

85-476

(To be provided by DEP)

Form 5

City/Town ACTON

Applicant Acorn Homes

Commonwealth of Massachusetts

Order of Conditions Massachusetts Wetlands Protection Act G.L. c. 131, §40

From ACTON CONSERVATION COMMISSION Issuing Authority

To Acorn Homes, Inc. Acorn Park Realty Trust (Name of Applicant) (Name of property owner)

Address 150 Wood Road, Braintree 02184 Address One Nagog Park Drive, Acton MA 01720

This Order is issued and delivered as follows:

[] by hand delivery to applicant or representative on _____ (date)

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

This project is located at EUA 13 Acorn Park Drive, Acton

The property is recorded at the Registry of Middlesex South

Book 16746 Page 547

Certificate (if registered) _____

The Notice of Intent for this project was filed on 5/17/95 (date)

The public hearing was closed on June 7, 1995 (date)

Findings

The Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the 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, Private water supply, Ground water supply, Flood Control, Storm damage prevention, Prevention of pollution, Land containing shellfish fisheries, Protection of Wildlife Habitat

Total Filing Fee Submitted 250 State Share 112.50 (1/2 fee in excess of \$25)

City/Town Share 137.50

Total Refund Due \$ _____ City/Town Portion \$ _____ (1/2 total) State Portion \$ _____ (1/2 total)

Therefore, the 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 Commission orders that all work shall be performed in accordance with said 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.

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 and both that date and the special circumstances warranting the extended time period are set forth 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. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, 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 to be done. The recording informatin shall be submitted to the Commission on the form at the end of this Order prior to 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 size bearing the words, "Massachusetts Department of Environmental Protection, File Number 85-476"
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.

11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

12. The work shall conform to the following plans and special conditions:

Plans:

Title	Dated	Signed and Stamped by:	On File with:
<u>USGS</u>	<u> </u>	<u> </u>	<u>Acton Conservation</u>
<u>Grading Plan</u>	<u>4/27/95</u>	<u>Stamski & McNary</u>	<u>" "</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

Special Conditions (Use additional paper if necessary)

(Leave Space Blank)

.....

Plans:

Title	Dated	Signed and Stamped by:	On File with:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Conditions (Use additional paper if necessary)

(Leave Space Blank)



Issued by the Department of Environmental Protection

Signature _____

On this _____ day of _____, 19____,

before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Notary Public

My commission expires

The applicant, the owner, any person aggrieved by the Superseding Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten persons pursuant to G.L. c.30A §10A, are hereby notified of their right to request an adjudicatory hearing pursuant to G.L. c.30A, §10, 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 CHR 10.03(7), within ten days from the date of issuance of this Superseding Order, and is addressed to: Docket Clerk, Office of General Counsel, Department of Environmental Protection, One Winter Street, Boston, MA 02108. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, and any other party.

A Notice of Claim for an Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CHR 1.01(6), and shall contain the following information:

- (a) the DEP Wetlands File Number, name of the applicant and address of the project;
- (b) the complete name, address and telephone number of the party filing the request, and, if represented by counsel, the name and address of the attorney;
- (c) the names and addresses of all other parties, if known;
- (d) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Superseding Order, including specifically the manner in which it is alleged to be inconsistent with the Department's Wetlands Regulations (310 CHR 10.00) and does not contribute to the protection of the interests identified in the Act, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the Superseding Order;
- (e) a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known.

Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing.

Detach on dotted line and submit to the _____ prior to commencement of work.

.....

To _____ Issuing Authority.

Please be advised that the Order of Conditions for the project at _____

File Number _____ has been recorded at the Registry of _____ 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



DEP. File No.	<u>85-476</u>
Town File No.	_____
Applicant	<u>Acton Homes</u>



**ORDER OF CONDITIONS
WETLANDS PROTECTION BYLAW
CHAPTER F**

From ACTON CONSERVATION COMMISSION

To Acorn Homes, Inc. (name of applicant) Acorn Park Realty Trust (name of property owner)

Address 150 Wood Road, Braintree Address Acorn Park Drive, Acton, MA
01720

This Order is issued and delivered as follows:

_____ by hand delivery to applicant or representative on _____ (date)

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

This project is located at EUA 13

The property is recorded at the Registry of Middlesex South

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Certificate (if registered) _____

The Notice of Intent for this project was filed on May 17, 1995 (date)

The public hearing was closed on June 7, 1995 (date)

FINDINGS

The ACTON CONSERVATION COMMISSION has reviewed the above referenced 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 Acton Wetlands Protection Bylaw (check as appropriate):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public water supply | <input type="checkbox"/> Flood control | <input type="checkbox"/> Fisheries |
| <input checked="" type="checkbox"/> Private water supply | <input type="checkbox"/> Storm damage prevention | <input checked="" type="checkbox"/> Wildlife habitat Protection |
| <input checked="" type="checkbox"/> Ground water supply | <input checked="" type="checkbox"/> Prevention of pollution | |

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 50

Therefore, the ACTON CONSERVATION COMMISSION hereby finds that the following conditions are necessary, in accordance with the Construction Standards and Restrictions set forth in the Rules and Regulations, to protect those interests checked above. The ACTON CONSERVATION COMMISSION orders that all work shall be performed in accordance with said 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.

General Conditions (310 CMR)

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. This 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 form completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority from 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. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, 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 to be done. The recording information shall be submitted to the ACTON CONSERVATION COMMISSION on the form at the end of this order prior to 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 size bearing the words "Massachusetts Department of Environmental Protection, File Number 85-476."
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

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

13. 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.
14. This Order of Conditions shall apply to any successor in interest or successor in control.
15. Members and agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with this Order and to require the submittal of any data deemed necessary by the Commission for that evaluation.
16. 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.
17. 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.
18. 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.
19. Accepted engineering and construction standards and procedures shall be followed in the completion of this project.
20. The Commission shall be notified in writing 10 days prior to commencement of any site work. Failure to so notify the Commission shall result in the issuance of an Enforcement Order.
21. 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.

22. 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.
23. Any materials collected by the erosion control measures shall be removed and properly disposed of.
24. 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.
25. No salt or other deicing chemicals shall be used on roadways and parking areas on the site.
26. 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.
27. All disturbed areas shall be topsoiled six inches and seeded.
28. 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.
29. 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.
30. A twenty-five (25) foot setback of natural vegetation shall be maintained up-gradient from the wetland.
31. No construction, either temporary or permanent shall occur within forty feet of the edge of wetlands. This shall include driveways; roadways; residential, commercial or industrial structures, etc.
32. There shall be no use of fertilizers, pesticides, herbicides or chemicals of any kind within the forty (40) foot no construction zone.
33. There shall be no underground storage of gasoline, oil or other fuels or hazardous materials within the one-hundred (100) foot buffer zone.

Issued by the ACTON CONSERVATION COMMISSION

Signatures William M. Hill
Ann M. Shubert
Peter Shanahan
MB
Heida McElroy

This Order must be signed by a majority of the ACTON CONSERVATION COMMISSION.

On this seventh day of June 19 95, before me personally appeared William M Hill, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Andrea H B Markunje March 1, 2002
Notary Public My commission expires

Detach at line and submit to the Acton Conservation Commission prior to commencement of work.

To ACTON CONSERVATION COMMISSION:

Please be advised that the Order of Conditions for the project at EUA 13 Acorn Park Drive
File number 85-476 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 _____.

Name of Applicant _____

Signature _____ Applicant

PLANS

Title	Dated	Signed and Stamped by:	On File with
USGS			Acton Conservation
Grading Plan	4/27/95	Stamski & McNary	" "

ACTON WETLANDS BYLAW - SPECIAL CONDITIONS

FOR: _____



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Central Regional Office

William F. Weld
Governor

Trudy Coxe
Secretary, EOE

David B. Struhs
Commissioner

RE: NOTIFICATION OF WETLANDS PROTECTION ACT FILE NUMBER Acton

DATE: May 19, 1995 (city/town)

The Department of Environmental Protection has received a Notice of Intent filed in accordance with the Wetlands Protection Act (M.G.L. c.131, §40):

Applicant: Acorn Homes, Inc Owner: Acorn Park Realty Trust

Address: 150 Wood Rd. Address: One Nagog Park
Braintree, MA 02184 Acton, MA

Project Location: Acorn Park Drive Lot EVA 13

IF CHECKED, THE FOLLOWING ITEM(S) APPLY TO THIS NOTICE OF INTENT:

A. This project has been assigned the following file #: 85-476

Although a file # is being issued, please note the following: _____

ISSUANCE OF A FILE NUMBER INDICATES ONLY COMPLETENESS OF SUBMITTAL, NOT APPROVAL OF APPLICATION

B. ___ No File # will be assigned to this project until the following missing information is sent to this office, to meet the minimum submittal requirements in accordance with the Wetlands Protection Regulations at 310 CMR 10.00:

- () ___ copy(s) of a completed Notice of Intent (Form 3 or Form 4 of Sect. 10.99, whichever is applicable) and a copy of the Fee Transmittal Form, with a copy of the check for the State's share of the Notice of Intent filing fee.
- () ___ copy(s) of plans, calculations, and other documentation necessary to completely describe the proposed work and mitigating measures to protect resource areas.
- () ___ proof of abutter notification: ch. 472 of the Acts of 1993.
- () ___ copy(s) of plans showing compliance with Title 5 of the State Environmental Code, 310 CMR 15.00.
- () Proof that a copy of your Notice of Intent has been mailed or hand delivered to the Natural Heritage and Endangered Species Program.

COMMENTS: _____

(see page 2 for additional information)

C. ___ Other Regulatory Jurisdiction

- () Application has been forwarded to Waterways Regulatory Program to determine if a Chapter 91 License is required.
- () Applicant is advised to forward a copy of the Notice of Intent to the Corps of Engineers for review (call 1-800-362-4367 for information).

D. ___ 401 Water Quality Certification

Pursuant to 314 CMR 9.00, the project described in your Notice of Intent requires a 401 Water Quality Certification from the Department of Environmental Protection and may require submittal of a 401 application form. See below for further details:

- () **Based upon the information submitted in and with your Notice of Intent a separate 401 Water Quality Certification application form is not required.** The Department of Environmental Protection has reviewed the plans submitted by the applicant and finds that there is reasonable assurance that the project or activity will be conducted in a manner that will not violate the Massachusetts Surface Water Quality Standards, provided that:
 - a) activities are conducted in compliance with MGL c.131, §40 (the Wetlands Protection Act) and the Final Order of Conditions permitting the activities does not result in the loss of more than 5,000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water and/or the dredging of more than 100 cubic yards of land under water;
 - b) the Final Order of Conditions includes conditions requiring at least 1:1 replacement of bordering vegetated wetlands under 310 CMR 10.55(4)(b);
 - c) the project is not exempt from the MGL c.131, §40 (except for normal maintenance and improvement of land in agricultural or aquacultural use); is not part of a subdivision unless deed-restricted, see 314 CMR 9.04(3); does not cause the loss of any wetlands designated as Outstanding Resource Waters; does not result in the discharge of fill material to an isolated vegetated wetland designated as rare and endangered species habitat; and
 - d) the proposed work is not subject to 314 CMR 9.04.Therefore, provided that the above conditions are satisfied, the Final Order of Conditions will serve as the Water Quality Certification for this project. This does not relieve the applicant of the duty to comply with any other statutes or regulations.
- () Before the activity described in the Notice of Intent can commence, you must obtain a Water Quality Certification from this Regional Office. **Please complete the enclosed 401 Water Quality Certification application form and file it with this Regional Office for review.**
- () Your project involves dredging of greater than 100 cubic yards of material. **Please complete the enclosed 401 Water Quality Certification application form and file it with the Department of Environmental Protection, Waterways Program, One Winter Street, Boston, MA 02108.** Contact the Waterways Program at 617-292-5655 if you have any questions.

For more information please contact: Marielle Stone
Environmental Analyst (508) 792-7650 Ext. 3733

cc: Conservation Commission () U.S. Army Corps of Engineers
() Owner () Representative: _____
() DEP-Waterways _____
() Other: _____