



# CAPE COD COMMISSION

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DATE: November 10, 1998

APPLICANT: Vallejo Street Realty, Inc.  
32 Elm Street  
Worcester, MA

PROJECT #: JD98044

PROJECT: Harlow Farm Estates  
Off Norris Road and Old Plymouth Road  
North Sagamore, MA

RE: Jurisdictional Determination  
Cape Cod Commission Act, Section 12(j)

BOOK/PAGE: Bk 11357/Pg 332-345 and Bk 11358/Pg 13-17

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## SUMMARY

Pursuant to Section 12(j) of the Cape Cod Commission Act (the "Act"), the Cape Cod Commission (the "Commission") hereby determines that the proposed subdivision entitled Harlow Farm Estates, off Norris Rd. and Old Plymouth Rd., North Sagamore, is a Development of Regional Impact under Section 3(c) of the Commission's DRI Enabling Regulations, Chapter A of Barnstable County Ordinance 90-12, as amended. The purpose of this Jurisdictional Determination is to ascertain whether the proposed subdivision meets or exceeds a threshold for review as a Development of Regional Impact (DRI), and whether the project is exempt from DRI review under Section 22(e) of the Act.

## PROJECT DESCRIPTION

Harlow Farm Estates is a 29 lot residential subdivision, creating 25 buildable lots, located off of Norris and Old Plymouth Roads in North Sagamore (Bourne). The project proponent is Vallejo Street Realty Inc. represented in this Jurisdictional Determination by Robert W. Parady, Esquire. The approximately 29.8 acre parcel comprising Harlow Farm Estates was created by a January 23, 1998 judgment of the Trial Court of the Commonwealth of Massachusetts Probate and Family Court. Prior to the January, 1998 decision the parcel was part of a subdivision of land known as Sagamore Park Village comprising 60 acres and 19 lots owned by Bourne Realty Trust. Sagamore Park Village was recorded with the Barnstable County Registry of Deeds on June 30, 1982. Sagamore Park Village was approved as a Special Permit and Subdivision by the Town of Bourne. The Special Permit for Sagamore Park Village expired in 1992 with three units having been developed.

## PROCEDURAL HISTORY

This Jurisdictional Determination request was filed by the Bourne Planning Board on October 13, 1998. The application was deemed complete on October 20, 1998. The Commission must render a



decision by November 10, 1998. At its meeting of October 22, 1998, the Commission voted to delegate to a subcommittee the authority to make a final determination on this Jurisdictional Determination request. The duly authorized subcommittee held a public hearing on Wednesday, November 4, 1998 at the Jonathan Bourne Public Library in Bourne Village. After taking public testimony, the subcommittee voted to close the hearing and the record and voted to determine that the proposed Harlow Farm Estates Subdivision is a Development of Regional Impact under Section 3(c) of the Commission's DRI Enabling Regulations and that the project does not qualify for an exemption under Section 22(e) of the Act.

#### MATERIALS SUBMITTED FOR THE RECORD

##### From the Town of Bourne

- JD Request Referral Form, dated October 9, 1998
- Amended Order for Partition of Land and Settlement of Claims, Trial Court of the Commonwealth Probate and Family Court Dept., w/ Exhibits, Docket No. 93E065 PT-1.
- Stormwater Drainage Design/Calculations by Eagle Surveying, dated 9/10/98
- Memo from R. Troy, Esq., dated 12/15/92, to the Bourne Planning Board
- Minutes of the 12/17/92 Bourne Planning Board meeting
- Land Court Dept., Civil Action No. 188-584 2 AC F, Notice of Appeal, Appeal and Stipulation for Dismissal under G.L. Ch 40A Sec. 17, Bourne Realty Trust v. Bourne Planning Board
- Definitive Plan "Sagamore Park Village", Sagamore Highlands, Bourne, Mass. Dated October 15, 1981, revised 2/27/82 and 6/30/82
- Termination of the Bourne Realty Trust, dated Sept. 30, 1993
- Letter from the Sagamore Highlands Association, dated 9/20/98, to Bourne Plng. Bd.
- Quitclaim Deed, Bk 11358-013, filed 4/15/98
- Agreement for Judgment, Superior Court No. 40677, 46034, and 46740
- Special Permit Conditions of the Bourne Planning Board
- Topographical and Water Distribution Plan prepared for Vallejo Street Realty, Inc., dated 9/8/98 by Canal Land Surveying
- Plan entitled "Harlow Farm Estates", dated 8/11/98, by Canal Land Surveying, Sheets 1-9

##### From the Property Owner, Vallejo Realty Trust

- Letter from R. Parady, Esq., dated October 5, 1998, to the Bourne Planning Board
- Letter from R. Parady, Esq., dated September 30, 1998, to the CCC

### From the Cape Cod Commission

- Letter from P. Daley, Esq., dated October 2, 1998 to the Bourne Planning Board Clerk
- Letter from P. Daley, Esq., dated October 2, 1998 to R. Parady, Esq.
- Letter from E. Wodlinger, Esq., dated November 3, 1998, to the CCC
- Staff Report Dated October 28, 1998
- Public Hearing Minutes from the 11/4/98 public hearing
- Fax to Bourne Planning Board Clerk of newly adopted DRI Thresholds

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of hearings, and all written submissions received in the course of our proceedings are hereby incorporated by reference.

### TESTIMONY

A duly authorized Subcommittee of the Commission including Robert Deane, Chair, Herb Olsen, Vicky Bebout, Elizabeth Taylor and Tom Broidrick held a public hearing on Wednesday, November 4, 1998. Mr. Broidrick arrived late.

Mr. Robert Parady, attorney for the applicant, explained the position of the applicant that the project is not a DRI. He explained that the site had been owned by a trust until September of 1993, when the trust was dissolved. An action for partition of the site was filed in Barnstable Probate Court in October of 1993. The Probate Court issued a judgment and Order of Partition in January of 1998. It is Mr. Parady's position that the division of land that resulted from the court order is retroactive to 1993 when the lawsuit was filed. He also noted his position that the court decision supersedes local jurisdiction.

Mr. Parady stated that the threshold states the Commission has jurisdiction if the land was in common ownership on September 30, 1994. Since it is his opinion that the land division was effective in 1993, and therefore not in common ownership in 1994, it is also his position that the project is not subject to DRI review.

Patricia Daley, Commission Staff Counsel, explained that the primary issue is whether the property was in common ownership on or after September 30, 1994. She stated that it is the position of Commission's legal counsel that the change in ownership of the property was effective in 1998 when the Probate Court Order became effective and when the title to the property was conveyed. Therefore, the land division by the court is a division of a parcel of land greater than thirty acres that was in common ownership as of September 30, 1998. The land division of the 60 acre Sagamore Park Village property would be a DRI. It was also her position that the Harlow Farm Estates property was in common ownership with the other half of the Sagamore Park Village Subdivision on or after September 30, 1994 and therefore the proposed subdivision is a DRI.

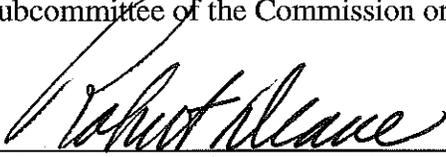
Mr. Olsen moved to determine that Harlow Farms Estates is a DRI under Section 3 of the DRI Enabling Regulations. Elizabeth Taylor seconded the motion and it was approved by four members voting in favor and Tom Broidrick abstaining.

## FINDINGS

1. The proposed Harlow Farm Estates subdivision project consists of a 29 lot residential subdivision creating 25 buildable lots, located off of Norris and Old Plymouth Roads in North Sagamore (Bourne). According to the project proponent, the parcel to be subdivided consists of approximately 29.8 acres.
2. In the 1980's, the Harlow Farm Estates property was in common ownership with an adjacent parcel of approximately 30 acres. The Harlow Farm Estates property and the adjacent 30 acre parcel comprised a subdivision known as the Sagamore Park Village which was owned by the Bourne Realty Trust.
3. The Sagamore Park Village Subdivision, an approximately 60 acre subdivision, received definitive plan approval on February 3, 1983, and a special permit on November 25, 1980 from the Town of Bourne. On December 17, 1992 the Bourne Planning Board denied a request by the Bourne Realty Trust to extend and transfer ownership of the special permit. On appeal, the Land Court upheld the town's denial of the extension and transfer. As a result, the special permit is null and void.
4. In September of 1993 the Bourne Realty Trust terminated. In October of 1993 a petition was filed with the Probate Court to partition the property held by the Bourne Realty Trust. The Probate Court issued a judgment entitled "Amended Order for Partition of Land and Settlement of Claims" (the "Order"). The Order, issued on or after January of 1998, divided the 60 acre property into two halves, creating a new subdivision line on the property. The Order further required the exchange of deeds among the parties on or before February 6, 1998. Nowhere in the order is there any indication that the Order was entered retroactively.
5. Section 3(c) of the DRI Enabling Regulations requires DRI review of "any development which proposes to divide parcel(s) of land totaling 30 acres or more in common ownership on or after September 30, 1994 including assembly and recombination of lots. This threshold shall include any development activity in conjunction with any land division not otherwise exempted from review under Section 22(e) of the Cape Cod Commission Act.."
6. The Commission finds that the Probate Court's subdivision of the 60 acre parcel into two halves qualified for DRI review under Section 3(c) set forth above. Because the Probate Court did not refer the subdivision to the Commission for DRI review, the subcommittee will recommend that the Commission vote to review both halves of the Sagamore Park Village Subdivision (including the Harlow Farm Estates Subdivision) as a DRI under Section 12(h) of the Act at its next meeting.
7. In addition, the Commission finds that the Harlow Farm Estates Subdivision was in common ownership with land totaling 30 acres (the remainder of the Sagamore Park Village subdivision) on or after September 30, 1994 because the property did not come out of common ownership until sometime after February 6, 1998, when title passed pursuant to the Order for Partition. The removal of the land from common ownership occurred upon the passing of title at the Registry of Deeds, and not upon the filing of the suit to partition the property with the Probate Court.
8. The project does not qualify for an exemption under Section 22(e) of the Act because the covenants for the Sagamore Park Village subdivision were never released and because the proposed Harlow Farm Estates subdivision changes the lot lines created by the Sagamore Park Village subdivision.

**CONCLUSION:**

Based upon the findings above, the Commission concludes that the proposed Harlow Farm Estates Subdivision is subject to mandatory DRI review under Section 3(c) of the DRI Enabling Regulations, and that the proposed subdivision does not qualify for an exemption from DRI review under Section 22 of the Act. This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on November 4, 1998.

  
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Robert Deane, Subcommittee Chair

  
\_\_\_\_\_  
Date

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

Then personally appeared before me the above-named , Chairman of the Cape Cod Commission Subcommittee, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the Cape Cod Commission, before me,

  
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Notary Public  
My Commission Expires:

