

DEP File No.	85-984
Applicant	S & R Kelley



**Order of Conditions  
Wetlands Protection Bylaw  
Chapter F**

From the ACTON CONSERVATION COMMISSION Issuing Authority

To Steven & Rachel Kelley (Name of person making request) \_\_\_\_\_ (Name of property owner)

Address 70 Newtown Road, Acton MA 01720 Address \_\_\_\_\_

This Order is issued and delivered as follows:

by hand delivery to person making request on \_\_\_\_\_ (date)

by certified mail, return receipt requested on 12/12/2007 (date)

This project is located at \_\_\_\_\_

The property is recorded at the Registry of Middlesex South

Book 39045 Page 340

Certificate (if registered) \_\_\_\_\_

The Notice of Intent for this project was filed on November 8, 2007 (date)

The public hearing was closed on November 21, 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 type="checkbox"/> Flood Control                      | <input type="checkbox"/> Land containing shellfish                 |
| <input type="checkbox"/> Private water supply | <input checked="" type="checkbox"/> Storm damage prevention | <input type="checkbox"/> Fisheries                                 |
| <input type="checkbox"/> Ground water supply  | <input checked="" type="checkbox"/> Prevention of pollution | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 22

Therefore, the ACTON CONSERVATION COMMISSION hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The ACTON CONSERVATION COMMISSION orders that all the work shall be performed in accordance with the said conditions and with the Notice of Intent references above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

#### General Conditions

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, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - (a) the work is a maintenance dredging project as provided for in the Act; or
  - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one period of up to three years upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final order 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 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 ACTON CONSERVATION COMMISSION on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in the size bearing the words, "Massachusetts Department of Environmental Protection, File Number 85-984".
10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

**\*\* PLEASE READ THE FOLLOWING GENERAL CONDITIONS REQUIRED BY THE  
TOWN OF ACTON WETLANDS BYLAW \*\***

18. No work shall be undertaken until the Order of Conditions has been reviewed and is clearly understood by the Contractor or his agent. It is the Applicant's responsibility to see that the Contractor clearly understands all items herein.
19. This Order of Conditions shall apply to any successor in interest or successor in control.
20. Members and agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the Order and to require the submittal of any data deemed necessary by the Commission for that evaluations.
21. All drainage facilities and related structures and equipment shall be continually operated and maintained so as to comply with this Order of Conditions. The operation and maintenance of the facilities and structures shall be on-going and will not expire at the end of one year or with the issuance of the Certificate of Compliance.
22. Any change made, or intended to be made, in the plans shall require the applicant to file a new Notice of Intent, or to inquire of the Commission, in writing, whether the change is substantial enough to require a new filing.
23. The Conservation Commission shall have the right to file this Order of Conditions in the Registry of Deeds should the applicant fail to do so within 60 days.
24. Accepted engineering and construction standards and procedures shall be followed in the completion of this project.
25. The Commission shall be notified in writing 10 days prior to the commencement of any site work. Failure to so notify the Commission shall result in the issuance of an Enforcement Order.
26. The Petitioner is advised that this Order in no way absolves him of responsibility to other property owners upon whose land he discharges water directly or indirectly.
27. Erosion control measures consisting of staked haybales unless otherwise approved by the Commission shall be installed during the first phase of construction and the Commission shall be notified of their placement and no work shall begin before inspection by the Commission.
28. Any materials collected by the erosion control measures shall be removed and properly disposed of.
29. All work shall be completed as quickly as possible to minimize the duration of exposure of disturbed areas. If work is suspended for a significant period of time (i.e. as during winter months), then temporary stabilization methods must be employed and maintained during the period of inactivity.
30. No salt or other deicing chemicals shall be used on roadways and parking areas on the site.
31. This order applies only to the work described in the Notice of Intent and shown on the plans referenced in Condition 12. A Determination of Applicability Form must be filed for any additional work on site in areas governed by the Town of Acton Wetlands Protection Bylaw.
32. All disturbed areas shall be top-soiled six inches and seeded.

33. Violation of any condition of this Order may result in the issuance of an Enforcement Order. Such Enforcement Order, if issued, will require the immediate cessation of all work until a hearing is held; such hearing will be held not more than 10 days from the issuance of the Enforcement Order.
34. The work authorized hereunder by the Acton Wetlands Protection Bylaw shall be completed within three years from the date of this Order unless the Order is renewed prior to expiration.
35. A fifty (50) foot setback of natural vegetation shall be maintained up-gradient from the wetland except as noted on the accepted plans (see page E-4 for plan reference).
36. No construction, either temporary or permanent shall occur within seventy-five (75) feet of the edge of wetlands. This shall include driveways; roadways; residential, commercial or industrial structures, etc. except as noted on the accepted plans (see page E-4 for plan reference).
37. There shall be no use of fertilizers, pesticides, herbicides or chemicals of any kind within the fifty (50) foot no construction zone.
38. There shall be no underground storage of gasoline, oil or other fuels or hazardous materials within the one-hundred (100) foot buffer zone.
39. The Commission reserves the right to impose additional conditions to mitigate any actual or potential impacts resulting from the permitted work.
40. All haybales placed for siltation prevention must be removed from the site within 30 days of the stabilization of the area of activity.
41. The work shall conform to the following plans and special conditions:

**Plans:**

Title	Dated	Signed and Stamped by:	on file with:
<u>Notice of Intent Plan</u>	<u>11/7/2007</u>	<u>Scott P. Hayes, Civil PE 41017</u>	<u>Acton Conservation</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**SEE ATTACHED DECISION, FINDINGS OF FACT AND SPECIAL  
CONDITIONS ISSUED BY THE ACTON CONSERVATION COMMISSION  
(PAGE E-7 & E-8)**

(Leave Space Blank)

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Issued by the ACTON Conservation Commission

Signature(s) \_\_\_\_\_

Terrence Maitland  
Loan Portante

William Fobery  
John M... ..

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

On this 11th day of December, 2007, before me, the undersigned notary public, personally appeared Terrence Maitland proved to me through satisfactory evidence of identification, which were known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as Commissioner for the Acton Conservation Commission.

Andrea H. Ristine  
Notary Public - Andrea H. Ristine

February 27, 2009  
My Commission Expires

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

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

To ACTON CONSERVATION COMMISSION Issuing Authority

Please be advised that the Order of Conditions for the project at 70 Newtown Road, Acton

File Number 85 984 has been recorded at the Registry of Middlesex South and

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

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

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

Signature \_\_\_\_\_ Applicant

**DECISION  
NOTICE OF INTENT FILING  
FOR  
70 NEWTOWN ROAD  
TOWN ATLAS PLATE E-3, PARCEL 82  
DEP FILE NO. 85-984**

**Applicant:** Steven and Rachel Kelley

**Representatives:** Scott P. Hayes, PE No. 41017, Foresite Engineering; E. Michael Thomas, Esq.

**Date Filed:** November 8, 2007

**Hearing Closed:** November 21, 2007

**DECISION:**

On November 21, 2007, the Acton Conservation Commission voted unanimously to issue an Order of Conditions approving a Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw

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

**FINDINGS OF FACT:**

1. The 70 Newton Road parcel lies almost entirely within the overlapping 100-foot buffer zones of two wetlands located in the northerly and southerly corners of the property.
2. On August 1, 2001, the Commission issued an Order of Conditions (OOC) under the Town of Acton Wetland Protection Bylaw ("Bylaw"), approving the construction of a single-family residence with associated driveway and septic system. The Massachusetts Department of Environmental Protection previously had issued a Superseding Order of Conditions, approving the project under the Massachusetts Wetlands Protection Act ("Act"). The OOC under the Bylaw included special conditions that were to be permanent restrictions in the property deed: (1) the land located between the wetlands and the haybale-delineated limit-of-work was to be a permanently restricted area and remain undisturbed; (2) a portion of the driveway was to remain gravel-surfaced; and (3) the area over the septic leaching field was to be maintained as a wildlife habitat, with a wildflower meadow, native plantings, a blackberry hedge, logs and a turtle nesting area in accordance with a Wildlife Habitat Enhancement Plan. The owner, Frank Tricone ("Tricone"), subsequently sold the property to Westchester Company, Inc. ("Westchester"), on September 28, 2001; the deed to Westchester included the permanent restrictions required by the OOC. The Commission issued a Certificate of Compliance to Westchester on May 7, 2003.
3. The Applicants and current owners, the Kelleys, purchased the property, including residence, from Westchester on April 24, 2003, shortly before the issuance of the Certificate of Compliance. The Kelleys' deed does not include the language of the deed restrictions but incorporates the language via a reference to the deed containing the restrictive language that Westchester received from Tricone.
4. On May 27, 2004, the Kelleys, at the direction of the Commission, filed a Request for Determination of Applicability respecting the already completed but not previously authorized construction in the front of the house of a brick patio, walkway, flower beds and replacement front steps. The Commission issued a negative determination of applicability on June 16, 2004.

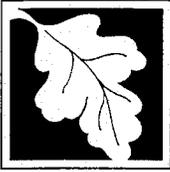
5. In May of 2007, the Kelleys paved the gravel portion of the driveway in violation of the deed restriction, and in violation of the requirements under the Act and Bylaw that they obtain prior authorization from the Commission for work within 100 feet of wetlands.
6. At the request of the Commission, the Kelleys appeared before the Commission on July 18, 2007 to discuss the illegal driveway paving. The Kelleys explained that they had paved the driveway because the gravel surface had become a safety concern, particularly in winter. They said that they were unaware of the deed restrictions. The Commission explained that the restrictions nonetheless were legally binding.
7. Commissioners and the Town Agent, Thomas Tidman, visited the property on September 25, 2007 and November 15, 2007. Given the contour and slope of the driveway, the Commissioners considered the paved surface to be more reasonable than gravel for erosion-control as well as safety. The Commissioners also concluded that leaving the pavement in place would be preferable to the disturbance that its removal would require, and that the existing infiltration trench along the northerly edge of the driveway would compensate for some of the increase in impervious surface.
8. A modest expanse of lawn occupied the area immediately to the south of the driveway where the wildlife habitat enhancement area should have been. The Kelleys said that the area was lawn when they bought the property, although only two weeks after their purchase the Commission issued the Certificate of Compliance confirming, among other things, that the wildlife habitat area was in place. The Commissioners concluded that leaving the lawn in place, and enforcing the prohibition against fertilizers and all other chemicals, would be acceptable in lieu of requiring the alteration of the lawn area.

The Commissioners requested that the Kelleys file a Notice of Intent (NOI) respecting the already completed paving and that the NOI plan include the additional work that the Kelleys wished to do, specifically, install two lamp posts along the edge of the driveway and replace the mailbox at the foot of the driveway.

9. At the hearing on November 21, 2007, the Kelleys requested additional permission to plant native shrubs on the northerly side of the driveway. In recompense for their violations of the Act and the Bylaw, the Kelleys agreed that prior to December 12, 2007 they would make a donation of \$1,000.00 to the Town as a "mitigation payment," to be used for conservation land trail maintenance.

**SPECIAL CONDITIONS:**

1. In accordance with the revised Notice of Intent Plan, dated November 7, 2007, Rev. 11/21/2007 (NOI Plan), the Applicants may install two lamp posts along the edge of the driveway and replace the existing mailbox located at the foot of the driveway.
2. The Applicants may plant native shrubs on the northerly side of the driveway.
3. *Bylaw Only* -This Order of Conditions (OOC) supplants the following Special Conditions of the Order of Conditions dated August 1, 2001 (DEP File No. 85-723), requiring as permanent deed restrictions that a portion of the driveway remain gravel and requiring the maintenance of a wildlife habitat in accordance with a Wildlife Habitat Enhancement Plan dated June 27, 2001. This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:  
 85-984

**A. General Information**

From: ACTON  
 1. Conservation Commission

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

3. To: Applicant:

Steven & Rachel Kelley  
 a. First Name b. Last Name c. Company  
70 Newtown Road  
 d. Mailing Address  
Acton MA 01720  
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

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

5. Project Location:

70 Newtown Road Acton  
 a. Street Address b. City/Town  
E-3 82  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
 Latitude and Longitude, if known (**note:** 42°29'24"N 71°26'32"W  
 electronic filers will click for GIS locator): e. Latitude f. Longitude

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

Middlesex South  
 a. County b. Certificate (if registered land)  
39045 340  
 c. Book d. Page

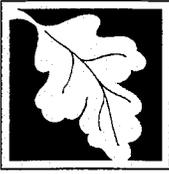
7. Dates: November 8, 2007  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Notice of Intent Plan – 70 Newtown Road, Acton  
 a. Plan Title  
Foresite Engineering Scott P. Hayes, Civil PE #41017  
 b. Prepared By c. Signed and Stamped by  
November 7, 2007 1" = 20'  
 d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date





**WPA Form 5 – Order of Conditions**

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

**B. Findings (cont.)**

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

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

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



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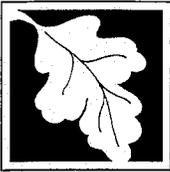
## **C. General Conditions Under Massachusetts Wetlands Protection Act**

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

“Massachusetts Department of Environmental Protection” [or, “MA DEP”]

“File Number 85-984”



**C. General Conditions Under Massachusetts Wetlands Protection Act**

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

Special Conditions:

**SEE ATTACHED DECISION, FINDINGS OF FACT AND SPECIAL CONDITIONS ISSUED BY THE  
 ACTON CONSERVATION COMMISSION ( PAGE 10).**

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



# WPA Form 5 – Order of Conditions

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

## D. Findings Under Municipal Wetlands Bylaw or Ordinance

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

a. Municipal Ordinance or Bylaw

b. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

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

Acton Wetland Protection Bylaw

Chapter F

a. Municipal Ordinance or Bylaw

b. Citation

The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

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

SEE ORDER OF CONDITIONS, FORM E, ISSUED UNDER THE ACTON WETLAND PROTECTION BYLAW.

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



# WPA Form 5 – Order of Conditions

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

DEP File Number:

85-984

## E. Issuance

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

1. Date of Issuance

Please indicate the number of members who will sign this form:

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

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

Paul J. Lee  
Terrence Martland  
Lisa Roberts

William F. Kelly  
John N. Cudde

## Notary Acknowledgement

Commonwealth of Massachusetts County of

Middlesex South

On this 15th Day of

December 2007  
Month Year

Before me, the undersigned Notary Public, personally appeared

Terrence Martland  
Name of Document Signer

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

### KNOWN TO ME

Description of evidence of identification

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

As member of

ACTON  
City/Town

Conservation Commission

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

by hand delivery on

Date

by certified mail, return receipt requested, on

Date

12/12/2007

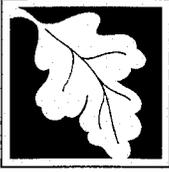
Andrea H. Ristine  
Signature of Notary Public

Andrea H. Ristine

Printed Name of Notary Public

February 27, 2009

My Commission Expires (Date)



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## **F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate DEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant. Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

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



**DECISION  
NOTICE OF INTENT FILING  
FOR  
70 NEWTOWN ROAD  
TOWN ATLAS PLATE E-3, PARCEL 82  
DEP FILE NO. 85-984**

**Applicant:** Steven and Rachel Kelley

**Representatives:** Scott P. Hayes, PE No. 41017, Foresite Engineering; E. Michael Thomas, Esq.

**Date Filed:** November 8, 2007

**Hearing Closed:** November 21, 2007

**DECISION:**

On November 21, 2007, the Acton Conservation Commission voted unanimously to issue an Order of Conditions approving a Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw

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

**FINDINGS OF FACT:**

1. The 70 Newton Road parcel lies almost entirely within the overlapping 100-foot buffer zones of two wetlands located in the northerly and southerly corners of the property.
2. On August 1, 2001, the Commission issued an Order of Conditions (OOC) under the Town of Acton Wetland Protection Bylaw ("Bylaw"), approving the construction of a single-family residence with associated driveway and septic system. The Massachusetts Department of Environmental Protection previously had issued a Superseding Order of Conditions, approving the project under the Massachusetts Wetlands Protection Act ("Act"). The OOC under the Bylaw included special conditions that were to be permanent restrictions in the property deed: (1) the land located between the wetlands and the haybale-delineated limit-of-work was to be a permanently restricted area and remain undisturbed; (2) a portion of the driveway was to remain gravel-surfaced; and (3) the area over the septic leaching field was to be maintained as a wildlife habitat, with a wildflower meadow, native plantings, a blackberry hedge, logs and a turtle nesting area in accordance with a Wildlife Habitat Enhancement Plan. The owner, Frank Tricone ("Tricone"), subsequently sold the property to Westchester Company, Inc. ("Westchester"), on September 28, 2001; the deed to Westchester included the permanent restrictions required by the OOC. The Commission issued a Certificate of Compliance to Westchester on May 7, 2003.
3. The Applicants and current owners, the Kelleys, purchased the property, including residence, from Westchester on April 24, 2003, shortly before the issuance of the Certificate of Compliance. The Kelleys' deed does not include the language of the deed restrictions but incorporates the language via a reference to the deed containing the restrictive language that Westchester received from Tricone.
4. On May 27, 2004, the Kelleys, at the direction of the Commission, filed a Request for Determination of Applicability respecting the already completed but not previously authorized construction in the front of the house of a brick patio, walkway, flower beds and replacement front steps. The Commission issued a negative determination of applicability on June 16, 2004.

5. In May of 2007, the Kelleys paved the gravel portion of the driveway in violation of the deed restriction, and in violation of the requirements under the Act and Bylaw that they obtain prior authorization from the Commission for work within 100 feet of wetlands.
6. At the request of the Commission, the Kelleys appeared before the Commission on July 18, 2007 to discuss the illegal driveway paving. The Kelleys explained that they had paved the driveway because the gravel surface had become a safety concern, particularly in winter. They said that they were unaware of the deed restrictions. The Commission explained that the restrictions nonetheless were legally binding.
7. Commissioners and the Town Agent, Thomas Tidman, visited the property on September 25, 2007 and November 15, 2007. Given the contour and slope of the driveway, the Commissioners considered the paved surface to be more reasonable than gravel for erosion-control as well as safety. The Commissioners also concluded that leaving the pavement in place would be preferable to the disturbance that its removal would require, and that the existing infiltration trench along the northerly edge of the driveway would compensate for some of the increase in impervious surface.
8. A modest expanse of lawn occupied the area immediately to the south of the driveway where the wildlife habitat enhancement area should have been. The Kelleys said that the area was lawn when they bought the property, although only two weeks after their purchase the Commission issued the Certificate of Compliance confirming, among other things, that the wildlife habitat area was in place. The Commissioners concluded that leaving the lawn in place, and enforcing the prohibition against fertilizers and all other chemicals, would be acceptable in lieu of requiring the alteration of the lawn area.

The Commissioners requested that the Kelleys file a Notice of Intent (NOI) respecting the already completed paving and that the NOI plan include the additional work that the Kelleys wished to do, specifically, install two lamp posts along the edge of the driveway and replace the mailbox at the foot of the driveway.

9. At the hearing on November 21, 2007, the Kelleys requested additional permission to plant native shrubs on the northerly side of the driveway. In recompense for their violations of the Act and the Bylaw, the Kelleys agreed that prior to December 12, 2007 they would make a donation of \$1,000.00 to the Town as a "mitigation payment," to be used for conservation land trail maintenance.

#### **SPECIAL CONDITIONS:**

1. In accordance with the revised Notice of Intent Plan, dated November 7, 2007, Rev. 11/21/2007 (NOI Plan), the Applicants may install two lamp posts along the edge of the driveway and replace the existing mailbox located at the foot of the driveway.
2. The Applicants may plant native shrubs on the northerly side of the driveway.
3. *Bylaw Only* -This Order of Conditions (OOC) supplants the following Special Conditions of the Order of Conditions dated August 1, 2001 (DEP File No. 85-723), requiring as permanent deed restrictions that a portion of the driveway remain gravel and requiring the maintenance of a wildlife habitat in accordance with a Wildlife Habitat Enhancement Plan dated June 27, 2001. This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.