



# CAPE COD COMMISSION

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Date: April 7, 1992  
To: Joseph P. Breen, President, Forward Development Corporation  
From: Cape Cod Commission

RE: Development of Regional Impact  
Jurisdictional Determination Request  
Cape Cod Commission Act, Section 12 (j)

Applicant: Joseph P. Breen, Forward Development Corporation  
Project #: JD92022  
Project: Quashnet Woods  
Route 28  
Mashpee, MA.

Map/Parcel: Book 5011, Page 64  
Book 6169, Page 168

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby finds that the Quashnet Woods Development is not required to be reviewed by the Commission pursuant to Section 12(j) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed residential development in Mashpee, MA. The decision is rendered pursuant to the vote of the Commission on April 2, 1992.

### PROJECT DESCRIPTION

The forty (40) acre site, south of the Mashpee rotary along Route 28, is the remainder of an original three hundred and eighty (380) acre property. The site is bounded to the north by the Deer Crossing Plaza, to the east (across Route 28) by the industrial park and to the south and west by open space owned by the Commonwealth of Massachusetts. The site is wooded (scrub pine and oak) and fairly level with a mixture of fine sands and clays for surface soil conditions. The site is accessible from several cart paths and a public utility line right of way. The cart paths show the effects of frequent off-road vehicle use and several piles of construction debris can be found along the way. The site is not within an ACEC or critical wildlife/plant habitat areas as delineated by the APCC Critical Habitats Atlas. The site is not within any identified wellhead protection zones as delineated by the Commission's Water Resources Classification Map. The site is within the Waquoit Bay watershed.

JD 92022    Decision    Quashnet Woods/Mashpee MA    April 7, 1992

### PROCEDURAL HISTORY

A special permit application was filed with the Mashpee Planning Board on March 8, 1988 by Forward Development Corporation under the Open Space Incentive Development provisions of the Mashpee Zoning By-law. The special permit was granted for 570 residential units with conditions on July 6, 1988. Special permit conditions b and h contemplated a future modification of the special permit after the sale of a portion of the property and its development rights to the State of Massachusetts. Condition b states the following: " The approval given hereunder is given subject to the sale of all but 184 units of the development rights herein granted to the Commonwealth of Massachusetts... If this sale is not consummated on or before August 21, 1988, or if the sale should fail at any time prior to that date, this permit shall automatically lapse and become void". Condition h states the following: "The permit granted hereunder shall not be considered as a permit for new construction and land development. Any new construction or land development to be initiated in that portion of land designated as the developable portion of the OSID project, must be brought before the Planning Board for its approval as a special permit modification and a definitive subdivision under the provisions of section 9.3.7.7. of the Town of Mashpee By-Laws".

After donating 282.19 acres to the Town of Mashpee for conservation land and conveyance of 62.1 acres of land and the development rights for 386 residential units to the Commonwealth on July 19, 1988, the applicant filed for a modification to the special permit on September 7, 1988 as required by condition b of the original special permit. This modification sought approval for a two phase 180 residential units, a clubhouse and a sewer treatment plant within the forty (40) acres (bounded by the electric easement, Falmouth Road, Route 28 and Whiting Road) located on the northeast corner of the original property. The Planning Board granted the modification to the original special permit on October 4, 1989. The modified special permit was extended by the Planning Board on September 18, 1991.

Materials Submitted for the record include:

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|--|-------------------|
| • J. D. application prepared by William C. Henchy              | March 12, 1992    |
| • A letter from Larry Berkowitz, M.D.P.W.                      | August 28, 1992   |
| • A letter from the Mashpee Planning Board                     | December 18, 1992 |
| • A letter from Thomas F. McLoughlin, M.D.P.W.                 | January 2, 1992   |
| • A letter from the Mashpee Board of Water Commissioners       | January 24, 1992  |
| • A letter from the Mashpee Board of Appeals                   | January 27, 1992  |
| • A letter from the Mashpee Building Inspector                 | January 27, 1992  |
| • A letter to Gerald E. Gaffin from William C. Henchy          | March 13, 1992    |
| • A letter from William C. Henchy                              | March 16, 1992    |
| • A letter to Gerald E. Gaffin from William C. Henchy          | March 19, 1992    |
| • A letter to William C. Henchy from Gerald E. Gaffin          | March 26, 1992    |
| • A letter from William C. Henchy                              | March 30, 1992    |
| • A letter to Gerald E. Gaffin from William C. Henchy          | March 31, 1992    |
| • A chronological list of approves from the Board of Health    | April 1, 1992     |
| • A Time line of important dates prepared by William C. Henchy | April 2, 1992     |

Additional Materials:

- Staff report dated March 26 , 1992
- Subcommittee report dated April 2, 1992

A public hearing on the jurisdictional determination was held on April 2, 1992 at the Chamber of Delegates in the First District Court House, Route 6A, Barnstable, MA. The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearing and all written submissions received in the course of our proceedings are incorporated into the record by reference.

SCOPE OF JURISDICTIONAL DETERMINATION

Under the commission regulations, the commission may determine whether a proposed development is or is not a Development of Regional Impact under the Act, and whether it is or is not exempt from the Commission review under the Act. Section 22(b) of the Act states that the Act shall not apply to any development which prior to July 1, 1989 has received any one of the following: an order of conditions under Section 40, Chapter 131 of the General Laws; a special permit or variance under Chapter 40A; a comprehensive permit under Chapter 40B; or a statement of the secretary of environmental affairs that the environmental impact report adequately complies with Sections 62-62H, inclusive, of Chapter 30, and which development is constructed or is thereafter constructed in substantial compliance therewith.

FINDINGS

The Commission has considered the Applicant's request for a Jurisdictional Determination regarding the proposed residential condominium development of Forward Development, and based upon consideration of such request, upon information presented at the public hearing and submitted for the record, makes the following findings:

- 1) This project meets or exceeds the standards and criteria set forth in Section 12(c) of the Act and is therefore a Development of Regional Impact (DRI). Specifically, the project is planned to "create or accommodate more than 30 dwelling units" pursuant to Section 12(c)(7) of the Act.
- 2) Section 22(b) of the Act provides an exemption from DRI review for projects which "prior to July 1, 1989 [have] received ...a special permit ...under chapter 40A ...and which development is constructed or is thereafter constructed in substantial compliance therewith".
- 3) The Mashpee Planning Board approved a special permit for this project under its OSID bylaw in July 6, 1988. The July '88 special permit required the applicant to perform certain tasks and return to the Planning Board to obtain a modification to the special permit. Thus, the Planning Board, through its original special permit, specifically required a special permit modification.
- 4) The applicant applied for a special permit modification from the Planning Board, as required by the July '88 special permit. The Planning Board approved said special permit modification on October 4, 1989. The special permit modification decision did not change the type of units allowed by the original special permit. However, the modification decision decreased the number of allowable units and allowed changes to roadway configuration.

5) Changes allowed by the special permit modification were contemplated in the original special permit. Those changes resulted in a decrease, and not an expansion, of the originally permitted project. The special permit modification resulted in an approved project which is essentially the same as the project allowed by the original approval.

6) The Mashpee Building Inspector, Planning Board and Zoning Board of Appeals submitted information for the record stating their opinion that the project, as currently proposed, is in substantial compliance with the July '88 special permit.

7) None of the actions outlined above were taken, either by the applicant or by town officials, in order to circumvent Commission review of this project.

**CONCLUSION**

In conclusion, the subcommittee found that the project is a Development of Regional Impact because it meets or exceeds the Standards and Criteria of Section 12(c) of the Act. However, the project is also exempt from DRI review under Section 22(b) of the Act on the basis of the July '88 special permit, so long as the project is constructed in substantial compliance with July '88 special permit and the subsequent modifications contained in the record before the subcommittee.

The subcommittee recommends that the Commission vote to find this project is a DRI under Section 12(c) of the Act and that the project is exempt from DRI review pursuant to Section 22(b) of the Act.

This decision is rendered by a vote of the Cape Cod Commission on April 2, 1992.

George L. Jackson  
George Jackson, Subcommittee Chairman

April 7, 1992  
Date

Commonwealth of Massachusetts

Barnstable, ss.  
Subscribed and sworn to before me this 7<sup>th</sup> day of April 1992

Katharine L. Peters  
Name, Notary Public

My Commission Expires: ~~My Commission Expires December 5, 1997~~