



CAPE COD COMMISSION

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DATE: October 20, 2005

TO: Irving B. Freeman and Priscilla F. Rorstrom
c/o Attorney Kate Mitchell
Bridge Creek Professional Building
1170 Route 6A, PO Box 160
West Barnstable, MA

FROM: Cape Cod Commission

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

APPLICANT: Irving B. Freeman Priscilla F. Rorstrom
Prospect Street 7 Buckboard Lane
Rutland, MA 01543 Marlborough, CT 06447

PROJECT #: TR05015

PROJECT: Bay View Farm Estates
211 Route 6A
Sandwich, MA

BOOK/PAGE: Book 5993, Page 218

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Irving Freeman and Priscilla Rorstrom (Applicants) as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Bay View Farm Estates. The decision is rendered pursuant to a vote of the Commission on October 20, 2005.

PROJECT DESCRIPTION

The proposed project consists of the subdivision of a 27.5± acre parcel of land, Bay View Farm, into nine residential lots (eight new lots) and one open space lot. (The existing family homestead will remain on one lot.) The project site is located on Route 6A in Sandwich and is bordered by Route 6A to the south, the railroad bed to the north, Ox Pasture Road (an unimproved way) to

the west, and Great Island Road to the east. Residential development is located to the east and west of the project site. The subdivision consists of a six lot cluster off of Great Island Road, plus one lot on Route 6A, and one lot on Ox Pasture Road in the northern portion of the property. The site contains 4.64 acres of wetland. A total of 16 acres (upland and wetland) is proposed as permanently protected open space.

PROCEDURAL HISTORY

The Applicants filed a Jurisdictional Determination (JD) with the Commission in 2003 to determine whether the proposed subdivision was subject to Commission DRI review. The central issue of the JD was whether the subdivision involved more than 30 acres of land held in common ownership by the applicant after September 30, 1994. The area of dispute concerned a 3.5 acre abutting parcel that the applicants' predecessor in title had acquired through a tax sale from the Town of Sandwich Collector of Taxes in 1917. The Commission determined that the applicants' interest in the abutting parcel constituted fee simple ownership and that for the purposes of the DRI threshold, they held more than 30 acres in common ownership after 1994. (See *Freeman/Rorstrom JD03010 October 16, 2003* decision.)

The project was referred to the Commission by the Sandwich Planning Board on June 9, 2005. A hearing officer opened the public hearing on August 5, 2005. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on September 13, 2005 at Sandwich High School. The public hearing was continued to the Cape Cod Commission meeting on October 20, 2005. The subcommittee held a public meeting October 6, 2005 at the Commission library to deliberate on the project.

At the October 6, 2005 subcommittee 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 October 20, 2005, where the hearing and the record were closed. At this hearing, the Commission voted unanimously to approve the project as a DRI, subject to conditions.

Materials submitted for the record:

From the Applicants:

Date received:

- | | |
|---|---------|
| • DRI application materials including the following plans: "Plan of Land" dated 5/31/05, "Bay View Farm Estates A Cluster Development in Sandwich MA" dated 5/31/05; "Existing Conditions Plan" dated 5/31/05; "Master Plan Bay View Farm Estates" dated 6/24/05; "Sketch Showing Conventional Subdivision in Sandwich MA" dated 5/6/05; "Sketch Showing Maximum Cluster Bay View Farm Estates" dated 6/23/05; "Landscape and Erosion Control Plan to Accompany Proposed Cluster Development in Sandwich MA" dated 12/23/04; drainage, roadway, and profile plans dated 12/23/04. | 6/28/05 |
| • Certification of filing with town | 7/13/05 |
| • Letter to MHC re: cemetery | 8/2/05 |
| • Cover letter, revised site (master) plan dated 9/12/05, stormwater operations & maintenance manual, revised nitrogen loading calcs | 9/13/05 |
| • Cover letter, water adjustment data, revised landscape & erosion control plan dated 9/15/05, revised Master Plan dated 9/15/05 | 9/16/05 |
| • Historic photos of site | 10/6/05 |

From Cape Cod Commission staff:

- Notice of DRI referral
- Request for additional information
- Cover memo to subcommittee and staff report

Date sent:

6/13/05
7/8/05
9/7/05

From state/local officials:

- DRI referral
- Letter from MHC re: cemetery
- Letter from MHC re: no significant impacts
- Email from Sandwich Director of Planning & Development re: zoning consistency

Date received:

6/9/05
8/5/05
8/10/05
10/11/05

From members of the public

- No submittals

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

A public hearing was held at Sandwich High School in Sandwich, MA on September 13, 2005. Attorney Kate Mitchell, representing the Applicants, presented an overview of the proposed project. In response to comments in the staff report, she said that the lot lines for two lots would be reconfigured to remove them from the wetland buffer areas. She submitted revised plans showing the change. She said that they also would clarify the numbers used in the nitrogen loading calculations.

Martha Hevenor presented a summary of the staff report.

The subcommittee's comments and questions primarily focused on allowing agricultural use in the open space and also whether the invasive species management plan would conflict with the requirement to maintain a vegetated buffer area along Route 6A. Don Schall of ENSR, representing the Applicants, explained that the intent of the invasive species management plan is not to clear all the vegetation but control the invasive species and replace them with native vegetation over time.

Jo Anne Miller Buntich, Sandwich Director of Planning and Development, explained that she had worked with the Applicants over the past two years. She said improvements might be needed for Ox Pasture Road and that she would like to see a provision to allow agricultural use in the open space.

Mark LaReau, an abutter, said he does not want to see Ox Pasture Road widened, as the rural character would be lost. Ms. Taylor explained that that would be handled on the local level.

JURISDICTION

The proposed Bay View Farm Estates qualifies as a Development of Regional Impact (DRI) under Section 3(c) of the DRI Enabling Regulations governing review of Developments of

Regional Impact, which requires review of “any development that proposes to divide parcel(s) 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 Irving Freeman and Priscilla Rorstrom for the proposed Bay View Farm Estates, 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 and 13 of the Act:

General

G1. The proposed project was reviewed under the 2002 Regional Policy Plan, as the date of the first public hearing was September 13, 2005.

G2. The proposed project consists of the subdivision of a 27.5± acre parcel of land, Bay View Farm, into nine residential lots (eight new lots) and one open space lot. (The existing family homestead is to remain on one lot.) The project site is located on Route 6A in Sandwich and is bordered by Route 6A to the south, the railroad bed to the north, Ox Pasture Road (an unimproved way) to the west, and Great Island Road to the east. The subdivision consists of a six lot cluster off of Great Island Road, plus one lot on Route 6A, and one lot on Ox Pasture Road in the northern portion of the property. The site contains 4.64 acres of wetland. A total of 16 acres (upland and wetland) is proposed as permanently protected open space.

G3. According to an email from the Sandwich Director of Planning and Development dated October 11, 2005, the proposed project substantially complies with local regulations, based on the application materials reviewed to date.

G4. The Commission did not review the project for consistency with a certified local comprehensive plan, as the town of Sandwich does not have one.

G5. The proposed project is not located within a District of Critical Planning Concern.

Land Use

LU1. MPS 1.2.1 requires all residential subdivisions of 5 or more lots to cluster the proposed development (unless it is inconsistent with local bylaws) and design the site to maximize contiguous open space and respect its natural topography and character. The project proposes to cluster six of the residential lots and provide open space in a continuous corridor across the site with extensions along stretches of Route 6A.

Transportation

T1. The eight new lots would increase traffic on Route 6A by approximately 80 daily trips and 8 peak hour trips. Access is proposed to six lots via Great Island Road, a private way. The

existing house has access via a driveway onto Route 6A (the location of this driveway may be moved to improve sight lines). Ox Pasture Road provides access for one house lot, and the final new lot is proposed to have a new driveway onto Route 6A. Therefore, only one additional curb cut onto Route 6A is proposed.

T2. The Applicants submitted a “Maximum Cluster” plan that demonstrates fourteen (14) house lots could be developed on the site and still meet town zoning and RPP open space requirements. A fourteen (14) lot subdivision (13 new lots) would increase traffic by approximately 130 daily trips and 13 peak hour trips.

T3. To meet the trip reduction and traffic congestion mitigation requirements of the RPP, the Applicants propose a combination of placing land under a permanent conservation restriction (CR) or agricultural preservation restriction (APR) and cash mitigation. This method is acceptable under MPS 4.1.2.7, 4.1.2.8 and 4.1.3.4 of the RPP.

T4. The reduction in the trip generation potential of the site by 5 lots (reducing potential site traffic by 50 daily trips and 5 peak hour trips) satisfies all of the trip reduction requirements of the RPP and a portion of the required congestion mitigation.

T5. The remaining traffic to be mitigated is approximately 30 daily trips and 3 peak hour trips, as follows:

	Daily	Peak Hour
Potential maximum net increase in site traffic	130	13
Proposed net increase in traffic	80	8
Traffic potential eliminated by CR	50	5
Net traffic requiring mitigation	30	3

The Applicants have offered to pay Twelve Thousand Dollars (\$12,000) to meet the remaining congestion impacts of the RPP. This amount is sufficient to mitigate the congestion impacts of 30 daily trips and 3 peak hour trips from this residential subdivision.

T6. The Sandwich Planning Board may impose additional requirements on the Applicants regarding access and egress to the lots within the subdivision. These requirements may include but are not limited to driveway location, the need for upgrades to Great Island Road and/or Ox Pasture Road.

Water Resources

WR1. Based on the amount of wastewater generated by nine 4-bedroom homes, assumed use of standard Title-5 septic systems (no nitrogen-removal capability), and the parameters detailed in Commission Technical Bulletin 91-001, the proposed project results in a nitrogen loading concentration in groundwater of 2.93 ppm-N and therefore meets MPS 2.1.1.1, which sets a nitrogen limit of 5 ppm.

WR2. The project is located in the Sandwich Harbor watershed, a Marine Water Recharge Area (MWRA) defined and regulated under MPS 2.1.1.2.C. Sandwich Harbor is currently being evaluated by the Massachusetts Estuaries Project to establish an appropriate nitrogen load for the Sandwich Harbor watershed. Because a critical nitrogen load has not yet been established for Sandwich Harbor, MPS 2.1.1.2.C.2 does not limit the project's nitrogen load to the Sandwich Harbor watershed. However, the project is required by MPS 2.1.1.2.C.1 to provide a monetary contribution toward calculating a critical nitrogen load to Sandwich Harbor. A one-time Five-Hundred Dollar (\$500.00) contribution is appropriate based on the size of the project.

WR3. The project is not located in a Wellhead Protection Area, Potential Public Water Supply Area, or Fresh Water Recharge Area as defined under MPS 2.1.1.2.A, MPS 2.1.1.2.F and MPS 2.1.1.2.B.

WR4. The Drainage Area Plan, dated 12/23/04, describes disposal of stormwater on site in accordance with MPS 2.1.3.1 and use of vegetated basins to treat stormwater runoff consistent with MPS 2.1.3.3.

WR5. A minimum 2-foot separation between points of stormwater infiltration and maximum high groundwater has been demonstrated in accordance with MPS 2.1.3.5 using methodology described in Technical Bulletin 92-001.

WR6. An operation and maintenance plan for stormwater facilities which has been submitted to and approved by Commission staff identifies the responsible party for plan implementation and provides a schedule for basin inspection, monitoring and maintenance as required by MPS 2.1.3.6.

WR7. Municipal water supply is available to the project according the project's Profile Plan (Sheet 2 of 4) dated 12/21/04.

Natural Resources and Open Space

NROS1. The 27.65 acre project site consists of 23.01 acres of upland and 4.64 acres of wetland. The wetland area is mapped as Significant Natural Resources Area. According to the Massachusetts Natural Heritage Atlas, the site is not located within mapped rare species habitat area. As such, review and comment on the proposed project from the Massachusetts Natural Heritage and Endangered Species Program was not required. The barrier beach and salt marshes adjacent to the project site (north of the railroad tracks), however, are mapped for rare species habitat.

NROS2. The Applicants submitted a Natural Resources Inventory (NRI) consistent with the requirements of the RPP. According to the NRI, pine-oak woodland habitat is the principal upland habitat on the site, with a moderate shrub understory in the woodland. A variety of common wetland shrubs occurs within the wetland areas. Dense thickets of vegetative cover occur along Route 6A, where invasive species dominate the heavy shrub understory. A variety of herbaceous species occurs throughout the site in both woodland and wetland areas. The pine-

oak woodland habitat provides important habitat for birds, mammals, reptiles and amphibians. The NRI notes that wildlife activity is moderate to high in the woodland areas and high in wetland areas.

NROS3. The project is required to provide open space at a 1:1 open space to development area ratio, due to its location outside of mapped SNRA (The wetland SNRA noted above is not part of the development area.) According to the open space calculations submitted, the development area is 11.50 acres. The applicant is proposing to provide 11.51 acres of upland open space plus an additional 4.54 acres of wetland. The open space is configured as a continuous corridor across the site with extensions along stretches of Route 6A and is to be permanently protected through a conservation restriction (CR) and/or through an agricultural preservation restriction (APR). The open space configuration protects the wetland buffer areas and adjacent land throughout most of the site. Most of the woodland areas bordering Route 6A are protected as well.

NROS4. According to the narrative submitted with the application materials, the project site was worked as a farm until the mid 1960s by the Applicants' parents. The Applicants have expressed interest in re-establishing agricultural uses on the site, within part of the open space. Allowing for agricultural use at this location is consistent with the open space requirements of the RPP.

NROS5. MPS 2.3.1.2 requires the provision of at least a 100 foot undisturbed vegetated buffer area from wetlands. The lots are configured such that no development will occur within the 100 foot wetland buffer areas. To address concern that a segment of the rear lot line for Lot 2A is located within the buffer area, a development envelope for that lot is shown on the Master Plan to ensure that the 100 foot wetland buffer area remains undisturbed.

NROS6. MPS 2.4.1.6 requires that *development on sites where an NRI identifies that presence of invasive plant species shall provide and implement a management and restoration plan detailing the management of, and where possible, the eradication of the invasive species present, and for revegetating the site with native species.* The Applicants have agreed to provide and implement a management plan to control the non-native invasive species on the site. The plan shall provide for removal and control of invasive species along Route 6A and open up and protect the marsh view corridor along the western/central portion of the site.

Heritage Preservation/Community Character

HPCC1. The Applicants submitted a Project Notification Form to the Massachusetts Historical Commission (MHC) on June 28, 2005. On August 5, 2005 MHC issued a letter stating that the proposed project is unlikely to affect significant historic or archaeological resources.

HPCC2. The project is located within Old King's Highway Regional Historic District, and any buildings on the site will need approval from the Sandwich Old King's Highway Historic District Committee.

HPCC3. Route 6A was designated as a scenic road by the state legislature in 1992. MPS 6.2.3 requires that *new development proposed adjacent to scenic roads shall be designed to preserve distinctive features of the scenic road, including tree canopy, stone walls, winding road character, and scenic views, and to limit the visibility of new development.* The proposed cluster subdivision has been designed to preserve distinctive features of the scenic road and limit the visibility of the development by protecting a 75' wooded buffer along Route 6A as permanent open space, and by maintaining the existing family homestead and its surrounding landscape. In addition, the view corridor from Route 6A towards the marsh along the western/central portion of the site will be opened up and protected through the implementation of an invasive species management plan.

HPCC4. MPS 6.2.9 requires that *all development implement a landscape plan that addresses the functional aspects of landscaping, such as drainage, erosion prevention, and screening and buffering.* The proposed wooded buffer discussed in Finding HPCC3 excludes areas adjacent to the intersection of Route 6A/Great Island Road that are proposed for stormwater drainage and the proposed site drive. The Applicants submitted a landscape plan for treatment of the basins' side slopes dated 9/15/05 and have agreed to increase the density of the proposed plantings and adjust the species proposed in accordance with the Commission staff recommendations in the 9/29/05 update memo to the subcommittee.

CONCLUSION

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

The proposed project complies with the minimum performance standards of the RPP and the probable benefits of the proposed project outweigh the probable detriments resulting from the development, as supported by the findings above. The proposed development is consistent with town of Sandwich zoning by-laws, as supported by Finding G3.

The Commission hereby approves with conditions the application of Irving Freeman and Priscilla Rorstrom for the proposed Bay View Farm Estates as a Development of Regional Impact, 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 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 Applicants shall obtain all state and local permits for the proposed project.

G4. The Applicants shall be responsible for providing proof of recording of the decision prior to issuance of the first Certificate of Compliance.

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.

G6. Prior to issuance of Certificate of Compliance #1, the Applicants shall submit final plans for Lots 1A, 2A, and 3A 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. Prior to the issuance of Certificate of Compliance #2, the Applicants shall submit final plans pertaining to the cluster subdivision 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 as amended from time to time.

G7. The proposed Bay View Farm Estates project shall be constructed in accordance with the following plans:

- "Master Plan" prepared by Down Cape Engineering, dated 9/15/05.
- "Profile Plan Details to Accompany Proposed Cluster Development" prepared by Down Cape Engineering, dated 12/21/04.
- "Drainage Area Plan to Accompany Proposed Cluster Development" prepared by Down Cape Engineering, dated 12/21/04.

G8. As set forth below, prior to release or conveyance of a lot, issuance of a building permit, or any development activity on the site (as the term "development" is defined in the Act), the Applicants shall obtain a Certificate of Compliance from the Commission stating that the conditions in this decision that are required precedent to that Certificate of Compliance have been met. Certificates of Compliance shall be issued as follows:

1. Prior to the issuance of Certificate of Compliance #1, which allows for the conveyance or issuance of building permits for Lot 1A and Lot 2A, and Lot 3A, the Applicants shall comply with Conditions NROS2 and NROS3.

2. Prior to the issuance of Certificate of Compliance #2, which allows for the construction of the cluster subdivision roadway and the conveyance or release or issuance of a building permit for any lot within the cluster subdivision, the Applicants shall comply with Conditions T3, T4, WR1, NROS4, and HPCC1.

3. Prior to the issuance of a Final Certificate of Compliance, which allows for the release of all securities from the Sandwich Planning Board and the conveyance or the issuance of a building permit for the last lot of the cluster subdivision, the Applicants shall comply with all conditions of this decision.

G9. The Applicants shall notify Commission staff of the intent to seek a Certificate of Compliance at least thirty (30) days prior to the anticipated date of lot conveyance or release or issuance of a building permit. 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 seven (7) business days of such notification and inform the applicant in writing of any deficiencies and corrections needed. The Applicants understand that the Commission has no obligation to issue a Certificate of Compliance unless all conditions that are required as a condition precedent to that certificate are complied with or secured consistent with this decision. The 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 the decision are met.

Transportation

T1. No more than one (1) new driveway may be constructed directly onto Route 6A. Such driveway shall be located along the frontage of Lot 2A.

T2. The six (6) lots accessed via Great Island Road shall be restricted to the single subdivision road; no other driveways onto Great Island Road shall be allowed.

T3. Prior to issuance of Certificate of Compliance #2, the Applicants shall prohibit further development on 16.15 acres of the site by recording a conservation restriction (CR) or agricultural preservation restriction (APR) on the open space area as shown on the Master Plan dated 9/15/05, in accordance with the Condition NROS4.

T4. Prior to the issuance of Certificate of Compliance #2, a one-time cash payment of Twelve Thousand Dollars (\$12,000) shall be submitted to the County of Barnstable/Cape Cod Commission to be used to advance any transportation improvements within the Town of Sandwich.

T5. Prior to a Final Certificate of Compliance, the applicant shall demonstrate that all access or egress points to Route 6A serving any parcels within the subdivision meet or exceed the American Association of State Highway Transportation Official's guidelines for safe stopping sight distance.

Water Resources

WR1. Prior to the issuance of Certificate of Compliance #2, the Applicants shall make a one-time monetary contribution of Five Hundred Dollars (\$500) to Barnstable County, to be held in escrow and disbursed at the discretion of the Commission's Executive Director for purposes of calculating a critical nitrogen load to Sandwich Harbor and/or developing nitrogen-management strategies for the Sandwich Harbor Watershed.

WR2. The stormwater system as identified in the Drainage Area Plan dated December 23, 2004 shall be sized to handle capacity for a 25 year-24-hour storm and attain 80% total suspended solids removal in accordance with MPS 2.1.3.2.

Natural Resources/Open Space

NROS1. In accordance with Finding NROS5, no development, including clearing of vegetation for agricultural purposes shall occur within the 100 foot wetland buffer area. This shall not preclude implementation of the invasive species management plan, as described in Condition NROS3.

NROS2. In accordance with Finding NROS3, prior to the issuance of Certificate of Compliance #1, the Applicants shall submit for Commission staff review a draft conservation restriction (CR) and/or agricultural preservation restriction (APR) for the open space areas as shown on the Master Plan dated 9/15/05. The Applicants may determine whether to submit a CR or an APR or both, provided that the total area identified as open space on the Master Plan dated 9/15/05 will be restricted. The grantee shall be identified in this draft CR or APR. An accompanying plan shall also be submitted for review.

NROS3. Prior to issuance of Certificate of Compliance #1, the Applicants shall submit for staff review and approval a draft invasive species management plan. The plan shall provide for removal and control of invasive species along Route 6A and open up and protect the marsh view corridor along the western/central portion of the site. Such plan shall be reviewed and approved by Commission staff prior to the issuance of Certificate of Compliance #1.

NROS4. Prior to the issuance of Certificate of Compliance #2, the Applicants shall provide the Commission with a conservation restriction of a form and substance satisfactory to the Commission or its designee and consistent with Massachusetts General Laws Chapter 184, § 31 – 33, and accompanying plan, and/or an agricultural preservation restriction consistent with MGL Chapter 132A, §11, which provide that the 16.15 acres identified on the plan titled “Master Plan Bay View Farm Estates” as prepared by Down Cape Engineering and dated 9/15/05 shall be preserved as permanent open space. Prior to the issuance of Certificate of Compliance #2, the Applicants shall execute and record the conservation restriction and/or agricultural preservation restriction and site plan at the Registry of Deeds or Registry District of the Land Court, and proof of recording shall be provided to the Commission. To preserve the significant habitat values of this open space area, the land within the 100 foot wetland buffer areas shall remain undisturbed for conservation and wildlife habitat preservation purposes and may provide for public access.

NROS5. Prior to the issuance of Certificate of Compliance #2, the Applicants shall begin implementation of the invasive species management plan as described by Finding NROS6.

Heritage Preservation/Community Character

HPCC1. Prior to issuance of Certificate of Compliance #2, the Applicants shall submit a final erosion control and landscape plan for approval by Commission staff based on the Landscape

