

# CAPE COD COMMISSION

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DATE: August 4, 2005

TO: Town of Sandwich  
C/of George Dunham, Town Administrator  
130 Main Street  
Sandwich, MA 02563

P.A. Landers Inc.  
C/of Attorney Jonathan Fitch, Esq.  
MacNeil & Fitch  
P.O. Box 549  
Sandwich, MA 02563

FROM: Cape Cod Commission

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

CO-APPLICANTS: Town of Sandwich and P.A. Landers Inc.

PROJECT #: TR-04028

PROJECT: Town of Sandwich and P.A. Landers Inc. Land Exchange

## REGISTRY INFORMATION:

BOOK:	15426	PAGE:	17	BOOK:	6478	PAGE:	110
	14405		214		3676		77
	13013		268		3236		34
	12897		103		3217		77
	12514		105		2112		201
	12362		204		1777		255
	11236		181		1645		264
	9696		234		1214		360
	9505		152		575		443
	7341		44				

<u>REGISTRY PLANS:</u>	BOOK:	571	PAGE:	67	BOOK:	399	PAGE:	80
		569		55		370		70
		556		92		326		63
		531		40		280		87
		458		59		273		65
		420		32		105		55



<u>ASSESSORS INFORMATION:</u>	Map 27	Parcels 2 to 10
	Map 32	Parcel 57
	Map 33	Parcel 61
	Map 39	Parcel 146

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Town of Sandwich and P.A. Landers Inc as a Development of Regional Impact (DRI) pursuant to Section 12 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed land exchange project. This decision is rendered pursuant to a vote of the Commission on August 4, 2005.

### PROJECT DESCRIPTION

The proposed project is a re-subdivision of land to implement a land exchange between the Town of Sandwich and P.A. Landers, Inc. It involves several parcels of land encompassing approximately 203.25 acres located between Kiah's Way and the Service Road in Sandwich.

### PROCEDURAL HISTORY

On December 9, 2004, the Commission received a DRI referral for the proposed land division and re-division from the Town of Sandwich Planning Board. In a letter dated December 10, 2004, the co-applicants were informed that the Commission had received a DRI referral, and that the proposed project qualified as a Development of Regional Impact. The Commission received a DRI referral form for the project from the Town of Sandwich Planning & Community Development Department on December 9, 2004. The co-applicants filed additional application materials with the Commission on April 19, 2005, May 4, 2005, May 10, 2005, May 27, 2005, June 2, 2005, June 14, 2005, June 16, 2005, June 17, 2005, and June 20, 2005. The application was deemed complete on June 16, 2005.

A Commission Hearing Officer opened a procedural hearing on the DRI referral on February 18, 2005. A Commission Hearing Officer closed a procedural hearing on the DRI referral on May 2, 2005. In an Extension Agreement dated May 10, 2005, the co-applicants agreed to extend the DRI decision time to January 1, 2006.

A duly noticed Public Hearing pursuant to Section 5 of the Act was held on the DRI by an authorized Subcommittee of the Commission on Monday, June 20, 2005 at 6:30 PM at Town Office Building, 16 Jan Sebastian Drive, Sandwich, MA. At this hearing, the Subcommittee voted to continue the hearing and the record to the August 4, 2005 full Commission meeting. The Subcommittee also voted to recommend approval of the project as a DRI, and to send the project for a vote before the full Commission. The Subcommittee also voted to authorize the Chair to review and approve the final draft decision.

A final public hearing was held before the full Cape Cod Commission on August 4, 2005. At the close of this hearing, the Commission voted unanimously to approve, with conditions, the proposed land exchange.

### Materials Submitted for the Record

#### From the Co-Applicants – Town of Sandwich and P.A. Landers Inc.

Colored Approval Not Required Plan, 11X 17 inch size, sheet 1 or 1, drawn by EGI, showing site of proposed land exchange, attached to a copy of 2 plans showing land exchange	10/2003
DRI referral form, from JoAnne M. Buntich, includes local Form A and a list of deed book and page and parcel information	12/9/04
Letter, from Attorney Fitch, additional application materials	4/19/05
Letter, from Attorney Fitch and Town, concerning extension agreement	5/4/05
Abutters list	5/4/05
Plan, "Proposed Change to the Sandwich Industrial Park Zoning District Boundaries," 11 x 17 inch size, created by the Cape Cod Commission for the Town of Sandwich on 1/12/04	5/4/05
Quad sheet, Vaccaro Environmental Consulting, showing site locus	5/4/05
E-mail, from JoAnne M. Buntich, acknowledgement of letter and extension agreement	5/10/05
Letter, from Attorney Fitch, transmittal of plans	5/27/05
Approval Not Required Plan, large size, sheet 1 or 1, drawn by EGI, dated 10/25/04, revision date of 11/16/04, showing site of proposed land exchange	5/27/05
Approval Not Required Plan, 11x17 inch size, sheet 1 or 1, drawn by EGI, dated 10/25/04, revision date of 11/16/04, showing site of proposed land exchange	5/27/05
Approval Not Required Plan, large size, sheet 1 of 1, drawn by EGI, dated 10/25/04, revision #2 – 5/13/05, showing proposed site of land exchange	5/27/05
Letter, return of extension agreement	6/2/05
E-mail, from JoAnne M. Buntich, coordination of hearing	6/14/05
E-mail, from JoAnne M. Buntich, about why Commissioner Jones was not on the Subcommittee	6/16/05
E-mail, from JoAnne M. Buntich, about hearing and site visit	6/16/05
E-mail, from JoAnne M. Buntich, about hearing and site visit	6/17/05
Fax, from Sandwich Town Administrator, comments in support of the land exchange and providing a copy of special legislation concerning the proposed exchange	6/20/05
Letter, from Sandwich Town Administrator, comments in support of the land exchange and providing a copy of special legislation concerning the proposed exchange	6/20/05
Air photo of locus (submitted at hearing)	6/20/05
E-mail, from JoAnne M. Buntich, received electronic copy of draft decision	7/25/05
Colored Approval Not Required Plan, 11x17 inch size, colored blue and green	no date

#### From the Commission

Copy, December 5, 1991 DRI decision, P.A. Landers Inc.	12/5/91
Copy, Staff Report to Regulatory Committee	10/27/03
Letter, to JoAnne M. Buntich and Attorney Fitch, project is a DRI	12/10/04
Memo, to Commission technical staff	12/21/04
Letter, JoAnne M. Buntich and Attorney Fitch, concerning DRI application	2/2/05
Notice, Hearing Officer	2/18/05
Minutes, Hearing Officer	2/18/05
Letter, to JoAnne M. Buntich and Attorney Fitch, application incomplete	3/31/05
Notice, Hearing Officer	5/2/05
Minutes, Hearing Officer	5/2/05
E-mail, to JoAnne M. Buntich, concerning the hearing date	5/3/05
Fax, to JoAnne M. Buntich and Attorney Fitch, concerning Regulatory Committee	5/4/05
Fax, to JoAnne M. Buntich and Attorney Fitch, return of a letter	5/4/05
Report, to Regulatory Committee	5/4/05
Agenda, Regulatory Committee	5/9/05
Letter, to JoAnne M. Buntich, extension agreement	5/10/05
E-mail, to JoAnne M. Buntich, extension agreement	5/10/05
Copy, signed extension agreement	5/10/05

Fax, to JoAnne M. Buntich, extension agreement	6/2/05
Letter, to JoAnne M. Buntich, extension agreement	6/2/05
E-mail, to Attorney Fitch, concerning public hearing	6/13/05
E-mail, to JoAnne M. Buntich, concerning public hearing	6/13/05
E-mail, to JoAnne M. Buntich, information for Subcommittee	6/14/05
E-mail, from Commissioner Harris, site visit coordination	6/15/05
E-mail, to Commission Subcommittee, site visit and public hearing	6/15/05
E-mail, to Commissioner Harding, site visit and public hearing	6/15/05
E-mail, to Commissioner Harding, site visit and public hearing (second try)	6/15/05
E-mail, to Commissioner Harding, site visit and public hearing (third try)	6/15/05
Memo, to Commission Subcommittee, site visit and public hearing	6/15/05
Staff Report	6/15/05
E-mail, to JoAnne M. Buntich, coordination of site visit	6/16/05
E-mail, to JoAnne M. Buntich, why Commissioner Jones not on Subcommittee	6/16/05
Letter, to JoAnne M. Buntich and Attorney Fitch, application complete	6/16/05
E-mail, to JoAnne M. Buntich and Attorney Fitch, Staff Report	6/16/05
E-mail, from Commissioner Virgilio, receipt of information	6/16/05
E-mail, to Commission Subcommittee, JoAnne M. Buntich and Attorney Fitch, concerning public hearing and site visit	6/17/05
E-mail, to Commissioner Crowell, hearing and site visit	6/17/05
Hearing Notice, Public Hearing	6/20/05
Minutes, Public Hearing	6/20/05
Minutes, Public Meeting	6/20/05
Map of area involved in the land exchange	6/20/05
E-mail, to Commission staff, review of draft decision	7/19/05
E-mail, to Attorney Fitch & JoAnne M. Buntich, concerning draft decision and copies for the full Commission packets	7/20/05
Fax, to Attorney Fitch & JoAnne M. Buntich, list of materials submitted by co-applicants to the Commission, to assist them with Commission mailing	7/21/05
Memo, to Subcommittee Chair, Carol Tinkham, draft decision	7/25/05
E-mail, to Subcommittee members, draft decision	7/25/05
E-mail with PDF attachment, to Attorney Fitch & JoAnne M. Buntich, draft decision	7/25/05
E-mail, to Commission staff, draft decision	7/25/05
E-mail, to Commission staff, draft decision	7/25/05
Hand written receipt, by Andrea Adams, to confirm receipt of copies	7/27/05
E-mail, to Attorney Fitch & JoAnne M. Buntich, concerning Commission hearing	8/2/05

From Federal, State or Local Officials Other than Town of Sandwich

Letter, from Massachusetts Historical Commission, copy of a letter to Attorney Fitch, stamped by the Historical Commission 4/20/05

Letter, to Attorney Fitch, from the Division of Fisheries and Wildlife, no objection to the proposed land exchange, but it does express concern that the entire site is Eastern Box turtle habitat 4/20/05

From the Public

No comments were received

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 Commission's proceedings are incorporated into the record by reference.

TESTIMONY

***June 20, 2005 Public Hearing***

*Below is a summary of the June 20, 2005 Public Hearing. Please see the record for the full Minutes, and Minutes of any Subcommittee meetings.*

Attorney Jonathan Fitch, MacNeil & Fitch, explained the proposed land exchange between the Town of Sandwich and P.A. Landers, Inc. involving approximately 203 acres. He said the division had been approved by Sandwich Town Meeting, and by the state Legislature. Attorney Fitch said the project will allow the Town to have more conservation land, and less housing. He requested that the Commission recognize that 40 acres of open space to be provided by this project be “credited” towards the open space requirement for future development on the P.A. Landers Inc. site.

JoAnne Miller Buntich, Sandwich’s Director of Planning & Community Development, spoke in favor of the application.

Ms. Adams, the Commission’s project Planner, presented the staff report. She noted the history of DRI permits for P.A. Landers Inc. Ms. Adams said the proposed project, which is a subdivision of land to implement a land exchange between the Town of Sandwich and P.A. Landers, qualifies as a DRI according to Section 3(c) of the *Enabling Regulations* as “[a]ny development that proposes to divide parcels of land totaling 30 acres or more in common ownership or control on or after September 30, 1994...”. Ms. Adams said the only issue under consideration at this time by Commission staff related to the area of open space.

Ms. Adams said the subdivision of land involved several parcels of land, totaling 203.25 acres, to be re-divided and conveyed to the Town of Sandwich and P.A. Landers. She said that P.A. Landers understands that if and when development is proposed on the land to be acquired by them, P.A. Landers will return to the Commission for a full DRI review. Ms. Adams said the Town of Sandwich intends to preserve the land acquired through this swap as conservation land in perpetuity.

Ms. Adams said of the 203 acres, the Town owns 76.9 acres and P.A. Landers owns 126.3 acres. She said that through the swap, the Town will convey 40.87 acres to P.A. Landers in exchange for almost exactly twice that amount (81.74 acres) from P.A. Landers. Ms. Adams said that the co-applicants requested that the land that P.A. Landers is conveying to the Town for conservation be credited toward future development on the land that the Town is conveying to P.A. Landers.

Ms. Adams said that because the DRI under review involves only the division or re-division of land in Sandwich, no other comments are being provided at this time by Commission staff. Commission staff recommended that the Commission condition any approval of the land exchange to require further review by the Cape Cod Commission prior to any changes, redevelopment or development of any piece of land involved in the land exchange, and prior to any changes, redevelopment or development of the P.A. Landers site or its existing operation.

Ms. Adams also said staff would recommend conditioning any approval such that Town lands be conserved either through Sandwich’s Conservation Commission, or through a Conservation Restriction held by a suitable conservation organization.

The Subcommittee members inquired about wetlands, rare species, previously required road improvements, and how the land would be protected.

Mr. William Diederling, Chair, Sandwich Board of Selectmen, said the Board was unanimously in favor of the proposed land exchange, and that the project would improve the Town’s tax base.

Attorney Fitch spoke as a Sandwich resident in favor of the project.

The Subcommittee continued the hearing to the August 4, 2005 Commission meeting.

### JURISDICTION

The proposed land re-division and exchange project qualifies as a Development of Regional Impact under Section 3(e) of the *Enabling Regulations* as amended, as qualifies as “[a]ny development that proposes to divide parcels of land totaling 30 acres or more in common ownership or control on or after September 30, 1994...”.

### FINDINGS

The Commission has considered the application of the Town of Sandwich and P.A. Landers Inc. (as co-applicants) for the proposed land re-division and exchange project, and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following findings pursuant to Section 12 of the Act:

#### General

G1. As the date of the first substantive public hearing was June 20, 2005, this project was reviewed subject to the 2002 (revised) Regional Policy Plan.

G2. As of the date of this decision, the Town of Sandwich did not have a Cape Cod Commission certified Local Comprehensive Plan.

G3. In a DRI decision dated December 5, 1991, the Commission approved, with conditions, P.A. Landers, Inc. sand and gravel removal operation and sand and gravel processing plant on part of a 33.3 acre site located off Kiah's Way in Sandwich. In October, 2003, the Commission's Regulatory Committee granted a modification of condition 13 of the 1991 DRI decision. This condition stated that “[t]he gravel removal operation must commence within seven (7) years of the approval date” and that “the approval shall be valid for a maximum of ten (10) years from the date of approval by the Commission.” The Regulatory Committee approved a change to condition 13 extending the approval period until November 8, 2005. The primary rationale for this was to allow the Town of Sandwich to work with P.A. Landers, Inc. on preservation of open space.

G4. The proposal considered by the Commission in the public hearing for this project and in this decision involves the division or re-division of land in Sandwich along Kiah's Way and Sandwich Road between P.A. Landers, Inc. and the Town of Sandwich. No development of the land to be exchanged, or of the existing P.A. Landers, Inc. site or its sand and gravel operation was advertised as part of the hearing notice, or was considered by the Commission in its review or in this decision. Since no development, re-development or change was proposed to the land that is the subject of this DRI review, or to P.A. Landers, Inc. existing sand and gravel operation, no findings or conditions relative to Regional Policy Plan issues other than Open Space have been incorporated into this decision.

G5. Because of the limited nature of the Commission's review of this project (confined to Open Space issues) the Commission finds that it is appropriate to condition its approval of the land exchange to require further review by the Cape Cod Commission prior to any change, re-development or development of any piece of land involved in the land exchange, and prior to any changes, re-development or development of the P.A. Landers, Inc. site or its operation as it existed at the time of this review.

#### Open Space

OS1. Since no development as defined by the RPP, other than the division of land, is proposed at this time, there is no open space requirement at this time. The applicants have requested, and the Commission finds, that the land conserved through this land exchange may be credited toward future RPP open space requirements at the PA Landers' properties to be acquired through this swap. The town is receiving 81.74 acres in exchange for 40.87 previously protected acres.

Therefore, the excess land available to be used as a credit toward a future open space requirement is 40.87 acres.

OS2. The Town has acknowledged and agreed to permanently protect the 81.74 acres through conveyance of the land to the Town of Sandwich under the care, custody, and control of its conservation commission.

### CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes that the probable benefit of the proposed development is greater than the probable detriment. The Commission also concludes that the proposed land re-division and exchange is consistent with the 2002 Regional Policy Plan (as revised) in the area of Open Space. No conclusion has been reached by the Commission concerning whether the proposed project is consistent with the other parts of the 2002 Regional Policy Plan (as revised).

The Commission hereby approves, with conditions, the application of the Town of Sandwich and P.A. Landers Inc. as co-applicants for the proposed land re-division and exchange project as a DRI provided the following conditions are met:

### CONDITIONS

#### General

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 this written decision as may be necessary to implement the proposed land exchange.

G2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and failure to remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

G3. The co-applicant shall obtain all state and local permits for the proposed land exchange.

G4. 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. The "development" as defined by the Act that is allowed by this decision is limited to the division of land into parcels as needed to facilitate the land exchange as described in this decision.

G5. The co-applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to the project which are issued subsequent to this decision. A copy of final plans approved by the Town of Sandwich or other state or federal boards or agencies shall be submitted to the Commission upon receipt of local approvals.

G6. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed by Commission staff to determine consistency with the Commission's *Enabling Regulations* in effect at the time to determine whether the change in the final plans is a modification to the approved project. If the Commission staff determines that the final plans require a modification, the co-applicants shall also as necessary seek a modification to this decision in accordance with the Commission's *Enabling Regulations* in effect at the time the modification is sought.

G7. A Certificate of Compliance shall be issued by the Commission prior to any development activity on or the issuance of any building permits on the parcels of land subject to this review.

G8. The co-applicants shall be responsible for providing proof of recording of the decision prior to issuance of the Certificate of Compliance. If the project site is on an assemblage of parcels, the co-applicants shall record this decision as to each parcel or plan at the Barnstable Registry of Deeds and/or Land Court.

G9. The co-applicants shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek each Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if warranted, within fourteen (14) business days of such notification and inform the Applicant in writing of any deficiencies and corrections needed. The co-applicants understand that the Commission has no obligation to issue any Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The co-applicants agree to allow Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in this decision have been met.

G10. Further review by the Cape Cod Commission is required prior to any change, re-development or development of any piece of land involved in this Development of Regional Impact and/or the land exchange described in this decision.

### **Open Space**

OS1. Prior to issuance of a Certificate of Compliance by the Commission, PA Landers Sand and Gravel shall convey 81.74 acres of land to the Town of Sandwich to be placed under the care, custody, and control of its conservation commission. The form and substance of the deed and plan shall be reviewed and approved by Commission Counsel prior to execution and recording at the Registry of Deeds. Unless and until the Commission approves the form and substance of the deed and plan noted above, and unless and until the Commission issues a Certificate of Compliance, no building permits shall be issued on or relative to the parcels of land subject to this decision.

OS2. Following issuance of a Certificate of Compliance, P.A. Landers, Inc. shall be credited with conveying 40.87 acres of upland to the Town of Sandwich as permanently protected open space. Such open space credit shall be applied toward the open space requirement of a future DRI on the parcels of land shown as "27-4, 5, 9, 10 Granted to PAL, 30.8 AC±," "32-57 Granted to PAL, 5.4 AC±," and "27-7 Granted to PAL, 4.7 AC±" on the map titled "Approval Not Required Plan off Kiah's Way and Service Road, Sandwich Massachusetts," and dated 10/25/04, with revision dates of 1/16/04 and 5/13/05 (this plan is also Appendix A to this decision).

**SEE NEXT PAGE FOR SUMMARY AND SIGNATURE**

SUMMARY

The Cape Cod Commission hereby approves with conditions the application the Town of Sandwich and P.A. Landers, Inc. for the proposed land re-division and exchange as a Development of Regional Impact as outlined in this decision pursuant to Sections 12 of the Act, c. 716 of the Acts of 1989, as amended.



\_\_\_\_\_  
Commission Chair

Sept 26, 2005

Date

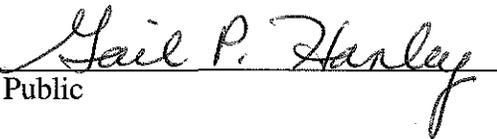
**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

9/26, 2005

Before me, the undersigned Notary Public, personally appeared

Alan Platt, in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned.



\_\_\_\_\_  
Notary Public

My Commission Expires:

10/13/11