

CAPE COD COMMISSION

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DATE: May 3, 2007

TO: Attorney Patrick M. Butler
Nutter, McClennen & Fish
1523 Lyannough Road
P.O. Box 1630
Hyannis, MA 02601-1630

FROM: Cape Cod Commission

RE: Review of Proposed New Tenants

CO-APPLICANTS: Enoch T. Cobb Trust
David Cole, Trustee of Enoch T. Cobb Trust
420 South Street, Hyannis, MA 02601

JDJ Housing Development, LLC
c/o The Keller Company, 683C Main Street, Osterville, MA 02655

NEW TENANT: Northern Heritage Builders/A1A Steel
135 Barnstable Road, Hyannis, MA 02601

PROJECT #: TR-05009/HDEX-05009

PROJECT: Supply New England, 755 Independence Drive, Hyannis, MA

PROPERTY OWNER: Enoch T. Cobb Trust
David Cole, Trustee of the Enoch T. Cobb Trust
420 South Street, Hyannis, MA 02601

MAP/PARCEL: 332/10-2

BOOK/PAGE: 4036/119

INTRODUCTION

In a Development of Regional Impact Hardship Exemption (HDEX) decision dated June 29, 2006, the Cape Cod Commission (Commission) approved, with conditions, the Hardship Exemption application for the Enoch T. Cobb Trust, David Cole, Trustee, and



JDJ Housing Development, LLC, as co-applicants, for a project that involved construction of a new building and outdoor storage space on a 3-acre part of a 12.80-acre parcel in Independence Park in Hyannis.

At the time of the Commission's review, JDJ Housing Development, LLC, proposed to lease the three-acre parcel from the Trust, and in turn, sub-lease it to Supply New England, an existing business with stores in Barnstable County which sells/distributes plumbing and heating-related supplies.

On February 23, 2007, Commission staff received from Nutter, McClennen & Fish a Memorandum noting that there was a proposed new sub-lessee and user of the proposed new building, Northern Heritage Builders. The Memo also states that A1A Steel Company, a company affiliated to Northern Heritage Builders, will also use the site.

DETERMINATION

The matter of the proposed new sub-lessee was brought before the Regulatory Committee at a regular meeting on March 19, 2007 because condition GC3 of the HDEX decision states in part that *"[i]f a sub-tenant other than Supply New England is selected, such selection shall be reviewed by the Commission Regulatory Committee for consistency with this decision."* At that meeting, the Committee approved the proposed new tenants as consistent with the HDEX decision, with modifications to the findings and conditions of the HDEX decision as warranted to address the nitrogen loading issues as discussed in the March 19, 2007 meeting.

MODIFICATIONS TO THE HDEX DECISION

In accordance with the vote of the Regulatory Committee, the following modifications are made to the findings and conditions of the June 29, 2006 HDEX decision:

FINDINGS

WRF6. Nitrogen loading to groundwater is directly related to on-site wastewater disposal. Use of a standard Title-5 septic system with 379 gallons of Title-5 wastewater design flow is proposed. The project results in a nitrogen-loading concentration of 1.3 ppm if 9.7 acres of the parcel are not developed. The portion of the project parcel not subject to lease is not likely to be developed because the associated upland is interspersed with 3.2 acres of wetlands. If actual water-use information is used for comparable development (FW Webb & Co), the project's estimated Title-5 wastewater flows would be 274 gpd, reducing the nitrogen-loading concentration from 1.3 ppm to 1.0 ppm, consistent with MPS 2.1.1.2.F.2. Alternatively, connection of the project to sewer reduces the project's nitrogen-loading concentration to 0.99 ppm, likewise consistent with the 1-ppm standard. The Commission's Regulatory Committee reviewed the change in sub-tenant from Supply New England to Northern Heritage Builders/A1A Steel and found that this change would increase the wastewater flows and nitrogen loading as follows:

Northern Heritage Builders Treatment alternative	Wastewater Flows (gallons per day)		Nitrogen Loading Conc. (ppm)	
			Entire parcel (12 acres) (Non-leased area - 9 acres undeveloped)	Leased area (3.1 acre) (Non-leased area - 9 acres developed)
Standard Title-5 Septic System	Actual flows	441	1.4	3.2
	Title-5 flows	882	2.3	5.1
Denitrifying Septic System	Actual flows	441	1.1	2.5
	Title-5 flows	882	1.8	3.9
Sewered			0.4	1.0

Increased wastewater flows resulting from the new proposed tenants may affect the project's ability to meet the 1-ppm nitrogen loading limit. As with the previously proposed sub-tenant, the project can meet the 1-ppm limit if the project is connected to sewer. Alternatively, the project would need to provide enhanced denitrification of wastewater as a condition of this decision if a sewer connection is not permitted.

CONDITIONS

GC3. JDJ shall obtain all required state and local permits for the proposed project. If a sub-tenant other than Supply New England is selected, such selection shall be reviewed by the Commission Regulatory Committee for consistency with this decision. In its meeting on March 19, 2007, the Regulatory Committee reviewed the change in tenant from Supply New England to Northern Heritage Builders/A1A Steel and found that this change in sub-tenant was consistent with the Hardship Exemption decision with a modification to Water Resources Finding WRF6 to reflect the revised nitrogen loading, and modifications General Condition GC11 and Water Resources Conditions WRC1 and WRC3 as described below.

GC11. An escrow agreement of form and content satisfactory to Commission Counsel and to the Applicant may be used to secure funding for connection of the project to Town of Barnstable municipal sewer, or to install Massachusetts Department of Environmental Protection-approved (DEP) denitrifying technology to an onsite standard Title-5 septic system as further described in Water Resources Condition WR1. All relevant parties shall sign such escrow agreement, and the escrow account shall be in place with the County Treasurer's department prior to issuance of a Preliminary Certificate of Compliance.

The check for the escrow funds as described in Water Resources Condition WR1 shall be payable to the Barnstable County Treasurer. This escrow agreement may allow for partial release of funds. Prior to the release of the escrow funds, the work must be

reviewed and approved by Commission staff as completed as required by either this decision, or the terms of the escrow agreement.

WRC1. Prior to the issuance of a Preliminary Certificate of Compliance, JDJ and/or the sub-tenant shall provide sixteen thousand five hundred dollars (\$16,500) to be held in escrow to be expended for use at the discretion of the Cape Cod Commission's Executive Director for the purpose of connecting the project to sewer, or installing a Massachusetts Department of Environmental Protection-approved denitrifying components to an on-site septic system in accordance with the following:

Prior to issuance of a Preliminary Certificate of Compliance, The project JDJ or the sub-tenant shall apply for a sewer connection permit from the Massachusetts Department of Environmental Protection and to the town of Barnstable to connect the project to town municipal sewer to enable the project to meet the 1-ppm standard set forth in MPS 2.1.1.2.F.2. If the sewer connection applications are approved, the project shall connect to sewer within twelve (12) consecutive months of such approvals. In the interim, The proposed project may use a standard Title-5 septic system as proposed until the project is connected to sewer. If the sewer connection permit is denied, JDJ or the sub-tenant shall install DEP-approved denitrifying components to the on-site septic system within twelve (12) consecutive months of such denial.

WRC3. Prior to the release of any Certificate of Compliance, the Operations & Management plan shall be updated by JDJ, and shall be submitted for approval by Commission staff, as noted in Finding WRF9, to ensure that the project meets MPSs 2.1.1.2.A.5 and MPS 2.1.3.6. The revised O&M plan shall reflect the project's grading changes noted in Finding WRF9. At minimum, the plan shall contain the following information and provisions:

- Identify the party responsible for implementing the plan in accordance with MPS 2.1.3.26;
 - Detailed spill prevention and containment plan to be posted in a conspicuous place within the project building, particularly to address spills in areas that drain to the vegetated swale from the designated fleet-truck storage and parking area, in accordance with MPS 2.1.3.27;
 - Identify best management practices and provide a cumulative account of total suspended solids removal up to a minimum of 80% in accordance with MPS 2.1.3.2;
 - Inspection, monitoring, maintenance schedule;
 - Engineer's stamp certifying that the stormwater system is capable of handling the 25-year 24-hour storm in accordance with MPS 2.1.3.2;
 - Detailed spill prevention, response and containment components, in accordance with MPS 2.1.3.27, which in particular address releases in areas that drain to the vegetated swale from the designated fleet-truck storage and parking area;
- and
- Detailed turf-management plan that emphasizes water-conservation measures and minimizes use of chemical fertilizers and pesticides through best-management practices in WHPAs in accordance with MPS 2.1.1.2.A.5.

SEE NEXT PAGE FOR SIGNATURE


Frank Hogan, Regulatory Committee Chair

5/3/07
Date

COMMONWEALTH OF MASSACHUSETTS

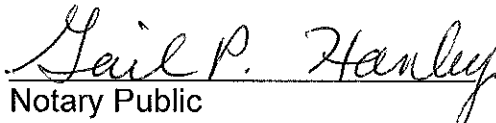
Barnstable, ss

5/3, 2007

Before me, the undersigned notary public, personally appeared

Frank Hogan,

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


Notary Public

My Commission Expires:

10/13/11