CAPE COD COMMISSION

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DATE: April 13, 2000

TO: Richard and Lorna Yuricich
Frederick and Sheila Jensen

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Richard and Lorna Yuricich
PO Box 1833
North Falmouth, MA 02556

Frederick and Sheila Jensen
487 Boxberry Hill Road
East Falmouth, MA 02536

PROJECT #: TR20006

PROJECT: Yuricich ANR
Lot 38, Boxberry Hill Road
Hatchville, MA 02536

BOOK/PAGE: 1779/160

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Richard and Lorna Yuricich, and Frederick and Sheila Jensen as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Yuricich ANR. The decision is rendered pursuant to a vote of the Commission on April 13, 2000.

PROJECT DESCRIPTION

The project involves the subdivision of a two and a half (2.5) acre lot from a 42.6 acre parcel in North Falmouth between Route 151 and Boxberry Hill Road. The site is located within the

Agricultural district, requiring minimum 80,000 s.f. lots, and is also located within the Wildlife Corridor overlay district. The proponent proposes construction of a single family residence on the two and a half acre lot.

PROCEDURAL HISTORY

The Commission reviewed a DRI application for the subdivision of the subject parcel of land in February 1999. That previous application proposed to create a single family house lot. The Commission approved a DRI exemption of that prior development, known as the Boxberry Hill Road DRI, on February 18, 1999.

The Yuricich ANR was referred to the Commission by the Falmouth Assistant Town Planner on February 24, 2000. The Commission received the referral on February 25, 2000. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on March 21, 2000 at the Gus Canty Recreation Center, Falmouth, MA. The public hearing was continued to April 13, 2000 and the record was left open for submission of written materials until April 13, 2000.

After the close of the public hearing, the subcommittee held a public meeting to deliberate on this project on April 3, 2000.

At the April 3, 2000 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions. A final public hearing was held before the full Commission on April 13, 2000. At this hearing, the Commission voted unanimously to approve the project as a DRI, subject to conditions.

Materials submitted for the record

From the applicant:

- DRI application from Richard and Lorna Yuricich to the Cape Cod Commission, received 2/25/00.
- Letter from Frederick Jensen to the Cape Cod Commission dated 3/20/00.
- Response from Massachusetts Natural Heritage, received by Cape Cod Commission 3/21/00.

From Cape Cod Commission staff:

- DRI referral notification from Cape Cod Commission to Frederick and Sheila Jensen dated 2/28/00.
- Staff report dated 3/15/00.
- Letter from Cape Cod Commission to Frederick Jensen 3/31/00.

From state/local officials:

- DRI referral from Wayne Dick, Assistant Town Planner, to Cape Cod Commission dated 2/24/00.
- Letter from Peter Kirwin, Falmouth Director of Human Services, to Cape Cod Commission dated 3/15/00.

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written

submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

The Commission heard oral testimony at the March 21, 2000 hearing from Alan Alai, an abutter, speaking generally in favor of the project. Mr. Alai also noted in general his concern about increasing residential density and sprawl in the Town of Falmouth.

JURISDICTION

The proposed Yuricich ANR qualifies as a Development of Regional Impact (DRI) under Section 3(c) of the DRI Enabling Regulations governing review of Developments of Regional Impact, which requires review of "...any development which proposes to divide parcels of land totaling 30 acres or more...".

FINDINGS

The Commission has considered the application of Richard and Lorna Yuricich, and Frederick and Sheila Jensen for the proposed Yuricich ANR, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General

G1. The project involves the subdivision of a two and a half acre lot from a 42.6 acre parcel (the Jensen parcel) in North Falmouth between Route 151 and Boxberry Hill Road. The site is located within the Agricultural district, requiring minimum 80,000 s.f. lots, and is also located within the Wildlife Corridor overlay district. The proponent proposes construction of a single family residence on the 2.5 acre lot (the Yuricich lot). The proposed dwelling unit will require a new curb cut on Boxberry Hill Road, a road which is classified as a Rural Minor Collector by the RPP.

G2. The Commission reviewed a subdivision of this same parcel of land in February 1999 which proposed to create a single family house lot. The Commission approved a DRI exemption of that prior development, known as the Boxberry Hill Road DRI, because the project was found not to create regional impacts. The Boxberry Hill DRI Exemption decision noted that any future development of the Jensen parcel shall be reviewed as a DRI, and further that the cumulative effects of all development on the Jensen parcel shall be considered toward any required mitigation. Consequently, the Commission finds that the impacts of the house construction associated with the Boxberry Hill DRI Exemption, and the impacts of the proposed Yuricich ANR DRI, shall be considered cumulatively with any future development proposed on the Jensen parcel.

G3. The Commission is concerned that the present one-lot subdivision proposal, following a one-lot subdivision approval in February 1999, and the potential for future one-lot subdivision proposals, may result in the gradual accumulation of adverse impacts to the resources protected

by the Act over time. The Commission finds that any future development proposed for the Jensen parcel shall be reviewed as a DRI, and shall meet the performance standards of the Regional Policy Plan (RPP) in effect at the time of such future DRI filing.

G4. The Commission finds that the Yuricich ANR proposal to subdivide a 2.5 acre lot for the purpose of constructing a single family home, and the location of the subdivision adjacent to existing houses on the west end of the Jensen parcel does not pose a significant impact on the resources protected by the Cape Cod Commission Act, and finds that the mitigation required of this project for impacts to traffic, water, open space, affordable housing, or other interests protected by the Cape Cod Commission Act may be provided at a later date when additional development is proposed for the Jensen parcel.

G4. The benefits of this project outweigh the detriments.

G5. The project is consistent with Falmouth's LCP and development bylaws.

Natural Resources

NR1. The project site is partially wooded, and according to RPP maps, is located within Significant Natural Resource Area (SNRA) due to the presence of unfragmented forested habitat and wellhead protection area. The parcel is located outside of estimated habitat for rare or endangered species, though estimated habitat is identified to the north of Route 151. The site is also located within Falmouth's Wildlife Corridor overlay district.

NR2. Given the scale and location of the proposed development adjacent to existing development, staff did not recommend the preparation of a Natural Resources Inventory (NRI) for this project. However, further development on the 40 acre parcel should be required to prepare a NRI in accordance with Minimum Performance Standard (MPS) 2.4.1.1.

NR3. The site is located within a Town of Falmouth Wildlife Corridor district, and as such may be required to maintain 300 ft. corridors onsite for wildlife movement, consistent with Falmouth zoning requirements. In order to better comply with this standard, the Commission finds that any building disturbance on the lot shall be limited to no more than a 30,000 s.f. building envelope. The building envelope should be located as closely as feasible to the existing adjacent dwellings on Boxberry Hill Road in order to reduce impacts to any wildlife corridors that may exist along the ComElectric easement to the north.

Open Space

OS1. The open space requirement for this project is 65% of the total upland area of the parcel due to its location within a SNRA, in accordance with MPS 2.5.1.3. Based on the 42.6 acre Jensen parcel, the open space requirement is 27.7 acres.

OS2. The open space requirement may be deferred until such time as future development is proposed on the Jensen parcel, and after such time as a natural resources inventory has been conducted onsite.

Water

W1. The project is located in a Wellhead Protection Area. The project is also located on a tract of land that has been identified as a potential future wellhead area, though the potential for a

future wellhead on this tract has been assigned 'lowest priority' by the Commission Priority Land Acquisition Assessment Project (1999) as a result of the tract's proximity to Endangered Species Habitat and ground-water contamination plumes emanating from the Massachusetts Military Base. The RPP requires that projects "within Wellhead Protection Areas shall use DEP approved alternative systems with enhanced nitrogen removal" for purposes of wastewater management (MPS 2.1.1.2.A.4). In addition, the RPP stipulates that "development and redevelopment shall not exceed a 5 parts per million [ppm] nitrogen loading standard for impact to groundwater..." (MPS 2.1.1.1.).

W2. Building plans for the project have not been completed. Therefore, based on reasonable assumptions regarding the amount of impervious surface resulting from the construction of a 4-bedroom home and driveway paving, over 33,000 s.f. of the 2.5 acre lot potentially would be available for landscaping and cultivation. Recognizing the potential for seven 4-bedroom homes on the 42.6 acre parcel, potentially over 614,180 s.f. would be available for landscaping and cultivation. These scenarios would provide for project ground-water nitrogen concentrations of 4.2 ppm-N for the 2.5 acre lot, and 3.2 ppm-N for expected buildout of the entire parcel.

W3. An analysis of the potential nitrogen load to the referenced Wellhead Protection Area suggests that the future nitrogen load will be below the 5 ppm-N standard, consistent with MPS 2.1.1.2.A.1 and 2.1.1.2.A.4.

W4. The project site is located downgradient of the CS 20 plume from the MMR, and a private well onsite could be subject to future contamination. However, based on information provided by the Town planner, town water is available on Boxberry Hill Road at the location of the project site.

Transportation

T1. The trip generation for this project is based on two single-family dwellings including the existing house approved through the Boxberry Hill Road DRI exemption and the proposed single family dwelling on the Yuricich lot. Based on the Institute of Traffic Engineers (ITE) Trip Generation manual, the two single dwelling units will generate 2 vehicle trips during the highest peak hour (the afternoon peak hour) and 19 daily vehicle trips. The 2 vehicle trips are below the threshold of 25 vehicle trips requiring analysis and mitigation under MPS 4.1.1.1 of the RPP.

T2. MPS 4.1.1.5 requires all DRI access/egress locations with public ways to meet Massachusetts Highway Department's (MHD) and American Association of State Highway Transportation Official's (AASHTO) standards for safe stopping sight distance. Based on field observations, the location of the proposed driveway access on the Yuricich lot meets or exceeds safe stopping distances based on AASHTO standards.

T3. The intersection of the proposed new driveway on the Yuricich lot with Boxberry Hill Road will operate at better than Level of Service (LOS) C, consistent with MPS 4.1.1.6 which requires all new driveways on regional roads to operate at LOS C or better as defined in the Highway Capacity Manual.

T4. The RPP specifies that the Commission will work with the Cape Towns and the State to improve access management along all regional roadways on Cape Cod. MPS 4.1.1.17 states "Internal site circulation and access/egress shall be designed to minimize impacts on the adjacent road system." Further, per the AASHTO Green Book, there is a direct relationship between

access points and accident rates. MPS 4.1.1.7 states that regardless of project size or traffic generation, there shall be no degradation in public safety as a result of a Development of Regional Impact.

Should the remaining 40± acre parcel be developed in the future, an access management plan, such as combining driveways for new single family dwellings, shall be provided in order to reduce potential safety impacts on Boxberry Hill Road.

T5. The Commission finds that the total vehicle trips from existing construction (Boxberry Hill Road DRI exemption) and proposed construction (Yuricich lot) on the 42.6 acre parcel is 19 daily vehicle trips. MPS 4.1.2.1 states that all DRI's shall reduce average daily traffic from that land use by 20%. For this project, 20% of the average daily traffic is 4 vehicle trips.

The Commission finds that a trip reduction plan for the present and proposed houses on the Jensen parcel may be deferred until such time as future development is proposed. Appropriate trip reduction shall be provided at the time of future DRI review.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes:

- The benefits of the proposed project outweigh the detriments resulting from the development. This conclusion is supported by the facts that the project as proposed meets the nitrogen loading requirements, and limits the development area on the lot to accommodate wildlife movement.
- The project as proposed and conditioned complies with the RPP, as noted in the findings.
- According to the Town of Falmouth planner, the project complies with local development bylaws.

The Commission hereby approves with conditions the application of Richard and Lorna Yuricich, and Frederick and Sheila Jensen for the proposed Yuricich ANR as a Development of Regional Impact, provided the following conditions are met:

CONDITIONS

General

G1. The Commission approves the proposed subdivision plan titled "Plan of Land of Frederick K. Jensen, et. al." and dated February 24, 2000, of the Yuricich lot from the Jensen parcel for the purpose of constructing a four bedroom single family house on the Yuricich lot, including a septic system and driveway.

G2. This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

G3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

G4. The applicant shall obtain all state and local permits for the proposed project.

G5. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G6. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the Falmouth Planning Board shall be submitted to the Commission upon receipt of local approvals.

G7. Any future development on the Jensen parcel shall be subject to Cape Cod Commission DRI review for consistency with the RPP in effect at the time future development is proposed, including impacts pertaining to traffic, water, open space, affordable housing, or other interests protected by the Cape Cod Commission Act. Subsequent review of the remaining Jensen parcel as a DRI shall include the cumulative impacts of the development on the Jensen parcel, the Boxberry Hill Road DRI exemption lot, and the Yuricich ANR lot.

G8. Prior to receiving a Building Permit from the Town of Falmouth, the applicant shall obtain a Certificate of Compliance from the Cape Cod Commission.

Natural Resources

NR1. Prior to receipt of a Certificate of Compliance, the applicant shall provide the Commission with a final site plan showing a 30,000 s.f. building envelope outside of which no development shall occur, and showing the location of the four bedroom house, septic system, and driveway. The building envelope shall be located toward the south side of the Yuricich lot in accordance with findings NR1 and NR3, reasonably adjacent to the existing buildings on Boxberry Hill Road, while at the same time meeting Falmouth's zoning bylaw setback requirements. The plan shall be approved by Commission staff.

NR2. A Natural Resources Inventory shall be conducted as part of any future development proposal on the Jensen parcel and DRI review.

Open Space

OS1. A contiguous open space requirement shall be met at the time any future development is proposed on the Jensen parcel and once a natural resources inventory has been conducted of the site.

Water

W1. The Commission encourages the applicant to connect to town water, available on Boxberry Hill Road, in order to avoid possible contamination of a private onsite well from the approaching CS 20 plume.

Transportation

T1. Should the remaining 40± acre parcel be developed in the future, an access management plan, such as combining driveways for new single family dwellings, shall be provided in order to reduce potential safety impacts to Boxberry Hill Road.

T2. The Commission finds that a trip reduction plan shall be developed as part of any future development proposal and DRI review for the Jensen parcel, and shall include the impacts from

the house constructed as part of the Boxberry Hill Road DRI Exemption and the house proposed on the Yuricich lot. Appropriate trip reduction shall be provided at the time of future DRI review.

The Cape Cod Commission hereby approves with conditions the application of Richard and Lorna Yuricich and Frederick and Sheila Jensen as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Yuricich ANR located in Falmouth, MA.

Thomas Braidick 4/13/00

Name, Chair Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 13th day of April 2000

Katharine L Peters

Name, Notary Public

My commission expires:

OFFICIAL SEAL
KATHARINE L. PETERS
NOTARY PUBLIC-MASS.
BARNSTABLE COUNTY
My Comm. Expires Nov. 19, 2004