

# CAPE COD COMMISSION

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Date: March 5, 1992  
To: The Town of Provincetown  
From: Cape Cod Commission  
Re: Development of Regional Impact Partial Hardship Exemption, Section 23  
Cape Cod Commission Act.  
Project #: TR91087  
Project: Solid Waste Transfer Station  
Applicant: The Town of Provincetown  
Map/Parcel: Lot 8-1-005, Assessor's Map 8, Provincetown

## Decision of the Cape Cod Commission

### Summary

The Cape Cod Commission (Commission) hereby approves the application of the Town of Provincetown for a partial Development of Regional Impact (DRI) hardship exemption under section 23 of the Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the limited purpose of allowing Provincetown to pursue a local Board of Health site assignment. This partial exemption shall be granted on two conditions. First, that the project will be returned to the Commission for further consideration immediately after the Provincetown Board of Health makes a determination on a local site assignment for the proposed solid waste transfer station, regardless of the outcome of that review. The second condition is that the Town of Provincetown continue to pursue in good faith, an agreement with the Town of Truro to use the existing Truro solid waste transfer station site as a regional transfer station for Provincetown and for Truro. The decision is rendered pursuant to the vote of the Commission on March 5, 1992.

### Project Description

The proposed project is a municipal solid waste transfer station and recycling center. The station is a nonmechanical--direct dump type of facility. The building is a three sided metal structure with a footprint of approximately 3000 sq ft. The building will house an office, an at grade vehicle access area and a dumping area. A below grade trailer storage area will house a 100 cu. yd. trailer. The recycling area will have an 8 foot high retaining wall that is approximately 200 feet long. Six, 40

cu yd. roll-off containers will be located in the recycling area. The access roads and parking areas will be paved. The station will have a design capacity of 48 tons per day and will be used exclusively by Provincetown.

### **Procedural/Jurisdictional History**

This project is a DRI under section 12 (c) (8) of the Act. No local approvals have yet been obtained, however Provincetown received a site assignment from the Massachusetts Department of Environmental Protection (DEP) on November 4, 1991. The project was reviewed for a Hardship Exemption by the Commission pursuant to section 23 of the Act. Section 23 states that " The commission shall have the power after holding a public hearing pursuant to section five to grant an exemption, in whole or in part and with appropriate conditions, to any applicant from the terms and provisions of this Act where the commission specifically finds that a literal enforcement of the provisions of the act would involve substantial hardship, financial or otherwise, to the applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act". The Commission subcommittee held a public hearing at 1:00 p.m. on November 21, 1991 at the Barnstable District Court House in Barnstable, Ma. to allow Provincetown, Commission staff and interested persons an opportunity to present information and testimony. A second subcommittee hearing was held, again taking public testimony, on December 3, 1991, at the Cape Cod Commission offices in Barnstable, Ma. At this hearing, both the hearing and the record were closed. The subcommittee made a recommendation to deny the hardship exemption before the full Commission at the Assembly of Delegate's Hall in Barnstable, Ma. on December 5, 1991. The full Commission voted to table the written decision at a public meeting on December 19, 1991 in an effort to pursue alternatives. The subcommittee held a newly noticed public hearing on January 24, 1992 at the Assembly of Delegates Hall in Barnstable when the public hearing was closed. The record was left open until 11:00 a.m. on January 31, 1992. A final subcommittee meeting was held on January 31, 1992 at the Commission Offices where a motion to support a limited hardship exemption was adopted.

### **Materials Submitted for the record**

All information submitted for the record at public hearings, including testimony, staff reports, plans and correspondence are duly incorporated by reference.

#### Town Submittals

1. Letter from Elizabeth Steele, Chairman of the Provincetown Board of Selectmen, regarding meeting with Truro over issues related to the shared use of the Truro transfer station, January 29, 1992.
2. Memo from SEA, consultants for Provincetown outlining the scope of work and costs for site 6, east, January 22, 1992.
3. Letter from Kopelman and Paige, Attorneys for Provincetown, regarding meeting with Department of Environmental Protection Officials and hardship exemption, January 7, 1992.
4. Correspondence from Winig Associates to SEA concerning the wetland delineation of site 6, November 27, 1991.
5. Correspondence from SEA to Cape Cod Commission showing Test Pit logs for site 6,

November 27, 1991.

6. Letter from Keith Bergman outlining the hardship exemption case, November 21, 1991.

7. Memorandum concerning DRI review from Alix Ritchie to Provincetown Board of Selectmen, November 7, 1991.

8. Letter from Kopelman and Paige, Attorneys at Law representing Provincetown to the Cape Cod Commission, November 4, 1991.

9. Hardship Exemption Application, November 4, 1991.

10. DRI application, November 4, 1991.

11. Site Assignment from Mass. DEP for site 6, November 4, 1991.

12. Memorandum of Understanding between Provincetown and the National Park Service, November 4, 1991.

13. Correspondence from SEA to Keith Bergman, Provincetown Town Manager concerning the site selection process, November 4, 1991.

14. Memorandum from Keith Bergman to the Provincetown Board of Selectmen concerning Cape Cod Commission review, October 21, 1991.

#### Site Plans

1. Site plan showing the test pits taken for Site 6 east, November 27, 1991.

2. Site plan showing the locus of the project, November 14, 1991.

3. Site plan detailing the waste water system and preliminary engineering drawings, November 4, 1991.

#### Staff Reports and Correspondence

1. Memo to Commission subcommittee reviewing Provincetown transfer station DRI regarding findings and a motion, January 31, 1992.

2. Extension agreement between the Commission and Provincetown, January 31, 1992.

3. Subcommittee report regarding transfer station recommendation, January 31, 1992.

4. Subcommittee report, December 4, 1991.

5. staff report, December 2, 1991.

6. Staff report, November 18, 1991.

#### Submittals from the public.

1. Letter from Christopher Snow with attachments regarding opposition to the hardship request and zoning proposals for the transfer site, January 30, 1992.

2. Letter from Christopher Snow requesting copies of all hearing notices, January 29, 1992.

3. Letter from Donna Cooper urging denial of the hardship exemption, December 4, 1991.

4. Letter from abutter's lawyer C. Snow concerning procedures, November 27, 1991.

5. Letters totally 138 were submitted with identical text signed by 138 different individuals in opposition to the siting of the transfer station, January 26, 1992.

6. Letter from Elizabeth Patrick of Shankpainter Assoc. Inc. summarizing her statement at the January 24, 1992 hearing, January 24, 1992.

7. Letter from Mary Jo Avellar in opposition to the transfer station, January 23, 1992.

8. Postcard from George Bryant opposed to the siting of the transfer station, January 21, 1992.

9. Letter from Joan Cordeiro opposed to the transfer station, January 2, 1992.
10. Letter from Evelyn Souza opposed to the transfer station, December 27, 1991.
11. Letter from George Bryant in opposition to the transfer station, December 16, 1991.
12. Letter from Shankpainter Associates to DEP concerning transfer station siting, November 25, 1991.
13. Letter from C. Snow concerning transfer station siting, November 21, 1991.
14. Photographs of Site 6 from Peter Sousa and Julie Trzcinski, November 21, 1991.
15. Petition from Peter Sousa and Julie Trzcinski of 360 names of people from Provincetown opposed to the location of the transfer station, November 21, 1991.

#### Submittals from Government Agencies

1. Letter from Andrew Ringgold supporting the hardship exemption, November 21, 1991.
2. Letter from Mass. Division of Fisheries and Wildlife identifying concerns related to the transfer station location, November 21, 1991.

#### Submittals from other interested groups

1. Letter from the Association for the Preservation of Cape Cod, in opposition to the transfer station siting, January 30, 1992.
2. Letter from the Association for the Preservation of Cape Cod, November 21, 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.

### **Findings**

The Commission has considered the application of the town of Provincetown for a hardship exemption for a solid waste transfer station. Based on consideration of such application and upon the information presented at the public hearings makes the following findings pursuant to section 23 of the Act.

1. Provincetown's Memorandum of Understanding with the National Park Service to use the landfill currently located within the Cape Cod National Seashore boundary will end on January 1, 1994.
2. Provincetown's DEP permit to continue using the landfill within the Cape Cod National Seashore boundary will end on January 1, 1994.
3. Based upon findings 1 and 2 above, Provincetown has demonstrated a hardship with respect to time. A limited exemption from Commission review will allow Provincetown to examine alternatives to the site 6 proposal and remain within the time constraints identified above.
4. Provincetown has signed a contract with SEMASS to deliver solid waste to the SEMASS waste to energy facility located in Rochester, Ma.

5. In order to meet contractual requirements with SEMASS, Provincetown must gain access to a transfer station, either their own transfer station or through shared use of another transfer station.

6. Provincetown has examined a variety of sites to locate the proposed transfer station, however the geographic restraints and proximity of the Cape Cod Seashore National Park leave a limited number of sites available for the town's use.

7. Site 6, chosen by the town for the location of the proposed transfer station, has two areas. An area located on the eastern portion of the site that is the location of the former burn dump used by the town until 1954, and an area located on the western portion of the site that is essentially a pristine wooded upland area.

8. Site 6 is surrounded by wetlands, coastal plain ponds, a quaking bog and habitat that supports 3 different rare and endangered species that have been identified by the Massachusetts's Department of Fish and Wildlife's Natural Heritage and Endangered Species Program.

9. Provincetown has applied for and received a site assignment for the westerly portion of site 6, the site chosen for the proposed transfer station, from the DEP.

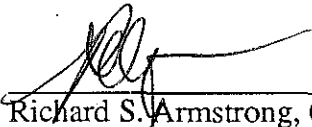
10. Cost estimates provided by the applicant show that obtaining a DEP site assignment for site 6 east could range between \$200,000 and \$900,000.

11. Provincetown is negotiating with Truro in good faith for the shared use and regionalization of the Truro transfer station.

12. Pursuing a local site assignment will not derogate from the intent and purposes of the Act, since no construction is allowed by this decision.

### Conclusion

Based on the findings above, the Cape Cod Commission hereby approves the application for a partial hardship exemption for the limited purpose of allowing Provincetown to pursue a local board of health site assignment. Based upon the above findings, Provincetown has demonstrated a hardship with respect to time and the granting of a partial exemption will not derogate from the intent and purposes of the Act. The findings above allow the Commission to conclude that granting a local board of health site assignment and/or the failure of the Town of Provincetown to come to an agreement with the Town of Truro regarding a regional transfer station site will not necessarily result in a full hardship exemption or DRI approval.

  
Richard S. Armstrong, Chair

Date 3/5/92

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 5<sup>th</sup> day of March 1992

Katharine L Peters

NAME, Notary

My Commission expires: My Commission Expires December 3, 1997

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