

June 13, 2017

Denise Childs, Chief
Wetlands Section
MassDEP Central Regional Office
8 New Bond Street
Worcester, MA 01606

Re: Appeal Notice – Request for a Superseding Order of Conditions
Park Central - 0 Turnpike Road, Southborough, MA (MassDEP File #: 290-0981)

Dear MassDEP Central Regional Office:

Goddard Consulting, LLC (“Goddard”) hereby requests a Superseding Order of Conditions (SOC) on behalf of the Applicant, Capital Group Properties, LLC and Owner, Park Central, LLC in an appeal of a Denial Order of Conditions (the “Denial”) for a residential project with associated improvements to an existing storm water management system at 0 Turnpike Road in Southborough, MA issued on May 30, 2015 by the Southborough Conservation Commission (SCC). This request under the Wetlands Protection Act (WPA)¹ contains a summary description of the Applicant’s disagreement with the Denial, including a timeline of events leading up to the Denial (a copy of which is attached). All documents referenced in this request were provided to MassDEP during the NOI review process. Copies of the documents will be provided during the SOC review to ensure MassDEP has all information provided to the SCC. Please note that this request is submitted in a timely manner (6/13/17- hand delivery) within the ten (10) business days of issuance (5/30/17).

Denial Order of Conditions

The following are a summary of the Applicant’s objections to the SCC’s findings for denial:

1. Performance Standards Compliance: The Applicant rejects the SCC’s claim that the project does not comply with the WPA performance standards for work in wetland resource areas.

The Applicant provided a detailed analysis demonstrating compliance with the regulatory performance standards for work in a resource area in the original NOI narrative dated 4/11/16 section 2.4. Additional information demonstrating compliance with the performance standards has been provided in Goddard’s comment response letter dated 9/6/16, Goddard’s “Wetland Resource Evaluation & Stormwater Impact

¹ The NOI was filed only under the WPA and not under the local Bylaw because the Bylaw was deemed inapplicable by the Southborough permit granting authorities under G.L. c. 40B.

Analysis” dated 3/13/17, and the revised the plans by Waterman Design Associates dated 8/15/16.

2. **Stormwater Management Standards:** The SCC claimed the project does not comply with the MassDEP stormwater management standards.
The Applicant disagrees and provided a detailed explanation of how the project complies with all applicable stormwater management standards in Waterman Design’s stormwater management summary dated August 2015.
3. **Insufficient Information:** SCC claimed the Applicant failure to provide information for a number of reasons. The Applicant has provided sufficient information to describe the site, the work, the effect on the interests identified in the WPA. The Applicant disagrees for the following reasons that correspond to each lettered claim in the Denial:
 - a. The Applicant’s contends that the proposed project meets the applicable Stormwater Management Standards (1-4, 6, 8-10) and the regulatory performance standards for work within BVW, Bank, LUW, and IVW. Compliance with the performance standards was provided in the 4/11/17 Notice of Intent narrative section 2.4. Additional information and plans to meet performance standards were attached to Goddard’s comment response letter dated 9/6/16 titled “Restoration Plan and Wetland Replication Plan” dated 8/31/16. Compliance with the stormwater management standards was provided by Waterman Design Associates in the Stormwater Management Summary dated August 2016 on pages 1-6 followed by supporting calculations.
 - b. The Applicant does not propose any adverse impact of subject wetland resource areas for the stormwater management system. The reasons to support this position have been provided in Goddard’s “Wetland Resource Evaluation & Stormwater Impact Analysis” dated 3/13/17 section 4.0.
 - c. The Applicant does not propose any adverse impact or filling the subject wetland resource areas on site for the stormwater management system. The reasons to support this position have been provided in Goddard’s “Wetland Resource Evaluation & Stormwater Impact Analysis” dated 3/13/17 section 4.0.
 - d. The Applicant disagrees. Though the commercial development was not completed, the subject resource areas have received surface water runoff because the stormwater management system has been partially constructed. Partial construction includes grading, installation of concrete pipes, drainage inlets, and water control devices. A partial Certificate of Compliance was issued by the SCC. There has been periodic maintenance of the basins.
 - e. The resource areas for stormwater management do not consist of Land Subject to Flooding or Riverfront Area, and therefore, these areas are not applicable.
 - f. The proposed stormwater management system will be in compliance with standards 1-4, 6, 8-10. Standards 5 and 7 are not applicable to this project. Compliance with these standards has been provided by Waterman Design Associates in the Stormwater Management Summary dated August 2016 on pages 1-6 followed by supporting calculations.

- g. The Applicant disagrees and has provided sufficient information to demonstrate no adverse impact to the values and functions of the resource areas in section 4.0 of the “Wetland Resource Evaluation & Stormwater Impact Analysis” dated 3/13/17.
- h. The Applicant disagrees because the proposed stormwater management system will be in compliance with standard 2 of the stormwater management standards. This standard addresses flood control and prevent storm damage.
- i. The Applicant disagrees with this claim. To clarify, section 4.4 of the “Wetland Resource Evaluation & Stormwater Impact Analysis” dated 3/13/17 discusses no adverse impacts to fisheries and land containing shellfish, and does not discuss having no changes at all. The proposed elevations and peak duration of water in ponds B and H (which already contain water) shown in Appendix F and G are minor and would not, in Goddard’s expert opinion, constitute as having an adverse impact.
- j. The peak water volume has been kept as close to the approved conditions in 1983 to the extent practicable, and any slight increase is minor. The resource areas naturally contain the appropriate conditions in vegetation types and soils to allow for periodic volumes of water.
- k. The Applicant disagrees with this statement because the stormwater management system designed in 1983 was approved through a valid Order of Conditions by the SCC. Therefore, it is appropriate, in Goddard’s opinion, to modify the proposed system from that which was previously approved as a baseline, plus any additional measures to meet today’s stormwater management standards.
- l. Waterman Design Associates has run calculations and specified on pages 3 and 4 of the August 2016 Stormwater Management Summary that the proposed peak runoff rates have been limited to pre-development levels. Detailed calculations have been included to support their summary. As required under standard 4, a number of measures are proposed to maintain water quality, which are specifically outlined on page 4 of the summary, and in section 2.2 of Goddard’s “Wetland Resource Evaluation & Stormwater Impact Analysis” dated 3/13/17.
- m. It is the Applicant’s position that the additional requests in this claim are not necessary to demonstrate compliance with standard 2. The hydrology calculations in the August 2016 stormwater management summary by Waterman Design Associates are sufficient.
- n. It is not required under the WPA to maintain a 20-foot Buffer Zone around the resource areas. As a courtesy to accommodate the SCC’s concerns, the Applicant has offered a generous 80% of this zone to be undisturbed. Additionally, 65% of otherwise pervious/disturbed areas (e.g. grading) will be restored to a natural condition. Refer to Goddard’s “Restoration Plan and Wetland Replication Plan” dated 8/31/16.
- o. The Applicant disagrees with this claim. The two potential vernal pools on site (R and D series), plus any additional possible vernal pools, have been observed and/or documented both for the initial NOI and again for the 9/6/16 comment response letter. No other areas were observed to be functioning as vernal pools. The boundary of vernal pool habitat extends to the wetland edge. No portion of vernal pool habitat is being proposed for development.
- p. The Applicant disagrees with this claim. The two potential vernal pools on site (R and D series), plus any additional possible vernal pools, have been observed and/or documented both for the initial NOI and again for the 9/6/16 comment response letter. No other areas

were observed to be functioning as vernal pools. Sufficient information has been provided on this issue.

- q. The WPA allows for work to take place in the Buffer Zone up to a resource area. There will be no work proposed within vernal pool habitat of the potential vernal pools on-site.
- r. The WPA allows for work to take place in the Buffer Zone up to a resource area. There will be no work proposed within vernal pool habitat of the potential vernal pools on site.
- s. Compliance with the MA Stream Crossing Standards has been provided in the plan set dated 8/15/16 on pages C6.05 and C6.06.
- t. The Applicant disagrees with this claim. Bank alteration calculations have been provided on page 12 of Goddard's comment response letter dated 9/6/16 and also pages C3.02 and C6.05 of the site plans dated 8/15/16.
- u. An alternatives analysis with alternative site plans has been provided by Goddard and is dated June 14, 2016, and is also described again on pages 14-15 of Goddard's comment response letter dated 9/6/16.
- v. The wastewater treatment leaching area has already been moved outside of the 100' Buffer Zone, and is shown in the revised plan set dated 8/15/16.
- w. The Applicant has provided sufficient information on the open space parcel on page 16 of Goddard's comment response letter dated 9/6/16.
- x. The Applicant has provided sufficient information including plans calculating the proposed work within the Buffer Zone. The WPA allows for work to occur within the Buffer Zone. Any work that will be occurring within the resource areas has been properly mitigated for and/or replicated in the "Restoration Plan and Wetland Replication Plan" by Goddard dated 8/31/16. All proposed work has been designed to be in compliance with the performance standards under the WPA. Further, portions of disturbance within the Buffer Zone will be restored, and has been described in the above-referenced plan.
- y. The Applicant has provided sufficient information outlining proposed mitigation and wetland replication. The information can be found in the "Restoration Plan and Wetland Replication Plan" by Goddard dated 8/31/16.
- z. As noted in Goddard's comment response letter dated 9/6/16, the Applicant has provided sufficient information in the O&M plan, Long-Term Pollution Prevention Plan, Construction Period Pollution Prevention Plan and Erosion and Sedimentation Control Plan, Draft Stormwater Pollution Prevention Plan (SWPPP). All snow storage areas have been properly identified on the revised plan set dated 8/15/16.
- aa. Goddard has already provided commentary on this claim on page 9 of the comment response letter dated 9/6/16. As stated in the letter, the proposed four DMH's within existing culverts will result in 24 l.f. of temporary Bank impact (6 l.f. for each DMH), as shown in Table 3 of the letter. These temporary impacts will be restored in place, of which the details can be found in Goddard's "Restoration Plan and Wetland Replication Plan" dated 8/31/16.
- bb. Sufficient measures have been taken to protect the quality of the groundwater supply, as specified on page 6 of Waterman Design Associate's stormwater management summary dated August 2016. The proposed stormwater management system will be in compliance with standard 2 of the stormwater management standards, which is set to control flooding and prevent storm damage.

- cc. It is the conclusion of Goddard and Waterman Design Associates that a groundwater mounding analysis is required for highly permeable soils under the stormwater management handbook. The project site does not contain these types of soils, and therefore, is not required for the proposed project.
- dd. All comments from the review consultants have been sufficiently addressed in Goddard's comment response letter dated 9/6/16, which also contains supporting plans and documents to address specific questions. It is the applicant's understanding that Waterman Design Associates provided sufficient responses to all comments from Fuss & O'Neill.

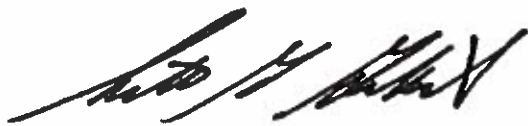
Summary Timeline of Events

A Notice of Intent for the project was filed on April 11, 2016. The first hearing for the project was held on April 21, 2016. There were work sessions between the Applicant and the SCC's peer review consultants. A work session on the last submittal by Goddard demonstrating compliance with performance standards and the lack of adverse impact to wetland resources and interests was canceled because the SCC determined the proposed modifications and use of the previously approved and constructed stormwater system is impermissible under the WPA. From May 12, 2016 to March 9, 2017. There were four public meetings plus a number of requested continuances until May 11, 2017 where the applicant requested to close the hearing due to being at an impasse. The Commission voted to deny the project on May 25, 2017, and issued a written denial Order of Conditions on May 30, 2017.

Conclusion

The Applicant contends the reason for the Denial are incorrect because the Applicant has provided sufficient information in both the original NOI narrative and all supplemental documents to demonstrate compliance with the WPA regulatory performance standards for work in jurisdictional resource areas. We request a Superseding Order of Conditions approving this project.

Please feel free to contact us if you have any questions.
Very truly yours,



Scott Goddard,
Principal & PWS

CC: Southborough Conservation Commission, Southborough Town Hall, 17 Common Street, Southborough, MA 01772 (certified mail)
Capital Group Properties, LLC, 259 Turnpike Road, Suite 100, Southborough, MA 01772 (certified mail)
Park Central, LLC, 259 Turnpike Road, Suite 100, Southborough 01772
John F. Shea, Esq., Mackie Shea, PC., 20 Park Plaza, Suite 1118, Boston, MA 02116

List of Attachments:

- Request for Departmental Action Fee Transmittal Form
- Copy of Check
- Denied Order of Conditions, issued on 5/30/2017



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

290-0981

Provided by DEP

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

A. Request Information

1. Location of Project

0 Turnpike Road	Southborough, MA 01772
a. Street Address	b. City/Town, Zip
2055	\$245.00
c. Check number	d. Fee amount

2. Person or party making request (if appropriate, name the citizen group's representative):

Goddard Consulting, LLC

Name

291 Main Street, Suite 8

Mailing Address

Northborough	MA	01532
City/Town	State	Zip Code
508-393-3784		
Phone Number	Fax Number (if applicable)	

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Capital Group Properties

Name

259 Turnpike Road, Suite 100

Mailing Address

Southborough	MA	01772
City/Town	State	Zip Code
508-229-1810		
Phone Number	Fax Number (if applicable)	

4. DEP File Number:

290-0981

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



B. Instructions

1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
 Box 4062
 Boston, MA 02211



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Request for Departmental Action Fee Transmittal Form

DEP File Number:

290-0981

Provided by DEP

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

B. Instructions (cont.)

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>).
4. 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.

Goddard Consulting, LLC
291 Main Street, Suite 8
Northborough, MA 01532
508-393-3784

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2055

6/9 2017

Pay to the
Order of

Commonwealth of Massachusetts

\$ 245.00

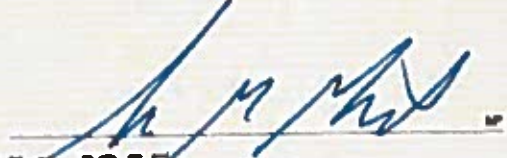
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Dollars

 Security features
are included
Details at bank

Avidia Bank
Hudson, MA

For DEP Appeal 276-13



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