



CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136

E-mail: frontdesk@capecodcommission.org

December 3, 1998

Applicant: Estate of Georgia Cook Ferguson
c/o Daniel J. Mullen, Esq.
Goodwin, Procter & Hoar, LLP
Exchange Place
Boston, MA 02109-2881

Georgia C. Ferguson

Project #: DRI Exemption EX98038

Project: Audubon/Ferguson Subdivision
Route 6A, Barnstable

RE: Development of Regional Impact Exemption Application

Land Court 34629 LCC 29726A
Certificate: 69906 LCC 35874

*LOTS 1-5
CTF 34629
152621
152622
152623*

DECISION OF THE CAPE COD COMMISSION

SUMMARY:

The Cape Cod Commission hereby **denies** the application of the Estate of Georgia Cook Ferguson, represented by Daniel J. Mullen, Esq. of Goodwin, Procter & Hoar LLP of Boston, for a Development of Regional Impact (DRI) Exemption. The project came before the Commission under the threshold, "any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more." It is located within estimated habitats of rare wildlife and priority sites of rare species habitats and exemplary natural communities, as mapped by the Natural Heritage and Endangered Species Program. Due to these area characteristics, the site is a regionally significant natural resource and the Commission can best provide protection of these important natural resources through the Development of Regional Impact (DRI) process of the Cape Cod Commission Act.

PROJECT DESCRIPTION:

The project is located in the Town of Barnstable off of Route 6A on Barnstable Harbor in the area of Jules Island Creek. The Ferguson family proposes to subdivide approximately 103 acres to create a total number of five lots. Lot 1 contains the original home and will remain with the family. Lots 2 and 4 will be donated to provide



a gift of 78 acres to the Massachusetts Audubon Society. Lot 2 contains one single-family home and Lot 5 contains a hunting cabin. Lot 3 and Lot 5 will remain with the Ferguson family.

JURISDICTION:

The project is being reviewed as a Development of Regional Impact (DRI) under the threshold, "any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more." The applicant applied for a Development of Regional Impact Exemption and the Town of Barnstable referred the project as a Development of Regional Impact. Both hearings were conducted simultaneously.

PROCEDURAL HISTORY:

The Commission received a Development of Regional Impact (DRI) application for an Exemption on September 9, 1998 from Daniel J. Mullen, Esq. representing the applicants. The Commission received a Development of Regional Impact Referral letter from Ralph M. Crossen, Building Commissioner for the Town of Barnstable, on September 15, 1998. A duly noticed Public Hearing pursuant to Section 5 of the Cape Cod Commission Act was held by an authorized Subcommittee of the Commission on the DRI Exemption request and on the DRI on November 4, 1998 at the Assembly of Delegates Chamber, Barnstable County Complex. At this hearing the record and hearing were left open and continued to a full Commission meeting on November 19, 1998. On November 19, 1998, to allow for more time to finalize details concerning the conservation restriction, a Hearing Officer continued the hearing to the December 3, 1998 Commission meeting. A final Hearing on both the DRI Exemption and the DRI was held on December 3, 1998 where the full Commission voted to deny the Exemption request and to approve the DRI with Conditions.

Materials Submitted for the Record

Application Materials:

- DRI Exemption Application
- Preliminary Site Plan
- Form letter signed by Eric S. Johnson of Massachusetts Historical Commission, September 21, 1998
- Letter to Daniel Mullen from Gary R. Clayton, Massachusetts Audubon Society, October 30, 1998
- Letter to Georgia C. Ferguson from Gary R. Clayton of Massachusetts Audubon Society, December 15, 1997.

Correspondence from Applicant:

- Letter to Gay Wells from Theresa A. Cook, September 2, 1998
- Letter to Gay Wells from Daniel J. Mullen, September 9, 1998
- Letter to abutters from Gary R. Clayton, September 9, 1998
- Letter to Gay Wells from Daniel J. Mullen, September 21, 1998
- Letter to Gay Wells from Daniel J. Mullen, October 1, 1998
- Letter to Dennis Coffee from Daniel J. Mullen, October 10, 1997
- Letter to Daniel J. Mullen from Dennis Coffee, EOTC, November 24, 1997
- Letter to Daniel J. Mullen from Arne H. Ojala, P.E., P.L.S., November 3, 1998
- Letter to Daniel Mullen from Gary R. Clayton, October 30, 1998

Correspondence from the Cape Cod Commission:

- Letter to Daniel J. Mullen from Gay Wells, August 26, 1998
- Letter to Daniel J. Mullen from Gay Wells, September 22, 1998
- Memorandum to Subcommittee from Gay Wells, October 16, 1998
- Memorandum to Subcommittee from Gay Wells, October 30, 1998
- Memorandum to Gay Wells from Ed Eichner, November 2, 1998
- Fax to Daniel J. Mullen from Gay Wells, November 2, 1998
- Fax to Ralph Crossen from Gay Wells, November 2, 1998
- Fax to Jackie Etsten from Gay Wells, November 2, 1998
- Staff Report, October 28, 1998
- Letter to Daniel J. Mullen from Gay Wells, November 4, 1998
- Sign-in sheet for Public Hearing, November 4, 1998
- Agenda for Public Hearing, November 4, 1998
- Minutes of Public Hearing, November 4, 1998

Other Correspondence and Information:

- Letter to the Cape Cod Commission from Ralph M. Crossen, September 14, 1998
- Letter to the Cape Cod Commission from A. Roy Fogelgren, October 27, 1998
- Abutters List
- Meeting notes with Mr. Alvin Oppenheim, November 2, 1998 and November 12, 1998

TESTIMONY:

Public Hearing: Wednesday, November 4, 1998 - 7:00 p.m. (See minutes in file)

Daniel Mullen, attorney for the applicant, explained that the project is the subdivision of over 100 acres of land, 75+ acres of which will be donated to the Massachusetts Audubon Society, along with a house. The remainder of the land will remain with the sons of Georgia Ferguson. Due to the low amount of development and the large donation of land, the applicant believes that an Exemption should be granted.

George Ferguson, one of Mrs. Ferguson's sons, gave an historical perspective on the family's ownership of the land and stated that his father bought the land in the 1960's to preserve land from development.

Arne Ojala, P.L.S., P.E., explained the project which is the subdivision of the site into five (5) lots. There are two existing homes on the site. There is extensive wetlands and also an old hunting camp on the site.

Mario DiGregorio, biologist and consultant for the applicant, did a site assessment for the project and gave his report. Bob Prescott, Wellfleet Bay Sanctuary Manager, stated that the site will be part of the Great Marsh Sanctuary. The site would not be open to the public on their own, but would be a program-driven site where a few people will be brought in together via van. He stated that they are very grateful to receive the property.

Mr. Mullen stated that the property was assembled from two pre-existing parcels.

Gay Wells, Commission Planner and Project Manager, presented the staff report and gave the water portion of the report stating that the Water Resources staff's evaluation of potential nitrogen loading impacts of the proposed subdivision showed the projected nitrogen load is less than the most sensitive of the available areal loading rates.

Kathy Sferra, Commission Natural Resources Planner, stated that the site contains outstanding natural habitats and she noted that the donation is a significant parcel of land. Ms. Sferra discussed the methods to calculate Open Space requirements. Commission staff will work with the applicant regarding Open Space and conservation methods.

Bob Mumford, Transportation Program Manager for the Commission, gave the transportation report and noted that the questions in the staff report regarding the railroad crossing, trip generation for the project, and Route 6A access have all been resolved.

Jackie Etsten, Principal Planner for the Town of Barnstable, presented the Town's concerns and stated that their review is very focused and is restricted to zoning and access. She noted that Open Space and Natural Resources cannot be reviewed and addressed by the Planning Board and, for this reason, it is important to have the Commission's review of these issue areas. The Planning Board has stated that existing access and future development is a concern and that the Board may want to place a Condition for not allowing future subdivision of land.

Herb Olsen, Orleans representative to the Commission, stated that the subcommittee recognizes that this is an important donation of land. He also said that he believes that the Subcommittee should deny the Exemption in order to be able to place Conditions on resource protection through DRI review.

There was a discussion of the Exemption. Rob O'Leary spoke strongly in favor of the project. He noted that the donation of this significant portion of land is important to the preservation of natural resources on Cape Cod and is the type of project the Commission encourages. Mr. O'Leary stated if the Exemption is denied, the importance of a swift decision on the DRI. He also noted that it is important to not require the applicants to spend more money on the review than they have already spent.

Herb Olsen made the motion to recommend denial of the Exemption and Sumner Kaufman seconded the motion. The vote was unanimous.

FINDINGS:

General Findings:

G1. The project is being reviewed as a Development of Regional Impact (DRI) under the threshold "any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more."

G2. The project proposes a subdivision of Ferguson family land of approximately 103 acres to provide for a gift of 78 acres on Lot 4 and Lot 2 to the Massachusetts Audubon Society. Division of the remaining land among family members would create two additional building lots for a total number of five lots. Lots 1, 3, and 5 will remain with family members.

Natural Resources and Open Space Findings:

N/O1. The proposed project is located within a Significant Natural Resource Area as well as within the Sandy Neck/Barnstable Harbor Area of Critical Environmental Concern. The site includes diverse habitat areas such as tidal creeks and salt marsh, bordering and isolated vegetated wetlands, and upland areas. It is located within estimated habitats of rare wildlife and priority sites of rare species habitats and exemplary natural communities, as mapped by the Natural Heritage and Endangered Species Program. Due to these area characteristics, the site has regional significance.

N/O2. The applicant is proposing to deed all of Lot 2 and Lot 4 to the Massachusetts Audubon Society to become part of their "Great Marshes" Sanctuary. This donation provides for 13.3 acres of upland Open Space in addition to 61.33 acres of wetland (salt marsh) area. Based upon the standards of the Regional Policy Plan pertaining to protection of wetland buffer zones and the provision of Open Space, a DRI approval with Conditions will permanently protect this regionally significant natural resource area.

CONCLUSION:

The Cape Cod Commission determines that based upon the above-stated Findings, the proposed project is a regionally significant natural resource and that due to the location, character, and environmental effects of the subdivision, it will have significant impacts on the values and purposes protected by this act outside of the municipality in which the development is located. The Cape Cod Commission hereby denies the DRI Exemption application for the project known as the Audubon/Ferguson subdivision.

This Decision is rendered pursuant to a vote of the Cape Cod Commission on December 3, 1998.

Herbert Olsen
Herbert Olsen, Chair, Cape Cod Commission

12/7/98
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 7th day of December, 1998

Katharine L Peters
Notary Public

My commission expires:

