Form E

DEP File No. 85-947

Applicant Apple Valley Homes, Inc.

Order of Conditions
Wetlands Protection Bylaw
Chapter F

From the ACTON CONSERVATION COMMISSION Issuing Authority

To John Barbadoro, Apple Valley Homes, Inc. _____
(Name of person making request) (Name of property owner)

Address 2 Orchid Drive, Littleton MA 01460 Address _____

This Order is issued and delivered as follows:

☒ by hand delivery to person making request on 9/28/06 (date)

☐ by certified mail, return receipt requested on _____ (date)

This project is located at Behind 118 Willow Street (Lot 7)

The property is recorded at the Registry of Middlesex South

Book 43940 Page 196

Certificate (if registered) _____

The Notice of Intent for this project was filed on July 20, 2006 (date)

The public hearing was closed on September 6, 2006 (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):

☐ Public water supply	☒ Flood Control	☐ Land containing shellfish
☐ Private water supply	☒ Storm damage prevention	☐ Fisheries
☒ Ground water supply	☐ Prevention of pollution	☒ Protection of Wildlife Habitat

Total filing fee submitted under Acton Wetlands Protection Bylaw $ 100

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 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, 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 **85-947** ".

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.

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.

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:
Notice of Intent Plan Lot 7 Willow Street	7/11/2006	Mark Donohoe, Civil PE #27149	Acton Conservation
8/29/06 Letter - Supplemental Information Request for Waiver	8/29/2006	" " " " "	" "

SEE ATTACHED DECISION (PAGES E-7 - E-8).

(Leave Space Blank)

Issued by the ACTON Conservation Commission

Signature(s)

William Fobert

Terence Maitland

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

On this Sixth day of September, 2006, before me, the undersigned notary public, personally appeared Terence 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.

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 Behind 118 Willow Street - Lot 7

File Number 85-947 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

On September 6, 2006, the Acton Conservation Commission voted to grant the Applicant's requested waiver under Section F4.6 of the Town of Acton Wetland Protection Bylaw ("Wetland Bylaw"), and to issue an Orders of Conditions approving the Notice of Intent ("NOI") filings under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and the Wetland Bylaw for Lots 7 & 8 behind 118 Willow Street (Parcel 309, Town Atlas Plate G-1).

Findings of Fact

1. The Applicant has filed two NOI's under the Massachusetts Wetlands Protection Act ("the Act") Act and Wetland Bylaw, with each NOI pertaining to the construction of a single-family residence on one of two abutting parcels within 100 feet of a vegetated wetland bordering Muddy Brook. Muddy Brook itself is approximately 500 feet away. The two parcels, Lots 7 and 8 are located behind 118 Willow Street. An expanse of grass and woods separates the vegetated wetland from the proposed construction area. The terrain is fairly level, has coarse-grain well-drained sandy soils and historically has been in agricultural use, most recently as a hay meadow. A shared driveway would provide access to the two "hammerhead" lots. A drip-line trench installed along the foundation of each residence would facilitate groundwater recharge.

2. Portions of each proposed structure would fall within the 75-foot no-structure and 50-foot no-disturbance setbacks that the Wetland Bylaw requires. Relocating the proposed residences to increase the distance from the wetland would not be feasible due in part to the location just outside of the 100-foot buffer-zone line of the bulk of the proposed septic systems, which the Acton Board of Health already has approved. In addition, the Acton Zoning Bylaw requirements for hammerhead lot dimensions and house locations impose further restrictions on Applicant's ability to change the proposed locations of the houses.

3. The Massachusetts Department of Environmental Protection ("DEP"), in its August 15, 2006 notice assigning the DEP file number for Lot 8, included a comment that the Lot 8 project did not appear to meet the general performance standards of 310 CMR 10.57(4)(A) relating to bordering land subject to flooding. The 100-year flood plain, as depicted in Federal Emergency Management Agency ("FEMA") maps, crosses Lots 7 and 8 and includes a portion of the Lot 8 house. The Applicant emphasizes that the elevations in the FEMA maps are simply guidelines subject to modification, and that in the adjacent Sweeney Farm Lane subdivision project, the Applicant used FEMA data and Town Engineering Department data to determine that the 100-year flood plain elevation should be 199.6 feet. The Applicant expects to resolve the flood plain elevation issue similarly with respect to Lot 8.

4. As part of the NOI's, the Applicant requests a waiver, on public-interest grounds, of the 75-foot and 50-foot setback requirements under the Wetland Bylaw. Applicant would adhere instead to setbacks roughly corresponding to the 40-foot no-structure and 25-foot no-disturbance setbacks in effect prior to the amendment of the Wetland Bylaw in July 2003.

5. In support of the waiver request, the Applicant first proposes an "environmental hedge," consisting of naturalized native plants and boulders, located behind each house and approximately 40 feet from the wetland line. The Applicant also has offered to create and include in the property deeds a conservation restriction to protect the buffer area that the environmental hedge would establish; the Applicant would place permanent monuments clearly identifying the restriction-protected area. Furthermore, the Applicant has offered to establish a public access easement from 108 - 110 Willow Street adjacent to Lot 7 and accessing existing Town-owned property at the rear of Lots 7 & 8. The proposed access easement would allow hikers to enter Mt. Hope Cemetery property (Town Atlas Plate G-1,

Parcel 213 and 320) and General Municipal Property (Town Atlas Plate G-1, Parcel 262) from Willow Street across from Kingman Road.

6. In addition, the Applicant proposes to grant in fee to the Town a seven-acre, undeveloped parcel encompassing a large, open field and located off Knowlton Drive and Arlington Street in West Acton (a portion of Parcel 75-14, Town Atlas Plate F-2). The northerly portion of the Knowlton Drive parcel is a habitat for endangered species. The westerly side of the parcel includes a strip of land extending to the centerline of Fort Pond Brook and connecting the parcel to 190 Arlington Street, a municipal parcel owned by the Town of Acton. Additional Town-owned property, including vegetated wetlands is located on the south side of Massachusetts Avenue, and the inclusion of the Knowlton Drive parcel would greatly enhance the "Fort Pond Brook Greenbelt". The proposed-gift parcel, which is less than a half mile from the Douglas and Gates elementary schools, also could conceivably accommodate one or more playing fields. A small portion of the Knowlton Drive parcel is subject to a septic system easement, encompassing a sewage pipeline, septic tank and leaching field, for the benefit of the residence at 501 Massachusetts Avenue; use of the remaining land for playing fields still would be possible, and the easement could diminish in importance if the Town extended sewer service to West Acton.

Supporting Conclusions

1. The proposed construction, considered alone, is likely to pose minimal if any risk to the nearby wetland, and adequately protects the interests of the Wetland Bylaw. The coarse, sandy soil quality, relatively flat topography, proposed installation of foundation trenches, so-called environmental hedges and grassy, treed buffer area increase the likelihood that runoff from the driveway and lawns will be recharged in upland areas rather than in the wetland. In addition, the proposed environmental restrictions, which would be for the benefit of the Town, will protect against damaging encroachments upon the wetland by future homeowners on Lots 7 and 8.

2. The Knowlton Drive parcel would be a significant and valuable addition to the Town's conservation land and recreational space. Its acquisition by the Town indisputably would be in the public interest, as required under Section F4.6 of the Wetland Bylaw.

Special Conditions

1) The Applicant shall prepare, for inclusion in the deeds for the Lot 7 and 8 properties, a conservation restriction comparable to the deed restriction that the Commission approved for the Sweeney Farm Lane project, DEP File No. 85-877 (and with respect to which the Applicant included with the NOI's for Lots 7 & 8 a copy of the Commission's 8/23/04 Order of Conditions, Decision and Attachment A specifying Deed Restriction language). Final wording of the deed restriction shall be approved by the Commission prior to its inclusion in the deeds.

2) The Applicant shall install permanent concrete monuments at 75' intervals along the structure side of each "environmental hedge" on Lots 7 & 8. The concrete monuments shall indicate that the natural environment behind the monuments is to remain natural habitat and restricted conservation/open space. Final wording shall be approved by the Commission prior to installation.

3) As requested by the Commission and agreed to by the Applicant, the transfer of Knowlton Drive parcel to the Town, as described in "Findings of Facts No. 6" (within this written Decision), shall occur prior to the issuance of Building Permits for Lots 7 & 8.

- END -