

85-424

(To be provided by DEP)

Form 5

City/Town ACTON

Applicant ACORN HOMES, INC.

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, MA 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 Acorn Park Drive, E.U.A. 60

The property is recorded at the Registry of Middlesex South

Book 16746 Page 567

Certificate (if registered)

The Notice of Intent for this project was filed on 4/6/94 (date)

The public hearing was closed on April 20, 1994 (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 information 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 85-424".
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.

**Plans:**

<b>Title</b>	<b>Dated</b>	<b>Signed and Stamped by:</b>	<b>On File with:</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**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



**FORM 5 ORDER OF CONDITIONS**

**FILE NO. 85-424**

**LOCATION: E.U.A. 60 Acorn Park**

**APPLICANT: Acorn Homes, Inc.**

**MASSACHUSETTS WETLAND PROTECTION ACT  
SPECIAL CONDITIONS REQUIRED BY THE TOWN OF ACTON**

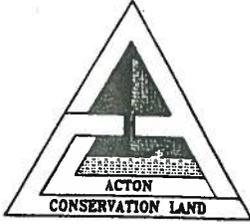
1. The Acton Conservation Commission will require the planting of a shrub border of not less than ten plants, three to four feet in minimum height, these shrubs must be indigenous to New England. The purpose of this border planting is to establish a permanent limit of clearing, and to enhance the wildlife habitat value of Exclusive Use Area (EUA) 60. The required planting shall be established parallel to the haybale line and contained entirely within the bounds of EUA 60. A plan of the proposed shrub border must be approved by the Acton Conservation Administrator prior to the issuance of a building permit for EUA 60.
  
2. Prior to the issuance of a certificate of compliance for EUA 60, an inspection of the wetlands perimeter will be done by the Acton Conservation Administrator to determine if yard waste (i.e.: grass clippings and leaf litter) have been dumped into the wetlands. If it is determined that yard waste has been dumped in the wetlands or within the 25' (twenty-five foot) no disturbance buffer, a certificate of compliance will not be issued, and the EUA will be in violation of the Wetlands Protection Act.

**ACTON CONSERVATION COMMISSION**





D.E.P. File No. 85-424  
~~XXXXXXXXXX~~  
Applicant Acorn Homes, Inc.



ORDER OF CONDITIONS  
WETLANDS PROTECTION BYLAW  
CHAPTER F

From ACTON CONSERVATION COMMISSION

To Acorn Homes, Inc. Acorn Park Realty Trust  
(name of applicant) (name of property owner)  
150 Wood Road One Nagog Park Drive  
Address Braintree, MA Address 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 E.U.A. 60 Acorn Park Drive

The property is recorded at the Registry of Middlesex South

Book 16746 Page 567

Certificate (if registered) \_\_\_\_\_

The Notice of Intent for this project was filed on 4/6/94 (date)

The public hearing was closed on April 20, 1994 (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):

- Public water supply
- Private water supply
- Ground water supply
- Flood control
- Storm damage prevention
- Prevention of pollution
- Fisheries
- Wildlife habitat Protection

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 50.00

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 85-424."
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 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.

PLANS

Title	Dated	Signed and Stamped by:	On File with
A.	USGS		Acton Conservation
B.	3/28/94	Bruce Stamski	" "

ACTON WETLANDS BYLAW - SPECIAL CONDITIONS

FOR: E.U.A. 60 Acorn Park Drive

\*\* SEE ATTACHED SHEET FOR SPECIAL CONDITIONS REQUIRED BY THE TOWN OF ACTON CONSERVATION COMMISSION. \*\*

Issued by the ACTON CONSERVATION COMMISSION

Signatures

*[Handwritten Signature]*

*[Handwritten Signature]*

Peter Shanahan

*[Handwritten Signature]*

Linda McE/Roy

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

On this twentieth day of April 19 94, 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.

*[Handwritten Signature]*  
Notary Public

March 16, 1995

My commission expires

Detach on dotted 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 E.U.A. 5 Acorn Park Drive File number 85-424 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

**FORM E ORDER OF CONDITIONS**

**FILE NO. 85-424**

**LOCATION: E.U.A. 60 Acorn Park  
APPLICANT: Acorn Homes, Inc.**

**ACTON WETLANDS PROTECTION BYLAW  
SPECIAL CONDITIONS REQUIRED BY THE TOWN OF ACTON**

1. The Acton Conservation Commission will require the planting of a shrub border of not less than ten plants, three to four feet in minimum height, these shrubs must be indigenous to New England. The purpose of this border planting is to establish a permanent limit of clearing, and to enhance the wildlife habitat value of Exclusive Use Area (EUA) 60. The required planting shall be established parallel to the haybale line and contained entirely within the bounds of EUA 60. A plan of the proposed shrub border must be approved by the Acton Conservation Administrator prior to the issuance of a building permit for EUA 60.
  
2. Prior to the issuance of a certificate of compliance for EUA 60, an inspection of the wetlands perimeter will be done by the Acton Conservation Administrator to determine if yard waste (i.e.: grass clippings and leaf litter) have been dumped into the wetlands. If it is determined that yard waste has been dumped in the wetlands or within the 25' (twenty-five foot) no disturbance buffer, a certificate of compliance will not be issued, and the EUA will be in violation of the Wetlands Protection Act.

**ACTON CONSERVATION COMMISSION**





Commonwealth of Massachusetts  
Executive Office of Environmental Affairs

**Department of  
Environmental Protection**  
Central Regional Office

William F. Weld  
Governor

Trudy Coxe  
Secretary, EOE

Thomas B. Powers  
Acting Commissioner

RE: NOTIFICATION OF WETLANDS PROTECTION ACT FILE NUMBER Acton

DATE: April 22, 1994 (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 Dr. Lot EUA60

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

A.  This project has been assigned the following file #: 85-424

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.
- ( ) \_\_\_ copy(s) of an 8½" X 11" section of the USGS map of the area.
- ( ) \_\_\_ 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

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) the applicant receives and complies with a Final Order of Conditions from the local conservation commission or the Department;
  - b) the Order of Conditions does not cause the loss of more than 5,000 sq. ft. of bordering vegetated wetlands and land under water and/or the dredging of more than 100 cubic yards of land under water;
  - c) any loss of vegetated wetlands has been mitigated with a minimum replication of 1:1; and
  - d) the project is not exempt from the M.G.L. c.131, §40 - the Wetlands Protection Act; is not part of a subdivision; does not cause the loss of any wetlands designated as Outstanding Resource Waters; and does not cause the loss of any salt marsh.

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 or requires a permit from the Federal Energy Regulatory Commission for work in "waters of the Commonwealth." Therefore, your proposed project is subject to 314 CMR 9.00 and requires a Water Quality Certification. Please complete the enclosed 401 Water Quality Certification application form and file it with the Department of Environmental Protection, Division of Water Pollution Control, One Winter Street, Boston, MA 02108. Contact the Division of Water Pollution Control at 617-292-5655 if you have any questions.

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

- cc: Conservation Commission ( ) U.S. Army Corps of Engineers  
 ( ) Owner ( ) Representative: \_\_\_\_\_  
 ( ) DEP - Water Pollution Control \_\_\_\_\_  
 ( ) DEP - Waterways \_\_\_\_\_  
 ( ) Other: \_\_\_\_\_