



Commonwealth of Massachusetts

DEP File No.

SE 69-238

(To be provided by DEP)

City/Town

SEEKONK

Applicant

Robincrest Land Dev. Co.

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

From Department of Environmental Protection

To Robincrest Land Development Corp. SAME
(Name of Applicant) (Name of property owner)

Address 388 Brown Avenue Seekonk, MA 02771 Address SAME

This Order is issued and delivered as follows:

- by hand delivery to applicant or representative on (date)
by certified mail, return receipt requested on July 3, 1991 (date)

This project is located at Plat 28, Lots 24, 28 and 52 Pine Street P 622 585 936

The property is recorded at the Registry of Deeds, Bristol County

Book 3188, 3026 Page 334, 237

Certificate (if registered)

The Notice of Intent for this project was filed on November 29, 1990 (date)

The public hearing was closed on January 7, 1991 (date)

Findings

The Department 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 Department at this time, the Department 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 525.00 State Share 250.00
City/Town Share 275.00 (1/2 fee in excess of \$25)
Total Refund Due \$ -0- City/Town Portion \$ State Portion \$
(1/2 total) (1/2 total)

PLANS:

Title	Dated	Signed and Stamped by:	On File with:
"Cedar Hill Estates II"	7/13/90	Bruce R. Pilling, RLS	Department of Environmental
Definitive Subdivision of land in Seekonk, MA	Rev. 11/8/90	Fred L. Pfischner, Jr., RPE	Protection
Sheets 1,2,3, & 4	Rev. 1/3/91		
Sheets 2 & 3	Rev. 6/26/91		

Special Conditions (use additional paper if necessary)

This application for a permit to alter wetlands under Chapter 131, Section 40, is hereby denied for the following reason(s):

1. The Department has determined that the boundary of the BVW has not been delineated in accordance with the Wetlands Protection Act (M.G.L. c.131, §40), its Regulations [310 CMR 10.55(2)], and Wetlands Program Policy 85-1. The extent of the BVW located on the site is greater than that delineated in the field and depicted on the plan of record.
2. In the opinion of the Department, construction of the proposed roadway and detention basin will destroy or otherwise impair BVW. The applicant has failed to demonstrate that a reasonable alternative means of access from a public way to the upland area of the same owner is unavailable. Therefore, the roadway does not qualify for consideration as a limited project under 310 CMR 10.53(3)(e). No detailed replication plan which demonstrates compliance with the general conditions at 310 CMR 10.55(4)(b) for the replacement of the BVW to be lost due to the roadway has been provided. The Department has determined that the proposed project does not meet the performance standards for BVW set forth in 310 CMR 10.55(4).

(continued on page 5-5B)

.....
(Leave Space Blank)

Issued by the Department of Environmental Protection

Signature Robert P. Fagan
Robert P. Fagan, Regional Engineer for Resource Protection

On this 3rd day of July 19 91 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.

Jaime E. Jurney
Notary Public My commission expires Sept. 21, 1995

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. 20A §10A, are hereby notified of their right to request an adjudicatory hearing pursuant to G.L. c. 20A, §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 CMR 10.02(7), within ten days from the date of issuance of this Superseding Order, and is addressed to: SEE BELOW
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 CMR 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 proceeding, (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 CMR 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.

PLEASE REFER TO THE ATTACHED DOCUMENT - NOTICE OF APPEAL RIGHTS For Additional Appeal Procedures/Filing Fee and Address

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

To _____ Issuing Authority

Please be advised that the Order or Conditions for the project at _____ and

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 d 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

Continued:

3. The Department has concluded that construction of the proposed roadway and detention basins will have both long and short term adverse effects on the habitat of the local population of a state-listed vertebrate species. Therefore, the proposed project does not meet the performance standards set forth at 310 CMR 10.55(4)(d) and 310 CMR 10.59.

NOTICE OF APPEAL RIGHTS/ADMINISTRATIVE ORDER/DETERMINATION

APPEAL RIGHTS AND TIME LIMITS

This Order/Determination is an action of the Department. If you are aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing must be made in writing within and postmarked within ten (10) days of the date this Order/Determination was issued.

CONTENTS OF HEARING REQUEST

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the Order/Determination is not consistent with applicable laws and regulations.

FILING FEE AND ADDRESS

The hearing request along with a valid check payable to Commonwealth of Massachusetts in the amount of \$100 must be mailed to

Commonwealth of Massachusetts
Department of Environmental Protection
P.O. Box 4062
Boston, MA. 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

EXEMPTIONS

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

WAIVER

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

11-11-11