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CAPE COD COMMISSION

Cape Cod Commission Staff Memo

DATE: August 23, 2024

TO: Cape Cod Commission

RE: Development of Regional Impact (DRI) Exemption
Benjamin Nyes ANR, Falmouth (CCC File No. 24019)
48 Benjamin Nyes Lane & 0 Quaker Road, North Falmouth, MA

Project Description

The proposed Project is the division, by Approval Not Required (ANR) plan, of a 55.7-acre +/- parcel ("Property") into four new lots. The division is proposed to enable the Applicant, the 300 Committee Land Trust, Inc ("300 Committee"), to permanently protect 48.2 acres +/- of the Property for open space purposes. The division into four lots is proposed to enable the phased acquisition of Property over two years for financing purposes. The remaining 7.5-acre +/- portion of the Property, some of which is previously disturbed, is not expected to be protected for open space purposes and would remain developable.

The proposed lots are shown on the plans titled: "*Plan of Land at Benjamin Nye's Lane and Quaker Road, North Falmouth, Massachusetts*," prepared for the 300 Committee, Inc, dated April 30, 2024. The currently 55.7-acre +/- parcel would be divided and then conveyed and protected as follows:

	Lot Size	**Plan for Protection**	**300 Committee Land Acquisition Schedule**
Lot 5	20.147	Falmouth Conservation Commission will purchase a conservation restriction in January 2025	January 2025
Lot 6	18.010	Falmouth Conservation Commission will purchase a conservation restriction in January 2026	January 2026
Lot 7	7.501	N/A – this lot would remain developable	January 2026
Lot 8	10.024	The 300 Committee will donate a conservation restriction to Falmouth Conservation Commission in 2025	January 2025

Procedural History

The Applicant submitted a DRI Exemption Application for the Project to the Commission on July 17, 2024. Commission staff confirmed that the DRI Exemption Application was complete on July 31, 2024. The Applicant has authority to pursue the Project through a Purchase and Sale Agreement with the Property Owner, LTC, LLC, executed in October 2024. The Project will require endorsement of the Approval Not Required ("ANR") plan by the Town of Falmouth prior to lots being conveyed to the 300 Committee.

Commission Jurisdiction

The Project literally qualifies as a DRI because it meets or exceeds the DRI review threshold appearing in Section 3(c) of the Enabling Regulations Governing Review of Developments of Regional Impact, as amended November 17, 2021 ("Enabling Regulations"). Said Section 3(c) provides: *"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 assembly and recombination of lots…"*

Where proposed development literally qualifies as a DRI, Section 12(k) of the Cape Cod Commission Act and Section 7 of the Enabling Regulations allow the 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

Staff suggest the Commission could approve the DRI Exemption Request based on the following:

- The Project does not propose any physical building or structural development work.
- The 300 Committee will acquire the 55.7-acre +/- parcel and then permanently protect 48.2 acres +/- by conveying conservation restrictions on Lots 5, 6, and 8 to Falmouth Conservation Commission. The conservation restrictions will extinguish development rights, allowing the land to be used for passive recreation and open space purposes.
- The proposed division will enable the 300 Committee to protect of the most sensitive areas of the Property, which is in a Natural Area Placetype, largely undeveloped, and identified as being of high natural resource value. The portions of the Property proposed to be protected contain:
    - NHESP priority habitat for rare species (eastern box turtle);
    - 3.4 acres +/- of wetland area;
    - vernal pool buffer area;
    - and prime farmland soils.
- Approval of a DRI Exemption for the proposed division does not exempt future development on the remaining 7.5 acres +/-. Future development that meets or exceeds a mandatory DRI threshold as determined by the Commission's Enabling Regulations then in effect would be subject to mandatory referral.

- The location, character, and environmental effects of the proposed division and conservation plan will prevent it having any significant impacts on the values and purposes protected by the Act outside of Falmouth.
- A DRI exemption for this Project is consistent with the Cape Cod Commission Act, the Enabling Regulations, and the Regional Policy Plan.