

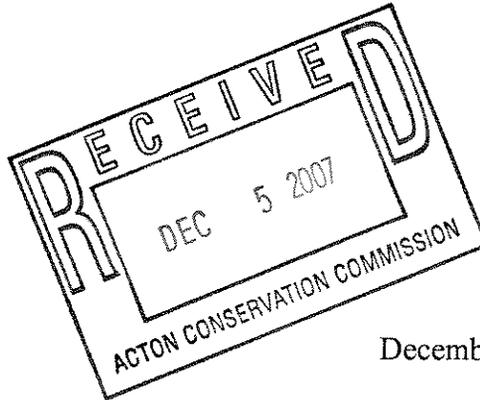
COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner



December 3, 2007

Anne Hartley, Case Administrator  
Office of Appeals and Dispute Resolution  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

In re: Michael Jeanson & Jeanson Homes, Inc.  
Docket No. WET-2007-005

Dear Ms. Hartley:

Please find attached for submission in the above-referenced matter, the **Department of Environmental Protection's Motion to Dismiss for Lack of Timeliness.**

Thank you for your attention to this matter.

Yours very truly,

Leslie-Ann DeFilippis, Paralegal for  
Elizabeth Kimball, Senior Counsel  
Office of General Counsel  
MassDEP – 3<sup>rd</sup> Floor  
One Winter Street  
Boston, MA 02108

cc: Service List

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF APPEALS AND DISPUTE RESOLUTION  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
In the Matter of )  
Michael Jeanson & Jeanson )  
Homes, Inc. )  
 )  
 )  
\_\_\_\_\_ )

Docket No. WET-2007-005  
File No. 85-971  
ACTON

**DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MOTION TO  
DISMISS FOR LACK OF TIMELINESS**

The Department of Environmental Protection (the "Department") submits this Motion to Dismiss for Lack of Timeliness in Response to Presiding Officer's Order to Show Cause issued on November 29, 2007. John Appelmans (the "Petitioner") filed an untimely Appeal Notice and therefore the Department seeks a dismissal of the Petitioner's Appeal Notice for lack of timeliness. No issues concerning the standing of the Petitioner to file this claim are addressed herein, as it is clear the appeal is untimely.

**FACTUAL BACKGROUND**

The Department issued a Superseding Order of Conditions (the "SOC") in this matter on October 16, 2007. See SOC attached hereto as **Exhibit A**. The Office of Appeals and Dispute Resolution (the "OADR") received an Appeal Notice from the Petitioner with a postmark date on the envelope of November 15, 2007. See copy of envelope attached hereto as **Exhibit B**.

At the site visit held on September 27, 2007 (See SOC Cover letter) the Department wetlands analyst (the "analyst", Ms. Maryann DiPinto asked the

citizen's/resident's group attending to designate one member of the group to receive a copy of the Reviewable Decision. The group designated Dara Mitchell of 8 Springhill Road (See, sign in sheet attached hereto, **Exhibit C**).

On October 16, 2007, the analyst mailed the SOC first class mail to the Applicant, Conservation Commission and Dara Mitchell. Although the Department can not provide the e mail itself, the analyst also sent an e-mail copy to Dara Mitchell on the same date. Consequently, the envelope containing the SOC was sent back to the Department's Central Office. Apparently some residents who have an Acton address receive their mail from the Concord Post Office. Upon receipt of the returned SOC, Ms. Dipinto re-sent a hard copy of the SOC to the group's designated representative, Dara Mitchell at 8 Springhill Road, Concord MA on October 22, 2007. See note on returned envelope attached hereto as **Exhibit D**. In analyzing the timeliness of Mr. Appelmans' appeal, the Department utilizes both the original date of issuance, October 16, as well as an issuance date most favorable to Mr. Appelmans, October 22, 2007.<sup>1</sup>

## ARGUMENT

The Department's current wetlands regulations allow for an appeal to be filed (10) ten business days after the issuance of an SOC. 310 CMR 10.05(7)(j)(2)(a) states in part, "Any...ten residents of the city or town where the land is located, if at least one resident was previously a participant in the permit proceeding may request review of a Reviewable Decision by filing an Appeal Notice no later than ten business days after the issuance of the Reviewable decision. 310 CMR 10.05(7)(j)(2)(a) also further states that

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<sup>1</sup> Mr. Appelmans' appeal references the same issuance dates: October 16, 2007 and October 22, 2007. (See Appeal, Page 3, first full paragraph.)

"The Appeal Notice must be filed with the Department...by certified mail or hand delivered within ten days after the date of issuance of the Reviewable Decision...Any party listed in 310 CMR 10.05(7)(j)(2)(a) that fails to timely file an Appeal Notice pursuant to 310 CMR 10.05, shall be deemed to have waived its right to appeal the Reviewable Decision."

In the instant matter, the analyst sent the Reviewable Decision (the "SOC") on October 16, 2007 by first class mail to the Applicant, Conservation Commission and the group's designated representative. Additionally, an e-mailed copy of the SOC was sent to the group's designated representative. Once the Department analyst received notice that the Reviewable Decision should be mailed utilizing a Concord address rather than an Acton address, a hard copy was mailed to the group's designated representative utilizing the Concord address. This re-mailing occurred on October 22, 2007. The Petitioner confirms that Dara Mitchell indeed received a hard copy of the SOC. See page 3 of 9, first full paragraph, of the Appeal Notice. As a matter of law, this Appeal Notice should be dismissed because it was filed beyond the ten (10) business day time frame allowable for filing a Hearing Request. In order to file a timely appeal, the Petitioner would need to file his appeal ten (10) business days from the issuance of the SOC. The SOC was issued on October 16, 2007. In this case the group's designated representative was sent at least an e-mail copy of the SOC on October 16, 2007 and was issued a hard copy on October 22, 2007. The postmark on the Petitioner's envelope or certified slip should have a date no later than ten (10) business days from the date of issuance. In order to file a timely Appeal Notice, the Petitioner would need to mail his Appeal Notice no later than October 30, 2007, utilizing the 10/16 date, or November 5, utilizing the

10/22 issuance date. The Department received the Appeal Notice on November 16, 2007 and the postmark on the Petitioner's envelope had a date of November 15, 2007. The Petitioner's Hearing Request is therefore, either eleven (11) days late or, even taking into account the date of October 22, 2007, the date that the analyst re-sent a hard copy of the SOC to the group's designated representative, seven (7) days late. Whichever date is used, the Petitioner failed to meet the Department's ten (10) business days deadline for filing a timely appeal. See 310 CMR 10.05(7)(j)(2)(a).

#### CONCLUSION

The regulations specify that appeals must be filed within ten (10) business days of the date of issuance of an SOC. 310 CMR 10.05(7)(j)(2)(a). As a result, this appeal should be dismissed as untimely.

Respectfully submitted by,

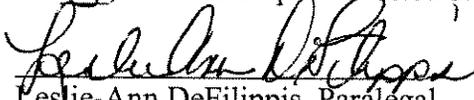


Leslie-Ann DeFilippis, Paralegal for  
Elizabeth Kimball, Senior Counsel  
Department of Environmental Protection  
Office of General Counsel,  
One Winter Street- 3rd Floor  
Boston, MA 02108

Dated: December 3, 2007

**CERTIFICATE OF SERVICE**

I, Leslie-Ann DeFilippis, do hereby certify under the pains and penalties of perjury, that a true and complete copy of the foregoing Department's Motion was served by First Class, U.S. Mail on this day, December 3, 2007 on all parties listed on the attached Service List.

  
Leslie-Ann DeFilippis, Paralegal

**SERVICE LIST**

<u>Representative</u>	<u>Party</u>
Michael Jeanson & Jeanson Homes, Inc. 12 Kennedy Lane Acton, MA 01720	Applicant
John Applemans 4 Spring Hill Road Acton, MA 01742	Petitioner
Dara Mitchell 8 Spring Hill Road Concord, MA 01720	Citizen's/Resident's designated representative
Acton Conservation Commission 472 Main Street Concord, MA 01720	Conservation Commission
Cc: Maryann DiPinto Mass DEP CERO	



COMMONWEALTH OF MASSACHUSETTS  
 EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 Central Regional Office, 627 Main Street, Worcester, MA 01608

DEVAL L. PATRICK  
 Governor

TIMOTHY P. MURRAY  
 Lieutenant Governor

IAN A. BOWLES  
 Secretary

LAURIE BURT  
 Commissioner

October 16, 2007

Michael Jeanson  
 Jeanson Homes, Inc.  
 12 Kennedy Lane  
 Acton, MA 01720

Re: Wetlands/Acton  
 File # 85-971, Superseding  
 Order of Conditions  
 West of 8 Spring Hill Rd.

Dear Mr. Jeanson:

MaryAnn DiPinto of the Department of Environmental Protection conducted a site meeting on September 27, 2007 in response your appeal of the Acton Conservation Commission's denial of an Order of Conditions issued for the above-referenced project. The commission denied the project both under the Massachusetts Wetlands Protection Act as well as the Town of Acton Wetland Protection Bylaw.

The Department understands the proposed work to be the construction of a common driveway to serve two new homes as part of a subdivision of land from property that has an existing home. That home at 8 Spring Hill Road was sold separately while a 5.2 acre parcel was retained by the former owner. The construction of the common driveway results in the filling of 928 square feet of Bordering Vegetated Wetland with the intermittent stream channel being bridged by an open bottom culvert. A replication area of 961 square feet is proposed.

The Commission's Order stated that the project was denied because it could not be conditioned to meet the Performance Standards under the Wetlands Protection Act or under the Acton Wetlands Bylaw, and because the information submitted was insufficient to describe the activity and its impacts on the wetlands. The Conservation Commission also stated that another alternative should have been explored to access the upland over a former cart path located across the back land at 8 Spring Hill Road. The Commission did ask Acton Survey, the consultant for the applicant, to explore this possibility as a means to lessen wetland and buffer zone impacts. Mark Donohoe responded to this request in a letter dated June 4, 2007 stating that because the common drive would access three lots it would need to be constructed wider and result in approximately 1500 square feet of wetland impacts. The cart road has completely grown over and is no longer a cleared path.

This information is available in alternate format. Call Donald M. Gomez, ADA Coordinator at 617-556-1057.

<http://www.mass.gov/dep> • Phone (508) 792-7650 • Fax (508) 792-7621 • TDD # (508) 767-2788

Printed on Recycled Paper

Southboro - SORAD  
DEP File #290-828

The wetlands impacts for the alternative crossing are greater than the current proposal. Since land including all of the remaining wetland area is being set aside in a conservation restriction, a 401 Water Quality Certificate will not be required by MassDEP. The Department therefore has determined that the proposed work can be conditioned to adequately protect the interests of the Act. Based on the above, the Department hereby issues the attached Superseding Order of Conditions **approving** this project. However, the Department reserves the right to raise additional issues and present further evidence as may be appropriate should there be further proceedings in this matter. Work may not commence however until all approvals are in place, including an approval under the Town of Acton Wetlands Bylaw.

If you have any questions regarding this Order please contact MaryAnn DiPinto of this office at (508) 792-7650 ext. 3711.

Sincerely,



Philip P. Nadeau  
Wetlands Section Chief

Enclosure

cc: Conservation Commission

Dara Mitchell  
8 Spring Hill Road  
Acton, MA 01720

978- not done right  
263-1860



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Superseding Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
and Wetland Regulations 310 CMR 10.00

DEP File Number:  
85-971

**A. General Information**

1. From: Department of Environmental Protection  
Regional Office of the Department of Environmental Protection (the Department)
2. This issuance is for (check one):  
a.  Superseding Order of Conditions  
b.  Amended Superseding Order of Conditions
3. To: Applicant:  
a. Name Michael Jeanson b. Company Jeanson Homes, Inc.  
c. Mailing Address 12 Kennedy Lane  
e. City/Town Acton f. State MA g. Zip Code 01720
4. Property Owner (if different from applicant):  
a. First Name William & Deanne b. Last Name Angell  
c. Mailing Address 643 Pheasant Hill Road, Village of Nagog Woods  
d. City/Town Acton e. State MA f. Zip Code 01720
5. Project Location:  
a. Street Address West of 8 Spring Hill Road b. City/Town Acton  
c. Assessors Map/Plat Number E-6 d. Parcel/Lot Number 6-1  
Latitude and Longitude, if known (note: electronic filers will click for GIS locator):  
e. Latitude 42° 29' 59.32" f. Longitude 71° 23' 36.88"
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
a. County Middlesex South b. Book 24106 c. Page 522  
d. Certificate (if registered land)
7. Dates:  
a. Date Notice of Intent Filed May 17, 2007 b. Date SOC Site Meeting September 27, 2007 c. Date of SOC Issuance October 16, 2007
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
a. Plan Title Notice of Intent Plan sheets 1 to 3 of 3 dated April 19, 2007 sheet 1 revised June 26, 2007  
b. Prepared By Acton Survey and Engineering c. Signed and Stamped by Mark Donohoe, P.E.  
d. Final Revision Date June 26, 2007 (see above) e. Scale 1"=20'  
f. Additional Plan or Document Title \_\_\_\_\_ g. Date \_\_\_\_\_
9. Total WPA Fee Paid:  
a. Total Fee Paid 1500.00 b. State Fee Paid 737.50 c. City/Town Fee Paid 762.50

## B. Findings

### 1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, the Department 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. The Department 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. The Department 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 Superseding 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 Only

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
Vegetation alteration only:				
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	928	928	961	961
	a. square feet	b. square feet	c. square feet	d. square
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square
	e. cu.yd dredged	f. cu.yd dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet

## B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	a. square feet		
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total square ft	a. total square ft		
Sq ft within 100 ft	c. square feet	c. square feet		
Sq ft between 100-200 ft	e. square feet	e. square feet		

## 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. See Condition #26 below.
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. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on October 16, 2010 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the DEP Regional Office 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.

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### C. General Conditions (cont.)

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number 85-971"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department of Environmental Protection in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until the Department of Environmental Protection has issued a Certificate of Compliance.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Brief Project Description of Permitted Activities:

Construction of two single-family homes in the Buffer Zone with a common driveway wetland crossing.

Special Conditions (See the attached sheet(s) for additional conditions numbered 20 through 27)

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20. All areas of construction shall be inspected at the close of each construction day. Erosion and siltation controls and control structures shall be monitored at that time and maintained, repaired, or reinforced as necessary. Erosion and/or siltation structures may be added based on experience at the site. These devices shall be inspected to assure maximum control has been provided after any rainfall.
  21. Any damage caused as a direct result of this project to any wetland resource areas shall be the responsibility of the applicant to repair, restore and/or replace. Sedimentation or erosion into these areas shall be considered damage to wetland resource areas. If sediment reaches these areas the applicant shall contact the Conservation Commission and the Department immediately. A plan for abatement of problem and restoration shall be submitted to and approved by the Department.
  22. The limits of work depicted on the plan must be clearly marked in the field prior to commencement of construction. The erosion control barrier shall serve as a work limit line for this project. Under no circumstances is any work allowed to take place on the resource area side of the barrier replacement and shall include materials to repair silt fences, haybales, stone rip-rap filter dikes or any other devices planned for use during construction.
  23. Upon completion of this project, the design engineer or other Professional Engineer (P.E.) shall at the request of the applicant submit to the Department a written statement, stamped and signed, which certifies that project has been done according to submitted plans and this Order. The project shall not be considered complete without submittal of this statement to the Department. This statement shall be accompanied by a request from the applicant to the Department for a Certificate of Compliance for this Order of Conditions.
  24. The proposed wetland replication area must meet the Performance Standards for Bordering Vegetated Wetlands (Wet Meadows, Marshes, Swamps, and Bogs), 310 CMR 10.55 (4)(b). Replication must be based on the best available information for such areas and must be supervised by a wetlands specialist who shall be a professional with experience in wetland replication and a working knowledge of botany and hydrology.
  25. Wetland Regulation (310 CMR 10.55 (4)(b)(6) requires that at least 75% of the surface of the replacement area be re-established with indigenous wetland plant species within two growing seasons. If monitoring data indicates that this objective cannot be met a corrective plan of action shall be submitted to the Department for approval, and implemented under the supervision of a wetlands specialist.
  26. These lots contain areas that are subject to the Wetlands Protection Act. Any future alteration, filling, dredging removal of vegetation or other work in or within 100 feet of those areas will require notification of the Conservation Commission and Department. This condition is ongoing and does not end upon the completion of this project or the issuance of a Certificate of Compliance.
  27. This Order supersedes all previous Orders of Conditions issued for DEP File # 85-971.

**END OF SPECIAL CONDITIONS**

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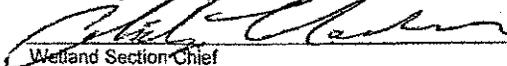
## D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

## E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions #4 or #6.

Issued by the Department of Environmental Protection:

 October 16, 2007  
Wetland Section Chief Date

### Notary Acknowledgment

Commonwealth of Massachusetts County of Worcester

On this 16th of October 2007  
Day Month Year

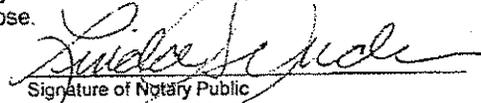
before me, the undersigned Notary Public, personally appeared

Philip P. Nadeau, Wetlands Section Chief  
Name of Document Signer

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

personally known  
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.

  
Signature of Notary Public

LINDA S. ANDERSON  
Printed Name of Notary Public

June 5, 2009  
My Commission Expires (Date)

See attached for appeal rights

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## F. Appeals

### For Notices of Intent filed AFTER March 1, 2005:

The applicant or landowner, the conservation commission, any person aggrieved by this Superseding Order or Determination if previously a participant in the permit proceedings, any owner of land abutting the land subject to this Superseding Order or Determination if previously a participant in the permit proceedings, or any ten residents of the city or town where the land is located, if any one resident was previously a participant in the permit proceedings, are hereby notified of their right to file a Notice of Claim for an Adjudicatory Appeal (Notice of Claim) pursuant to M.G.L. c. 30A, sec. 10. Previous participation in the Superseding Order or Determination permit proceedings means the submission of written information to the Conservation Commission prior to the close of the public hearing, filing a Request For A Superseding Order or Determination with the Department, or providing written information to the Department prior to issuance of a Superseding Order or Determination. Complete adjudicatory appeal applications require the submittal of a Notice of Claim and an Adjudicatory Appeal Fee Transmittal Form. A completed Fee Transmittal Form (available at: <http://www.mass.gov/oaaf/feetrans.htm>) including an appeal fee payment of \$100.00, must be mailed to the DEP Lockbox at:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

The Notice of Claim (including a copy of the \$100.00 appeal fee payment check and a copy of the Fee Transmittal Form) must be sent by certified mail or be hand delivered to the Department within ten business days after the date of issuance of this Superseding Order or Determination. The Notice of Claim must be addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street – 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the Notice of Claim shall, at the same time, be sent by certified mail or hand delivery to the Conservation Commission, the applicant, and any other parties involved in the proceeding.

The Notice of Claim shall clearly and concisely set forth the facts related to the proceeding, the reasons the Superseding Order or Superseding Determination is considered to be inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40, and the relief sought through the adjudicatory appeal, including the changes desired in the Superseding Order or Superseding Determination. The Notice of Claim must include a copy of the document subject to the appeal and set forth: the Department Wetlands File Number; the name of the applicant and address of the project; the complete name, address, telephone and telefax (if any) numbers of the party filing the request, and, if represented by counsel, the name, address, telephone and telefax (if any) numbers of the attorney; the names, addresses, telephone and telefax (if any) numbers of all other parties, if known; and a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known. In addition, any person filing a Notice of Claim must also set forth sufficient facts to demonstrate their status as a person aggrieved, an abutter, or a ten residents group, and provide documentation to demonstrate previous participation, where required. Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing. Any ten persons may intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, s. 10A.

## 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 9 of this form shall be submitted to the DEP Regional Office listed below.

DEP - Wetlands Program 627 Main Street Worcester, MA 01608  
Regional Office of the Department of Environmental Protection

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

To:

Central Regional Office - DEP  
Regional Office of the Department of Environmental Protection

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:

County	Book	Page
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for:

Property Owner

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

Book	Page
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In accordance with the Order of Conditions issued on:

Date

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

Instrument Number

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

Document Number

Signature of Applicant



# SOC Site meeting Acton - lots 2c+3 Spring Hill Rd Sign-in list

- |                      |                              |                                    |
|----------------------|------------------------------|------------------------------------|
| Mary Ann DiPinto     | DEP 508-767-2711             | email: maryann.dipinto@state.ma.us |
| MARA J. DONOHUE      | AS&P 978-263-3666            | ACTON SURVEY @ URBICOM             |
| TERRY MATLAND        | Acton ComComm                | 508/395-5938                       |
| JAWET ADALHI         | "                            | 978-369-4930                       |
| Joan Gardner         | 15 Spring Hill Rd            | 978-369-7367                       |
| Elaine Sislet        | 38 Dustin Lane               | 978-371-9833                       |
| Fred Seward          | 158 Spencer Brook Rd         | 978-369-8805                       |
| SUSAN MITCHELL-NARON | 328 POPE RD                  | 978-369-9264                       |
| Sandra Baschill      | 2 Spring Hill Rd             | 978-371-0699                       |
| DARA MITCHELL        | 8 SPRING HILL RD             | 978-263-1860                       |
| TERRY O'SULLIVAN     | 8 SPRING HILL RD             | 978-263-1860                       |
| Jim Appalman         | 4 Spring Hill Rd             | 978-369-7437                       |
| Angela Leonard       | 158 Spencer Brook Rd         | 978-369-8805                       |
| Deanne Angell        | 643 Pleasant Hill, Acton, MA | 978-273-7675                       |
| William Angell       | 643 Pleasant Hill, Acton, MA | 978-273-7675                       |
| Tom Tidman           | 472 Main St. Acton Ma.       | - Town of Acton 978-264-9621       |

\* DARA MITCHELL  
 8 SPRING HILL RD  
 COM 027, MA 01912  
 978-263-1860  
 DARA MITCHELL e HETMIL.COM  
 (AS YOUR PERSON FOR ASSETTERS)

## Site walk

Jeff C. 978  
 464 3101  
 621 4821

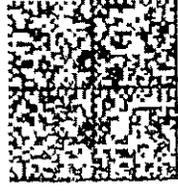
439 Lou D

EXHIBIT D

Dept. of Environmental Protection  
Central Region  
627 Main Street  
Worcester, MA 01608

RECEIVED  
OCT 19 2007  
DEP-CERO

*sent by email on 10/16  
re sent hardcopy on 10/22*



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\$00.580  
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DARA MITCHELL  
8 SPRING HILL RD  
ACTON, MA 01720

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UNABLE TO FORWARD  
RC: 01608202227 \*0522-07450-14-42

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