

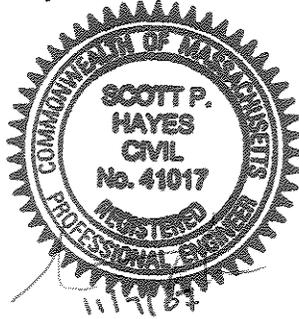


16 Gleasondale Rd., Suite 1-1  
Stow, Massachusetts 01775  
Phone: (978) 461-2350  
Fax: (978) 841-4102  
www.foresite1.com

## NOTICE OF INTENT

*For paving of an existing driveway at*

**70 Newtown Road  
Acton, Massachusetts**



**Date:** November 7, 2007



**Prepared for:**  
Steven & Rachel Kelley  
70 Newtown Road  
Acton, Massachusetts 01720

**Prepared by:**  
FORESITE Engineering Associates, Inc.  
16 Gleasondale Road, Suite 1-1  
Stow, Massachusetts 01775

## CONTENTS

1. WPA Form 3: Notice of Intent
2. WPA Appendix B: Wetland Fee Transmittal Form
3. Copy of Filling Fee Checks
4. Certified List of Abutters
5. Copy of Notice to Abutters
6. Locus Map (From USGS Reading Quadrangle) Scale 1:25,000
7. "Notice of Intent Plan, 70 Newtown Road, Acton Massachusetts", prepared by FORESITE Engineering Associates, Inc., dated November 7, 2007, Scale: 1-inch equals 20 feet

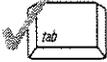




Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by DEP:  
 \_\_\_\_\_  
 DEP File Number  
 \_\_\_\_\_  
 Document Transaction Number  
 Acton  
 City/Town

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



**Note:**  
 Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

**A. General Information**

1. Project Location (**Note:** electronic filers will click on button for GIS locator):

70 Newtown Road  
 a. Street Address  
 Acton  
 b. City/Town  
 01720  
 c. Zip Code  
 Latitude and Longitude:  
 42°29'24"N  
 d. Latitude  
 71°26'32"W  
 e. Longitude  
 E3  
 f. Assessors Map/Plat Number  
 82  
 g. Parcel /Lot Number

2. Applicant:

Steven & Rachel  
 a. First Name  
 Kelley  
 b. Last Name  
 c. Company  
 70 Newtown Road  
 d. Mailing Address  
 Acton  
 e. City/Town  
 MA  
 f. State  
 01720  
 g. Zip Code  
 (978) 263-2646  
 h. Phone Number  
 i. Fax Number  
 rachel\_kelley@ml.com  
 j. Email address

3. Property owner (if different from applicant):  Check if more than one owner

a. First Name  
 b. Last Name  
 c. Company  
 d. Mailing Address  
 e. City/Town  
 f. State  
 g. Zip Code  
 h. Phone Number  
 i. Fax Number  
 j. Email address

4. Representative (if any):

FORESITE Engineering Associates, Inc.  
 a. Firm  
 Scott  
 b. Contact Person First Name  
 Hayes  
 c. Contact Person Last Name  
 16 Gleasondale Road, Suite 1-1  
 d. Mailing Address  
 Stow  
 e. City/Town  
 MA  
 f. State  
 01775  
 g. Zip Code  
 (978) 461-2350  
 h. Phone Number  
 (978) 841-4102  
 i. Fax Number  
 scott@foresite1.com  
 j. Email address

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

\$110  
 a. Total Fee Paid  
 \$42.50  
 b. State Fee Paid  
 \$67.50  
 c. City/Town Fee Paid

6. General Project Description:

Paving of an existing gravel driveway.



# WPA Form 3 – Notice of Intent

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

Provided by DEP:
DEP File Number
Document Transaction Number
Acton
City/Town

## A. General Information (continued)

7. Project Type Checklist:

- a.  Single Family Home
- b.  Residential Subdivision
- c.  Limited Project Driveway Crossing
- d.  Commercial/Industrial
- e.  Dock/Pier
- f.  Utilities
- g.  Coastal Engineering Structure
- h.  Agriculture – cranberries, forestry
- i.  Transportation
- j.  Other

8. Property recorded at the Registry of Deeds for:

<u>Middlesex South District Registry of Deeds</u>	<u>340</u>
a. County	b. Page Number
<u>39045</u>	
c. Book	d. Certificate # (if registered land)

9. Has work been performed on the property under an Order of Resource Area Delineation involving Simplified Review within 3 years of the date of this application?

- a.  Yes
- b.  No

If yes, no Notice of Intent or Request for Determination of Applicability may be filed for work within the 50-foot-wide area in the Buffer Zone along the resource area during the three-year term of an Order of Resource Area Delineation, or any Extended Order, or until the applicant receives a Certificate of Compliance, whichever is later.

10. Buffer Zone Only - Is the project located only in the Buffer Zone of a bordering vegetated wetland, inland bank, or coastal resource area?

- a.  Yes - answer 11 below, then skip to Section C.
- b.  No - skip to Section B.

11. Buffer Zone Setback – For projects that involve work only in the buffer zone, select the applicable adjacent resource area (check one):

- a.  BVW
- b.  inland bank
- c.  coastal resource area

The distance between the closest project disturbance and the associated resource area is:

41 feet  
d. linear feet



# WPA Form 3 – Notice of Intent

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

Provided by DEP:

DEP File Number \_\_\_\_\_

Document Transaction Number \_\_\_\_\_

Acton \_\_\_\_\_

City/Town \_\_\_\_\_

## B. Resource Area Effects

### 1. Inland Resource Areas

Check all that apply below. Attach narrative and any supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

**Online Users:**  
Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
a. <input type="checkbox"/> Bank	1. linear feet _____	2. linear feet _____
b. <input type="checkbox"/> Bordering Vegetated Wetland	1. square feet _____	2. square feet _____
c. <input type="checkbox"/> Land Under Waterbodies and Waterways	1. square feet _____ 3. cubic yards dredged _____	2. square feet _____
d. <input type="checkbox"/> Bordering Land Subject to Flooding	1. square feet _____ 3. cubic feet of flood storage lost _____	2. square feet _____ 4. cubic feet of flood storage replaced _____
e. <input type="checkbox"/> Isolated Land Subject to Flooding	1. square feet _____ 2. cubic feet of flood storage lost _____	3. cubic feet of flood storage replaced _____
f. <input type="checkbox"/> Riverfront area	1. Name of Waterway (if available) _____	

For projects impacted by the riverfront area and a buffer zone of another resource area, add 50% to the total fee.

1. Width of Riverfront Area (check one):

- 25 ft. - Designated Densely Developed Areas only
- 100 ft. - New agricultural projects only
- 200 ft. - All other projects

2. Total area of Riverfront Area on the site of the proposed project: \_\_\_\_\_

Square Feet

3. Proposed alteration of the Riverfront Area:

a. Total Square Feet \_\_\_\_\_

b. Square Feet within 100 ft. \_\_\_\_\_

c. Square Feet between 100 ft. and 200 ft. \_\_\_\_\_

4. Has an alternatives analysis been done and is it attached to this NOI?  Yes  No

5. Was the lot where the activity is proposed created prior to August 1, 1996?  Yes  No



# WPA Form 3 – Notice of Intent

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

Provided by DEP:
DEP File Number
Document Transaction Number
Acton
City/Town

## B. Resource Area Effects

### 2. Coastal Resource Areas:

Check all that apply below. Attach narrative and supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

**Online Users:**  
Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

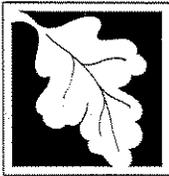
<u>Resource Area</u>	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
a. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below	
b. <input type="checkbox"/> Land Under the Ocean	1. Square feet _____	
	2. Cubic yards dredged _____	
c. <input type="checkbox"/> Barrier Beach	Indicate size under Coastal Beaches and/or Coastal Dunes below	
d. <input type="checkbox"/> Coastal Beaches	1. Square feet _____	2. Cubic yards beach nourishment _____
e. <input type="checkbox"/> Coastal Dunes	1. Square feet _____	2. Cubic yards dune nourishment _____
f. <input type="checkbox"/> Coastal Banks	1. Linear feet _____	
g. <input type="checkbox"/> Rocky Intertidal Shores	1. Square feet _____	
h. <input type="checkbox"/> Salt Marshes	1. Square feet _____	2. Sq ft restoration, rehab., or creation _____
i. <input type="checkbox"/> Land Under Salt Ponds	1. Square feet _____	
	2. Cubic yards dredged _____	
j. <input type="checkbox"/> Land Containing Shellfish	1. Square feet _____	2. Square feet restoration, rehab. _____
k. <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	
	1. Cubic yards dredged _____	
l. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	1. Square feet _____	

### 3. Limited Project:

Is any portion of the proposed activity eligible to be treated as a limited project subject to 310 CMR 10.24 or 310 CMR 10.53?

a.  Yes  No If yes, describe which limited project applies to this project:

b. Limited Project



# WPA Form 3 – Notice of Intent

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

Provided by DEP:

DEP File Number

Document Transaction Number

Acton

City/Town

## C. Bordering Vegetated Wetland Delineation Methodology

Check all methods used to delineate the Bordering Vegetated Wetland (BVW) boundary:

- 1.  Final Order of Resource Area Delineation issued by Conservation Commission or DEP (attached)
- 2.  DEP BVW Field Data Form (attached)
- 3.  Final Determination of Applicability issued by Conservation Commission or DEP (attached)
- 4.  Other Methods for Determining the BVW Boundary (attach documentation):
  - a.  50% or more wetland indicator plants
  - b.  Saturated/inundated conditions exist
  - c.  Groundwater indicators
  - d.  Direct observation
  - e.  Hydric soil indicators
  - f.  Credible evidence of conditions prior to disturbance
- 5. Other resource areas delineated: \_\_\_\_\_

**Online Users:**  
Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

For all projects affecting other Resource Areas, please attach a narrative explaining how the resource area was delineated.

## D. Other Applicable Standards and Requirements

- 1. Is any portion of the proposed project located in estimated habitat as indicated on the most recent Estimated Habitat Map of State-Listed Rare Wetland Wildlife published by the Natural Heritage and Endangered Species Program?

a.  Yes  No If yes, include proof of mailing or hand delivery of NOI to:

Natural Heritage and Endangered Species Program  
 Division of Fisheries and Wildlife  
 Route 135, North Drive  
 Westborough, MA 01581

2006  
b. Date of Map

- 2. For coastal projects only, is any portion of the proposed project located below the mean high water line or in a fish run?

a.  Yes  No If yes, include proof of mailing or hand delivery of NOI to either:

South Shore - Cohasset to Rhode Island, and the Cape & Islands:

North Shore - Hull to New Hampshire:

Division of Marine Fisheries -  
 Southeast Marine Fisheries Station  
 Attn: Environmental Reviewer  
 838 South Rodney French Blvd.  
 New Bedford, MA 02744

Division of Marine Fisheries -  
 North Shore Office  
 Attn: Environmental Reviewer  
 30 Emerson Avenue  
 Gloucester, MA 01930

b.  Not applicable – project is in inland resource area only

- 3. Is any portion of the proposed project within an Area of Critical Environmental Concern (ACEC)?

a.  Yes  No If yes, provide name of ACEC (see instructions to WPA Form 3 or DEP Website for ACEC locations). **Note:** electronic filers click on Website.

b. ACEC



# WPA Form 3 – Notice of Intent

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

Provided by DEP:
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Acton
City/Town

**Online Users:**  
include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

## D. Other Applicable Standards and Requirements

4. Is any portion of the site subject to a Wetlands Restriction Order under the Inland Wetlands Restriction Act (M.G.L. c. 131, § 40A) or the Coastal Wetlands Restriction Act (M.G.L. c. 130, § 105)?
- a.  Yes  No
5. Is any activity within any Resource Area or Buffer Zone exempt from performance standards of the wetlands regulations, 310 CMR 10.00.
- a.  Yes  No If yes, describe which exemption applies to this project:
- b. Exemption
- 
6. Is this project subject to the DEP Stormwater Policy? a.  Yes  No
- If yes, stormwater management measures are required. Applicants should complete the Stormwater Management Form and submit it with this form.
- b. If no, explain why the project is exempt:
- Single family house project.

## E. Additional Information

Applicants must include the following with this Notice of Intent (NOI). See instructions for details.

**Online Users:** Attach the document transaction number (provided on your receipt page) for any of the following information you submit to the Department.

- USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and the Department to locate the site. (Electronic filers may omit this item.)
- Plans identifying the location of proposed activities (including activities proposed to serve as a Bordering Vegetated Wetland [BVW] replication area or other mitigating measure) relative to the boundaries of each affected resource area.
- Other material identifying and explaining the determination of resource area boundaries shown on plans (e.g., a DEP BVW Field Data Form).
- List the titles and dates for all plans and other materials submitted with this NOI.
- If there is more than one property owner, please attach a list of these property owners not listed on this form.
- Attach proof of mailing for Natural Heritage and Endangered Species Program, if needed.
- Attach proof of mailing for Massachusetts Division of Marine Fisheries, if needed.
- Attach NOI Wetland Fee Transmittal Form
- Attach Stormwater Management Form, if needed.



# WPA Form 3 – Notice of Intent

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

Provided by DEP:
DEP File Number
Document Transaction Number
Acton
City/Town

## F. Fees

The fees for work proposed under each Notice of Intent must be calculated and submitted to the Conservation Commission and the Department (see Instructions and NOI Wetland Fee Transmittal Form).

No filing fee shall be assessed for projects of any city, town, county, or district of the Commonwealth, federally recognized Indian tribe housing authority, municipal housing authority, or the Massachusetts Bay Transportation Authority.

Applicants must submit the following information (in addition to pages 1 and 2 of the NOI Wetland Fee Transmittal Form) to confirm fee payment:

<u>3561</u>	<u>11/7/07</u>
1. Municipal Check Number	2. Check date
<u>3562</u>	<u>11/7/07</u>
3. State Check Number	4. Check date
<u>FORESITE Engineering Associates, Inc.</u>	
5. Payor name on check: First Name	6. Payor name on check: Last Name

## G. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Notice of Intent and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge. I understand that the Conservation Commission will place notification of this Notice in a local newspaper at the expense of the applicant in accordance with the wetlands regulations, 310 CMR 10.05(5)(a).

I further certify under penalties of perjury that all abutters were notified of this application, pursuant to the requirements of M.G.L. c. 131, § 40. Notice must be made in writing by hand delivery or certified mail (return receipt requested) to all abutters within 100 feet of the property line of the project location.

<u>[Signature]</u> Signature of Applicant	<u>(AGENT FOR APPLICANT)</u> Date
<u>[Signature]</u> Signature of Property Owner (if different)	<u>[Signature]</u> Date
<u>[Signature]</u> Signature of Representative (if any)	<u>SCOTT HAYES, P.E.</u> Date

### For Conservation Commission:

Two copies of the completed Notice of Intent (Form 3), including supporting plans and documents; two copies of pages 1 and 2 of the NOI Wetland Fee Transmittal Form; and the city/town fee payment must be sent to the Conservation Commission by certified mail or hand delivery.

### For DEP:

One copy of the completed Notice of Intent (Form 3), including supporting plans and documents; one copy of pages 1 and 2 of the NOI Wetland Fee Transmittal Form; and a copy of the state fee payment must be sent to the DEP Regional Office (see Instructions) by certified mail or hand delivery. (E-filers may submit these electronically.)

### Other:

If the applicant has checked the "yes" box in any part of Section D, Item 3, above, refer to that section and the Instructions for additional submittal requirements.

The original and copies must be sent simultaneously. Failure by the applicant to send copies in a timely manner may result in dismissal of the Notice of Intent.





Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**NOI Wetland Fee Transmittal Form**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Fees** (continued)

Step 1/Type of Activity	Step 2/Number of Activities	Step 3/Individual Activity Fee	Step 4/Subtotal Activity Fee
Category 1.a. Work on a single family house	1	\$110	\$110

Step 5/Total Project Fee: \$110

**Step 6/Fee Payments:**

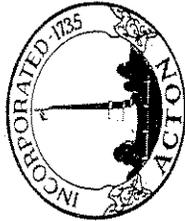
Total Project Fee:	\$110
State share of filing fee:	a. Total fee from Step 5 \$42.50
City/Town share of filling fee:	b. 1/2 total fee less \$12.50 \$67.50
	c. 1/2 total fee plus \$12.50

**C. Submittal Requirements**

- a.) Complete pages 1 and 2 and send with a check or money order for the state share of the fee, payable to the Commonwealth of Massachusetts.

Department of Environmental Protection  
 Box 4062  
 Boston, MA 02211

- b.) **To the Conservation Commission:** Send the Notice of Intent or Abbreviated Notice of Intent; a copy of this form; and the city/town fee payment.
- c.) **To DEP Regional Office** (see instructions): Send a copy of the Notice of Intent or Abbreviated Notice of Intent; a copy of this form; and a copy of the state fee payment. (E-filers of Notices of Intent may submit these electronically.)



Town of Acton  
 472 Main Street  
 Acton, MA 01720  
 Telephone (978) 264-9622  
 Fax (978) 264-9630

Brian McMullen  
 Assistant Assessor

Locus: 70 Newtown Rd  
 Parcel ID: E3-82

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
81 NEWTOWN RD	E3-55	PITTORINO FELIX J	PITTORINO SANDRA ET AL	81 NEWTOWN ROAD	ACTON	MA	01720
4 MCKINLEY DR	E3-63-5	BROWN DAVID W	KENNEDY-BROWN KATHRYN M	4 MCKINLEY DR	ACTON	MA	01720
2 MCKINLEY DR	E3-63-6	KNIKER CHRISTOPHER T	KNIKER CATHERINE A	2 MCKINLEY DR	ACTON	MA	01720
2 EVERGREEN RD	E3-73	RAO ROSHAN M	KAMATH VEENA N	2 EVERGREEN RD	ACTON	MA	01720
1 EVERGREEN RD	E3-79	FOYE PETER B		4 BALSAM RD	ACTON	MA	01720
55 NEWTOWN RD	E3-80	TOWN OF ACTON		472 MAIN STREET	ACTON	MA	01720
20 COWDREY LN	E3-95	ROCKWELL BECKY A	BENT DOUGLAS C	20 COWDREY LN	ACTON	MA	01720
58 NEWTOWN RD	E3-95-1	TOWN OF ACTON		472 MAIN ST	ACTON	MA	01720
22 COWDREY LN	E3-95-3	ALLISON JAMES M	DONNELLAN KATHLEEN A	22 COWDREY LN	ACTON	MA	01720
28 SIMON WILLARD RD	E3-95-4	DELLICICCHI ALFRED	& PATRICIA	28 SIMON WILLARD RD	ACTON	MA	01720
30 SIMON WILLARD RD	E3-95-5	HUTCHINSON PETER	& LAURA	30 SIMON WILLARD RD	ACTON	MA	01720
59 NEWTOWN RD	E3-102	MILL DAM TRUST	C/O BARBARA KEIZER	1 LEXINGTON ROAD	CONCORD	MA	01742

The owner of land sharing a common boundary or corner with the site of the proposed activity (100 feet) in any direction, including land located directly across a street, way, creek, river, stream, brook or canal. The above are as they appear on the most recent applicable taxes.

*Kimberly Hoyt*  
 Kimberly Hoyt  
 Assessing Clerk  
 Acton Assessors Office  
 31-Oct-07



**FORESITE**  
ENGINEERING

16 Gleasondale Rd., Suite 1-1  
Stow, Massachusetts 01775  
Phone: (978) 461-2350  
Fax: (978) 841-4102  
[www.foresite1.com](http://www.foresite1.com)

**TO: Abutters to 70 Newtown Road**  
**FROM: FORESITE Engineering Associates, Inc.**  
**DATE: November 7, 2007**  
**RE: Notice of Public Hearing**

You are hereby notified that the Acton Conservation Commission will hold a public hearing at the Acton Town Hall on November 21, 2007 at 7:15 PM to discuss a Notice of Intent filed by Steven & Rachel Kelley for proposed work at 70 Newtown Road.

The proposed work, **paving of an existing gravel driveway**, is under the jurisdiction of the Massachusetts Wetlands Protection Act and the Town of Acton Wetlands Protection Bylaw.

If you have any questions regarding this notice or the work proposed, please contact the Acton Conservation Commission at (978) 264-9631 or FORESITE Engineering Associates, Inc. at (978) 461-2350.

**NOTIFICATION TO ABUTTERS  
UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT  
AND THE TOWN OF ACTON WETLANDS BYLAW**

In accordance with the second paragraph of Massachusetts General Laws Chapter 131, Section 40 and the Town of Acton Bylaws, you are hereby notified of the following:

The Applicant: Steven & Rachel Kelley

Address 70 Newtown Road, Acton, MA 01720

Phone: (978) 263-2646

has filed a Notice of Intent with the Acton Conservation Commission seeking permission to remove, fill, dredge or alter an Area Subject to Protection under the Wetlands Protection Act .

Applicant's Representative: FORESITE Engineering Associates, Inc.

Address 16 Gleasondale Road, Suite 1-1, Stow, MA 01775

Phone: (978) 461-2350

The address of the property where the activity is proposed 70 Newtown Road

Town Atlas Plate E-3

Parcel 82

Project Description Construction of an addition to a single family dwelling, site grading and landscaping within 100 feet of a bordering vegetated wetland.

Copies of the Notice of Intent may be examined at the Conservation Office, Acton Town Hall, 472 Main Street, Acton. Between the hours of 9:00 A.M. and 4:30 P.M. Monday through Friday. For more information please call the Conservation Office at 508-264-9631.

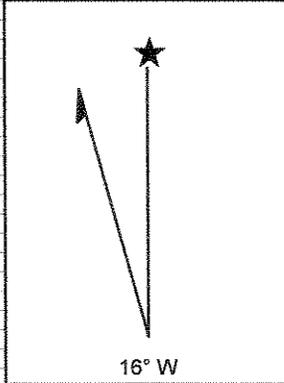
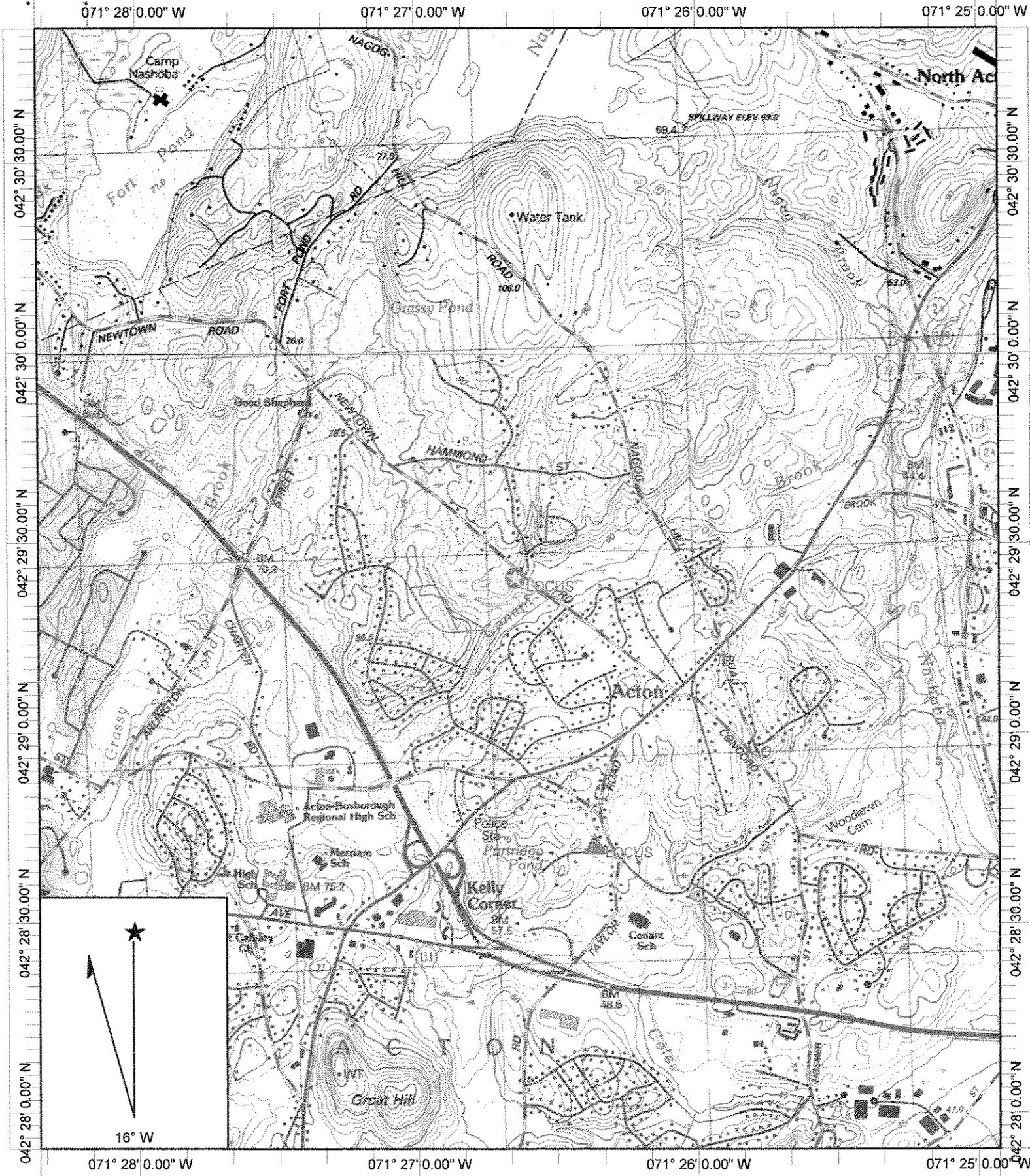
A Public Hearing will be held at the Acton Town Hall, 472 Main Street, on Wednesday,  
November 21, 2007 at 7:15 P.M.  
(date)

The notice of the public hearing, will be published at least five (5) days in advance in the Acton edition of the *Beacon* newspaper.

NOTE: You may also contact your local conservation commission or the nearest Department of Environmental Protection Regional Office for the information about this application or, the Wetlands Protection Act. Acton is in the Central Region. To contact DEP, call:

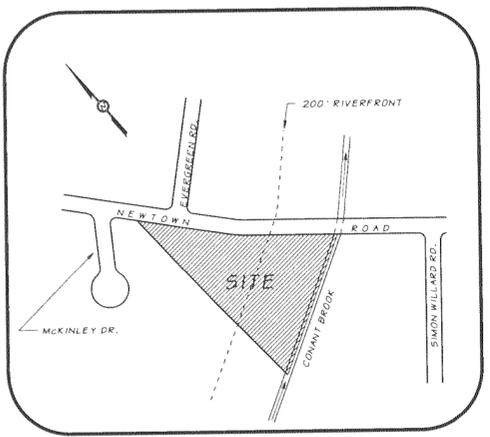
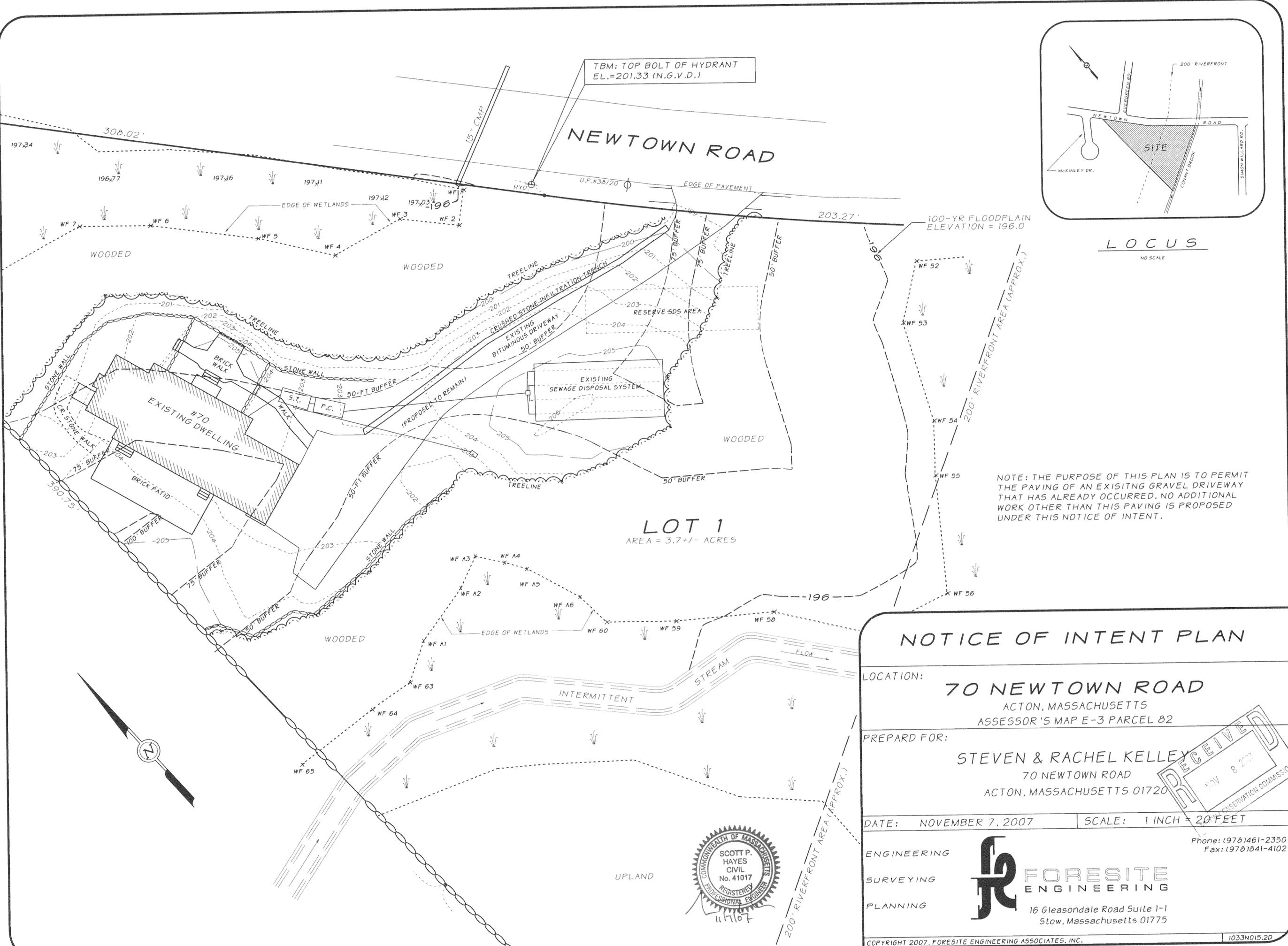
\*Central Region: 508-792-7650  
Southeast Region: 508-946-2800

Northeast Region: 617-935-2160  
Western Region: 413-784-1100



Name: MAYNARD  
 Date: 11/7/2007  
 Scale: 1 inch equals 2000 feet

Location: 042° 29' 22.8" N 071° 26' 38.4" W  
 Caption: FROM USGS, MAYNARD QUADRANGLE, 1987



LOCUS  
NO SCALE

NOTE: THE PURPOSE OF THIS PLAN IS TO PERMIT THE PAVING OF AN EXISTING GRAVEL DRIVEWAY THAT HAS ALREADY OCCURRED. NO ADDITIONAL WORK OTHER THAN THIS PAVING IS PROPOSED UNDER THIS NOTICE OF INTENT.

**NOTICE OF INTENT PLAN**

LOCATION: **70 NEWTOWN ROAD**  
ACTON, MASSACHUSETTS  
ASSESSOR'S MAP E-3 PARCEL 82

PREPARED FOR:  
**STEVEN & RACHEL KELLEY**  
70 NEWTOWN ROAD  
ACTON, MASSACHUSETTS 01720

DATE: NOVEMBER 7, 2007      SCALE: 1 INCH = 20 FEET

ENGINEERING  
SURVEYING  
PLANNING

**FORESITE ENGINEERING**  
16 Gleasondale Road Suite 1-1  
Stow, Massachusetts 01775

Phone: (978)461-2350  
Fax: (978)841-4102



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)

---

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.

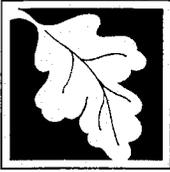
5. In May of 2007, the Kelleys paved the gravel portion of the driveway in violation of the deed restriction, and in violation of the requirements under the Act and Bylaw that they obtain prior authorization from the Commission for work within 100 feet of wetlands.
6. At the request of the Commission, 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

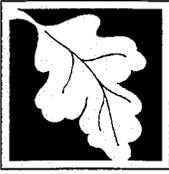
7. Dates: November 8, 2007  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

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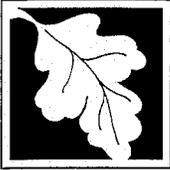
## **C. General Conditions Under Massachusetts Wetlands Protection Act**

(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

85-984

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**

85-984

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

**E. Issuance**

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

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. Perry  
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

Andrea H. Ristine  
Signature of Notary Public

Andrea H. Ristine  
Printed Name of Notary Public

February 27, 2009  
My Commission Expires (Date)

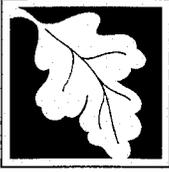
This Order is issued to the applicant as follows:

by hand delivery on

by certified mail, return receipt requested, on

Date

Date 12/12/2007



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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.