



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

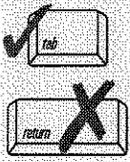
85-971

Provided by DEP

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

A. Request Information

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



1. Person or party making request (if appropriate, name the citizen group's representative):

Michael Jeanson, Jeanson Homes, Inc.

Name

12 Kennedy Lane

Mailing Address

Acton

City/Town

978-263-8081

Phone Number

MA

State

01720

Zip Code

978-263-1311

Fax Number (if applicable)

Project Location

West of 8 Spring Hill Road

Mailing Address

Acton

City/Town

MA

State

01720

Zip Code

2. Applicant (as shown on Notice of Intent (Form 3), Abbreviated Notice of Resource Area Delineation (Form 4A); or Request for Determination of Applicability (Form 1)):

Michael Jeanson, Jeanson Homes, Inc.

Name

12 Kennedy Lane

Mailing Address

Acton

City/Town

978-263-8081

Phone Number

MA

State

01720

Zip Code

978-263-1311

Fax Number (if applicable)

3. DEP File Number:

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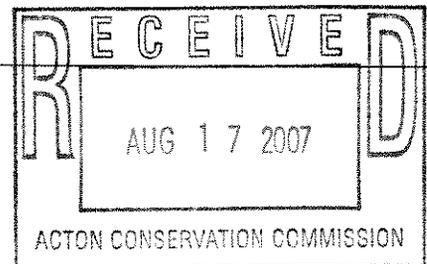
B. Instructions

1. When the Departmental action request is for (check one):

- Superseding Order of Conditions
 Superseding Determination of Applicability
 Superseding Order of Resource Area Delineation

Send this form and check or money order for \$100.00 (single family house projects) or \$200 (all other projects), payable to the *Commonwealth of Massachusetts* to:

Department of Environmental Protection
 Box 4062
 Boston, MA 02211



via Certified Mail
7005 0390 0001 8489 8688



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee
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B. Instructions (cont.)

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office.
4. 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.

8857

ACTON SURVEY & ENGINEERING, INC.

97 GREAT ROAD, P.O. BOX 666
UNIT 6
ACTON, MA 01720-0666
(978) 263-3666

CITIZENS BANK
MASSACHUSETTS
5-7017-2110

**PAY
TO THE
ORDER
OF**

Commonwealth of Massachusetts

Exactly Two hundred and no / 100 Dollars

DATE	AMOUNT
8/16/2007	\$200.00



⑈008857⑈ ⑆2110⑆0175⑆ 1200691897⑈

081013/6-89

Acton Survey & Engineering, Inc.
P.O. Box 666, 97 Great Rd. #6 • Acton, MA • 01720
Phone: (978) 263-3666 • Fax: (978) 635-0218
Email: actonsurvey@verizon.net

August 15, 2007

DEP CERO
627 Main Street
Worcester, MA

Certified Mail 7005 0390 0001 8485 5452

Re: Jeanson Homes, Inc.
Lots 2C & 3, Spring Hill Road, Acton
DEP 085-0971
AS&E 6562

Dear Sir or Madam:

At the request of Jeanson Homes, Inc. this office is requesting the Department issue a Superseding Order of Conditions to control the proposed development on Lots 2C and 3, which are to be created by subdividing existing Lot 2B on Springhill Road in Acton.

The Commission issued a denial under the Act and the Acton Wetlands Bylaw. It is our understanding that our client has contacted an attorney regarding an appeal for the denial under the Bylaw.

The Commission issued the denial for four reasons which contain error of fact as discussed below for each reason.

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

In our June 4, 2007 letter to the Commission we addressed the impact of the proposed alterations to all Interests of the Act and Purposes of the Bylaw. A copy of this letter is attached.

In the subsequent Hearings before the Commission the letter's discussions of there being no adverse impacts to the Interests of the Act and the Purposes of the Bylaw was referenced by this writer and not receiving any questions or comments from the Commission Members or it's staff, it was assumed that the Commission was satisfied that the alterations had been designed to not adversely impact the interests and purposes of the Act.

In making their Denial the Commission did not state how or to what degree the Interests and Purposes would be adversely impacted.

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

While this reason for denial pertains only to the Bylaw, Section F4.5 of the Bylaw exempts Limited Projects listed under 310 CMR 10.53(3) from all other provisions of the Bylaw.

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

The Bylaw defines a limited project as those listed under 310 CMR 10.53(3).

The project meets all criteria established by 310 CMR 10.53(3)(e), namely:

1. The proposed driveway has a width of twelve feet and has three foot wide shoulders, which we believe to be the minimal practical width to allow all weather access to the site for emergency and delivery vehicles during and after construction of the houses. The shoulders are to be eliminated for the portion of the driveway that crosses the wetland.

The Commission did not find that the driveway was not of the minimum practical width.

2. The Commission states that a reasonable alternative means of access from a public road was available across property once in joint ownership with Lots 2C and 3 via a cart road.

The cart road does not exist and never has existed.

A bridge comprised of a pressure treated wood deck placed directly on stones/ground exists at the rear of the property within the wetlands. The surface of the wetlands appears to have been altered to allow access to the bridge for human and horseback riders during drier periods at some time in the past. Flowage occurs across the altered ground surfaces.

All delineations of the wetlands have shown the BVW extending to the southerly property line. The bridge is located at the southerly end of the flow line.

Even if the cart road existed its use would not be a reasonable alternative as the driveway would serve more than two lots and would be required to comply with Acton Zoning Bylaw 3.8.1.5, which provides certain horizontal and vertical alignment and cross section constraints which would unreasonably impact the existing house, increase the length of the driveway and result in an increase in alterations to the wetlands.

A driveway designed to cross the wetland in the area of the existing footbridge would be required to pass behind and in close proximity to the existing house. Such a driveway would not be reasonable. A plan illustrating such a driveway is attached.

3. The wetland crossing has been designed to not restrict the flow of water and meet all requirements of the State's stream crossing guidelines. The calculations referenced in the Commission's findings of fact are complete and final calculations, not preliminary as stated.
4. Replication of the bordering vegetated wetlands and flood storage compensation is shown to be provided.
5. The owners of the property purposefully retained the right to access lots 2C and 3 across lot 2A to insure the provision of the only reasonable point of access to the developable portion of upland.

A wetland crossing in the vicinity of the existing foot bridge will result in additional wetlands being altered and the presence of walls up and downstream of the crossing site would interfere with crossing hydraulics.

The Commission apparently terms our written and verbal communications as being "unsubstantiated conjecture". The Commission did not comment on the contents of our letter and never suggested that this office did not present adequate data to show that the Interests of the Act were not being adversely impacted by the proposed alterations. Not being requested to provide additional information, we concluded that none was required.

In their e-mail of July 12, 2007 the Commission did not request additional information pertaining to possible wetland impacts.

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

Section F4.5 exempts limited projects as defined by 310 CMR 10.53(3) from other portions of the bylaw.

Summary

The Commission's denial of this project is apparently based on their contention that it does not meet the requirements of a limited project.

The project meets all criteria of a limited project set forth by 310 CMR 10.53(3) and by Wetlands Policy 88-2 as:

1. A reasonable alternative access is not and never was available.

Acton Survey & Engineering, Inc.
P.O. Box 666, 97 Great Rd. #6, Acton, MA 01720
Phone: (978) 263-3666 Fax: (978) 635-0218
Email: actonsurvey@verizon.net

2. The magnitude of the proposed alterations [928 square feet] and the nature of the wetlands to be altered is not "particularly important" to the protection of Interests to the Act. A significant area of upland [2.62 Acres] capable of containing two single family homes under applicable land use regulations is to be accessed.
3. Replication of the wetlands and flood storage lost is proposed.

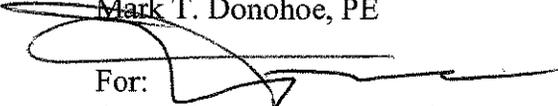
As the project meets all criteria set forth by the Wetlands Protection Act and 310 CMR 10.00 the Department is requested to issue a Superseding Order of Conditions as allowed by 310 CMR 10.05(7).

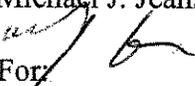
Enclosed are copies of all documents referenced in the Order of Conditions and the July 13th e-mail from the Commission.

If prior to any meeting, hearing or decision on this matter the Department should require any additional information or copies of data please contact us.

Thank you for any consideration you may give this matter.

Very truly yours,
Mark T. Donohoe, PE


For:
Acton Survey & Engineering, Inc.

Approved,
Michael J. Jeanson

For:
Jeanson Homes, Inc.

cc: Jeanson Homes, Inc.
William & Deanne Angell
Acton Conservation Commission - Certified Mail 7005 0390 0001 8485 6596