



CAPE COD COMMISSION

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DATE: September 9, 1999

APPLICANT: Paul Daniels
71 Finlay Road
Orleans, MA 02653

PROJECT #: EX99017/TR99017

PROJECT: Daniels Construction & Demolition Debris Handling and
Transfer Facility
29 Giddiah Hill Road
Orleans, MA

RE: Development of Regional Impact Exemption
Cape Cod Commission Act, Section 12(k)

BOOK/PAGE: Book 10671, Page 1
Book 11553, Page 96

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby grants the application of Paul Daniels for a Development of Regional Impact (DRI) Exemption under Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for construction of a Construction and Demolition Debris Handling and Transfer Facility processing under 50 tons per day at 29 Giddiah Hill Road, Orleans, MA, on September 9, 1999.

PROJECT DESCRIPTION

The proposed project is located at 29 Giddiah Hill Road in the Commercial Business District in the Town of Orleans. The District is generally located between Route 6A and Route 28, near Exit 12 of the Mid-Cape Highway. It includes a variety of commercial and industrial uses such as marine construction, boat storage, excavation contractors, warehousing, automotive repair, leased commercial business space, and the Orleans Landfill. A performing arts school is also located within the Commercial Business District, approximately 550 feet from the proposed project site.



The proposed construction and demolition processing facility is on a 2.4 acre site which has been largely cleared of vegetation to allow for storage of heavy equipment and landscaping materials in conjunction with an existing landscaping and construction business. The site currently is used for a composting and chipping facility which chips stumps and brush into mulch and topsoil for retail sale and business use. The site is served by municipal water supply and is mapped as a "water quality impaired area" due to its location downgradient of the Orleans Landfill. The property is not within a Zone of Contribution to a public water supply.

The proposed facility is detailed in site plans dated 6-25-99, revised 7-29-99 and 8-10-99. As proposed, the facility would process less than 50 tons of construction and demolition debris per day, sorting out recyclable components such as wood and metal, and disposing of the remaining materials at licensed facilities. The proposed site plan includes a new gravel and paved access drive for container trucks to enter the facility, a 100 foot by 60 foot metal building at the rear of the property in which construction and demolition debris would be sorted and processed, a storage area for roll-off containers of demolition debris, and areas for storage of brush, mulch and chipping debris.

PROCEDURAL HISTORY

The town of Orleans Health Agent referred this project to the Cape Cod Commission on May 21, 1999 under Section 3(h) of the DRI Enabling Regulations. Duly noticed public hearings were held on the project on July 20, 1999 at the Orleans Town Hall and on September 9, 1999 at the Assembly of Delegates Chamber, First District Courthouse in Barnstable. A subcommittee meeting was held on the project on August 19, 1999 at the Cape Cod Commission offices.

Based upon testimony received at the public hearings, application materials submitted by the project proponent, written material submitted by all interested parties, and supporting technical information provided by staff, the subcommittee voted unanimously on August 19, 1999 to recommend to the full Commission that the proposed construction of a construction and demolition handling and transfer facility handling under 50 tons per day be granted a DRI Exemption. On September 9, 1999, a draft decision was presented to the full Commission. Also on September 9, 1999, the Commission voted to grant the applicant a DRI Exemption pursuant to Section 12(k) of the Act.

Materials Submitted for the Record:

Town Submittals:

- DRI referral form signed by Robert J. Canning, Health Agent, dated 5-21-99.
- Letter from David B. Ellis, DEP, to Orleans Board of Health re: Clarification of Site Suitability Report, dated May 6, 1999, received 7-20-99.
- Memo from Robert L. Bersin, Highway/Transfer Station Manager, to Glenn Cannon, dated August 3, 1999, with site plan showing intersection of Finlay Road and Giddiah Hill Road, plan dated December 18, 1998.

Submittals from the Applicant:

- DRI Exemption Application, with DRI Application and attachments, dated June 25, 1999, including cover letter from John M. O'Reilly, David C. Bennett, and Kara M. Shumway to Commission members. [Revised version received 7-13-99.]
- Site Suitability Report/ Application for Construction and Demolition Processing Facility, submitted to David Ellis, DEP, dated October 28, 1998, received 6-28-99.
- Letter from David C. Bennett to Thomas Cambereri re: supplemental water resources information, dated 7-12-99.
- Letter and attachments from John M. O'Reilly and David C. Bennett to Robert Mumford re: supplemental transportation information, dated 7-12-99.
- Letter and attachments from David C. Bennett to Cape Cod Commission re: issues raised at public hearing, dated 7-29-99.
- Revised site plan, dated 6-25-99, revised 7-29-99.
- Letter and attachments from John M. O'Reilly and David C. Bennett to Glenn Cannon, re: traffic safety issues - truck size and turning radius, dated 8-10-99.
- Letter from David C. Bennett to Dorr Fox, dated September 8, 1999.

Staff Reports and Correspondence:

- DRI Notification Letter, dated May 28, 1999.
- DRI Notification Letter with Revised Hearing Date, dated 6-11-99.
- Memo from Sarah Korjeff to David Bennett re: summary of May 12th meeting, dated 6-11-99.
- Memo from Sarah Korjeff to subcommittee members re: new DRI, dated 7-1-99.
- Staff Report, dated 7-15-99.
- Minutes of July 20, 1999 public hearing.
- Memo from Sarah Korjeff to subcommittee members re: additional submittals and meeting with applicant, dated 8-2-99.
- Turning Movement Counts, ReSource Recovery of Cape Cod, dated 8-6-99.
- Project Update Memo from Sarah Korjeff to subcommittee members, dated 8-19-99.
- Minutes of August 19, 1999 subcommittee meeting.

Submittals from Government Agencies:

- Project Notification Form signed by Massachusetts Historical Comm., dated 7-19-99.

Submittals from the Public:

- Letter from Chris and Judy Beardsly to CCC re: air and noise pollution and traffic concerns, dated 7-18-99.
- Letter from Douglas and Helen Pluciennik to CCC re: opposition to Daniels project, dated 7-18-99.
- Letter from Linae Macleod to CCC re: noise and pollution concerns, received 7-19-99.
- Letter from Robert P. Singer, et al, to CCC re: truck traffic, noise and air pollution concerns, dated 7-19-99.
- Letter from Helen Pluciennik to CCC re: health concerns, received 7-20-99.
- Letter from Mr & Mrs Paul Repp to CCC re: noise and traffic concerns, dated 7-20-99.
- Letter from John Giso to CCC re: noise, traffic & pollution concerns, received 7-20-99.
- Letter from Judy Wallace to CCC re: objection to Daniels proposal, dated 7-20-99.
- Letter from Edna Gallagher to CCC re: traffic safety concerns, dated 7-21-99.
- Letter from Augusta Fishel McKusick, Chair, Orleans Board of Health, to Sarah Korjeff, CCC re: support for Daniels project, dated 7-21-99.

- Letter from Douglas Pluciennik to CCC, with attachments, re: traffic, child safety and noncompliance concerns, dated 7-29-99.
- Letter from Douglas M. Parker, Academy of Performing Arts, to CCC, with attachments, re: regional impacts from Daniels facility, dated 8-2-99.
- Letter from Marc Norgeot to CCC re: support for Daniels project, dated 8-3-99.
- Letter from Richard Nickerson to Town of Orleans re: opposition to Daniels facility, dated 8-3-99.
- Letter from Laurette Lupton to CCC re: traffic safety concerns, dated 8-6-99.
- Letter from Jeffrey Norgoet, President, Anchor Marine Inc., re: support for recycling facility, dated 8-6-99.
- Letter from Lynn Vardakis to CCC re: traffic and noise concerns, received 8-9-99.
- Petition in support of the recycling facility, approximately 200 signatures, signed between 7-29-99 and 8-9-99.
- Letter from Jeffrey Karlson, President, The Building Company, Inc., re: support for facility, dated 8-10-99.
- Letter from Constance Alvarez to CCC re: traffic impact concerns, dated 8-16-99.
- Letter from Douglas Pluciennik to CCC re: traffic generation concerns, dated 8-19-99.
- Letter from Nancy & William Cook to CCC re: truck traffic concerns, received 8-19-99.
- Letter to the Cape Cod Commission from Douglas Parker, dated September 4, 1999.
- Letter to Cape Cod Commission from Thomas C. Joy, dated September 8, 1999.
- Letter from Mrs. Paul Repp.
- Letter from Douglas Pluciennik.
- Letter from Helen Pluciennik along with photographs of the vicinity.

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

TESTIMONY

At the public hearing of July 20, 1999:

Philip Magnuson, attorney for the applicant, described the proposed project and noted that it is currently under review by the Department of Environmental Protection (DEP). Following DEP review, he stated that the project would require local review by the Building Inspector and Site Plan Review. Mr. Magnuson stated that the proposed project involves redevelopment of an existing site with a mulching and wood processing operation. He described the processing and sorting of construction and demolition debris, and stated that all processing, sorting and grinding would occur indoors. He noted that fewer trucks would need to leave this area of the Cape because waste would be handled more efficiently. Mr. Magnuson stated that a 3-step inspection process would help prevent collection of hazardous materials and that a shut-off valve would be added to address stormwater. Mr. Magnuson concluded by stating that the project meets the Commission's DRI Exemption standard. David Bennett, Bennett & O'Reilly, consultant for the project, showed the proposed site plan and offered to answer questions.

Sarah Korjeff presented the staff report, reviewed the Commission's DRI thresholds and DRI Exemption standard. She stated that the project is consistent with Regional Policy

Plan (RPP) goals and performance standards regarding waste management and noted that there are few options on the Lower Cape for waste reduction and recycling. She stated that the DEP report on Site Suitability identifies conditions to address nuisance issues such as dust and noise. Regarding transportation, Ms. Korjeff noted that access to the site is achieved via several regional roadways and that transportation staff reviewed the project for potential impacts to public safety. The project will generate 44 trips per day, significantly lower than the Commission's mitigation threshold of 25 trips per hour. She stated that Commission water resource staff recommended a shut-off mechanism be incorporated into the stormwater drainage on site to allow isolation of a contaminant in case of an accidental spill. Ms. Korjeff noted that the project is not located within a Significant Natural Resource Area and that there are no wetlands within 100 feet of the site. No significant regional impacts with regard to natural resources and open space are expected. Ms. Korjeff concluded that unless other regional concerns are raised, the project would be eligible for a DRI Exemption.

Douglas Pluciennik, resident, read a list of concerns including inspections, monitoring, exclusion of certain materials, tonnage, air pollution, traffic, noise pollution, test wells, surface run-off, site suitability, and community character. Peter Coneen, resident, stated that this is a necessary facility, but the access road to the site is a problem. He described an existing non-conforming use as part of the problem. Ryan Conti stated that this is not an appropriate area for the proposed use because of the limited access and poor intersections. William Norton, resident, questioned how many trips from general contractors would be added to the trip generation estimate. Jerry Lupton, resident of Nickerson Road, stated that the town has not given enough buffer to the nearby residential area. Marjorie Fulcher stated concern about traffic and noted that the town recently bought land at one intersection to address traffic concerns. She stated she did not want to see traffic increases there but felt that stringent conditions from the Board of Health and Commission could address this. Bob Laudy stated concern regarding noise and noted that noise generated inside the metal building would be magnified unless well insulated.

Lynn Vardakis read a letter from Judy Wallace into the record. The letter recommended a regional impact study because of the project's proximity to Crystal Lake and cranberry bogs. Ms. Vardakis questioned the proposed operating times and asked whether an alternative access route could be developed. Mr. Daniels stated that project is planned to operate from 8 am to 5 pm, 6 days a week. Frances Panchuk stated concern regarding dust from the existing facility, unsafe conditions on Finlay Road, and its proximity to a residential area. Herb Lanworth, resident of Nickerson Road, stated that hours of operation should be better controlled. Mr. Coneen noted that the town's zoning for this area was in place prior to construction of the residences. Jane Cook read a letter from John Giso into the record, stating concerns regarding noise and dust, and recommending an air quality study. Skip Norgeot, abutter to the project, stated he has no objection to the plan and noted that without this business there would be more small trucks on the road. Helen Pluciennik, resident, stated the project would have impacts beyond direct abutters, noting health concerns for schools, residences and a convalescent home nearby. Ms. Vardakis questioned venting for the facility. Mr. Bennett clarified the project's trip generation and noted that town review and DEP review could address many of the issues raised.

At the subcommittee meeting of August 19, 1999:

Ms. Korjeff described the information submitted since the July 20, 1999 public hearing. She stated that the revised plan showing a shut-off valve in the stormwater system is consistent with the Regional Policy Plan (RPP) performance standards. She also stated that the proposed project meets the RPP goal of providing a recycling facility for construction and demolition debris without being inconsistent with other RPP concerns. Ms. Korjeff described a conversation with Chris Anderson, Project Reviewer at the Department of Environmental Protection (DEP), regarding the state's review process.

Glenn Cannon, Commission Transportation Engineer, described his review of the traffic generation estimates and a traffic count conducted at Cape Cod ReSource Recovery facility in Sandwich. Mr. Cannon also discussed his review of traffic safety issues, stating that the applicant is proposing to use a specific size container truck and that the proposed truck can safely negotiate the site access route. Ms. Korjeff concluded that staff believes the proposed project is consistent with RPP minimum performance standards and does not pose significant regional impacts to the values and purposes protected by the Act and is therefore eligible for a DRI exemption.

Douglas Pluciennik, resident, asked why the Commission's review does not include the Daniels' site on Finlay Road. Angela Muscat, owner of the Skaket Beach Motel, noted problems accessing her site and stated her belief that the existing traffic situation is dangerous. Doug Parker, Academy of Performing Arts, noted that the proposed project addresses a regional need and therefore should be considered a DRI. Helen Pluciennik, resident, noted traffic problems in the area and stated her belief that the project poses a regional impact on traffic. Lorette Lupton, resident, noted that the Academy School is a regional school and thus impacts should be considered regional. Mr. Pluciennik stated that 1,400 tons/year of construction and demolition materials are accepted at the Orleans landfill, an average of 4 tons/day. He stated that 18 to 37 vehicles per day deliver this material and thus the traffic generation for the proposed project may not be accurate. He also noted that traffic from the current facility is not addressed. Mr. Cannon restated that he is comfortable with the traffic generation estimates based on the traffic count he performed at the facility in Sandwich and on traffic studies conducted for other similar facilities. David Bennett, consultant for the applicant, noted that the Orleans landfill only accepts construction and demolition debris from trucks under 1-ton and therefore has a higher traffic generation. He also stated his belief that most construction and demolition debris generated in the town is not taken to the Orleans landfill. Judy Wallace, resident, stated concern regarding traffic safety at Finlay Road and Route 28.

At the Commission hearing on September 9, 1999:

Ken Brock and Dorr Fox presented the draft decision to the Commission. Philip Magnuson presented the proposed project on behalf of the applicant. Megan Pettit, Helen Pluciennik, Mrs. Paul Repp and Douglas Pluciennik spoke in opposition to the project. Charles Thompson spoke in favor of the project. The Commission voted in favor of approving an exemption for the project.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact (DRI) under Section 3(h) of the DRI Enabling Regulations as a proposed facility providing transportation to or from Barnstable County, including transfer stations.

FINDINGS

The Commission has considered the application of Paul Daniels for the Daniels Construction and Demolition Handling Facility in Orleans, MA, and based on consideration of such application, the information presented at the public hearing and submitted for the record, the Commission makes the following findings subject to Section 12(k) of the Act:

- 1.) The proposed project site is currently used for a composting and chipping operation and is completely cleared of vegetation. No significant natural resources were identified on the site.
- 2.) The proposed project requires review by the Department of Environmental Protection (DEP) Solid Waste Division. The applicant has completed the first phase of the DEP review process, including submission of a Site Suitability Report, and DEP has issued a Report on Site Suitability. In order for the applicant to go forward with the project, they must receive a Site Assignment from the Orleans Board of Health and must apply for an Approval to Construct from DEP.
- 3.) A Letter of Clarification regarding the Site Suitability Report from the Department of Environmental Protection indicates that the proposed construction and demolition handling facility must be combined with the existing composting and chipping operation as part of the DEP permit process.
- 4.) Both the Orleans Board of Health and the Department of Environmental Protection have the ability to monitor and enforce any conditions placed on the project if approved. The DEP Report on Site Suitability indicates that all construction and demolition debris processing must occur within a building, that a noise survey must be conducted, and that detailed plans must be developed to address potential nuisance conditions.
- 5.) The proposed facility would help to manage construction and demolition material on Cape Cod in a more environmentally sound and cost efficient manner. Currently, the only facility on Cape Cod with substantial processing of construction and demolition debris is ReSource Recovery of Cape Cod, located in Sandwich.
- 6.) The proposed facility is consistent with the goals and minimum performance standards in the waste management section of the Regional Policy Plan and is consistent with the Massachusetts Solid Waste Master Plan.
- 7.) The applicant has agreed to provide the Cape Cod Commission with data on an annual basis specifying the amount of materials received and from which towns, the amount recycled, and the amount landfilled, if the project is approved.

- 8.) The proposed project is expected to generate no more than 44 new daily trips, some of which would be large trucks and some of which would be small vehicles. Commission staff conducted a traffic count at a similar facility in Sandwich and found that the estimated traffic generation was consistent. The project's estimated new traffic generation is significantly less than the Cape Cod Commission's standard requiring mitigation (25 vehicle trips/hour).
- 9.) The applicant has demonstrated that there will be no degradation in public safety at the intersections along the access route, consistent with RPP minimum performance standard 4.1.1.7, as long as the wheel base of the applicant's trailer trucks does not exceed 24 feet and the overall length of the trailer does not exceed 28 feet. The proposed trucks are capable of carrying 75 to 80 cubic yard containers.
- 10.) The proposed project is located within an area designated as an impaired area because water quality under the site is compromised by the upgradient Orleans landfill and because of existing industrial land uses. The site is located within the marine recharge area to Town Cove.
- 11.) The proposed project, as shown on the revised site plan, includes a shut-off mechanism in the stormwater system that would isolate a contaminant in case of an accidental spill. The proposed design is consistent with RPP minimum performance standard 2.1.1.6 to address potential stormwater impacts.
- 12.) Massachusetts Historical Commission determined on 7-19-99 that the proposed project is unlikely to affect significant historic or archaeological resources.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

The location, character and environmental effects of the proposed construction of a construction and demolition handling and transfer facility handling under 50 tons per day will prevent its having any significant impacts on the values and purposes protected by the Act outside of the community of Orleans. This conclusion is supported by the findings regarding the lack of sensitive resources on the site and the proposed project's compliance with the RPP minimum performance standards.

The Commission hereby grants Paul Daniels a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act, for the construction of a construction and demolition handling and transfer facility handling under 50 tons per day at 29 Giddiah Hill Road, Orleans, consistent with this decision.

Thomas Broidrick
Thomas Broidrick, Chair

9/9/99
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this ^{9th} day of Sept 1999

Katharine L. Peters
Name, Notary Public

My commission expires:



