



CAPE COD COMMISSION

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DATE: November 6, 1997 TR-97008/EX-97008

TO: Peter Mulvey, Trustee
C/O Patrick M. Butler
Nutter, McClennen and Fish, LLP
1513 Iyanough Road
P.O. Box 1630
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Cape and Islands Steel

APPLICANT: Peter Mulvey, Trustee
Airport Way Nominee Trust
200 Airport Way
Hyannis, MA 02601

PROJECT: Cape and Island Steel Building
Barnstable, MA

PROJECT #: TR-97008/EX-97008

BOOK/PAGE: Book 446, Page 3
Map 312, Parcel 8-H00

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with Conditions the Development of Regional Impact application of Peter Mulvey, Trustee of Airport Way Nominee Trust pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(e), Barnstable County Ordinance 94-10. The Applicant has also filed a DRI Exemption application under Section 12(k) of the Cape Cod Commission Act. This DRI Exemption application was withdrawn by the applicant at the November 6, 1997 Cape Cod Commission meeting. This Decision is rendered pursuant to a vote of the Commission on November 6, 1997.

PROJECT DESCRIPTION

The project consists of the proposed construction of a 40,000 sq. ft. steel fabrication building and an associated 3,000 sq. ft. saw house on a 12.47-acre parcel located on Airport Way in Barnstable. There is an existing 4,995 sq. ft. office building on the project site which is not part of this project. The company also currently owns and operates an existing steel fabrication business on an adjoining parcel.

PROCEDURAL HISTORY

On May 28, 1997, the applicant filed a DRI Exemption application. The project was referred by

Cape & Islands Steel
TR-97008/EX-97008
DRI Decision

Mr. Ralph Crossen, the Barnstable Building Commissioner, as a DRI on May 29, 1997. The referral was received by the Cape Cod Commission on May 30, 1997. A letter dated June 3, 1997 was sent to the applicant informing them of the intent to review the project as a DRI. Commission staff met in conjunction with the Barnstable Site Plan Review on June 19, 1997 as a Joint Review under a Memorandum of Understanding between the Commission and the Town of Barnstable to discuss the proposed project. A letter was sent to the applicant dated June 11, 1997 indicating that the DRI/DRI Exemption application was incomplete. A site visit was held on July 9, 1997. A Hearing Officer opened and continued a public hearing on the project on July 16, 1997. A letter dated July 16, 1997 was sent to the applicant indicating that the DRI/DRI Exemption application was incomplete. A Hearing Officer opened and continued a public hearing on August 4, 1997. A letter dated August 22, 1997 indicated issues which remained unresolved and noted the DRI/DRI Exemption application was incomplete. The letter also noted the 90-day DRI time period ended on October 14, 1997. In a letter dated September 23, 1997, the applicant was informed that the DRI/DRI Exemption application was sufficiently complete to hold a public hearing. A duly noticed public hearing was held on October 14, 1997. At this hearing, the Subcommittee voted to instruct the staff to draft findings, to close the DRI hearing but leave the record open and to hold a public meeting on October 28, 1997. At this meeting, the Subcommittee voted to recommend denial of the DRI Exemption application to the full Cape Cod Commission. The Subcommittee also voted to recommend to the full Cape Cod Commission approval with Conditions of the DRI application. On November 6, 1997, the full Commission opened a public hearing on the DRI/DRI Exemption application. At this hearing, the applicant withdrew the DRI Exemption application from before the Cape Cod Commission. At this hearing, the full Commission voted to approve with Conditions the DRI application.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials Submitted by the Applicant:

DRI Exemption application	5/28/97
-fee, application form, Massachusetts Historical Commission notice, locus map, abutters list, deed, Barnstable site plan application form, site plan (one large size), site plan showing septic design (one large size)	
Locus map	6/19/97
Letter, from Attorney Butler, concerning hearing date	7/14/97
Letter, from John Paulding, to Commonwealth Electric	7/18/97
Letter, from Sam Park and Associates, traffic information	7/28/97
Letter, from Attorney Butler	7/29/97
-MSDS sheets, clarification that project is not on Lot 8-1, copy of site plans reduced to 11 x 17, memo on company safety policies	
Letter, from Attorney Butler, additional application information	8/11/97
-Hazardous Materials Users Registration Form, site plan showing edge of clearing, note that negotiations ongoing with Commonwealth Electric	
Letter, from Attorney Butler, additional application information	9/19/97
-noted updated Hazardous Materials Registration Form would be filed, provided additional MSDS sheets	
Letter, from Attorney Butler to Natural Heritage Program	9/24/97
Letter, from Attorney Butler, new information about project	10/14/97
Copy, Building Permit for office building (by hand)	10/14/97
Copy, summary sheet of project issues (by hand)	10/14/97
Letter, from Attorney Butler, discussion of zoning issues, draft Findings, proposal to provide about one acre of open space (by hand)	10/23/97

Letter, from Attorney Butler, copy of Article 39 (fax) 10/24/97

B. Materials Submitted by the Cape Cod Commission:

DRI Checklist	5/30/97
Letter, to Attorney Butler, intent to review	6/3/97
Fax cover sheet, to Town, Attorney Butler	6/4/97
Memo, selection of Subcommittee	6/5/97
-locus map, referral form	
Memo, to Ralph Crossen, joint meeting with Town	6/5/97
Memo, to Subcommittee, about joint review	6/6/97
Notice, joint meeting with Town	6/10/97
Letter, to Attorney Butler, application incomplete	6/11/97
Site visit notes and two polaroid photos	7/9/97
Letter, to Attorney Butler, application incomplete	7/16/97
Notice, public hearing	7/16/97
Memo, to Subcommittee, recent correspondence	7/16/97
Minutes, Hearing Officer	7/16/97
Water Resources comments	7/30/97
Notice, public hearing	8/4/97
Minutes, Hearing Officer	8/4/97
Fax, to Health Department, list of hazardous materials	8/19/97
Letter, to Attorney Butler, unresolved project issues	8/22/97
Memo, transportation comments	8/22/97
Table, estimate of transit cost calculation	9/18/97
Memo, to Subcommittee, hearing	9/19/97
Letter, to Attorney Butler, application sufficiently complete for hearing	9/23/97
Staff Report	10/7/97
Subcommittee Update/Draft Findings	10/23/97
Natural Resources comments	Undated

C. Materials Submitted by the Town:

DRI Referral form	5/30/97
Comments from Planning Department to Site Plan Review	6/12/97
Notice, joint meeting with Commission	6/19/97
Site Plan Review notes of joint meeting with Commission	6/19/97
Hyannis Fire Department, site inspection notes	8/6/97

D. Materials Submitted by the Public:

Barnstable Water Company, concerns over hazardous materials	7/7/97
Letter, Commonwealth Electric, concerns over easement	7/11/97
Letter, to Attorney Butler, Massachusetts Aeronautics Commission	10/9/97
Letter, to Commission, MA Aeronautics Commission	10/15/97

E. Materials Submitted by the State

None submitted

The application materials, and notices of public hearings relative thereto, the Commission's Staff Reports and exhibits, Minutes of all hearings and meetings and all submissions received in the course of the proceedings, including all materials submitted on file TR-97008 and EX-97008 are

incorporated into the record by reference.

TESTIMONY

Public Hearing of 10/14/97

Attorney Patrick Butler, representing the applicant described the project using a handout and a colored site plan.

Mr. Broidrick asked if the large wooded area on the site would be placed under a permanent conservation restriction. Attorney Butler responded that it would not be placed under a conservation restriction.

Mr. Broidrick questioned where the Commonwealth Electric easement was on the site. Attorney Butler noted the location of the easement on the site plan.

Mr. O'Leary questioned what the easement meant to the project going forward. Attorney Butler said one possibility was that the easement be placed underground. Mr. Paulding said he was negotiating to buy out the easement.

Mr. O'Leary questioned whether a building could be constructed in the easement. Mr. Paulding said he could construct a building in the easement area if he bought out the easement rights.

Attorney Butler said construction could occur with the permission of Commonwealth Electric. He said if no agreement was reached with Commonwealth Electric, the applicant would move the building out of the easement area.

Mr. Kaufman noted the letter that had been received from Commonwealth Electric expressing concern about the proposed project. Mr. Kaufman also suggested that the bottled compressed gases, particularly the oxygen and acetylene be stored outside in a secure area.

Mr. Paulding noted the bottled compressed gases are stored in a fenced, locked area outside. He said the bottles were secured to a dolly when in use.

Mr. Wightman questioned where the endangered species were located on the site.

Mr. Butler said the site or a portion of it was within rare and endangered species habitat as mapped by the Natural Heritage program. He noted the applicant sent a copy of the site plan showing the edge of clearing to the Natural Heritage program.

Ms. Adams noted that she had contacted the Natural Heritage program this afternoon. She said that Natural Heritage was waiting for further information from the applicant before they could provide comments.

Mr. Broidrick questioned whether the electric lines could be placed underground.

Mr. Paulding said this was still under discussion but it should not be an engineering issue.

Mr. O'Leary questioned whether a variance was needed.

Attorney Butler noted that at the time of the initial site plan review meeting, the issue of a variance was raised in a Planning Department memorandum. He said the Building Commissioner had

clarified the business was an allowed use under zoning.

Ms. Adams confirmed that the Building Commissioner had indicated the use was permitted within the Industrial Limited zone as light manufacturing and assembly.

Mr. O'Leary suggested the hazardous materials and waste issues needed to be carefully looked at. He noted the Staff Report questioned whether the company was registered with the DEP as a hazardous waste generator.

Attorney Butler said that Barnstable Site Plan Review had asked for information on what hazardous materials were in the existing business.

Mr. O'Leary questioned whether the new project and the existing business were linked. He questioned whether the applicant was separating out hazardous materials from the existing business and transferring them to the new business so as not to trigger a threshold.

Attorney Butler suggested the proper way to look at the project would be to look only at the new buildings. He said the applicant noted at site visit the existing uses and what uses might be transferred to the new site.

Mr. Wightman questioned whether there would be hazardous materials or wastes associated with the proposed project which would be stored elsewhere and not on the project site.

Mr. O'Leary said he thought the economic development points raised were important. He also noted the applicant had indicated a willingness to place the large wooded area under a permanent conservation restriction.

Attorney Butler noted the applicant was willing to expand the buffer at the rear of the site to approximately 60 feet. He noted the applicant was not proposing to place the large wooded area of the site under a conservation restriction.

Ms. Adams presented the Staff Report.

Mr. Kaufman questioned whether some of the hazardous materials concerns could be addressed by the Town.

Ms. Adams noted that the Health Department requires users of hazardous materials to register. She said staff did not have a clear indication of how present hazardous materials use would change as a result of the proposed project. She indicated staff had sought clarification on this from the applicant.

Mr. O'Leary asked the applicant for comments.

Attorney Butler said the applicant had worked in good faith with staff to provide information about the project. He said that new issues had arisen in the past few weeks, such as the requirement to file with the Natural Heritage program. Attorney Butler said that with the proposed project, there would be a net decrease of hazardous materials used on the existing site.

Mr. Paulding noted the new I-beam line would use about 160 gallons of lubricants. He said the

two proposed saws used about 20 gallons of lubricants each. He said Cape and Islands Steel was interested in finding a company to recycle the used lubricants.

Mr. O'Leary said it was important to clarify whether the company was a Very Small or Small Quantity Generator of hazardous waste under DEP regulations.

Attorney Butler said he did not believe the company was required to notify or register with the DEP. He said the company was willing to do this as part of the review process.

Mr. Wightman noted it was important to consider the requirements of a DRI Exemption. He noted there were five public wells in the vicinity of the proposed project. He said this was a significant regional resource. Mr. Wightman said he felt the Staff Report raised valid points concerning the project that needed to be dealt with.

Attorney Butler said he had met with staff this afternoon to try to resolve the project issues. He noted he had provided staff with additional clarification in the 10/14/97 letter. Attorney Butler said the applicant acknowledged the regional concern with respect to the public supply wells.

Ms. Adams noted the paints and primers were hazardous materials was based on the current Materials Safety Data sheets submitted in September by the applicant. She said this was a reflection of materials currently in use by the company.

Mr. Broidrick noted Staff Report indicated the proposed project would allow for a more efficient operation and would not substantially increase the amount of work conducted on the site. He noted that at the same time, the Staff Report stated the number of employees would increase in three to five years.

Mr. Paulding said that the company has been decreasing the amount of hazardous materials used by limiting the amount of mineral spirits used.

Mr. Broidrick noted that a DRI Exemption does not allow for conditions to be placed on the project. Mr. Broidrick noted that the applicant might sell the property to someone else who would develop it.

Mr. O'Leary questioned whether the Commission's findings could be linked to Barnstable's site plan review. He noted that conditions could not be placed on a DRI Exemption.

Attorney Butler stated findings could represent that the applicant would undertake certain activities in order for site plan review and approval to proceed.

Ms. Adams noted that findings did not have the same weight as conditions. She noted that if the applicant chose not to build the project in conformance with the Commission's findings, the primary recourse for enforcement was through the court action.

Mr. Kaufman said that the review of this project at the local level by Barnstable site plan review was not complete until the Commission had rendered its decision. He noted the Commission's decision with findings was taken into account by site plan review.

Ms. Adams noted that in some cases, such as for parking requirements, the Commission may defer

to local requirements. She noted local approvals should not be inconsistent with findings in the decision.

Attorney Butler noted that on a recent previous project, findings were drafted to ensure items were brought to the attention of site plan review. Attorney Butler stated the applicant had to bear part of the responsibility for providing information to the staff so it could be communicated clearly to the Subcommittee.

Mr. O'Leary questioned whether the company was below the DEP's threshold for a Small Quantity generator.

Attorney Butler said he did not know definitively, but he believed that the company was below the threshold.

Mr. Wightman said he was concerned about the exemption. He noted the applicant had represented the proposed new project would involve 245 gallons of hazardous materials. He said if the project was exempted, the applicant would have to ensure that no additional hazardous materials were used or stored at the site.

Mr. Kaufman stated he did not think that the Commission could insure that this level of hazardous materials use did not change.

Mr. Wightman said that a condition could be placed on the project to restrict it to a certain level of hazardous materials use.

Attorney Butler noted that Barnstable zoning prohibited certain types of materials in Wellhead Protection Districts and limited the quantity of other types of materials. He noted that these restrictions keep the company below a certain level of hazardous materials use.

Mr. Wightman said that it was important to monitor the company's use of hazardous materials. He said in some cases it was more appropriate for the project to go forward as a DRI because of the conditions.

Attorney Butler noted that the Health Department was a member of site plan review. He also stated he would clarify whether the company needed to register with the DEP as a Small Quantity generator of hazardous waste. Attorney Butler said he believed the entire business fell below the threshold for hazardous waste generators.

Ms. Adams noted that hazardous waste generated by both the existing business and the proposed new business would be counted toward the company's status as a hazardous waste generator.

Ms. Pommrehn, a transportation engineer, noted that the applicant had presented information concerning the traffic generated by the company. She noted traffic with the proposed project was expected to increase as much as 9 AM peak hour trips and 8 PM peak hour trips. She noted that as proposed, the project was not expected to increase traffic on the regional roadway system significantly. Ms. Pommrehn noted that the applicant was proposing to pave the site drive and that they should work with the Town concerning any roadwork/road opening permit.

Attorney Butler noted that the Town Engineer was willing to work with the applicant concerning

paving the driveway and any road opening permits.

Mr. O'Leary asked for comments from the staff.

Ms. Adams noted there were a number of outstanding issues which needed to be resolved. She noted that no comments had been received concerning the site from the Natural Heritage program and the project's impacts on rare/endangered species. Ms. Adams noted that the applicant was still in negotiations with Commonwealth Electric concerning the easement area.

Attorney Butler said he would provide additional information to the Natural Heritage program. He noted the wooded area of the site was not proposed to be disturbed as a result of the proposed project. Attorney Butler said the applicant was still in negotiations with Commonwealth Electric.

Mr. O'Leary asked what the next step in the process was.

Ms. Adams noted the hearing was being held on the 90th day of the DRI period. She noted this meant that the hearing on the DRI had to be closed, but it did not preclude leaving the record open. She noted another hearing on the DRI could be opened if needed in the decision period.

Mr. Kaufman moved that the DRI hearing be closed and that the record be kept open. Mr. Broidrick seconded the motion. The Subcommittee voted all in favor of the motion.

Mr. O'Leary moved that the Subcommittee hold a public meeting for the purpose of instructing the staff on how to proceed. Mr. Kaufman seconded the motion. The Subcommittee voted all in favor of the motion.

Public Meeting of 10/14/97

The public meeting began at 8:00 PM.

Mr. Kaufman asked if the issues raised could be resolved.

Ms. Adams said comments from the Natural Heritage program depended on their staff schedule and additional information from the applicant. She said it was also unclear how long it would take the applicant to resolve the negotiations with Commonwealth Electric.

Mr. Kaufman said some of the issues could be resolved. He noted if the negotiations with Commonwealth Electric were unsuccessful, the proposed new buildings would be moved south, out of the easement area.

Mr. Broidrick said that other issues were important to the exemption question.

Mr. O'Leary noted the project was on an existing site. He noted the fundamental issue for him was proper handling and storage of hazardous materials.

Mr. Kaufman felt the issues could be resolved. He said that if negotiations with Commonwealth Electric fail, the applicant will move the building. He felt a finding could address issues related to hazardous materials.

Mr. Broidrick noted that new employees would use the existing septic system on the adjacent

parcel, which would result in additional nitrogen loading.

Mr. Wightman noted that the Natural Heritage program comments were still outstanding. He questioned what triggered the involvement of the Natural Heritage program.

Attorney Butler stated that the Natural Heritage program had been notified and the applicant could provide Natural Heritage with additional information if it was required.

Mr. O'Leary suggested most issues could be addressed through findings.

Ms. Adams noted that the only way to place restrictions or conditions on a project was through a DRI decision. She noted that a DRI Exemption could not place conditions on a project.

Ms. Adams said that the Commission did indeed have the ability to limit the quantity of hazardous materials used by a company through a DRI decision. She noted the Commission had in fact placed limits on the use of hazardous materials in past DRI decisions.

Mr. Wightman noted that the Commission has placed limits on the amount of hazardous materials used by companies in DRI projects. He said this related to his earlier point about whether the issues could be addressed through DRI conditions.

Mr. Broidrick noted the ability to limit the quantity of hazardous materials was in the Regional Policy Plan.

Attorney Butler noted there was strict enforcement of site plan review conditions. He noted that the Building Commissioner could revoke the occupancy permit for any violations of the conditions placed on the project by site plan review. He also noted the Barnstable Health regulations placed requirements on the use and storage of hazardous materials in Wellhead Protection districts.

Ms. Pommrehn noted that if the project was a DRI, the applicant would also need to address the 20% trip reduction standard. She noted the applicant would need to supply additional information for determine how this standard could be addressed.

Attorney Butler suggested that the potential mitigation costs to address the 20% trip reduction standard was significant: approximately \$36,000.

Ms. Pommrehn noted the figure quoted was an estimate. She noted it was based on use of a transit equivalent cost calculated by staff. Ms. Pommrehn noted that if the project was deemed a DRI, the applicant could address the 20% trip reduction standard through other ways including shift changes and pavement marking.

Ms. Adams noted the applicant could file a DRI Hardship Exemption if they felt that the application of certain requirements of a DRI decision, such as addressing the 20% trip reduction standard, would pose a hardship.

Mr. O'Leary noted that findings needed to be drafted describing what the applicant had represented.

Ms. Adams suggested the Subcommittee could instruct the staff to draft findings to be reviewed at

a subsequent meeting.

Mr. Broidrick made a motion to instruct the staff to draft findings working with the applicant for the Subcommittee to review to be distributed no later than October 24, 1997. Mr. Wightman seconded the motion. The Subcommittee voted all in favor of the motion.

Mr. O'Leary moved that the Subcommittee hold a meeting on Tuesday, October 28, 1997 at the Commission offices. Mr. Broidrick seconded the motion. The Subcommittee voted all in favor of the motion.

Public Meeting of 10/28/97

Mr. O'Leary opened the public meeting at 5:10 pm. He asked the Subcommittee for comments on the draft Findings.

Mr. Broidrick suggested the company as a whole should be considered in the DRI/DRI exemption review.

Attorney Butler said that it would be possible for the Commission to consider the existing business and the proposed new buildings. He noted the applicant had filed a DRI exemption application based on the impacts of the new buildings.

Mr. Kaufman questioned what hazardous materials were on hand in the existing business. Ms. Adams, the Commission's Hazardous Waste Planner noted that the new project alone would use about 245 gallons of hazardous materials. She said that the company as a whole used approximately 650 gallons of liquid hazardous materials.

Attorney Butler said the applicant had provided additional updated information. He noted the applicant had investigated contacting the DEP as a hazardous waste generator.

Ms. Adams noted that if the Commission would like something to occur as a result of the development project for any issue are, the Commission should place a Condition on the project as part of a DRI approval.

Ms. Sferra addressed open space issues on the project. She noted that as the project was proposed, it is not in compliance with the RPP with regards to open space. Ms. Sferra said the staff had discussed open space issues with staff Counsel. She said it was suggested that the applicant be required to comply with the open space requirements of the RPP and that the best way to do that would be through a DRI approval rather than to grant a DRI exemption. She noted that if the project was viewed as a re-development, which it probably would be given the condition of the site, the RPP requirement would be to maintain the existing % open space on the site. She noted that this was less open space than would be required if the project was viewed as new development.

Mr. O'Leary asked for clarification on the open space requirements in the RPP for new development and re-development projects.

Ms. Sferra said that if the project was new development, it would be required to provide 65% of the site as open space because of its location in a Significant Natural Resources Area. She said that because the project is being viewed as redevelopment, the RPP includes an incentive for

redevelopment. Ms. Sferra noted that redevelopment projects are required by the RPP to maintain the existing % of open space up to an amount. Ms. Sferra noted the existing % of open space for this project was approximately 58% of the site. She noted that the existing open space would need to be placed in a conservation restriction to be in conformance with the RPP.

Attorney Butler said noted the staff was recommending that 58% of the site or about 8 acres be permanently restricted as open space through a conservation restriction. He said this would not allow the applicant to use the land for purposes other than those allowed by the conservation restriction. He noted that the Commission had granted exemptions to the F.W. Webb and Womens' Body Shop projects without land being placed in a conservation restriction.

Mr. Wightman questioned whether it was staff's recommendation that the RPP's open space standard needed to be met in determining whether an exemption was warranted. He also questioned whether the staff was recommending that the issue was better addressed through a DRI approval with conditions.

Ms. Sferra noted that staff had discussed these questions. She said it was staff's position that the staff and Commission should look to whether the RPP was being met by a project to determine whether or not it was likely to have a regional impact. She noted this was the standard the Commission had used in the past.

Mr. Fox noted that staff agreed that the standard for a DRI exemption was whether or not the project had regional impacts outside of the municipality its located in. He said the Commission and staff looked toward regional resources and issues when making a recommendation about whether or not a project should get a DRI exemption. Mr. Fox said the staff looks to the RPP and Minimum Performance Standards when considering an exemption request. He said the Commission has granted DRI exemptions in the past when it has felt that most of the MPS have been reasonably addressed by an applicant. He noted that staff did not feel this was the case in the Cape and Islands Steel project.

Attorney Butler said that the F.W. Webb and Womens' Body Shop projects included open space issues and % of open space. He said the Cape and Islands Steel project could address its open space issues in the same way.

Ms. Sferra said the RPP had a two-part standard for open space on redevelopment projects. She emphasized the RPP's first standard for redevelopment projects is that they shall maintain the existing percentage of open space on the site. She said that the second, separate standard in the RPP for redevelopment projects that the percentage of open space provided shall in all cases not be less than 30%. She noted that the existing percentage of open space on the Cape and Island Steel site was 58%.

Mr. O'Leary said the staff had noted that in the past, they have looked to the RPP and the standards in the RPP to see if the project meets these standards when making a determination about whether the project qualified for a DRI exemption.

Ms. Sferra said staff felt it was appropriate to consider conformance with the Minimum Performance Standards of the RPP when discussing this project. She also noted it was appropriate for the Subcommittee to consider the site in question. As an example, Ms. Sferra said the F.W. Webb site did not have any naturally-vegetated land left on it. She said the Subcommittee on the

F.W. Webb project was considering landscaping as the vegetated part of the site, and it would not be appropriate to consider a conservation restriction on landscaped areas.

Mr. O'Leary questioned whether there was flexibility in how the RPP standards could be applied.

Mr. Fox said the criteria for a DRI exemption is whether or not the project presents regional impacts outside of the municipality in which it is located. He said the staff and Subcommittee looks toward the RPP when making that determination.

Mr. Kaufman questioned what the difference was in acres between what the applicant was proposing and what the staff recommended as appropriate.

Attorney Butler said the applicant's position was that the RPP standards required 30% of the site to be set aside as permanent open space. He said the applicant wanted to maintain the ability to develop the site in the future. He said Barnstable zoning required 50% pervious coverage and 30% in its existing condition. Attorney Butler said the applicant's proposal was to restrict approximately 62,100 square feet of land or about 1.5 acres on the site as permanent open space.

Mr. Broidrick noted the applicant would be required to retain 30% of the site as open space anyway according to local zoning.

Attorney Butler noted that zoning required 30% of the site to be in open space but that zoning did not require that 30% to be permanently restricted. Attorney Butler suggested the applicant might be willing to sell the wooded area to another project as the open space for that other project.

Mr. Broidrick noted that if the applicant sold the wooded area in the future to another project as its open space, the Cape and Islands Steel project would not have any open space to satisfy conformance with the RPP.

Mr. O'Leary asked for comments from the staff on the applicant's open space proposal.

Ms. Sferra said that in response Mr. Sumner's question, the open space requirement under the RPP would be about 7.2 acres. She said the applicant was proposing about 1.4 acres.

Mr. Fox noted it was staff's recommendation that if the Subcommittee wanted to restrict land and preserve it as open space, that this should be done through a condition of a DRI approval and not through findings and a DRI exemption.

Attorney Butler said the applicant's position was that the RPP's requirement for open space on this project was 30% of the site.

Mr. Fox noted that if the Subcommittee did not approve the DRI exemption, they could still approve a DRI with conditions.

Attorney Butler noted the site would be subject to zoning and the Wellhead Protection District regulations of Barnstable. He said the applicant felt these were sufficient protection.

Mr. Wightman questioned whether there were regional issues with respect to open space.

Ms. Sferra noted that the criteria for a DRI exemption was an impact on regional resources and impacts in other municipalities.

Mr. Broidrick suggested the applicant could provide off-site open space as a way of meeting the RPP's standards.

Attorney Butler said that if the project was deemed to be a DRI, the applicant could provide land on site as permanent open space through a conservation restriction, could provide off-site open space or could make a cash contribution. He said the applicant did not believe the project was a DRI.

Mr. Kaufman asked the staff to comment on the natural resources impacts.

Ms. Sferra said the staff was concerned about a possible DRI exemption for this project. She noted the site was located in an identified area of rare natural species habitat. She noted Commission staff had not received comments from the Natural Heritage Program. She noted staff felt there was an opportunity to protect a contiguous piece of open space. Ms. Sferra said that the Commission is concerned about forested habitat on the Cape and noted the site was in a Significant Natural Resources Area as mapped by the Commission. She noted the RPP's requirement for redevelopment in a Significant Natural Resources Area is that the project maintain the existing percentage of open space.

Mr. Broidrick suggested the Subcommittee had discussed the issues enough to deny the applicant's DRI exemption request.

Mr. O'Leary suggested issues related to hazardous materials and water quality remained to be discussed.

Ms. Adams noted impacts to groundwater quality and drinking water supply were other important regional resources for the Subcommittee to consider in reviewing the DRI exemption request. She suggested a representative from the Barnstable Water Company was available to address some of the findings related to hazardous materials and protecting groundwater quality.

Mr. O'Leary asked Mr. Wadsworth if he had any comments.

Mr. Wadsworth, President of the Barnstable Water Company introduced himself and Mr. Bagley of Horsely and Whitten who was also at the meeting and who had assisted Mr. Wadsworth in reviewing a past release of hazardous materials on a site adjacent to the Cape and Islands Steel site. Mr. Wadsworth said the previous spill had caused the shut-down of the Airport Well. Mr. Wadsworth said it was important to make sure that hazardous materials were appropriately managed to prevent any impacts to the well.

Mr. Wightman asked if the Cape and Islands Steel site was within a Zone II to the Airport Well.

Mr. Wadsworth said the project site was in a Zone II to the Airport Well. He noted that it was also in the 5-year time of travel distance to the Airport Well which is the Wellhead Protection District under Barnstable zoning.

Mr. Wightman asked if Mr. Wadsworth was familiar with the proposed project.

Mr. Wadsworth said he gathered that the project was not proposing to increase its use, handling or storage of hazardous materials. He noted his previous letter suggested the Commission look carefully at the control of hazardous materials.

Attorney Butler said the applicant was not proposing to increase the hazardous materials used by the company with the project. He also said the project would result in a net decrease of hazardous materials and hazardous waste.

Ms. Adams noted that the Subcommittee Update reflected the project as proposed to date. She suggested that the Subcommittee could place conditions on the project through a DRI approval which would limit the quantity of hazardous materials used.

Mr. Kaufman disclosed that he was appointed to the Barnstable Board of Health.

Attorney Butler said the applicant did not see any conflict with Mr. Kaufman's appointment to the Barnstable Board of Health. Attorney Butler noted he had additional information on hazardous materials and waste management. He distributed a copy of Article 39, Barnstable's Hazardous Materials Users ordinance. Attorney Butler noted the applicant had contacted the DEP about hazardous waste issues.

Mr. Kaufman noted the Wellhead Protection District regulations limited the quantity of hazardous materials in these areas to no more than 50 gallons or 25 pounds dry weight.

Attorney Butler noted Mr. Kaufman was correct. He said the company is a pre-existing non-conforming use under zoning. He said the Barnstable Building Commission was that so long as the project did not increase or expand the amount of hazardous materials, there would not be an expansion of a non-conforming use. Attorney Butler said the applicant would decrease the amount of hazardous materials used.

Mr. Jim Begley asked Mr. O'Leary if he could ask the applicant for clarification. Mr. O'Leary asked Mr. Begley to proceed.

Mr. Begley asked Attorney Butler if the applicant had information which showed the types and quantities of hazardous materials currently used, handled or stored by the company. He also asked if there was any change in the mix of hazardous materials. He noted a hazardous material of particular concern were solvents.

Mr. Paulding, the applicant, responded that the company had undertaken steps to do away with paint thinners over the past 24 months. He said there was no anticipated increase in use of solvents.

Mr. O'Leary asked the staff for clarification between findings and conditions.

Mr. Fox noted that a finding cannot impose a requirement on an applicant.

Mr. Wightman did not think that open space issues could be addressed through findings and were probably better addressed through a DRI approval with conditions.

Ms. Sferra said the Town place conditions on a project in the Site Plan Review process which it

has the authority to do. She said the Town would have a hard time requiring more open space that it had the authority to require, even if it was a finding of the Commission's decision that more was needed. Ms. Sferra said the Commission cannot condition a local board to require something it does not have the power to do.

Mr. Wightman noted that the state also needed to approve the conservation restriction before it could be final.

Mr. O'Leary noted the Subcommittee could also deny the DRI exemption but approve a DRI with conditions.

Mr. Fox noted the application was both for a DRI and a DRI exemption. He said the 10/14/97 public hearing was on both.

Ms. Adams noted the DRI hearing was closed on 10/14/97 with the record left open.

Mr. Fox noted that the hearing on 11/6/97 before the full Commission had been noticed for both the DRI and DRI exemption. He said either a DRI approval or a DRI exemption could be addressed at the 11/6/97 hearing.

Attorney Butler said the applicant had filed a DRI exemption application because the issues could be handled through local controls. He said the applicant could not agree to having the entire wooded area of the site placed under a conservation restriction as permanent open space.

Mr. Wightman suggested it was easier to get a conservation restriction changed by the Legislature than Attorney Butler was suggesting.

Ms. Sferra noted the Commission had reviewed projects where the ability to develop the site in the future was an issue. She noted that in these cases, the applicant had considered providing off-site open space or a cash contribution.

Attorney Butler questioned whether the Commission had conditioned projects to provide a part of the open space area now and that the applicant has the option to decide by a date certain whether or not the remaining open space would be provide on site, off-site or through a cash contribution.

Mr. Wightman suggested this had been considered for the Cape Cod National Golf project in Brewster/Harwich.

Attorney Butler suggested the applicant was seeking this kind of flexibility from the Commission.

Ms. Sferra suggested that if part of the open space was to be provided now as part of the DRI approval, the applicant would have to make a determination on how to address the remainder (on site, off-site or cash contribution) before the Certificate of Compliance was issued.

Attorney Butler asked the Subcommittee to pause the tape for about 10 minutes to allow the applicant to discuss their position on open space.

The tape was paused at 6:05 pm to allow the applicant and Attorney Butler to discuss a position on open space. At 6:15 pm, the tape was re-started.

Attorney Butler said the applicant believed they could accept a DRI approval with conditions.

Mr. Wightman asked for clarification from staff as to whether the Subcommittee had flexibility on the open space issues.

Ms. Sferra said the extent to which the Subcommittee had flexibility was to use the RPP's flexibility clause. She noted the Subcommittee would have to find that the applicant's proposal would not be more detrimental to open space than would be allowable under the applicable Minimum Performance Standard.

Attorney Butler said the applicant would propose to place 30% of the site under a conservation restriction as permanent open space now with the flexibility that during the time allowed to get a Certificate of Compliance from the Commission, that the applicant could provide additional permanent open space areas off site. He said that he was willing to work with the staff to work on this proposal.

Ms. Pommrehn noted that a DRI approval with conditions also raised the issue of conformance with the RPP's 20% trip reduction standard.

Attorney Butler said the applicant would look for flexibility from the Commission in meeting that standard as well.

Mr. Kaufman moved the Subcommittee recommend to the full Cape Cod Commission that the DRI exemption be denied but that a DRI with conditions be approved for the project. He also moved that the Subcommittee direct staff to work with the applicant to craft DRI conditions related to open space. He further moved that the Subcommittee designate the Chair, Mr. O'Leary, to approve the final draft findings and conditions.

Mr. Broidrick seconded Mr. Kaufman's motions. The Subcommittee voted all in favor of the motions.

Commission Meeting of 11/6/97

Herb Olsen read the hearing notice.

Ms. Adams, Project Planner, noted that a withdrawal statement was hand-delivered from Attorney Patrick Butler representing the applicant, Peter Mulvey.

Tom Broidrick noting the Subcommittee vote recommending denial of the exemption request, moved to accept the withdrawal. The motion was seconded and unanimously voted.

Attorney Butler provided a brief description of the project.

Ms. Adams presented changes to the draft decision.

Mr. Tamsky noted that two of the conditions seemed redundant. After discussion between members, it was agreed to delete one of the conditions.

Ralph Crossen, Building Inspector for the Town of Barnstable, addressed the issue of enforcement before a certificate of occupancy was issued by the Town.

Attorney Butler remarked that this was his first DRI through the joint process and he found it very beneficial. He further noted that the benefits of the project outweigh the detriments, a good decision has been reached allowing flexibility, thanked the staff for their efforts in expediting the review and asked the Commission to vote to approve the decision.

Mr. Broidrick moved to close the hearing and the record. Herb Olsen seconded the motion. The vote was unanimous. Mr. Broidrick moved to approve the DRI Application of Peter Mulvey, Trustee for Airport Way Nominee Trust for the Cape & Islands Steel Building, TR97008. Ken Brock seconded the motion. The motion was voted unanimously.

JURISDICTION

The proposed project qualifies as a DRI under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(e), Barnstable County Ordinance 94-10 (as amended): any development which is in excess of 10,000 square feet. The Applicant has also filed a DRI Exemption application under Section 12(k) of the Cape Cod Commission Act. The DRI Exemption application was withdrawn by the applicant on November 6, 1997.

FINDINGS

The Commission has considered the application of Mr. Peter Mulvey, Trustee of Airport Way Nominee Trust for the proposed construction of a 40,000 sq. ft. steel fabrication building and an associated 3,000 sq. ft. saw house on a 12.47-acre parcel located on Airport Way in Barnstable.

Based on consideration of such application, the information presented at the public hearing and submitted for the record, the Commission makes the following Findings:

GENERAL

1. The project was reviewed under the 1996 Regional Policy Plan.
2. The proposed project involves the construction of a 40,000 sq. ft. steel fabrication building and an associated 3,000 sq. ft. saw house on a 12.47-acre parcel in Barnstable, MA.
3. There is an existing 4,995 sq. ft. office building on the project site which was previously permitted by the Town of Barnstable. It is not part of the proposed project.
4. The site is zoned limited industrial (IND-Limited) according to the Barnstable Zoning Bylaw. In a letter dated 10/14/97, the applicant indicated that the Barnstable Building Commissioner deemed the proposed project to be an allowed use in the limited industrial zone under Section 3.4.1(b) of the Zoning Ordinance.
5. The existing use on an adjoining parcel is non-conforming under Barnstable's Groundwater Protection Overlay zoning, specifically section 3-5.2(7) which prohibits any use in WP-Wellhead Protection Districts which "uses, generates or stores, including racking for re-sale, toxic or hazardous substances totalling at any one time, more than fifty (50) gallons liquid volume or twenty-five (25) pounds dry weight." It was the determination of the Barnstable Building Commissioner on 10/22/97 that the project would not need a Special Permit from the Barnstable Zoning Board of Appeals to expand a pre-existing, non-conforming use so long as the total quantity of hazardous materials and wastes used by the company did not increase or expand as a result of the proposed project. The applicant would be required to seek a Special Permit from the Barnstable Zoning Board of Appeals and a Modification of this Decision if the company wished to

increase or expand the amount of hazardous materials or wastes.

6. Plans submitted with the DRI/DRI Exemption application indicate that there is a Commonwealth Electric easement which crosses the northern end of the site. At the 10/14/97 public hearing, the applicant indicated that discussions related to relocating the easement are continuing. At the 10/14/97 hearing, the applicant stated the larger beam line building will be relocated to the south, out of the easement area, if negotiations with Commonwealth Electric could not reach a resolution

ECONOMIC DEVELOPMENT

1. According to the application materials, the proposed project will create up to 20 new jobs within three to five years in accordance with the Regional Policy Plan's Development Review Policy 3.3.1

2. The company also currently owns and operates an existing steel fabrication business on an adjoining parcel. Information submitted in the application indicates that the proposed project will allow for a more efficient operation of the company.

3. At the 10/14/97 public hearing, the applicant indicated the proposed new structures would allow reuse and rehabilitation of existing buildings owned by the company.

TRANSPORTATION

1. Information submitted in the application indicates that the number of employees is projected to increase from 60 to a maximum of 80 employees within three to five years.

2. The project site is located at the end of Airport Way, which is classified a Local Road in the Regional Roadway System. Airport Way turns into Mary Dunn Road, also a Local Road in the Town of Barnstable. Kidd's Hill Road, an Urban Collector is the most direct route to Exit 6 on Route 6.

3. Using both the Institute of Transportation Engineers (ITE) trip generation data and a traffic count at the existing site, traffic is expected to increase as much as 9 AM peak hour trips and 8 PM peak hour trips with an increase of 20 employees. As proposed, this project is not expected to increase traffic on the regional roadway system significantly.

4. The applicant stated that flatbed (22 foot long) and tractor-trailer trucks are used to deliver goods. Traffic counts showed two trucks during the AM peak hour and none during the PM peak hour travelling to or from the existing site. The amount of truck traffic from the project will not increase significantly with the project.

5. During Joint Site Plan Review of this project, the Town of Barnstable Engineering Department noted that additional truck traffic on Mary Dunn Road would further deteriorate the pavement of the road. Mary Dunn Road is a Local Road in the Regional Roadway System south of Independence Drive, where few other businesses exist to generate traffic. The Town provided pavement condition data which indicates that the pavement condition of Mary Dunn Road in the vicinity of the project is fair. Significant repairs would be required to improve the condition of the pavement on this road. However, improvements to this roadway are not planned by the Town of Barnstable in the near future.

6. As part of the proposed project, the applicant will pave the existing gravel driveway shown in

the site plan dated 7/29/97.

7. The project may require a road opening permit from the Town of Barnstable Engineering Department to pave the existing gravel driveway.

8. Minimum Performance Standard 4.1.2.1 of the Regional Policy Plan requires that DRIs shall reduce project traffic by 20%. No estimate was provided by the applicant of the projected daily traffic from the project. As such Commission staff estimate that an additional 80 weekday vehicle trips will occur with the project. This estimate is based upon the assumption that the PM peak hour trips (8 trips) reflect 10% of the daily site traffic. The 10% figure of 8 trips was extrapolated to reflect a full day. To satisfy MPS 4.1.2.1 of the RPP, daily site traffic must be reduced by 20% or 16 trips.

9. The applicant has indicated that Cape and Islands Steel, Inc. operates no more than 250 days per year.

10. The applicant has proposed to apply Minimum Performance Standard 4.1.2.2 to satisfy half of the trip reduction requirements of Minimum Performance Standard 4.1.2.1. The applicant has proposed to contribute \$12,150 toward enhancing transit within the Town of Barnstable. This amount was determined using Commission Transportation Guidelines - Technical Bulletin 96-003 and reflects that traffic generated from the site occurs no more than 250 days per year. The proposed cash contribution of \$12,150 may be reduced if the applicant demonstrates that the proposed trip reduction program eliminates additional trips.

11. The applicant has proposed to satisfy half of the trip reduction requirements of the Minimum Performance Standard 4.1.2.1 through implementing an employee incentive program for Cape & Islands Steel Inc. Due to the small number of trips (8 weekday trips) proposed to be addressed through an employee trip reduction program, the Commission finds this manner of satisfying half of the trip reduction requirement of the RPP acceptable. The applicant has proposed to include financial incentives and increased vacation time to encourage Cape & Island Steel employees to car-pool to work.

WATER RESOURCES

1. The project site is located in a Zone II area and a WP-Wellhead Protection District according to Barnstable's Zoning Ordinance. The site is less than 1/2 mile directly upgradient of the Airport well site of the Barnstable Water Company and the existing non-conforming use involves the use of hazardous materials.

2. Plans and information in the DRI/DRI Exemption application indicated a new septic system would be constructed as part of the I-beam fabrication building.

3. Based on information in the application, the estimated nitrogen loading from the company with 20 new employees will be 2.28 ppm.

4. According to testimony by the applicant at the public hearing held on 10/14/97, the project will incorporate vegetated swales instead of the drainage basins shown on the plans submitted on 7/29/97 with the application materials.

HAZARDOUS MATERIALS and WASTES

1. According to the DRI/DRI Exemption application, the company receives and fabricates steel I-beams at its existing facility. The existing facility is located adjacent to the proposed project site. Fabrication work involves cutting I-beams to length, punching holes in them, or fitting beams with clips according to work orders. The company also does limited welding and painting.
2. An inspection by the Hyannis Fire Department done in 1996 as well as testimony by the Town Engineer assigned to the project at the Joint Site Plan Review meeting held on 6/19/97 indicates the company used approximately 650 gallons of hazardous materials as of June, 1997.
3. The company will transfer 245 gallons of liquid hazardous materials for fabrication work to the new buildings. This includes 200 gallons of hydraulic fluid and 45 gallons of lubricants and gear oils. The total amount of liquid hazardous materials used at the existing site will remain at 405 gallons.
4. The total amount of liquid hazardous materials or hazardous wastes handled, used, stored and/or generated by the company will not increase over 650 gallons with the proposed project.
5. In a letter dated 10/14/97, the applicant stated there will be a net decrease in total hazardous materials used by the company as a result of the proposed project.
6. The company will continue to use limited quantities of compressed gasses, which are also classified as hazardous materials, in I-beam fabrication. These include liquid oxygen (4,800 cubic feet), MAPP gas (methyl-acetyl-propyl-propylene) (three 115 pound cylinders), bottled oxygen (250 cubic feet) and bottled acetylene (250 cubic feet).
7. According to the application, the company has an existing bermed hazardous waste storage area on the adjacent parcel to store waste associated with current operations. In a letter dated 10/14/97, the applicant agreed to construct a new hazardous waste storage area on the project site for wastes generated by the beam line and saw house.
8. At the 10/14/97 public hearing, the applicant stated that the company is believed to qualify as a Very Small Quantity Generator of hazardous waste according to the applicable DEP hazardous waste regulations.
9. In a letter dated 9/19/97, the applicant stated the company would provide to the Barnstable Health Department an updated hazardous materials users Registration Form.

NATURAL RESOURCES AND OPEN SPACE

1. The site is within a Significant Natural Resources Area, due to its location within a Wellhead Protection Area. The site has also been mapped by the state Natural Heritage Program as a "Priority Site of Rare Species Habitats and Exemplary Natural Communities."
2. The application materials and a site plan submitted on 8/11/97 indicate that a portion of the site (about 7.23 acres) is currently wooded and in its natural state (this area is noted on the plan as undisturbed). It is not proposed to be developed as part of the proposed project, however, the applicant indicated at the 10/14/97 hearing that he may wish to develop it in the future or use it as off-site open space for another development.

3. The Regional Policy Plan requires that redevelopment projects within a Significant Natural Resource Area maintain the existing percentage of open space on the site as permanently restricted open space or shall provide off-site open space or make a cash contribution toward open space which offsets, by an equal amount, any reduction in open space. In order to comply with the Regional Policy Plan, the applicant would be required to provide 7.23 acres of permanent open space. The open space may also be provided on site, off-site or through a cash contribution.

4. In a letter dated 10/23/97, the applicant also confirmed an intent to provide sixty (60) feet of vegetated buffer at the rear (northern) end of the site.

5. At the 10/28/97 Subcommittee meeting, the applicant proposed to place 3.74 acres of the site under a conservation restriction as permanent on-site open space. This would include 60 feet of vegetated buffer at the northern end of the site as well as a portion of the undeveloped area of the site consisting of existing woodland cover. An additional 3.49 acres of open space will be provided pursuant to the conditions of this decision to meet the Regional Policy Plan's requirement.

CONCLUSION

Based on the above Findings, and the materials and testimony submitted for the record, the Commission hereby concludes:

The probable benefit of the proposed project is greater than the probable detriment. This conclusion is supported by Economic Development Findings #1, #2 and #3 and Hazardous Materials Finding #5.

As conditioned, the project is consistent with the Minimum Performance Standards of the 1996 Regional Policy Plan.

The Cape Cod Commission hereby approves with Conditions the Development of Regional Impact application of Peter Mulvey, Trustee of Airport Way Nominee Trust for development of a 40,000 square foot I-beam fabrication building and a 3,000 square foot saw house pursuant to Sections 12 and 13 of the Cape Cod Commission Act, provided the following Conditions are met:

CONDITIONS

GENERAL

1. All Conditions shall be complied with as specified below in each Condition, or prior to issuance of a Certificate of Compliance.
2. The applicant shall obtain a Certificate of Compliance from the Cape Cod Commission or its designee before the local official responsible for issuing a Certificate of Occupancy may issue a temporary or permanent Certificate of Occupancy for any portion of the proposed project.
3. All plans listed in these Conditions shall become part of the record and any changes shall be approved by the Cape Cod Commission or its designee.
4. Prior to any development, the applicant shall either resolve negotiations with Commonwealth Electric concerning the easement area or shall relocate buildings out of the easement area. The applicant shall provide to the Cape Cod Commission proof of resolution of negotiations with Commonwealth Electric or a new plan which shows how the buildings will be re-located outside of

the easement area.

5. The applicant shall obtain all necessary local and State permits for this project.
6. The Cape Cod Commission, or its designee, shall have the right to enter onto the premises and inspect for compliance with these Conditions upon prior notice to the applicant.
7. Any subsequent construction, development or redevelopment proposals for the entire site shall be reviewed by the Cape Cod Commission as a Development of Regional Impact regardless of size.

TRANSPORTATION

1. The applicant shall contribute a one-time cash payment of \$12,150 to meet half of the requirement of the 20% trip reduction standard of the Regional Policy Plan. Said cash payment shall be held in a designated escrow fund by the Commission which shall be dedicated to the purposes of providing alternative modes of transportation within the town of Barnstable. Monies not expended within ten (10) years of the date of deposit shall revert to the Cape Cod Regional Transit Authority for general transit service expenses in the Town of Barnstable. The escrow fund shall be in a form and content which is satisfactory to Commission Counsel. If Cape and Islands Steel Inc. or subsequent occupants of the site generate traffic greater than 250 days per year, additional mitigation shall be required in a manner acceptable to the Commission.

2. To meet half the requirements of the 20% trip reduction standard of the Regional Policy Plan, the applicant shall develop and seek approval from the Commission for and implement an employee trip reduction program for Cape & Islands Steel Inc. to reduce site trips. Prior to issuance of a Certificate of Compliance from the Cape Cod Commission, the applicant shall provide the Commission with documentation of the components of the trip reduction program, participation in the program by existing employees and documentation showing how many vehicle trips are actually eliminated on an average weekday with the program.

As part of the employee trip reduction program, the applicant shall set a goal of reducing site traffic by a minimum of 8 vehicle trips each weekday of the year. The applicant shall include as part of this program financial incentives and/or benefit incentives to reduce site trips.

As part of the trip reduction program, the applicant shall monitor employee participation and provide to the Commission annually the total number of employees participating in the program, the total number of employees working at the site, the type and cost associated with each incentive, and the reduction in traffic to and from the site on an average weekday.

If, prior to issuance of the Certificate of Compliance, the applicant demonstrates to the satisfaction of the Commission that the proposed trip reduction program results in an average weekday trip reduction of greater than eight (8) vehicle trips each weekday of the year, the Commission shall reduce the portion of the trip reduction requirement met through the \$12,150 transit contribution and the applicant shall adjust the trip reduction program accordingly.

Subsequent occupants of the site shall also implement this trip reduction program or its equivalent. Conformance with this Condition shall be an ongoing requirement to maintain the validity of the Certificate of Compliance.

3. The applicant shall obtain any road opening or roadwork permits as may be required from the Town of Barnstable Engineering Department to pave the existing gravel driveway. The applicant shall provide a copy of said permit, if applicable, to the Cape Cod Commission.

WATER RESOURCES

1. Prior to any development, the applicant shall conduct a Title 5 inspection of the existing septic system(s) on the project site and at the existing business on the adjacent parcel to verify that these septic systems are adequate to handle additional flows from additional employees working in the new buildings. A copy of the inspection report shall be provided to the Barnstable Health Department. The applicant shall correct any deficiencies in the existing septic systems based on the inspection.

2. The applicant shall utilize vegetated swales instead of the drainage basins shown on the plans submitted on 7/29/97 with the application materials for stormwater management from the proposed buildings. Prior to any development, the applicant shall submit for Commission review and approval a revised plan which shows vegetated drainage swales for stormwater management.

HAZARDOUS MATERIALS and WASTES

1. The total amount of hazardous materials and/or wastes used, stored, generated, treated and disposed of as part of the company shall not exceed 650 liquid gallons or its dry weight equivalent at any given time. This limit shall exclude compressed gasses.

2. The applicant shall notify and/or register with the Department of Environmental Protection as a generator of hazardous waste in conformance with the requirements of 310 CMR 30.00.

3. The applicant shall handle, store and manage hazardous waste generated by the company in a manner consistent with the Massachusetts Hazardous Waste Regulations, 310 CMR 30.00.

4. The applicant shall store all hazardous materials and/or wastes in a bermed containment area. The containment area to be constructed shall include an impervious surface without floor drains. It shall also be under cover and shall include containment sufficient to account for 150% of the total volume stored there at any given time.

5. The applicant will retain a qualified, licensed hazardous waste hauler to remove accumulated hazardous waste according to deadlines established by 310 CMR 30.00.

6. Prior to any development, the applicant shall provide to the Barnstable Health Department and the Hyannis Fire Department an updated hazardous materials users registration form which reflects a company-wide inventory of hazardous materials and/or wastes. This information shall include hazardous materials and/or wastes used, handled, stored, treated and disposed of as a result of the proposed new buildings.

NATURAL RESOURCES AND OPEN SPACE

1. Prior to any development on site, the applicant shall submit a final plan depicting at least 3.74 acres to be permanently restricted as open space. This area shall include 0.26 acres at the rear (northern) end of the site plus 3.48 acres completely located on the undeveloped wooded area generally shown on the site plan.

2. Prior to any development on the site, the applicant shall provide the Cape Cod Commission

with a conservation restriction (subject to MGL, Section 184, Sections 31-33) to be reviewed and approved by Commission Counsel.

3. Prior to issuance of a Certificate of Compliance, the conservation restriction as approved by Commission Counsel and the accompanying plans shall be recorded at the Registry of Deeds or Land Court with proof of recording provided to the Cape Cod Commission. The conservation restriction shall also cover the open space area depicted on the final plan noted in Natural Resources and Open Space Condition #1, above. In the alternative, the applicant may, prior to obtaining a Certificate of Compliance from the Cape Cod Commission, satisfy this Condition through one of the other methods described in Minimum Performance Standard 2.5.1.3 of the Regional Policy Plan, subject to review and approval by the Cape Cod Commission.

4. Prior to any development affecting or within the undisturbed area shown on the site plan dated 8/11/97, or prior to using this land as off-site open space for another development subject to Cape Cod Commission approval, the applicant shall provide an additional 3.49 acres of land as permanently restricted on-site open space or shall satisfy this Condition through one of the other methods described in Minimum Performance Standard 2.5.1.3 of the Regional Policy Plan. Any additional on-site open space areas shall be contiguous to the open space areas referenced in Natural Resources and Open Space Conditions #1, #2 and #3, above.

The Cape Cod Commission hereby approves with Conditions the Development of Regional Impact application of Peter Mulvey, Trustee of Airport Way Nominee Trust for development of a 40,000 square foot I-beam fabrication building and a 3,000 square foot saw house on Airport Way in Barnstable pursuant to Sections 12 and 13 of the Cape Cod Commission Act.

Vicky Bebout
Vicky Bebout, Chair

Date

12-18-97

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn before me this 18th day of Dec, 1997.

Katharine L Peters
Name, Notary

My Commission Expires: Nov 19, 2004