



# CAPE COD COMMISSION

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Date: September 2, 2004

To: Mark Boudreau, Esquire

From: Cape Cod Commission

RE: Development of Regional Impact,  
Sections 12 and 13, Cape Cod Commission Act

Applicant: Chris Wickstrom  
Harwich Concrete Block Company  
181 Queen Anne Road  
Harwich, MA 02645

Project: 532 Main St. Clear Cut  
Mashpee, MA

Project #: TR # 02026

Book/Page: Book 272, Page 49

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the DRI application of Chris Wickstrom, owner of the Harwich Concrete Block, Mashpee, MA pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the clear cutting and mitigation of approximately 2.7 acres at 532 Main Street, Mashpee, MA (Project). The decision is rendered pursuant to a vote of the Commission on September 2, 2004.

### PROJECT DESCRIPTION

The site of the approximately 2.7-acre clear cut is on an 18-acre parcel at 532 Main Street (Route 130) in Mashpee, MA. The site is currently a Significant Natural Resource Area (SNRA) as mapped by the Regional Policy Plan (RPP) containing undisturbed, unfragmented forest, except for the cleared area. The clear cutting occurred in April, 2002 by Harwich Concrete Block Company, when the property was owned by John Otis Drew. Subsequently, Harwich Concrete Block Co. purchased the property. Following the clear cutting, the Applicant continued to do further earthwork such as topsoil removal and digging, and grubbing (removing stumps) of a



large area toward the center of the clear cut. The Applicant plans to utilize the cleared area for truck turning space, and storage of vehicles and equipment related to the existing concrete block business on adjacent, leased property. The Applicant indicated there is potential for future development on the site, but nothing is proposed at this time. The Applicant has proposed mitigation in the form of permanent protection of 4 acres of land on site, and the revegetation of the buffer to Route 130.

The site is zoned commercial C-3, which allows “covered wholesale and business storage”, but does not allow open commercial storage of building materials. According to the Mashpee Town Planner, the parking and vehicle storage use proposed by Harwich Concrete Block is allowed in the C-3 Zone.

The property abuts Nicoletta’s Way to the south, existing commercial businesses along Echo Road to the north, open space to the west, and Route 130 and residences to the east.

### **PROCEDURAL HISTORY**

The Project was referred to the Commission by the Mashpee Building Department on August 22, 2002. The Commission received the referral on August 22, 2002. A procedural hearing was opened on October 17, 2002 by a hearing officer, and continued. The hearing was closed by a hearing officer on January 13, 2003. Extensions for project review until September 26, 2003, and then to September 26, 2004 were granted by the Regulatory Committee on March 10, 2003 and September 22, 2003, respectively. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on August 12, 2004 at the Mashpee Town Hall. The public hearing was continued to September 2, 2004 and the record was left open for submission of written materials.

The subcommittee held a public meeting on August 26, 2004. At that meeting, the subcommittee voted unanimously to recommend to the full Commission that the Project be approved as a DRI, subject to conditions. A final public hearing was held before the full Commission on September 2, 2004. At this hearing, the Commission voted unanimously to approve the Project as a DRI, subject to conditions.

### **MATERIALS SUBMITTED FOR THE RECORD**

#### ***Materials submitted by the Town:***

- Letter from T. Fudala dated September 1, 2004
- Email from T. Fudala dated August 13, 2004
- Email from Tom Fudala, Town Planner, dated August 13, 2004
- Letter from Russell Wheeler to Harwich Concrete Block dated July 21, 2004
- DRI Referral via fax August 22, 2002 from R. Wheeler
- Copy of Mashpee Design Review Committee meeting minutes of July 24, 2002 meeting, via fax August 21, 2002 to Dorr Fox.
- Letter from Russell Wheeler, Mashpee Building Inspector, to Harwich Concrete Block dated May 15, 2002

***Materials submitted by the Applicant:***

- Letter from M. Boudreau dated July 26, 2004 and site sketch plan from Coastal Engineering dated July 3, 2003 with revisions dated July 21, 2004
- DRI Application, quit claim deed, letter from Harry Johnson Tree Farm to Chris Wickstrom, dated July 22, 2004
- Letter dated June 23, 2004 from J. Costedio, surveyor, to M. Boudreau
- Letter dated May 28, 2004 and sketch plan from Jack Costedio, surveyor, to C. Wickstrom
- Site photographs, Tree Restoration Plan dated January 22, 2003, and tree species list from C. Wickstrom to CCC staff on July 25, 2003
- Letter from J. McAuliffe to M. Twombly dated January 13, 2003
- Letter from John McAuliffe, Attorney for Chris Wickstrom, to Martha Twombly dated June 7, 2002

***Materials submitted by Interested Parties:***

- Copy of a letter from S. Heimberg to Mashpee Board of Selectmen dated August 26, 2004
- Letter from S. Heimberg dated August 12, 2004
- Letter from S. Heimberg dated August 9, 2004
- Letter and photographs from Arden and Steven Cadrin dated August 9, 2004
- Letter from S. Heimberg to M. Twombly dated July 27, 2004
- Letter from Sidney Heimberg to Jamie Reagan, Chair of the Mashpee ZBA, dated July 27, 2004
- Email from Arden Cadrin to M. Twombly dated July 25, 2002

***Materials submitted by Cape Cod Commission:***

- Draft Hearing Minutes from August 12, 2004 public hearing, dated August 20, 2004
- Staff Report dated August 4, 2004
- Letter from M. Twombly to M. Boudreau dated July 14, 2002
- Memo from M. Twombly to Tom Fudala, Mashpee Town Planner and R. Wheeler, via fax, dated July 8, 2004
- Letter from M. Twombly to M. Boudreau dated July 6, 2004
- Fax from M. Twombly to Mark Boudreau, attorney for C. Wickstrom, dated August 27, 2003
- Letter from M. Twombly to C. Wickstrom dated July 17, 2003
- Memo from M. Twombly to subcommittee dated February 28, 2003
- Letter from M. Twombly to C. Wickstrom dated January 6, 2003
- Letter from M. Twombly to C. Wickstrom dated October 17, 2002
- Letter from M. Twombly to Russell Wheeler, Mashpee Building Inspector, dated August 21, 2002
- Letter from M. Twombly to John McAuliffe, attorney for C. Wickstrom, dated July 12, 2002
- Letter from Martha Twombly to Chris Wickstrom dated May 10, 2002
- Letter from Dorr Fox to John Drew, owner of 532 Main St., dated April 25, 2002
- Digital photos of the clear cut submitted by Tana Watt, CCC planner, to Dorr Fox in April 2002

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

## TESTIMONY

### *Hearing #1 – August 12, 2004*

Mr. Boudreau, attorney for the Applicant, stated that Chris Wickstrom is owner of the adjacent Harwich Concrete Block (HCB) business and that the subject property was under purchase agreement since 2001 with owner John Drew. While under contract, clearing was done on the property to create truck-turning space for the existing business. As mitigation for the clearing Mr. Wickstrom proposed to permanently protect four acres of open space on the site, and to revegetate the 50' buffer along Route 130. He said there are no current development plans but future plans may include the subdivision and sale of land to adjacent businesses along Echo Road, and/or be used for the existing HCB. He stated that any future development would go through local or Commission review.

Commission staff stated that the open space set-aside of four acres was acceptable as mitigation, and recommended a wider buffer along Route 130. Staff explained that clear cutting results in increased nitrogen loading to water resources and recommended a cash contribution for mitigation.

Mr. Broidrick raised questions about project segmentation, about uses permitted by local zoning, and about the lease term on the adjacent property. Mr. Boudreau answered that C-3 zoning on the subject parcel allowed a covered building, but did not allow outdoor storage of building materials, and that the lease for the existing business was 6 or 7 years.

### Public Testimony

Sidney Heimberg expressed concerns about impacts to the Mashpee Wakeby Pond and the lack of consideration Mr. Wickstrom has shown to residents regarding dust, wind, stormwater, and truck traffic. He stated that open space protection was needed along Route 130, and that access should be from Nicoletta's Way.

Henry DeRocher wanted the cleared area to be revegetated with large, mature trees.

Steve Cadrin supported a 200' buffer along Route 130, and suggested a bond be levied to insure that revegetation is completed.

Barnet Berliner recommended that Mr. Wickstrom replace what was cleared rather than making a monetary contribution as mitigation.

Mr. Boudreau said the Applicant needed at least an 80' opening for safe movement of his large trucks into the parcel, leaving a maximum buffer to Route 130 of no more than 70'.

Ms. Kadar asked about the four-acre open space parcel isolated at the foot of the property. Ms. McElroy explained that it maintains the integrity of existing wildlife habitat with adjacent parcels.

Mr. Broidrick asked about stormwater management and Mr. Cole asked about site plan review for the cleared area. Mr. Boudreau answered that the Applicant would still have to go through local review for any type of development, and satisfy stormwater and parking requirements for the town.

Ms. Taylor suggested at least a 70' buffer to Route 130 be required.

Ken Clinton said that land along Route 130 should be preserved rather than land at the back of the property.

Mr. Fox clarified the Commission's scope regarding the clear cutting threshold, the DRI review process, and the setting of appropriate mitigation measures.

#### **JURISDICTION**

The Project qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations for "site alterations or site disturbance greater than 2 acres, including but not limited to clear cutting, grading, and clearing land, unless such alteration or disturbance is conducted in conjunction with a building permit for a structure or a DRI approval or in conjunction with a municipal project."

#### **FINDINGS**

The Commission has considered the application of Chris Wickstrom regarding the clear cutting, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

#### **General Findings:**

- G1.** The Project consists of clear cutting of, and mitigation for, approximately 2.7 acres, on a portion of an 18-acre parcel, located between Echo Road and Nicoletta's Way on Route 130 in Mashpee, MA. This includes earthwork and grubbing on approximately 1.3 acres within the 2.7 acre clear cut. This Project approval anticipates the future use of 1.9 acres within the interior of the 2.7 acre cleared area for future development (where site restoration is not being required), and requires the revegetation of buffers to Rt. 130 and Nicoletta's Way.
- G2.** The Mashpee zoning bylaw requires a minimum 50-foot buffer between proposed development and Route 130. The clear cutting included the clearing of the required 50' buffer. The town has notified the property owner of this violation, and has been consulted as part of this review to rectify the action.

- G3.** The Applicant cleared the land without a valid building permit for a structure or DRI approval. The land clearing was not completed in conjunction with a municipal project.
- G4.** The Project is being reviewed under the 2002 RPP.

**Water Resource Findings:**

- WR1.** The Applicant cleared approximately 2.7 acres of unfragmented forest and removed approximately 1.3 acres of topsoil within the 2.7 acres at the site, a location in a Potential Public Water Supply Area and in the Mashpee River watershed. These regional resources are regulated under MPS 2.1.1.2.C and 2.1.1.2.F of the RPP, respectively.
- WR2.** The nitrogen load to the Mashpee River watershed exceeds the estuary's critical nitrogen load. Therefore, MPS 2.1.1.2.C.2 applies to the Project, requiring that no additional nitrogen load be permitted to the Mashpee River watershed by Developments of Regional Impact.
- WR3.** Based on Technical Bulletin 91-001 methodology, the clear cutting and soil removal results in a 6.5 kg-N/yr increase in nitrogen load to the Mashpee River watershed. An equivalent amount of nitrogen load will need to be eliminated from the Mashpee River watershed such that the project complies with MPS 2.1.1.2.C.2. The estimated cost to mitigate 6.5 kg-N/yr of nitrogen in the Mashpee River watershed is \$10,125. This contribution may be reduced to \$8,750 in conjunction with the revegetation of the 100-foot buffer along the property's entire frontage on Route 130 in accordance with Conditions CC1 and CC2.
- WR4.** The clear cutting and soil removal meets the 1-ppm-N nitrogen-loading limit applicable to Potential Public Water Supply Areas.
- WR5.** Based on a site visit conducted by Cape Cod Commission staff, the clear cutting and soil removal does not appear to result in the potential for stormwater runoff to offsite areas from areas where top soil has been removed.

**Natural Resource/Open Space Findings:**

- NR1.** Based on staff and town analysis, the area of clear cutting is approximately 2.7 acres on the site. This 2.7 acres included approximately 1.3 acres of earthwork and grubbing in a central portion of the clear cut. According to the plan, 1.9 acres will remain cleared (the development area), and it is upon this area that the open space requirement is based. The remaining cleared area located within the buffers to the site shall be mitigated through the revegetation and permanent protection of these buffers as required in Condition CC3.
- NR2.** MPS 2.4.1.2 requires that the clearing of vegetation shall be minimized. The clearing that occurred at 532 Main was executed without regard to minimizing vegetation removal.
- NR3.** As the site is located in a Significant Natural Resource Area due to the presence of unfragmented forest and a potential public water supply protection area, the Applicant must provide an area twice the development area of the clear cut to comply with the RPP

open space requirement, MPS 2.5.1.3. Harwich Concrete Block has agreed to donate a 4-acre lot at the rear of the site to the Town of Mashpee to comply with the open space standard.

**NR4.** As the project site is also located in the Mashpee National Wildlife Refuge, and was previously identified as potential open space to be acquired by the town, the location of the open space at the rear of the lot, in proximity to both existing protected open space and the Otis airfields, is appropriate for wildlife protection purposes.

### **Community Character Findings:**

**CC1.** The clear cutting action triggered DRI review as it completely removed the naturally vegetated buffer to Route 130, a regional roadway, where local and regional regulations require the protection of natural landscapes as buffers between roadways and any development. Revegetation of the site as described in Conditions CC1 and CC2 will help restore the vegetated buffer to this regional roadway.

**CC2.** MPS 6.2.9 requires that “all development shall implement a landscape plan that addresses the functional aspects of landscaping, such as drainage, erosion prevention, wildlife enhancement, screening and buffering, wind barriers, provision for shade, energy conservation, sound absorption, dust abatement, and reduction of glare.” Adjacent residential areas to the clear cutting have been experiencing these impacts based on testimony received at the public hearing. Implementation of a buffer restoration plan will mitigate these impacts to neighboring residential areas.

**CC3.** There is currently robust regrowth of oak, pitch pine, tupelo, and native understory vegetation in the clear cut area between the excavated area and Route 130 and along the northern and southern property lines. These areas, if left undisturbed and supplemented with an earthen berm and additional planting of the berm, will provide an adequate buffer between any future development of the site and the roadway, as well as other adjacent uses.

### **CONCLUSION**

Based on the findings above, the Commission hereby concludes:

1. With mitigation measures, the Project will be consistent with the RPP.
2. With mitigation, the Project will be consistent with local zoning and the Mashpee Local Comprehensive Plan, based on consultation with the Mashpee town planner.
3. The proposed Project is not within a District of Critical Planning Concern (DCPC).
4. The benefits outlined in Findings WR3, NR3, CC1, CC2, and CC3 outweigh the detriments of leaving the site in its currently disturbed and degraded condition.

The Cape Cod Commission hereby approves the 532 Main Street clear cutting and mitigation as a DRI under Sections 12 and 13 of the Act, provided the following Conditions are met.

### CONDITIONS

#### General Conditions:

- G1.** This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.
- G2.** Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.
- G3.** The Applicant shall obtain all state and local permits for the proposed project.
- G4.** No further development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- G5.** Prior to issuance of a building permit for any development within the required buffers and the cleared area of the Project, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and/or information submitted as part of the DRI review. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed subject to Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 5/30/02 and as amended from time to time.
- G6.** A Certificate of Compliance from the Cape Cod Commission shall be obtained by the Applicant prior to the sale or conveyance of any lot, or prior to the issuance of any local permits or any development as defined by the Cape Cod Commission Act, within the 18 acre property as described on the plans entitled "Site Sketch Plan, prepared by Coastal Engineering, Inc, dated July 3, 2003 and revised July 21, 2004" or on a subsequent Definitive Plan as approved and endorsed by the Town of Mashpee Planning Board. The restoration landscaping as described under Conditions CC1, CC2, and CC3 and the division of land for proposed open space as described in Condition NR1 are exempt from this Condition.
- G7.** Prior to a Certificate of Compliance the Applicant shall submit a revised site plan showing buffers, open space, and area to be retained as cleared area, to be reviewed and approved by Commission staff.
- G8.** The Applicant shall be responsible for providing proof of recording of the Decision prior to issuance of a Certificate of Compliance.
- G9.** The Applicant shall provide Commission staff with at least thirty (30) days notice of the

intent to seek a Certificate of Compliance. Such notification shall include a list of key contact(s) for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the Applicant in writing of any deficiencies and corrections needed. The Applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The Applicant agrees to allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.

**Water Resources Conditions:**

**WR1.** Prior to the issuance of a Certificate of Compliance the Applicant shall make a monetary contribution in the amount of \$8,750, payable to Barnstable County, to be used toward nitrogen mitigation in the Mashpee River watershed. The contribution shall be disbursed at the direction of the Commission's Executive Director.

**Natural Resources/Open Space Conditions:**

**NR1.** Prior to a Certificate of Compliance, the Applicant shall donate 4 acres as shown on the plan from Coastal Engineering dated July 3, 2003 and revised July 21, 2004 to the Town of Mashpee under the care, custody and control of the Conservation Commission for conservation and open space purposes. The deed and plan shall be approved by Commission Counsel prior to recording at the registry of deeds.

**Community Character Conditions:**

**CC1.** The Applicant shall provide permanent vegetated buffers on the site as follows:

- a). Buffer from Route 130 – 100' wide from the property line abutting Route 130, consisting of areas containing existing second growth vegetation supplemented with evergreen trees, and the remainder of the buffer consisting of a mixture of evergreen and deciduous trees with understory plantings to form a dense screen from the roadway. All planting shall be completed as described in condition CC2 below;
- b). Buffer from properties to the south (Nicolettas Way) – 30' wide from the southern property line and approximately 350' along Nicoletta's Way as shown on the plan entitled "Site Sketch Plan, prepared by Coastal Engineering, Inc, dated July 3, 2003 and revised July 21, 2004", consisting of existing second growth vegetation supplemented with evergreen trees to be planted as described in condition CC2 below;
- c). The applicant may seek approval for one (1) curb cut from either Route 130 or Nicoletta's Way within the 30' x 350' buffer. The location and width of the curb cut shall be approved by the Commission's Regulatory Committee.

**CC2.** Prior to issuance of a Certificate of Compliance, the Applicant shall submit a buffer restoration plan for the areas described in condition #CC1 for approval by Commission staff and the Mashpee Design Review Committee. Such restoration plan shall include the following:

### Areas containing existing second growth vegetation

- No mechanical equipment shall be used in this area during installation in order to protect existing vegetation;
- Existing trees shall not be removed or damaged during installation;
- Planting locations shall be staked/flagged in the field prior to installation and approved by Commission staff and a representative from the Mashpee Design Review Committee;
- All planting holes shall be dug by hand;
- Trees shall be transported to planting locations by a ball cart;
- 6 – 8' evergreen trees shall be planted at a spacing of 15 – 20' on-center;
- Plan shall specify an irrigation system and program to insure the survival of all plantings.

### Areas of new planting

- Plan shall include a 6' high and 30' wide earthen berm with a maximum 3:1 slope, starting from a point taken a minimum of 65' west of the property line (from Route 130), and extending 50' from the northern property line, to a point no closer than 50' from Nicoletta's Way.
- Plan shall consist of 60% evergreen and 40% deciduous trees with understory plantings to form a dense screen;
- 6 – 8' evergreen trees shall be planted at a spacing of 15 – 20' on-center;
- Deciduous trees shall be a minimum of 3" caliper;
- Plan shall specify an irrigation system and program to insure the survival of all plantings.

For all areas, planting shall take place only between September 1, 2004 – November 1, 2004 or April 1 – June 15, 2005.

Prior to issuance of a Certificate of Compliance, the applicant shall implement the above restoration plan. The Applicant agrees to allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of determining whether this condition has been met.

- CC3.** Prior to issuance of a Certificate of Compliance the applicant shall record a permanent open space deed restriction to maintain the buffer areas as specified in Condition CC1 of this decision. The deed restriction may allow for one (1) driveway access to the site from either Route 130 or Nicoletta's Way within the 30' x 350' buffer, upon approval by the Mashpee Planning Board.
- CC4.** All plantings installed as a result of this decision shall be subject to a maintenance agreement to ensure their survival. Prior to issuance of a Certificate of Compliance from the Commission, the Applicant shall provide a fully executed landscape maintenance contract for three (3) full growing seasons based on guidelines provided by Commission staff.

- CC5.** Prior to issuance of a Certificate of Compliance, the Applicant shall execute an escrow agreement of form and content satisfactory to Commission counsel to ensure the survival of all buffer restoration plantings. The amount of the escrow agreement shall equal 150% of the cost of the restoration planting, including labor and materials, with the amount approved by Commission staff. The check shall be payable to Barnstable County. Unexpended escrow funds shall be returned to the Applicant, with interest, upon a site inspection completed after three (3) full growing seasons. The Applicant agrees to allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of determining whether this condition has been met.
- CC6.** Plant materials specified by the landscape restoration plan prepared in accordance with Condition CC2 may be substituted with prior written approval of Commission staff.

The Cape Cod Commission hereby approves with conditions the application of Chris Wickstrom as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended, for clear cutting and mitigation of that clear cutting located at 532 Main Street in Mashpee, MA.

*Alan Platt*

~~David Ansel, Chair~~ ALAN PLATT, VICE  
CHAIR

9/2/04  
Date

Commonwealth of Massachusetts  
County of Barnstable

On this 2nd day of September, 2004, before me, the undersigned notary public, personally appeared ~~David Ansel~~ ALAN PLATT, proved to me through satisfactory evidence of identification, which were personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Dorr Steven Fox*

Notary Public  
Commonwealth of Massachusetts

My Commission Expires: \_\_\_\_\_

