



CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136
E-mail: 74260.3152@compuserve.com

Date: August 28, 1997

Applicant: J.P. Noonan Transportation, Inc.
c/o Philip E. Magnuson
255 Main Street
Hyannis, MA 20601

Project #: JD97014

Project: Septage Transfer Location
32 Giddiah Hill Road
Orleans, MA

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

Land Court Certificate of Title c.63416 plan 18010-11 Lot 157

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds that the proposed septage transfer location at 32 Giddiah Hill Road in Orleans, MA is subject to mandatory review as a development providing facilities for transportation to or from Barnstable County under Section 3(h) of the Development of Regional Impact (DRI) Enabling Regulations, Barnstable County Ordinance 90-12, as amended. The project is not exempt under Section 22 of the Act. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on August 27, 1997.

PROJECT DESCRIPTION

The project consists of the creation of a septage transfer location on a site of about 1.68 acres located in an industrial area on Giddiah Hill Road in Orleans. The site will be used as a transfer location between 2,500 gallon pumper trucks that collect septage from locations in the area and 9,000 gallon tanker trailers that will transport septage out of Barnstable County. Trailers will also be stored on the site until they are ready to be transported. Construction on the site will consist of a 30 by 40 foot concrete slab with a stormwater drain system with clarifier tank and leaching catch basin. This project also entails removal of an existing building and possible removal of some trees. Part of the site is currently used by an excavating company, and the buildings for that use will remain. The storage location is currently used for storage of gravel and loam, metal scrap and boat construction.

Septage Transfer Location - Orleans, MA #JD97014
Jurisdictional Determination Decision - August 28, 1997

PROCEDURAL HISTORY

The Commission received a request for a Jurisdictional Determination from the applicant on August 1, 1997. The Commission determined that the application was complete on August 8, 1997. A duly noticed public hearing pursuant to Section 5 of the Act to consider the request was held by an authorized subcommittee of the Commission on August 27, 1997 in the Orleans Town Hall, Orleans, MA. The public hearing and record were closed on August 27, 1997. At the close of the public hearing the subcommittee held a public meeting where the subcommittee voted four in favor and one opposed that the project was subject to mandatory review as a Development of Regional Impact.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

- Jurisdictional Determination application dated August 1, 1997.
- U.S.G.S. Quadrangle maps of relevant area sent dated August 6, 1997.

Cape Cod Commission

- Staff report dated August 22, 1997.
- Letter informing applicant that application is completed, dated August 8, 1997.

Additional Materials

- Title V Regulations, 310 CMR 15.503 (description of septage locations)
- Letter in support of DRI review of the project from Judy Wallace, South Orleans Rd., dated August 27, 1997.

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.

TESTIMONY

At the public hearing on August 27, 1997, Philip Magnuson, attorney for the applicant, presented a report outlining reasons why the project should not be considered a DRI. He said that, as a Title V facility, no permanent storage is allowed on the site. He noted the letter by the town Board of Health approving the project with conditions. He said that a 30' by 40' paved area with two trailer trucks parked on it should not be considered a "trucking terminal" as referred to in DRI regulations, and that the project should not be reviewed as one. He then said that the project should not be considered a "transfer station" as described in DRI regulations either. A transfer station, he said, brings to mind a large facility that collects something from the public for a fee. This project is a private arrangement between one septage hauler and one trucking company, and thus is not a transfer station. Mr. Magnuson showed three photographs in support of his assertions. These were of a pumper, a tractor-trailer, and a transfer taking place through a tight hose.

Mr. Magnuson said that any remaining doubts should be dispelled by looking at Section 12 of the Commission Act, which should provide guidance for interpreting the DRI regulations. That section lists factors that should be considered in reviewing projects. Although one of them refers to transfer of sewage, he stated that to do so would violate the Interstate Commerce Act and risk personal liability of Commission members. Mr. Magnuson also said that the Barnstable Household Hazardous Waste facility decision should show why projects of this size are not DRI's. In that case, the Commission voted that a household hazardous waste transfer facility built at the Barnstable transfer station would not be considered a DRI. Mr. Magnuson said that if the septage transfer location was a DRI, any bottle redemption center, warehouse, or other facility where waste products are taken off-site would also have to be a DRI.

Commission project planner Jeff Levine presented the staff report. He said the staff believes this project is a "transfer station" and thus qualified as a DRI under Section 3 of the DRI regulations. He said that any location where materials were transferred on a daily basis was a transfer station. He noted that the Barnstable Household Hazardous Waste facility transferred materials considerably less often than this location.

Gussie McKusick of the Orleans Board of Health said that the cooperative efforts of towns to deal with septage were needed, and that the increased transfer of septage off of Cape Cod were regional in impact and thus projects such as this one should be considered as DRI's. Mr. Magnuson said that any effort to protect town facilities from competition would be unconstitutional and that the responsible public officials could be liable for damages in such cases.

After the public hearing, the subcommittee met to further discuss the project. There was some discussion of whether jurisdiction needed to be asserted since many of the subcommittee members felt the project would likely receive a DRI exemption. However, most subcommittee members decided that the project was a transfer station as contemplated in Section 3(h) of the DRI Enabling Regulations and thus needed to have jurisdiction asserted.

Mr. Kaufman called for a vote. The vote was taken and as 4 to 1 in favor of determining that this project qualified as a DRI under Section 3(h) of the regulations.

FINDINGS

The Commission has considered the applicant's request for a Jurisdictional Determination regarding the proposed septage transfer location at 32 Giddiah Hill Road in Orleans, MA, and based upon consideration of such request, information presented at the public hearing and submitted for the record, makes the following findings under Sections 12 and 13 of the Act:

- 1). The project consists of the creation of a septage transfer location on a site of about 1.68 acres located in an industrial area on Giddiah Hill Road in Orleans. The site will be used as a transfer location between 2,500 gallon pumper trucks that collect septage from locations in the area and 9,000 gallon tanker trailers that will transport septage out of Barnstable County. Trailers will also be stored on the site until they are ready to be transported. Construction on the site will consist of a 30 by 40 foot concrete slab with a stormwater drain system with clarifier tank and leaching catch basin. This project also entails removal of an existing building and possible removal of some trees. Part of the site is currently used by an excavating company, and the buildings for that use will remain. The storage location is currently used for storage of gravel and loam, metal scrap and boat construction.
- 2). The project qualifies as a Development of Regional Impact under Section 3(h) of the DRI enabling regulations, which requires DRI review of "[a]ny development providing facilities for transportation to or from Barnstable County, including but not limited to ferry slips, bus, rail, trucking terminals, transfer stations, air transportation and/or auxiliary uses and accessory parking or storage facilities, so long as such auxiliary or accessory uses meet the criteria of Section (h)..." The project is a transfer station for septage that will then be transported from Barnstable County for disposal. For this reason, it qualifies as a DRI and requires Commission review before proceeding.
- 3). The project will facilitate the daily delivery of septage off-Cape. The proponent estimates that two trucks per day will collect septage on-Cape to deliver it off-Cape, making this a transportation facility.
- 4). The applicant has not obtained any permits which would qualify the project for an exemption under Section 22 of the Act. Therefore, the proposed project is not exempt under Section 22(b) of the Act as a development which has received a special permit or variance under Chapter 40A prior to July 1, 1989.

CONCLUSION

Based on the findings above, the Commission hereby concludes that the proposed septage transfer location on Giddiah Hill Road in Orleans, MA is subject to mandatory review under Section 3(e) of the DRI Enabling Regulations. This conclusion is based on findings above. The project is not exempt under Section 22 of the Act. This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on August 27, 1997.

Sumner Kaufman
Sumner Kaufman, Subcommittee Chair

8/28/97
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 28th day of August 1997

Katharine L Peters
Name, Notary Public

My Commission expires:

~~My Commission Expires December 5, 1997~~