FILE NO. 85-971

Applicant: Michael Jeanson, Jeanson Homes, Inc.
Representative: Mark Donohoe, PE No. 27148, Acton Survey & Engineering
Date Filed: May 17, 2007
Hearing Closed: July 18, 2007

DECISION

On July 23, 2007, the Acton Conservation Commission voted unanimously to issue an Order of Conditions denying a Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw because the proposed project (1) will adversely affect significant resource areas and interests protected by the Act and the Bylaw, (2) does not satisfy the buffer-zone resource area setback requirements of the Bylaw, (3) does not meet the requirements for a limited-project exception under either the Act or Bylaw and (4) would not meet the requirements for a waiver under the Bylaw.

The Commission bases its decision upon the Findings of Fact and Conclusions set forth below.

FINDINGS OF FACT

- 1) Project Summary. The Applicant, Jeanson Homes Inc., (“Applicant”), has filed a Notice of Intent (“NOI”) seeking limited-project approval under the Massachusetts Wetlands Protection Act (“Act”) and the Town of Acton Wetland Protection Bylaw (“Bylaw”) for the construction of two four-bedroom, single-family homes with attached garages, including associated driveways, septic disposal systems, private wells, barrier walls, recharge areas, utilities and landscaping, and a shared driveway providing wetlands-crossing access from Spring Hill Road.
- 2) Project Site. The project site currently is a single lot, comprising approximately 5.2 acres of undeveloped, forested land on the south side of Spring Hill Road. The parcel is a species-rich wetland and upland habitat supporting a diverse population of fauna and flora. The Applicant intends to further subdivide the parcel into two lots, Lots 2C and 3, of approximately 2.93 acres and 2.25 acres, respectively, to accommodate the two proposed single family residences. One-half of the project site is 2.56 acres of forested bordering vegetated wetlands (BVW) located at the front, northeast side of the parcel bordering Spring Hill Road. Red maple, white pine, pitch pine, yellow birch, slippery elm, sweet pepperbush, swamp azalea, highbush blueberry, cinnamon and sensitive ferns, sedges and sphagnum moss are predominant; royal

fern and interrupted fern also are present. The BVW borders two streams, one flowing in a southeasterly direction from Lot 3 to Lot 2C and the other located only in Lot 2C.

The Lot 3 stream enters Lot 3 from the abutting property to the west, flows east and then south-southeast across Lot 3 and then converges with the Lot 2C stream in the northern portion of Lot 2C. The Town Agent, Thomas Tidman, has observed that the Lot 3 stream has defined banks and other characteristics of a perennial stream; the Applicant believes that the Lot 3 stream is intermittent. The Lot 3 stream and BVW are associated with a large wetland system connected to the nearby Spring Hill Conservation Area to the north. The Lot 2C stream, which is intermittent, flows north from the southern portion of Lot 2C and appears to include runoff of nutrients from an abutting horse farm. After the two streams converge on Lot 2C, the combined streams flow east to a 1960s-era fire pond in the northeastern corner of Lot 2C, by the road. A third stream that appears to be perennial flows north from the pond via a culvert under Spring Hill Road to the north side of the road, and eventually flows into Spencer Brook. Lot 2C also includes an area, north of the point where the two streams converge, that Mr. Tidman states “exhibits vernal pool characteristics” (adjacent to WF 223 – 225).

The other one-half of the project site is 2.62 acres of forested upland located at the back, southwest side of the parcel. Red oak, white oak, red maple, hay-scented fern, witch hazel, sarsaparilla and “princess pine” are predominant; ash trees also are present. Some 2.31 acres of the upland, or approximately 88 percent, lie within the 100-foot buffer zone of the BVW; the upland that is not in the buffer zone is 0.31 acre, or about six percent (6%) of the 5.2-acre property.

- 3) Project Details. The Applicant proposes to develop 1.6 acres of the upland, inside and outside the buffer zone, for the two residences and associated infrastructure. Construction of the two residences would require the alteration of 0.58 acre in the buffer zone and necessitate the removal of a large number of mature trees. The Bylaw requires that structures be located a minimum of 75 feet from wetlands; the Applicant proposes to place the houses no closer than 75 feet from the wetlands, although portions of both houses would sit at or on the 75-foot setback line. Similarly, the Bylaw requires that at least 50 feet of the inner buffer zone remain undisturbed natural vegetation; the Applicant proposes that the limit of disturbance for grading, well-installation, other residence-related work and installation of a driveway-drainage/groundwater-recharging system be at least 50 feet from the BVW, with portions of the limit of disturbance sitting only slightly inside the 50-foot undisturbed-buffer line.

The shared driveway would be a 12-foot-wide bituminous concrete surface with most of the length including a three-foot shoulder on both sides. Beginning at Spring Hill Road in the northern corner of the abutting 8 Spring Hill Road lot, the driveway would follow an access easement on that lot to the Lot 2C property line, and then bisect Lot 2C from east to west, crossing BVW and continuing to the Lot 2C upland. The driveway would span over 400 feet from the road to the 100-foot buffer line in the upland area; that segment also would lie entirely within the buffer zone, and largely within 50 feet of the BVW. In addition to necessitating the filling of wetlands at the proposed crossing, construction of the driveway would require extensive clear-cutting of mature trees in the buffer zone.

The wetlands-crossing structure would include a bridge over the stream flowing from the southern portion of Lot 2C. The crossing and bridge structure would be 12 feet wide and approximately 60 feet long. The elevation of the structure would be about two feet higher

than the current elevation of the BVW. The crossing itself would consist of a paved surface on a mechanically compacted gravel base bounded and contained by large boulders. The bridge over the stream would consist of rebar-enforced concrete footings and walls topped by a deck and forming a three-sided culvert through which the stream would continue flowing north and perpendicular to the crossing and driveway.

The Applicant has submitted preliminary, handwritten estimates of post-construction stream-crossing flow, runoff volume and recharge.

- 4) Proposed Mitigation. In mitigation, the Applicant proposes to create 961 square feet of replicated wetlands adjacent to the driveway in the area just west of the proposed crossing.

The Applicant also proposes to place three conservation restrictions on approximately 75 percent of the parcel containing principally wetlands. The two restrictions on Lot 2C would apply to approximately 2.18 acres (94,785 square feet) of now-continuous wetlands that would be fragmented by the shared driveway; the conservation restriction on Lot 3 would apply to approximately 1.78 acres (77,450 square feet) of wetlands located between Spring Hill Road and the Lot 3 upland.

- 5) Site Owners; 1999 NOI Proceeding (DEP File Nos. 85-644, 85-645). The owners of the project site are William and Deanne Angell (“Angells”). The Angells also formerly owned the abutting upland lot at 8 Spring Hill Road as part of a single 7.3-acre lot that included the 5.2-acre project site. The 7.3-acre parcel contained a single residence and associated driveway, now part of the 8 Spring Hill Road lot. At the back of that lot is an old cart path formerly used for access across wetlands to the upland portions of Lots 2C and 3.

In 1999, the Angells filed two NOIs, both seeking limited-project authorization under the Act and Bylaw for a project that related to the 7.3-acre property but was substantially the same as the project that the Applicant proposes for the 5.2-acre lot that originally was part of the 7.3-acre parcel. After extensive hearings, the Commission issued an Order of Conditions denying the project because the project did not qualify for a limited-project authorization under the Act or Bylaw, and an economic-hardship-based waiver of requirements was not appropriate. In support of the denial, the Commission cited the relatively small developable uplands in comparison to the wetlands on the site; the presence on the site of the Mystic Valley Amphipod and Spotted Turtle, which at the time were classified as species of “special concern” by the Massachusetts Natural Heritage and Endangered Species Program (MNHESP); the value of the site particularly as wildlife habitat, given its unbroken wetlands and buffer zone connection to the nearby Spring Hill Conservation Area; the existing residential access to upland and corresponding benefit to the Angells of the existing residence, which countered the asserted need for the limited-project crossing and also demonstrated that no economic hardship would result from a denial of the limited project; and the impossibility of conditioning the project to adequately protect the interests of the Act and Bylaw, given the irreversible impairment of the wetlands and the buffer zone that the project would cause.

Since the Commission’s 1999 decision, the Angells have subdivided the 7.3-acre lot into two lots. One lot is the 8 Spring Hill Road upland lot with the residence and driveway that were present at the time of the 1999 proceeding. The other lot is the undeveloped 5.2-acre project site. In November 2006, the Angells sold the 8 Spring Hill Road lot, reserving in the deed an access easement across the northern corner for the benefit of Lots 2C and 3. The deed for the 8 Spring Hill Road lot indicates that the Angells received consideration of \$620,000 for that property.

6) 2003 Increase of Bylaw Setbacks. In 2003, the Town of Acton approved an amendment of the Bylaw, effective July of 2003, which increased the minimum setbacks for activities in the buffer zone. The minimum setback for structures increased from 40 feet to 75 feet, and the minimum required buffer of undisturbed vegetation increased from 25 feet to 50 feet.

7) Site Visit, Site Conditions. Members of the Commission and the Town Conservation Agent, Mr. Tidman, visited the project site on June 1, 2007. The characteristics and conditions of the undeveloped land are essentially the same as they were during the 1999 NOI proceedings.

During the site walk, the Commissioners requested that the Applicant re-determine and re-flag the wetlands. The re-flagging indicates that portions of the BVW immediately north of the upland have migrated closer to the proposed house and septic system locations. The wetlands lines otherwise remained largely unchanged from 1999.

The MNHESP has recently determined that the Mystic Valley Amphipod and Spotted Turtle no longer are species of "special concern."

8) Hearing. The Commission held hearings on this NOI on June 6, June 20, and July 18, 2007. Mark Donohoe, Professional Engineer, of Acton Survey & Engineering, represented the Applicant, Jeanson Homes Inc.; the law firm of McGregor & Associates, P.C. (Gregor I, McGregor, Esq. and Luke H. Legere, Esq. via written submission and Mr. Legere attending the July 18 hearing), represented abutter William Sawyer, Esq. and several other abutters. The Commission closed the hearing on July 18, 2007. The Commission's file on this matter contains various correspondence, reports and other documents that are part of the hearing record for this NOI as well as the record of the hearing pertaining to the 1999 denial.

CONCLUSIONS

The project must be denied because (1) it will adversely affect significant resource areas and interests protected by the Act and the Bylaw, (2) it does not satisfy the buffer-zone resource area setback requirements of the Bylaw, (3) it does not meet the requirements for a limited-project exception under either the Act or Bylaw and (4) it would not meet the requirements for a waiver under the Bylaw.

1) **The project will adversely affect significant resource areas and interests protected by the Act and the Bylaw.**

Under the Act and Bylaw, an applicant proposing to work in wetlands and associated buffer zone must demonstrate that the work will protect wetlands-related interests such as public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention and wildlife habitat.¹

¹ 310 C.M.R. § 10.03(1) provides that an applicant has the burden of proving that proposed work in wetlands and buffer zone will serve the interests of the Act. Specifically, a person filing an NOI for proposed work within a resource area or buffer zone must demonstrate:

- that the area is not significant to the protection of any of the interests identified in the Act, or
- that the proposed work within a resource area will contribute to the protection of the interests identified in the Act by complying with the general performance standards established by the Act regulations for that area; and that the proposed work within the buffer zone will contribute to the protection of the interests identified in the Act.

The project site, in its current, undeveloped condition, indisputably serves the interests of the Act and Bylaw. The site is forested land, largely undisturbed, on which wetlands occupy one-half of the total land and are part of a larger wetland system that connects to the Spring Hill Conservation Area. The parcel is habitat for a wide variety of wildlife and plants.

The project will produce significant physical changes on the site that are likely to undermine the condition of the wetlands and buffer zone and the interests that they serve. Construction will necessitate the substantial clearing of trees and vegetation and other construction disturbance within 50 feet of BVW, will require the crossing and filling of BVW and will create an extended impervious surface in the middle of the now-undivided wetlands area. The removal of trees and tree canopy, the fragmentation of wetlands and the introduction of impervious structures will have an immediate impact on site characteristics such as temperature, hydrology and wildlife activity. Those changes, in turn, are likely to give rise to adverse changes in the condition and functioning of the wetlands and buffer zone, and thus to diminish the interests that the Act and Bylaw protect. The wetlands replication and conservation restrictions that the Applicant has proposed in mitigation are ill-suited to either ameliorate or compensate for the anticipated negative impact of the project. In the absence of evidence to the contrary, the Commission concludes that the project will adversely affect the wetlands, the buffer zone and their functions and that denial of the project is necessary to protect the resource areas and wetlands-related interests under the Act and Bylaw.

2) The project does not satisfy the no-structure and no-disturbance setback requirements of the Bylaw.

Sections F3.5 and F3.18 of the Bylaw provide for the protection of the 100-foot buffer zone, as well as the wetlands to which it relates, as “resource area.” Section F8.3 sets minimum setbacks to restrict activities in the buffer zone, and authorizes the Commission to increase those minimum setbacks as necessary to protect the interests of the Bylaw. In particular, Section F8.3 (2), (3) requires that:

- the inner 50 feet of the buffer zone be undisturbed natural vegetation; and
- driveways, roadways and structures be at least 75 feet from wetlands.

Over 400 feet of the shared driveway will be constructed inside the buffer zone and largely inside of the 50-foot undisturbed-vegetation buffer in violation of the minimum requirements of the Bylaw. Unless the project qualifies as a limited project, for which the Bylaw requires no setback, or unless the project merits a waiver of Bylaw requirements, the Commission must deny the project under the requirements of the Bylaw.

3) The project does not meet the requirements for a limited project under the Act or Bylaw.

310 C.M.R. § 10.01(2) provides that the interests of the Act include protection of public and private water supply, protection of ground water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish, protection of fisheries and protection of wildlife habitat.

Section F8.1 of the Bylaw similarly provides that an applicant has the burden of proving that the proposed work will not harm the interests of the Bylaw. Section F1 provides that the interests of the Bylaw include public or private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution prevention, fisheries, protection of endangered or threatened species and wildlife habitat.

Under Section 10.53(3) of the regulations under the Act, contained in Chapter 310 of the Code of Massachusetts Regulations (“Act regulations” or “regulations”), the Commission may, in the exercise of its discretion, approve certain “limited projects.” In deciding a limited-project request, the Commission must weigh the magnitude of the proposed alteration, the significance of the project to the interests protected under the Act, the availability of reasonable alternatives to the proposed activity and the extent to which the applicant would minimize adverse impacts and provide mitigation in furtherance of the interests of the Act.

Section 10.53(3)(e), authorizing limited-project roadways and driveways, provides specifically that the Commission may approve a wetlands-crossing driveway as a limited project where the driveway would provide access from a public road to upland and the Commission concludes that no reasonable alternative means of access from the road to the upland exists. In deciding whether reasonable alternative access exists, the Commission may consider and require alternative configurations or locations of the proposed driveway to minimize adverse impacts on wetlands including on land that the applicant currently owns or formerly owned or in which the applicant has or could acquire an ownership interest.

Even if a proposal meets the no-reasonable-alternative-access requirement and other general standards for a driveway under Section 10.53(3)(e), Wetlands Policy 88-2 stresses that the Commission still may deny limited-project status if the magnitude of proposed wetlands impact and significance of the wetlands to the interests of the Act are sufficient to warrant a denial.

The Bylaw, in Section F4.5, also gives the Commission discretion to approve the limited projects specified in Section 10.53(3) of the Act regulations.

Although the Applicant claims that no reasonable alternative means of access to the upland on the project site exists, the abutting 8 Spring Hill Road lot, which the Angells owned until November 2006, potentially could provide a means of access to the project site upland that would be less disruptive of the wetlands and the buffer zone, particularly the inner 50 feet of buffer zone.² One reasonable alternative, for example, would seem to be the old cart path at the rear of the 8 Spring Hill Road lot, which historically provided access across wetlands to the upland now part of proposed Lots 2C and 3; and yet the Angells chose not to reserve an

² The Act, unlike the Bylaw, does not specifically protect buffer zone as “resource area.” Nonetheless, 310 C.M.R. § 10.02 (2)(b) allows the Commission to regulate proposed work in the buffer zone where the Commission concludes that such work will result in the alteration of the wetlands. The Preface to the current Act regulations, revised in 2005, also confirms the importance to wetlands protection under the Act of the buffer zone, particularly the inner portion of the buffer zone:

“The potential for adverse impacts to resource area from work in the buffer zone increases with the extent of the work and proximity to the resource area . . . Extensive work in the inner portion of the buffer zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. Alterations to biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. These alterations from work in the buffer zone can occur through the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas.”

In the absence of any evidence to the contrary from the Applicant, the Commission believes that the construction and presence of a long shared driveway within 50 feet of wetlands is likely to give rise to undesirable changes in the BVW, and that denial of the project is consistent with the purpose of the Act and the regulations on buffer zone.

access easement from the public way, across the 8 Spring Hill Road lot, to and in the cart path. The Applicant has submitted minimal information about the Applicant's evaluation of alternative access routes via the 8 Spring Hill Road lot. The Commission has received no detailed analysis of why the Applicant rejected alternative routes and concluded that the proposed driveway course--crossing wetlands, dividing a now-continuous expanse of wetlands and associated buffer zone, degrading habitat and other functions through extensive tree removal and other disturbance within 50 feet of, and with potentially great risk to, BVW-- would best serve the interests of the Act and Bylaw. Under the Bylaw, Section 10.53(3)(e) of the regulations, and Wetlands Policy 88-2, moreover, the mere fact that the Angells no longer own the 8 Spring Hill Road land does not excuse them or the Applicant acting in their behalf from considering an access route on that property.

Furthermore, even if no reasonable alternative access exists, which the Applicant has not demonstrated, the Applicant has proposed insufficient mitigation. The proposed wetlands replication would compensate to some extent for the filling of wetlands, although replications are not notably successful. But, for the significant encroachment on the buffer zone, including in the inner 50-foot buffer, the Applicant has proposed essentially no mitigation. The three post-construction conservation restrictions would be of limited value, applying to the fragmented and compromised wetlands and buffer zone remaining after the driveway was in place.

Finally, the Act and Bylaw place the burden on the Applicant to prove that the project will further and not harm the interests of the wetlands and buffer zone, but the Applicant has provided insufficient information to satisfy those requirements.³ The Applicant has made repeated assurances that the project will protect and not harm the interests of the Act and Bylaw, but, aside from perfunctory, handwritten estimates of post-construction stream-crossing flow, runoff volume and recharge, has furnished no supporting evidence. On a forested site where ninety-four percent (94%) of the land is either wetlands or buffer zone, the Applicant proposes to build an extended driveway, which will cross wetlands and lie inside the 75-foot no-structure setback and 50-foot undisturbed-vegetation buffer that are "resource area" under the Bylaw; the purpose of the driveway, moreover, will be to provide access to two sizeable residences that the Applicant intends to build on the same site. The project will significantly alter conditions on the site through the removal of numerous large trees and their canopy within 50 feet of BVW, the removal and disturbance of other vegetation within the 50-foot buffer zone, the fragmentation of wetlands, and the addition of impervious surfaces and structures. These changes and others that follow are likely to have a significant, negative impact on the condition and functioning of the wetlands and the buffer zone, thereby undermining wetlands-related values such as flood-control, storm-damage prevention and wildlife habitat that the Act and Bylaw protect.

The Applicant's largely unsubstantiated conjecture is unpersuasive and does not allay the Commission's concerns. In the absence of evidence indicating otherwise, the Commission concludes that the project will harm rather than further the interests of the Act and Bylaw. Denial of limited-project status therefore is appropriate under both the Bylaw and the Act regulations.⁴

³ See Note 1, above.

⁴ The Applicant has suggested casually during the course of this proceeding that a denial of the project would unfairly deny the full economic use of the property. To the extent that the Applicant is claiming that a denial of the project

4) The project would not qualify for a waiver under the Bylaw even if the Applicant had requested one, which it did not.

Section F4.6 of the Bylaw authorizes the Commission, upon an applicant's written request at the time of initial filing, to waive strict compliance with the Bylaw where the Commission determines that "such action is in the public interest and is consistent with the intent and purpose of the Bylaw."

Even if the Applicant had requested a waiver under the Bylaw, which the Applicant did not, the Commission could not have granted one based upon these facts and circumstances. More than 400 feet of the proposed paved, shared driveway will be in the buffer zone, which is resource area under the Bylaw. Furthermore, much of the driveway in the buffer zone will not meet the 75-foot no-structure setback or 50-foot undisturbed-buffer requirement, and one part will cross and require the filling of 928 square feet of BVW. The setback requirements, which the Town of Acton approved in 2003, are more stringent than the setbacks in effect at the time of the 1999 proceeding, and reflect the Town's intention to strengthen the protection of wetlands under the Bylaw. A waiver of the setback requirements would, on the one hand, benefit private individuals on a privately-owned parcel and, on the other hand, put wetlands and buffer zone resource area at risk, contravening not only the purpose of the Bylaw to protect resource areas, but the interest and will of the public as embodied in the 2003 Bylaw amendment.

The Applicant's proposed conservation restrictions would not transform the project into one justifying a waiver of Bylaw setback requirements. The conservation restrictions would apply in patchwork fashion, on privately owned land, to wetlands and buffer zone that would become fragmented and otherwise compromised as a result of the project. The restrictions would come too late to serve the interests of the public and wetlands protection in a meaningful way, and would not compensate for the harm likely to result if the project moved forward pursuant to a waiver. In the absence of evidence that the project would serve the public interest and be consistent with the purposes of the Bylaw, the Commission would be required to deny a waiver.⁵

would amount to an unconstitutional taking of property without compensation, the Supreme Judicial Court decision in Giovanella v. Conservation Commission of Ashland, 447 Mass. 720 (2006) would refute that claim (where owner owned two abutting lots, one with house that owner sold, and one predominantly wetlands that owner sought to develop, lots were considered single property for purposes of "takings" analysis of impact on economic value, and Commission's denial of permission to develop wetlands lot was not a taking because denial did not render property economically valueless). In the current filing, the value of the project site would be combined with the value of the 8 Spring Hill Road house lot and a taking claim would fail by virtue of the significant financial consideration stated in the deed to the 8 Spring Hill Road house lot.

⁵ 310 CMR § 10.05(10) of the Act regulations also authorizes variances in the discretion of the Commissioner of the Massachusetts Department of Environmental Protection.