

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Roy O. Dubs  
Freshwater Wetlands Application No. 87-0973F

DECISION AND ORDER

This matter is before the Hearing Officer on the application of Roy O. Dubs to alter freshwater wetlands located north of Wordens Pond Road at utility pole 3061, 0.3 miles east of the intersection of Biscuit City Road, Charlestown, Rhode Island, further described as Town of Charlestown Tax Assessor's Plat 29 Lot 112-2.

The applicant requested permission to alter Freshwater Wetlands by filling, grading, creating soil disturbance and removing vegetation in and within 50 feet of a wooded swamp, with culverting and channelization of 160 total linear feet of three watercourses/streams associated with and flowing within the subject wetland areas.

The purpose of said alterations is for construction of a 2000 foot long, 20 foot wide gravel roadway through the subject wetlands.

The application was denied by the Wetlands Section of the Department of Environmental Management (DEM) and a hearing was requested.

Michael P. Donegan, Esq. of Hinckley, Allen, Snyder & Comen represented the applicant and Mark Siegars, Esq. represented the Division of Groundwater and Freshwater Wetlands of the Department of Environmental Management.

The Prehearing conference was held on November 13, 1989 at 291 Promenade Street, Providence, Rhode Island 02908. No requests to intervene were received.

The Pre-Hearing Conference record was prepared by the Hearing Officer and the following stipulations were entered by agreement of the parties:

1. The applicant, Roy O. Dubs, is the owner of the subject property and the proper party to proceed.
2. Notice required to be given was adequate.
3. The parties will agree on those documents to be submitted as joint exhibits prior to the Hearing.

The following issues were submitted to the Hearing Officer for decision:

1. Whether the proposed alterations will cause random, unnecessary and/or undesirable destruction of freshwater wetlands as described in § 5.03 (b) (c) 7 of the Rules and Regulations Governing the Enforcement of Rhode Island Freshwater Wetlands Act.
2. Whether the proposed project will result in significant loss, encroachment, and permanent alteration of a "valuable" Wetland-Wildlife habitat (1.53 ± acres) associated with the subject wooded swamp wetlands complex. Whether encroachment upon the subject wetland will result in elimination of sections of an essential buffer zone located along edge of the subject wetlands complex. Whether construction encroachment into wetland and associated buffer zones will introduce disturbance factors which serve to reduce wildlife populations.
3. Whether the proposed project will reduce the value of "valuable" Wetland recreational environment and will reduce and negatively impact the aesthetic and natural character of the undeveloped wetland and buffer zone.

Public hearings were held on December 7, 1989, December 14, 1989, December 21, 1989, December 28, 1989, January 16, 1990 and April 17, 1990.

All of said public hearings were held in appropriate places and locations, pursuant to notice by DEM.

A view of the site was conducted on January 8, 1990.

The following documents were admitted into evidence:

JOINT EXHIBITS

- JT1. Site Plan - Gravel drive for Roy Dubs received by the Department May 6, 1988. (4 pages).
- JT2. Technical supplement Freshwater Wetlands Permit Review criteria dated November 1987.
- JT3. Wetland Wildlife/Recreation Evaluation by Brian C. Tefft dated August 2, 1988. (13 pages).
- JT4. Letter dated June 23, 1988 to Dean Albro of the Department of Environmental Management from the Town of Charlestown. (3 pages).
- JT5. Letter dated June 29, 1988 to Dean Albro of the Department of Environmental Management from Barbara A. Heavers. (1 page).
- JT6. Letter dated August 17, 1988 from the Department of Environmental Management to Roy O. Dubs. (3 pages).
- JT7. Request for Public Hearing received from Gregory L. Benick, Esq. of Hinckley, Allen, Snyder & Comen. (1 page).
- JT8. Notice of Administrative Hearing and Prehearing Conference dated November 1, 1989. (4 pages).
- JT9. Letter dated December 9, 1988 from Town of South Kingstown to Department of Environmental Management. (1 page).
- JT10. Copy of the Groundwater and Freshwater Wetlands Act.
- JT11. Copy of the Department of Environmental Management Rules and Regulations, amendments and Emergency Rules.
- JT12. Freshwater Wetlands permit application for Roy Dubs property dated November 1987. (11 pages).
- JT13. Resume of Brian C. Tefft.
- JT14. Resume of Thomas Lucivero.
- JT15. Resume of Jonathan L. Feinstein.
- JT16. Document/Joint Statement of clarification dated December 14, 1989.

APPLICANT'S EXHIBITS

- Applic 1. Deed from Vincent O. Cordero et ux , Theodora to  
(for Ident.) Theodoro Cordero dated March 10, (year not legible)  
and recorded on March 11, 1980, at 3:12 p.m..
- Applic 2. Package of Deeds.  
(A through M)
- Applic 3. Package of Deeds.  
(A through H)
- Applic 4. Package of Deeds.  
(A through E)
- Applic 5. Package of Deeds.  
(A through H)
- Applic 6. Final Judgment of Washington County Superior Court in  
case No. C79-169.

OTHER INTERESTED PARTIES EXHIBITS (OIP)

- OIP 1. Town of Kingstown Tax Assessors Map dated September 30,  
1981 - sheet 59-2 prepared by C.E. Maguire, Inc.
- OIP 2. Town of Kingstown Tax Assessors Map dated September 30,  
1981 - sheet 52 prepared by C.E. Maguire, Inc.
- OIP 3. Town of Charlestown Tax Assessors Map dated 1982 prepared  
by S.L.F., Inc., revised December 1988.
- OIP 4. Notes of James C. Kanes, Charlestown Town Planner on  
Freshwater Wetlands dated 1987.

DEM EXHIBITS

- DEM 1. Deed to property in South Kingstown dated September 1986  
from Edwards to Dubs.
- DEM 2. Letter from Thomas Lucivero to Dean Albro (DEM) dated March  
1, 1988 (with 5 pages of enclosures).
- DEM 3. Letter from Thomas Lucivero to Dean Albro (DEM) dated March  
31, 1988 (with 1 page enclosure).

page 5  
Roy O. Dubs

DEM 4. Letter from David Kilroy, Chief, Evaluation Section, Operations Division, Department of Army Engineers to Dubs c/o Bridge of Vanasse dated May 2, 1988.

DEM 5. Aerial photo of area subject to Hearing of Application No. 87-097F. Photo 9-7.

Roy O. Dubs, the applicant, was called as the first witness. He testified that he purchased a parcel of land in South Kingstown, Rhode Island in early 1987 (described as South Kingstown Tax Assessor's Lot 1 on Plat 52 and being in excess of 100 acres) to live there.

He desires to build a home there, eventually one for each of his two children and also to establish a wildlife sanctuary there.

He stated that he has conducted discussions with the Audobon Society with regard to giving up development rights to almost all of his property which presently was suitable for 10 house lots. However, access to the property was available only by canoe from Worden Pond or over a stone wall at an adjacent trailer park (with permission).

He later purchased the property which is the subject of this application (described as Charlestown Tax Assessors Lot 112-2 on Plat 29, in 1987 to gain access to said South Kingstown property from a public road.

This Charlestown property was purchased from the only abutting property owner who would consider selling him land to enable him to have access to his South Kingstown property. Said access property purchased was the most upland available (any other land the seller would consider selling would have been more in Wetland).

It was elicited in cross examination that Mr. Dubs had some

page 6  
Roy O. Dubs

discussions with the Department personnel prior to this hearing where it was indicated that they probably would recommend approval if applicant restricted the South Kingstown property to the construction of one home, but that applicant wished to eventually build 3 homes.

Although the application and attendant documents mentioned that applicant sought access to an adjoining land parcel to construct a single family residence on his South Kingstown property, the application and plans submitted failed to identify the extent of the purposes and uses intended on said South Kingstown property. This topic had been discussed with the Department, but in order to clearly establish that the pending application sought approval for construction of a proposed driveway only, a Joint Statement of Clarification (JT Ex 16) was introduced at the Hearing. Mr. Dubs' testimony was interrupted to allow public comment and testimony.

Richard Sisson, chairman of the South Kingstown Conservation Commission (SKCC) was permitted to testify next. He stated that the SKCC was charged as environmental advocates to make recommendations. South Kingstown and Charlestown had coordinated their efforts in the subject application because construction (of the houses) was to be in South Kingstown but access (the proposed road) was to be in Charlestown.

Mr. Sisson explained that although it was originally felt that the Applicant had alternative access, later investigation revealed that no such access existed. However, both Towns are still opposed to granting of the pending application.

This witness presented the joint view of both Towns that the proposed

page 7  
Roy O. Dubs

gravel drive would require the permanent elimination of .82 acres of palustrine forested and riverine Wetland habitat and that the destruction and disturbance associated with the construction of  $\pm$  3,000 feet, .74 miles of road will have a negative impact on area wildlife.

As such they objected to the application as proposed and encouraged applicant to seek a lesser environmentally damaging solution.

James C. Kanes, Charlestown Town Planner, was then permitted to testify. He stated that he was concerned about the effects of the proposed driveway on waterflow and flooding in case of heavy rains. His review of various maps revealed that the flow was such that there was a very large area that's encompassed now that has a free flow of water during flooding - that flow would be damaged by the road and even with the culverts proposed - during heavy rain, water would back up on the driveway and Wordens Pond Road (a town road).

Mr. Kanes did not know if the Charlestown Town Council had "disapproved" by resolution within the 45 day period.

After these two members of the public appeared, cross-examination of Mr. Dubs continued. It was further established that Mr. Dubs failed to have a title search by a title company prior to purchasing the South Kingstown property. He had inspected the South Kingstown property by walking said property with the Real Estate Agent.

Mr. Dubs testified that the Chappels (neighbors) had promised to sell him property to enable Mr. Dubs to gain access to his land in South Kingstown, which resulted in the purchase of the subject Charlestown property.

Mr. Dubs testified that he was unsuccessful in his efforts to identify the 14 foot Right of Way referred to in his Deed to the South Kingstown property. He then hired an attorney to search the title (after purchase of same) in order to find the 14 foot Right of Way to Biscuit City Road referred to in his title Deed (this road being approximately 3,000 feet northwest from his South Kingstown property), but the title attorney found that he could not use the purported Right of Way. He explained that although the Deed to his South Kingstown property sets forth a 14 foot Right of Way to Biscuit City Road, there was nothing recorded in the Town of Charlestown.

Doreen McCall, a legal assistant at the Law Firm of Hinckley Allen, was the applicant's next witness. She testified that she conducts title searches and draws deeds for said Law Firm. She stated that she searched the records in Charlestown and did not find any document granting said Right of Way recorded in chain of the title to the required lots.

Thomas Lucivero, a Rhode Island registered engineer, was the next witness called by the applicant. He supervised the technical supplement and engineering plans for the subject application. He testified that for safety reasons twenty feet should be the minimum width for the proposed drive to access the South Kingstown lot. A gravel driveway was deemed best because the application calls for alteration of Wetlands and that approximately 1.45 acres of wetland would be impacted.

He described the subject property as having 3 streams (1) largest 3' deep and 4' to 6' wide, (2) a smaller one - 8" to 12" wide and (3) 1' to 2' wide and 1' deep. The subject application proposes box culverts for



the 2 larger streams and a 12" pipe culvert for the smaller stream.

Mr. Lucivero opined that impact from storm water flow because of the gravel drive was calculated to cause an increase of 1,800 cubic feet of run off, which spread out over the area southeast of the drive, would amount to an increase of about 1/16 of an inch over the entire area between Worden Pond and said access drive. It was this witness's opinion that this was not significant.

He explained further that the plans called for filling 3,600 cubic feet of flood area, so they proposed a compensatory storage area greater than the amount displaced. This witness was of the opinion that there would be no net result impact on flood plain.

Mr. Lucivero testified that in his opinion the proposed gravel drive construction and the consequent disruption of trees and vegetation for the twenty foot drive and the area surrounding said drive (for the slope of embankment) was the minimum disturbance deemed necessary.

They had considered the effects on water quality with respect to erosion and sedimentation - so they proposed hay bales to areas along the wetland. The degradation of water quality resulting from sedimentation or erosion would be temporary (during construction) and would then disappear. It was this witness's further opinion that no random destruction of wetland alteration is necessary to construct the proposed drive as they did everything they could (engineering-wise) to mitigate the impact on wetland.

Cross-examination of this witness brought out that he had previously discussed with Mr. Dubs the possibility of a 12 foot drive with a turn

out, (rather than 20 feet wide); but a 12 foot drive was not much of a drop off in mitigation, so the 20 foot wide drive was proposed.

Mr. Lucivero did not visit the site to assess the wetland present before the project was designed. He described the extent of the fill required to construct this roadway over the 3 culverts so that the streams could pass underneath. At the 2 large culverts, 5 to 6 feet of fill would be required and at the smaller 12 inch pipe, 3 to 4 feet of fill would be required. He stated also that approximately 4,800 cubic feet of material would be excavated for the proposed flood plain compensation; that 63,175 square feet of wetland would be affected by the proposed project; that almost 90% of lot 112-2 in Charlestown is not in the flood plain. It was established by cross-examination of this witness that construction of the driveway would require disturbance of the subject property in an area greater than just where the box culverts would be situated.

Brian Tefft was the Department's sole witness. He was qualified as an expert in Wetland biology. He is the senior supervisory biologist in the Freshwater Wetland section, Division of Groundwater and Freshwater Wetlands of DEM. He made two site inspections of subject property. Mr. Tefft testified that the subject wetlands are part of a large complex which extends not only on this property but off this property and extends to the north through various hydrological connections to the Wetland complex known as the Great Swamp Wetlands Complex.

The Wetlands complex in the immediate area of the proposed alterations is approximately 27 acres and is dominated by wooded swamp. Two streams flow through applicant's property and join a main tributary

stream and eventually reaches the Pawcatuck River which feeds out of Worden Pond.

The Wetland is directly connected via a significant stream of substantial flow to the Great Swamp Wetlands Complex which includes the Great Swamp and the Worden Pond area, the single largest wetland in the State of Rhode Island (2,000 to 3,000 acres) and the wetland being considered is directly hydrologically linked to same.

The wooded swamp evaluation unit (27 + acres) has standing water present during a significant portion of the year. There is considerable groundwater discharged on the slopes leading down to the wetland, which channelize and form a stream that flows through the subject wetland. This particular wetland is within one-quarter of a mile of other wetlands (Great Swamp Wetland Complex) where it shares a direct stream linkage.

There was considerable evidence of white tailed deer using the subject wetlands, and heavy concentrations of deer in the adjacent areas. The stream corridors provide good and suitable habitat for fur-bearing animals and the wooded swamp provides suitable habitat for certain species of birds.

The applicant proposes to fill in 66 thousand plus square feet (approximately 1½ acres) of wetland area, so that much physical disturbance will result from the physical construction of the roadway.

Mr. Tefft elaborately explained the detrimental effect of cumulative loss of Wetlands on wildlife habitat and the Wetlands overall value and that each incremental encroachment into Wetland areas in terms of its ability to provide a wildlife function serves to reduce the carrying

capacity for wildlife further. This incremental loss of Wetlands through small alterations has an extremely detrimental effect on Freshwater Wetlands and their ability to provide wildlife habitat.

The Department's Modified Golet evaluation resulted in a total score of 61.5 (within the high range of values) making this a valuable Wetland for wildlife. The Department also considered numerous other factors, all of which demonstrated how the project will negatively impact the Wetlands, both in terms of the physical and non-physical sense, where disturbance factors expand the zone of influence beyond the subject Wetland areas.

It was this witness's opinion that the subject Wetland has the potential of providing recreation by the general public and provides open space or aesthetic values to the general public. That the Wetlands complex is a valuable recreation environment pursuant to the Rules and Regulations governing Freshwater Wetlands, and the wetlands complex is a valuable wildlife habitat pursuant to said rules.

Mr. Tefft testified that the proposed alterations would negatively impact the recreational values of the subject Wetland complex since it would cause the loss of the natural character of the area. The subject Wetland complex does not have any specific disturbances, per se, in it, and it is a relatively natural and undeveloped area. The proposed alterations would encroach into further undeveloped portions of the Wetlands and detract from the natural character of the area.

Mr. Tefft was of the opinion that:

- (1) the proposed alterations constitute a random, unnecessary and

unreasonable alteration of a wetlands.

(2) The proposed alterations are undesirable from the standpoint of reducing the natural character of the Wetlands area and replacing it with a man-made structure (roadway).

(3) The roadway itself would be a random alteration as it is being created for access to a parcel of land for which there is no specific purpose proposed at the present time.

(4) The proposed alterations:

- a. would result in a significant loss, encroachment or permanent alteration of a valuable Wetlands wildlife habitat.
- b. would result in the reduction of the value of a valuable Wetland recreational environment.
- c. would not meet the requirements of the Rhode Island Freshwater Wetlands Act and the Rules and Regulations governing the Freshwater Wetlands.

Mr. Tefft further testified that the level of use and operation of the roadway would be one of the disturbance factors that may cause certain animals to relocate temporarily or perhaps permanently.

He explained that the Department viewed this alteration as random because the subject application only proposed a roadway (for access purposes to an adjoining parcel of land owned by applicant). The extent of the uses intended for said adjoining parcel were not submitted as part of the application process (other than a mere mention of a personal family residence).

Jonathan L. Feinstein testified next for the applicant. (He was called after Department's witness because of his unavailability earlier). It was stipulated that he was qualified as a Wetland biologist

expert. He has Bachelor of Science and Master in Planning Degrees from the University of Rhode Island.

Mr. Feinstein is the Director of Environmental Services for Vanasse Hangen & Brustlin, the consulting and engineering firm that prepared the subject application. Their modified Golet evaluation was 59 (moderate) and based upon the review of various criteria, this witness felt that there are no unique or valuable Wetlands within the area of the proposed project.

This witness's opinion was that this land would support only passive recreational activities such as bird watching, natural walks and education.

He stated that there would be negligible impacts to wildlife by the proposed road based on "this size of a project" and the proposed alteration would have an insignificant impact on the aesthetics of the Wetland. That the impact to Wetland caused by the filling and grading associated with the construction of the roadway would result in a permanent loss of wetland habitat, but there would be no impact to the larger ecosystems and no significant reduction in wildlife.

Mr. Feinstein voiced the opinion that the extent of the alteration and the magnitude of the project would determine its effects on wildlife.

It was elicited in cross-examination of this witness that the extent of total Wetland alteration originally submitted to DEM as .39 acres was subsequently refigured by his staff and increased to 1.53 acres.

Attorney Mark A. Greenfield was the last witness for the applicant. He was qualified as a title attorney. He stated that he reviewed the

title records concerning the applicant's property to determine the validity of the 14 foot Right of Way through the so called Holloway Farm mentioned in the deed conveying the abutting South Kingstown property to Mr. Dubs.

It was this witness's opinion that since said deed was not recorded in the Town of Charlestown that, absent actual notice by a subsequent purchaser of the land wherein said Right of Way was previously granted, no such Right of Way now exists. Therefore, the applicant would have no access to the South Kingstown property via the purported 14 foot Right of Way.

Although the Department called Brian Tefft as its only witness, it appears that this witness presented the most credible pertinent testimony. His modified Golet evaluation appeared the most accurate and his opinion that the subject wetland was a valuable wetland for wildlife was reliably based on numerous valid factors and considerations.

Mr. Tefft clearly established the direct stream linkage and the hydrological connection of the subject Wetland to the greater Wetland complex nearby. His testimony as to the negative impacts and detrimental effects of the proposed alterations was straight-forward and the most believable.

There was extensive testimony presented on behalf of applicant to establish the non-existence of the purported Right of Way to gain access to his South Kingstown property; however, applicant either knew or should have known said property was "landlocked". His attempt to correct an unfortunate and hapless situation (as to lack of access) by

significant alterations of wetlands should not be tolerated.

While applicant's plight in this regard is most unfortunate, this administrative hearing is not the proper forum to address applicant's possible remedies. Likewise, sympathy for Mr. Dubs' predicament should not compel a favorable determination for the applicant where the evidence shows the alterations sought will violate a valuable wetland.

The applicant failed to submit plans for development of his adjoining South Kingstown property and incorporate the uses thereof in the subject application. Although clarification of the intended use of the adjoining property was allowed to address the issue of whether the proposed alteration of the Charlestown property was random, unnecessary and/or undesirable, the applicant's evidence in this regard was inconclusive and incomplete. The uses alluded to by applicant in his testimony failed to satisfactorily address the issues.

No expert evidence was presented as to the extent of the wetlands on on applicant's adjoining South Kingstown property nor as to extent of development that might be allowed thereon. Applicant's failure to submit appropriate plans pertaining to the development and extent of the uses of his adjoining property certainly hampered the Department's review of the application. However, consideration of the testimony concerning same did not rectify this situation.

The findings of fact contained in this decision are required to be based exclusively on the evidence and matters officially noted. The evidence as introduced compels the conclusion that the alteration as sought by applicant is random, and clearly fails to establish that the



proposal as submitted is proper and necessary.

The credible evidence clearly establishes that the applicant failed to sustain his burden of proving by a preponderance of the evidence that the proposed alterations are consistent with the policies, intent and purposes of the Act and the Rules and Regulations.

#### FINDINGS OF FACT

After review of all the documentary and testimonial evidence of record, I make the following specific findings of fact.

1. A Prehearing Conference was held on November 13, 1989.
2. Public Hearings were held on December 7, 1989, December 14, 1989, December 21, 1989, December 28, 1989, January 16, 1990 and April 17, 1990.
3. All hearings were held in appropriate places and locations.
4. All hearings were conducted in accordance with the provisions of the "Administrative Procedures Act" (Chapter 42-35 of the General Laws of Rhode Island, and specifically § 42-35-9) and the "Freshwater Wetlands Act" (Rhode Island General Laws Sections 2-1-18 et seq.).
5. The parties stipulated that the applicant Roy O. Dubs is the owner of the subject property and the proper party to proceed and that proper notice required to be given was adequate.
6. The applicant seeks approval to alter a Fresh Water Wetlands on a parcel of land located north of Wordens Pond Road, at utility pole 3061, 0.3 miles east of the intersection of Biscuit City Road, in the Town of Charlestown, Rhode Island being further described as Charlestown Tax Assessor's Plat 29, Lot 112-2.

7. The purpose of said alterations is for construction of a 2,000 foot long, 20 foot wide gravel roadway through the subject wetland on the property of applicant located entirely in the Town of Charlestown, Rhode Island.

8. The applicant's property consists of a narrow strip of land which is 50 foot wide and runs from Wordens Pond Road a distance of approximately 2,000 feet through applicant's Charlestown property to other land owned by this applicant in the Town of South Kingstown, Rhode Island.

9. The wetland portion of applicant's land encompasses nearly all of applicant's Charlestown property.

10. The physical disturbance to the wetland by the proposed alteration totals approximately 66,000 square feet (approximately 1 ½ acres).

11. The proposed alteration of a Freshwater Wetland is sought to provide access to the abutting property owned by the applicant located in the neighboring Town of South Kingstown, Rhode Island and described as Lot 1, Plat 52 in South Kingstown, Rhode Island.

12. The documents, information and evidence concerning applicant's South Kingstown property were presented solely to demonstrate the potential uses to and for said South Kingstown's property and in regard to access thereto.

13. Applicant purchased the Charlestown property to provide access to the South Kingstown property.

14. Applicant purchased the South Kingstown property when he was

aware or should have known that said property was landlocked and that access thereto was limited and problematic.

15. Applicant has failed to submit detailed and specific plans concerning the definitive uses of his South Kingstown property for proper consideration of this application.

16. Applicant failed to establish the specific uses of the South Kingstown property necessary for a determination of whether the proposed alteration to the Charlestown property will cause a random, unnecessary and/or undesirable destruction of a Freshwater Wetland.

17. The wetland complex in the immediate area of the proposed alterations consists of approximately 27 acres of predominantly wooded swamp, which is within one quarter of a mile of the Great Swamp Wetland complex and is directly connected via a significant stream of substantial flow to the Great Swamp Wetland complex.

18. The streams that flow through Applicant's Charlestown property join a main tributary stream which eventually reaches the Pawcatuck River, which feeds out of Worden Pond.

19. The subject wetland is a "valuable" wetland wildlife habitat.

20. The proposed alteration contributes to the cumulative loss of the wetland and the adverse affects would be significant.

21. The proposed alterations will cause random, unnecessary and undesirable destruction of a Freshwater Wetland as described in § 5.03 (b) (c) 7 of the Rules and Regulations Governing the Enforcement of the Rhode Island Freshwater Wetlands Act.

22. The proposed project will result in significant loss,

encroachment and permanent alteration of a "valuable" Wetland Wildlife habitat. (1.53 ± acres) associated with the subject wooded swamp wetlands complex.

23. The proposed project's encroachment upon the subject wetland will result in eliminations of sections of an essential buffer zone located along the edge of the subject wetlands complex.

24. Construction encroachment of the proposed road into the wetland and associated buffer zones will introduce disturbance factors which serve to reduce wildlife populations.

25. The subject wetland is a "valuable" wetland in that it does provide a valuable recreational environment.

26. The proposed project will reduce the value of a valuable wetland recreational environment.

27. The proposed alterations will reduce and negatively impact the aesthetic and natural character of an undeveloped wetland and buffer zone.

28. The proposed alterations are inconsistent with the policies, intents and purposes of the Act and the Rules and Regulations.

#### CONCLUSIONS OF LAW

Based upon all the documentary and testimonial evidence of record, I conclude the following as a matter of law:

1. All of the hearings in this matter were held in appropriate places and locations.
2. All hearings were held in accordance with Rhode Island General Laws, the Administrative Rules for Practice and Procedure for DEM, DEM Rules and Regulations governing the enforcement of the Fresh Water Wetland Act.

3. The matter is properly before the Administrative Adjudication Officer.
4. The area in question is a "valuable" wetland pursuant to the definition provided in § 7.06 (f) of the Rules and Regulations.
5. The proposed alterations will cause random, unnecessary and undesirable destruction of freshwater wetlands pursuant to § 5.03 (f) and (c) (7) of the Rules and Regulations.
6. The proposed alterations will result in significant loss, encroachment and permanent alteration of a "valuable" wetland wildlife habitat associated with the subject wooded swamp wetlands complex.
7. The proposed project's encroachment upon the subject wetland will result in eliminations of sections of an essential buffer zone located along the edge of the subject wetlands complex.
8. Construction encroachment of the proposed road into the wetland and associated buffer zones will introduce disturbance factors which serve to reduce wildlife populations.
9. The proposed project will reduce the value of a "valuable" wetland recreational environment.
10. The proposed project will reduce and negatively impact the aesthetic and natural character of an undeveloped wetland and buffer zone.
11. The proposed alterations are inconsistent with the best public interest and public policy as stated in § 2-1-18 and 2-1-19 of the Rhode Island General Laws and § 1:00 of the Rules and Regulations governing the Freshwater Wetlands Act.
12. The applicant has not sustained his burden of proof that the application will not cause random, unnecessary and/or undesirable destruction of a freshwater wetland which should be protected by the Director.

THEREFORE, IT IS

ORDERED

1. Application No. 87-0973F to alter fresh water wetlands be and is hereby DENIED.

I hereby recommend the foregoing Decision and Order to the Director for issuance as a final Order.

November 16, 1990  
Date

Joseph F. Baffoni  
Joseph F. Baffoni  
Hearing Officer

The within Decision and Order is hereby adopted as a final Decision and Order.

NOV 21, 1990  
Date

191  
Michael Annarummo  
Director  
Department of Environmental Management