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CAPE COD  
COMMISSION

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## **Cape Cod Commission Staff Memo**

DATE: November 26, 2023  
TO: Cape Cod Commission  
RE: Development of Regional Impact Exemption  
Cannery Wharf Park Improvement Project (CCC File No. 23012)

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### ***Project Description***

The Applicant, Town of Provincetown Recreation Department (“Town”), proposes to redevelop a parking lot at 387 Commercial Street (“Site”) into a passive park, which will provide recreational space and ADA accessible connections to the beach. As proposed, the Project will provide new hardscape pedestrian areas including concrete steps and a concrete seat-wall. Pedestrian amenities, including fixed benches, picnic tables, bicycle racks, and lighting, are proposed along with a restroom structure, which will connect to public sewer. Native vegetation will be used to provide shade and buffer plantings between the park and neighboring properties.

Though the Project is proposed in coastal resource areas, it has been designed to limit impacts to the maximum extent practicable. The Town designed the Project to improve flood protection over existing conditions. The Project also includes seasonal flood protection strategies intended to mitigate nor’easter storm surges. The Project improves site permeability and stormwater management by using pervious pavement and capturing and infiltrating stormwater on site. With the proposed native plantings, storm damage prevention, and flood control, an overall improvement over current conditions is expected.

### ***Procedural History***

The Project underwent review pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62I (“MEPA”) because it requires Agency Action and meets/exceeds MEPA thresholds for the alteration of a coastal dune. The Secretary of the Executive Office of Energy and Environmental Affairs (“Secretary”) required the preparation of an Environmental Impact Report (“EIR”) due to the Project’s proximity to an Environmental Justice Population. Under Section 12(i)

of the Commission Act, any project that requires an EIR under MEPA is subject to Development of Regional Impact (“DRI”) review by the Commission.

The Commission received the Secretary’s certification of the adequacy of the EIR for the Project on September 15, 2023. The Applicant subsequently submitted a DRI Exemption Application for the Project on October 6, 2023. The DRI Exemption Application was determined to be complete on October 20, 2023. A staff hearing officer opened the hearing period on the Project on October 30, 2023.

### ***Commission Jurisdiction***

The Project literally qualifies as a DRI because it meets or exceeds the DRI review threshold appearing in Section 12(i) of the Cape Cod Commission Act (“Act”) and Section 2(d)(i) of the Commission’s Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact, revised November 17, 2021 (“Enabling Regulations”). Said Section 2(d)(i) provides: “Any proposed development for which an Environmental Impact Report (EIR) is required to be prepared under the provisions of MEPA shall be deemed a DRI. The Applicant shall file a DRI application for the proposed development to the Commission for review as a DRI.”

Where proposed development literally qualifies as a DRI, Section 12(k) of the Act and Section 7 of the Enabling Regulations allow any Applicant to 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 the Act outside of the municipality in which the development is to be located.”

### ***Review of Exemption Request***

- The Site encompasses just 0.38 acres +/-, which was formerly used as a crushed shell parking lot. Redevelopment of this Site with a passive park will not change any wetland hydrology and is expected to be an improvement over existing conditions.
- As proposed, the Project will improve flood protection and storm damage prevention. The ADA accessible walkway at the beach-side of the park has been designed parallel to Commercial Street to prevent flood waters from channelizing on site. The grassed and planted areas will help prevent erosion from storms as well as foot traffic on site.
- The Project will provide ADA accessible pedestrian connections to the coast and recreational space in a downtown setting.
- The restroom on Site will be a small “Portland Loo” structure, connected to public sewer.
- Staff suggest that the location, character, and environmental impacts of the proposed Project will prevent it having any significant impacts on the values and purposes protected by the Act outside of Provincetown.