



CAPE COD COMMISSION

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DATE: January 20, 2004

TO: Cape Cod Aggregates
In care of Attorney Patrick M. Butler
Nutter, McClennen & Fish
1513 Iyannough Road
P. O. Box 1630
Hyannis, MA 02601-1630

RE: Modification of an Approved DRI Decision

APPLICANT: Cape Cod Aggregates Corporation

PROJECT: Modification of Development of Regional Impact decision
TR-96020

LOCUS: Book 5041 Page 284
Book 6656 Page 147
Book 10212 Page 145

MODIFICATION TO DEVELOPMENT OF REGIONAL IMPACT DECISION

The Development of Regional Impact (DRI) decision dated May 21, 1998 issued by the Cape Cod Commission approved, with conditions, the application of Cape Cod Aggregates for a subdivision of approximately 108 acres of land off of Kidds Hill Road in Barnstable into eight lots and one ANR lot.

On October 1, 2003, the Cape Cod Commission received a letter from Attorney Butler of Nutter, McClennen & Fish requesting that the Cape Cod Aggregates DRI decision be modified to allow condition NR/OS-1 satisfied through deeding land to the Town of Barnstable. Attorney Butler's letter also requested a modification to condition HAZ-1 of the decision concerning the amount of hazardous materials attributable to Aggregates' operation in relation to an intent by a separate applicant to remove a 10,000 gallon underground diesel fuel tank on the site.

The Commission's Regulatory Committee considered the requests to modify the Cape Cod Aggregates decision on November 17, 2003. At this meeting, the Regulatory Committee voted to allow a modification of finding NR/OS-4 and conditions NR/OS-1 and NR/OS-2. The Committee also voted to make changes to the DRI decision concerning removal the underground diesel fuel tank. The Regulatory Committee voted



that these changes were a minor modification #2 under Section 7 of the *Administrative Regulations* (as revised).

On January 20, 2004, the Regulatory Committee also considered a request by Attorney Butler to adjust the modification made to open space and natural resources finding NR/OS-4 and conditions NR/OS-1 and NR/OS-2 by the Committee's November 17, 2003 vote. The adjustment requested was to allow the areas of a driveway and drainage easement to be offset through a cash contribution or additional land. The Regulatory Committee voted that these adjustments to the already approved modification were a minor modification #2 under Section 7 of the *Administrative Regulations* (as revised).

Modification to Cape Cod Aggregates Decision

In accordance with the November 17, 2003 and January 20, 2004 votes of the Regulatory Committee, the following modifications are made to the May 21, 1998 Cape Cod Aggregates DRI decision. No other changes or modifications to the Cape Cod Aggregates DRI decision are made or authorized.

Open Space/Natural Resources

Finding NR/OS-4 as modified:

Paragraph (a) is struck and replaced with the following paragraph:

"Donation to the Town of Barnstable, under the care, custody and control of its Conservation Commission, of the 21.66 acres of land along Phinney's Lane consisting of 17 residentially-zoned lots. Most of this area is currently wooded; a portion is not wooded and will be restored. The permanent protection of this 21.66 acre area is important for buffering and to protect the water resources, open space, and recreation values of Hathaway's Pond and its associated Conservation Area; and"

Conditions NR/OS-1 and NR/OS-2 are modified as follows:

All language in both conditions is struck, and replaced with the following new condition NR/OS-1:

"NR/OS-1. Prior to the issuance of a Certificate of Compliance, and prior to the sale of any lot and the application for any building permit and /or foundation permit from the Town of Barnstable for any lot as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board, the applicant shall submit a final plan depicting the 21.66 acres of off-site open space and a proposed quitclaim deed for review and approval by Commission Counsel. The area on the plan shall encompass the area as generally shown on the map

submitted with a letter from Nutter, McClennen & Fish dated August 22, 1997, and may provide for a driveway and drainage easement. The quitclaim deed shall transfer title to the property to the Town of Barnstable under the care, custody and control of its Conservation Commission. Future activities within this area shall be consistent with open space preservation for buffering and protecting the water quality of Hathaway's Pond. Such submission and approval by Commission Counsel of the quitclaim deed and plan shall occur prior to recording at the Registry of Deeds and prior to issuance of a Certificate of Compliance.

Prior to the issuance of a Certificate of Compliance, Cape Cod Aggregates shall provide a cash contribution toward the purchase of open space in the Town of Barnstable in the amount of \$17,419 in lieu of the land dedicated for driveway access and drainage easement for the Cape Cod Aggregates property. The cash contribution is based on a per acre price of \$51,000 (based on recent conservation sales in Barnstable) multiplied by the area of the drainage easement plus the area of a 20 foot wide driveway easement. Said cash contribution shall be made to Barnstable County Treasurer to be held in escrow by the Cape Cod Commission until such time as the Town of Barnstable requests these funds toward purchase of a suitable open space parcel in the Town. In lieu of the cash contribution, the applicant may provide additional open space in the amount of 14,888 square feet on an adjacent lot."

Hazardous Materials/Wastes

Finding HAZ-5 as modified:

"HAZ-5. According to letters from Nutter, McClennen & Fish dated January 26, 1998, February 25, 1998, May 5, 1998 and a letter from Bardon Trimount dated May 5, 1998, Cape Cod Aggregates/Hyannis Sand & Gravel and Bardon Trimount have, **in 1998, had** the following types and amounts of hazardous material on Lots 5 or 9 at any one time:

Vehicle oils (10, 15, 30, 40 weights), grease, lubricants 650 gallons

Diesel fuel 10,000 gallon above-ground tank
~~10,000-gallon underground tank~~
 (underground tank removed - see below)

Gasoline 2,500 gallon underground tank

Welding gases three tanks, total, of oxygen and

Liquid asphalt storage 20,000 gallon above-ground tank

Dryden Oil Company, Inc. provides the new oil/grease/lubricant delivery. The applicant has submitted Material Safety Data Sheets from Dryden for the vehicle oils, greases and lubricants. Welding gases are provided by a local vendor.

In addition to these hazardous materials, Cape Cod Aggregates/Hyannis Sand & Gravel has had 850 gallons of used oil on Lots 5 and 9 at any one time. Some of this oil is to supply a used oil fired space heater. According to letters from Nutter, McClennen & Fish dated January 26, 1998, February 25, 1998 and May 5, 1998, what is not burned in the space heater is currently hauled off-site by United Industrial Services, a DEP-licensed hazardous waste hauler. Cape Cod Aggregates/Hyannis Sand & Gravel is also registered with DEP as a small quantity generator of hazardous waste. Re-use of used oil in a properly-permitted used-oil fired space heater is in conformance with Minimum Performance Standard 4.2.2.1. According to a letter from Bardon Trimount dated May 5, 1998, maintenance of the asphalt plant is limited to greasing of internal parts, which produces no waste, and there is no generation of including no used oil.

As a result of a subsequent DRI decision for another project, the BJ's project (TR-20031), Cape Cod Aggregates agreed to remove the 10,000 gallon underground diesel fuel tank described above."

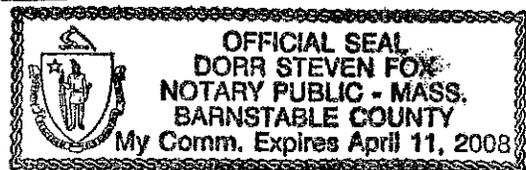
David J. Ansel
David J. Ansel
Chair, Regulatory Committee

1/20/04
Date

**Commonwealth of Massachusetts
County of Barnstable**

On this 20th day of January, 2008, before me personally appeared David Ansel, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Dorr Steven Fox
Notary
Commonwealth of Massachusetts



My Commission Expires: