

Request for Determination of Applicability

**Under The Massachusetts Wetlands Protection Act and the
Town of Acton Wetland Protection Bylaw**

CVS/pharmacy (Store # 706)

400 Massachusetts Avenue (Route 111)
Acton, Massachusetts

SUBMITTED TO:

Town of Acton Conservation Commission
472 Main Street
Acton, MA 01720

PREPARED BY:

Lucas Environmental, LLC
67 Coddington Street, Suite 204
Quincy, MA 02169

IN ASSOCIATION WITH:

Bohler Engineering
352 Turnpike Road
Southborough, MA 01772

Report Date: July 25, 2013

July 25, 2013

Town of Acton
Conservation Commission
472 Main Street
Acton, MA 01720

**Re: Request for Determination of Applicability
CVS/pharmacy (Store #706)
400 Massachusetts Avenue (Route 111)
Acton, Massachusetts 01720**

Dear Conservation Commission Members,

On behalf of the Applicant, TRB Development Group, Inc., Lucas Environmental, LLC (LE) has prepared this Request for a Determination of Applicability under the Wetland Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) and the Town of Acton Wetland Bylaw (Chapter F) and Rules & Regulations. The Applicant proposes to construct a 13,602 square foot CVS/pharmacy store with associated drainage, parking and access at 400 Massachusetts Avenue (Route 111) in Acton, Massachusetts. This redevelopment project includes the removal of the existing building and constructing a CVS/pharmacy store with drive through and associated appurtenances. Only a small portion of the paved access road will be located within the outer 100-Foot Buffer Zone to Bordering Vegetated Wetlands. All other work will be located outside jurisdictional resource areas.

Enclosed please find four (4) copies of the Request for a Determination of Applicability (RDA) submittal. The RDA includes the modified RDA Form 1, project narrative, site locus USGS map and other figures, filing fee, and Project Plans. We respectfully request that you place this matter on your agenda for the **August 7, 2013** public hearing.

If you have any questions, please do not hesitate to contact me at 617.405.4140 or cml@lucasenvironmental.net. Thank you for your consideration in this matter.

Sincerely,
LUCAS ENVIRONMENTAL, LLC



Christopher M. Lucas, Manager, PWS
Environmental Consultant/Soil Scientist
Land Development & Permitting

Enclosures

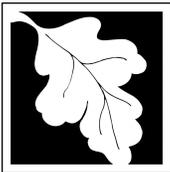
cc: Town Clerks Office (Letter Only)
Owners: Lands of Mustard Seed Properties, LLC
Lands of Parker Lane Investment Trust
Notca, LLC
Applicant: TRB Development Group, Inc.
Project Engineer: Bohler Engineering

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Prepared by Bohler Engineering, Dated January 25, 2013, Revised July 8, 2013	

Section I

Request for Determination of Applicability Form



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Acton
City/Town

WPA Form 1- Request for Determination of Applicability

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

A. General Information

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



1. Applicant:

TRB Development Group, Inc. Name rpmattocks@trb-group.com E-Mail Address
36 Londonderry Turnpike Mailing Address
Hooksett City/Town NH State 03106 Zip Code
603.669.8500 Phone Number
Fax Number (if applicable)

2. Representative (if any):

Lucas Environmental, LLC Firm
Christopher M. Lucas Contact Name cml@lucasenvironmental.net E-Mail Address
67 Coddington Street, Suite 204 Mailing Address
Quincy City/Town MA State 02169 Zip Code
617.405.4140 Phone Number
617.405.4465 Fax Number (if applicable)

B. Determinations

1. I request the Acton Conservation Commission make the following determination(s). Check any that apply:

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:

Acton
Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



WPA Form 1- Request for Determination of Applicability

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

C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

<u>400 Massachusetts Avenue (Route 111)</u> Street Address	<u>Acton</u> City/Town
<u>Map 3F</u> Assessors Map/Plat Number	<u>Lots 118-2, 127 & 128</u> Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

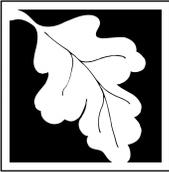
The 1.48 acre site is currently developed and consists of a one-story masonry building with associated parking and access. The site is bound by Massachusetts Avenue to the North, commercial properties to the west, wooded upland to the south and a wetland with intermittent stream channel within wooded upland to the east. See Attached Project Narrative for further detail.

c. Plan and/or Map Reference(s):

<u>Site Development Plans (Revised through July 8, 2013)</u> Title	<u>January 25, 2013</u> Date
_____	_____
_____	_____

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

Work proposed within jurisdictional areas consists of a small portion of a paved access road for a CVS/pharmacy store. This work will be located outside the 75-Foot Buffer Zone to Bordering Vegetated Wetlands. The majority of the work area currently is pavement. Work will occur on two adjacent parcels within easement areas. See Attached Project Narrative for further detail.



WPA Form 1- Request for Determination of Applicability

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

C. Project Description (cont.)

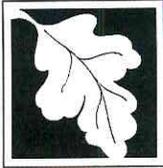
b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

Pursuant to 310 CMR 10.02(2)(b), the work is within the outer Buffer Zone as defined in the regulations, but will not alter an area subject to protection under the WPA. The proposed work is limited to previously developed/disturbed areas of the 100-Foot Buffer Zone and potential impacts will be avoided through proper installation and maintenance of erosion controls and final stabilization of the project construction.

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.

- Single family house on a lot recorded on or before 8/1/96
- Single family house on a lot recorded after 8/1/96
- Expansion of an existing structure on a lot recorded after 8/1/96
- Project, other than a single family house or public project, where the applicant owned the lot before 8/7/96
- New agriculture or aquaculture project
- Public project where funds were appropriated prior to 8/7/96
- Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
- Residential subdivision; institutional, industrial, or commercial project
- Municipal project
- District, county, state, or federal government project
- Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)



WPA Form 1- Request for Determination of Applicability

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

D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

See Attached Sheet - Multiple Property Owners

Name

Mailing Address

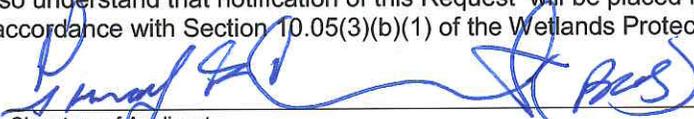
City/Town

State

Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.


Signature of Applicant

Date

8/22/13


Signature of Representative (if any)

Date

08/26/13

OWNER INFORMATION

Primary Owner (1)

Assessor Info: Map 3F, Lot 128
Address: 400 Massachusetts Avenue

Lands of Mustard Seed Properties, LLC
Care of Daniel Silvestrone
14 Page Street
Bedford, MA 01730

Owner (2)

Assessor Info: Map 3F, Lot 118-2
Address: Rear 408 Massachusetts Avenue

Lands of Parker Lane Investment Trust
Anna Ludwig Trustee
Care of Protech
205 Willow Street
Waltham, MA 02453

Owner (3)

Assessor Info: Map 3F, Lot 127
Address: 408 Massachusetts Avenue

Notca, LLC
Care of Protech
205 Willow Street
Waltham, MA 02453

Section II

Project Narrative

PROJECT NARRATIVE

1.0 INTRODUCTION

On behalf of the Applicant, TRB Development Group, Inc., Lucas Environmental, LLC (LE) is pleased to submit this Request for Determination of Applicability for the proposed construction of a 13,602 square foot CVS/pharmacy with drive through and associated parking, access, and appurtenances. A portion of the proposed work is located within the outer 100-Foot Buffer Zone to Bordering Vegetated Wetlands (BVW). No work is proposed within the 50-Foot or the 75-Foot local Town of Acton wetland setback areas.

The site is bound by Massachusetts Avenue to the north, TD Bank to the west, wooded uplands to the south and a wetland/intermittent stream system within wooded upland to the east. The project is primarily located on one parcel identified as Map 3F, Lot 128 by the Town of Acton Board of Assessors. Minor work outside the 100-Foot Buffer Zone is located on two additional parcels with easements. The parcels are identified as Map 3F, Lots 118-2 and 127.

This Project Narrative describes existing conditions, wetland resource areas, proposed work and regulatory compliance.

2.0 EXISTING CONDITIONS

The property is a 1.48-acre parcel located at 400 Massachusetts Avenue in Acton, Massachusetts (See Figure 1– USGS Map and Figure 2 – Aerial Map). The site consists of an existing one story commercial building (Goodyear) with associated parking, access, and appurtenances. The site is bound by Massachusetts Avenue to the north, to the west by a TD Bank, to the south by an upland forested area and to the east by a wooded upland with interior wetland/stream system. Resources identified in the vicinity of the site include Bank, Bordering Vegetated Wetlands, and Bordering Land Subject to Flooding.

A review of the current Mass GIS data layer for the Massachusetts Natural Heritage Atlas (effective October 1, 2008) under the Natural Heritage and Endangered Species Program (NHESP) indicates that the site is not located within Estimated Habitat for Rare Wildlife or Priority Habitat for Rare Species (See Figure 3 – NHESP Map). Furthermore, no certified or potential vernal pools under the jurisdiction of the Wetlands Protection Act (310 CMR 10.00) or the Massachusetts Endangered Species Act (321 CMR 10.00) occur within or near the property.

The site is not located within an Area of Critical Environmental Concern (ACEC) or within an Outstanding Resource Water (ORW).

3.0 RESOURCE AREAS

A Professional Wetland Scientist (PWS) from Lucas Environmental, LLC delineated wetland resource area boundaries on August 29, 2012, using methods prescribed in the Massachusetts Department of Environmental Protection’s Delineating Bordering Vegetated Wetlands handbook, the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual (1987), and the Northcentral and Northeast Regional Supplement version 2.0 (2012).

Resource areas identified include Inland Bank, Bordering Vegetated Wetland, and Bordering Land Subject to Flooding. Under the Massachusetts Wetlands Protection Act (WPA) and the Town of Acton Wetland Bylaw, wetland resource areas on the property are regulated as follows:

Bank – 310 CMR 10.54

310 CMR 10.54 defines a Bank as the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. The upper boundary of a Bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

Bordering Vegetated Wetlands – 310 CMR 10.55

310 CMR 10.55 of the WPA defines bordering vegetated wetlands as freshwater wetlands which border on creeks, rivers, streams, ponds and lakes. The types of freshwater wetlands are wet meadows, marshes, swamps and bogs. Bordering Vegetated Wetlands are areas where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The boundary of Bordering Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish & Wildlife Service, U.S. Department of the Interior, 1988) or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions. The BVW is documented in the following section.

Bordering Land Subject to Flooding – 310 CMR 10.57

310 CMR 10.57(2)(a)3 of the WPA states that the boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm. This information can be obtained from the most recently available flood profile data prepared under the National Flood Insurance Program (NFIP, currently administered by the Federal Emergency Management Agency). According to the June 10, 2012 FEMA Flood Insurance Rate Map for the Town of Acton, Middlesex County, Community Panel Number 352 of 656 (Map Number 25017C0352E), the land adjacent to the intermittent stream is located within Zone A (See Figure 4 – FEMA Map). Zone A is an area subject to the 100-year flood where base flood elevations and flood hazard factors have not been determined. This resource area is located off-site and has a local 100-Foot Buffer Zone.

Resource Area Description

The LE 2 Series delineates the BVW located off-site to the west. The BVW was delineated using pink survey flagging numbered sequentially from LE 2-112 to LE 2-133. The BVW is a forested/scrub wetland associated with an intermittent stream which drains to Coles Brook. The wetland is vegetated with winterberry (*Ilex verticillata*), northern spicebush (*Lindera benzoin*), common elderberry (*Sambucus canadensis*), red maple (*Acer rubrum*), poison ivy (*Toxicodendron radicans*), skunk cabbage (*Symplocarpus foetidus*), cinnamon fern (*Osmunda cinnamomea*), and royal fern (*Osmunda regalis*).

The LE 2A Series delineates the top of Bank of the unnamed intermittent stream channel located in the off-site BVW system. This stream originates at the headwall at Massachusetts Avenue and flows in a southerly direction away from the site. The Bank was delineated using blue survey flagging numbered sequentially from LE 2A-1 to LE 2A-25. It is well vegetated with a mix of woody vegetation such as common elderberry, winterberry, and northern spicebush.

The stream flows in a southerly direction away from the site. This stream is not depicted on the most recent USGS map until a distance of approximately 250 feet from the southern property line (i.e. Coles Brook). Per 310 CMR 10.58(2)(a)1.c., a stream shown as intermittent or not shown on the current USGS map that has a watershed size of less than one square mile is characterized under the State Wetlands Protection Act as “intermittent” unless the stream has a watershed size of at least one-half square mile and has a predicted flow rate greater than or equal to 0.01 cubic feet per second (cfs) at the 99% flow duration using the USGS StreamStats method.

The watershed area for this reach of stream was provided to Lucas Environmental by Bohler Engineering. Using the USGS Massachusetts Stream Stats method the watershed area was determined to be 0.38 square miles with a 99% flow duration of 0.006 cubic feet per second. This falls below the required perennial stream threshold value of 0.5 square mile at 0.01 cubic feet per second flow rate at the 99% flow duration (Refer to the enclosed StreamStats Analysis). Based upon this information, the stream would be classified as intermittent with the appropriate buffer zones as outlined in the following sections.

4.0 Proposed Work

This redevelopment program includes the removal of the existing building (‘Goodyear’) and the construction of a 13,602 square foot CVS/pharmacy with drive through and associated appurtenances. This work will occur outside all wetland resource areas. Work as proposed will include a small section of paved access road to be constructed within previously developed/paved areas of the site within the outer 100-Foot Buffer Zone to BVW (See Site Development Plans). No work is proposed within the 50-Foot or 75-Foot setback areas.

The stormwater management system for the development includes measures for collecting, conveying, treating and controlling stormwater runoff from the site. The stormwater management system incorporates both structural and non-structural BMP’s to adequately treat runoff from the proposed development area and is designed in accordance with MassDEP Stormwater Management Policy to the maximum extent practicable.

Erosion and Sedimentation Controls

Erosion and sedimentation controls will be installed at the limits of the work area prior to the commencement of construction (including demolition), which will begin only after erosion controls are installed and inspected. Installation and maintenance of erosion and sedimentation controls will reduce soil erosion on the project site and prevent sedimentation from occurring on- and off-site. These controls will be inspected and maintained throughout construction and will remain in place until areas upgradient are permanently stabilized.

Erosion and sedimentation controls shall be repaired or replaced as inspection deems necessary or as directed by the contractor or engineer. Accumulated silt at any erosion control device shall be removed when it reaches a depth of six inches, and shall be distributed on-site in a manner not contributing to additional siltation.

Any contractor is responsible for re-establishing any erosion control device which is disturbed during construction. Each contractor shall notify the engineer of any deficiencies in the established erosion control measures which may lead to unauthorized discharge or stormwater pollution, sedimentation or other pollutants. Unauthorized pollutants include, but are not limited to, excess concrete dumping or concrete residue, paints, solvents, grease, fuel, and lube oil, pesticides, any solid waste materials.

5.0 Regulatory Compliance

All work will be outside wetland resource areas. No work is proposed within the 50-Foot setback of undisturbed natural vegetation or the 75-Foot no-build setback to the edge of driveways, roadways and structures.

The Town of Acton Wetland Protection By-law has wetland setbacks for existing structures as follows:

Work associated with pre-existing structures or activities not presently in compliance with Section 3.2 may not increase the degree of "non-conformance" of those structures or activities. No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like Activities or structures, but the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure if it finds such Activity or structure will not affect the interests provided for in the Bylaw more adversely than the existing Activity or structure.

The project will conform to the wetland setbacks for existing structures; meaning that no new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like activities or structures.

Work proposed within the outer 100-Foot Buffer Zone to BVW and the local 100-Foot Buffer Zone to BLSF will occur within areas previously developed/paved for the existing Goodyear store. Proposed conditions with these areas will be similar in nature (i.e. consisting of a small section of paved access road). Furthermore, work associated with this redevelopment project will improve existing drainage and the on-site stormwater system. In addition, erosion controls will be placed at the limit of work on-site adjacent to the wetland/stream system.

6.0 Summary

The project includes the removal of an existing commercial building, the construction of a new 13,602 square foot CVS/pharmacy with drive through and associated appurtenances. Work within the jurisdictional areas of the site will occur mostly within previously developed/paved areas. Work will not occur within 75 feet of the Bank, BVW, and BLSF resources located off-site. The stormwater management system for the development includes measures for collecting, conveying, treating and controlling stormwater runoff from the site.

Based on the minor work within previously disturbed Buffer Zone, the distance from wetland (outside the 50-Foot and 75-Foot local wetland setbacks) and the proposed improvements to stormwater, this project will not alter any wetland resource areas. As a result, we respectfully request that a Negative Determination of Applicability be issued for the construction of the CVS/pharmacy and associated appurtenances as herein proposed and demonstrated on the Site Development Plans.