



## CAPE COD COMMISSION

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Date: January 22, 2004

To: Mr. Patrick M. Butler.

From: Cape Cod Commission

RE: Development of Regional Impact Hardship Exemption  
Cape Cod Commission Act, Section 23

Applicant: Cape Cod Healthcare, Inc  
C/o Patrick M. Butler, Esquire  
Nutter, McClennen & Fish  
PO Box 1630  
Hyannis, MA 02601

Project: Long Pond (Fontaine) Medical Center Expansion  
525 Long Pond Drive  
Harwich, MA

Project #: HDEX # 20073

Book/Page: Book 11747, Page 256  
Book 11788, Page 160

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### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Hardship Exemption application of Cape Cod Healthcare, Inc. (Applicant) for the Long Pond (Fontaine) Medical Center Expansion at 525 Long Pond Drive in Harwich, MA pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on January 22, 2004.

## **PROJECT DESCRIPTION**

The proposed project is located at the existing Long Pond Medical Center site on Long Pond Drive, which is located off Route 137 in Harwich, MA. The property is within the Rural Residential Zone District, and is surrounded by a dental office and Long Pond Drive to the north, residential uses to the east and west and Route 6 to the south. The proposed development consists of a 12,000 square-foot (sf) addition to the southeast side of the existing 14,200 sf Long Pond Medical Center. The addition is intended to relieve existing overcrowding at the facility by the creation of more space for treating the current and anticipated patient population and is anticipated to improve accessibility and delivery of healthcare services at this location.

The hospital addition will result in the creation of 102 parking spaces in a reconfigured parking lot. An area for 12 parking spaces will be landscaped and held in reserve for future use should a need be demonstrated by the facility. The building and parking area will be landscaped and will include the construction of two new six-foot-high fences to screen the project from abutting properties.

## **PROCEDURAL HISTORY**

The Long Pond (Fontaine) Medical Center was referred to the Cape Cod Commission (CCC) as a mandatory Development of Regional Impact (DRI) by the Harwich Planning Board on September 19, 2001, and was received by the Cape Cod Commission on September 20, 2001. The Project was subject to review under the 1996 Regional Policy Plan (RPP). The Applicant submitted a DRI application on September 12, 2001.

A duly noticed hearing was opened by a hearing officer on November 8, 2001 and closed on January 31, 2002. On February 4, 2002, an extension was granted for DRI review until September 28, 2002. On August 19, 2002, a second extension was granted for DRI review until March 28, 2003. A duly noticed public hearing was held on October 29, 2002 at the Harwich Middle School, Harwich, MA. On January 31, 2003, a third extension was granted for DRI review until March 28, 2004.

On August 15, 2003 an application was made for a Hardship Exemption. A duly noticed public hearing was held on November 6, 2003 at the Harwich Town Hall, Harwich, MA at which the hearing was closed and the record kept open.

The Subcommittee met on November 20, 2003, December 15, 2003 and January 14, 2004 and voted to recommend approval of a Hardship Exemption with conditions to the full Commission. A duly noticed final hearing was held before the Cape Cod Commission on January 22, 2004, at which the Commission voted unanimously to approve the Hardship Exemption with Conditions.

## MATERIALS SUBMITTED FOR THE RECORD

### *By Applicant:*

- Letter from Mr. P. Butler dated September 12, 2001, re: DRI Application.
- Facsimile from Ms. A. Brigham-Janowicz dated November 8, 2001, re: MHC determination
- Letter from Mr. R. Bryant dated November 15, 2001, re: traffic analysis.
- Letter from Mr. R. Bryant dated December 6, 2001, re: site distance evaluation.
- Facsimile from Ms. A. Brigham-Janowicz dated January 3, 2002, re: correspondence.
- Letter with attachments from Ms. E. Cox dated January 15, 2002, re: application materials
- Letter from Ms. E. Cox dated January 25, 2002, re: extension request
- Letter with attachments from Ms. E. Cox dated July 16, 2002, re: application materials
- Letter with attachments from Mr. P. Butler & Ms. E. Cox dated August 12, 2002, re: additional application materials
- Letter with attachments from Ms. E. Cox dated September 18, 2002, re: additional application materials
- Letter from Ms. E. Cox dated October 17, 2002, re: subcommittee materials
- Various Cape Cod Healthcare “Self Learning Tools” submitted by hand November 22, 2002, re: hazardous materials protocols and procedures
- Letter from Ms. E. Cox dated January 30, 2003, re: extension request
- Letter from Ms. E. Cox dated February 4, 2003, re: extension request
- Letter with attachments from Mr. R. Bryant dated July 9, 2003, re: TDM program
- Letter with attachments from Ms. E. Cox dated August 15, 2003, re: Hardship Exemption Application and additional application materials
- Letter with attachments from Ms. E. Cox dated August 28, 2003, re: plans
- Electronic Mail from Ms. E. Cox dated August 28, 2003, re: hazardous materials
- Letter with attachments from Ms. E. Cox dated September 19, 2003, re: budget
- Letter with attachments from Ms. E. Cox dated September 30, 2003, re: Hardship Exemption
- Letter with attachments from Ms. E. Cox dated October 27, 2003, re: materials for subcommittee
- Memorandum with attachments from Mr. P. Butler dated October 28, 2003, re: hazardous materials/economic development issues
- Electronic Mail from Mr. R. Bryant dated October 31, 2003, re: parking
- Facsimile from Mr. R. Bryant dated November 4, 2003, re: Traffic
- Facsimile from Mr. P. Butler dated November 5, 2003, re: summary matrix
- Facsimile from Mr. P. Butler dated November 6, 2003, re: Lighting and natural resources
- Memorandum with attachments from Mr. P. Butler dated November 10, 2003, re: parking
- Memorandum with attachments from Mr. P. Butler dated November 20, 2003, re: miscellaneous issues
- Letter from Mr. P. Butler dated December 1, 2003, re: plans
- Facsimile from Mr. P. Butler dated December 4, 2003, re: Hardship Exemption Proposal and December 2, 2003 memorandum regarding healthcare programs
- Letter from Mr. P. Butler dated January 6, 2004, re: plans, Operations, Management and Compliance (OMC) program
- Letter from Mr. P. Butler dated January 9, 2004, re: plans

- Email from Mr. D. Michniewicz dated January 13, 2004, re: plan revisions
- Memorandum from Mr. P. Butler dated January 13, 2004, re: draft decision comments

***By State:***

- Project Notification Form dated October 15, 2001 from Massachusetts Historical Commission

***By Town:***

- Letter from Ms. S. Leven dated September 19, 2001, re: referral
- Facsimile and attachments from Ms. S. Leven dated October 3, 2001, re: MRI
- Electronic Mail from Ms. S. Leven dated January 16, 2002, re: copies
- Memorandum from Harwich Real Estate and Open Space Committee dated June 11, 2002, re: open space
- Electronic Mail from Ms. S. Leven dated August 20, 2002, re: open space
- Electronic Mail from Ms. S. Leven dated September 19, 2002, re: parking
- Memorandum from Harwich Real Estate and Open Space Committee dated November 6, 2003, re: open space

***By Commission Staff:***

- Letter from Mr. P. Dascombe dated September 27, 2001, re: DRI notification
- Letter from Mr. P. Dascombe dated October 25, 2001, re: incomplete application
- Memorandum from Mr. P. Dascombe dated November 7, 2001, re: DRI subcommittee
- Letters regarding extensions dated January 22, 2002, July 23, 2002 and January 16, 2003
- Memorandum to subcommittee dated January 30, 2002, October 30, 2003, November 14, 2003, November 25, 2003 and December 12, 2003
- Commission Staff Reports dated October 22, 2002 and October 31, 2003
- Electronic Mail from Mr. P. Dascombe dated August 28, 2003, re: outstanding application issues
- Letter from Ms. A. Adams dated December 5, 2003, re: hazardous materials
- Letter from Mr. P. Dascombe dated January 5, 2004

***By Interested Parties:***

- Letter from Ms. M. Geist, representing the Association to Preserve Cape Cod, dated October 28, 2002
- Letter from Real Estate and Open Space Committee dated November 6, 2003
- Letter from Ms. L. Young dated November 10, 2003

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

### Hearing #1 on Development of Regional Impact (DRI) - October 29, 2002

Mr. P. Butler gave a presentation that outlined the proposed project in detail and explained that the facility would be upgraded and expand the space of the existing operations. Mr. D. Michniewicz described the site engineering and storm-water proposal. Mr. R. Bryant discussed traffic related issues.

Mr. D. Fox presented the staff report and Mr. T. Boesch described traffic standards and mitigation.

Ms. S. Leven, Harwich Planning Director, commented that the Town will work with the applicant on any outstanding local issues.

Mr. W. Robillard raised concerns about noise, safety, water supply, run-off from the parking lot, the proposed trail easement and parking spaces. Mr. J McNaught spoke in favor of the project. Mr. R. Whitaker and Ms. L. Whitaker raised concerns over landscaping, traffic, noise, safety, swale design, the proposed trail connection and parking.

### Hearing #2 on Hardship Exemption - November 6, 2003

Mr. P. Butler gave a presentation that outlined the Hardship Exemption request for open space and trip reduction relief. Mr. D. Michniewicz described the changes to the site plan and Mr. M. Viera reviewed the architecture. Mr. R. Bryant described changes to the traffic requirements

Mr. P. Dascombe presented the staff report and recommendations concerning the Hardship request.

Mr. R. Peterson stated his support for the project. Mr. P. Wildegren stated that the Open Space Committee was not in favor of the current request.

Mr. E. Young and Mr. D. Oppenheim both spoke in favor of the project. Mr. W. Robillard raised concerns over parking spaces, traffic, security, water and trail access. Mr. C. Wiegand explained the proposed water lines arrangement. Mr. R. Whitaker asked for more information on landscaping, driveway locations and water connections. Ms. Kallstrom stated her support for the project.

## JURISDICTION

The Long Pond (Fontaine) Medical Center Expansion qualifies as a Development of Regional Impact under Section 3(e) of the DRI Enabling Regulations as an addition to a private healthcare development with a gross floor area greater than 10,000 sf.

## FINDINGS

The Commission has considered the application of Cape Cod Healthcare, Inc for the proposed addition to Long Pond (Fontaine) Medical Center, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to the 1996 Regional Policy Plan and Section 23 of the Act:

### General Findings:

- G1. The proposed project will consist of 12,000 square-foot addition to the existing facility to accommodate existing operations and visiting specialist physicians on a rotating basis. The addition will relieve existing overcrowding at the facility by the creation of more space for treating the current and anticipated patient population and is anticipated to improve accessibility and delivery of healthcare services at this location. Access to specialists in Harwich that ordinarily are located in Hyannis will provide more convenient access to these specialist services for residents of the Outer Cape and may reduce the travel distance for some patients.
- G2. The Long Pond (Fontaine) Medical Center is the only facility of this type east of Hyannis, and between 1998 and 2000 the clinic experienced a 130% increase in patient visits (from 13,000 to 30,000 visits). The proposed project aims to address and meet this continuing demand for medical services in the Outer Cape area.
- G3. Cape Cod Healthcare, Inc relies heavily upon philanthropic and charitable giving to meet its capital requirements and anticipates that this project will require the exclusive use of philanthropic dollars for financing.
- G4. The Hardship Exemption filing outlines several factors influencing the fiscal environment of the Medical Center within the healthcare system, which is different from other commercial or business entities and affect the applicant's ability to meet the project budget and the full requirements of the RPP. The Hardship Exemption filing also outlines the potential delay in bringing the proposed healthcare services to this location and the potential financial hardship to the Applicant if additional funds are required to fully meet the requirements of the RPP.
- G5. The provision of the kinds of healthcare services proposed to be available at the expanded facility are consistent with other Development Review Policy 3.1.7 of the RPP which identifies the need to encourage development that enhances the availability of health services in Barnstable County. Long Pond (Fontaine) Medical Center will provide a new three year, sliding-scale fee program for all self-paying patients of the clinic that will be based on the patients income level and ability to pay. The rates charged under this program are to be based on Blue Cross/Blue Shield of Massachusetts rates schedule and the program will provide up to \$180,000 dollars of free care. Long Pond (Fontaine) Medical Center will contribute any unutilized portion of this amount to the Community Health Center Network for similar free service opportunities or programs. This program

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will provide healthcare at reduced rates to self-paying patients and will therefore improve access to healthcare for lower income and uninsured residents.

### **Water Resource Findings:**

- WR1. The project is in several sensitive water resource areas including a wellhead protection area to Brewster's municipal wells, the fresh water recharge area to Long Pond and the marine recharge area for the Herring River.
- WR2. MPS 2.1.1.2.A.4 and 2.1.1.2.C.3 require a DEP approved alternative wastewater system with denitrification and MPS 2.1.1.2.E.1 requires developments to improve existing levels of nitrate nitrogen loading. Wastewater flow will increase from an existing 2,000 gallons per day to 2,750 gallons per day with the proposed addition. Nitrogen loading from the existing project is 6.88 ppm. Although no commitment has been made to a specific technology, an advanced wastewater disposal system will be used, that based on using an effluent concentration of 25 ppm, will lower nitrogen loading to 5.54 ppm. The 25 ppm figure used is the nitrogen discharge concentration that Massachusetts DEP assigns to effluent generated by commercial projects using denitrifying on-site systems approved through DEP's Innovative/Alternative (I/A) Technology Program. Therefore, the project is consistent with MPS 2.1.1.2 parts A.4, C.3 and E.1.
- WR3. MPS 2.1.1.2.A.1 requires that developments meet the basic 5.00 ppm nitrogen loading standard. In order to comply with MPS 2.1.1.2.A.1, a 21 ppm nitrogen concentration must be established for the wastewater effluent leaving the treatment system. The applicant has proposed to meet the standard by agreeing to an Operation, Management and Compliance (OMC) program dated January 12, 2004 to monitor and demonstrate that the treatment plant is meeting the 21 ppm nitrogen concentration. The OMC program would be administered through the Harwich Board of Health, in cooperation with the Cape Cod Commission. The Harwich Board of Health has agreed to monitor the project's septic system influent and effluent quality in accordance with the OMC program. Compliance with the provisions of the OMC program will meet the intent of MPS 2.1.1.2.A.1.
- The Commission therefore grants relief to the Applicant as part of the Hardship Exemption as the proposed program will not be more detrimental to the protected resource than a project that met the MPS. The Commission also finds that implementation of the OMC program will not substantially derogate from the intent of the Act or be detrimental to the public good.
- WR4. A critical nitrogen load has not been determined for the Herring River and therefore, the Applicant is subject to MPS 2.1.1.2.C.1, which requires projects to make a monetary contribution for development of a critical nitrogen load for the applicable embayment. MPS 2.1.1.2.C.1 also requires a monetary contribution for development of nitrogen management strategies.

- WR5. The project is in compliance with MPS 2.1.1.2.B.1, that requires the septic system disposal area to be located over 300 feet away from a fresh water body.
- WR6. Stormwater disposal facilities will be upgraded with the creation of a grass lined bioinfiltration swale, which allows a 25% credit for nitrogen loading from impervious surfaces. A maintenance plan for the stormwater system has not been presented, but will be required to be prepared and approved by Commission staff prior to issuance of a Preliminary Certificate of Compliance. Therefore the project is in compliance with MPS 2.1.1.6.

**Natural Resource Findings:**

- NR.1 The project site is located in a Significant Natural Resource Area (SNRA) due to the presence of a public water supply wellhead protection area. The site is not mapped for rare species habitat, nor does it contain any wetlands. A natural resources inventory consistent with RPP requirements and MPS 2.4.1.1 was provided. The natural resources inventory indicates that the site contains a typical mix of oak and pitch pine woodland with a shrub understory of low blueberry and huckleberry. A smaller open area containing a bearberry heath, a natural community in decline on Cape Cod, is also located on site. Other areas were previously disturbed and contain a variety of herbaceous plants and some invasive tree species.
- NR2. The project design minimizes the extent of additional development and disturbance on the site. Cape Cod Healthcare has offered to attempt to relocate the bearberry heath.
- NR3. The NRI also indicates the presence of two invasive species, black locust and autumn olive. While the 1996 RPP does not require invasive species management, Cape Cod Healthcare has offered to incorporate management of these species into the landscape maintenance contract for the Long Pond (Fontaine) Medical Center site.

**Open Space Findings:**

- OS1. Based on a project site area of 5.85 acres and the site's location within SNRA, the project is required to provide 65% permanently protected open space, or 3.8 acres, in accordance with MPS 2.5.1.3. The applicant has requested relief from this requirement as part of the Hardship Exemption request. As mentioned previously, Cape Cod Healthcare's hardship is financial and the value of open space acquisitions in Harwich is presently \$135,500 per acre. In partial fulfillment of the open space requirement, Cape Cod Healthcare has identified a two acre parcel located just north of Queen Anne Road and proximate to Hawksnest State Park, which they intend to deed to the Town of Harwich for conservation purposes. The town expressed some concern that Cape Cod Healthcare may have difficulty establishing clear title to this parcel. Consequently, the Commission has determined that the purchase price for the parcel, \$60,000, is the cash equivalent that Cape Cod Healthcare should provide to the town should they be unable to acquire clear title to the parcel.

- OS2. The Commission has determined that granting Cape Cod Healthcare relief from the open space requirement in the amount of 1.8 acres is appropriate relief in this situation, and does not substantially derogate from the intent or purposes of the Act or result in substantial detriment to the public good.

**Transportation Findings:**

- T1. The proposed development is a 12,000 square foot expansion of an approximately 14,200 square foot existing primary care medical center on Long Pond Drive near Route 137 in Harwich. Regional Roadways in the area include Long Pond Drive, Route 137, Route 6, and Pleasant Bay Road.

- T2. The proposed expansion is expected to generate new vehicle trips (without adjustments) as follows:

- Weekday Afternoon Peak Hour            51 new trips
- Weekday Daily                                435 new trips

- T3. MPS 4.1.1.1 requires analysis and mitigation of traffic if the expected peak hour trip generation from a development results in 25 or more new trips on regional roadways. The following locations are expected to be impacted by 25 or more new peak hour trips:

- Intersection of Long Pond Drive/Route 137                                39 new trips
- Intersection of Route 6 Westbound ramp/Route 137                        30 new trips
- Long Pond Drive between medical center driveway/Route 137        39 new trips
- Route 137 between Long Pond Drive/Route 6 Westbound ramps        30 new trips

Utilizing ODRP 4.1.1.20, the applicant has proposed to make a \$100 per trip payment for the above locations (allowed where the peak hour increase is less than 50 new trips). This will result in a payment of \$13,800 to Barnstable County for the 138 peak hour trips, which will be used in the Town of Harwich for transportation improvements.

- T4. MPS 4.1.1.5 requires all DRIs, regardless of trip generation, to have safe sight distances at site access driveways. The applicant has provided a letter from a professional engineer stating sight lines at the proposed driveway location are “safe and adequate” based on AASHTO guidelines. However, the applicant’s letter also indicates that vegetation on the south side of Long Pond Drive needs to be kept trim. The applicant has agreed to a condition to maintain sight distances and requiring the applicant work with the Town of Harwich to maintain sight distances at the project site driveway.

- T5. MPS 4.1.1.6 requires all new site driveways to operate at Level-of-Service (LOS) C or better. Commission staff has estimated the driveway will operate at LOS B.

- T6. MPS 4.1.1.7 requires that there be no degradation of public safety.

A. The Town of Harwich expressed concerns regarding sight lines at the corner of Route 137 and Long Pond Drive. A preliminary Commission staff review of these sight lines showed them to be sufficient. The applicant has agreed to a condition requiring the applicant to notify and work with the town of Harwich to maintain sufficient sight lines at this location.

B. The intersection of Route 39 and Route 137 in East Harwich is a high accident location showing 24 crashes in the years 1998 through 2000. The town took steps in 2000 to improve safety at this intersection including intersection widening, turning lanes, and signal improvements which are now complete. Considering the estimated new peak hour traffic through the intersection generated by proposed development (less than 25 new peak hour trips) and the town improvements, no further safety mitigation is required as part of this development.

C. The intersection of Route 39 and Pleasant Bay Road in East Harwich is also a high accident location showing 19 crashes in the years 1998 through 2000. Since that time, the Town of Harwich has taken steps to improve sight lines at this location. Considering the level of traffic generation of the proposed development (less than 25 new peak hour trips), and town improvements, no further safety mitigation is required as part of this development.

- T7. MPS 4.1.1.14 requires developments to provide adequate parking and MPS 4.1.1.15 requires parking to be limited to the needs identified in a Commission approved traffic study or the requirements of local communities, whichever is greater. The applicant has proposed 102 built parking spaces and 12 parking spaces held in “landscaped reserve”. This is far more than the town requirement of 70 parking spaces. However, a parking study from a similar medical facility on Cape Cod submitted by the applicant as well as information in the Institute of Transportation Engineer’s *Parking Generation* manual indicates that 102 spaces are appropriate. If transportation engineering based studies show a need for the additional 12 spaces to be made usable, it will be necessary for the applicant to present information to the Regulatory Committee for their review. The Regulatory Committee will make a determination whether the additional twelve (12) spaces may be constructed.
- T8. MPS 4.1.1.16 requires adjacent commercial uses to share access points and provide connections between parcels where appropriate. The medical center shares a single driveway on Long Pond Drive with a dentist’s office, which is the only adjacent commercial property.
- T9. MPS 4.1.2.1 requires all DRIs to reduce expected weekday trips by 20%. For the estimated 435 weekday trips, this amounts to 87 trips. The applicant has proposed a comprehensive trip reduction plan with a financial incentive to be applied to both the existing facility staff and any additional staff added in the future. The expanded facility is expected to have a total of 40 employees. It is estimated 20% of the employees will

participate in the program reducing 24 daily trips, leaving 63 daily trips to be mitigated or offset.

- T10. The Trip Reduction mitigation for the remaining 63 trips to be offset would amount to \$133,100, and the applicant has requested relief from this requirement as part of the Hardship Exemption request. The Commission has determined a hardship exists and that granting partial relief from the requirements of MPS 4.1.2.1 will not result in substantial detriment to the public good nor will it nullify or substantially derogate from the intent of the Act.

### **Economic Development Findings:**

- ED1. The Long Pond Medical Center provides basic health services to residents and visitors to the mid- and outer-Cape, with a substantial majority of patients deriving from Harwich, Orleans, Chatham, and Brewster, according to the Applicant. Healthcare is among the list of desired economic activities included in the economic development section of the Regional Policy Plan.
- ED2. The Long Pond Medical Center is not located in an existing growth activity center but the project is focused on the redevelopment of an existing facility that is convenient to regional automobile traffic and emergency vehicles.
- ED3. The Long Pond Medical Center employs on a full- or part-time basis over twenty individuals and according to the applicant, the “substantial majority” of these employees reside in the surrounding communities of Harwich, Brewster, Chatham, Orleans, and Eastham. Cape Cod Healthcare provides a full complement of benefits including health, dental, life and disability insurance coverage, and a reasonable sick, holiday, and vacation package to these employees. Training opportunities are also available through an in-house program and tuition reimbursement and wages are generally consistent with national wage levels for similar occupations. Current staffing levels are not expected to increase or decrease immediately following the renovation and expansion, and therefore there is no proposed change in jobs or salary income to residents in Barnstable County.

### **Solid Waste Findings:**

- SW1. MPS 4.2.1.3 states that “*construction demolition debris from development and redevelopment shall be removed from construction sites and disposed of in accordance with the integrated solid waste management system in Section 4.2.1.1.*” In a memorandum dated October 28, 2003, the applicant has stated that a construction/demolition plan for the project has not been developed at this time but will be submitted after the applicant has hired a contractor. This decision will be conditioned to require approval of a construction/demolition plan prior to issuance of a building permit to ensure compliance with this standard.

### **Hazardous Materials/Wastes Findings:**

- HM1. The project site is located in a Wellhead Protection District/Zone II, as mapped by the Commission as part of the 1996 RPP. Based on this, MPS 4.2.2.3 applies to this project which restricts the use, treatment, generation, storage or disposal of hazardous wastes or hazardous materials to a household quantity.
- HM2. According to information submitted as part of the Hardship application, hazardous materials attributable to the existing facility include 4 above-ground, vaulted fuel tanks located in the basement for an estimated total of 1,320 gallons. The facility also has 10 mercury-containing thermometers and/or blood pressure cuffs.
- HM3. Hazardous wastes attributable to the existing facility include two 55-gallon drums of waste photo fixer, and two 5-gallon tanks for developer and fixer in the existing X-ray machine. The facility was registered with the Department of Environmental Protection (DEP) as both a Very Small *and* a Small Quantity Generator of hazardous waste (VSQG/SQG). Waste manifests provided as part of an October 28, 2003 letter from the Applicant indicate, as of December 2003, that the facility was generating these amounts of hazardous waste. The existing facility also generates an unknown amount of fluorescent bulbs, a regulated waste.
- HM4. The site also currently generates medical-related bio-hazard wastes. Blood and urine samples are taken at the facility, but there is no "stat" lab. C-Lab handles disposal of these samples. The facility also has an on-site bone density machine and has the capacity to service a mobile MRI unit. However, neither machine uses hazardous materials or generates hazardous waste.
- HM5. The Applicant has stated that with the proposed addition, hazardous materials and wastes attributable to the facility are expected to decrease. The new addition is to be supplied with natural gas, so no additional on-site fuel storage will be needed. The facility will operate under the auspices of Cape Cod Healthcare, which has committed to removal of mercury-containing medical devices. The October 28, 2003 letter from the Applicant states that the facility has taken steps to register with the DEP as a VSQG. The application materials also indicate that the facility will not use "wet" X-ray processing once the new addition is built. Interior floor layouts received by the Commission in November 2003 confirm that the facility, as reconfigured, will have only one dark room.
- HM6. MPS 4.2.2.2 requires that development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00. As noted above, the facility with the new addition is constructed, will reduce its generation of hazardous waste to VSQG levels. As noted below, the applicant has also committed to steps to monitor its hazardous waste management, consistent with MPS 4.2.2.2.
- HM7. MPS 4.2.2.1 requires DRIs to make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and

recycling. Replacing mercury-containing devices partly addresses MPS 4.2.2.1. The Applicant also submitted copies of the facility's anticipated infectious waste management procedure and a December 12, 2003 fax that included a draft protocol that requires that an employee at the facility manage the quantity of waste in storage, look for leaking containers, insure that containers in storage are labeled, and keep copies of required shipping papers. These actions and documents satisfy MPS 4.2.2.1 for this project.

HM8. The December 12, 2003 fax from the Applicant includes an outline of requirements to be inserted into the project's construction documents. This document addresses the hazardous materials and waste management standards of the 1996 RPP for the construction phase of this project.

### **Community Character Findings:**

- CC1. The proposed project consists of a single-story addition to the east side of the existing structure. The height and scale of the addition is consistent and harmonious with the existing building and its surroundings. The existing exterior clapboard will be stained to match the addition, which consists of stained cedar wood siding and cedar wood trim. The design is consistent with the requirements of MPS 6.2.1.
- CC2. The plans dated January 9, 2004 show that the addition incorporates variety in height and setbacks by the use of cross gables, gable ends and porches. The roof mass has been designed to accommodate noise generating roof-top equipment within a central enclosure that also screens the equipment from view, therefore reducing any negative noise and visual impacts. The mass and scale of the building, roof shape, roof pitch, and proportions and relationships between doors and windows are harmonious among themselves and consistent with the existing structure and with traditional Cape Cod architectural style, and therefore the project complies with MPS 6.2.2.
- CC3. MPS 6.2.3 requires in part that *all new development provide adequate landscaped buffers in order to limit adverse visual impacts on the surrounding community. Preservation of existing natural vegetation in these buffer areas is preferred.* The proposed addition incorporates at least a 125' wide wooded buffer from Long Pond Drive. Buffering on the sides and rear of the site vary from approximately 25' to over 130' wide adjacent to a portion of the Route 6 right-of-way. These buffers include areas that will be cleared, graded and subsequently replanted with vegetation that provides screening of the site. Proposed plans include 6' high wooden fencing along the sides of the project site to improve the screening of the facility from residential abutters. Due to site topography, proposed stormwater facilities and wastewater leaching areas are located in the rear of the site, adjacent to the Route 6 right-of-way. This infrastructure requires clearing and grading as close as 30' to the rear property line in one location. The applicant has reduced the amount of grading in the rear of the site in order to retain as much natural vegetation as possible and has supplemented existing vegetation with proposed plantings. The proposed project is therefore consistent with MPS 6.2.3.

- CC4. *MPS 6.2.5 requires new development to provide landscaping that integrates buildings with their environment, enhances architectural features and provides amenities for pedestrians.* MPS 6.2.6 addresses the functional aspects of landscaping. The proposed site plan provides adequate sidewalks within the project site. The proposed landscape plan incorporates plant materials that are adaptable to site conditions. The landscape plan also includes plantings on the edges of the proposed detention basin to reduce its visual impact and improve its habitat value. Further, the applicant has agreed to remove invasive species from the site during construction. Therefore, the proposed project is consistent with MPS 6.2.5 and MPS 6.2.6.
- CC5. The applicant submitted a Project Notification Form (PNF) to the Massachusetts Historical Commission (MHC) on September 10, 2001. After review of the MHC files and the materials submitted, MHC determined on October 15, 2001 that the project is unlikely to affect significant historic or archaeological resources.
- CC6. MPS 6.2.7 of the 1996 RPP requires development and redevelopment to conform with the Technical Bulletin 95-001 (as revised). The project must also conform to MPS 6.2.8, which states that *the installation of billboards, offsite advertising (excepting approved directional signs) and internally lit or flashing signs shall not be permitted.* Lighting information submitted by the applicant during the Commission's review indicates the exterior lighting, including all pole-mount lights, conform to the Technical Bulletin standards and minimum performance standards. Information submitted by the applicant in an August 12, 2002 letter also indicates that "there will be no wallpacks designed or used on the exterior facades of the building." The project does not include any new signage on the building and the existing driveway entrance sign is shown to remain, therefore the project as proposed is consistent with MPS 6.2.8.
- CC7. MPS 6.2.10 requires *parking to be located to the rear or side of a building unless such location would have an adverse visual or environmental impact, or is completely infeasible.* MPS 6.2.11 requires in part that *parking lots be visually screened from roads and adjacent residential areas through fencing, stone walls or landscaping.* A small amount of new parking (12 spaces) had been proposed to the front of the medical building, adjacent to the entrance driveway. However, these spaces are to held in landscape reserve until such time that the Medical Center can show they are needed. The siting requirements of proposed stormwater and wastewater facilities made it infeasible to locate these 12 spaces to the rear or side of the building. The remainder of the proposed parking spaces are located to the side and rear of the site. All parking areas are screened from roads and adjacent residential areas through fencing and landscaping. Therefore, proposed parking is consistent with MPS 6.2.10.

## CONCLUSION

Based on the findings above, the Commission hereby concludes:

Due to the nature of this business and its heavy reliance on philanthropy for capital expenditures, and the project benefits discussed in the findings above, the Cape Cod Commission finds that a Hardship Exemption is appropriate. A literal enforcement of the provisions of the Act would involve trip reduction mitigation and open space contributions that would represent a financial hardship to the Applicant. Partial relief from the transportation standards, open space and water resources requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Cape Cod Healthcare, Inc. for the Long Pond (Fontaine) Medical Center Expansion, provided the following conditions are met:

## CONDITIONS

### General Conditions:

- G1. The proposed Long Pond (Fontaine) Medical Center Expansion shall be constructed in accordance with the following final plans:
- Building elevations, sections and floor plans prepared by TRO (Sheet numbers A200, A20B, A400, A401 and A410) dated January 9, 2004;
  - Landscape Plans prepared by Strata Design Associates, Inc. (Sheet numbers L-1.00, L-2.00, L-3.00, L-4.00 and L-5.00) dated December 22, 2003
  - Landscape Initial Lighting Plan and Landscape Maintained Lighting Plan submitted by TRO (Sheet numbers L-400 and L-401) dated August 7, 2002;
  - Drawings prepared by Coastal Engineering (Sheets EC-1 (dated September 7, 2001), SP-1, SP-2, SP-3, DET-1, DET-2 and DET-3 (dated January 9, 2004)) and issued January 9, 2004.
- G2. This DRI Hardship Exemption 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 necessary 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. Prior to issuance of a building permit for any phase of proposed construction, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and/or information submitted as part of the DRI review. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed subject to Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 5/30/02 and as amended from time to time.
- G7. Prior to issuance of a demolition permit or building permit for any phase of construction, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of a building permit have been met.
- G8. Prior to receiving a temporary or Final Certificate of Occupancy from the Town of Harwich, the Applicant shall obtain a Final Certificate of Compliance from the Commission.
- G9. The Applicant shall provide a minimum of 30 days notice prior to issuance of all certificates associated with this decision.
- G10. The Applicant shall be responsible for providing proof of recording of the Decision prior to issuance of a Preliminary Certificate of Compliance.
- G11. The Applicant shall demonstrate that a copy of this decision has been provided to the general contractor prior to the start of construction.
- G12. Prior to issuance of a Preliminary Certificate of Compliance, the Long Pond (Fontaine) Medical Center shall develop a sliding scale fee structure for all healthcare services provided by Cape Cod Healthcare, or its physicians or employees at the facility to self-paying patients (who are eligible for free care) based on the patient's income level and ability to pay. Prior to issuance of a Preliminary Certificate of Compliance, the details of the sliding-scale fee program shall be submitted to the Lighthouse Health Access Alliance and the Cape Cod Commission for approval. This program shall be substantially similar to the program outlined in the December 2, 2003 memorandum from Mr. Patrick M. Butler to the Cape Cod Commission subcommittee.
- G13. The program described in Condition G12 shall be implemented for a maximum of three years , with a budget up to \$180,000, with the rates for service charged in a manner consistent with those reimbursement rates established from time to time by Cape Cod Healthcare in its contractual agreements with Blue Cross/Blue Shield of Massachusetts. Prior to issuance of a Final Certificate of Compliance, Cape Cod Healthcare, Inc shall establish this program and notify the Commission in writing of the start date of this program.

- G14. The applicant shall, for a period of three (3) years from the start date, maintain complete and accurate records regarding the implementation of the program. The Applicant shall submit an accounting report to the Cape Cod Commission within 14 days of the first, second and third anniversary of the start date of the program described in G12 and G13. This report shall detail the amount of free care rendered to patients of the facility for the prior year for the purposes of determining compliance with Condition G12 and G13. The Commission staff shall make report to the Regulatory Committee for the purposes of monitoring the Long Pond (Fontaine) Medical Center's consistency with this decision.
- G15. If at the end of the three year period the amount of free care provided does not total \$180,000, the Applicant shall donate any utilized balance to the Community Health Center Network for the provision of similar free service programs.

**Water Resources Conditions:**

- WR1. Prior to issuance of a Final Certificate of Compliance, the applicant shall provide a DEP approved application and plans for the I/A denitrifying septic system and provide the Cape Cod Commission with an approved Operations, Management and Compliance (OMC) program signed by the Harwich Board of Health.
- WR2. Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall make a \$5,000 monetary contribution to Barnstable County for implementation of the OMC program. The \$5,000 contribution will cover the annual costs associated with implementing the Harwich Board of Health's oversight of the OMC program dated January 12, 2004 for the first five years of the treatment system. The Board of Health and the Cape Cod Commission are the respective local and regional authorities responsible for administrative and regulatory oversight of the project's onsite-wastewater management. Funds will be made available to the Town of Harwich upon approval by the Executive Director of the Cape Cod Commission.

Following the initial five-year period of operation, system performance shall be jointly reviewed by the Commission staff, the Harwich Board of Health and the applicant. Upon a recommendation of the Commission staff, the Commission's Regulatory Committee and Harwich Board of Health shall jointly determine the need for further compliance oversight.

- WR3. Prior to issuance of a Preliminary Certificate of Compliance, the applicant make a one-time payment of \$412 to Barnstable County toward the completion of flushing studies for the Herring River system or for implementation of appropriate nitrogen management strategies as determined by the town of Harwich and Cape Cod Commission Water Resources staff. Funds will be disbursed to the Town of Harwich upon approval of the Executive Director of the Cape Cod Commission.

- WR4. A plan for operation and maintenance of stormwater facilities shall be prepared by the project consultant and submitted and approved by the Commission prior to issuance of a Preliminary Certificate of Compliance.
- WR5. Prior to issuance of a Final Certificate of Compliance, the applicant shall meet all provisions for the approved Operations, Management and Compliance Policy for onsite-wastewater management at the site.

**Natural Resources Conditions:**

- NR1. Cape Cod Healthcare shall relocate the bearberry heath located on the property to a suitable site elsewhere on the property or to the adjacent lot at the corner of Long Pond Road and Route 137. Management of the heath for three years from date of its relocation shall be incorporated into the landscape maintenance contract for the facility.
- NR2. Prior to issuance of a Preliminary Certificate of Compliance, Cape Cod Healthcare shall prepare an invasive species management plan consistent with the guidelines in the Invasive Species technical bulletin and submit the plan for Commission staff approval. Removal of the species in question shall occur prior to a Final Certificate of Compliance. Management and monitoring of these species shall be incorporated into the landscape maintenance contract for the facility.

**Open Space Conditions:**

- OS1. Prior to issuance of a Preliminary Certificate of Compliance, Cape Cod Healthcare shall convey to the Town of Harwich, under the care, custody and control of its Conservation Commission, the two-acre parcel located just north of Queen Anne Road and Beach Plum Circle. The quitclaim deed shall be approved by Commission counsel prior to issuance of a Preliminary Certificate of Compliance. In the alternative, and only if it is demonstrated that clear marketable title to the two-acre parcel in question cannot be conveyed, Cape Cod Healthcare shall meet the open space requirement through the contribution of \$60,000 toward open space preservation in Harwich. If such a payment is required, it shall be made prior to issuance of a Preliminary Certificate of Compliance, and consist of a one-time payment of \$60,000 to Barnstable County for the purposes of open space preservation. Funds will be disbursed to the Town of Harwich Land Bank Account upon approval of the Executive Director of the Cape Cod Commission.

**Transportation Conditions:**

- T1. Prior to the issuance of a Preliminary Certificate of Compliance and in order to comply with MPS 4.1.1.1 and ODRP 4.1.1.20, the applicant shall make a one-time payment of \$13,800 to Barnstable County for the purpose of studying, designing, operating, promoting, and/or building transportation improvements in the project's study area, or in the Town of Harwich. Funds will be disbursed to the Town of Harwich upon approval of the Executive Director of the Cape Cod Commission.

- T2. The applicant shall maintain American Association of State Highway Transportation Officials safe stopping sight distances where the driveway meets Long Pond Drive. The applicant shall work with the Town of Harwich to maintain vegetation on town-owned property if necessary to maintain appropriate sight distances at the site driveway.
- T3. The applicant shall inform the Town of Harwich when appropriate sight distances at the intersection of Long Pond Drive and Route 137 are hampered by vegetation and work with the Town to resolve the problem.
- T4. The applicant will provide 102 parking spaces as well as an additional 12 parking spaces held in landscaped reserve. The applicant may apply to the Regulatory Committee to construct and make usable some or all of the remaining 12 parking spaces. At that time, the applicant will be required to provide a study of parking accumulation conducted by a qualified independent transportation engineering firm showing the need for extra parking spaces. The study must cover at least three days of parking counts at the facility. Commission transportation staff will need to verify the data in the field on the days of the study and thus prior coordination with Commission staff is required.
- T5. In order to meet the requirements of MPS 4.1.1.16, the applicant is required to maintain a single site driveway on Long Pond Drive for the medical center and the adjacent dentist's office (and/or successor owner). Any change in the location or number of site driveways will require a DRI modification.
- T6. The applicant shall implement the proposed trip reduction program for all on-site employees. Prior to issuance of a Final Certificate of Compliance, the applicant shall demonstrate to the satisfaction of the Commission staff that the proposed program is to be implemented will include the following:
- Designation of an employee to serve as the Transportation Coordinator who will be responsible for promoting the rideshare program and other Transportation Demand Management (TDM) measures.
  - Posting of carpooling/ridesharing opportunities and incentives prominently in the employee area;
  - Designation of three or more parking spaces (as demand indicates), convenient to the building entrances, which will be reserved for carpool or vanpool vehicles. At least three spaces will be designated before the Final Certificate of Compliance is issued.
  - Establishing a bulletin board to aid in matching employees to carpools and vanpools.
  - Providing a \$20 per week cash incentive drawing for all employees using alternative modes to access the facility during the week. The cash incentive shall be indexed to inflation and adjusted annually. Alternative modes shall include walking, bicycling,

transit, and carpooling with another employee or employees of the medical center or of the adjacent dentist's office.

- Providing information on-site to employees relative to the available public transit services and other alternative mode opportunities.
- Providing a secure area and rack to store bicycles.
- Allowing flexible work hours when it will support participation in carpools and vanpools and also help to shift site generated traffic away from the normal peak commuting hours.
- Providing an on-site lunch room for employees including a microwave, refrigerator, and mail box.
- Explore contracting with a catering service to provide lunches on site or consider designating an employee to pick-up lunches for co-workers from a local restaurant.
- Providing an emergency ride home up to four times per year per employee participating in the alternative commuting program.

#### **Solid Waste:**

SW1. Prior to the issuance of a Preliminary Certificate of Compliance, the proponent shall submit for Commission staff review and approval, a draft contract specifying the disposal method and location that the contractor shall use to dispose of all asphalt, brick, concrete (ABC), untreated wood, metals and other solid waste generated by the construction activities. These materials shall be managed according to an integrated waste management system, and disposed of at a facility permitted to dispose of construction demolition materials.

#### **Hazardous Materials:**

HM.1 The overall expanded facility shall not use, treat, generate or store on site at any time more than the amount of hazardous materials and wastes described in Findings HM1-HM5 at the existing facility plus 25 gallons or its dry weight equivalent of hazardous materials or wastes from the expansion. The facility shall be restricted to the VSQG level of hazardous waste generation as defined by the version of 310 CMR 30.00 in effect at the time of the Commission's decision. There shall be no onsite disposal of hazardous materials or wastes. The new addition to the existing building shall be fueled by natural gas and no increase in onsite fuel storage shall be allowed. The facility, once reconfigured as a result of this decision, shall be limited to one "wet" X-ray unit and one dark room. All other medical imaging machinery shall be limited to technology that does

not use hazardous materials or produce hazardous wastes. The facility shall only use non-mercury containing thermometers and blood-pressure cuffs.

- HM2. The facility shall operate in a manner consistent with the requirements of MPS 4.2.2.2 of the 1996 RPP, and shall establish and maintain the Hazardous Waste Monitoring Policy (Policy) as outlined in the December 12, 2003 fax from the Applicant. This shall include designating and maintaining, as an on-site employee position, a Hazardous Waste Monitor to insure compliance with MPS 4.2.2.2 and the Policy.
- HM3. Prior to issuance of the Preliminary Certificate of Compliance, the applicant shall submit for Commission review and approval a copy of the Construction Documents to be distributed to each prime and sub-contractor which describes the proposed construction-related workplace safety, release response and emergency response plans. Such plans shall, at a minimum, contain the items listed in the December 12, 2003 fax from the Applicant that relate to construction activities.
- HM4. Prior to issuance of the Preliminary Certificate of Compliance, the applicant shall submit for Commission review and approval evidence that the facility replaced its mercury-containing medical devices.
- HM5. Prior to the Final Certificate of Compliance, Commission staff shall meet with facility staff on site to confirm the establishment of the Hazardous Waste Monitor and implementation of the Policy described in Finding HM6 and Finding HM7 .
- HM6. Six months from the date of the issuance of the Commission's Final Certificate of Compliance, the applicant shall submit to the Commission a written report on the facility's hazardous waste generation. This report shall include copies of waste shipment manifests and other data as needed to confirm compliance with conditions HM1 and HM2 of this decision.

### **Community Character**

- CC1. The project shall be constructed in accordance with the approved exterior lighting plans dated August 7, 2002. Any changes to this plan, including redesign, adjustments to site exterior lighting fixtures, or substitutions of fixture heads, shall be submitted to the Cape Cod Commission for review and approval and be consistent with the Technical Bulletin.
- CC2. Prior to issuance of a final Certificate of Compliance from the Commission, in-the-field verification of light levels shall be conducted by Commission staff to verify conformance with the requirements of the Technical Bulletin 95-001 and MPS 6.2.7. This shall also include verification that installed signage is in conformance with Condition CC3, below.
- CC3. Any pylon or free-standing signs shall be down-lit in conformance with Technical Bulletin 95-001 (revised).

- CC4. The applicant shall implement and conduct a landscape maintenance plan for three (3) full growing seasons. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall submit a draft maintenance contract for all proposed landscaped areas based upon guidelines provided by Commission staff. Prior to issuance of a Final Certificate of Compliance, the applicant shall provide a fully executed landscape maintenance contract for the required three (3) full growing seasons.
  
- CC5. If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements shall be completed within six (6) months of issuance of a Final Certificate of Compliance from the Commission.
  
- CC6. Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

The Cape Cod Commission hereby approves with conditions the application of Cape Cod Healthcare, Inc. as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Long Pond (Fontaine) Medical Center in Harwich, MA.

\_\_\_\_\_  
 Susan Kadar, Chair

\_\_\_\_\_  
 Date

Commonwealth of Massachusetts

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
 Notary Public, Commonwealth of Massachusetts