



# CAPE COD COMMISSION

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DATE: December 5, 1991 TR# 91054

TO: Mr. Preston A. Landers, P.A. Landers, Inc.  
P.O. Box FF  
Hanover, MA. 02339

FROM: Cape Cod Commission

RE: Development of Regional Impact Application  
Cape Cod Commission Act, Section 12

APPLICANT: P.A. Landers, Inc.

PROJECT: The mining of 274, 941 cy of sand and gravel and the  
establishment of a sand and gravel processing plant.  
Map 53, Parcel's E4 and E2-2, 33.3 Acres (Kiah's Way),  
Sandwich, MA.

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (the Commission) hereby approves with conditions the application of PA Landers, Inc., for a Development of Regional Impact under Section 12 (c)(6) of the Commission Act (the Act), c. 716 of the Acts of 1989, as amended for the removal of sand and gravel and the establishment of a sand and gravel processing plant. The decision is rendered pursuant to the vote of the Commission on December 5, 1991.

### PROJECT DESCRIPTION

The Landers property is located south of the Mid-Cape Highway between Telegraph and Discovery Hills in Sandwich. The property has frontage on Kiah's Way which is a gravel road used by existing gravel removal and construction equipment firms. The combined 33.3 acre site (Assessors parcels E4 + E2-2) is presently split by Kiah's Way. The sand/gravel removal operation is proposed on 13 acres of the northern portion of the site. The sand/gravel processing plant is proposed on 5 acres within the aforementioned 13 acres. The site is within the Water Resource Overlay District and is split between the residential Ridge District and the Industrial Limited District. The majority of the site is covered with scrub pine and oak trees and is part of the Sandwich Moraine. The identified soil types are all well sorted stratified sand and gravel (PxC, PvD and PvC). The rear portion of the site is identified as a critical wildlife habitat area. The proposed earth removal operation is shown to be over 700 feet away from a critical wildlife habitat area.

TR 91054 P.A. Landers DRI Decision December 5, 1991

## PROCEDURAL HISTORY

The project was referred to the Commission by the Sandwich Planning Board on June 24, 1991. A DRI application was filed by the applicant on July 19, 1991. A site visit was conducted by the subcommittee, staff and the applicant on August 5, 1991. The public hearing was opened on August 15, 1991 and continued on September 12th and 26th. The public hearing was closed on October 10, 1991 and two additional public meetings were held on November 4th and 21st to finalize wording of the proposed conditions. The subcommittee report was presented to the full Commission on November 21, 1991.

## MATERIALS SUBMITTED FOR THE RECORD

### A. Materials submitted by the applicant:

|   |  |                |
|---|--|----------------|
| 1. Request for a reduction in fees      | Prepared by Jonathan D. Fitch                          | July 1, 1991   |
| 2. DRI Application                      | Prepared by Jonathan D. Fitch                          | July 19, 1991  |
| 3. Landscape and site layout plan       | Prepared by John McElwee Dated 4/4/9 revised 6/25/91   |                |
| 4. Potential benefits from the facility | Prepared by Jonathan D. Fitch                          | Sept. 23, 1991 |
| 5. Wildlife Habitat Assessment          | Prepared by IEP  | Sept. 26, 1991 |
| 6. Vibration and sound monitoring       | Prepared by GZA  | Sept. 26, 1991 |
| 7. Hydrologic Assessment                | Prepared by GZA  | Sept. 26, 1991 |
| 8. Revised Landscape/ site layout plan  | Prepared by John McElwee Dated 9/13/91 revised 10/7/91 |                |
| 9. Methodology for wildlife assessment  | Prepared by Stanley M. Humphries                       | Oct. 10, 1991  |
| 10. Phase Plan "Phasing"                | Prepared by J.D. Fitch from site plan                  | Nov. 1, 1991   |

### B. Materials submitted by the Town:

|  |                |
|--|----------------|
| 1. Comments from the Fire Dept.              | June 4, 1991   |
| 2. Comments from the Town Engineer           | June 11, 1991  |
| 3. Comments from the Town Planner            | June 24, 1991  |
| 4. Comments from the Conservation Commission | June 25, 1991  |
| 5. Comments from the Board of Health         | June 25, 1991  |
| 6. Comments from the Police Dept.            | June 25, 1991  |
| 7. Comments from the Water District          | June 25, 1991  |
| 8. Comments from the Conservation Commission | Aug. 13, 1991  |
| 9. Comments from the Police Dept.            | Aug. 14, 1991  |
| 10. Comments from the Town Engineer          | Sept. 12, 1991 |
| 11. Comments from the Planning Board         | Sept. 23, 1991 |
| 12. Comments from the Executive Secretary    | Nov. 1, 1991   |
| 13. Comments from the Fire Dept.             | Aug. 7, 1991   |

### C. Materials submitted by the public:

|                                       |               |
|---------------------------------------|---------------|
| 1. A letter from Mr. and Mrs. Pierson | Aug. 14, 1991 |
| 2. A letter from Peggy Sloan (APCC)   | Oct. 21, 1991 |

The Commission also received oral testimony from public officials and members of the public as described in the minutes of the subcommittee public hearing(s) dated August 15, 1991, September 12, 1991, September 26, 1991 and October 10, 1991 .

The application and notice of public hearings relative thereto, the Commission's staff's reports, notes and

exhibits, minutes of all hearings and all written submissions received in the course of the proceedings are incorporated into the record by reference.

### JURISDICTION

The proposed sand and gravel removal operation and processing plant qualifies as a Development of Regional Impact under Section 12(c)(6) of the Act, because it is a " outdoor commercial space greater than forty thousand square feet".

### FINDINGS

The Commission has considered the Development of Regional Impact application of P.A. Landers, Inc., for the proposed sand/gravel removal operation and a sand/gravel processing plant. Based on consideration of such application, the information presented and Commission staff recommendations, the Commission makes the following findings pursuant to Sections 12 and 13 of the Act:

1. As conditioned in this decision, the project is consistent with the minimum performance standards as identified in the Regional Policy Plan. The Commission also noted that the town has not developed a local comprehensive plan at this time.
2. The Zoning By-law of the Town of Sandwich allows by special permit the proposed uses in both the Ridge and Industrial districts.
3. At this time there are no Districts of Critical Planning Concern in Sandwich. Therefore, this review standard is not applicable to the proposed project.
4. The project provides 22 acres of open space and an undisturbed buffer of approximately 700 feet between the limit of work and the critical wildlife habitat/wetland area. The project also provides a buffer area between the operations and the abutting town owned properties.
5. The fuel used to operate the sand and gravel sorting machinery is classified as a hazardous material. However, the amount to be stored on the site is at a household level (275 gallons, approximately one week's supply) and the provision for an impervious fueling pad will safeguard against accidental spills from fuel, motor oil or solvents.
6. The revised site plan will discourage trespassing and vandalism due to the gates, lights, stones and dense thorny plantings proposed.
7. The proposed improvements (an acceleration lane) to the intersection of Route 130 and Kiah's Way not only address the concerns raised by the Commission and local officials but provides a substantial benefit for traffic flow and safety to the regional and local road network.
8. The site location was appropriate due to the distance from residential abutters.

### CONDITIONS

Based upon the findings above, the Commission hereby concludes that the proposed gravel operation

and processing plant will not have a significant impact on the environment and natural resources, including groundwater supply/quality and protection of a critical wildlife habitat area, provided that the following conditions are imposed on the project. **These conditions shall apply to the Applicant, his heirs, successors or assigns, and any owner or tenant:**

1. The applicant shall be allowed to have a fuel storage tank with a capacity of no more than 275 gallons to be placed on a spill pad as shown on the Landscaping and Site Layout Plan dated September 13, 1991 and revised October 7, 1991. The impervious pad shall be constructed with a berm to contain a spill of 275 gallons. The applicant shall be required to post an emergency spill response plan on site and file a copy with the Sandwich Fire Department. The material safety data sheet (msds) for the fuel should also be part of the plan. The plan shall identify the professional emergency response team to be contacted in case of a spill and phone numbers of both the clean up firm and the fire department.
2. A water truck shall be available during the hours of operation for the control of dust.
3. The applicant has proposed improving the intersection of Kiah's Way and Route 130. The intersection improvements include the construction of an acceleration lane on Route 130 northbound from Kiah's Way.

After securing the approval of the Town of Sandwich, the applicant shall design the proposed improvements, initiate and guide (as appropriate) the Massachusetts Department of Public Works (MDPW) permit application and thereafter construct, with due diligence, the improvements. Such improvements shall be constructed in accordance with a plan that shall be approved by the Commission. All design standards shall be governed by the MDPW Highway Design Manual. In addition, vegetation within the layout of Route 130 which now restricts sight distance to the south of Kiah's Way intersection shall be cleared as required by the MDPW. If this intersection is to be converted to two-way flow for truck traffic, the design shall be subject to Commission approval.

All improvements shall be completed prior to any excavation or earth removal from the site, unless the Town of Sandwich definitively denies the improvements.

4. The applicant shall limit exposed areas of active gravel removal to an area 200 feet in length x 200 feet in width x 30 ft. in depth. The exposed area shall be restored to the state identified in condition number 5.
5. The applicant shall restore the mined area by establishing a maximum slope of two (2) ft. horizontal to one (1) ft. vertical. This area shall be covered with six (6) inches of loam, fertilized, seeded and maintained to create a vegetated cover.
6. The applicant shall, stake or mark all phase areas where work and restoration have been completed, the phase area currently being worked, and any phase areas for which subsequent work is planned. These boundary markers shall be maintained through the life of the operation.
7. A buffer zone (ten (10) feet in width) in which natural vegetation and soil are left undisturbed shall be maintained from all abutting property lines. The undisturbed buffer shall be forty (40) feet in width along Kiah's Way.
8. In addition to the buffer zone in condition #7, the applicant shall create a ten (10) foot area in width along the buffer zone as shown on the Landscaping and Site Layout Plan dated September 13, 1991

and Revised October 7, 1991. This area shall have a finished grade of three (3) horizontal feet to one (1) vertical feet which shall be planted with Russian Olive and Multiflora Rose in two rows of sufficient density to serve as a natural fence, screen and wildlife habitat.

9. The applicant may transport clean sand and gravel materials onto the property for processing. No solid waste, sludge, asphalt, cement, road construction debris, demolition debris and/or tree stumps not shown on the approved site plan shall be brought onto or deposited on the property.

10. All soil recovered from operations on the site which are suitable for cover material shall be stockpiled on site and retained for future use in the reclamation of the affected area.

11. The depth of excavation shall be limited to an elevation one hundred and sixty five (165) feet above mean sea level in the base of the proposed drainage swale as shown in the Landscape and Site Layout Plan dated September 13, 1991 and revised October 7, 1991. The lowest elevation of the floor of the gravel removal and processing operations shall be one hundred and sixty eight (168) feet above mean sea level.

12. A yearly report certified by a Massachusetts registered professional engineer shall be provided to the Commission on each anniversary date of the DRI approval. The first report shall be filed with the Commission by December 1993. This report shall state the amount of material removed, areas restored and overall condition of the site (noting any erosion, pollution, noise or dust problems that have taken place and/or complaints filed with the Town officials during that year). A current site plan certified by a registered surveyor shall be included in the yearly report. The plan shall show areas under removal operation, revegetated and future phases. The yearly report (including site plan) must be deemed acceptable by the Commission within thirty (30) days of receipt by the Commission for the DRI approval to remain valid. The applicant shall be granted a thirty (30) day correction period prior to a vote of the Commission.

13. The gravel removal operations must commence within seven (7) years of the approval date. The approval shall be valid for a maximum of ten (10) years from the date of approval by the Commission.

14. The applicant and property owner agree to allow the Commission or its representative(s) free access to the site to conduct inspections to determine compliance with the conditions of this approval at any time.

15. The Commission shall be notified of any transfer of ownership or legal interest or change in contractual interest in the subject property, including a change in the current or subsequent earth removal operator deriving income resulting from such work on said property, within ten (10) days of such transfer or change. Failure to do so will render this approval null and void.

16. To ensure compliance with the conditions of the DRI approval the applicant shall be required to post a cash deposit or surety bond, in an amount and form acceptable to the Town of Sandwich. Such amount shall be sufficient to meet the estimated cost of the required reclamation work. Said Bond amount shall be filed with the Town of Sandwich prior to commencement of work. Within six (6) months of the completion of operations or the expiration of the approval, the land shall be restored in accordance with the conditions of the DRI approval.

17. The applicant shall notify the Commission at the completion of each phase of work. Upon notification,

the Commission shall issue a partial certificate of compliance for the phase if all work and restoration has been completed in accord with plans and conditions above. The next phase of excavation shall not commence until a partial certificate of compliance has been issued for the preceding phase.

18. Monumentation as shown on the September 13, 1991 Landscape and Site Layout Plan revised October 11, 1991 shall be established prior to the commencement of earth removal. Monuments shall be numbered 1-6 starting with the southwestern corner of the property (Kiah's Way, Landers and Knight's properties) and heading north to the intersection of the Landers, Knight's and Town of Sandwich properties.

19. The amount of area left disturbed after the completion of the earth removal (phases 1-3 ) and during the crushing and processing operation (phase 4), shall be a maximum of five (5) acres in size. The phases of the approval shall be as shown on the Phase Plan, dated September 13, 1991 and received by the Commission on October 10, 1991.

20. The remaining 20 acres of land shall be kept in its existing natural state as open space. The applicant may file future applications for further use of the property.

21. Applicant shall obtain all necessary local permits.

**CONCLUSION**

Based on the findings above, the Cape Cod Commission hereby concludes:

The project is consistent with the Commission's Regional Policy Plan. This conclusion is supported by finding # 1 listed above.

The project is consistent with local development by-laws. This conclusion is supported by finding # 2 and condition # 21 listed above.

The project is not located within a District of Critical Planning Concern. This conclusion is supported by finding #3 listed above.

The benefits of the proposed project outweigh the detriments resulting from the development. This conclusion is supported by findings # 4, 7 and 8 listed above.

The Commission hereby approves with conditions a Development of Regional Impact Application for P.A. Landers, Inc., pursuant to Section 13 of the Act.

  
Richard S. Armstrong, Chairman

12/5/91  
Date

  
Katharine L. Peters  
Notary  
Commission Expires December 3, 1997

12/5/91  
Date