

CAPE COD COMMISSION

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TR #930013

Date: June 22, 1995

To: Jack Williams
Canalscape Trust
1A Fuller Street
Carver, MA 02330

From: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 & 13

Project: Canalscape
Scenic Highway, Bourne, MA

Applicant: Jack Williams and George E. Williams, Canalscape Trust

Book/Page#
Map/Lot# Map 20, Lot 33

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies without prejudice the application of Jack Williams, Canalscape Realty Trust as a Development of Regional Impact, pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the acts of 1989, as amended, for the Canalscape development, in Bourne, Massachusetts. The decision is rendered pursuant to the vote of the Commission on June 22, 1995.

PROJECT DESCRIPTION

The proposed project consists of clearing of vegetation, earth removal, grading and construction of cranberry bogs on 45 acres of a 122 acre site located on the north side of Route 6 (Scenic Highway) and east of Nightingale Pond in the Bournedale area of Bourne, MA. A total of approximately 2 million cubic yards of gravel removal has been estimated, with access to the Scenic Highway provided through Nightingale Pond Road via an easement.

PROCEDURAL HISTORY

The Cape Cod Commission asserted jurisdiction over this project on June 10, 1993 under Section 12(h) of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended. The Commission voted that the project was a Development of Regional Impact under Section 12(c)(6) of the Act as

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an outdoor commercial use of a land area greater than 40,000 square feet. The applicant was notified by certified mail of the Commission's decision on June 15, 1993. A hearing was opened and closed by a hearing officer on July 28, 1993 at the Cape Cod Commission office. No testimony was taken at the hearing as no abutters list and no application had been submitted.

The applicant commenced litigation in Barnstable Superior Court (Civil Action No. 93-753) on July 13, 1993 challenging the Commission's assertion of jurisdiction over the proposed project. Following commencement of litigation, the parties signed an extension agreement which extended the Commission's decision time limit to 210 days from the final resolution of the lawsuit. Settlement negotiations occurred between the parties regarding the proposed project.

On August 9, 1994 the applicant submitted a Notice of Project Change to MEPA. On September 29, 1994 the Secretary of Environmental Affairs determined that the project required the preparation of a Final Environmental Impact Report (FEIR) to satisfy MEPA requirements.

After the Secretary of Environmental Affairs determined that the project required preparation of an Environmental Impact Report, thereby triggering Commission review under Section 12(i) of the Act, the parties stipulated to dismissal of the lawsuit without prejudice. The stipulation was filed on November 28, 1994, commencing the 210 day decision timeframe.

On December 15, 1994, Commission Counsel wrote a letter to the applicant regarding application requirements and withdrawal procedures and requested a response by January 31, 1995.

On March 6, 1995 the applicant was provided with information regarding application requirements and Commission review standards. The applicant was asked to respond by March 27, 1995.

On May 9, 1995 the applicant was notified of the Commission's hearing to consider a procedural denial on June 22, 1995.

MATERIALS SUBMITTED FOR THE RECORD

An application, supporting documentation and exhibits, and all other submittals required and requested of the applicant have not been submitted to the Commission. Submittals made in the course of settlement discussions relating to the prior litigation have not been included in the record.

Materials Submitted by the Applicant

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| 1. Letter to Trudy Coxe re: Commission's MEPA comments | September 15, 1994 |
| 2. Letter from John Paul Tassinari re: easement | November 4, 1994 |

Materials Submitted by the Town of Bourne

- | | |
|--|-------------------|
| 1. Earth Removal Permit with Conditions | June 14, 1990 |
| 2. MEPA Comments from Board of Selectmen | September 9, 1994 |

Other Information

- | | |
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| 1. Certificate of the Secretary of Environmental Affairs on the Notice of Project Change | September 29, 1994 |
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JURISDICTION

The proposed Canalscape project qualifies as a Development of Regional Impact under Section 12(i) of the Cape Cod Commission Act which requires review of any development for which

preparation of an Environmental Impact Report (EIR) is required by the Secretary of Environmental Affairs. In addition, the Cape Cod Commission found that the proposed development is a Development of Regional Impact under Section 12(c)(6) of the Act as "new construction . . . involving outdoor commercial space greater than 40,000 sq. ft."

FINDINGS

The Cape Cod Commission makes the following findings pursuant to Sections 12 and 13 of the Act:

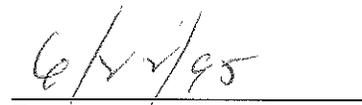
- 1). On June 10, 1993, the Cape Cod Commission determined that the proposed project was subject to the jurisdiction of the Cape Cod Commission and qualifies as a Development of Regional Impact.
- 2). A letter of withdrawal was not submitted to the Town of Bourne or the Cape Cod Commission.
- 3). A completed application for DRI review was not submitted to the Cape Cod Commission by the applicant.
- 4). The applicant failed to progress continuously and expeditiously through required regulatory processes, thereby providing no information on which to base a decision.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal of Canalscape Trust for the Canalscape development pursuant to Sections 12 and 13 of the Cape Cod Commission Act. This conclusion is supported by the finding that the applicant failed to comply with procedures of the Act and Commission regulations requiring submission of a completed application.



Kenneth Brock, Chairman



Date

Commonwealth of Massachusetts

Barnstable, ss

Subscribed and sworn to before me this 22nd day of June 1995



Name, Notary Public

My Commission expires: 