

CAPE COD COMMISSION

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Date: August 4, 2005

To: Attorney Andrew Singer
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26 Upper County Road
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From: Cape Cod Commission
Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23
Applicant: Sandwich Old Harbor, LLC
205 Worcester Court
Falmouth, MA 02540

Project #: HDEX 05006

Project: Olde Harbor Estates/Sandwich
4-6 Dewey Avenue, Sandwich, MA

Book/Page: Book 15516 Page 130 Lot/Parcel: Lot 74, Parcel 64
Book 15516 Page 122 Lot 74, Parcel 65

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Sandwich Old Harbor, LLC for a Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Olde Harbor Estates/Sandwich project. The decision is rendered pursuant to a vote of the Commission on August 4, 2005.

PROJECT DESCRIPTION

The proposed project involves the subdivision of approximately 84.3 acres of land in Sandwich into seven residential lots and several open space lots for the construction of seven single-family residences. The applicant proposes to demolish an existing house and detached garage off Dewey Avenue and redevelop that portion of the property with a new single-family house.



The project site does not lie within an existing Wellhead Protection District or a Potential Public Water Supply Area. Although portions of the site are located in a significant natural resource area (SNRA) due to the presence of mapped estimated rare species habitat and salt marsh wetland, the majority, if not all, of the proposed developed area is located outside of SNRA. The property is located in a Marine Water Recharge area that drains to Sandwich Harbor.

The project site is located within the Old Kings Highway Historic District and is located adjacent to the Jarvesville section of Sandwich, which dates to the early 1800's and the opening of the Sandwich Glass Works and which is eligible for listing on the National Register. The Massachusetts Historical Commission has determined that the project is unlikely to affect significant historic or archaeological resources.

PROCEDURAL HISTORY

On February 28, 2005, the Commission received a mandatory Development of Regional Impact (DRI) referral from the Sandwich Planning Board. The Commission received a hardship exemption application on March 8, 2005 requesting relief from the Commission's DRI application requirement for a completed traffic study and associated mitigation. The application was deemed complete as of March 22, 2005 for the purposes of scheduling a public hearing.

A public hearing was held on April 25, 2005 at the Sandwich Town offices on Jan Sebastian Drive, Sandwich to consider the Hardship Exemption request and the DRI for the project. The hearing was continued to June 9, 2005, at which time it was continued again to July 7, 2005, at which time it was continued again to July 21, 2005, when the hearing was closed. On June 9, 2005, the subcommittee met to discuss the project and voted unanimously to recommend approval of the Hardship Exemption, with appropriate conditions, to the full Commission, and directed staff to prepare a draft decision.

On July 12, 2005, the Subcommittee met to discuss the draft decision, and voted to forward it as amended to the full Commission for approval on July 21, 2005.

On July 21, 2005, the Cape Cod Commission closed the public hearing.

On August 4, 2005, the Cape Cod Commission held a public hearing opening the 60-day decision period and voted to approve the project with conditions as contained in the draft decision.

MATERIALS SUBMITTED FOR THE RECORD

From the Proponent:

1. Natural Resources Inventory prepared by Vaccaro Environmental Consulting, dated November 2003.
2. Drainage Calculations and Supplemental Data prepared by David C. Thulin, PE PLS, dated December 1, 2004.
3. Site Plans dated 10/12/04.
4. DRI Application, dated March 3, 2005.
5. DRI Hardship Exemption Application, dated March 8, 2005.

6. Letter from Atty. Andrew L. Singer, Law Office of Singer & Singer, LLC, to Tana Watt, CCC, dated April 12, 2005.
7. Letter from Atty. Andrew L. Singer, Law Office of Singer & Singer, LLC, to Tana Watt, CCC, dated May 23, 2005 containing revised site plans, landscape plan, and invasive species management plan.
8. Site Plans dated 10/12/04, revised 5/17/05.
9. E-mail correspondence detailing revised open space calculations between William D. O'Brien, Esq., Law Office of Singer & Singer, and Heather McElroy, CCC, dated June 22, 2005.
10. New England Blazing Star & Invasive Species Management Plan, revised June 27, 2005.
11. Letter and attachments from Daniel Solien, Horiuchi Solien, Inc., to Tana Watt, CCC, dated July 7, 2005.
12. E-mail correspondence and attachments from Daniel Solien, Horiuchi Solien, Inc., to Tana Watt, CCC dated July 8, 2005.
13. Revised site plans prepared by David C. Thulin, PE, PLS, dated October 12, 2004, last revised 7/18/05, received July 27, 2005.
14. E-mail with attachments from Kelly Durfee Cardoza, Avalon Consulting, to Tana Watt, CCC dated August 4, 2005.

From state/local officials:

1. Mandatory Referral from the Sandwich Planning Board, dated February 28, 2005, received February 28, 2005.
2. Letter from Brona Simon, Massachusetts Historical Commission to Sarah Korjeff, CCC, dated February 23, 2005, received February 28, 2005.
3. Letter from Kaethe O. Maguire, Sandwich Historical Commission to Roslyn Garfield, CCC, dated May 9, 2005, received May 24, 2005.
4. Fax of Letter from Dave DeConto, Sandwich Conservation Commission Wetland Consultant, dated June 1, 2005, received June 7, 2005.
5. Letter from Brona Simon, Massachusetts Historical Commission, to Kelly Durfee Cardoza dated June 2, 2005, received June 6, 2005.
6. E-mail from Jonathan Regosin, NHESP, to Heather McElroy, CCC, dated August 4, 2005.

From the public: none

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 the proceedings are incorporated into the record by reference.

TESTIMONY

Note: see minutes in file for complete public hearing and subcommittee meeting proceedings.

At the April 25, 2005 Public Hearing, the Subcommittee heard oral testimony from the following individuals:

1. Attorney Andrew Singer, Law Office of Singer & Singer LLC, described the proposed project as a subdivision of land for 7 single-family homes and open space. He discussed the road design in relation to rare plant species found onsite. He noted that part of the access easement for fire vehicles is within the 100' buffer to wetlands. Mr. Singer said the applicant sought a hardship exemption from some of the RPP standards for traffic issues, noting that the project will have no significant impact on traffic. He said they had

submitted a plan showing that they could place 10 lots on the site, and they only want 7. He said the project only qualifies as a DRI because there is a substantial amount of wetland area, which puts the parcel over the 30-acre threshold.

2. Ms. Kelly Cardoza, Avalon Consulting Group, noted that an archaeological study was underway, and that a preliminary report is expected in a couple of weeks. She noted that the project is designed to preserve rare species, including New England Blazing Star and box turtle. She said they were proposing a management plan for the Blazing Star.

3. Ms. Jo Anne Miller Buntich, Sandwich Director of Planning and Development, said that the Town believes that there is limited regional impact. She noted that they are pleased that an archaeological survey is being done. She said the Town engineers were satisfied with the traffic arrangements. She noted that there have been past problems in Town with vista pruning, especially when titles transfer and the order of conditions regarding vista pruning gets lost. Regarding the CR, she said the Town was reviewing with legal counsel which option the Town would prefer.

4. Ms. Katherine Chafee, abutter, said that she is glad that there will be environmental protection for the land. She said that there will be impacts on the neighborhood, because there actually will be more cars.

5. Mr. Steve Carmel, neighborhood resident, said that he was concerned about more cars and about destruction of the woodlands. He said he would like to see the house retained rather than demolished. He expressed concern about the access road, specifically where it goes and how it will be paved.

At the June 9, 2005 Subcommittee Meeting, the Subcommittee met with the applicant and Commission staff to discuss the project and directed staff to write a Hardship Exemption DRI approval with the appropriate conditions.

On July 12, 2005, the Subcommittee discussed the project and revisions to the draft decision, and voted to forward the amended draft decision to the Cape Cod Commission for approval at the July 21, 2005 meeting.

On July 21, 2005, the public hearing for the project was closed.

On August 4, 2005, the Cape Cod Commission held a public hearing opening the 60-day decision period and voted to approve the project with conditions as contained in the draft decision.

JURISDICTION

The proposed Olde Harbor Estates project qualifies as a Development of Regional Impact (DRI) under the Cape Cod Commission Enabling Regulations Governing Review of Developments of Regional Impact, Chapter A, Section 3 (c), Barnstable County Ordinance 90-12, as amended, which requires review of *“any development which proposes to divide, combine or develop any parcel of land totaling 30 acres or more.”*

FINDINGS

The Commission has considered the application of Sandwich Old Harbor, LLC for the proposed Olde Harbor Estates/Sandwich project, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 12, 13 and 23 of the Act:

General Findings:

Finding G1. The project consists of a residential subdivision of 83 acres of land into seven residential lots and several open space lots. The majority of the land is considered wetlands (approximately 64 acres). Currently, one recently inhabited house exists on the site. The site is located north of Route 6A and the Old Colony Railroad on Dewey Avenue in Sandwich.

Finding G2. Based on an e-mail received from the Sandwich Town Planner on June 16, 2005, the project does not lie within a District of Critical Planning Concern, and appears to comply with the 1996 Sandwich Local Comprehensive Plan (Master Plan) and with the Sandwich Protective Zoning By-law.

Finding G3. All of the land proposed for development is in the Residence – 1 zone, which under the Sandwich Protective Zoning By-law (May 2004) requires 40,000 square feet per lot, unless the subdivision is designed as a cluster development. Sandwich regulations require that lot area for cluster lots fall between 5,000 sf and 40,000 sf. Residential lot sizes for the proposed subdivision vary from 31,124 sf (Lot 1) to 40,000sf (Lot 4).

Land Use Findings:

Finding LU1. MPS 1.2.1 requires all residential subdivisions of five or more lots to cluster the proposed development in order to maximize contiguous open space and respect the natural topography and character of the site unless it is inconsistent with local bylaws. The project proposes to cluster the residential lots and provide open space that is contiguous with existing open space and that provides residential housing in a manner that minimizes negative impacts to the character of the site.

Water Resources Findings:

Finding WR1. The project meets MPS 2.1.1.1 limiting all development to a 5-ppm nitrogen loading standard or less. Nitrogen concentration for 35 bedrooms is estimated at 3.4 ppm, well below the 5 ppm nitrogen loading standard.

Finding WR2. The project meets MPS 2.1.3.1 prohibiting untreated stormwater, parking-lot runoff and/or wastewater from discharge into marine and fresh surface water and natural wetlands. A comprehensive plan for stormwater control from construction activities is proposed to protect the wetlands and a post construction stormwater design will contain all runoff on site with no direct wetland discharge.

Finding WR3. To comply with MPS 2.1.1.2.C.1, the applicant has agreed to make a one-time monetary contribution toward the development or implementation of appropriate nitrogen management strategies. The rate is \$0.15 cents per gallon of wastewater, resulting in a total of approximately \$577.00.

Natural Resources /Open Space Findings:

Finding NROS1. Portions of the site are located in a significant natural resource area (SNRA) due to the presence of mapped estimated rare species habitat and salt marsh wetland. The vast majority, if not all, of the proposed developed area is located outside of SNRA. In addition to the mapped rare species habitat, there is an area of actual habitat on the south-westerly portion of Lot 9 for the state-listed flower, New England blazing star as shown on Figure 1, Development Scenario #5, NHESP Submittal, dated December 2004, revised June 30, 2005.

Finding NROS2. The applicant has submitted a natural resources inventory (NRI) consistent with MPS 2.4.1.1. The NRI noted the presence of several state listed species, including New England blazing star, a rare salt marsh plant *Atriplex glabriuscula*, northern harrier, and sharp shinned hawk. In addition, the NRI observed that the site provides suitable habitat for Eastern box turtle, diamond-back terrapin and two moth species.

Finding NROS3. The applicant has worked with the Natural Heritage and Endangered Species Program to address the rare species issues at this site, including conducting rare species surveys of the site consistent with the Natural Heritage Program requirements. The proposed subdivision plan reflects consideration of the rare species concerns and will not impact rare species or their habitat, consistent with MPS 2.4.1.4. The Natural Heritage Program has provided correspondence indicating that the site design, together with the permanent protection of Lot 9, and the implementation of a rare species management plan for the New England blazing star on Lot 9, will not result in a take of state listed rare or endangered species.

Finding NROS4. The project will not impact wetland resources. A small area of wetland buffer (925 sf) will be disturbed as a result of the construction of the town-required emergency access easement. During the course of project review the emergency access easement was relocated, minimizing the impacts to wetland buffer area to the extent feasible. Based on unique characteristics of the site, including the location of the wetlands and the New England blazing star, and that the impacts to wetland buffer have been minimized to the extent feasible, the Commission finds that granting relief from MPS 2.3.1.2 is warranted as part of the hardship exemption for this project. As mitigation for the small area of wetland buffer alteration, 3+ acres of wetland buffer will be permanently protected (this area protected is in excess of the open space requirements for this site). Therefore, the Commission finds that:

- The applicant has met its burden of showing that a hardship exists.
- Literal enforcement of the minimum performance standard would be a hardship for the applicant.
- Relieving the requirements of MPS 2.3.1.2 is the minimum relief required to alleviate the hardship.
- The relief does not nullify or substantially derogate from the intent of the act nor will it result in substantial detriment to the public good given the quality and quantity of open space and natural resource protection.

Finding NROS5. The site drainage has been reconfigured to accommodate stormwater on the upland portions of the site, and with the exception of one discharge structure, is located outside

of the 100 ft buffer to wetlands consistent with the requirements of MPS 2.3.1.4. Given site topography and other design constraints including the location and presence of the New England blazing star, one discharge structure must be located approximately 15 ft into the 100 ft buffer north of Lot 2. With the use of drainage swales and infiltration structures, the discharge of stormwater at this location has been minimized. As mitigation for the disturbance to the buffer resulting from stormwater discharge, 3+ acres of wetland buffer will be permanently protected in excess of the open space requirements. The Commission finds that:

- The applicant has met its burden showing that a hardship exists.
- Literal enforcement of the minimum performance standard would be a hardship for the applicant.
- Partially relieving the requirements of MPS 2.3.1.4 to allow one stormwater discharge structure 15' into the wetland buffer north of Lot 2 is the minimum relief required to alleviate the hardship.
- The relief does not nullify or substantially derogate from the intent of the act nor will it result in substantial detriment to the public good given the quality and quantity of wetland buffer protection on the site.

Finding NROS6. Consistent with MPS 2.3.1.2, the applicant is allowed to establish limited vista corridors within the 100 ft buffer to wetlands. These vista corridors are designed to provide limited views of the salt marsh from each of the house lots while preserving the integrity of the existing habitat for wildlife. Vista pruning must comply with the parameters proposed in the Vista Pruning Guidelines submitted by Olde Harbor Estates dated 6/29/05, including but not limited to consultation with the Sandwich Conservation agent onsite to approve proposed pruning, and limiting total pruning within the vista corridors to no more than 10% of the canopy over the life of each given tree.

Finding NROS7. The NRI determined that five invasive species are present on the site; Japanese barberry, oriental bittersweet, autumn olive, common reed, and multiflora rose. The applicant has prepared a management plan titled "New England Blazing Star and Invasive Species Management Plan, Olde Harbor Estates" revised August 4, 2005 which is consistent with the requirements of MPS 2.4.1.6 proposing to manage these species onsite.

Finding NROS8. The open space requirement for this project is equivalent to the total developed area for the project site. The developed area, including the area of house lots and the roadway right of way, is 7.12 acres, and consequently the open space requirement is 7.12 acres. Upland open space being provided is 10.25 acres, exceeding the requirement for the project by 3.13 acres. This excess open space area may be credited toward mitigating impacts to the wetland buffer resulting from the installation of the emergency access easement (see Finding NROS4).

Finding NROS9. The applicant has proposed to permanently protect Lot 10.

Transportation Findings:

Finding T1. Area Regional Roadways in the vicinity of the proposed project as defined by MPS 4.1.3.1 include: Route 6A, Tupper Road, Route 130, and Beale Avenue.

Finding T2. Giving credit for the existing house on site, trip generation is expected from six new houses. Based on the Institute of Transportation Engineer's *Trip Generation* manual, six houses would be expected to generate:

- 78 New Weekday Trips
- 9 New Weekday Afternoon Peak Hour Trips
- 6 New Saturday Peak Hour Trips

Finding T3. The development will not degrade safety as defined by MPS's 4.1.1.1 and 4.1.1.2 due to the project's location and low trip generation.

Finding T4. The plan allows for a ten-foot wide sidewalk easement along Dewey Avenue for use by the Town to build sidewalks if the Town decides to build them in the future and if the land is needed, as required by MPS's 4.1.1.1., 4.1.1.6, 4.1.2.5, and 4.1.3.9.

Finding T5. MPS 4.1.1.3 requires access and egress locations that meet access management requirements. The project's driveway is located approximately 500 feet from the nearest intersection and is located on a low volume residential street and thus complies with this requirement.

Finding T6. MPS 4.1.1.5 requires human-made objects (such as signage, utility poles and boxes) and lighting to minimize visual obstruction and glare and requires location of utilities underground where appropriate. The site plans does not include signage or street lighting. All utilities are proposed to be underground.

Finding T7. MPS 4.1.1.7 requires acceptable sight distances at all site accesses/egresses. Preliminary review shows acceptable sight distances at the proposed subdivision roadway location. However, the applicant will be required to submit a letter from a professional engineer stating that the sight distances meet required American Association of State Highway Transportation Officials (AASHTO) guidelines before any lots in the subdivision are conveyed and/or occupied.

Finding T8. MPS 4.1.1.9 requires curb-cut openings to not exceed MassHighway standards. The proposed subdivision roadway pavement width is 22 feet, which is considered acceptable and meets MPS 4.1.1.9.

Finding T9. MPS 4.1.2.1 requires reduction of 25% of the expected daily traffic or approximately 20 daily trips. The applicant has requested a hardship exemption from this requirement. The majority of the site (approximately 64 acres) is wetlands and is being deeded to the town of Sandwich for conservation. Since only upland can be developed for trip generation purposes, the remaining 19 acres is below the 30 acre threshold for CCC residential subdivision review. Also, the development is not maximizing the use of this remaining land based on Town zoning and includes additional upland conservation. The applicant has proposed restricting development on Lots 8, 9 and 10 as appropriate mitigation. The development is expected to have very low traffic generation and its location within biking and walking distance to a village center will likely further reduce automotive travel. The proposal includes all practical and reasonable protections and mitigation. Consequently, given the size of the developable area and very low estimated trip generation, the CCC finds:

- The applicant has met its burden of showing that a hardship exists.

- Literal enforcement of the minimum performance standards would require detailed transportation studies, analysis, and payments which would be a hardship for the applicant.
- Relieving the requirements of MPS 4.1.2.1 is the minimum relief required to alleviate the hardship.
- The relief does not nullify or substantially derogate from the intent of the act nor will it result in substantial detriment to the public good given the project's very low trip generation and proximity to a village center.

Finding T10. MPS 4.1.3.2 requires new driveways onto the regional roadway system to operate at Level of Service C or better. While the proposed subdivision roadway does not directly access a regional roadway, given the project's low trip generation and the low volumes on Dewey Avenue, it is estimated that the intersection of the subdivision roadway with Dewey Avenue will operate sufficiently to comply with MPS 4.1.3.2.

Finding T11. MPS 4.1.3.4 requires full mitigation of project impacts at all regional roadway locations where a development is expected to have peak hour impacts. The development is estimated to generate nine peak hour trips. The applicant has requested a hardship exemption from this requirement. The majority of the site (approximately 64 acres) is wetlands and is being deeded to the town of Sandwich for conservation. The remaining 19 acres is below the 30 acre threshold of CCC residential subdivision review. Also, the development is not maximizing the use of the remaining land based on Town zoning and includes additional upland conservation. The applicant has proposed restricting development on Lots 8, 9 and 10 as appropriate mitigation. The development is expected to have very low traffic generation and its location within biking and walking distance to a village center will likely further reduce automotive travel. Consequently, given the size of the developable area and very low estimated trip generation, the CCC finds that:

- The applicant has met its burden of showing that a hardship exists.
- Enforcement of the minimum performance standards would require detailed transportation studies, analysis, and payments which would be a hardship for the applicant.
- Relieving the requirements of MPS 4.1.3.4 is the minimum relief required to alleviate the hardship.
- The relief does not nullify or substantially derogate from the intent of the act nor will it result in substantial detriment to the public good given the project's location and very low trip generation.

Hazardous Materials and Waste Management Findings:

Finding HAZ1. According to Regional Policy Plan maps, the project site is not located in either an existing Wellhead Protection District or a Potential Public Water Supply Area. As such, MPS 4.3.1.3 does not affect this project.

Finding HAZ2. MPS 4.3.1.1 and MPS 4.3.1.2 apply to this project. These RPP standards require development and redevelopment to minimize use of hazardous materials and generation of hazardous wastes. They also require it be done in a manner consistent with the Massachusetts

Hazardous Waste Regulations. Construction will take place near a marsh. Based on this, and the RPP standards, the applicant should make reasonable efforts to minimize hazardous materials use and/or waste generation from construction activities. This includes developing written plans that address on-site use of heavy equipment, including maintenance, fueling, spill containment and emergency response.

Finding HAZ3. As part of a letter dated May 23, 2005, the Avalon Consulting Group (representing the applicant) described a plan to minimize hazardous materials use and waste generation from project construction. -The May 23rd plan submitted by Avalon Consulting is consistent with MPS 4.3.1.1 and MPS 4.3.1.2 of the 2002 (revised) RPP.

Heritage Preservation/Community Character Findings:

Finding HPCC1. The proposed development is located adjacent to the Jarvesville section of Sandwich, a neighborhood developed in the early 1800s in conjunction with the nearby Sandwich Glass factory. The area has a distinctive development pattern with buildings constructed close to the roadway and in a modest scale, following architectural styles common to the period. Development of the Olde Harbor Estates property must be carefully designed to avoid negative impacts to this historically significant area.

Finding HPCC2. RPP MPS 6.2.4 requires new development adjacent to or within historic districts to be designed consistent with the character of the area and to retain the distinctive features of the neighborhood. To avoid the negative impacts of introducing a dramatically different scale and pattern of development on the otherwise compact historic neighborhood, the proposed new development should be screened through a combination of careful siting of the building envelopes, and maintenance of existing mature vegetation. Mature trees and vegetation currently found along Dewey Avenue on Lot 1 and Lot 8 and on the Open Space parcel (Lot 9) should be preserved. A viewshed analysis conducted by Dan Solien, LA, and a presentation by the applicant's engineer regarding clearing for drainage facilities between Lots 2 and 3, demonstrated that only Lots 1 and 2 would be visible from the adjacent historic area. The proposal to move several mature holly trees to an easement along the side of Lot 1, and to the open space adjacent to Lot 2 will serve to filter views into the new development. Commission staff will also provide input to the Old Kings Highway Historic District Committee when they review proposed development for Lot 2 in an effort to limit the structure's visibility.

Finding HPCC3. The existing house on the proposed Lot 1 is believed to have been constructed circa 1927. The Massachusetts Historical Commission stated in a letter dated June 2, 2005 that the building's demolition would adversely affect the Old King's Highway Regional Historic District. In a letter dated May 9, 2005, the Sandwich Historical Commission did not state particular concerns regarding the loss of the building, but rather focused on the project's overall impact on the adjacent historic area. Demolition of the existing building will require approval of the Sandwich Old Kings Highway Committee.

Finding HPCC4. The proposed project area was determined to be archaeologically sensitive, according to a letter from the Massachusetts Historical Commission (MHC) dated February 23, 2005. An archaeological survey was conducted by Public Archaeology Lab (PAL) and the completion memorandum was submitted to MHC for review on May 10, 2005. A very small number of archaeological materials were found on the site, so MHC concluded in a letter dated

June 2, 2005 that the area is not likely to produce additional information and therefore no further archaeological investigation is warranted.

Finding HPCC5. In conformance with MPS 6.2.9, the applicant submitted a landscape plan by Horiuchi & Solien Landscape Architects, dated 7/7/05, indicating mature holly trees to be relocated on-site into a 25' wide buffer area on Lot 1 along Dewey Avenue that will be protected via a 30-year deed restriction. The landscape plan also identifies the location on open space Lot 9 onto which a mature holly will be transplanted. The applicant submitted a draft Land Maintenance Agreement for the Old Field area and the common areas within the roadway layout and emergency access easement. The Land Maintenance Agreement includes mowing, removal of invasive species, mulching, watering, Integrated Pest Management, fertilizing, pruning of deadwood and replacement of dead plant material if necessary, and specifies that the Olde Harbor Estates Homeowners Association will enter into the contract with the landscape maintenance contractor. The Land Maintenance Agreement should also include the transplanted hollies on Lots 1 and 9.

Finding HPCC6. MPS 6.2.10 requires exterior lighting in new development or redevelopment to comply with Technical Bulletin 95-001. The application materials did not indicate whether roadway lighting is proposed as part of the project. However, given the project's size, layout, and its location, the Commission finds that exterior lighting does not constitute a significant regional impact.

CONCLUSION

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

1. The probable benefits of the proposed project outweigh the probable detriments resulting from development, in that the project as proposed will be constructed as a cluster residential subdivision that provides protection of a Significant Natural Resource Area (Findings LU1 and NROS 1 through 9); and the project is located within walking distance of the Sandwich town center with necessary services and transit lines that provide mobility alternatives (Finding T9).
2. The project, as noted in the findings, complies with the RPP's Minimum Performance Standards, with the exception of MPS 4.1.2.1, MPS 4.1.3.4, MPS 2.3.1.2 and MPS 2.3.1.4 which are the subject of the Hardship Exemption request.
3. According to the Sandwich Town Planner, the project does not fall within a District of Critical Planning Concern, and appears to comply with local development bylaws and the Sandwich Local Comprehensive Plan (Finding G2).
4. Based on Findings T9, T11 and NROS4, the Commission finds that a literal enforcement of the provisions of the Act would involve substantial hardship to the applicant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The Commission hereby approves with conditions the application of Sandwich Old Harbor, LLC for the proposed Olde Harbor Estates/Sandwich project as a DRI Hardship Exemption, provided the following conditions are met:

CONDITIONS

General Conditions:

Condition G1. This Hardship Exemption 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.

Condition 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.

Condition G3. The applicant shall obtain all necessary state and local permits for the proposed project.

Condition G4. The applicant shall be responsible for providing proof of recording of the decision prior to issuance to the preliminary Certificate of Compliance.

Condition G5. No 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.

Condition G6. Any project changes subsequent to Commission approval shall require a modification from the Cape Cod Commission in accordance with the Cape Cod Commission Administrative Regulations, Modifications to Approved DRI's, in effect on the date the modification is sought. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the town of Sandwich Planning Board shall be submitted to the Commission upon receipt of local approvals for review by Commission staff to determine their consistency with Section 7 of the Cape Cod Commission Administrative Regulations. Modifications made during the Town permitting process that are consistent with this approved decision shall be considered as Minor Modifications #1 and approved by Commission staff.

Condition G7. The proposed Olde Harbor Estates project shall be constructed in accordance with the following final plans:

	<u>Dated</u>	<u>Last Revised</u>	<u>Date Received</u>
Definitive Cluster Subdivision Plan (Sheets 1 and 2)	10/12/04	7/18/05	7/27/05
Topographic Plan (Sheets 4 and 5)	10/12/04	7/18/05	7/27/05
Road Plan and Profile (Sheets 6 and 7)	10/12/04	7/18/05	7/27/05
Drainage Systems Plan/Profile (Sheet 8)	10/12/04	7/18/05	7/27/05
Drainage Component Details (Sheets 9 and 10)	10/12/04	7/18/05	7/27/05
Roadway Sections – Erosion Control (Sheet 11)	10/12/04	7/18/05	7/27/05
Utilities – Schematic Layout (Sheet 12)	10/12/04	7/18/05	7/27/05
Landscape Plans (Sheets L1 and L3)	7/7/05	n/a	7/27/05

Condition G8. Prior to the conveyance or release of the first lot, issuance of a building permit or any development activity on the site, the applicant shall obtain a preliminary Certificate of Compliance from the Commission stating that all conditions in this decision required prior to the issuance of the preliminary Certificate of Compliance have been met. The applicant shall obtain a final Certificate of Compliance from the Commission prior to release or conveyance of the last lot stating that all of the conditions in this decision have been met. The project shall be constructed in accordance with final plans listed in Condition G7. All conditions must be met prior to the issuance of a final Certificate of Compliance unless expressly excepted by the decision.

Certificates of Compliance shall be issued as follows:

- 1) Prior to issuance of a preliminary Certificate of Compliance allowing the conveyance or release of the first subdivision lot, the applicant shall obtain a Certificate of Compliance from the Commission stating that the project complies with Conditions WR1, NROS1, NROS2, T6, and HPCC2.
- 2) Prior to issuance of a preliminary Certificate of Compliance allowing conveyance of any subdivision lots or occupancy of any houses, but after the subdivision roadway is substantially completed, the applicant shall obtain a preliminary Certificate of Compliance from the Commission stating that the project complies with Condition T4.
- 3) Prior to issuance of a final Certificate of Compliance and prior to relocation of any plant material, the applicant shall obtain a Certificate of Compliance from the Commission stating that the project complies with Condition HPCC3.
- 4) Prior to the issuance of a final Certificate of Compliance allowing the conveyance or release of the last lot in the subdivision, the applicant shall obtain a Certificate of Compliance from the Commission stating that the project complies with Conditions NROS4, NROS5 and HPCC4.

Condition G9. The applicant shall notify Commission staff of the intent to seek a preliminary or final Certificate of Compliance at least thirty (30) days prior to the anticipated date of building permit or occupancy permit issuance. Such notification shall include a list of key contact(s) and their telephone numbers for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within twenty (20) days of such notification and inform the applicant in writing of any deficiencies and corrections needed. -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 shall 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, and at any time in the future to determine continuing compliance with the conditions of this and/or subsequent modification decisions.

Water Resources Conditions:

Condition WR1. Prior to the issuance of a preliminary Certificate of Compliance, the applicant shall make a one-time \$577.00 monetary contribution to Barnstable County to be held in escrow

for use at the discretion of the Commission's Executive Director in the development or implementation of appropriate nitrogen-management strategies in the town of Sandwich in compliance with MPS 2.1.1.2.C.1.

Natural Resources/Open Space Conditions:

Condition NROS1. Prior to issuance of a preliminary Certificate of Compliance, Lot 9 shall be permanently protected either through a Massachusetts General Laws Chapter 184, § 31 – 33 conservation restriction and accompanying plan, or deed transfer to the town of Sandwich under the care, custody and control of its Conservation Commission, the method of protection to be determined by the town of Sandwich based on how the Town determines they (the Town) may best ensure the ongoing protection and maintenance of the habitat values of the rare species habitat and wetland buffer areas on Lot 9. In either case, the Commission or its designee shall approve the form and substance of the document(s) and plans permanently protecting the 10.25 acres of open space on the site prior to execution and recording at the Registry of Deeds or the Registry District of the Land Court.

Condition NROS2. Prior to issuance of a preliminary Certificate of Compliance, Lot 10 shall be permanently protected through deed transfer to the town of Sandwich under the care, custody and control of its Conservation Commission. The form and substance of the deed shall be approved by the Commission or its designee prior to execution and recording at the Registry of Deeds or Registry District of the Land Court.

Condition NROS3. The applicant is allowed to establish limited vista corridors within the 100 ft buffer to wetlands from each house lot while preserving the integrity of the existing habitat for wildlife. Vista pruning shall comply with the parameters proposed in the Vista Pruning Guidelines submitted by Olde Harbor Estates to the Commission dated 6/14/05, including but not limited to consultation with the Sandwich Conservation agent onsite to approve proposed pruning, and limiting total pruning within the vista corridors to no more than 10% of the canopy over the life of any given tree.

Condition NROS4. The applicant, or designee, shall implement the invasive species management plan as proposed in "New England Blazing Star and Invasive Species Management Plan, Olde Harbor Estates" revised August 4, 2005, prior to issuance of a final Certificate of Compliance for the project.

Condition NROS5. Management of the New England blazing star field on Lot 9 shall continue annually consistent with the proposed "New England Blazing Star and Invasive Species Management Plan, Olde Harbor Estates" revised August 4, 2005, and shall be the responsibility of the homeowners association at Olde Harbor Estates or the town of Sandwich, pending determination of the ownership of Lot 9. Financial responsibility for implementing the management plan shall be incorporated into the homeowners association documents, and said documents shall be of a form and content approved by Commission counsel prior to the issuance of a final Certificate of Compliance.

Transportation Conditions:

Condition T1. The project shall be built according to the plans listed in Condition G7.

Condition T2. The applicant shall provide a 10 foot sidewalk easement along Dewey Avenue should the Town decide to construct such a sidewalk and should such land be needed.

Condition T3. All utilities shall be located underground. All signage will be located to not obstruct sight distances where the subdivision roadway meets Dewey Avenue.

Condition T4. Prior to conveyance of any subdivision lots for construction and prior to occupancy of any homes but after the subdivision roadway is substantially completed (defined as being at final grade and location at the intersection with Dewey Avenue with sub-surface and first layer of asphalt completed), the applicant shall provide a signed and sealed letter from a Massachusetts licensed professional civil engineer certifying that the sight distances to the subdivision roadway along Dewey Avenue meet or exceed the American Association of State Highway Transportation Official's guidelines for safe stopping sight distance.

Condition T5. The subdivision roadway pavement width shall not exceed 22 feet except where allowable turning radii are expected at the intersection with Dewey Avenue as outlined in the project plans.

Condition T6. The applicant shall permanently restrict Lots 8, 9, and 10 such that all future trip generation is extinguished. Lot 8 shall be protected through deed restriction (as per Condition HPCC2), Lot 9 shall be protected via conservation restriction or deed transfer to the town of Sandwich (as per Condition NROS1), and Lot 10 shall be protected through deed transfer to the town of Sandwich (as per Condition NROS2).

Hazardous Materials and Waste Management Conditions:

Condition HAZ1. On-site equipment maintenance, fueling and/or re-fueling shall be restricted to the minimum necessary, and to locations outside the wetland areas and outside those areas flagged for the New England blazing star as shown on Figure 1, Development Scenario #5, NHESP Submittal, dated December 2004, revised June 30, 2005. Any limited equipment maintenance shall be performed on an impervious surface and with spill response equipment readily available. Any secondary containment methods shall provide for a minimum of 150 percent of the total volume of hazardous materials or wastes to be stored in the containment area.

Condition HAZ2. All project bid specifications and/or bid documents for contractors and sub-contractors shall include the restrictions and special requirements articulated in condition HAZ1.

Condition HAZ3. The selected prime contractor and any sub-contractors shall be provided with a copy of the Commission's decision prior to commencement of any on-site development or construction activities on each lot.

Heritage Preservation/Community Character Conditions:

Condition HPCC1. The future owners of Lot 2 as identified on the Definitive Cluster Subdivision Plans Sheets 1 and 2 by David C. Thulin, PE, PLS, shall submit a site plan and building elevations for any proposed buildings on Lot 2 to CCC staff for comment at the same time they submit them to the Sandwich Old Kings Highway Historic District Committee for review. Staff shall review and comment to the Historic District Committee on issues of siting and orientation of the buildings with the intent of limiting their visual impact on the adjacent historic area.

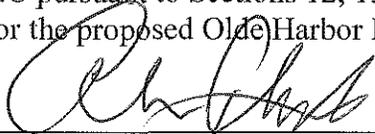
Condition HPCC2. In order to screen the proposed development from the adjacent historic area and limit negative visual impacts, clearing of mature trees and understory vegetation currently found along Dewey Avenue on Lots 1 and 8 as indicated on the landscape plan by Horiuchi & Solien Landscape Architects, dated 7/7/05 shall be prohibited. The applicant shall provide staff with 30-year deed restrictions prohibiting clearing of such vegetation on Lots 1 and 8 containing within the instrument provisions for extensions. The deed restrictions shall be approved by Commission counsel, executed and recorded at the Registry of Deeds or Registry District of the Land Court, and proof of recording shall be provided to the Commission prior to the conveyance or release of Lot 1.

Condition HPCC3. The project shall be landscaped according to the landscape plan by Horiuchi & Solien Landscape Architects, dated 7/7/05. The draft Land Maintenance Agreement shall be revised according to Finding HPCC5, above, and approved by CCC staff. An executed landscape maintenance contract consistent with the approved draft Land Maintenance Agreement which includes maintenance of the transplanted hollies shall be submitted to staff prior to the relocation of the existing plant material and prior to issuance of the final Certificate of Compliance. The applicant shall ensure that all landscaping included in the maintenance contract is maintained from the time of installation or relocation until such time as the maintenance contract is in effect, and shall provide Commission staff with documentation of such maintenance. If transplanted plant material dies while under the applicant's care, the applicant shall replace it with material of equivalent size and species that is approved by Commission staff. If transplanted plant material dies while the maintenance agreement is in effect, it shall be replaced by the landscape maintenance contractor with plant material of equivalent size and species that is approved by Commission staff.

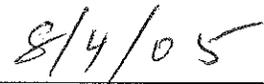
Condition HPCC4. The applicant shall complete all site work and landscaping prior to issuance of the final Certificate of Compliance.

If all required site work and/or other landscape improvements are not complete prior to issuance of a final Certificate of Compliance, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow funds shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work.

The Cape Cod Commission hereby approves with conditions the application of Sandwich Old Harbor, LLC pursuant to Sections 12, 13 and 23 of the Act, c.716 of the Acts of 1989, as amended for the proposed Olde Harbor Estates/Sandwich project located in Sandwich, MA.



Alan Platt, Chairman



Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

8/4, 2005

Before me, the undersigned notary public, personally appeared Alan Platt, in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires:

10/13/11