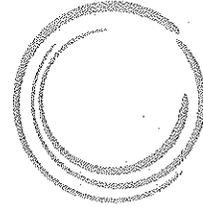


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CAPE COD
COMMISSION

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

Date: December 1, 2011
To: Samuel H. Crowell
Crowell Law Office
99 Willow Street, Suite 1
Yarmouthport, MA 02675
From: Cape Cod Commission
Re: DRI Exemption Decision
Cape Cod Commission Act, Section 12(k)
Cape Cod Commission *Enabling Regulations*, Section 8

Applicant: Steven Dodge

Property Owner: Deerwild Realty Trust

Project: Deerwild Approval Not Required Subdivision

Project #: TR/EX 11015

Project Location: 102 Sesuit Neck Road, East Dennis, MA

Map and Parcel: 406-1

Recording Information:

Deerwild Realty Trust Lot 6 Land Court Plan 29040-D, Certificate of Title #: 129466
Roger P. Nordblom and Peter C. Nordblom, Trustees
Steven B. Dodge and Anne N. Dodge Lot 5 Land Court Plan 29040-D,
Certificate of Title #: 195980

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves the Development of Regional Impact (DRI) Exemption application filed by Steven Dodge, the Applicant, as represented by Attorney Samuel H. Crowell, for a proposal to subdivide a 41.45-acre property located at 102 Sesuit Neck Road, East Dennis, into two (2) lots. The DRI Exemption decision is rendered pursuant to a vote of the Commission on December 1, 2011.

PROJECT DESCRIPTION

The project as described by the Town DRI referral form and by the Applicant is to subdivide a 41.45-acre property located at 102 Sesuit Neck Road, Dennis, into two (2) lots. All of the 41.45 acres is currently subject to a Conservation Restriction granted to the Dennis Conservation Trust. The site is residentially zoned.

The project consists of a proposed subdivision of a 41.45 acre parcel (Lot 4) that will divide it into two new lots: a 23.93 acre lot (Lot 6) and a 17.52 acre lot (Lot 5). The property is restricted in perpetuity under a Conservation Restriction (CR) that also extends to abutting lots not subject to the subdivision. The CR limits the location of development on the project site to a 10.18 acre building envelope area. The remaining area (31.27 acres) is protected open space ("restricted" area). The Building Envelope contains two houses, two horse corrals, two outbuildings, and a tennis court. Much of the land inside the building envelope has been previously disturbed/alterred by the existing development.

PROCEDURAL HISTORY

On September 19, 2011, the Commission received a referral of the project as a DRI from the Dennis Planning Board, through Daniel J. Fortier, the Dennis Town Planner. On September 20, 2011, the Commission staff sent the Applicant a letter confirming receipt of the DRI referral and notifying the Applicant of the statutory DRI timeframes. On October 12, 2011, the Applicant submitted a DRI Exemption application. The Applicant submitted additional application materials between October 14, 2011 and October 28, 2011. The application was deemed substantially complete by a Commission letter on November 16, 2011. The DRI/DRI Exemption hearing was opened by a duly noticed public hearing held on November 16, 2011. The Subcommittee held public meeting on November 16, 2011 and November 22, 2011.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearings relative thereto, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
Materials from Cape Cod Commission	Date Sent
Certified Letter, Andrea Adams (AA), to Rodger and Peter Nordblom: Receipt of DRI Referral and notice of Commission DRI review with attachments	9/20/11
Email, Kristy Senatori (KS) to Attorney Crowell: DRI review process	10/5/11
Email, AA to Daniel Fortier: Consistency with local requirements	10/13/11
Email, KS to Attorney Crowell: Archeological issues and review process	10/14/11
Email, AA to Attorney Crowell: DRI review process and timelines	10/14/11
Email, AA to Attorney Crowell: Copy of letter from Massachusetts Historical Commission	10/20/11
Email, AA to Dan Fortier: Copies of materials and review of Conservation Restriction and amendment	10/21/11
Email, AA to Glenn Cannon: Project description relative to possible Transportation impact	10/25/11
Email, AA to Cheryl Wilson, Dennis Police Department: Use of meeting	10/26/11

room at Police Department	
Email, AA to Dennis Historical Society: Use of Carleton Hall	10/26/11
Email, AA to Cheryl Wilson: Use of meeting room at Police Department	10/27/11
Email, AA to Attorney Crowell: Sample staff reports for other DRI projects that requested a DRI Exemption	10/27/11
Letter, Gail Hanley: Noticing of Public Hearing	10/28/11
Email, AA to Peter Howes, Dennis Historical Society concerning use of Carleton Hall	10/31/11
Memo, Glenn Cannon to AA: Transportation analysis	11/1/11
Staff Report	11/9/11
Email, AA to Subcommittee: Site visits	11/9/11
Email, AA to Attorney Crowell: Copies for Subcommittee	11/9/11
Email, AA to Attorney Crowell: Copy of Staff Report	11/9/11
Email, AA to Dan Fortier: Copy of Staff Report	11/9/11
Email, AA to Carrie Wilkins for Attorney Crowell: Site visits	11/9/11
Email, AA to Attorney Crowell: Copies to Town of Application	11/10/11
Email, AA to Commission Member Taylor: Directions to site	11/10/11
Email, AA to Other Subcommittee Members: Directions to site	11/10/11
Email, AA to Mark Robinson: Copy of Staff Report	11/15/11
Email, AA to Subcommittee Members: Site visit and Hearing location	11/15/11
Email, AA to Paula Pariseau: Response to Comments on Staff Report	11/16/11
Email, AA to Attorney Crowell: Copy of comments on projects	11/16/11
Letter, AA to Attorney Crowell: Application substantially complete	11/16/11
Hearing Outline and Sample Motions Sheet	11/16/11
Hearing Notice	11/16/11
Hearing Sign In Sheet	11/16/11
Subcommittee Public Hearing Minutes	11/16/11
Meeting Notice	11/16/11
Subcommittee Meeting Minutes	11/16/11
Email, AA to Attorney Crowell: Evidence that Application at Town	11/17/11
Email, AA to Attorney Crowell: Copy of draft Decision	11/18/11
Email, AA to Daniel Fortier: Copy of draft Decision	11/18/11
Email, AA to Subcommittee: Copy of draft Decision	11/18/11
Email, AA to Subcommittee: Copy of draft sets of Minutes	11/21/11
Meeting Notice	11/22/11
Subcommittee Meeting Minutes	11/22/11
Memo, AA to Subcommittee: Copy of draft decision and Minutes for consideration at 12/1/11 full Commission meeting	11/22/11
Memo, AA to Commission Members: Copy of materials for consideration at 12/1/11 full Commission meeting	11/22/11
Meeting Outline	11/22/11
Materials from Applicant	Date Received
Letter with attachments, Attorney Crowell: DRI Application – Application cover page; Abutters List; Project Narrative; Current Conservation Restriction; Proposed Conservation Restriction	10/12/11

Amendment; Color topographical map; MHC response; Large site map, Small plan of land	
Email, Attorney Crowell to AA: Timeline for limited DRI review	10/14/11
By Hand from Attorney Crowell: Color Sketch of Plan of Restricted Lands (8.5 x 11 inches)	10/17/11
Letter, Attorney Crowell: Fee payment	10/21/11
Copy of Fee Payment	10/27/11
Email, Attorney Crowell to AA: Steven Dodge as Applicant	10/28/11
Letter, Attorney Crowell to AA: Copies of Materials for Subcommittee	11/4/11
Email, Carrie Wilkins for Attorney Crowell to AA: Scheduling site visits	11/9/11
Email, Attorney Crowell to AA: Evidence of Application to Town	11/17/11
Letter, Attorney Crowell to AA: Copies of Application for mailing	11/18/11
Existing CR Plan (2000) (8.5 x 11 inches)	Undated
Proposed CR Plan (2011) (8.5 x 11 inches)	Undated
Materials from Public Agencies	Date Received
Letter, Daniel Fortier: DRI Referral Form and attachments	9/19/11
Letter, Jonathan K. Paton, Massachusetts Historical Commission (MHC): Archeological issues	10/6/11
Letter, Jonathan K. Paton, MHC: Archeological issues (by Fax)	10/20/11
Email, Daniel Fortier: Conservation Restriction endorsed by Conservation Commission and consistency with Local Comprehensive Plan	10/21/11
Letter, Jonathan K. Paton, MHC: Archeological issues (original)	10/24/11
Email, Daniel Fortier: Project is not in a DCPC area	11/1/11
Email, Daniel Fortier: In support of DRI Exemption	11/16/11
Materials from General Public	Date Received
Email, Mark Robinson: Received Staff Report	11/15/11
Email, Paula Pariseau: Comments on Staff Report	11/15/11

TESTIMONY

November 16, 2011 Subcommittee Public Hearing

Jack McCormack, Chair, opened the public hearing on November 16, 2011 at 7:00 PM. Mr. McCormack asked a Subcommittee member to read the hearing notice. Richard Roy read the Hearing Notice.

Documents Used/Received:

1. Staff Report
2. Hearing Outline
3. Hearing Notice
4. 11/16/11 Email, Daniel J. Fortier, AICP, Dennis Town Planner
5. 11/15/11 Email, Paula S. Pariseau, The Compact of Cape Cod Conservation Trusts, Inc.
6. 11/16/11 Email, Andrea Adams to Paula Pariseau

Mr. McCormack noted that the hearing is being recorded and that there was a sign-in sheet for people who wish to provide testimony. He then introduced himself and asked the Subcommittee members to introduce themselves, which they did. He then stated that the purpose of the

hearing was to consider the application for a DRI/DRI Exemption review of the subdivision of 40+ acres of vacant land located in Dennis and to take public testimony on the project. He noted that the Applicant is Steven Dodge as represented by Attorney Samuel Crowell. He stated that the order of the hearing would be a staff report by Commission staff, a presentation by the Applicant, questions from the Subcommittee and public testimony. He then swore in everybody providing testimony. He then invited Commission staff to present the staff report.

Andrea Adams, Senior Regulatory Planner presented the staff report. She began with a project description in which she stated that the project consists of a 41.45 acre lot located at 102 Sesuit Neck Road in Dennis, the Applicant proposes to subdivide the property into two (2) lots creating a 23.93 acre lot and a 17.52 acre lot, the property is subject to a Conservation Restriction (CR), development is and will be limited per the CR, development is limited to a defined "Building Envelope", and existing development on the property includes two houses, two horse corrals, two out-buildings, and a tennis court.

Ms. Adams proceeded to describe the Commission's jurisdiction, stating that the project qualifies as a DRI pursuant to Section 3(c) of the Enabling Regulations as "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, including the assembly and recombination of lots..." Ms. Adams noted that the Applicant applied for a DRI Exemption pursuant to Section 12(k) of the Cape Cod Commission Act (Act) and Section 8 of the Enabling Regulations, which states "Any Applicant may apply to the Commission for an Exemption from Commission review... where the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by this act outside of the municipality in which the development is to be located." She also noted that pursuant to the Enabling Regulations "[t]he burden of proof shall be on the Applicant to show the project is exempt."

Ms. Adams went on to address the project's consistency with the Minimum Performance Standards (MPS) in each of the issue areas in the Regional Policy Plan (RPP). She noted that the site is classified as "Other" on the Dennis Land Use Vision Map and that staff suggests the project does not pose a threat to underlying resources or land uses protected by that classification and that, as the project proposes to extend the CR to cover 2.63 additional acres, staff suggests it is consistent with MPS LU1.1. She also noted that staff suggests that MPS LU1.2, MPS LU2.1, MPS LU2.2, MPS LU3.1 and MPS LU3.2 do not apply and that staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Land Use.

Ms. Adams stated that MPS ED1.1 does not apply to "residential subdivisions..." staff suggests that MPS ED1.4 does not apply because the existing horse corrals are not "working agricultural land," MPS ED1.2, MPS ED1.3, and the remaining MPS' in Economic Development Section ED2 do not apply, and staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Economic Development.

Ms. Adams noted that the southern quarter of the property is in the Sesuit Harbor Marine Water Recharge Area (MWRA) and no nitrogen threshold concentration has been set for this MWRA. She noted that the current CR and CR Amendment require that no additional houses be constructed beyond the current number of houses and that the CR creates a specific Building Envelope. She stated that the Applicant estimated 12 current total bedrooms on the property, staff calculated estimated nitrogen loading using 12 bedrooms is less than one part per million

(PPM) and if development is replaced in kind, it will not exceed the 5 PPM standard in RPP Goal WR1. She stated that the CR and CR Amendment allow the existing dirt driveway to "be paved with impervious materials within the Premises to the minimum width necessary by law, so long as no road runoff is directed towards" Shiverick Pond and allow the dirt drive to be reconfigured or relocated but requires that if this is done "said driveway shall be placed farther away from the wetland and the existing driveway shall be restored to a native habitat of field grasses, shrubs or trees." She stated that staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Water Resources.

Ms. Adams noted that the property contains several Coastal Resources. She noted that the CR allows dune stabilization and bulkheads, groins, revetments but these must be approved by the Dennis Conservation Trust and also be consistent with Massachusetts Wetlands Protection Act. She went on to note that the MPS does not allow new development on a Barrier Beach/Coastal Dune. She further noted that the CR allows the right to clear and maintain existing 6-foot wide beach walkway easement and bridle paths and the right to maintain view sheds by limbing or crowning of trees. She stated that staff suggests beach/dune nourishment and clearing and maintenance work relative to the beach walkway, bridle paths and view sheds would not have adverse impacts on the resources and values protected by the Act and staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Coastal Resources.

Ms. Adams noted that the property contains a mix of habitat types and a freshwater pond (Shiverick Pond), a Baseline Data and Natural Resources Inventory was prepared in 2000, MPS WPH1.1 requires a Natural Resources Inventory (NRI) and staff suggests the Baseline Data prepared in 2000 is sufficient to address MPS WPH1.1 and a new NRI is not warranted. She went on to note that the site is not mapped as rare/endangered species habitat and there are no vernal pools on the site. She further noted that the Building Envelope extends into the 100-foot wetland buffer, MPS WET1.1 prohibits wetland buffer alteration, MPS WET1.2 requires 100-foot undisturbed wetland buffer, the CR prohibits alteration of any wetland in the "restricted area" outside the Building Envelope and MPS WET1.3 requires utility lines be outside of wetlands unless no feasible alternative exists. She stated that staff suggests it is unlikely new development would extend farther into the buffer to Shiverick Pond. She noted that MPS OS1.1 requires development in Significant Natural Resource Areas (SNRA) to cluster development away from sensitive resources, MPS OS1.3 requires DRIs to provide permanently protected open space, MPS OS1.4 requires development to protect sensitive resources and MPS OS1.5 applies to subdivisions of 5 or more lots to cluster. She went on to note that the site is not mapped as a SNRA, the CR preserves a large part of site, future development on the site is restricted to the Building Envelope and the proposed project will add 2.63 acres into restricted area of CR. She stated that staff suggests the project is consistent with MPS OS1.4 and MPS OS1.5, MPS OS1.7 and MPS OS1.8 do not apply and staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Natural Resources (Wetlands, Plant & Wildlife Habitat and Open Space).

Ms. Adams noted that the project entails the relocation of an existing house, the relocated house would use the existing dirt driveway and staff suggests that no new traffic and no significant traffic impacts would be created by the proposed project. She went on to note that staff reviewed the sight distance at the driveway and it meets Commission standards. She stated that staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Transportation.

Ms. Adams noted that the property is not located in Wellhead Protection Area or Potential Public Water Supply Area, that there may be Hazardous and Solid Waste generated from the replacement of the existing house in the form of land clearing and construction/demolition debris but the CR and Building Envelope limit clearing and the replacement of house limits construction/demolition debris. She stated that staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Solid and Hazardous Waste Management.

Ms. Adams noted that the RPP Energy standards apply to non-residential development, multi-family residential development (apartments, condos), Mixed Use projects and Wind Energy Conversion Facilities, the proposed project is not Mixed Use as defined by the RPP, no Wind Energy Conversion Facilities are planned, and the development is restricted by the CR to two houses. She stated that staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Energy.

Ms. Adams stated that MPS AH1.1 applies to residential construction and redevelopment of 10 units or more, MPS AH1.2 applies to residential subdivisions of 10 or more lots, the proposed project is the subdivision of land into two new lots, and staff suggests that the Subcommittee could find that the RPP Affordable Housing section does not apply to the project.

Ms. Adams noted that the project is located in the Dennis Old Kings Highway Historic District; the property does show evidence of historic use, including stone walls, cart paths, ditch and earthen dyke associated with cranberries, but the buildings are not historically significant. She went on to note that the CR restricts development to a Building Envelope and the Massachusetts Historical Commission issued a letter on 10/20/11 noting that the Building Envelope has had ground disturbance and is unlikely to contain significant archeological resources. She stated that staff suggests that the project is consistent with MPS HPCC1.1 (Historic Structures), MPS HPCC1.2 (Cultural Landscapes) and MPS HPCC1.3 (Archeological Resources), MPS HPCC2.1 through MPS HPCC2.14 do not apply and staff suggests that the Subcommittee could find that the project can be granted a DRI Exemption in the RPP issue area of Heritage Preservation & Community Character.

Ms. Adams restated that the Applicant applied for a DRI Exemption pursuant to Section 12(k) of the Commission Act and Section 8.0 of the Enabling Regulations. She stated that the standards for review and approval include that the Commission must find that the probable benefit from the proposed development is greater than the probable detriment. She also stated that according to a 10/21/11 email from Daniel J. Fortier, Dennis Town Planner, the project is consistent with Municipal Development Bylaws and with the Local Comprehensive Plan and that the site is not located in the area of the Quivet Neck/Crowe's Pasture District of Critical Planning Concern.

Ms. Adams concluded, stating that the Subcommittee needed to determine if the project is eligible for a DRI Exemption or if the project could be approved as a DRI. She noted that there was a Subcommittee meeting scheduled for right after the public hearing to discuss the project. She also noted the Subcommittee needed to continue the public hearing and record to December 1, 2011 full Cape Cod Commission meeting.

Mr. McCormack thanked Ms. Adams and asked the Applicant if he would like to make a presentation.

Attorney Sam Crowell referred to plans he had prepared including three land court plans. He noted that the 1990 plan (land court plan 29040B) showed three lots, including Lot 1 and Lot 2. He noted that in 2000 when the CR was put in place, Lot 1 and Lot 2 were combined to create Lot 4. He stated that if the project is approved, two lots will be created, Lot 6 which was Lot 1 and Lot 5 which was Lot 2. He also noted that the CR grants the right to reconfigure Lot 4 based on what Lot 1 and 2 were. He did note there will be one small discrepancy in the area of the driveway as there will be a small jog at the entrance on the plan so no easement is needed and to make things easier on the parties involved. He noted that 2 plans had been recorded and the Applicant is attempting to record the new plan that will go on record with the CR Amendment. Mr. Crowell referred to another sketch plan that was attached to the CR in 2000 that delineates where the restricted land is. He noted that of Lot 4 is 41.45 acres, but more land is restricted including another lot, a small jog and 3 unregistered pieces, but these are different lots and the Applicant is just proposing to subdivide Lot 4. He showed how the Building Envelope will change and noted that the eastern 2.63 acre portion will be restricted. He noted that all of the lot is within the CR and is kept in its natural state except within the Building Envelope where there are few restrictions but just 2 dwellings are allowed. He noted that as proposed in the amended CR, the Applicant will have to get rid of the existing dwelling within 9 months, will relinquish rights for a driveway and utilities and 2.63 additional acres will be preserved in its natural state in perpetuity. He also noted that under the terms of the CR, if one building is demolished another building can be added within the new Building Envelope. He stated there are no plans to add another building once the existing one is demolished, but there is the right to put a second dwelling within the Building Envelope.

Ms. Adams clarified that in some cases the staff report refers to a development potential in anticipation of a second dwelling being built as allowed in the CR and its potential impacts relative to the MPS'.

Attorney Crowell provided some background on the project. He stated that the property is owned by the Deerwild Realty Trust, Rod Nordblom is one of the Trustees and it is his land. He stated that Mr. Nordblom's son-in-law is Steven Dodge who owns an abutting parcel and that as soon as the subdivision is approved, the section will be transferred within the family to Steven Dodge who will then demolish the existing building and the amended CR will go on record under his name. Mr. Crowell asked if there were questions.

Roger Putnam asked whether the cleared land he drove through on the site visit was part of the Building Envelope as he was curious about the areas where brush had been cleared along the driveway and whether these were areas where it was meant to be kept in its natural state.

Mr. Crowell was not sure what the extent was, but noted the CR does allow some tree trimming.

Mr. Putnam said he was not sure it made much difference, but he was just curious.

Mr. McCormack asked if there were further questions. Hearing none, he invited federal, state, or local officials to testify. Hearing none, he invited testimony from other interested persons in the audience. Hearing none, he asked the Applicant for final comments.

Mr. Crowell thanked everyone for coming to the site visits and for making time for the hearing.

Mr. McCormack asked staff for final comments. Hearing none, he asked for a motion to continue the hearing and the record to the December 1, 2011 full Cape Cod Commission meeting

at 3:00 PM at the Assembly of Delegates Chamber, First District Court, Barnstable. Lynn Pleffner so moved. Elizabeth Taylor seconded and it came to a unanimous vote. Adjourned at 7:40 PM.

November 16, 2011 Subcommittee Meeting

Documents Used/Received: Meeting Outline

Jack McCormack opened the Subcommittee meeting on November 16, 2011 at 7:40 PM at the Dennis Police Department.

Andrea Adams, Senior Regulatory Planner noted that the purpose of the Subcommittee meeting was for the Subcommittee to discuss the project that was just heard in the public hearing. She noted that staff's general recommendation was that the project qualifies as a DRI exemption pursuant to Section 12(k) of the Commission Act and Section 8 of the Commission's Enabling Regulations. She clarified that if the Commission finds that the project qualifies as a DRI Exemption, it is making findings of fact on the record, it is a Commission decision and no conditions can be placed on project. She noted that several people have asked whether conditions can be attached to the Commission's decision if the project is approved as a DRI Exemption and what happens if there is a material change to the project. She clarified that the project, if approved as a DRI Exemption cannot be conditioned but the decision is attached to that particular project and the decision runs with the land not with the Applicant. She said that if there were a material change to the project, it may be subject to further Commission review. She noted that the current project under review is the subdivision of land into two parts and an amendment to the CR and staff has given input into its potential impacts. She further noted that if the Applicant or his successors or assigns decide on some other project that is not consistent with the Commission's decision, it may be subject to further review. She said the Subcommittee should discuss if the project qualifies as a DRI Exemption and discuss if the Applicant has met the burden of proof and, if not, if the project is eligible as a DRI with conditions.

Mr. McCormack asked if transferring the parcel described as Lot 5 to Mr. Dodge will affect the decision the Commission makes.

Ms. Adams said no and that the decision runs with the land not with the owner.

Roger Putnam asked if the Commission was limited in its decision to determining that the Building Envelope will be reduced 2.63 acres, the restrictions on the land do not change and the rights in effect now will remain.

Ms. Adams said that was correct and clarified that the Commission is determining whether or not the project is eligible for the exemption.

Richard Roy said that, based on materials submitted for the record, he moved that the Applicant has met the burden to show that the proposed subdivision qualifies under Section 12(k) of the Cape Cod Commission Act and Section 8 of the Commission's Enabling Regulations for an Exemption from Commission review *"because...the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Act outside of the municipality in which the development is to be located."* Robert Bradley seconded and it came to a unanimous vote.

Lynne Pleffner moved to direct Commission staff to draft a written decision for the proposed Deerwild Subdivision project in Dennis as a DRI Exemption. Elizabeth Taylor seconded and it came to a unanimous vote.

Mr. Roy moved to recommend to the full Commission approval of the Deerwild Subdivision project in Dennis as a DRI Exemption. Ms. Taylor seconded and it came to a unanimous vote.

Mr. Putnam asked if the Subcommittee could authorize staff to present the chair with a report for his signature to avoid a subsequent meeting.

Ms. Adams said no and acknowledged the difficulties in coming together as a group but the draft decision was the Subcommittee's decision, so need to meet to review and approve it.

Richard Roy moved to hold a Subcommittee meeting on Tuesday, November 22 at 3:00 PM at the Cape Cod Commission office in Barnstable to review the draft decision. Mr. Bradley seconded and it came to a unanimous vote. Adjourned at 7:50 PM.

November 22, 2011 Subcommittee Meeting

Documents Used/Received: Draft decision and Meeting Outline

Mr. McCormack opened the meeting at 3:00 PM. He asked for a motion on the draft Minutes of the 11/16/11 public hearing and Subcommittee meeting.

Ms. Pleffner moved to approve the draft Minutes, with corrections to the spelling of her name. Ms. Taylor seconded the motion, and it was unanimously approved.

Ms. Pleffner moved to approve the draft Minutes of the 11/16/11 Subcommittee meeting, with corrections to the spelling of her name. Ms. Taylor seconded the motion, and it was unanimously approved.

Mr. McCormack asked Commission staff to review the draft decision.

Ms. Adams, Senior Regulatory Planner went over the draft decision, page by page. She noted that Attorney Crowell had submitted a letter for the record on 11/18/11 which stated that he would be unable to attend the Subcommittee meeting. Ms. Adams said Attorney Crowell's letter also stated that he had reviewed the draft DRI Exemption decision, and which requested a correction to the recording information. Ms. Adams also noted that she had sent a copy of the draft decision to The Cape Cod Compact of Conservation Trusts, Inc. and to Mr. Fortier, the Dennis Town Planner, and that as of today, Commission staff had not received any comments on the draft decision. Ms. Adams went over the recording information, and the General Findings, noting that because the proposed draft decision would grant the project a DRI Exemption, there were no conditions. She noted the change to the spelling of Ms. Pleffner's name in the Testimony section. Ms. Adams noted a proposed change to the language of Natural Resources Finding NRF2. She said this Finding should read "*[t]he Amended CR requires the owner to demolish the dwelling on Lot 5....*".

Ms. Pleffner moved to approve the proposed change to Finding NRF2 as proposed by Commission staff. Mr. Roy seconded the motion and it was unanimously approved.

Ms. Pleffner moved that Finding NR12 be re-written to track the format of the other findings that confirm that the project can be granted a DRI Exemption. Ms. Taylor seconded the motion, and it was unanimously approved.

Ms. Adams continued to review the draft decision, page by page. She noted that a copy of a site plan, showing the proposed subdivision and the Building Envelope B would be attached to the decision. She asked for any final corrections or changes from the Subcommittee.

Hearing none, Mr. McCormack asked for a motion on the draft decision.

Ms. Pleffner moved to approve the draft revised written decision for the proposed Deerwild Subdivision in Dennis. Ms. Taylor seconded the motion and it was unanimously approved.

Mr. McCormack asked for a motion on the project.

Ms. Pleffner moved to recommend that the Cape Cod Commission approve the Deerwild Subdivision project as a Development of Regional Impact Exemption. Ms. Roy seconded the motion, and it was unanimously approved.

Mr. McCormack asked for a motion to adjourn the Subcommittee meeting. Mr. Roy seconded the motion and it was unanimously approved. Meeting adjourned at 3:15 PM.

JURISDICTION

The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(c) of the Commission's *Enabling Regulations* (Revised March 2011) as "*[a]ny 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, including the assembly and recombination of lots...*"

FINDINGS

The Commission has considered the DRI Exemption application of Steven Dodge for the proposed subdivision of a 41.45 acre parcel (Lot 4) that will divide it into two new lots: a 23.93 acre lot (Lot 6) and a 17.52 acre lot (Lot 5), 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 Cape Cod Commission Act:

GENERAL FINDINGS

GF1. The date of the first substantive public hearing on the proposed project was November 16, 2011. As such, this project was reviewed subject to the 2009 RPP, as amended in May 2011.

GF2. Pursuant to Section 12(k) of the Commission Act, this decision is valid for a period of three (3) years and local development permits may be issued pursuant hereto for a period of three (3) years from the date of this written decision.

GF3. The proposed project that is the subject of this DRI Exemption decision is to subdivide a 41.45-acre property located at 102 Sesuit Neck Road, Dennis, into two (2) lots, subject to a Conservation Restriction, and a Building Envelope of 7.55 acres in size as shown on the plan entitled "*Sketch Plan of Restricted Land and Building Envelopes in Dennis, MA as prepared for Rodger P. Nordblom,*" by Soule Land Surveying, dated 9/7/11, attached as Exhibit A to this decision, and incorporated by reference.

GF4. Section 12(k) of Commission Act and Section 8 of the Commission's *Enabling Regulations* provide that any Applicant can apply to the Commission for an Exemption from Commission review "because...the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by this act outside of the municipality in which the development is to be located." The *Enabling Regulations* further state that "[t]he burden of proof shall be on the Applicant to show the project is exempt."

GF5. According to an October 21, 2011 Email from Daniel J. Fortier, AICP, Dennis Town Planner, the Dennis Conservation Commission considered the request to alter the existing Conservation Restriction and endorsed it in concept at the Conservation Commission's October 20, 2011 meeting. As such, the Commission adopts the testimony of Mr. Fortier that the proposed development is consistent with local development bylaws.

GF6. The October 21, 2011 Mr. Fortier also states that the Town's Open Space and Recreation Plan and Local Comprehensive Plan "both promote protection of the natural areas and scenic landscapes of Dennis. While these recommendations are not parcel specific, the actions proposed with [the CR modification] are consistent with the recommendations of both of these documents." As such, the Commission adopts the testimony of Mr. Fortier that the proposed development is consistent with Dennis' Local Comprehensive Plan.

GF7. The Quivet Neck/Crowe's Pasture District of Critical Planning Concern (DCPC) is located in the Town of Dennis however; the proposed subdivision project is not located within this DCPC area. Based on this, the Commission finds this criterion of DRI approval would not apply to this project.

LAND USE

LUF1. The project site is mapped as *Other* on the Town of Dennis approved Land Use Vision Map. The Commission finds the proposed re-subdivision does not present a threat to the resources or characteristics intended to be protected by the underlying land use category of *Other*, and may enhance the site by extended the existing Conservation Restriction (CR) to an additional 2.63 acres. The Commission finds that the proposed re-subdivision is consistent with Minimum Performance Standard (MPS) LU1.1 (*Development Location*). The Commission also finds the proposed re-subdivision does not propose any nonresidential development for the site, therefore the Commission finds that MPS LU1.2 (*Compact Development*) does not apply.

LUF2. The Applicant is proposing to remove connections to existing infrastructure as part of the CR expansion, and no telecommunications facilities have been proposed, therefore, the Commission finds MPS LU2.1 (*Connections to Existing Infrastructure*) and MPS LU2.1 (*Co-location of Telecommunication Facilities*) do not apply.

LUF3. While there are prime agriculture soils mapped on the overall site, the Commission finds they appear to be located outside the "development area" as shown on application plans, and within the CR, which is consistent with the land use standards intended to protect these resource areas. However, as no development is currently proposed as part of the re-subdivision, Commission finds that MPS LU3.1 (*Buffers to Agricultural Uses*) and MPS LU3.2 (*Impact to Agricultural Uses*) do not apply.

LUF4. Based on the Applicant's proposed project, the Commission finds that the project can be granted a DRI Exemption in the RPP issue area of Land Use in as *"the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located."*

ECONOMIC DEVELOPMENT

EDF1. MPS ED1.1 (*Location in Economic Centers*) states in part "[t]his standard does not apply to residential subdivisions..." The proposed project is the subdivision of residentially zoned land into two lots. As such, the Commission finds that this MPS does not apply to the project.

EDF2. MPS ED1.4 (*Resource-based Economic Areas*) requires that "[d]evelopment shall not eliminate or significantly impair the current and future function of working agricultural land, working waterfronts and harbors, fin- and shellfishing grounds, and recreational areas." Information submitted by the Applicant indicates one of the houses currently on the property maintains horse corrals, but the Commission finds this is not within the meaning of "working agricultural land" per MPS ED1.4. As such, the Commission finds this MPS does not apply to the project.

EDF3. The Commission finds that MPS ED1.2, MPS ED1.3 and the remaining MPS in RPP Economic Development sections ED2: *Balanced Economy* which addresses gaming, and in section ED4: *Infrastructure Capacity* do not apply to the project.

EDF4. Based on the Applicant's proposed project, the Commission finds that the project can be granted a DRI Exemption in the RPP issue area of Economic Development in as *"the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located."*

WATER RESOURCES

WRF1. Under the terms of the Conservation Restriction (CR), no additional houses may be constructed beyond the current number of houses. A proposed amendment to the CR allows the owner to demolish one of the two houses (on Lot 5) and reduce the size of Building Envelope B by 2.63 acres. The 2.63 acres will be added to the currently restricted acreage. The CR amendment will also relinquish the owner's rights to a separate driveway and utilities to the existing house on Lot 5.

WRF2. The southernmost quarter of the property is located within the Sesuit Harbor Marine Water Recharge Area (MWRA). No nitrogen threshold concentration (Total Maximum Daily Load) is currently available for this watershed. Most, or all, of the 10.18-acre Building Envelope B is located outside of the MWRA. Notwithstanding the potential demolition of the existing house on Lot 5, the CR permits two dwellings to exist within Building Envelope B. The Commission finds the nitrogen loading concentration for the two, existing dwellings in Building Envelope B (assuming 12 bedrooms total, all occupied) results in a loading concentration of less than 1 part per million (ppm). Based on this calculation, which assumes that any potential demolition the residential structure on Lot 5 will be replaced by an in-kind structure, development will not exceed the 5 ppm nitrogen loading standard for General Aquifer Protection (Goal WR1).

WRF3. The CR also allows the owner the right to pave the existing "dirt drive" that exists to "be paved with impervious materials with the Premises to the minimum width necessary by law, so long as no road runoff is directed towards the wetland..." which is Shiverick Pond. The CR also allows the dirt drive to be reconfigured or relocated but requires that if this is done, "said driveway shall be placed farther away from the wetland and the existing driveway shall be restored to a native habitat of field grasses, shrubs or trees."

WRF4. Based on the Applicant's proposed project, the Commission finds that the project can be granted a DRI Exemption in the Water Resources RPP issue area in as "the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located."

COASTAL RESOURCES

CRF1. The 41.45-acre property contains several Coastal Resources including Coastal Beach, Coastal Dune, Barrier Beach (MCZM BB# Dn-9), and Land Subject to Coastal Storm Flowage. V-zone flooding occurs on the bay side of the property and stillwater (A zone) flooding occurs on the southern edge of the property along a small tributary of Sesuit Creek.

CRF2. The CR allows dune stabilization by plantings, nourishment, or other best management practices as permitted by local, state and federal regulations. Engineered erosion control structures, such as seawalls, bulkheads, groins and revetments, are also allowed (outside of Lot A, which is not part of the 41.45-acre property) with Grantee approval (Dennis Conservation Trust). New development, including coastal structures such as a seawall or revetment, is not allowed on Barrier Beach or Coastal Dune resource areas under the RPP. In addition, coastal engineering structures may not be allowed under the Massachusetts Wetlands Protection Act (MWPA) and its regulations depending on the resources present and whether they are significant to certain interests protected under the MWPA. RPP Minimum Performance Standards for Coastal Resources allow for beach or dune nourishment or other non-structural restoration projects provided they do not impair the natural beneficial functions of protected resources, including beach, dune, saltmarsh, and eelgrass.

CRF3. The CR also allows the right to clear and maintain (without impervious surfacing) an existing, 6-foot wide beach walkway easement (known as the "western cart path") and the right to clear and maintain (by limbing and crowning) viewsheds from the dwellings in the building envelopes to the bay. The CR does not permit the clearing of entire trees and shrubs or the removal of their root systems from any slope or bank in order to prevent erosion or destabilization of the soil. The CR also allows new bridle paths to be created or maintained provided they do not exceed 10 feet in width and are located at least 50 feet away from any wetland edge.

CRF4. Based on the Applicant's proposed project, the Commission finds that the project can be granted a DRI Exemption in the Coastal Resources RPP issue area in as "the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located."

NATURAL RESOURCES: WETLANDS, WILDLIFE AND PLANT HABITAT, OPEN SPACE

NRF1. The project consists of a proposed subdivision of a 41.45 acre parcel (Lot 4) that will divide it into two new lots: one, a 23.93 acre lot (Lot 6) and the other, a 17.52 acre lot (Lot 5). The property is restricted in perpetuity under a conservation restriction (CR) that also extends to abutting lots not subject to the subdivision. The CR limits the location of development on the project site to a 10.18 acre building envelope area. The remaining area (31.27 acres) is protected open space ("restricted" area). The Building Envelope contains two houses, two horse corrals, two outbuildings, and a tennis court. Much of the land inside the building envelope has been previously disturbed/alterd by the existing development.

NRF2. The subdivision proposal includes revisions to the existing CR that would further limit development on the property. Once subdivided, the property owners will decrease the portion of the building envelope on Lot 5 by 2.63 acres, thereby adding 2.63 acres of formerly unrestricted land to the restricted area, for a total of 33.90 restricted acres. The Amended CR requires the owner to demolish the dwelling on Lot 5 and extinguish rights to a separate driveway and separate utilities to serve that lot. A second dwelling may be constructed within the building envelope.

NRF3. The site contains a mix of habitat types. According to the *Baseline Data and Natural Resources Inventory* prepared in 2000 by the Compact of Cape Cod Conservation Trusts for the Conservation Restriction, the site is comprised of a mix of upland, wetland, and barrier beach/bay frontage. The dominant vegetation is oak/pitch pine woodland, with upland understory vegetation consisting of green briar, highbush blueberry, honeysuckle, and bayberry. A 2-acre freshwater pond (Shiverick Pond) is located in the northern portion of the property and is bordered by a vegetated wetland. The property contains two other wetland areas. Cranberry, bayberry, and arrowwood grow near the pond. Dune vegetation occurs towards the bay. The site is not mapped for rare species or rare species habitat.

NRF4. The site's wetland resource areas are located within the restricted portion of the site (i.e. outside the Building Envelope), although the Building Envelope extends into the 100-foot buffer area to the vegetated wetland that borders Shiverick Pond. MPS WET1.1 prohibits wetland alteration. The CR prohibits alteration of any wetlands in the restricted area. MPS WET1.2 requires the provision of a 100-foot undisturbed buffer area to wetlands. As noted above, a portion of the building envelope is located within the 100-foot wetland buffer. While new development is allowed inside the Building Envelope, it is unlikely that a new dwelling (or redevelopment of the existing dwelling) would extend farther into the buffer, given its sloping topography and low elevation. MPS WET1.3 requires installation of utility lines to occur outside wetland resource areas unless no feasible alternative exists. Based on the information submitted, the Commission could not determine from the subdivision plan where future utility lines might go, but finds that it is unlikely that new lines will cross the wetland given the limitation on the location and number of additional dwellings allowed on site. MPS WET1.4 prohibits direct discharge of stormwater into wetlands. Based on the materials submitted for the record, the Commission could not determine if there would be direct discharge of stormwater into wetlands, but finds that it is unlikely this would occur given restrictions in the existing and proposed amended CR.

NRF5. MPS WPH 1.1 requires that a Natural Resources Inventory (NRI) be conducted on sites for DRI applications that propose to alter undeveloped areas. The proposed subdivision does not involve or allow for alteration of undeveloped areas. Based on this, the Commission finds that that a new NRI is not required.

NRF6. MPS WPH1.2 requires limiting clearing and alteration of natural topography. The CR limits clearing and site alteration to the area inside the building envelope. MPS WPH1.3 requires development to minimize fragmentation of wildlife habitat. By limiting development to the area of the building envelope and preserving the remaining land area in perpetuity, the CR minimizes habitat fragmentation and protects over 30 acres of open space. MPS WPH1.4 requires DRIs within rare species habitat to submit project plans to the Massachusetts Natural Heritage and Endangered Species Program (NHESP) for review and comment. The project is not located within rare species habitat, and as such, the Commission finds that review by NHESP is not required. MPS WPH1.5 prohibits development within 350 feet of vernal pools. No vernal pools are located on site. MPS WPH1.6 requires a management and restoration plan to control invasive plant species on sites where an NRI has identified their presence. In accordance with MPS WPH1.1, the Commission finds that a new NRI is not required for this project. However, the 2000 wildlife and habitat assessment prepared for the CR does not identify invasive species on the site.

NRF7. MPS OS1.1 requires development within Significant Natural Resource Areas (SNRA) to be clustered away from sensitive resources and maintain a continuous corridor to preserve wildlife habitat. The site is not located within mapped SNRA. However, the CR preserves a significant portion of the site area, and limits the development area to inside the Building Envelope. MPS OS1.2 requires that proposed open space be contiguous and connected with adjacent open space. The open space is contiguous through the property, and the proposed subdivision would not affect the contiguity.

NRF8. MPS OS1.3 requires DRIs to provide permanently protected open space in proportion to the project's development area. Future development on the site can occur within the Building Envelope only, most of which is previously disturbed. The proposed subdivision does not allow for or create potential for the property's undeveloped areas to be developed. In addition, the subdivision and proposed revision to the existing CR will add 2.63 acres to the restricted area, for a total of 33.90 acres of the permanently protected open space on the 41.50 acre site.

NRF9. MPS OS1.4 requires that development be designed to protect sensitive natural resources. The Commission finds that sensitive natural resources would be protected through the CR preservation of open space and the limitation on development to the area inside the Building Envelope. MPS OS1.5 requires subdivisions with five or more lots to cluster the development to maximize open space. The proposed subdivision consists of only two lots, and also provides a significant portion as open space.

NRF10. Under MPS OS1.6 development proposed adjacent to land held for conservation or preservation purposes is required to be configured so as to prevent adverse impacts to such land. The Commission finds the proposed project complies with this MPS. MPS OS1.7 and MPS OS1.8 pertain to development within Growth Incentive Zones/Economic Centers and development with parking garages, respectively. The Commission finds that neither MPS is applicable to this proposal.

NRF11. The Commission finds the proposed project is consistent with the RPP goals and MPS in the areas of wetlands, plant and wildlife habitat, and open space.

NRF12. Based on the Applicant's proposed project, the Commission finds that the project can be granted a DRI Exemption in the Natural Resources/Wetlands/Plant and Wildlife/Open Space issue area in as *"the location, character and environmental effects of the development*

will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located.”

TRANSPORTATION

TF1. Based on the materials submitted for the record, the Commission finds that no new traffic will be created by this project and that the project will not have significant impacts in transportation. The standard for Commission review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. Based on the Applicant's proposal to re-subdivide the property and relocate an existing house, the Commission also finds that requiring trip reduction and traffic congestion mitigation of the Applicant would not be warranted.

TF2. The Applicant has proposed to utilize the existing site driveway off Sesuit Road. The Commission finds the stopping sight distance at this driveway complies with Commission standards.

TF3. Based on the information described in the Applicant's Project Narrative, the Commission finds that new traffic would not be added to the roadway system as a result of this project and finds that a DRI Exemption is appropriate in the RPP issue area of Transportation because *“the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located.”*

WASTE MANAGEMENT - HAZARDOUS WASTES

HWF1. MPS WM1.5 requires that *“[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste...”* be in compliance with the state's Hazardous Waste regulations. The RPP also specifies three items shall be provided to show compliance with this requirement for purposes of Commission review:

- (a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste;
- (b) a written plan or protocol to manage the Hazardous Waste prior to disposal; and
- (c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

HWF2. The proposed project is a subdivision of residentially zoned land that is not located in an existing Wellhead Protection Area or a Potential Public Water Supply Area. The Applicant's project narrative includes a statement that the project will not generate Hazardous Wastes, but provides no other information. Based on the materials submitted for the record, the Commission finds that the existing CR and proposed CR Amendment limits the amount of new development to the removal of one existing house and its replacement, and where on the site that replaced house can be located by describing a specific Building Envelope. The area inside the proposed Building Envelope is largely already developed.

HWF3. Based on the information submitted, the Commission finds that the amount of land clearing activity would be relatively limited, and finds that a DRI Exemption in the RPP issue area of Hazardous Waste is appropriate because *“location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located.”*

WASTE MANAGEMENT - SOLID WASTES/C&D/RECYCLABLES

SWMF1. MPS WM2.1 (*Construction Waste*) requires that “[d]evelopment and redevelopment projects shall address the disposal of construction waste...” and that “a plan shall be provided to demonstrate how the applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the [DEP] as a waste ban material.” MPS WM2.2 (*C&D Waste Plan*) describes the requirements of a construction and demolition (C&D) waste management plan needed as part of Commission review if a project generates C&D waste. MPS WM2.3 addresses post-construction waste management, and MPS 2.4 deals with management of food waste from projects that generate a significant amount, such as supermarkets.

SWMF2. The Commission finds that solid waste (primarily stumps, brush, wood chips, etc.) will be generated largely from land-clearing activities, and that some construction and demolition wastes will also be generated from demolishing the existing house, and re-building it within the designated Building Envelope. At the same time, the Commission finds area inside the proposed Building Envelope is largely already free of large vegetation, such as trees, that would result in a potentially significant amount of solid waste. Based on this, and information submitted for the record, the Commission finds that the amount of solid waste generated from the proposed project, including future development, would be relatively limited. The Commission also finds that MPS 2.3 (*Post-construction Waste*) and MPS 2.4 (*Food-waste Recycling*) do not apply to this project.

SWMF3. Based on information submitted for the record, the Commission finds that a DRI Exemption in the RPP issue area of Solid Waste Management is appropriate as “*the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located.*”

ENERGY

EF1. The Energy section of the 2009 (as amended) RPP applies to non-residential development and redevelopment, multi-family residential projects (town houses, condominiums and apartments), Mixed Use projects and Wind Energy Conversion Facilities (WECF). Mixed Use is defined by the RPP as “[a] single building or a single development of more than one building that contains residential and commercial land uses planned as a unified whole and functionally integrated, with residential use constituting between 40 percent and 70 percent of the total gross floor area.”

EF2. According to information submitted by the Applicant, the proposed project is the subdivision of residentially zoned land into two parcels. Also, no WECF are proposed. In addition, the CR on the property already restricts development on the property to no more than two (2) single family homes. Based on this, the Commission finds the RPP Energy section does not apply to this project.

AFFORDABLE HOUSING

AHF1. MPS AH1.1 (*Residential Development*) states in part that “[r]esidential construction and redevelopment projects of 10 units or more shall provide at least 10 percent of the proposed units as affordable units.” Also, MPS AH1.2 (*Ten-percent Requirements for Subdivisions of 10-plus Lots*) states in part “[r]esidential subdivision plans of 10 lots or more shall provide at least 10 percent of the proposed lots as affordable housing units.” According to information submitted by the Applicant, the proposed project is the subdivision of 41.45 acres

into two (2) new lots. Based on this, the Commission finds the RPP Affordable Housing section does not apply to this project.

HERITAGE PRESERVATION AND COMMUNITY CHARACTER

HPCCF1. The proposed subdivision is located within the Old King's Highway Historic District in the Town of Dennis. The property has been placed under a CR with two designated building envelopes that contain the property's three residences and associated outbuildings. While none of the existing buildings on the property are historically significant, the Natural Resources Inventory of the property prepared by The Compact of Cape Cod Conservation Trusts, Inc. in April 2000 notes that evidence of historic land uses exists on the property, including stone walls, cart paths, and a ditch and earthen dyke associated with cranberry farming. Nearby areas of the Town of Dennis have also been shown to be archaeologically sensitive.

HPCCF2. The proposed project involves subdividing the land under Conservation Restriction into two lots and altering the configuration of Building Envelope B, reducing its size by 2.63 acres. The proposed revised language of the Conservation Restriction allows demolition of an existing residence outside the revised Building Envelope B, and allows for construction of a second residence within Building Envelope B in the future. The revised conservation restriction language also eliminates the possibility of a second driveway access or utility corridor outside the building envelopes, reducing the potential for ground disturbance in the area subject to conservation restriction.

HPCCF3. Since none of the existing buildings on the property are considered historically significant, the Commission finds that the proposed demolition and potential future alteration of structures is consistent with MPS HPCC1.1 (*Historic Structures*). There are no cultural landscapes located within the proposed building envelopes, and as such, the Commission finds the potential future alteration of these areas is consistent with MPS HPCC1.2 (*Cultural Landscapes*). The Massachusetts Historical Commission (MHC) submitted a letter dated October 20, 2011 noting that the majority of Building Envelope B appears to have been subject to ground disturbance associated with previous construction and maintenance of existing structures, and therefore is unlikely to contain intact significant archaeological resources. The MHC letter also notes that the increase in parcel area subject to conservation restriction should assist in preserving significant archaeological sites that may be present. The Commission finds that proposed project therefore is consistent with HPCC1.3 (*Archaeological Resources*).

HPCCF4. Based on materials submitted for the record, the Commission finds that RPP Minimum Performance Standards HPCC2.1 through HPCC2.14 do not apply to the project as it involves a subdivision of land and does not include a specific proposal for new construction.

HPCCF5. MPS HPCC2.11 contains the Commission's requirements for exterior lighting. Technical Bulletin 95-001 (as amended) provides additional guidance on exterior lighting. The Applicant states that no exterior lighting "*is expected within the development envelope beyond what is typical for a residential dwelling.*" And that "*no lighting structures are allowed in the restricted area by the terms of the CR.*" Based on this, the fact that there already are two single family homes on the property, that the CR already allows for two single family homes, and that the Building Envelope described in the CR is set relatively far back from Sesuit Road, the Commission finds the proposed project meets the Commission's exterior lighting standards.

HPCCF6. Based on materials submitted for the record, the Commission finds that in the Regional Policy Plan issue area of Heritage Preservation and Community Character that a DRI Exemption is appropriate as *“location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by the Commission Act outside of the municipality in which the development is to be located.”*

CONCLUSION

Based on the above Findings, the Commission hereby concludes:

1. The Applicant has met its burden of proof and the proposed subdivision project *“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 values and purposes protected by the Commission Act outside of the municipality in which the development is to be located”* and as such, can be approved as a DRI Exemption.
2. The project is consistent with Dennis’ Local Comprehensive Plan as outlined in finding GF5.
3. The proposed project is consistent with Dennis’ local development by-laws/ordinances, as outlined in finding GF6.
4. The project is not subject to the Quivet Neck/Crowe’s Pasture District of Critical Planning Concern, as noted by finding GF7.

SEE NEXT PAGE FOR SIGNATURES

APPROVAL

The Commission hereby approves the DRI Exemption application of Steven Dodge for the proposal to subdivide a 41.45-acre property located at 102 Sesuit Neck Road, Dennis, into two (2) lots. The approved project, as described in this decision, consists of a proposed subdivision of a 41.45 acre parcel (Lot 4) that will divide it into two new lots: a 23.93 acre lot (Lot 6) and a 17.52 acre lot (Lot 5).

Michael A. Blanton
Michael Blanton, Cape Cod Commission Vice Chair

12-1-11
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

December 1, 2011

Before me, the undersigned notary public personally appeared

Michael A. Blanton in his capacity as Vice Chair 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 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

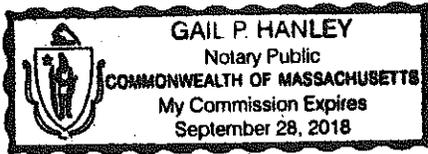


EXHIBIT A

