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COPY

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December 27, 2007

BY HAND

Anne Hartley, Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street
Boston, MA 02108

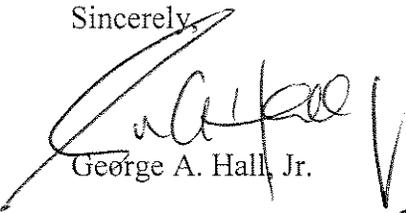
Re: In the matter of Michael Jeanson & Jeanson Homes, Inc.
OADR Docket No. WET-2007-005
DEP File No. 85-971

Dear Ms. Hartley:

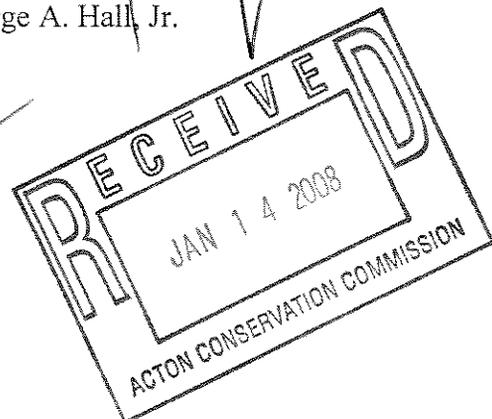
Enclosed for filing in the above matter is the Acton Conservation Commission's Statement on Proposed Stay.

Thank you for your kind attention to this matter.

Sincerely,


George A. Hall, Jr.

c: Service List
Tom Tidman, Acton Conservation Commission ✓



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of Michael Jeanson &
Jeanson Homes, Inc.

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OADR Docket No. WET-2007-005
DEP File No. 85-971
Acton, MA

ACTON CONSERVATION COMMISSION'S
STATEMENT ON PROPOSED STAY

The Acton Conservation Commission ("Commission") hereby submits this response to the December 21, 2007 Pre-Screening Conference Report and Order ("Report").

1. As a preliminary matter, the Commission objects to the Presiding Officer's apparent assumption that it is appropriate to compel a conservation commission to participate in an appeal from a Superseding Order of Conditions (SOC") that the commission did not initiate. It has long been the practice of the Department to provide conservation commissions with a limited opportunity to participate in these hearings and that, absent a response by the local commission by a deadline set by the hearing officer, the commission is dropped as a party without any sanctions. This practice takes note of the fact that, while conservation commissions have a sufficient interest in the administration of the Wetlands Protection Act in their communities to justify presumptive party status, they are not necessary parties to SOC appeals. Further, towns have limited resources to pay their staff or their attorneys to participate in adjudicatory proceedings, and they have to be selective about participating in legal proceedings where the municipality's interests are not substantial. Nothing in the recent amendments to the adjudicatory rules put commissions on notice of any change in practice in this regard. The tenor

of the December 21, 2007 report, in which the Presiding Officer effectively scolds the Commission for failure to appear at the pre-hearing conference, and for failure to file a responsive Pre-hearing Conference Statement he deems sufficiently responsive, is therefore unjustified.

2. There are two additional reasons why the demands placed on the Commission by the Presiding Officer in Pre-Screening Conference Report and Order are misplaced. First, it is apparent from the record that the Request for Adjudicatory Hearing was not filed within ten business days of the issuance of the SOC. The Department should resolve the question whether it even has jurisdiction to entertain this appeal before it imposes financial burdens on the Town of Acton to answer questions that may be academic. Second, the Report suggests that the Department has jurisdiction to determine whether a decision by the Commission under its local bylaw is enforceable under the SJC's decision in Oyster Creek Preservation, Inc. v. Conservation Commission of Harwich, 449 Mass. 859, 866 (2007); that the Department can decide whether its SOC "preempts" the local order. DEP has no such jurisdiction. DEP's interest in that question is limited to resolution of the question whether "bylaw stay policy" should be applied – a question the Commission has no interest in if it chooses not to be a party to the case. Only the state courts identified in G.L. c. 248, § 4 have jurisdiction to rule on the validity of the local order. The Department should not be compelling the participation of the Commission in this case for any reason, but especially not for the purpose of ruling on questions it has no jurisdiction to resolve.

3. DEP should also take care not to read more into the Oyster Creek decision than it includes. In that case, the Harwich Conservation Commission, which was in the habit of issuing a joint Order of Conditions under the Act and its local bylaw, failed to issue its Order of

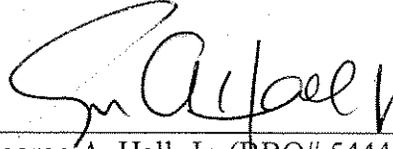
Conditions within the 21-day period, and the applicant requested an SOC *before* the Commission issued the Order, based on its failure to act. The applicant, therefore, properly preserved its challenge to the timeliness of the Harwich Conservation Commission's action.

3. Notwithstanding the foregoing objections, the Commission offers the following information to the Department in its efforts to resolve this matter. A copy of the Town of Acton's Wetland Protection Bylaw is attached as Exhibit A. A copy of the Acton Conservation Commission's Rules and Regulations for implementation of the Acton Wetland Protection Bylaw are attached as Exhibit B. Section F3.18 clearly defines "resource areas" subject to protection under the Bylaw to include the buffer zone. Section F8.3 of the Bylaw and Section 3.2 of the Rules and Regulations clearly include setback requirements that would apply to the activities that are the subject of this application under the Bylaw for which there are no parallel requirements under the Act.

4. The Commission's Order of Conditions was issued on August 8, 2007, exactly 21 days after the close of the public hearing in the matter on July 18, 2007, and was therefore timely (Exhibit C).

5. The applicant's request for an SOC did not challenge the timeliness of the Commission's decision (Exhibit D). The applicant did not appeal the denial of the project under the Bylaw. To the extent that the applicant's request for an SOC challenges the sufficiency of the Commission's reasons for denial of the project under the Bylaw, those issues are not ones the Department has jurisdiction to address.

Respectfully submitted,
ACTON CONSERVATION COMMISSION
By its attorney,

A handwritten signature in black ink, appearing to read "G. Hall, Jr.", written over a horizontal line.

George A. Hall, Jr. (BBO# 544493)
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One Canal Park, Suite 200
Cambridge MA 02141
(617) 621-6500

SERVICE LIST

In the Matter of:
Michael Jeanson &
Jeanson Homes, Inc.

OADR Docket No. WET-2007-005
DEP File No. 85-971

Applicants: Richard A. Nysten, Jr., Esq.
Lynch, DeSimone & Nysten, LLP
12 Post Office Square
Boston, MA 02108

Petitioner: John Appelmans
4 Spring Hill Road
Acton, MA 01742

Acton Conservation Commission: George A. Hall, Jr.
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

The Department: Philip Nadeau, Section Chief
MassDEP/Central Regional Office
Bureau of Resource Protection
627 Main Street
Worcester, MA 01608

Mary Jude Pigsley, Chief Regional Counsel
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627 Main Street
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Elizabeth Kimball, Office of General Counsel
MassDEP/Office of General Counsel
One Winter Street
Boston, Massachusetts 02108;

OADR Alternative Dispute

Resolution Administrator: Aprel McCabe
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108.

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CHAPTER F

ENVIRONMENTAL PROTECTION

WETLAND PROTECTION

Section F1 Purpose

The purpose of this Bylaw is to protect the wetlands, vernal pools, adjoining buffer zones, banks, lands subject to flooding and riverfront areas (collectively, "the resource areas") of the Town of Acton by controlling activities deemed to have a significant impact upon wetland interests. Said wetland interests include (but are not limited to) the following: 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 (collectively, the interests protected by this Bylaw.) The Town of Acton Wetlands Map shows the approximate location of most of the Town's wetlands and shall be used as a guide to wetland location.

Section F2 Provisions

No person shall remove, dredge, fill or alter any resource area except as provided in Section 4, without first filing a Determination of Applicability, or a written Notice of Intent under this Bylaw, and obtaining and complying with the terms of said Determination or with an Order of Conditions.

Section F3.1 Definitions

The term "person" as used in this Bylaw shall include any individual, group of individuals, association, partnership, corporation, or business organization, trust or estate, the Commonwealth, or any political subdivision thereof, administrative agency, public or quasipublic corporation or body, or any other legal entity or its legal representatives, agents or assigns.

Section F3.2

The term "abutter" as used in this Bylaw shall include all property owners, determined by the most recent maps in the Assessors Office, that abut the land on which the proposed activity is to take place and such other persons as the Commission may determine.

Section F3.3

The term "activity" shall mean any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; any form of construction, reconstruction, or expansion of any building, structure, road or other way; or alteration or any changing of the physical, chemical, or biological characteristics of an area of land or water.

Section F3.4

The term "alter" as used in this Bylaw shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:

- (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns and flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material which may degrade water quality;
- (e) Driving of piles, erection of buildings or structures of any kind;
- (f) Placing of obstructions whether or not they interfere with the flow of water;

- (g) Destruction of plant life, including the cutting of trees, which may significantly impact the interests protected by this Bylaw;
- (h) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water;

Section F3.5

"Buffer zone" shall mean that area of uplands within 100 feet horizontally outward from the boundary of a wetland, vernal pool (except as provided for in Section 3.14), bank, or land subject to flooding. (Note: there is no buffer zone associated with the riverfront area.)

Section F3.6

"Certificate of Compliance" shall mean a written determination by the Commission verifying that work has been completed in accordance with an Order of Conditions.

Section F3.7

"Commission" shall mean the Acton Conservation Commission, that body of members lawfully appointed pursuant to M.G.L. Chapter 40, Section 8c, for the purposes of administering and enforcing the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Town of Acton Wetland Protection Bylaw.

Section F3.8

"Determination Of Applicability" shall mean any review and written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw. See also Section F5 of the Bylaw.

Section F3.9

"Dredge" shall mean to clean, deepen, widen or excavate, either temporarily or permanently.

Section F3.10

"Extension Permit" shall mean a written extension of time granted by the Conservation Commission once for a period of up to 3 (three) years, within which time authorized work shall be completed.

Section F3.11

"Fill" shall mean either of the following, whichever is applicable:

- (a) to deposit or place any material so as to raise in elevation, either temporarily or permanently;
- (b) anything that fills or is used to fill - especially earth or gravel used for filling a hole, depression or low area.

Section F3.12

"Notice of Intent" shall be a written notice filed by any person intending to alter, or in any way change, the physical or chemical properties of land subject to protection under the Bylaw.

Section F3.13

"Order of Conditions" shall mean the document issued by the Conservation Commission or the courts containing conditions which regulate or prohibit any activity subject to the Bylaw, which is to be recorded in the Registry of Deeds or Land Court.

Section F3.14

The term "vernal pool" as used by this Bylaw shall include, in addition to that already defined under the Massachusetts Wetlands Protection Act and regulations (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or

driveways that meets the certification criteria established in the Guidelines for Certification of Vernal Pool Habitat published by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The buffer zone for vernal pools shall extend 100 horizontal feet from the mean annual high-water line defining the depression.

Section F3.15

The term "wetland" as used in this Bylaw includes:

- 1) Vegetated wetlands are wet meadows, marshes, swamps and bogs where 50% or more of the vegetative community consists of wetland indicator plants as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. When vegetation is not sufficient to determine the boundary of a wetland, characteristics of hydric soils or observations of flowing water, standing water or saturated soils may be used.
- 2) Any non-vegetated area such as a creek, brook, stream, river, pond, lake, lands under said waters, and certified and uncertified vernal pools as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00 and Section F3.14 of this Bylaw.

Section F3.16

"Bank" is the portion of the land surface that normally abuts and confines a water body such as a creek, brook, stream, river, pond or lake as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. A bank may be partially or totally vegetated, or comprised of exposed soil, gravel or stone.

Section F3.17

"Lands subject to flooding" are areas of temporary or occasional flooding as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. Bordering land subject to flooding is the estimated maximum lateral extent of floodwater that will theoretically result from the statistical 100-year frequency storm. Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches. Some isolated lands subject to flooding may be vernal pools.

Section F3.18

The term "resource area" shall mean any area subject to protection under this bylaw and include any bank, wetland, vernal pool, buffer zone, lands subject to flooding or riverfront area.

Section F3.19

The "Riverfront Area" is the area of land between a river's mean annual high water line and a parallel line measured horizontally 200 feet away. The riverfront area may include or overlap other resource areas or their buffer zones. A river is a flowing body of water that empties to any ocean, lake, pond or river and which flows throughout the year (except during drought conditions). Perennial streams are rivers; intermittent streams are not rivers. Determination of flow status shall be based on: field observations (witnessed by Conservation Commission or its authorized agent); USGS or other government maps; size of channel or bank; watershed size; stream order; streambed characteristics; local geology; biological community; and/or other appropriate evidence.

Section F4.1 Exemptions

No Notice of Intent hereunder need be filed in connection with an emergency project necessary for the protection of health or safety of the citizens of Acton to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town. An

emergency project shall mean any project certified to be an emergency by the Town of Acton Conservation Commission or its agents within 24 hours. In no case shall any removal, dredging, filling or altering commence prior to such emergency certification nor extend beyond the time necessary to abate the emergency.

Section F4.2

No Notice of Intent hereunder need be filed in connection with maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, or telecommunication services.

Section F4.3

No Notice of Intent need be filed in connection with normally accepted maintenance procedures on land in agricultural use. The term "land in agricultural use" shall mean any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, Massachusetts General Laws, Ch. 61A ss. 1 & 2. Any proposed changes to land in agricultural use which may have a significant impact on any of the interests protected by this Bylaw must be submitted to the Conservation Commission for a Determination of Applicability.

Section F4.4 Septic Systems Meeting State Title V

No Notice of Intent need be filed for the replacement, repair, or installation of a residential septic system that meets the requirements of Title V of the State Environmental Code (310 CMR 15.00), that has received a permit from the Acton Board of Health, and that meets the setback requirements of this Bylaw. Any such septic system replacement, repair, or installation that may have a significant impact on any of the interests protected by this Bylaw must be submitted to the Conservation Commission for a Determination of Applicability.

Section F4.5 Limited Projects

Notwithstanding the other provisions of this Bylaw, the Commission may issue an Order of Conditions for limited projects listed under Section 10.53(3) of the Wetland Protection regulations promulgated under the Massachusetts Wetland Protection Act (310 CMR 10.53(3)).

Section F4.6 Waivers

Strict compliance with this Bylaw may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing. The waiver shall be presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.

Section F5 Determination of Applicability

Any person may request the Conservation Commission to make a determination as to whether or not a proposed project in the wetland or "buffer zone" is significant to the interests protected by the Bylaw. This request for a Determination of Applicability shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative. A person delivering this request by hand shall be given a dated receipt. The Commission shall make such a determination within 21 days of the receipt of said request, and it shall notify the applicant by certified mail, of the results of the determination. If the Conservation Commission determines that the subject area is significant to the interests protected by this Bylaw, and said interests are not fully protected by the project as proposed, the Commission will require the applicant to file a Notice of Intent, or will attach such Orders of Conditions to ensure protection of the interests of this Bylaw. The Commission, or its agents, may, for the purpose of carrying out its duties under this Bylaw, request such plans or

information as may be necessary for its evaluation, may enter upon the subject land, and may make or require to be made such examination or survey as it deems necessary.

Section F5.1 Abbreviated Notice of Resource Area Delineation

Any person may request the Conservation Commission to make a determination as to the precise boundaries of a resource area, including the buffer zone. This request for Resource Area Delineation shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative. A person delivering this request by hand shall be given a dated receipt. Prior to issuing a Resource Delineation, the Conservation Commission shall hold a public hearing within 21 days of the filing. Notice of the time and place of such hearing shall be given by the Conservation Commission not less than five days prior to the public hearing, by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant, the Board of Health and the Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under M.G.L. Ch. 131, s. 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date time certain, agreeable to both the Applicant and the Commission, and shall be posted not less than five (5) days prior to said continuation. The Resource Area Delineation shall be issued within 30 days after the public hearing and may be identical to any such delineation issued under the provisions of the Massachusetts Wetlands Protection Act (M.G. L. Ch. 131, s. 40).

Section F6.1 Filing Procedure for a Notice of Intent

The Notice of Intent shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative, and shall include plans and specifications as required of an applicant by the Commission. A person delivering this Notice by hand shall be given a dated receipt. This Notice shall also include a filing fee to be designated in the rules and regulations of the Commission payable to the Town of Acton. No filing fee is required when the Town of Acton files an application. These plans shall also show the location of the wetland boundaries and shall be at a scale of 1" = 40' or any such scale that adequately depicts the area. The applicant shall also notify the clerk of the Town of Acton by hand delivery or certified mail, that such plans have been submitted to the Conservation Commission. Provided that the Notice of Intent fulfills the requirements of this Bylaw and M.G.L. Ch. 131, s. 40, only one Notice of Intent need be submitted.

Section F6.2 Notification of Filing

Any person filing a Notice of Intent under this Bylaw shall also notify by certified mail all abutters and the owner of the subject property, if different from the applicant, of the filing of such Notice of Intent. Such Notice shall clearly identify the land on which the work is to be done and describe the general nature of the work. Notice shall include the date, place, and time of said public hearing, and where plans may be reviewed. A list of persons so notified and proof of such notification shall be filed with the Conservation Commission prior to the Public Hearing.

Section F6.3 Extension Permits

The Commission may extend an Order of Conditions once for a period of up to three years. Written requests for an Extension Permit shall be made not less than thirty calendar days prior to the expiration of said Order of Conditions.

The Commission may deny an Extension Permit under any of the following circumstances:

- (1) Where no activity has begun on the project, except where such failure is due to unavoidable delay such as appeals in obtaining other necessary permits.
- (2) Where new information not available at the time of the original permit filing has become available and indicates that the Order of Conditions is insufficient to protect the areas subject to protection.

- (3) Where activity is causing damage to areas subject to protection.
- (4) Where there has been activity in violation of the Order of Conditions.
- (5) Where an Extension Permit has been previously granted for the Order of Conditions.

Section F7.1 Public Hearing

Prior to issuing any Order of Conditions (Section 8.2) the Conservation Commission shall hold a public hearing within 21 days of the filing of said Notice of Intent. Notice of the time and place of such hearing shall be given by the Conservation Commission not less than five days prior to the public hearing, by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant, the Board of Health and the Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under M.G.L. Ch. 131, s. 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date time certain, agreeable to both the Applicant and the Commission, and shall be posted not less than five (5) days prior to said continuation.

Section F7.2 Failure to Act

If the Conservation Commission has failed to hold a public hearing within the 21 day period as required, or if after holding such a hearing, has failed within 21 days from the date of the close of the public hearing to issue an Order of Conditions, an appeal may be made to the Board of Selectmen, who within ten days, shall instruct the Commission to act within a period not to exceed ten days. If, after this ten day period, no action has been taken by the Conservation Commission, the application shall be considered approved.

Section F8.1 Burden of Proof

The applicant shall bear the burden of proving that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission that the proposed work will not harm any of the interests protected by this Bylaw shall be sufficient cause for the Commission to deny the application or to grant a permit with an Order of Conditions, or, at the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

Section F8.2 Order of Conditions

The Conservation Commission may impose such conditions on any proposed removing, dredging, filling or altering as it deems necessary to protect and preserve the interests covered by this Bylaw. In preparing the Order of Conditions the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation and replication of protected resource areas throughout the municipality, resulting from past activities, permitted and exempt, and foreseeable future activities. Such Order of Conditions shall be in writing and may be subject to the same constraints and be identical to any such order issued by the Acton Conservation Commission under the provisions of M.G.L. Ch. 131, s.40, or successor statutes, and shall be issued within 30 days after the public hearing. Such Order of Conditions will expire three years from the date of issuance, unless renewed prior to expiration. No proposed work governed by an Order of Conditions shall be undertaken until all permits, approvals, and variances required by local Bylaws have been obtained and all applicable appeal periods have expired. The final Order of Conditions issued under this Bylaw shall be recorded with the Registry of Deeds for the district in which the land is located. However, if said Order is identical to the final Order of Conditions issued under the provisions of M.G.L. Ch. 131, s.40, only one Order of Conditions need be recorded. The Conservation Commission shall have the right to file the Order of Conditions with the Registry of Deeds should the applicant fail to do so within 60 days. If a wetland replication is required, the applicant will adhere to replication procedures established by the Commission or as set down in the Commission's Rules and Regulations.

Section F8.3 Setbacks for Activities

The following are the minimum distances (setbacks) of activity from the edge of wetlands or vernal pools. No activity shall be allowed within these setbacks except as provided below. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission.

The setbacks shall be as follows:

- (1) 0-foot setback for wetland-dependent structures (drain outfalls, weirs, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
- (2) 50-foot buffer of undisturbed natural vegetation.
- (3) 75-foot setback to the edge of driveways, roadways, and structures.
- (4) 50-foot chemical-free area within which no pesticides, herbicides, or fertilizers shall be used.
- (5) 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.
- (6) 100-foot setback from the mean high water line of vernal pools.

When in the opinion of the Commission compliance with these setbacks will result in greater harm to the interests of this Bylaw than would waiver of the setbacks, the Commission is permitted to grant such waivers.

Pre-existing activities or structures not meeting the setbacks set forth above need not be discontinued or removed [but shall be deemed to be nonconforming]. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands or vernal pools than existing non-conforming like activities or structures, but the Commission may permit new activity or structures as close to the edge of wetlands or vernal pools if it finds that such activity or structure will not affect the interests protected by the Bylaw no more adversely than the existing activity or structure.

Section F8.4 Erosion and Sedimentation Control

Where activities are proposed within the buffer zone, erosion and sedimentation barriers and other erosion controls as necessary shall be installed between the area of activity and the wetlands or vernal pool to prevent the transport of sediment into wetlands or vernal pools. Similarly, erosion and sedimentation controls shall be installed when activities outside the buffer zone create a significant potential for transport of sediment into wetlands or vernal pools.

Section F8.5 Storage of Fill or Materials

If any fill is to be stored on site, it shall be stored outside of the buffer zone and/or it shall be surrounded by staked haybales to prevent erosion and sedimentation.

There shall be no storage, disposal or burial of construction debris (for example, scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within the buffer zone without the express permission of the Commission in an Order of Conditions.

Section F9.1 Wetlands Replacement

Wetlands or vernal pools that are altered shall in all instances be replaced by replacement wetlands of similar character. Replacement wetlands shall include, at minimum, equal area as the altered wetlands or vernal pool in a hydrologically connected location to the unaltered remainder of the wetlands or vernal pool.

Section F9.2 Requirements for Wetlands Replacement

Projects involving the filling and/or permanent alteration of wetlands or vernal pools shall meet the following requirements:

- (1) The proposed replacement area design must be submitted to the Commission for approval as part of the Notice of Intent.
- (2) The replacement area must be shown to duplicate sufficiently the functions of the wetland proposed to be altered.
- (3) The replacement area shall be constructed, to the extent possible, immediately after alteration of the existing wetland and during the same growing season.
- (4) If after three growing seasons, the Commission determines that the replacement area has not satisfactorily developed into a wetland or vernal pool, the applicant or owner may be required to submit new plans to successfully replicate the original altered wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory replacement area has been completed.

Section F10 Denial

The Conservation Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulatively adverse effects upon the wetland values protected by this bylaw; or where the Commission deems that no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Section F11 Prior Violation

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of any order pursuant to this Bylaw, shall forthwith comply with any such order, or restore such real estate to its condition prior to any such violation; provided however that no such action, civil or criminal shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

Section F12 Bond

The Conservation Commission may require the posting of a bond with surety, running to the Town of Acton, and sufficient as to form and surety in the opinion of the Town Counsel, to secure the faithful and satisfactory performance of work required by any final Order of Conditions, in such sum and upon such conditions as the Commission may require. Other evidence of financial responsibility which is satisfactory to the Commission may be accepted in lieu of a bond. Notwithstanding the above, the amount of such bond shall not exceed either the estimated cost of the work required by the final Order of Conditions, or the estimated cost of the work required for the restoration of affected lands and properties if the work is not performed as required, whichever is greater.

Section F13 Rules and Regulations

After due notice and public hearing, the Commission may promulgate procedural rules and regulations to effectuate the purposes of this bylaw. However, failure to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

Section F14 Enforcement

Any person who violates any provision of this bylaw or of any condition of a permit issued pursuant to it may be subject to a fine of not more than \$300. Each day during which a violation continues may constitute a separate violation. This bylaw may be enforced pursuant to Mass. General Laws Chapter 40, Section 21D, by the Constable, Police Chief, Police Officer, Conservation Administrator, or other agent allowed by law. Upon request of the Commission, the Board of Selectmen or Town Counsel may take such other legal action as may be necessary to enforce this bylaw and permits pursuant to it.

The following provides a schedule of fines for specific violations:

- Alteration of a wetland or vernal pool without an Order of Conditions issued pursuant to this Bylaw - \$300
- Work within the buffer zone without prior submittal of Request for Determination or Notice of Intent - \$200
- Failure to provide sedimentation controls required by an Order of Conditions - \$200
- Disposal of construction debris within the buffer zone - \$300
- Failure to construct stormwater or drainage structure according to plans - \$300
- Removal of trees designated for protection - \$10 per inch of circumference
- Storage of fill within the buffer zone - \$150.

Section F15 Appeals

A decision of the Commission may be reviewed by the Superior Court in an action filed within 60 days thereof, in accordance with Massachusetts General Law 249, Section 4.

Section F16 Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

Annual Town Meeting Voted to Approve: April 8, 2003

Effective Date: July 8, 2003

ahm.concom.currentbylaw.THE BYLAW July 8, 2003 amended 4/03 atm

B

TOWN OF ACTON
WETLAND PROTECTION BYLAW
RULES AND REGULATIONS

SECTION 1
GENERAL PROVISIONS

1.1 AUTHORITY

These rules and regulations are promulgated by the Town of Acton Conservation Commission under the authority of Chapter F of the Town of Acton Bylaws, the Wetland Protection Bylaw, and the Home Rule Amendment, Article LXXXIX (83), of the Constitution of the Commonwealth of Massachusetts, and shall have the force of law upon the effective date.

1.2 PURPOSE

The purpose of these regulations is to aid in the consistent and effective implementation of the Town of Acton Wetland Protection Bylaw ("the Bylaw") by way of further definition, explanation and specification, and illustration and example of the Bylaw's provisions. These rules and regulations set uniform standards and procedures for activities and work conducted in wetland and buffer zone resource areas and for the filing and review of applications under the Bylaw.

Wetlands and wetland buffer zones contribute to a number of public interests and values and are therefore protected by this Bylaw. These interests and values include, but are not limited to, the following: public and/or private water supply, groundwater protection, surface water protection, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, freshwater shellfish, protection of endangered and/or threatened species, and wildlife and wildlife habitat.

1.3 JURISDICTION

In accordance with the above Purpose, no person shall remove, fill, dredge, discharge into, or otherwise alter any wetland resource area or buffer zone resource area of the Town of Acton as defined herein without an Order of Conditions or a Determination of Applicability from the Town of Acton Conservation Commission as provided by the Bylaw and these regulations.

Wetland and buffer zone resource areas protected by this Bylaw include:

- (1) Any vegetated wetland (marsh, swamp, wet meadow, bog, etc.)
- (2) Any river or stream (intermittent or perennial)
- (3) Any lake or pond
- (4) Any bank of the resource areas identified in 1.3(2) and (3)
- (5) Any vernal pool or pool of water having vernal pool properties or characteristics
- (6) All lands within 100 feet of the wetland resource areas identified in 1.3(1) through (5) (buffer zone resource areas)
- (7) Any land subject to flooding or isolated land subject to flooding

- (8) All lands within 200 feet of a perennial river or stream
- (9) Land under any of the resource areas identified in 1.3(1) through (8)

1.4 DEFINITIONS

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION See Section F5.1 of the Bylaw.

ABUTTER See Section F3.2 of the Bylaw.

ACT shall mean the Wetlands Protection Act, Chapter 131, s. 40, as amended.

ACTIVITY See Section F3.3 of the Bylaw.

AGRICULTURE See Section F4.3 of the Bylaw.

ALTER See Section F3.4 of the Bylaw.

APPLICANT shall mean any person who files a Determination of Applicability or Notice of Intent or on whose behalf said forms are filed.

AREAS SUBJECT TO PROTECTION See Section F3.15 of the Bylaw and Section 1.3 of these regulations.

BANK See Section F3.16 of the Bylaw.

BORDERING LAND SUBJECT TO FLOODING shall mean land within the 100 year flood plain, as mapped by the Federal Emergency Management Agency. This area is presumed significant to flood control and storm damage protection. See also Section F3.17 of the Bylaw.

BUFFER ZONE shall mean that area of land extending 100 feet horizontally outward from the boundary of any area specified in Section F3.15 of the Bylaw. Per Sections F1 and F3.18 of the Bylaw the Buffer Zone is a Resource Area. See also Section F3.5 of the Bylaw and Section 1.3 of these regulations.

BYLAW shall mean the Town of Acton Wetland Protection Bylaw.

CERTIFICATE OF COMPLIANCE See Section F3.6 of the Bylaw.

COMMISSION See Section F3.7 of the Bylaw.

CONDITIONS shall mean ORDER OF CONDITIONS.

CONSERVATION COMMISSION See Section F3.7 of the Bylaw.

CREEK shall mean any small stream or any intermittent tributary to any brook, river or stream.

CUMULATIVE ADVERSE EFFECT shall mean an effect on a wetland or buffer resource area(s) that is significant when considered in combination with other activities that have occurred, are occurring simultaneously or that are reasonably likely to occur within that resource area(s), whether such other activities have occurred or are contemplated as a separate phase of the same project or activities, or as a result of unrelated projects or activities.

DATE OF RECEIPT shall mean the date of delivery to an office, Town Clerk, or usual place of business by certified mail or hand delivery.

DETERMINATION OF APPLICABILITY See Section F3.8 of the Bylaw. See also Section F5 of the Bylaw.

DREDGE See Section F3.9 of the Bylaw.

EMERGENCY PROJECT See Section F4.1 of the Bylaw.

EXTENSION PERMITS See Section F3.10 of the Bylaw. See also Section 2.3(2) of these Rules and Regulations.

FILL See Section F3.11 of the Bylaw.

FLOOD CONTROL shall mean the prevention or reduction of flooding and/or flood damage.

FLOODING shall be defined as a local and temporary inundation of water or a rise in the surface of a body of water such that it covers land not usually underwater.

FLOOD PLAIN See Section 4.1 of the Town of Acton Zoning Bylaw.

GROUNDWATER shall mean water below the earth's surface in the zone of saturation. See also Town of Acton Groundwater Protection Bylaw.

ISOLATED LAND SUBJECT TO FLOODING See Section F3.17 of the Bylaw.

LAKE shall mean any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

LIKE ACTIVITY shall mean any activity similar in nature, purpose and extent as that activity currently occurring on the site of the proposed work.

LIKE STRUCTURE shall mean any structure similar in design or use currently located on the site of the proposed work.

MAJORITY shall mean more than half of the members of the Conservation Commission present and/or available to hear an application.

MARSH See definition in the Act Chapter 131, Section 40, as amended. See also Section F3.15 of the Bylaw.

NOTICE OF INTENT See Section F3.12 of the Bylaw.

ORDER shall mean ORDER of CONDITIONS.

ORDER OF CONDITIONS See Section F3.13 of the Bylaw.

PERSON See Section F3.1 of the Bylaw.

PLANS shall mean such data, maps, engineering drawings, calculations, specifications, schedules and other materials deemed necessary by the Commission to describe the site and/or the work, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests of the Bylaw.

POND shall mean any open body of water, either naturally occurring or man-made by impoundment, with a surface area of at least 10,000 square feet, and which is never without standing water due to natural causes except during periods of extended drought. See also Section F3.15 of the Bylaw.

PRIVATE WATER SUPPLY shall mean any source or volume of surface or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.

PUBLIC WATER SUPPLY shall mean any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. Chapter 111, Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

QUORUM shall mean more than half of the members of the Conservation Commission then in office.

REMOVE shall mean the act or process of taking away or moving any type of materials thereby changing the land elevation or topography, either temporarily or permanently. See also Section F3.3, F3.4 and F3.9 of the Bylaw.

REPLACEMENT shall mean to put back in proper place, or to provide an equivalent to the satisfaction of the Commission. See also Sections F9.1 and F9.2 of the Bylaw.

RESOURCE AREA See Section F3.18 of the Bylaw.

RIVER shall be a natural stream of water that empties into any lake, pond or other river or stream, and has a continuous or intermittent flow. See also Section 3.15 of the Bylaw.

RIVERFRONT AREA See Section F3.19 of the Bylaw. Riverfront area includes the entire length and width to the mean annual high water line of all perennial streams and rivers including any ponds and impoundments thereupon.

SIGNIFICANT shall mean to play a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

STORM DAMAGE PREVENTION shall mean the prevention of damage caused by water from storms including, but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice.

STREAM shall mean a body of running water including brooks and creeks, whether continuous or intermittent, moving in a definite channel in the ground. See also Section 3.15 of the Bylaw.

SWAMP See definition in the Act, M.G.L. Chapter 131, Section 40, as amended. See also Section F3.15 of the Bylaw.

VERNAL POOL See Section F3.14 of the Bylaw.

WAIVER shall mean an authorization from the Conservation Commission to an applicant for a deviation from the terms of the Bylaw as described in Section 1.5 of these Rules and Regulations.

WETLAND See Section F3.15 of the Bylaw. See also definition of "Freshwater Wetland" in the Act, Chapter 131, Section 40, as amended.

WILDLIFE shall mean all mammals, birds, fish, reptiles, amphibians, and invertebrate animal species including, but not limited to, any state- or federally-listed endangered or threatened species, or species of special concern.

WILDLIFE HABITAT shall mean areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

WORK shall mean the same as **ACTIVITY**.

1.5 WAIVERS FROM RULES AND REGULATIONS

Strict compliance with these Rules and Regulations may be waived when, in the judgment of the Commission, such action is in the public interest, and is consistent with the intent and purpose of the Bylaw. Any request for a Waiver must be submitted to the Commission in writing. The Waiver(s) shall be presented at the time of filing. (The Commission shall require the Applicant to submit a written justification stating why a Waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.)

1.6 ADVICE FROM TOWN STAFF

Any advice, opinion, or information given to an Applicant by a Commission member, or by any agency, officer, or employee of the Town, shall be considered advisory only, and not binding on the Commission.

SECTION 2

FILING REQUIREMENTS

2.1 TIME PERIODS

All time periods of ten days or less specified in the Bylaw or in these Rules and Regulations shall be considered business days only. Time periods of more than ten days shall be considered calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day to follow.

(1) Timeframes for Submission of Documentation

In order to insure adequate and proper review by the Commission, staff and the public, all permit application documentation -- including forms, narrative descriptions, plans, maps, tables, charts, reports, etc. -- must be submitted to the Conservation Commission no later than six business days prior to the scheduled public hearing, or its continuation. Documentation submitted by the Applicant five business days or less before the public hearing may be excluded from said hearing or held for discussion at a subsequently scheduled hearing. Submission of material by the Applicant five business days or less before the public hearing will constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Commission, the Commission, staff or public has not had adequate or sufficient time to properly consider said material.

2.2 DETERMINATIONS OF APPLICABILITY

Any Person who is proposing to undertake an activity and desires to know what is required of them may arrange a preliminary discussion by contacting the Conservation Office and arranging a time at a Commission meeting, or may satisfy their questions during the citizens' concerns portion of any regular Commission meeting.

(1) Filing Procedures

The Request for Determination Of Applicability shall include sufficient information to enable the Commission to find and view the area and to determine whether the proposed Work will Alter an Area Subject To Protection under the Bylaw. The information shall include, at a minimum:

- (a) Form 1 (Wetland Protection Act, M.G.L. Chapter 131, s. 40);
- (b) Such Plans, prepared and stamped by a Registered Professional Engineer and Registered Professional Land Surveyor, as are needed to locate and inspect the area and to determine whether the proposed Work may Significantly Alter an Area Subject To Protection. The requirement that Plans be stamped by a registered professional engineer and registered professional land surveyor may be waived by the Commission or its agent if it is deemed unnecessary. These Plans shall show:
 - (i) All Wetlands that are within 100 feet of the edge of Activity;
 - (ii) Riverfront Areas including inner and outer riparian zones
 - (iii) Wetland Protection Setbacks (See Section 3.2)
 - (iv) The 100 foot Buffer Zone;

- (v) Erosion and sedimentation control/prevention devices and method of maintenance;
 - (vi) The edge of disturbance, if different from the erosion control/prevention devices.
 - (vii) Location of stockpiled materials, if any.
- (2) In order to clarify the review process for the Commission and/or its agent, all Wetlands within 100 feet of the edge of Activity shall be marked with numbered flagging tape which will correspond to the edge of Wetlands as shown and numbered on the Plans.
- (3) Said Request for Determination of Applicability shall be sent by certified mail or hand-delivered to the Commission. If necessary, the Commission and/or its agent may require that additional information be submitted to aid in the evaluation. If all data required by the Commission and/or its agent is not received, the filing shall not be considered complete, a public meeting shall not be scheduled and the Applicant shall be notified.

At the public meeting the Commission will determine:

- Positively: that the area or Activity is subject to the jurisdiction of the Bylaw and requires the filing of a Notice of Intent; or
- Negatively: that the area or Activity is not subject to the jurisdiction of the Bylaw, or that the interests protected by the Bylaw are fully protected by the project as proposed.

2.3 NOTICES OF INTENT

2.3 (1) FILING PROCEDURES

Written application shall be filed with the Commission to perform Activities regulated by the Bylaw affecting Resource Areas protected under the Bylaw. The Applicant shall provide the Commission with four copies of the filing, and provide the Town Clerk and the Department of Environmental Protection with one copy each. The application shall include such information and Plans as are deemed necessary by the Commission to describe proposed Activities and their effects on Areas Subject to Protection. No Activities shall commence without receiving, recording and complying with an Order of Conditions issued pursuant to the Bylaw, and receiving a file number from the Massachusetts Department of Environmental Protection.

- (A) The Commission may accept as the application and Plans under the Bylaw the Notice of Intent and Plans filed under the Act. The filing shall at a minimum include four copies of the following:
- (i) Form 3 of the Act;
 - (ii) Such Plans and specifications as are required of an Applicant under the Act as specified in the regulations of the Act;
 - (iii) A list of Abutters from the most recent tax list of the Town and certified by the Town Assessors;
 - (iv) A detailed sequence of construction;

- (v) A detailed plan of Wetland Replacement or restoration if the project proposes a Wetland Alteration;
- (B) In order to clarify the review process for the Commission and/or its agent, all Wetlands within 100 feet of the edge of Activity shall be marked with numbered flagging tape, which will correspond to the edge of Wetlands numerically indicated on the Plans.
- (C) When a Person filing an application is other than the owner, the application, the notice of the hearing and the findings themselves shall be sent by the Applicant to the owner as well, and the Applicant shall supply the Commission with the name and current address of the owner.
- (D) Any Person filing a Notice of Intent under the Bylaw shall also notify by certified mail all Abutters of the filing of such Notice of Intent. Such Notice shall clearly identify the land on which the Work is to be done and describe the general nature of the Work. Notice shall include the date, place, and time of said public hearing, and where Plans may be reviewed. A list of Persons so notified and proof of such notification shall be filed with the Commission prior to the opening of the public hearing. If proof of said notification is not presented to the Commission, the public hearing shall not be opened. Said notification of Abutters should be sent not less than eight (8) business days prior to the scheduled hearing. For example, when a hearing is scheduled for a regular Wednesday meeting, said notification shall be sent by Monday of the week before the meeting, at the latest.

SECTION 2.3 (2) EXTENSIONS

- (A) The Commission may extend an Order of Conditions once for a period of up to three years. Written requests for an Extension shall be made not less than thirty days prior to the expiration of said Order of Conditions.
- (B) The Commission may deny a request for Extension under the following circumstances:
 - (i) where no Work has begun on the project, except where such failure is due to unavoidable delay, such as appeals in obtaining other necessary permits;
 - (ii) where new information, not available at the time of original permanent filing, has become available and indicates the Order of Conditions is insufficient to protect the Areas Subject to Protection;
 - (iii) where incomplete Work is causing damage to the Areas Subject TO Protection;
 - (iv) where Work has been done in violation of the Order of Conditions;
 - (v) where an Extension has previously been granted for said project.
- (C) Said Extension shall be recorded in the Registry of Deeds or Land Court, whichever is applicable, according to the procedures set forth in Section F8.2 of the Bylaw.

SECTION 2.3 (3) CERTIFICATES OF COMPLIANCE

- (A) A request for a Certificate of Compliance shall be made in writing on the appropriate form to the Commission. The Commission will act on the request within 21 days of receipt of such a request.

- (B) Prior to issuance of the Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. The Applicant shall be notified prior to the inspection and may be present at the inspection if that is desired.
- (C) If the Commission determines after review and inspection that the Work has not been done in compliance with the Order, it shall refuse to issue said Certificate of Compliance and specify the reasons for denial in writing to the Applicant.
- (D) If the Certificate of Compliance does not apply to all Work regulated by the Order of Conditions, it shall state to what portions of the Work it applies.
- (E) The Certificate of Compliance, if issued, shall be recorded by the APPLICANT in the Land Court or Registry of Deeds, whichever is applicable, according to the procedures set forth in Section F8.2 of the Bylaw.

2.4 FEE SCHEDULE

Permit fees are payable at the time of application and are non-refundable. Fees shall be calculated by the Commission or its agent according to the schedule listed below. Town projects are exempt from fees. These fees are in addition to and separate from those fees required by the Commonwealth of Massachusetts, Department of Environmental Protection.

The following fees shall be applied:

- (1) Request for Determination of Applicability \$45

- (2) Notice of Intent

The Notice of Intent filing fee shall be 20% of that fee which is applied under the State Notice of Intent filing fees as of August 1, 1989. This fee shall be in addition to that fee for the State filing.

For example, a proposed project which comes under Category 2 of the State fee schedule (\$250 State filing fee) shall be assessed a fee under the Town Bylaw of \$50, payable to the Town of Acton.

Calculation of Town of Acton Notice of Intent filing fees:

State Fee X 20% = Town of Acton Fee

Example:

\$250 X 20% = \$50

- (3) Request for Extension Permits \$45

- (4) Consultant Fees

Upon receipt of a Notice of Intent, Abbreviated Notice of Resource Area Delineation, or Request for Determination of Applicability, or at any point in its deliberations, the Commission may deem it necessary to obtain expert engineering or other outside consultant services in order to reach a final decision on the application. The specific consultant services may include, but are not limited to, Resource Area survey and delineation, analysis of Resource Area values (including Wildlife Habitat evaluations), hydrogeologic and drainage analysis, and/or environmental or land use law.

In such instances the Commission shall notify the Applicant of this need and shall provide the opportunity for the application to be amended or withdrawn. Should an Applicant choose to proceed the Commission shall require the Applicant to pay the reasonable costs and expenses for these consulting services. This fee is called the consultant fee. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision.

SECTION 3

CONSTRUCTION STANDARDS AND RESTRICTIONS

3.1 SEQUENCE OF CONSTRUCTION

As required by Section 2.3(1)(A)(iv), the Applicant shall provide a detailed sequence of construction to the Commission as part of the standard filing requirements, detailing in what order the project's construction will follow. Said sequence shall be followed by the Applicant, unless amended and approved by the Commission.

3.2 WETLAND SETBACKS FOR NEW ACTIVITIES

In order to protect and preserve the public interests and values of the wetlands and waterways of the Town of Acton, activities in Wetland and Buffer Zone Resource Areas should be avoided to the full extent practicable. The following are the minimum distances (setbacks) of activity from the edge of Wetlands or Vernal Pools. No activity shall be allowed within these setbacks except as provided below, or as provided in Section 1.5 of these rules and regulations. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission.

The setbacks shall be as follows:

- (1) 0-foot setback for wetland-dependent structures (drain outfalls, weirs, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
- (2) 50-foot setback of undisturbed natural vegetation.
- (3) 75-foot no-build setback to the edge of driveways, roadways, and structures.
- (4) 50-foot chemical free area, within which no fertilizers, herbicides, pesticides or other chemical maintenance substances shall be used.
- (5) 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.
- (6) 100-foot setback of undisturbed natural vegetation to the mean high water line for vernal pools.

3.3 WETLAND SETBACKS FOR EXISTING STRUCTURES

Work associated with pre-existing structures or activities not presently in compliance with Section 3.2 may not increase the degree of "non-conformance" of those structures or activities. No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like Activities or structures, but the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure if it finds such Activity or structure will not affect the interests provided for in the Bylaw more adversely than the existing Activity or structure.

3.4 EROSION PREVENTION

The purpose of installing a silt prevention barrier between the proposed limit of disturbance and the edge of Wetlands is to intercept sediment-laden runoff by reducing runoff velocity

and allowing suspended sediments to "settle out" before entering the Wetlands Resource Area. Such sediments shall be removed and sediment barriers monitored and replaced when deemed necessary by the Commission or its agent.

3.5 EROSION PREVENTION INSTALLATION

Proposed location of the silt prevention devices, silt fence and/or haybales, shall be shown on the Plan submitted in the Wetland filing furnished by the Applicant for Commission review and approval. Erosion prevention devices shall be installed prior to the commencement of Activities on the site. The Commission requires erosion prevention installation standards as defined in: Erosion and Sedimentation Control Standards, Middlesex Conservation District, or see Town of Acton Engineering Department for clarification or details.

3.6 STORAGE OF FILL

If any Fill is to be stored on site, it shall be stored outside of the Buffer Zone and/or it shall be surrounded by haybales to prevent erosion. The location of said Fill shall appear on any Plans submitted to the Commission pursuant to Notice of Intent requirements. If the Commission determines that the proposed location of Fill threatens the Areas Subject to Protection it may require the Applicant to store said Fill in a different location or to remove it completely from the site.

3.7 CONSTRUCTION DEBRIS

There shall be no disposal or burial of construction debris (i.e. scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within 100' of a Wetland unless approved by the Commission under the filing. Illegal disposal of said debris shall result in a stop work order, fine, required removal of said debris, or all of the above. The Commission may allow the creation of a spoils area, which would be required to be designated on the project PLANS, if it is proven that it will not harm Areas Subject to Protection.

SECTION 4

WETLANDS REPLACEMENT

SECTION 4.1 WETLANDS REPLACEMENT

Wetlands that are proposed to be Altered will in all instances require, at a minimum, equal Wetlands Replacement, preferably hydrologically connected to the Wetlands proposed to be Altered. Replacement shall mean to put back in proper place, or to provide an equivalent to the satisfaction of the Commission.

SECTION 4.2 REQUIREMENTS

Projects involving Wetlands Filling and/or permanent Alterations shall meet the requirements of 310 CMR, 10:60(3) and 10.55(4) and the following Requirements of the Commission:

- (A) The proposed Replacement area design must be submitted to the Commission for approval as part of the submittal of the project Notice of Intent. Applicants are advised to appear before the Commission for preliminary discussion, comments and review prior to submittal of the Replacement Plan with the Notice of Intent.
- (B) The Replacement area must be shown to sufficiently duplicate the functions of the Wetland proposed to be Altered;
- (C) The Replacement area shall be constructed, to the extent possible, immediately after Alteration of the existing Wetland and during the same growing season;
- (D) The proposed Replacement area must be clearly flagged for Commission site inspection before the Notice of Intent filing shall be considered complete, and said flagging shall be numerically coded and correspondingly shown on the Plans, according to Section 2.3(1)(B).
- (E) The Notice of Intent submittal for a Replacement area shall include a detailed of Replacement showing:
 - (i) cross-section with indication of Groundwater level, soil profile and thickness of organic soil in the existing and proposed Wetlands;
 - (ii) plant species detail, including species found in the area to be Altered, and number, types and locations of species to be introduced into the Replacement area;
 - (iii) detail of stabilization Plans for Replacement area Banks;
 - (iv) Wildlife Habitat diversity plan.
- (F) Construction of the Replacement area shall follow all requirements as set forth in general Construction Standards and Restrictions, Section 3.
- (G) If, after three growing seasons, the Commission determines that the Replacement area has not satisfactorily developed into a Wetland the Applicant or owner may be required to submit new Plans to successfully Replace said Wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory Replacement area has been completed at the end of the three year period.

C

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

D



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

**Request for Departmental Action Fee
Transmittal Form**

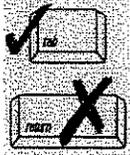
85-971

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

MA

01720

City/Town

State

Zip Code

978-263-8081

978-263-1311

Phone Number

Fax Number (if applicable)

Project Location

West of 8 Spring Hill Road

Mailing Address

Acton

MA

01720

City/Town

State

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

MA

01720

City/Town

State

Zip Code

978-263-8081

978-263-1311

Phone Number

Fax Number (if applicable)

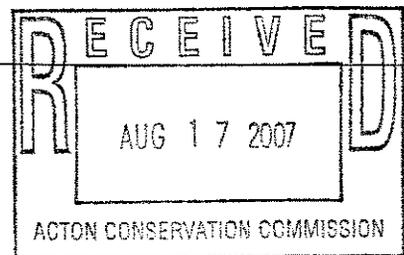
3. DEP File Number:

85-971

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
Transmittal Form**

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

DEP File Number:

85-971

Provided by DEP

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.

ACTON SURVEY & ENGINEERING, INC.

97 GREAT ROAD, P.O. BOX 668
UNIT 6
ACTON, MA 01720-0668
(978) 263-3666

CITIZENS BANK
MASSACHUSETTS
5-7017-2110

Exactly Two hundred and no / 100 Dollars

DATE	AMOUNT
8/16/2007	\$200.00

PAY
TO THE
ORDER
OF

Commonwealth of Massachusetts

⑈008857⑈ ⑆2110⑆0175⑆ 1200891897⑈



8857

Acton Survey & Engineering, Inc.

P.O. Box 666, 97 Great Rd. #6 • Acton, MA • 01720

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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.

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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.

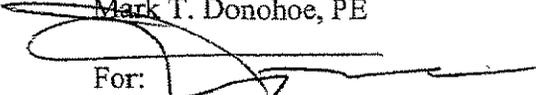
As the project meets all criteria set forth by the Wetlands Protection Act and 310 CMR 10.00 the Department is requested to issue a Superseding Order of Conditions as allowed by 310 CMR 10.05(7).

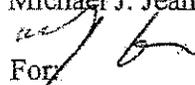
Enclosed are copies of all documents referenced in the Order of Conditions and the July 13th e-mail from the Commission.

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