



**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:  
85-947

**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:

<u>John</u>	<u>Barbadoro</u>	<u>Apple Valley Homes, Inc.</u>	
a. First Name	b. Last Name	c. Company	
<u>2 Orchid Drive</u>			
d. Mailing Address			
<u>Littleton</u>	<u>MA</u>	<u>01460</u>	
e. City/Town	f. State	g. Zip Code	

4. Property Owner (if different from applicant):

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

5. Project Location:

<u>Behind 118 Willow Street - Lot 7</u>	<u>Acton</u>	
a. Street Address	b. City/Town	
<u>G-1</u>	<u>309</u>	
c. Assessors Map/Plat Number	d. Parcel/Lot Number	
<u>Latitude and Longitude, if known (note: electronic filers will click for GIS locator):</u>	<u>42.27.960 N</u>	<u>71.28.796 W</u>
	e. Latitude	f. Longitude

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

<u>Middlesex South</u>	<u></u>	
a. County	b. Certificate (if registered land)	
<u>43940</u>	<u>196</u>	
c. Book	d. Page	

7. Dates: July 20, 2006 September 6, 2006 September 6, 2006  
 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):

<u>Notice of Intent Plan Lot 7 Willow Street</u>		
a. Plan Title		
<u>Acton Survey &amp; Engineering, Inc.</u>	<u>Mark Donohoe, Civil PE 27149</u>	
b. Prepared By	c. Signed and Stamped by	
<u>July 11, 2006</u>	<u>1" = 20'</u>	
d. Final Revision Date	e. Scale	
<u>Letter (supplemental information request for waiver under Town Bylaw, Chapter F)</u>	<u>8/29/2006</u>	
f. Additional Plan or Document Title	g. Date	



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## B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a.  Public Water Supply
- b.  Land Containing Shellfish
- c.  Prevention of Pollution
- d.  Private Water Supply
- e.  Fisheries
- f.  Protection of Wildlife Habitat
- g.  Groundwater Supply
- h.  Storm Damage Prevention
- i.  Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved subject to:**

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

**Denied because:**

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

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

3.	<input checked="" type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)				<u>26'</u> a. linear feet
	Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4.	<input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5.	<input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6.	<input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
		_____ e. cu.yd dredged	_____ f. cu.yd dredged		



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**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 85-947"



**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 PAGES 10 - 11 FOR DECISION ISSUED BY THE ACTON CONERVATION COMMISSION.

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



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## 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 FORM E - ORDER OF CONDITIONS - ISSUED UNDER THE WETLAND PROTECTION

BYLAW, CHAPTER F.

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



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**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.

9/6/09  
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.

4  
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:

*[Handwritten signatures: James Keenan, William F. ...]*

*[Handwritten signature: Luke ...]*

**Notary Acknowledgement**

Commonwealth of Massachusetts County of

Middlesex

On this

16th

Day

of

September

Month

2006

Year

Before me, the undersigned Notary Public, personally appeared

*[Handwritten signature: Terence ...]*  
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

*[Handwritten signature: 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

*[Handwritten signature and date: 9/6/09]*

Date



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## **F. Appeals**

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

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

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



## **DECISION**

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 -