

STAMSKI AND McNARY, INC.

80 Harris Street
Acton, Massachusetts 01720
(978) 263-8585
FAX (978) 263-9883

WILLIAM F. McNARY, P.L.S.
JOSEPH MARCH, P.E., P.L.S.

August 4, 2005

Acton Conservation Commission
472 Main St
Acton, MA 01720

Re: Ellsworth Village
Order of Conditions Revisions

Members of the Commission,

As required on pages E-8 of the Order of Conditions, Special Condition a), changes to the design plans have been made and are attached. The changes include a four foot high fence supported by steel posts, a guardrail, and vertical granite curb in the area of the proposed turnaround at the end of Brabrook Road. Furthermore, as discussed during the hearings, in order to meet new requirements of the Army Corp of Engineers, the proposed culvert has been enlarged in accordance with the General Standards of the "MA River & Stream Crossing Standards, Technical Guidelines." This also resulted in the addition of one more Stormceptor unit for treatment of runoff.

We hope you find the changes acceptable and look forward to starting work promptly. Thank you for your time in consideration of this matter. Please call our office if you have further questions or concerns.

Respectfully yours,

Stamski and McNary, Inc.


George Dimakarakos, P.E.

Joseph March, P.E., P.L.S.



cc: Ellsworth Village, LLC



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

DEP File Number:
 85-892

A. General Information

From: ACTON
 1. Conservation Commission

2. This issuance is for (check one): Order of Conditions Amended Order of Conditions

3. To: Applicant:

Ellsworth Village, LLC
 a. First Name b. Last Name c. Company
PO Box 985
 d. Mailing Address
Acton MA 01720
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

See attached
Property Information Sheet
 c. Company
 d. Mailing Address
 e. City/Town f. State g. Zip Code

5. Project Location:

End of Brabrook Road Acton
 a. Street Address b. City/Town
Map F-4/Parcel 69 & Map F-5/Parcel 40
 c. Assessors Map/Plat Number d. Parcel/Lot Number
 Latitude and Longitude, if known (note:
 electronic filers will click for GIS locator): e. Latitude f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Middlesex South
 a. County b. Certificate (if registered land)
Bk 18144/pg 70 & Bk 43318/pg 277
 c. Book d. Page

7. Dates: January 7, 2005 May 4, 2005 May 23, 2005
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

See attached Page 10 of this document for complete list of plans.
 a. Plan Title
Stamski & McNary, Ind. William F. McNary, PLS 30753 and
 b. Prepared By Joseph March, PE 40472
March 1, 2005
 d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date

9. Total WPA Fee Paid: \$ 1,450 \$ 712.50 \$ 737.50
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



B. Findings

1. 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:

- a. Public Water Supply
- b. Land Containing Shellfish
- c. Prevention of Pollution
- d. Private Water Supply
- e. Fisheries
- f. Protection of Wildlife Habitat
- g. Groundwater Supply
- h. Storm Damage Prevention
- i. Flood Control

2. 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. 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. 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. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- 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).**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
3. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
4. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>3,756</u> a. square feet	b. square feet	<u>3,800</u> c. square feet	d. square feet
5. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. cu.yd dredged	f. cu.yd dredged		



B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
6. <input type="checkbox"/> Bordering Land Subject to Flooding Cubic Feet Flood Storage	a. square feet e. cubic feet	b. square feet f. cubic feet	c. square feet g. cubic feet	d. square feet h. cubic feet
7. <input type="checkbox"/> Isolated Land Subject to Flooding Cubic Feet Flood Storage	a. square feet c. cubic feet	b. square feet d. cubic feet	e. cubic feet	f. cubic feet
8. <input type="checkbox"/> Riverfront area Sq ft within 100 ft Sq ft between 100-200 ft	a. total sq. feet c. square feet e. square feet	b. total sq. feet d. square feet f. square feet		

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

9. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
10. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
11. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
12. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
13. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
15. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
16. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
17. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
18. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
19. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. cu.yd dredged	b. cu.yd dredged		
20. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



C. General Conditions Under Massachusetts Wetlands Protection Act

(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.
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 85-892"



C. General Conditions Under Massachusetts Wetlands Protection Act

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.
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:

SEE ATTACHED DECISION ISSUED BY THE ACTON CONSERVATION COMMISSION.

If you need more space for additional conditions, select box to attach a text document



WPA Form 5 – Order of Conditions

85-892

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

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Furthermore, the ACTON hereby finds (check one that applies):
Conservation Commission
2. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

a. Municipal Ordinance or Bylaw

b. Citation

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.

3. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

ACTON WETLAND PROTECTION BYLAW

CHAPTER F

a. Municipal Ordinance or Bylaw

b. Citation

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

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

SEE ORDER OF CONDITIONS ISSUED BY THE ACTON CONSERVATION COMMISSION

UNDER THE ACTON WETLAND PROTECTION BYLAW.

If you need more space for additional conditions, select box to attach a text document



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

DEP File Number:
 85-892

E. Issuance

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

5/23/05
 1. Date of Issuance
 4
 2. Number of Signers

Please indicate the number of members who will sign this form:

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, if not filing electronically, and the property owner, if different from applicant.

Signatures:

[Handwritten signatures]

Notary Acknowledgement

Commonwealth of Massachusetts County of

Middlesex South

On this 23rd Day of

May Month 2005 Year

Before me, the undersigned Notary Public, personally appeared

Terrence Hartland
 Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

known to me
 Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of ACTON City/Town Conservation Commission

Place notary seal and/or any stamp above

Andrea H. Ristine
 Signature of Notary Public
 Andrea H. Ristine
 Printed Name of Notary Public
 February 27, 2009
 My Commission Expires (Date)

This Order is issued to the applicant as follows:

by hand delivery on 5/25/05 Date

by certified mail, return receipt requested, on _____ Date



WPA Form 5 – Order of Conditions

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

DEP File Number:

85-892

F. 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 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.

Section G, Recording Information is available on the following page.

PLANS:

TITLE	DATED	SIGNED AND STAMPED BY:	ON FILE WITH:
General Site Layout Master Plan (Sheet 1 of 10)	11/19/05 Rev. 3/1/05	William F. McNary PLS # 30753 Joseph March, PE # 40472	Acton Conservation Commission
Record Plan (Sheet 2 of 10)	11/19/04 Rev. 3/1/05	" "	" "
Natural Features & Existing Conditions Plan (Sheet 3 of 10)	11/19/04 Rev. 3/1/05	" "	" "
Site Development Plan (Sheet 4 of 10)	11/19/04 3/1/05	" "	" "
Plan & Profile (Sheet 5 of 10)	11/19/04 Rev. 3/1/05	" "	" "
E.V. Construction Details Sheet 1 (Sheet 6 of 10)	11/19/04 Rev. 3/1/05	" "	" "
E.V. Construction Details Sheet 2 (Sheet 7 of 10)	11/19/04 Rev. 3/1/05	" "	" "
Landscape Plan (Sheet 8 of 10)	11/19/04 Rev. 3/1/05	Kim L. Ahern, RLA #742	" "
Erosion & Sedimentation Control Plan (Sheet 9 of 10)	11/19/04 Rev. 3/1/05	William F. McNary PLS # 30753 Joseph March, PE # 40472	" "
Brabrook Road Improvements (Sheet 10 of 10)	11/19/04 Rev. 3/1/05	" "	" "
Supplemental Information	3/10/05	Stamski & McNary, Inc.	" "
Letter: NOI Additional Information	4/6/05	Stamski & McNary	" "
Site Plan (Sheet 1 of 2)	6/19/95	Bruce Stamski & William F. McNary	" "
Plan of Land	4/4/03	William F. McNary	" "

DECISION

NOTICE OF INTENT FILING ELLSWORTH VILLAGE, LLC

Applicant: Ellsworth Village, LLC
Representative: George Dimakarakos, Stamski & McNary
DEP File No.: 85-0892
File Date: January 7, 2005

DECISION:

On May 23, 2005 the Acton Conservation Commission voted to approve this Notice of Intent filing under the Massachusetts Wetland Protection Act G. L. Chapter 131 Section 40 and the Town of Acton Wetland Bylaw (Chapter F: Environmental Protection, the "Acton Bylaw"). The Commission presents the following:

- 1) Project Description
- 2) Finding of Facts
- 3) Concerns
- 4) Special Conditions

1. Project Description:

Ellsworth Village, LLC proposes the construction of 15 buildings with a total of 33 units of senior housing and associated parking on 4.67 acres of land. Roadway access to the development will occur through a cul-de-sac on Brabrook Road. Development of the access road requires the alteration of approximately 3,965 square feet of Bordering Vegetated Wetland (BVW). A proposed walkway will require the alteration of an additional 50 square feet of BVW. The Applicant has proposed a replication area of 4,150 square feet. A parcel of common land is to be set aside equaling 4.7611 acres±.

2. Finding of Facts:

- a) Construction of the Ellsworth Village roadway extension, sidewalk, underground electric and water service, drainage structures, a portion of Unit 1, and associated grading, as proposed, will occur within the 100' Buffer Zone of a Bordering Vegetative Wetland.
- b) Resource areas that will be directly impacted include 42 linear feet of bank and 4,015 square feet of Bordering Vegetated Wetland. Work will also occur, and directly impact, the 100-foot Buffer Zone of these resource areas, and the 100-foot Buffer Zone Resource area, as identified in the Town of Acton Bylaw.
- c) Acton Conservation Commission issued an Order of Resource Area Delineation for this site on May 5, 2004. A topographically depressed area, not found to be a wetland, was identified as an appropriate site for replication. At the request of the Acton Conservation Commission, the Applicant investigated a potential vernal pool/town-regulated wetland in an upland area. The area was determined not to be a vernal pool or other town-regulated wetland.

- d) The Bordering Vegetative Wetland is a Red Maple Swamp. The dominant canopy species in the wetlands is Red Maple; the remainder of the site is predominantly a mature White Pine stand.
- e) The cul-de-sac at the end of Brabrook currently has no functioning non-point source controls to manage stormwater run-off. Deposits of silt and sand are entering the wetland in the area of Wetland Flags 6, 7, and 8.
- f) The Applicant has proposed stormwater runoff management controls that will control sediment and will meet DEP Stormwater Management Policies.
- g) The Applicant has designated 4.76 acres± of the site to remain as open space.
- h) The Applicant proposes 4,150 square feet of replication that will be contiguous and hydrologically connected to the remaining, unaltered Bordering Vegetated Wetland. Groundwater levels were observed to be essentially equivalent to the adjacent wetland as observed in the standpipe.
- i) The Applicant has stated that the proposed access is the only reasonable alternative.

3.) Concerns:

The Commission has concerns with the proximity of the proposed vehicle turnaround to the wetland adjacent to Wetland Flags 19 through 22. There is significant potential for snow to be piled up and/or dumped into the wetland. The associated salts, sand, silt, and volatiles will adversely affect these areas. As such, the Commission has included special conditions intended to minimize this impact by directing snowmelt to the stormwater management system.

4) Special Conditions:

In order to minimize adverse affects to the wetland resource areas, the Commission requires the following conditions upon approval of this project:

- a) In order to limit the potential for snow and snowmelt to enter the wetland area, a four-foot high fence supported by steel piles is to be constructed around the edge of the turnaround area. A guardrail shall be placed between the fence and the edge of pavement in the turnaround, and a vertical granite curb is to be located inside the guard rail. Engineering plans and design details are to be submitted to the Conservation Commission office no later than 30 days before work is initiated on site for approval by the Commission or its Agent.
- b) The replication area is to be maintained and monitored in accordance with the regulations and bylaws.
- c) The Applicant shall submit for review and approval by the Commission a document identifying the parties responsible for maintenance and monitoring of the replication area.
- d) The Conditions and Covenants that are registered with the deeds of the units shall include and incorporate this Order of Conditions.
- e) The 4.76 acres± of open space are accepted as mitigation for the buffer zone resource area encroachment and shall not be developed. This area shall be left in its natural state in perpetuity.

DECISION

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- b) The replication area is to be maintained and monitored in accordance with the regulations and bylaws.
- c) The Applicant shall submit for review and approval by the Commission a document identifying the parties responsible for maintenance and monitoring of the replication area.
- d) The Conditions and Covenants that are registered with the deeds of the units shall include and incorporate this Order of Conditions.
- e) The 4.76 acres± of open space are accepted as mitigation for the buffer zone resource area encroachment and shall not be developed. This area shall be left in its natural state in perpetuity.