

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



CAPE COD
COMMISSION

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

MINOR MODIFICATION TYPE #1 DECISION

DATE: April 29, 2024

APPLICANT/
PROPERTY OWNER: 21 Hunters Brook Rd. Inc
c/o Eliza Cox, Esq.
Nutter McClennen & Fish LLP
1471 Iyannough Rd
P.O. Box 1630 Hyannis, MA 02601

PROJECT: Canal Street Crossing (CCC No. 19007)

SITE ADDRESS: 21 Hunters Brook Road, Sagamore Beach, MA 02562

ASSESSOR'S ID: Map 11 Parcel 27

TITLE REFERENCE: Book 30451 Page 57

Cape Cod Commission Decision Recorded: Deed Book 32230 Page 86

SUMMARY

Pursuant to Section 11 of the Cape Cod Commission's Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact ("Enabling Regulations") (revised November 2021), the Development of Regional Impact (DRI) decision dated July 11, 2019, (the "DRI Decision"), for the above referenced Project is hereby modified by a Minor Modification Type #1 to allow *de minimus* changes to the approved Project as discussed herein that will not result in different or increased impacts to the resources protected by the Cape Cod Commission Act or the Regional Policy Plan.

DISCUSSION

The Cape Cod Commission ("Commission") received correspondence from the Applicant on February 9, 2024 requesting a modification to the DRI Decision to permit an alternative method of meeting open space obligations under the DRI Decision. Condition C11 of the

DRI Decision currently requires the Project to satisfy its open space obligations via a conservation restriction on approximately 2.56 acres of open space on the subject Property (the "On-Site Obligation") and a conservation restriction on approximately 4.59 acres (the "Off-Site Obligation") of an approximately 11-acre off-site parcel located on MacArthur Boulevard (the "Off-Site Parcel"). While the Decision designates a conservation restriction as the method of open space protection, the Applicant seeks to modify the Decision to satisfy the Off-Site Obligation by deeding the Off-Site Parcel to the Town of Bourne, for conservation purposes pursuant to MGL, Ch. 40, Sec. 8C. Accordingly, the deeding of the Off-Site Parcel includes the Off-Site Obligation (4.59 acres), plus additional land (approximately 6.41 acres) that is not required as mitigation for the Project.

With respect to the On-Site Obligation, the draft restriction is currently under review with the Executive Office of Energy and Environmental Affairs ("EEA"). Once approved by the EEA, the conservation restriction to satisfy the On-Site Obligation will be executed and recorded. As a contingency, the Applicant requests that the DRI Decision be further modified to provide that if the conservation restriction for the On-Site Obligation is not approved, the deeding of the 11-acre Off-Site Parcel to the Town of Bourne for conservation purposes will fully satisfy the Project's open space obligations under the DRI Decision. In this instance, 7.15 acres of the Off-Site Parcel would be considered open space mitigation for the Project and the balance of the land, approximately 3.85 acres, would not be considered open space mitigation for the Project.

A deed to the Town would result in Article 97 protection. The Open Space Technical Bulletin provides that permanent protection of on-site and off-site open space may be implemented using any of the following methods:

- Land donated to the Town for conservation purposes;
- Land donated to a nonprofit (501(c)(3)) conservation organization or land trust; or
- Conservation Restriction placed on land, held by Town.

Therefore, the proposed modifications to the methodology for satisfying open space obligations under the DRI Decision are consistent with the Open Space Technical Bulletin and the Regional Policy Plan.

MODIFICATION TO THE DRI DECISION

The DRI Decision is hereby modified as a Minor Modification Type #1 to allow for *de minimus* changes to the methodology for permanently protecting Open Space. The language of Findings OSF1 and OSF3, and Condition C11 in the DRI Decision is modified as follows¹:

- OSF1. The Applicant will meet Open Space Objectives OS1, OS2, and OS3 through the preservation of open space both on the Project Site and off-site. The Applicant proposes to permanently protect 2.56 acres of wetland and wetland buffer area on the Property, along with a 4.59-acre parcel located on

¹ ~~Strikethrough~~ indicates a deletion; **Bold** indicates an addition.

MacArthur Boulevard south of the Otis Rotary ~~with a conservation restriction~~. The off-site parcel is located within mapped rare species habitat, BioMap2 Core Habitat, wellhead protection area, and is contiguous with a large area of unfragmented, undeveloped, forested lands containing ponds, vernal pools, and small intermittent streams. Given these characteristics of the off-site parcel, the protection of this land, adjacent to other protected lands to the south, will better meet the interests of Open Space Objective OS2 than protecting/restricting additional land on the Property as open space.

OSF3. The Applicant will provide more than the required 1.32 acres of open space mitigation associated with proposed development within site areas mapped as the Natural Area Placetype on-site by restricting 2.56 acres of open space on-site; and requested a 20% reduction only for the remaining 5.74 acres of open space mitigation associated with proposed development located outside the portion of the site mapped as the Natural Area Placetype by proposing to ~~conservation restrict in perpetuity~~ **permanently protect** 4.59 acres of higher resource value land off-site. This method is consistent with Open Space Objective OS3.

C11. The Applicant shall ~~restrict for conservation and open space purposes in perpetuity, and~~ **permanently protect** and in accordance with the relevant provisions of MGL Chapter 184 Sections 31 through 33, **or by deed to the Town of Bourne to be placed under the care, custody, and control of the Conservation Commission pursuant to MGL, Ch. 40, Sec. 8C**, the ~2.56 acres of wetlands and wetlands buffer on the Property and ~4.59 acres of the land off-site identified along MacArthur Boulevard (being a portion of Lot 1 shown on the plan recorded with the Barnstable Registry of Deeds in Plan Book 675 Page 72).

C11A. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide to Commission staff for review and comment drafts of the Conservation Restriction(s) **or deeds, as applicable**, for the said on- and off-site land, prepared in accordance with the relevant provisions from the Commission's Open Space Technical Bulletin, and each identifying a qualified and willing holder or grantee.

C11B. Prior to and as a condition to issuance of a Final Certificate of Compliance by the Commission, the Applicant shall provide to the Commission copies of the Conservation Restriction(s) **or deeds, as applicable**, recorded with the Barnstable Registry of Deeds for the said on- and off-site land, as previously reviewed by Commission staff.

If the Applicant provides satisfactory documentation to Commission staff demonstrating that the Conservation Restriction on the 2.56 acres of wetland and wetland buffer area on

the Property is not approved by EEA, the Applicant may satisfy the On-Site Obligations by permanently protecting at least 7.15 acres of the Off-Site Parcel.

All findings and conditions in the DRI Decision continue to apply as written except as modified herein. This Modification does not result in a change to the scope of DRI review established in said Decision and thus does not require further DRI review for the Project, as modified.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

Executed this 29th day of April 2024.

Kristy Senatori
Kristy Senatori, Executive Director

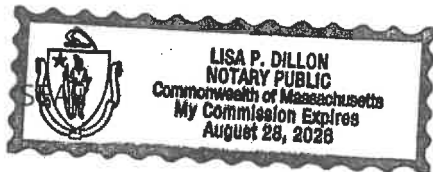
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

April 29, 2024

Before me, the undersigned notary public, personally appeared Kristy Senatori in her capacity as Executive Director of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that she signed such document voluntarily for its stated purpose on behalf of the Cape Cod Commission. 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 [X] personal knowledge of the undersigned.

Lisa P. Dillon
Notary Public:
My Commission expires: 8-28-26



Canal Street Crossing MM1, Bourne, MA

April 2024

Page 5