



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions - Denial
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

188-1148
 Provided by DEP

A. General Information

From:

Hopkinton
 Conservation Commission

This issuance is for (check one):

- Order of Conditions - **Denial**
- Amended Order of Conditions

To: Applicant:

Stagecoach Heights LLC
 Name
290 Eliot Street
 Mailing Address
Ashland MA 01721
 City/Town State Zip Code

Property Owner (if different from applicant):

Fafard Real Estate & Development Corp.
 Name
290 Eliot Street
 Mailing Address
Ashland MA 01721
 City/Town State Zip Code

1. Project Location:

<u>Wood Street</u> Street Address	<u>Hopkinton</u> City/Town
<u>Maps: U-9, U-10, U-14</u> Assessors Map/Plat Number	<u>Block: 21, Blocks: 2 & 3, Blocks: 1 & 25</u> Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

<u>Middlesex</u> County	<u>26148, 26246, 26345</u> Book	<u>16, 184, 90</u> Page
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Certificate (if registered land)

3. Dates:

<u>30 March 2001</u> Date Notice of Intent Filed	<u>03 February 2003</u> Date Public Hearing Closed	<u>24 February 2003</u> Date of Issuance
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4. Final Approved Plans and Other Documents (attach additional plan references as needed):

<u>"Stagecoach Heights Overall Plan in Hopkinton, MA"</u> Title	<u>October 2002</u> Date
<u>"Stagecoach Heights Site Development Plan For Comprehensive Permit in Hopkinton, Massachusetts" Sheets 1 - 12</u>	<u>3/19/01 rev. 9/23/02</u>

5. Final Plans and Documents Signed and Stamped by:

James E. McLoughlin IV, P.E. (Civil No. 31913)
 Name

6. Total Fee:

\$1,700.00 (State Share: \$837.50) (Town Share: \$862.50); Hopkinton Wetland Bylaw Fee: \$500.00
 (from Appendix B: Wetland Fee Transmittal Form)



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B. Findings

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:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Public Water Supply | <input type="checkbox"/> Land Containing Shellfish | <input checked="" type="checkbox"/> Prevention of Pollution |
| <input checked="" type="checkbox"/> Private Water Supply | <input checked="" type="checkbox"/> Fisheries | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| <input checked="" type="checkbox"/> Groundwater Supply | <input checked="" type="checkbox"/> Storm Damage Prevention | <input checked="" type="checkbox"/> Flood Control |

Furthermore, this Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

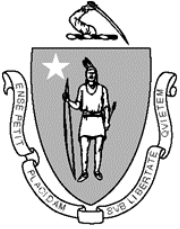
- the following conditions which are necessary, in accordance with the performance standards set forth in the wetlands regulations, to protect those interests checked above. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following 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:

- the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. 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.
- 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).

General Conditions (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.



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B. Findings (cont.)

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 188-_____"
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.



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B. Findings (cont.)

- 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.

Special Conditions (use additional paper, if necessary):

No work shall be performed on this project. See attached Finding of Fact.

Findings as to municipal bylaw or ordinance

Furthermore, the Hopkinton hereby finds (check one that applies):
Conservation Commission

- that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

Town of Hopkinton Wetlands Protection Bylaw
Name

Chapter 206
Municipal Ordinance or Bylaw

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.

- that the following additional conditions are necessary to comply with a municipal ordinance or bylaw, specifically:

Name

Municipal Ordinance or Bylaw

The Commission orders that all work shall be performed in accordance with the said additional 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.



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B. Findings (cont.)

Additional conditions relating to municipal ordinance or bylaw:

Four horizontal lines for entering additional conditions.

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

24 February 2003

Date

This Order must be signed by a majority of the Conservation Commission. 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 (see Appendix A) and the property owner (if different from applicant).

Signatures:

Four horizontal lines for signatures, arranged in two columns.

On _____ Of _____
Day Month and Year

before me personally appeared

Horizontal line for signature of the official.

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

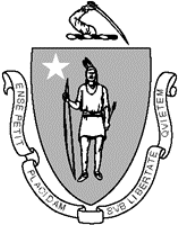
This Order is issued to the applicant as follows:

[] by hand delivery on

[] by certified mail, return receipt requested, on

Date

Date



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C. 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 Appendix E: 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.

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.

D. Recording Information

This Order of Conditions must be 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 subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of Form 5 shall be submitted to the Conservation Commission listed below.

Hopkinton

Conservation Commission



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D. Recording Information (cont.)

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Hopkinton
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location DEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex
County Book Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

SUMMARY OF HEARINGS REGARDING DEP FILE No. 188-1148

The proposed project is a Chapter 40B Comprehensive Permit application that has been filed with the Hopkinton Zoning Board of Appeals. A Notice of Intent for the proposed project was filed under the Massachusetts Wetlands Protection Act (the Act, Mass. G.L. Ch. 131, § 40) and the Town of Hopkinton Wetlands Protection Bylaw (the Bylaw, Chapter 206). The application was filed on 22 March 2001 and was determined to be incomplete at that time. Additional information was submitted and the application was determined to be complete on 30 March 2001. Hearings were held on the following dates under the Act and under the Bylaw: 30 April 2001, 14 May 2001, 18 June 2001, 26 November 2001, 7 October 2002, 25 November 2002, and 3 February 2003. Hearings had been scheduled for 20 August 2001, 11 February 2002 and 20 May 2002, but these were cancelled by the applicant prior to the hearing dates. The hearing under the Act was closed on 3 February 2003. The hearing under the Bylaw was continued to 12 May 2003 pending receipt of additional information required by the local Bylaw.

Hearing history

30 April 2001: The applicant's project engineer presented a summary of the proposed project which included the information that two wetland crossings were proposed, requiring the alteration of 4,650 square feet of wetland resource area and alteration of 53,000 square feet of wetland buffer zone. The applicant was requested to provide a written justification for the buffer zone disturbance (as required by the Bylaw). The applicant was informed that only a single wetland crossing could be conditioned under the limited project provision and was requested to explore alternative means of access to the site. The applicant was requested to provide a complete hydrological report identifying groundwater and surface water conditions on the site, along with a comprehensive erosion control plan, a construction sequence, and revised plans showing the 50-foot limit-of-work setback and soil stockpile locations. The Commission informed the applicant that there were three separate potential vernal pools located in the wetlands adjacent to Wood Street that could potentially limit or deny a second means of access to the parcel. A local resident present at the hearing stated that she had submitted paperwork for certification of each of the three vernal pools to the Massachusetts Natural Heritage Program.

14 May 2001: The applicant's project engineer stated that he had no updated plans to submit and requested a continuation. Arrangements were made for the Commission's wetland consultant to meet on site with a representative of the applicant to check boundaries of the resource areas. The applicant was informed that that 100-foot buffer zone of a vernal pool may not be disturbed, has never been permitted by the Commission, and will not be permitted for this project. The Applicant was encouraged to consider alternate roadway alignments, other means of access, or less dense development that would not require a second roadway access, wetland crossing, and substantial alteration of vernal pool buffer zone.

18 June 2001 The applicant's project engineer reviewed changes to the revised plans that had been submitted to the Conservation Office earlier in the day. The plans showed extensive grading for the detention basin and roadway within the 100-foot vernal pool setback at an elevation that is highly likely due to steep slopes to result in alteration of the vernal pool. The Commission reiterated that they have never permitted any disturbance within the 100-foot buffer zone of a vernal pool. A discussion was held whether the project, as a Comprehensive Permit, is subject to the Bylaw. It is the Commission's position and published policy that the Bylaw is applicable to Ch 40B projects and that the Commission must issue an Order of Conditions under the Act along with issuing recommendations to the Zoning Board of Appeals under the Bylaw. It was noted that the Applicant had already filed under both the Act and the Bylaw. The applicant was requested to file a copy of the Notice of Intent with Mass. Natural Heritage and Endangered Species Program (MNHESP). The status of the project as a limited project filing was discussed. The Commission stated its position that there is upland access to the project directly adjacent to Route 495 that allows access to the site without the necessity for wetland crossings. The Commission asked about the status of the geohydrologic study required under the Bylaw. The project engineer stated that the requested geohydrologic study would be ready in about a month. The chairman again noted a concern with the proposed site location for the detention basin area, within the buffer zone to the vernal pool. The applicant was requested to include the footprint of the proposed erosion control barrier in the calculation of the total proposed wetland resource area disturbance. The applicant was also asked to submit plans showing the entire site in order to allow the Commission to evaluate the impact of site drainage on wetlands to the northwest along with a written rationale as to why this is a limited project. The applicant was informed of the need for a wildlife habitat evaluation under

both the Act and the Bylaw. The hearing was continued to 20 August 2001. This hearing was subsequently cancelled by the Applicant, and eventually rescheduled for 26 November.

In a related matter, the Applicant filed an RFD to be allowed one-time access to the parcel for purposes of performing soil testing outside all buffer zones. The Commission permitted this testing, subject to extensive cautions to the Applicant that no work was to in any way alter either the buffer zone or the resource areas on the site. Work commenced, and resulted in an Enforcement Order from the Commission due to extensive alteration of vernal pool buffer zone on the site.

26 November 2001: The applicant reviewed the history of the filing and stated that the access roadways cannot be relocated to avoid the proposed wetland crossings. The current site plan, dated 11 June 2001, remained unchanged from that presented at the last hearing. The project engineer stated that through informal discussions with the Planning Board, they were informed that they must have two means of roadway access for a project of this size and density and that sight distance issues require the two locations shown on the plan. The Commission reiterated that it has not and will not permit alteration to the buffer zone of a vernal pool, nor would it permit a wetland crossing under the Limited Project provisions when other means of access to the parcel has already been shown by the Applicant. It was also noted that the Commission had not received the requested rationale for work proposed within the buffer zone. The project engineer stated that he was not in agreement with the vernal pool delineation performed by the individual who submitted the certification application to MNHESP. The Commission stated that the vernal pool delineation could not be reviewed until spring or, in case of drought, the following spring.

The Commission's wetland consultant noted that the geohydrologic study submitted did not meet the following criteria for the Commission's approval: pre- and post-development drainage calculations, calculations of surface and groundwater flows and how they change pre- and post-development, and watershed maps. The Commission chairman summarized the items that were required prior to next hearing: upgraded geohydrologic study, wildlife study, site access point relocated out of vernal pool buffer zone, MNESP vernal pool delineation, and removal of detention basin grading from vernal pool buffer zone.

The hearing was continued to 11 February 2002. This hearing was subsequently cancelled by the Applicant, and rescheduled for 20 May 2002. That hearing was subsequently cancelled by the Applicant, and eventually rescheduled for 7 October 2002..

7 October 2002: The applicant stated that the project was filed under Chapter 40B, that the road work and sight distance clearing is the only work under the jurisdiction of the Act, and that it is under 5,000 square feet of disturbance. She also noted that they will be requesting waivers from the ZBA for work within the 100-foot vernal pool set back under the Bylaw. The Commission reiterated that it has never allowed work within 100 feet of a vernal pool. The Commission noted that filling of 5,000 square feet of wetlands is not automatically granted, but rather is at the discretion of the Commission. The project engineer stated that the sewage disposal system has been redesigned based on last year's soil testing and that grassed swales were added to the plan to improve water quality. The geohydrologic consultant reviewed design changes that were incorporated to address comments from the Commission.

The applicant, when asked by the Commission, agreed that the NOI filing had been made under both the Act and the Bylaw. The vernal pool delineation was discussed, with the applicant noting that the delineation for the vernal pool on the plan was the one determined by the applicant's wetland consultant and the Commission's wetland consultant. The applicant stated that the vernal pools were certified but not delineated by MNHESP. The applicant's project engineer stated that the proposed TSS removal rate is 93.9 percent.

The Commission requested that the differences in the vernal pool delineations be resolved, that a detailed wetland replication procedure be submitted, that the wildlife evaluation be provided, and that a rationale for the disturbance within the 100-foot buffer zone be submitted.

25 November 2002: The applicant submitted a wetland replication plan and a letter from MNHESP noting that they do not approve the actual delineation of the limits of a vernal pool as part of the certification. The Commission reiterated

that they do not allow disturbance within the 100-foot vernal pool buffer zone and that the proposed plans indicate that this area will be heavily disturbed. The project engineer stated that there is no way to provide a second means of access to the site without disturbing a vernal pool buffer zone and that the applicant will seek a waiver under the Bylaw. The Commission reminded the applicant that the wildlife assessment requested in November 2001 had not been submitted to date. The Commission determined that they were in agreement with the vernal pool delineation as shown on the applicant's site plan and that the wetland replication report was adequate. The Commission's consultant reviewed the problems with the proposed project under the Act and under the Bylaw: Under the Act the proposed filling of BVW for a second means of access (the western access) does not meet the limited project provisions and the proposed sight distance clearing within the BVW falls within the 100-foot vernal pool buffer zone/vernal pool habitat, as defined under the Act. Under the Bylaw the proposed filling of BVW for the second means of access does not meet the limited project provisions, the proposed filling of an isolated wetland for construction of the eastern access does not meet the limited project provisions, and the proposed alteration of the 100-foot vernal pool buffer zone is not permitted.

An abutter to the project submitted photographs of spotted turtles on a lot directly adjacent to the project site. The Commission stated that this new information had to be reported to the MNHESP, was germane to the Commission's review under the Act and the Bylaw, and must be addressed by the Applicant. The Commission requested that the applicant address this new information in the wildlife study that was repeatedly requested.

3 February 2003: The applicant requested that the Commission close the hearing under the Act and continue the hearing under the Bylaw to a later date. The applicant promised to provide the requested wildlife study later in the year when the weather permits. The Commission's wetland consultant stated that the project is not in compliance under the Act because it does not meet the provisions of a limited project and because disturbance is proposed within the buffer zone of a vernal pool in the form of the site distance clearing of vegetation within the adjacent BVW, which is part of the buffer zone of a certified vernal pool. The chairman stated that the information received regarding the presence of spotted turtles has not been addressed by the Applicant, and needed to still be addressed, and that the requested wildlife study had still not been performed. The applicant was given the option of continuing the hearing under the Act in order to address these concerns. The applicant declined and requested that the hearing under the Act be closed. The Chairman noted that failure to address these issues by the Applicant was itself cause for denial under the Act, and again asked whether the Applicant would like to continue the hearing under the Act in order to address these issues. The Applicant declined, and requested that the hearing under the Act be closed. A motion was made to close the hearing and issue a denial Order of Conditions with a complete finding of fact detailing the points raised during the hearing process. The motion was seconded and passed by a vote of five in favor, one opposed. The hearing under the Bylaw was continued to 12 May 2003.

SUMMARY OF APPLICABLE LAWS AND REGULATIONS

Massachusetts Wetlands Protection Act (Mass. G.L. c.131, s.40) and its Regulations (310 CMR 10.00)

1. 310 CMR 10.05(4)(e) requires that the Applicant have filed for all obtainable permits, variances and approvals. Specifically,

"The requirement under M.G.L.c.131,§ 40 to obtain or apply for all obtainable permits, variances and approvals required by local by-law with respect to the proposed activity shall mean only those which are feasible to obtain at the time the Notice of Intent is filed. Permits, variances, and approvals required by local by-law may include, among others, zoning variances, permits from boards of appeals, permits required under floodplain or wetland zoning by-laws and gravel removal permits. They do not include, among others, building permits under the State Building Code, M.G.L.c.23B,§ 16,,or subdivision control approvals under the State Subdivision Control Law,M.G.L.c.41, §§ 81K through 81GG,,which are issued by local authorities. When an applicant for a comprehensive permit (under M.G.L.c.40B, §§ 20 through 23) from a board of appeals has received a determination from the board granting or denying the permit and, in the case of a denial, has appealed to the Housing Appeals Committee (established under M.G.L.c.23B,§ 5A), said applicant shall be deemed to have applied for all permits obtainable at the time of filing."

2. Activities occurring within 100 feet of an area subject to protection under the Act (the buffer zone) are subject to regulation under Mass. G.L. c. 131, s. 40 (310 CMR 10.02(b)).

3. Any person filing a Notice of Intent to perform any work within a wetland or the buffer zone has the burden of demonstrating to the Commission that the area is not significant to interests under the Act, that the proposed work will comply with applicable performance standards, and that work within the buffer zone will contribute to the protection of the interests of the act (310 CMR 10.03(1)(a)).
4. Areas subject to protection under the act are presumed to be significant to one or more of the interests of the act. These presumptions are rebuttable (310 CMR 10.03(5)). The standards and presumptions to be used by the Commission in determining whether an area is significant to the interests of the Act are found in 310 CMR 10.51 through 10.60.
5. The Order of Conditions shall impose such conditions as are necessary to meet the performance standards (310 CMR 10.06(b)). The Order shall prohibit any work or portion of the work that cannot be conditioned to meet the standards.
6. If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests of the Act, the Commission may issue an Order prohibiting the work (310 CMR 10.06(c)).
7. The Commission may issue an Order of Conditions for certain “limited projects” and impose such conditions as will contribute to the interests of the Act (310 CMR 10.53(3)). Specific to driveways, the Commission may allow the construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the Planning Board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable (310 CMR 10.53(3)(e)).
8. Banks (310 CMR 10.54), bordering vegetated wetland (310 CMR 10.55), and land under a water body (310 CMR 10.56) are presumed significant to the following interests of the Act: public and private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, fisheries, and protection of wildlife habitat (310 CMR 10.01).
9. The performance standards under the Act for a bordering vegetated wetland (310 CMR 10.55) state that there may be no destruction or impairment of the area: alteration of up to 5,000 square feet may be permitted at the commission’s discretion provided that the area is properly replicated in accordance with specific guidelines. The performance standards under the Act for bank (310 CMR 10.54) state that for projects on a single lot there may be cumulative alteration of up to 10 percent or 50 feet, whichever is less. The performance standards under the Act for land under a water body (310 CMR 10.56) state that for projects on a single lot there may be cumulative alteration of up to 10 percent or 5,000 square feet, whichever is less.
10. Vernal pool habitat under the Act (see 310 CMR 10.04 Definitions) is defined as “confined basin depressions which, a least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an Area Subject to Protection Under M.G.L. c. 131, § 40 as specified in 310 CMR 10.02(1)”. Relative to vernal pool habitat alteration, 310 CMR 10.60(1)(a) states “To the extent that a proposed project on inland Banks, land Under Water, Riverfront Area, or Land Subject to Flooding will alter vernal pool habitat or will alter other wildlife habitat beyond the thresholds permitted under 310 CMR 10.5494(a)5., 10.46(4)(a)3. and 10.58(4)(d)1., such alterations may be permitted only if they will have no adverse effects on wildlife habitat”.
11. Estimated Habitat of Rare Wildlife (310 CMR 10.59) - Notwithstanding 310 CMR 10.53 through 10.58 and 310 CMR 10.60, if a proposed project is found by the issuing authority to alter a resource area which is part of the habitat of a state-listed species, such project shall not be permitted to have any short or long term adverse effects on the habitat of the local population of that species. A determination of whether or not a proposed project will have such an adverse effect shall be made by the issuing authority.

FINDINGS OF FACT

The Hopkinton Conservation Commission, in its review of the proposed project, has determined the following facts under the Act.

1. The Applicant for the proposed project is Stagecoach Heights, LLC. Engineering services were provided by Benchmark Engineering Corporation. Wetland consulting services were provided by New England Environmental, Inc. Geohydrologic services were provided by Haines Hydrogeologic. Legal counsel was provided by Nealon & Nealon, Attorneys at Law.
2. Plans submitted as part of the filing were entitled "Stagecoach Heights, Site Development Plan for Comprehensive Permit in Hopkinton, MA", sheets 1 -12 of 12, prepared for Stagecoach Heights, LLC, prepared by Benchmark Engineering Corp., and dated 19 March 2001 with a latest revision date of 23 September 2002 and "Stagecoach Heights, Overall Plan in Hopkinton, MA" (sheet 1 of 1) prepared for Stagecoach Heights, LLC, prepared by Benchmark Engineering Corp. and dated October 2002.
3. The proposed project consists of 11 condominium buildings (44 units) on a 30.7 acre parcel with accompanying roadways, stormwater management system, and utilities.
4. Wetland resources on the site include bordering vegetated wetland along Wood Street, two small isolated vegetated wetlands (under jurisdiction of Bylaw only), three certified high-quality vernal pools located within the bordering vegetated wetland in the southern portion of the site, and bank in the form of intermittent stream within the BVW.
5. The three vernal pools on the site were certified by the Massachusetts Natural Heritage Program on 21 May 2001 and during the course of the hearings for the Notice of Intent filing. Even after a Notice of Intent has been filed, the presumption that vernal pool habitat does not occur on a site is overcome upon a clear showing to the contrary, either through official certification on the presentation of credible evidence at a public hearing (310 CMR 10.57(2)(a)(5)).
6. Evidence of endangered species present in the immediate vicinity of the project was submitted during the course of the hearings and was neither addressed nor rebutted by the Applicant. Even after a Notice of Intent has been filed, the presumption that a project is not within the habitat area of a state-listed species is rebuttable and may be overcome by a clear showing to the contrary (310 CMR 10.59).
7. Proposed wetland impacts include the filling of 4,120 s.f. of bordering vegetated wetland for roadway construction and sight distance clearing, the filling of 795 s.f. of isolated vegetated wetland for roadway construction, and an uncalculated amount of actual vernal pool habitat alteration as defined by the Act and the Bylaw and of 100-foot vernal pool buffer zone as defined by the Bylaw.
8. A total of 6,975 s.f. of bordering vegetated wetland replication is proposed. Replication of altered bank and vernal pool habitat are required but were not proposed.
9. The wildlife habitat evaluation/study required both under Bylaw and under Act and requested by the Commission on numerous occasions was not submitted during the course of the hearings under the Act.
10. Evidence brought forth during the course of the hearings relative to presence of spotted turtles, a state-listed species, on or adjacent to the site was never addressed in a wildlife habitat evaluation/study, nor was this evidence presented to the Mass. Natural Heritage and Endangered Species Program as required by the Commission. The Commission finds that the photographic evidence presented is credible, and that it shows the presence of a state-listed species adjacent to the proposed project area. The Applicant declined to address this issue nor perform the wildlife habitat evaluation despite repeated requests by the Commission.
11. At the request of the applicant, the hearing under the Act was closed before the submission of information required by the Commission for complete review under the Act, including a wildlife habitat study relative to the proposed alteration of the vernal pool habitat, required under 310 CMR 10.60(1)(a), and a written discussion of the rationale as to why the proposed alteration of the bordering vegetated wetland for roadway construction constitutes a limited project under 310 CMR 10.53(3)(e). The fact that this information was not submitted prior to the close of the hearings under the Act, which would by itself result in a denial from the Commission, was brought to the attention of the applicant on several occasions prior to the close of the hearings. The Applicant agreed that they understood this point, and asked that the hearing be closed.
12. The Commission finds that the proposed alteration of vernal pool habitat for sight distance clearing, as defined by alteration of bordering vegetated wetland within 100 feet of a certified vernal pool, is not permissible under the Act unless it can be demonstrated in a wildlife habitat evaluation conducted by a qualified wildlife biologist that such alteration will have no adverse effects on wildlife habitat, as per 310 CMR 10.60(1)(a).

13. The Commission finds that the proposed filling of bordering vegetated wetland for roadway construction does not meet the requirements for a limited project as per 310 CMR 10.53(3)(e) and as interpreted by DEP Policy 88-2. The project site can be accessed by a single roadway at the southwestern end of the property, adjacent to Route 495. The applicant has not presented alternative development schemes or reduced project densities suitable for a single access point to the Zoning Board of Appeals as part of the Chapter 40B Comprehensive Permit process, and therefore cannot demonstrate that reasonable alternative means of access to the site are not available.
14. At such time as the Applicant has collected the necessary information to respond to the Commission's request for additional information and has made the necessary modifications to the site plan to bring the proposed construction in compliance with the Act, the Applicant may file an Amended NOI containing said information and plans. The Commission would be pleased to conduct its review under the Act at that time.

RULINGS

Based on the foregoing, the Commission hereby denies the proposed project under the Massachusetts Wetland Protection Act.

10/03/97 (Effective 10/06/97) 310 CMR -

10.60: Wildlife Habitat Evaluations

(1) Measuring Adverse Effects on Wildlife Habitat

(a) To the extent that a proposed project on inland Banks, Land Under Water, Riverfront Area, or Land Subject to Flooding will alter vernal pool habitat or will alter other wildlife habitat beyond the thresholds permitted under 310 CMR 10.54(4)(a)5., 10.56(4)(a)4., 10.57(4)(a)3. and 10.58(4)(d)1., such alterations may be permitted only if they will have no adverse effects on wildlife habitat. Adverse effects on wildlife habitat mean the alteration of any habitat characteristic listed in 310 CMR 10.60(2), insofar as such alteration will, following two growing seasons of project completion and thereafter (or, if a project would eliminate trees, upon the maturity of replanted saplings) substantially reduce its capacity to provide the important wildlife habitat functions listed in 310 CMR 10.60(2). Such performance standard, however, shall not apply to the habitat of rare species, which are covered by the performance standards established under 310 CMR 10.59.

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10.60: continued

(b) An evaluation by the applicant of whether a proposed project will have an adverse effect on wildlife habitat beyond permissible thresholds shall be performed by an individual with at least a masters degree in wildlife biology or ecological science from an accredited college or university, or other competent professional with at least two years experience in wildlife habitat evaluation.

(c) Any wildlife habitat management practices conducted by the Division of Fisheries and Wildlife, and any wildlife management practices of any individual or organization if reviewed and approved in writing by said Division, shall be presumed to have no adverse effect on wildlife habitat. Such presumption is rebuttable, and may be overcome by a clear showing to the contrary.