3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

CAPE COD COMMISSION

Date:	February 14, 2013
To:	James Merriam, Town Administrator Town of Harwich 732 Main Street Harwich, MA 02645
From:	Cape Cod Commission
Re:	DRI Exemption Decision Cape Cod Commission Act, Section 12(k) Cape Cod Commission Enabling Regulations, Section 8
Applicant/ Property Owner:	Town of Harwich 732 Main Street Harwich, MA 02645
Project:	Harwich Landfill Approval Not Required (ANR) Division Plan
Project #:	EX 12046
Project Location:	205 Queen Anne Road, Harwich, MA
Town Assessors Map/ Parcel:	58/M-1
Registry Plan Reference:	Pl.Bk.211 Pg. 73
Registry Title Reference:	Bk. 650 Pg. 568

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission ("Commission") hereby approves the Development of Regional Impact (DRI) Exemption application filed by James Merriam, Town Administrator, on behalf of the Town of Harwich, the Applicant, for a proposal to divide a 142.82 acre parcel located at 205 Queen Anne Road, Harwich, MA, into three (3) parcels. The DRI Exemption decision is rendered pursuant to a unanimous vote of the Commission on February 14, 2013.

PROJECT DESCRIPTION

As described by the Applicant, the Town of Harwich capped landfill and recycle center covers approximately 50 acres of a total 142.82 acre +/- parcel owned by the Town. The project proposes division of this property by way of endorsement of an MGL Ch. 41, Sec. 81P "Approval Not Required" (ANR) Plan into three (3) parcels: Parcel 1 (142.31 acres +/-); Parcel 2 (0.31 acres +/); and Parcel 3 (0.22 acres +/-). Ownership and control of Parcel 1 will be retained by the Town and used for its existing purposes. Parcels 2 and 3, totaling 0.53 acres +/-, are small, individually unbuildable, oddly shaped, and have little utility to the town. They will likely be sold or leased to raise municipal funds and used in conjunction with abutting commercial and industrial properties. In May 2011, Harwich Town Meeting authorized the sale or lease of Parcels 2 and 3. The Town is not seeking any approvals for development aside from the land division.

PROCEDURAL HISTORY

The Commission received a DRI Exemption Application on October 19, 2012. The application was deemed complete on January 7, 2013. A substantive public hearing on the application was duly noticed, published and held on January 31, 2013 before the full Cape Cod Commission.

MATERIALS SUBMITTED FOR THE RECORD

TABLE 1: Materials Submitted for the Record	
Materials from Cape Cod Commission	***Date Sent***
Email from Jessica Rempel (JR) to David Spitz (DS) re: town referral, DRI Exemption v. LDRI	10/31/12
Letter from Gail Hanley (GH) to Applicant re: DRI Referral	12/6/12
Email from Jonathan Idman (JI) to DS re: request for outstanding materials	12/10/12

Email from JI to DS re: Mass Historic Project Notification Form (PNF)	12/20/12
Email from JI to DS re: potential hearing date	1/4/13
Letter from JI to DS re: application deemed substantively complete	1/7/13
Email from Kerri Driscoll (KD) to DS re: plans for public hearing	1/9/13
Staff Report	1/14/13
Staff PowerPoint presentation presented at 1/31/13 public hearing	1/31/13
Materials from Applicant	***Date Received***
Email from DS to JR re: Town of Harwich ANR – DRI Application	8/24/12
DRI Exemption Application	10/19/12
Email from DS to Elizabeth Enos (EE) re: DRI Referral	12/3/12
Email from DS to EE re: DRI Exemption confirmation	12/4/12
Email from DS to JI re: DRI Exemption language	12/10/12
Email from DS to JI re: Mass Historic PNF submittal, withdrawal of project at the local level	12/21/12
Mass Historic PNF submittal	12/21/12
Email from DS to JI re: Mass Historic response; next steps	1/4/13
Email from DS to KD re: plans for public hearing	1/10/13
Materials from Public Agencies/Towns/State/Federal	***Date Received***
DRI Referral Form from Town of Harwich, David Spitz, Town Planner	12/5/12
Mass Historic PNF determination	1/3/13

TESTIMONY

January 31, 2013, Commission Public Hearing

The Cape Cod Commission held a duly noticed public hearing on the DRI exemption application for the purpose of reviewing the proposed project and receiving public testimony. Jonathan Idman, Chief Regulatory Officer, presented the Staff Report. David Spitz, Town Planner for the Town of Harwich, stated that he did not have anything to add to the information presented in the Staff Report, but that he was available to answer questions. No representatives from federal, state or local government provided testimony and no members of the public provided public testimony. The Commission voted unanimously to find that the project literally qualifies as a DRI, but may nonetheless be exempted from Commission review because it will have no significant impacts on the values and purposes specified in Section 1 of the Cape Cod Commission Act ("Act") outside of the municipality in which it is proposed due to its particular location, character and environmental effect and directed Commission staff to draft a DRI Exemption decision consistent with this finding, and with the testimony provided and materials submitted for the record. The hearing was continued to the February 14, 2013 full Commission meeting at 3 PM at the Assembly of Delegates Chamber, Route 6A, Barnstable, MA.

JURISDICTION

The project qualifies as a DRI pursuant to Section 3(c) of the Commission's Enabling Regulations (Revised March 2011, Revised Fee Schedule Effective July 1, 2012) as "Any development that proposes to divide parcel(s) of land totaling 30 acres of more in common ownership or control on or after September 30, 1994, including assembly and recombination of lots . . . ."

FINDINGS

The Commission has considered the DRI Exemption application of James Merriam, Town Administrator, on behalf of the Town of Harwich, the Applicant, for a proposal to divide a 142.82 acre parcel located at 205 Queen Anne Road, Harwich, MA, into three (3) parcels, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings, pursuant to Sections 12 and 13 of the Act:

GENERAL FINDINGS

GF1. The date of the first substantive public hearing on the proposed project was January 31, 2013. As such, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in August 2012.

GF2. The proposed project is the division of the Town of Harwich, town-owned, capped landfill, transfer station and recycle center, which covers approximately 50 acres of a total 142.82 acre +/- parcel owned by the town, by way of endorsement of an MGL Ch. 41, Sec. 81P "Approval Not Required" (ANR) Plan into three (3) parcels: Parcel 1 (142.31 acres +/-); Parcel 2 (0.31 acres +/); and Parcel 3 (0.22 acres +/-). Ownership and control of Parcel 1 will be retained by the Town and used for its existing purposes. Parcels 2 and 3, totaling 0.53 acres +/-, are individually unbuildable, but will likely be sold or leased, and used in conjunction with abutting commercial and industrial properties. In May 2011, Harwich Town Meeting authorized the sale or lease of Parcels 2 and 3. The Town is not seeking any approvals for development aside from the land division.

GF3. Section 12(k) of the Act and Section 8 of the Commission's Enabling Regulations provide that any applicant can apply to the Commission for a DRI Exemption from Commission review of a proposed project that literally qualifies as a DRI, but where the location, character and environmental effects of the development will prevent its having any significant impacts on the

resources, values and purposes protected by the Act outside of the municipality in which the development is to be located.

GF4. The project qualifies as a DRI pursuant to Section 3(c) of the Commission's Enabling Regulations (Revised March 2011, Revised Fee Schedule Effective July 1, 2012) as "Any development that proposes to divide parcel(s) of land totaling 30 acres of more in common ownership or control on or after September 30, 1994, including assembly and recombination of lots . . . ."

GF5. The Commission finds that the project literally qualifies as a DRI, but may nonetheless be exempted from Commission review because it will have no significant impacts on the values and purposes specified in Section 1 of the Cape Cod Commission Act outside of the municipality in which it is proposed due to its particular location, character and environmental effect.

GF6. The land division is the one proposed as shown on the "Approval Not Required" (ANR) plan entitled "Plan of Land in Harwich, Massachusetts", dated June 15, 2012, prepared for the Town of Harwich, by Paul E. Sweetser, PLS, Harwich Engineering Department, which must be endorsed by the Harwich Planning Board to effect the proposed division, and subsequently recorded at the Barnstable Registry of Deeds.

GF7. According to the Applicant, "[t]he entire 142.82 acre parcel of land was included in the Site Assignment for the Town of Harwich landfill. The Town must apply to the Harwich Board of Health and the Massachusetts Department of Environmental Protection for a minor modification to remove [Parcels] 2 and 3 from the area subject to the Site Agreement."

GF8. The Commission finds that the proposed development is consistent with municipal development by-laws, including municipal zoning, provided that the Applicant successfully obtains all necessary municipal permits, licenses and approvals, including any required zoning relief.

FINDINGS RELATIVE TO REGIONAL POLICY PLAN (RPP) ISSUE AREAS

LAND USE

LUF1. The Town of Harwich does not have an endorsed Land Use Vision Map, and the proposed division neither creates five or more residential lots nor is located adjacent to rural landscapes or land under active agricultural production. Further, other than the division itself, no actual development is proposed at this time. The Commission finds MPS LU 1.2 (Compact Development), MPS LU2.1 (Connections to Existing Infrastructure), MPS LU2.2 (Co-location of Telecommunication Facilities), MPS LU3.1 (Buffers to Agricultural Uses), and MPS LU 3.2 (Impacts to Agricultural Lands) do not apply.

LUF2. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the Act outside the municipality in which the proposed development is to be located relative to the RPP issue area of Land Use.

ECONOMIC DEVELOPMENT

EDF1. Although the Town of Harwich does not have an endorsed Land Use Vision Map, as the proposed project consists only of the division of land, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside the municipality in which the proposed development is to be located, relative to the RPP issue area of Economic Development.

WATER RESOURCES

WRF1. The proposed project site is located in the West Reservoir subwatershed to the Herring River. The project is not proposed in a Water Quality Improvement Area or Freshwater Recharge Area, and does not propose public or private wastewater treatment facilities. Therefore, MPS under RPP Goal WR5 (Water Quality Improvement Areas), Goal WR4 (Freshwater Ponds and Lakes), and Goal WR6 (Public and Private Wastewater Treatment Facilities) do not apply.

WRF2. The project proposes only land division and no further development is proposed, therefore the project is consistent with MPS under RPP Goal WR1 (Water Resources Goals of General Aquifer Protection) and Goal WR7 (Stormwater Quality).

WRF3. The project is not in a Wellhead Protection Area or a Potential Public Water Supply Area. As such, because the project proposes land division and no further development is proposed, there is no significant impact on the drinking water resources as proposed.

WRF4. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the Act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Water Resources.

COASTAL AND MARINE RESOURCES

CMRF1. The site of the proposed project is not located in any Coastal or Marine Resource area and as such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue areas of Coastal and Marine Resources.

NATURAL RESOURCES

NRF1. The project site is not located in a Significant Natural Resources Area (SNRA) and currently abuts active industrial uses to the north and a utility easement to the south. Parcels 2 and 3, totaling approximately 0.53 acres, appear to be partially disturbed and/or have some encroachment on them. The Applicant has not provided a natural resource inventory; however, the small area, lack of SNRA designation and disturbed condition of Parcels 2 and 3 obviates the need for a natural resource inventory in this particular application.

NRF2. Based on the plans submitted by the Applicant, there are no wetlands on or directly affecting Parcels 2 and 3. As such, and as no development other than land division is proposed, MPS under RPP Goal WET1 (Wetlands Protection) and Goal WPH1 (Prevent Loss, Minimize Adverse Impacts, and Maintain Diversity) do not apply to the proposed development.

NRF3. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Natural Resources.

OPEN SPACE

OSF1. MPS OS1.3 requires that all development ". . . excepting municipal projects serving municipal purposes, that qualifies as a DRI [shall] provide permanently restricted upland open space . . . ." The project is proposed by a municipality, the Town of Harwich, for a municipal purpose, and the proposal includes only land division. Additionally, given the small size of Parcels 2 and 3, the nature of the impact on open space resources is minimal.

OSF2. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Open Space Protection and Recreation.

TRANSPORTATION

TF1. The proposed parcels do not have direct access to or abut a regional roadway. The proposed parcels are currently undeveloped and no development is proposed as part of this application other than the land division itself. Therefore, the Commission finds that MPS under the Transportation section of the RPP do not apply.

TF2. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Transportation.

WASTE MANAGEMENT

WMF1. As the project proposes only land division and is not located within an area mapped as a Potential Public Water Supply or a Wellhead Protection Area, Commission staff suggests MPS WM1.1 (Hazardous Materials/Waste Restrictions) and WM1.5 (Compliance with Massachusetts Hazardous Waste Regulations) do not apply.

WMF2. As the project proposes only land division and no further development is proposed, no solid waste generation is anticipated. As such, Commission staff suggests MPS under RPP Goal WM2 (Solid Waste) do not apply.

WMF3. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Waste Management.

ENERGY

EF1. As the project proposes land division and no buildings or structures are proposed, the Commission finds that MPS under the Energy section of the RPP do not apply.

EF2. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Energy.

AFFORDABLE HOUSING

AHF1. As the project proposes only land division and no residential or commercial construction is proposed, no affordable housing impacts are anticipated.

AHF2. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Affordable Housing.

HERITAGE PRESERVATION AND COMMUNITY CHARACTER

HPCCF1. The Heritage Preservation MPS under RPP Goal HPCC1 (Historic, Cultural, and Archaeological Resources) require the preservation of historic structures, cultural landscapes, and archaeological sites. There are no known historic structures or cultural landscapes on the project site or adjacent to the site. By correspondence dated December 31, 2012, the Massachusetts Historical Commission (MHC) determined that the project is unlikely to affect significant historic or archaeological resources. As such, Commission staff suggests that MPS under RPP Goal HPCC1 do not apply.

HPCCF2. The proposed division of land does not include any construction. As no structures are proposed, Commission staff suggests that MPS under RPP Goal HPCC2 (Community Character/Site and Building Design) do not apply.

HPCCF3. As such, the location, character and environmental effects of the proposed development will prevent its having any significant impacts on the resources, values and purposes protected by the act outside of the municipality in which the proposed development is to be located relative to the RPP issue area of Heritage Preservation and Community Character.

CONCLUSION

Based on the above Findings, the Commission hereby concludes that the Applicant has met its burden of proof that the proposed project literally qualifies as a DRI, but the location, character, and environmental effects of the development will prevent its having any significant impacts on the resources, values and purposes protected by the Act outside of the municipality in which the development is to be located, and as such, the Commission hereby approves the DRI Exemption application filed by James Merriam, Town Administrator, on behalf of the Town of Harwich, the Applicant, for a proposal to divide a 142.82 acre parcel located at 205 Queen Anne Road, Harwich, MA, into three (3) parcels subject to the following:

GENERAL CONDITIONS

GC1. Pursuant to Section 12(k) of the Act, this decision is valid for a period of three (3) years. The proposal hereunder may be exercised, and local development permits may be issued pursuant hereto, for a period of three (3) years from the date of this written decision.

GC2. The exemption granted in this decision shall be in gross, and personal to the municipal applicant. However, the decision shall bind, and be enforceable against, the Applicant, its heirs, successors, and assigns.

GC3. The Applicant shall obtain all necessary federal, state, and local permits, licenses and approvals for the proposed project.

GC4. Failure to comply, and remain in compliance, with all conditions stated herein, and with all related statutes, ordinances, laws and other regulations, shall be deemed cause to revoke or modify this decision.

GC5. The project shall be undertaken consistent with the "Approval Not Required" (ANR) plan entitled "Plan of Land in Harwich, Massachusetts", dated June 15, 2012, prepared for the Town of Harwich by Paul E. Sweetser, PLS, Harwich Engineering Department. The Applicant shall provide the Commission with both an endorsed and recorded copy of such plan, as and when endorsed and recorded.

GC6. Any future development proposed on any of the three subject parcels, singly or in combination with one another or other land, that independently exceeds a mandatory DRI threshold pursuant to the Commission's Enabling Regulations, when and if proposed, shall be subject to mandatory DRI review.

(Signature/s on Next Page)

Executed:

John D. Harris, Chair

14 Feb 2013
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Feb 14, 2013

Before me, the undersigned notary public, personally appeared John D. Harris, 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: 9-28-18

GAIL P. HANLEY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018