



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

Date: April 14, 2005

To: Sheila Vanderhoef
Town Administrator
2500 State Highway
Eastham, MA 02642-2544

From: Cape Cod Commission

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

Applicant: Town of Eastham
c/o Sheila Vanderhoef
Town Administrator
Eastham Town Hall
2500 State Highway
Eastham, MA 02642-2544

Project #: TR #02035

Project: Eastham Ocean Beach
Eastham, Massachusetts

Book/Page: 27898/73036
1489/923

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Town of Eastham (Town or Applicant) as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed development of the Eastham Ocean Beach parking lot and access stairway. This Decision is rendered pursuant to a vote of the Commission on April 14, 2005.

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PROJECT DESCRIPTION

The Town of Eastham proposes to construct a parking lot and ocean beach access on an undeveloped 123.73-acre town-owned parcel. The development of the ocean beach access site is proposed on the eastern 21.2-acre portion of that larger parcel lying between Ocean View Drive and the Atlantic Ocean.

At the regional scale, the parcel is designated a Significant Natural Resource Area due to the presence of unfragmented forest and rare species habitat and is a Potential Public Water Supply Area under the RPP. The town-owned parcel is within the boundaries of the Cape Cod National Seashore (CCNS). The access site driveway on Ocean View Drive is proposed to be located approximately one half mile from each of the CCNS Nauset Light and Coast Guard beach parking lots. The parcel is locally zoned as Wellhead Protection District (zoning District H).

Components of the proposal

The Eastham ocean beach access site proposes to include:

- main access driveway off of Ocean View Drive with six by 12-foot entrance booth and driveway turnaround (paved and served by one catch basin)
- parking lot for 250 vehicles (surface to be dense graded crushed stone; swales utilized for drainage; eight of the 250 spaces paved and designated handicapped-only parking)
- 100 bicycle bike rack (with paved sidewalk from Ocean View Drive to bicycle rack)
- sanitary facilities provided via four portable toilets (on paved area)
- trash receptacles (on paved area)
- 14 by 20-foot storage building for lifeguards and associated equipment
- six-foot wide internal pedestrian walkways across the drainage swales (processed gravel)
- 12-foot wide walkway to ocean access stairway (processed gravel)
- 20-foot wide landing platform at the top of the stairway (initially constructed eight feet inland from top/edge of the coastal bank)
- stairway to provide access to the beach down/up the coastal bank from its top at approximate elevation of 47.2 feet NGVD to its toe at approximate elevation of 10 feet NGVD

No utilities are proposed on site (no water lines, electricity, or lighting).

JURISDICTION

The proposed Eastham Ocean Beach project qualifies as a Development of Regional Impact (DRI) under Section 3(b) of the DRI Enabling Regulations governing review of DRIs, which requires review of the *construction or expansion of any bridge, ramp, road or vehicular way that crosses or provides direct access to an inland pond, barrier beach, coastal bank, dune, beach or tidal wetland or water body...*

PROCEDURAL HISTORY

The proposed project was referred to the Commission by the Eastham Conservation Commission on December 12, 2002. The Commission received the DRI referral on December 19, 2002 (File #TR02035). The Town filed an initial DRI Application on October 31, 2003. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized Subcommittee of the Commission on February 11, 2004 at Nauset Regional High School, Eastham, MA, at which the public hearing was closed and the record was left open for submission of written materials until the final public hearing before the full Commission on April 14, 2005.

At the Applicant's request, extensions of the 60-day decision period were granted on May 19, 2003, November 3, 2003, and April 8, 2004, which ultimately extended the decision period until May 30, 2005.

On October 18, 2004, the Town of Eastham filed an Environmental Notification Form (ENF) with the Secretary of Environmental Affairs, Massachusetts Environmental Policy Act (MEPA) office. A revised application was then filed on December 12, 2004. Commission staff provided comments to the MEPA office on November 12, 2004. On December 10, 2004 the Secretary of Environmental Affairs issued a Certificate on the ENF, which concluded that the project as proposed did not require the preparation of an Environmental Impact Report. As noted in the Certificate the proposed project does not require state permitting, however the Town filed an ENF at that time acknowledging that the required Order of Conditions from the Eastham Conservation Commission would likely be appealed in the future.

The Subcommittee held public meetings to deliberate on this project on December 16, 2004 and March 1, 2005. At these meetings the Subcommittee determined that the Project presented several concerns listed in 12(b) of the Act that were not otherwise exempt by Section 22 of the Act. At the March 1, 2005 meeting the Subcommittee made two unanimous (5-0) votes:

- that the Flexibility Clause be invoked as necessary to accept a conservation restriction as mitigation for the impacts to the rare species habitat;
- to recommend approval of the proposed project to the full Commission subject to the review of a draft Decision by the Subcommittee chair or an alternate.

A final public hearing was held before the full Commission on April 14, 2005. At that hearing, the Commission voted to approve (by a vote of 10 to 1) the project as a DRI, subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below) and the project plans (see Table 2 below) the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

Table 1: Materials Submitted for the Record	Date Received
<i>General Correspondence From the Town</i>	
Memo from T. Whalen to S. Vanderhoef and H. Lind re: potential jurisdiction and approvals required	15-Nov-02
DRI Referral from D. Murley, Chairman, Eastham Conservation Commission	19-Dec-02
Letter from H. Lind to H. McElroy re: 290 vehicle proposal	7-Feb-03
<i>Application Materials and Correspondence From the Town/Applicant</i>	
Letter to S. Justus re: extension request	15-May-03
Letter to S. Justus re: application filing pending and extension request	27-Oct-03
DRI Application	31-Oct-03
Traffic Impact Assessment and Technical Appendix	31-Oct-03
DRI Natural Resources Inventory	31-Oct-03
DRI Application (copy), with preface by Eastham Ocean Beach Committee	13-Nov-03
Letter to S. Justus re: incomplete application and public hearing	5-Dec-03
Letter to T. Boesch re: transportation study options and safety study	29-Dec-03
Letter to H. McElroy forwarding Survey of State-listed Lepidoptera on Town of Eastham Property	14-Jan-04
Letter to S. Justus re: supplemental information and materials in response to 11/20/03 letter	15-Jan-04
Letter to S. Justus forwarding Intersection Safety Assessment and Roadway Improvements Summary, prepared by Judith Nitsch Engineering, Inc, 1/20/04	26-Jan-04
Letter to S. Justus re: proposal to operate sticker-only parking	27-Jan-04
Letter to S. Justus re: copies of proposed gatehouse design	2-Feb-04
Memo to file with materials from Vanderhoef re: size of parcel	2-Feb-04
Supplemental application materials hand delivered at the Public Hearing, including Site Plan Showing Moth Habitat Delineation	11-Feb-04
Letter to S. Justus re: local approvals required	12-Feb-04
Letter to S. Justus forwarding Extension Agreement	7-Apr-04
Letter to S. Justus forwarding Extension Agreement (corrected)	12-Apr-04
Revised Parking Area - Concept Plan	17-Aug-04
Traffic Impact Assessment Addendum	15-Sep-04
Intensive Archaeological Survey for the Proposed New Beach Parking Lot	23-Sep-04
Environmental Notification Form (ENF) with attachments	18-Oct-04
Memo to S. Justus re: response to 2/11/04 Staff Report	5-Nov-04
ENF with revised attachments	2-Dec-04
Letter to S. Justus re: enclosing copies for meeting and various issues	8-Dec-04
Memo to S. Justus re: responses to 12/10/04 Staff Report and supplemental info. stated	16-Dec-04
Draft Conservation Restriction (rare species mitigation)	16-Feb-04
Draft Conservation Restriction (transportation mitigation)	16-Feb-04
Beach Access Stair System Plan, sheets 1, 2, 5 (revised)	16-Feb-04
Site Plan, sheets 1-3 (revised)	16-Feb-04
Supplemental materials including: revised draft Conservation Restriction and Plan; narratives of landscape plan; landscape plan; Beach Access Stair System Plans-revised; and Site Plan-revised	21-Mar-05
Supplemental materials including: revised Landscape Plan for Eastham Ocean Beach, revised Beach Access Stair System Plan, sheet 1 of 5, letter from Misty Hill Landscape Design, revised proposal for work to be done	30-Mar-05

<u>General Correspondence Received</u>	
Letter from M. Burks, CCNS, to R. Sandbloom re: Town's 10/24/02 letter with CCNS responses	27-Jan-03
Letter from Friends of Eastham Recreation to H. Lind re: correction to number of parking spaces	4-Feb-03
Letter from P. Whitlock to H. McElroy re: update to Conservation Commission	14-May-03
Letter from J. Hunt, EOE, to S. Vanderhoef re: ENF or other state permit requirements	12-Nov-03
Email from D. Schall to M. McElroy re: dates of site visits	26-Nov-03
Email from D. Prentiss to T. Boesch re: transportation meeting notes	26-Dec-03
Letter from M. Burks, CCNS, re: comment letter to Commission for 2/11/04 Public Hearing	12-Feb-04
Letter from J. Sullivan to M. Harding re: apology	9-Mar-04
Letter from T. French, NES, to S. Vanderhoef re: opinion on "take" per revised site plans	20-Aug-04
Letter from B. Simon, MHC, to J. Sullivan re: archaeological resources review	30-Aug-04
Letter from S. Snow-Cotter, CZM, to Secretary Herzfelder re: ENF comment letter	12-Nov-04
Letter from M. Murray, CCNS, to Secretary Herzfelder re: ENF comment letter	16-Dec-04
Certificate of the Secretary of EOE on the ENF	17-Dec-04
Letter from W. Riley to S. Justus re: lack of notice	7-Mar-05
Letter from George E. Price, CCNS, to Commission and Town re: alternatives and concerns	13-Apr-05
<u>From Commission Staff</u>	
Letter to S. Vanderhoef re: referral received	24-Dec-02
Memo to new Subcommittee	9-Jan-03
Memo to S. Vanderhoef re: scoping meeting	3-Feb-03
Letter to W. Scully re: traffic counts in Eastham region	16-Apr-03
Memo to file re: W. Scully 4/16/03 letter	5-May-03
Letter to S. Vanderhoef re: 45-day decision period notification	5-May-03
E-mail to P. Whitlock re: public hearing	14-May-03
Letter to D. Prentiss re: DRI study process	10-Jul-03
Letter to W. Riley forwarding general transportation information	25-Aug-03
Letter to S. Vanderhoef re: 45-day decision period notification	20-Oct-03
Memo to Regulatory Committee re: extension request	28-Oct-03
Letter to S. Vanderhoef forwarding Extension Agreement	3-Nov-03
Memo to Subcommittee re: new Subcommittee membership	4-Nov-03
Letter to S. Vanderhoef forwarding Extension Agreement	17-Nov-03
Letter to S. Vanderhoef re: outstanding application materials required	20-Nov-03
Letter to S. Vanderhoef re: transportation study options and safety study	19-Dec-03
Letter to Eastham Board of Selectman re: traffic mitigation payments	9-Jan-04
Memo to Subcommittee forwarding materials for 2/11/04 hearing	5-Feb-04
Staff Report	5-Feb-04
Letter to S. Vanderhoef forwarding 2/5/04 Staff Report	5-Feb-04
E-mail response to Paula Aschettino (resident) re: traffic issues	12-Feb-04
Memo to file re: Twombly recusal	2-Mar-04
Memo to S. Vanderhoef forwarding letters of opposition post 2/11/04	8-Mar-04
Memo forwarding to Subcommittee letter from J. Sullivan to M. Harding	9-Mar-04
Letter to J. Regosin re: project rare moth habitat	9-Mar-04
Letter to S. Vanderhoef re: 45-day decision period notification	15-Mar-04

Letter to S. Vanderhoef forwarding extension agreement	1-Apr-04
Letter to S. Vanderhoef setting extension to May 30, 2005	8-Apr-04
Letter to S. Vanderhoef re: review of new concept plan filed 8/17/04	25-Aug-04
Staff comment letter to MEPA on ENF	12-Nov-04
Staff Report	10-Dec-04
Facsimile to S. Vanderhoef forwarding POCB information and W.H.A.T. Decision	11-Jan-05
Note to S. Vanderhoef forwarding example conservation restriction	1-Feb-05
Letter to S. Vanderhoef and Subcommittee re: status of project to date	23-Feb-05
E-mail to S. Shea re: plant materials and landscaping plan information	24-Feb-05
Memo to S. Vanderhoef re: changes needed to monitoring and maintenance protocol	23-Mar-05
Memo to S. Vanderhoef re: Draft DRI Decision	24-Mar-05
Memo to S. Vanderhoef re: Materials List—as submitted by Town	29-Mar-05
Memo to Subcommittee re: 4/6/05 Draft Decision (included)	4-Apr-05
<i>Letters of Project Support from State and Local Officials</i>	
Eastham Board of Selectmen	20-Aug-03
Senator Robert A. O'Leary	22-Sept-03
State Rep. Shirley Gomes	05-Jan-04
State Rep. Brian Knuutila	21-Jan-04
Senator Robert A. O'Leary	04-Feb-04
<i>Letters of Opposition or Concern from Abutters, Residents, Others</i>	
Gary Wolf abutter	08-Jan-03
Roger Patskanick	31-Jan-03
Russ and Nancy Chenoweth	07-Feb-03
Ivan Ace	13-Feb-03
Angela and John Bianas	28-Feb-03
Mike from Birdwatchers General Store	03-Mar-03
Cheryl Gayle	04-Mar-03
Gwen Pelletier	03-Mar-03
Robert B. Cook	17-Apr-03
Don & Mahala Bishop	29-Apr-03
Audrey Eagles	23-May-03
Toni Stoker	13-Dec-03
Ivan Freed	19-Jan-04
Edward W. Stewart	26-Jan-04
Angelica A. Bianas	28-Jan-04
Saran Twombly	30-Jan-04
Gen and Don Sparrow	02-Feb-04
William G. Coughlin	02-Feb-04
James E. Owens	03-Feb-04
W. J. Norris	04-Feb-04
Mimi Ace	06-Feb-04
Nathaniel and Katherine Goddard	06-Feb-04
Marriane Simmel	10-Feb-04
George and Carole Katz	11-Feb-04
Mike Marks	12-Feb-04

APCC/ Maggie Geist and Don Kiernan	12-Feb-04
Ivan and Mimi Ace	17-Feb-04
Mimi Ace	20-Feb-04
Ben and Kate Hood	27-Feb-04
Robert P. Cook	21-Jun-04
Stuart and Gale Edmonds	04-Aug-04
Aimee Eckman	10-Nov-04
Robert P. Cook and Mary E. Hake	11-Nov-04
Joanna Stevens	12-Nov-04
Mark J. Budnick	30-Nov-04
Carol O'Shaughnessy	15-Dec-04
Marion Brewer	23-Mar-05
Ann Crozier	24-Mar-05
Ivan Ace	26-Mar-05
Jill Brookshire	28-Mar-05
Toni Stoker	28-Mar-05
Pamela Nobili	29-Mar-05
Annie Dolan-Niles and Paul Niles	29-Mar-05
Liis McKenna	30-Mar-05
Russor Verna Moor	30-Mar-05
Ruth Brumbar	30-Mar-05
Jean L. Southern	30-Mar-05
W.J. Norris	30-Mar-05
Sue Barrett	31-Mar-05
James D. Parmelee	31-Mar-05
Judith D. Parmelee	31-Mar-05
Barbara Walsh	1-Apr-05
Al and Tess McAlpine	1-Apr-05
Andrea Hanson	4-Apr-05
Chris Szwedo	4-Apr-05
Leon Ackerman and Sheila N. Green	4-Apr-05
James and Lori McGrath	4-Apr-05
Gary Fisher	4-Apr-05
Linda Fisher	5-Apr-05
Robert Cook and Mary Hake	5-Apr-05
Louie Benner	5-Apr-05
Brian F. Chance	5-Apr-05
Merton H. Stevens, Jr.	5-Apr-05
Katherine and Nathaniel Goddard	5-Apr-05
Joanna Stevens and Aimee Eckman	6-Apr-05
Mark and Lynne Budnick	6-Apr-05
Sandra Larsen	6-Apr-05
James Schrock	6-Apr-05
Suzanne Haley	7-Apr-05
James Schrock	8-Apr-05
Beata Panagopoulos	8-Apr-05
C. Peckham	8-Apr-05

Roz Diamond	10-Apr-05
June and Jim Meckel	11-Apr-05
Min and Bob Koblitz	11-Apr-05
Louis Kohlmeier	11-Apr-05
Cheryl Gayle	12-Apr-05
Garrett Moynihan	13-Apr-05
Carol O'Shaughnessy Nickerson	13-Apr-05
Almond Nickerson III	13-Apr-05
Penelope (E-mail address: penelopelamm825@yahoo.com)	13-Apr-05
Aimee Eckman (statement given at public hearing)	14-Apr-05
Joanna Stevens (statement given at public hearing)	14-Apr-05
Robert P. Cook (statement given at public hearing)	14-Apr-05
<i>Letters of Project Support from Abutters, Residents, Others</i>	
Michael and Gail Andrews	14-Mar-03
M.J. Turlington	24-Apr-03
Richard and Anne Anderson	22-Apr-03
Mr. David C. Wagner	23-Apr-03
Gay Michaelis	10-May-03
P. Edmondson	12-May-03
Claudia Michaelis	16-May-03
38 Letters of Support received from the Ocean Beach Committee web site	11-Feb-04
Peter Reinke	11-Feb-04
Brian Drake	11-Feb-04
Al and Joan Rizzotti	05-Feb-04
Scott White	04-Feb-04
George Katz	11-Feb-04
Bonnie and Don Nuendel	03-Feb-04
Joanne and Jack Bruckman	03-Feb-04
Mr. & Mrs. Francis Poisson	09-Feb-04
Janet Wacht	07-Feb-04
Jim Burrows	02-Feb-04
Bob DeCecco	02-Feb-04
Naurice Bessman	02-Feb-04
Joel and Laura Allen	09-Jan-04
Steven Kagle	02-Feb-04
Bob and Elaine Gale	29-Jan-04
Tom and Carol Barron	23-Jan-04
Robert E. Overton	23-Jan-04
David and Barbara Palton	20-Jan-04
Joseph Bianchi	08-Jan-04
John DelPizzo	30-Dec-03
Ronald Peterson	30-Dec-03
Frances Lee	30-Nov-04
Elayne Weinbaum	19-Nov-04
Robery Gerney	19-Nov-03
Taxpayers petition of support w/1440 signatures	13-Nov-03

Frank and Carol Sandler	01-Nov-03
Elizabeth C. Simmons	10-Oct-03
Ed Sedlock	16-Sep-03
Fred Briggs	11-Sep-03
Eugene F. Pierney	08-Sep-03
Carol DeLucia	08-Sep-03
Dave and Pat Root	04-Sept-03
Richard P. Clancy	02-Sep-04
Mary Ann Skaham	02-Sep-03
Rose Goldman	28-Aug-03
Brian Walsh	28-Aug-03
Constance L. Lavallee	28-Aug-03
M.J. Walsh	28-Aug-03
Donald and Patricia Karpe	27-Aug-03
Judith D. Bots	26-Aug-03
Elaine Quinten	26-Aug-03
Kim B. Mislk	26-Aug-03
George H. Lee	26-Aug-03
Camilla Alfano	26-Aug-03
Charlotte kelley	25-Aug-03
Phil Brady	19-Aug-03
Edward and Gail Yarosz	13-Aug-03
Joan Sullivan	11-Aug-03
Robert W. Francis	10-Aug-03
J. Sullivan	06-Aug-03
Roger Magustanlli	06-Aug-03
Bill Williamson	06-Aug-03
Matthew D. Doyle	05-Aug-03
Serban and Katherine Alimanestianu	31-Jul-03
David Dodd	05-Aug-03
Lynn C. Higgins	22-Jul-03
James Higgins	22-Jul-03
C. Corrigan	22-Jul-03
Chris Sullivan	22-Jul-03
Gwen Turrieff	22-Jul-03
John W. Eaton	22-Jul-03
Faith H. Smith	22-Jul-03
Diane M. Montgomery	21-Jul-03
Peter Bowin	21-Jul-03
Anne & Rich Cavanaugh	21-Jul-03
Robert Prout	21-Jul-03
Mark E. Smith	21-Jul-03
Tony Duarte	21-July-03
M.S. Montgomery	21-July-03
Suzanne Carlson	21-Jul-03
JoAnn Thompson	21-July03
Nancy Perno	16-Jul-03

MaryEllen and John Massaro	16-Jul-03
Joseph L. Quinn Jr.	16-Jul-03
Peter Kerrigan	16-Jul-03
Thomas W. Mair	15-Jul-03
Jean M. Mello	15-July-03
William Nicholas	14-Jul-03
John Hayden Jr.	14-Jul-03
Patricia Zagwyn	14-Jul-03
Jolus E. Jalbot	14-Jul-03
Jeff W. Deane	14-Jul-03
Bernard R. Crosphy	14-Jul-03
Gail Bernstein and Michael Sullivan	08-Jul-03
Robert J. Foley	16-Jun-03
Pam Panella	16-Jun-03
Barbara Jerszyk	23-May-03
Janice & Francisco Rubira	23-May-03
Joan P. Sullivan	15-May-03
Lora E. Sheptyck	15-May-03
Michael J. Walsh	15-May-03
Margaret Keith	15-May-03
Faith F. Casarella	15-May-03
Bill Williamson	15-May-03
Pablo Mohina	15-May-03
Barbara Schug	13-May-03
Charles Wilder	13-May-03
Maria Mohina	13-May-03
Eileen Morgan	13-May-03
Debra A. Hayes	13-May-03
Diana Karlson	13-May-03
Chris & Donald Amith	13-May-03
Ronald Dumas	13-May-03
Matthew Frazier	12-May-03
Kathryn Casey	10-May-03
Norma P. Manuelli	12-May-03
Elizabeth Simmons Ostman	9-May-03
Jannette Sandblom	7-Apr-03
Hank Skehan	7-Apr-03
John & Nancy Buckhoff	17-Mar-03
Nathan Nickerson	04-Mar-03
Marie Stark	04-Mar-03
Fred Rollinson	27-Feb-03
Gail Silvermail	18-Feb-03
Peter M. Roarke	14-Feb-03
Matthew Flood	14-Feb-03
Michael Walsh	12-Feb-03
Douglas Blood	10-Feb-03
Joanna Anderson	4-Apr-05

John, Gwynne, Rebecca, John Jr., Katherine and Elizabeth Kaletski	11-Apr-05
Tracy Nalbandian	11-Apr-05
Duane and Donna Smith	11-Apr-05
Hortense Kelly	11-Apr-05
Judy Kenneally	11-Apr-05
Joan and Al Rizzotti	12-Apr-05
Maurice Kenneally	11-Apr-05
Alden and Margaret Harrison	13-Apr-05
Scott White	13-Apr-05

Table 2: Project Plans

Project Plans	Date of Final Project Plan; Commission Receipt Date of Final Plan	Commission Receipt Date of Previous Submittals
Site Plan, Details, and Site Mitigation Plan for Proposed Parking Eastham Ocean Beach (sheets 1, 2, and 3 of 3)	3/16/05 (as revised); 3/21/05	2/16/05
Site Plan and Details for Proposed Parking Eastham Ocean Beach (sheets 1 and 2 of 2)		12/16/04; 12/2/04
Beach Access Stair System (sheets 1, 2, and 5 of 5)	Sheet 1 revised and received 3/30/05; Sheets 2 and 5 dated as received 3/21/05	3/21/05; 2/16/05; 12/16/04; 12/2/04; 10/31/03
Beach Access Stair System (sheets 3 and 4; timber stair system alternative)		12/16/04
Landscape Plan for Eastham Ocean Beach	3/16/05 (as revised); 3/30/05	3/21/05
Revised Parking Area (concept plan only)		8/17/04
Site Overview Plan (sheet SP-O)		10/31/03
Site Plan Showing Moth Habitat Delineation		2/11/04
Proposed Site Development Plan (EC-1, SP-0, SP-1, and DET)		1/15/04; 10/31/03
Topographic Survey Plan (sheet S-1)		1/14/03

TESTIMONY

The following oral public testimony was received on February 11, 2004:

Linda Burt, Chair of the Eastham Board of Selectmen, described the proposed beach project and noted that the proposed beach was intended to serve Town residents and increase resident access to the Atlantic Ocean. She said a group of citizens had decided to pursue a Town ocean-side beach in part due to the Cape Cod National Seashore's closure of their curbside drop-off area at Coast Guard beach and that this Beach Committee had received a non-binding confidence vote at Town Meeting to proceed with their planning process. She also noted the Committee had met with the Board of Selectmen on many occasions. Ms. Burt indicated that the Town was the applicant for the purposes of this Development of Regional Impact (DRI) before the Commission. Ms. Burt then discussed the Town's response to several of the issue areas in the 2/5/04 Staff Report including land use, coastal resources related to the stairway design, natural resources, water resources, transportation issues, and community character issues. She indicated that materials supporting her comments at this hearing would be filed with the Commission shortly.

Several Beach Committee members continued the applicant's presentation to the Subcommittee: Russ Sandbloom, Beach Committee, stated the Committee's position on the need for the beach. Bob Smith, Beach Committee, said the Committee's mission was to turn over a turn key operation to the Town and described the fund-raising efforts, how operation costs for the facility would be covered by beach sticker fees, and town rezoning of the parcel to enable this project. He also described the proposed project, noting that the proposed parking lot had been downsized since it was originally conceived, cut-and-fill minimized, and that it had been designed by Coastal Engineering of Orleans, MA. Rick Weeks, Beach Committee, presented his vision of how Eastham would be with the proposed beach, particularly how children would experience the facility and its ambiance in the summer.

Stacey Justus, Commission staff summarized the Staff Report dated 2/5/04, and discussed the staff's position regarding the following issue areas in the RPP: land use, coastal, water, and natural resources, heritage preservation and community character, transportation, and hazardous wastes. Ms. Justus stated that based on new materials received by NHESP as provided by the Town, that a Conservation Permit is required, therefore an ENF is now required by MEPA.

William Doherty, County Commissioner, asked about the moth species habitat, indicating that this area may not really be their habitat and that perhaps they were passing through. He asked if the Commission is sure that this is rare species habitat and if this is the moth's main habitat. Ms. McElroy responded by addressing Mr. Mello's report that, based on scientific study by an expert, did conclude that this project area contains rare species habitat.

Maria Burks, Superintendent, Cape Cod National Seashore, expressed concern about the proposed project in terms of the abutting Federal interests and she addressed comments as provided in a 2/10/04 letter to the Commission. She noted the CCNS letter failed to note a concern about the proximity of the project to National Seashore beaches. Ms. Burks said signage would be needed to handle how beach-goers "spread out" as they use a facility, and noted that the CCNS lifeguard services are stretched thin. Ms. Burks also acknowledged the complexity of providing and managing any ocean beach, including those managed by the CCNS.

Sue Rorhbach, District Aide to Senator Robert O'Leary, noted that the Senator had submitted a letter to the Commission in support of the project.

Brian Drake spoke in favor of the project citing interest in providing access to Town land.

William Riley, Attorney representing an abutter, expressed concerns about the site plan and project design and the desired consolidation of the footprint, erosion, construction of the stairs, and impacts to the resource area. Tara Marden, coastal geologist, working with Mr. Riley on behalf of the abutter to the north expressed concerns about natural and coastal resource issues.

Russ French, David Pike, Doug Weeks, Liz Simmons, Doug Blood, David Schropfer, Jeanette Sandblom, Farrell Kane, Kathleen Kane, Ron Peterson, Janice Rubira, Cassidy Weeks, Madison Weeks, Sharon Vecsey, Trudy Craig, Scott Kerry, Edward Sedlock, Catherine Alimanestianu, Gene Chaisson, Jack Kitson, Lisa Radke, Judy Tarr, and Irene Paine spoke in favor of the project, citing issues such as Eastham's need for an ocean beach, public support for the project,

“lot full” status of the CCNS beaches, inconvenient or lack of access to Seashore beaches, and financial gains to the town in terms of increasing property values. Doris Quarels spoke in favor of the project noting that senior citizens have difficulty in accessing the existing beaches.

Roger Grad, Board of Directors of the Eastham Part-time Taxpayers Association, indicated that the Association was in favor of the proposal. Kathryn Casey spoke in favor of the project and indicated that she was impressed with the discussion of technical issues by both the Beach Committee and the Commission and encouraged both to work together in a spirit of cooperation. Richard Ryder spoke in favor of the project stating that the proposed access stairs would not unduly affect erosion. Joan Sullivan spoke in favor of the project saying that traffic issues were the CCNS’s concerns and not the Town’s. Becky Gerry spoke in favor of the project saying it would alleviate boat traffic in Nauset Marsh.

Mr. Mike Marks spoke in opposition of the project. He said that as a surfer, use of a shuttle bus was not a solution but at the same time, he said he opposed the project because it broke up the CCNS and the aesthetics of the Outer Cape. Vincent Scrivani spoke against the project. He expressed concern about erosion, the longevity of the project, and problems getting lifeguards to staff it. Jim Owens expressed concerns about the project including that the proposed beach would at best provide limited facilities meaning that the Town may get this beach, but that it would not be happy with the result. He also said that it was not the Commission’s job to mitigate the project’s impacts, the project’s impacts were for the Beach Committee and the Town to address.

Don Keeran, Association for the Preservation of Cape Cod, summarized the comment letter submitted stating that though APCC was sympathetic to the desires of Eastham residents to have an ocean beach access, that the project poses significant environmental impacts and that the Town should look closely at an Alternatives Analysis in consultation with the CCNS.

George Katz spoke about alternatives to this project that should be considered. Brenda Boleyn spoke in opposition stating that erosion rates were such that it would cause damage to the stairway and cost Eastham money. Chris MacFarlane spoke in opposition to the project noting that it would have social impacts, including traffic, and he questioned whether it would increase local property values.

Ruth Twombly, abutter to the project site, hesitantly supported the proposal indicating that the project should start with a smaller parking lot. She expressed concerns with bank and beach erosion. Chris Hermanson expressed concern about traffic issues, particularly a safety issue for pedestrians on Doane Road and surrounding roads, which were issues the CCNS should address.

Mr. Mark Harding, DRI Subcommittee member, indicated that he had found a shell midden in the zone of the project area and had documented it and that based on what he had seen, more investigations about this were needed as the project went forward. Several members of the public asked for a definition of shell midden. Mr. Harding said that a shell midden is an archeological site that was a refuse pit, indicating human habitation in the immediate area. Ms. Justus explained the process that involves the Massachusetts Historical Commission (MHC) and determinations of archeological resources that may be on project sites. She noted that additional

information often comes forward to MHC after an initial determination by them that they can take into consideration for the issuance of a follow-up determination. Ms. Justus said that the MHC now needed time to respond to this information.

FINDINGS

The Commission has considered the application of the Town of Eastham for the proposed Eastham Ocean Beach parking lot and access stairway project and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General Findings:

- F-G1.** The Town of Eastham proposes to construct a parking lot and ocean beach access on an undeveloped 123.73-acre town-owned parcel. The development of the Town's ocean beach access site is proposed to be located on the eastern 21.2-acre portion of that larger parcel lying between Ocean View Drive and the Atlantic Ocean. Components of the proposed Eastham ocean beach access site (hereinafter the "Project") include:
- main access driveway off of Ocean View Drive with six by 12-foot entrance booth and driveway turnaround (paved and served by one catch basin)
 - parking lot for 250 vehicles (surface to be dense graded crushed stone; swales utilized for drainage; eight to be paved and designed handicapped-only parking)
 - 100-bicycle bike rack (paved sidewalk from Ocean View Drive to bicycle rack)
 - sanitary facilities provided via four portable toilets (on paved area)
 - trash receptacles (on paved area)
 - 14 by 20-foot storage building for lifeguard and associated equipment
 - six-foot wide internal pedestrian walkways across the drainage swales (processed gravel)
 - 12-foot wide walkway to ocean access stairway (processed gravel)
 - 20-foot wide landing platform at the top of the stairway (initially constructed eight feet inland from top/edge of the coastal bank)
 - stairway to provide access to the beach down/up the coastal bank
 - No utilities are proposed on site (no water lines, electricity, or lighting).
- F-G2.** The proposed Project is located within several designated resource areas including designated Significant Natural Resource Area due to the presence of unfragmented forest and rare species habitat and is a Potential Public Water Supply Area. The Project site is within the boundaries of the Cape Cod National Seashore (CCNS).
- F-G4.** The Project does not lie within a District of Critical Planning Concern.
- F-G5.** The Project was reviewed by the Cape Cod Commission for its consistency with the Goals and Minimum Performance Standards (MPS) of the 2002 Regional Policy Plan (RPP).

- F-G6.** According to a Local Comprehensive Plan (LCP) Consistency Review submitted by the Eastham Town Planner on February 11, 2004 the Project is “generally consistent” with the Town of Eastham LCP. In a letter from the Eastham Town Planner received on February 12, 2004, the proposed Project is allowed within the Wellhead Protection District (District H) zoning district.
- F-G7.** The Town originally contemplated proposing a 300-car parking lot on this site, however, according to a letter received by the Commission on January 15, 2004, the Town states “that after reviewing it internally and with the National Park Service, it was decided to reduce the size of the parking area to 250 spaces so as to lessen the potential impacts.”
- F-G8.** According to the LCP Consistency Review submitted by the Eastham Town Planner on February 11, 2004, the Town has proposed this Project in order to preserve the traditional access of its residents to the Atlantic Ocean and to accommodate Eastham’s need for expansion of public access to the Atlantic Ocean shoreline for Eastham residents.

Water Resources Findings:

- F-WR1.** The Project is not located in a Wellhead Protection Area, a Marine Water Recharge Area or a Fresh Water Recharge Area.
- F-WR2.** The Project satisfies MPS 2.1.1.1, which limits groundwater nitrogen loading to 5 parts per million (ppm). The Project results in a nitrogen concentration of less than 1 ppm in groundwater across the entire parcel due to the creation of 3.97 acres of developed area, including driveway, parking area, and associated bicycle and pedestrian paths.
- F-WR3.** The proposed drainage design is shown on the plan entitled *Site-Plan, Proposed Parking Eastham Ocean Beach*, sheet 1 of 3, as revised February 1, 2005 and received by the Commission on March 21, 2005. The project utilizes vegetated swales to treat stormwater runoff in accordance with MPS 2.1.3.3. The project is also required by MPS 2.1.3.6 to have an approved stormwater operations and maintenance (O&M) plan.
- F-WR4.** The project site is mapped as a Potential Public Water Supply on Water Resources Classification Map I of the RPP. The project site has been removed from consideration by the Town of Eastham as a Potential Public Water Supply Area, in accordance with MPS 2.1.1.2.F. The Town of Eastham provided written testimony in a memorandum dated December 16, 2004 to Commission staff stating that any future water supply developed on the project parcel will be limited to supply the Ocean Beach site only and that a municipal water supply is not contemplated for the site.

Coastal Resources Findings:

F-CR1. *Coastal Bank:*

Certain elements of the Project are located within the 100-foot buffer to the top of the coastal bank, including: approximately 75 feet of the pedestrian ocean access walkway, the overlook platform, and the beach access staircase. As such these elements of the Project were reviewed under the coastal resources MPS's. The proposed project's likely effect on coastal resources can be viewed in the context of short-term disturbance of the coastal bank associated with construction, and effects resulting from future work to maintain, remove, and reconstruct the structure following chronic and storm induced erosion.

Land Subject to Coastal Storm Flowage:

The Town has demonstrated that best available measures will be utilized to minimize adverse impacts to all critical characteristics of land subject to coastal storm flowage (MPS 2.2.2.10), and that there is no feasible alternative to the project (MPS 2.2.2.1). These measures, as outlined by the Town in the December 16, 2004, memorandum to Commission staff, include minimizing disturbance and impacts from construction activities, the use of a "break away" stairway design, and the integration of a mechanism for assessing erosion and its effect on structural stability of the stairway and viewing platform.

- F-CR2.** The project is located in a high-hazard area subject to extreme forces of wind and waves. The Federal Emergency Management Agency Flood Insurance Rate Map designation of the 100-year flood zone (or V-zone) is located at elevation 39 NGVD. The proposed stairway reaches the top of the coastal bank at elevation 47.2 NGVD, indicating that all but the upper eight feet of the structure would be constructed in the V-zone. The upper bank will still be subject to wave run-up and erosional effects.

MPS 2.2.2.6 is fulfilled because there is an overriding public benefit in providing access to the beach where none existed before at this location. This also fulfills Goal 2.2.1 by expanding public access to the shoreline. This development is not expected to promote additional new growth and development in the project area.

In the December 16, 2004, memorandum to Commission staff the Town acknowledges that the conditions on site will place the future of the structure in jeopardy, and they have indicated that their intention is to follow a strategy of retreat, relocating the stairway structure in accordance with the erosion of the bank, rather than undertaking measures to fortify the coastal bank or otherwise inhibit its landward migration.

On the plan entitled *Beach Access Stair System*, sheet 1 of 5, prepared by JDB Consulting Engineers, as revised March 30, 2005, the Town cites the approximate long-term average landward rate of bluff recession at 2.5 ft/yr, a statistic that is subject to different interpretations depending on periods of time during which rates are recorded and averaged. The Massachusetts Coastal Zone Management shoreline

change rate map for this location shows a short-term erosion rate of approximately -6 ft/yr in the period between 1970 and 1994. This illustrates the fact that periods of rapid, storm-induced episodic erosion are likely to occur at the site, and that the frequency and extent to which the structural elements of the Project will be damaged or destroyed cannot be accurately predicted, but are anticipated to occur.

- F-CR3.** The proposed construction of an elevated stairway and associated use of the beach as a recreation area by the Town will not inhibit the landward migration of the coastal beach or the coastal bank. The Town has proposed a “break away” staircase design rather than a fortified structure. This design is intended to minimize damage to the coastal bank during extreme wind and wave conditions, to allow the coastal bank to retreat unimpeded and to serve as a means of accommodating future sea level rise. As such, the design is consistent with MPS 2.2.2.2 and 2.2.2.10.

However, the Town proposes to leave the staircase in place during winter months and during predicted storm events, preferring to repair or replace the structure as necessary rather than moving it out of harm’s way. This procedure will result in periodic damage to or destruction of the staircase either on-site or down-drift of its original location. The Town proposed to remove debris by means of a crane positioned on the landward side of the top of the coastal bank. Prompt removal of debris will ensure that public access is not curtailed and is consistent with MPS 2.2.1.1.

- F-CR4.** Vegetation within the 100-foot undisturbed buffer zone to the top of the coastal bank required by MPS 2.2.3.11 may be damaged by pedestrian traffic and the introduction of “social trails.” Damage to vegetation within the protected buffer zone would reduce its value as habitat and could lead to increased erosion, contrary to ODRP 2.2.1.5 and 2.2.2.14. Consequently, the site plan provides for one access path to the proposed staircase, with fencing along the access path and at the seaward edge of the parking lot.

- F-CR5.** As is consistent with MPS 2.2.1.1 and ODRP 2.2.1.7, the project will enhance public access to coastal resources, provided that nonresidents of the Town of Eastham and resident non-sticker holders are allowed to access the coastal beach. While the use of parking facilities for motor vehicles may be managed or limited as determined by the Town, the development of the site should not prohibit access by nonresidents or non-sticker holders wishing to access the site on foot or other non-motorized means.

- F-CR6.** The Town has proposed to elevate the overlook platform and top of the staircase above the grade of the top of the coastal bank in order to allow vegetation underneath to grow and to contribute to the stability of the top of the bank. The elevated design is generally consistent with MPS 2.2.2.10, which allows for “appropriately designed pedestrian walkways and elevated decks with appropriate orientation, height, and spacing between planks to allow sufficient sunlight penetration.”

Natural Resources and Open Space Findings:

- F-NR1.** The project site is located in a Significant Natural Resource Area due to the presence of unfragmented forest and rare species habitat. The Town has submitted a natural resource inventory consistent with the requirements of MPS 2.4.1.1, and subsequently has submitted two rare species surveys conducted on the site. According to the natural resources inventory, there are no freshwater wetlands or vernal pools located on the site, though the site does contain coastal bank and coastal beach.
- F-NR2.** The natural resources inventory describes the site as containing two principal plant communities; a maritime shrubland community extending landward from the top of the coastal bank, and a pitch pine/oak forest along Ocean View Drive. The maritime shrubland community, dotted with patches of coastal heath, is characterized by scrub oak, beach plum and other low shrubs, and is influenced by salt spray and wind action. The forest community contains pitch pine, a variety of oaks, and a mixed shrub layer including scrub oak.
- F-NR3.** The site is mapped by the Natural Heritage and Endangered Species Program (NHESP) as potential rare species habitat. Two rare species surveys were conducted at the request of the NHESP, one for Eastern box turtles, and the other for rare Lepidoptera, or moths. In addition, NHESP has noted in written comments that this section of the coastal beach may provide suitable habitat for piping plovers at some point in the future through changes effected by erosion of the bank and sediment deposition on the beach.

No box turtles were found during the survey, though the habitat is appropriate for box turtles. The Lepidoptera survey identified six rare moth species on the project site, and identified habitat present as suitable to support a total of ten rare Lepidoptera. The Lepidoptera survey breaks down the plant communities on the project site into three types for the purposes of moth habitat suitability: 1) open canopy scrub oak barrens, 2) partial canopy scrub oak barrens, and 3) a pitch pine woodland with little to no scrub oak understory. These habitat types are delineated on the plan *Site Plan Showing Moth Habitat Delineation*, prepared by Coastal Engineering, dated February 10, 2004, and received by the Commission on February 11, 2004.

The NHESP determined that the area of open canopy scrub oak barrens is significant habitat for rare species, and subsequently the Commission finds that this area should be preserved to protect rare moth habitat consistent with MPS 2.4.1.4.

- F-NR4.** The proposed project was reconfigured to minimize impacts to the significant moth habitat area, though the Project will destroy approximately 0.89 acre of significant moth habitat.
- F-NR5.** The Town has proposed to place a conservation restriction on the remaining areas of significant moth habitat on the project site, an area of approximately 4 acres, as mitigation for the impacts to moth habitat resulting from the project. The

Commission finds that this alternative form of habitat protection is suitable mitigation for the impacts proposed by this town project, that it will not be more detrimental to the protected resource than would be allowable under MPS 2.4.1.4 and therefore warrants use of the Flexibility Clause in order to allow construction of the project.

- F-NR6.** There is the potential for vegetation within the moth habitat to be damaged by pedestrian traffic and the introduction of “social trails,” which would reduce its value as habitat and could lead to increased erosion of area that may also be part of the buffer zone to the coastal bank. Consequently, the site plan provides for one access path to the proposed staircase, with fencing along the access path and at the seaward edge of the parking lot, consistent with MPS 2.4.1.4 to protect rare species habitat.
- F-NR7.** A conservation restriction is proposed to protect a total area of 8.08 acres, which addresses both the rare species habitat mitigation and transportation mitigation requirements. At the time of this Decision, the MassAudubon Society is considering whether to hold the conservation restriction on this site.
- F-NR8.** The wildlife and plant habitat minimum performance standards (MPS 2.4.1.2 and 2.4.1.3) require minimizing the clearing and grading of sites, and minimizing fragmentation of habitat areas. The reconfiguration of the parking area closer to the road and with less area between rows of parking has resulted in a more compact site design, consistent with these standards.

Economic Development Findings:

- F-ED1.** The proposed project will rely on local financial resources for its construction, operations, and maintenance. No regional funding or services will be required at any phase of this project as proposed by the Town. The Eastham Ocean Beach Committee, a private citizens group in the community, has committed to raising funds for the initial construction of the project. The Town has passed by town meeting (May 2004) an allocation of \$125,000 for maintenance and operation of the proposed beach for the first year only. The Town has proposed to develop a user fee system, based on beach stickers for taxpayers and visitors, to defray the future operations and maintenance costs of the project.
- F-ED2.** Given that this proposed project is a public amenity proposed to be accessible to Eastham residents only with respect to the user fee/beach sticker system, the project is not expected to have any significant regional economic development impacts.

Transportation Findings:

- F-T1.** Regional roadways within the project area include Ocean View Drive, Doane Road, Cable Road, and Nauset Road per MPS 4.1.3.1.
- F-T2.** MPS 4.1.1.10 allows the use of trip generation data other than data from national sources. Due to the unique nature of the proposal, the applicant studied trip

generation at Nauset Beach in Orleans and by factoring based on parking spaces available at Nauset Beach and proposed spaces at the development site, estimated the following trip generation:

- 840 New Weekday Trips (representing an average increase of 22% on area roadways)
- 169 New Weekday Evening Peak Hour Trips (representing an average increase of 55% on area roadways)
- 102 New Saturday Morning Peak Hour Trips (representing an average increase of 32% on area roadways)

F-T3. MPS 4.1.1.1 requires that developments not degrade safety for pedestrians, bicyclists, or motor vehicle operators or passengers. The Town has proposed to allow pedestrian and bicyclist admission and has included pedestrian and bicycle accommodations in the project. The Town has also proposed to provide a police officer at the site entrance during operating hours to enhance safety for all users accessing the development and for travelers along Ocean View Drive.

F-T4. MPS 4.1.1.2 requires crash analysis at all locations where the development is expected to increase peak hour trips by 25 new vehicles. A traffic study provided by the Town showed the intersection of Route 6 and Brackett Road and the intersection of Ocean View Drive, Cable Road, and Nauset Light Beach Road will be impacted by more than 25 new peak hour trips and exceed the statewide average crash rate. The intersection of Route 6 and Brackett Road has been recently improved by the state, the result of which may be an increase in safety. The intersection of Ocean View Drive, Cable Road, and Nauset Light Beach Road is scheduled to be reconstructed by the National Park Service, which may result in safety improvements at this location.

F-T5. MPS 4.1.1.5 requires development structures including signs, utility poles, and lighting to minimize visual obstruction and MPS 4.1.1.7 requires sight lines at site driveways to meet the minimum requirements of the American Association of State Highway Transportation Officials (AASHTO) safe-stopping sight distances. The site plan submitted by the Town shows no objects obstructing the sight entrance. Preliminary review by Commission staff showed sufficient sight distances up to 45 miles per hour, while the roadway is posted at 30 miles per hour. The Town will be required to provide a letter from a Massachusetts Licensed Professional Engineer stating that the actual sight lines meet AASHTO standards prior to receiving a Final Certificate of Compliance from the Commission.

F-T6. MPS 4.1.1.6 requires development access to minimize impacts on adjacent roadways, accommodate all users, and provide pedestrian and bicycle connections to allow for future connections to adjacent properties, where appropriate. The site entrance is designed to hold approximately seven cars waiting to enter the development through the site entrance booth. Additional cars will not be allowed to wait on Ocean View Drive and the Town has committed to having a police officer at the site monitoring traffic at and around the entrance during operating hours. Furthermore, the Town has

agreed to have the police officer coordinate with the Cape Cod National Seashore traffic control rangers stationed at nearby intersections.

- F-T7.** MPS 4.1.1.6 and MPS 4.1.2.5 require developments to safely accommodate all users including pedestrians and bicyclists both those accessing the development as well as other area roadway users. Furthermore, applicants are required to provide connections to adjacent properties where appropriate or make accommodation for such connections if needed in the future. The Town proposes a bicycle/pedestrian entrance path from Ocean View Drive into the development connecting to the walkway accessing the beach staircase. The plans also include a bicycle rack for up to 100 bicycles along this path. There are no other public trail connections through the property. The Town has stated that the right-of-way width for Ocean View Drive is sufficient to accommodate a pedestrian / bicycle path should one be built in the future and consequently, the Town is not required to provide land for such a path on the project site.
- F-T8.** MPS 4.1.1.9 requires site driveways to not exceed Massachusetts Highway Department standards. The proposed driveway entrance is 24 feet wide and complies with this requirement.
- F-T9.** MPS 4.1.2.1 requires development to reduce and/or offset 25% of the expected increase in summer site traffic on a daily and project peak-hour basis. Through MPS 4.1.2.7.a the Town has proposed to preserve through a conservation restriction vacant developable land on-site adjacent to the proposed parking lot. Approximately one acre of this land will fulfill the requirements of MPS 4.1.2.1.
- F-T10.** The Town's land preservation proposal includes 3.97 acres for transportation mitigation, the same size as the project's total disturbed area. The preserved land area is sufficient to offset all trip generation of the project as allowed by MPS 4.1.2.8 and consequential elimination of analysis and mitigation required under MPS 4.1.3.4.
- F-T11.** MPS 4.1.3.2 requires all accesses for new development to operate at Level of Service (LOS) C or better. The Town's *Traffic Impact Assessment* dated September 2003 showed the site driveway is expected to operate at LOS C or better. In addition, the Town has agreed to provide a police officer at the site driveway during operating hours.
- F-T12.** To limit the impact of traffic traveling on regional roadways to the site when it is full, the Town has agreed to provide a telephone accessed voice message with hourly updates on the availability of parking at the beach.

Hazardous Materials/Wastes Findings:

- F-HM1.** The project site is mapped as a Potential Public Water Supply on Water Resources Classification Map I of the RPP. As was previously stated in F-WR4, the project site has been removed from consideration by the Town of Eastham as a Potential Public

Water Supply Area. Based on this removal, MPS 4.3.1.3. does not apply to this project.

- F- HM2.** MPS 4.3.1.2 requires that development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.000. Commission experience with construction projects indicates they typically generate hazardous waste. In this case, project construction will also occur on the ocean edge, where releases of hazardous waste are a concern.

Heritage Preservation and Community Character Findings:

- F-CC1.** The Massachusetts Historical Commission (MHC) determined the project site to be archaeologically sensitive and likely to contain archaeological sites related to Native American settlement of the area. An intensive archaeological survey was conducted in the area of the proposed parking lot and beach access site and no significant cultural resources were located. MHC staff reviewed the archaeological report prepared by Alan E. Strauss, Cultural Resource Specialists of New England, and, in a letter dated August 25, 2004, MHC staff concurred that no further archaeological survey is necessary.
- F-CC2.** The proposed entrance booth and storage shed are to be constructed with shingles and pitched roofs, consistent with Goal 6.2 of the RPP.
- F-CC3.** MPS 6.2.9 requires that all development implement a landscape plan that addresses the functional aspects of landscaping, including screening and buffering. The *Site-Plan Proposed Parking Eastham Ocean Beach*, prepared by Ryder & Wilcox, Inc., sheet 1 of 3, as revised February 1, 2005, and received by the Commission on March 21, 2005, indicates that an approximately 60' wide buffer will be retained between the proposed parking lot and Ocean View Drive. The buffer widens considerably adjacent to the site entrance driveway. A portion of the buffer will be altered as a result of grading for the parking lot, which is located 4–6' below the elevation of the roadway. Existing vegetation consists primarily of pitch pines, which do not provide significant screening. The Town has submitted the *Landscape Plan for Eastham Ocean Beach*, dated March 16, 2005, as received March 30, 2005, and letter dated March 16, 2005, from Misty Hill Landscape Design, Ltd., which provides additional buffering along Ocean View Drive to comply with MPS 6.2.9. Plant species are adaptable to the harsh conditions anticipated at the site.
- F-CC4.** MPS 6.2.9 also requires a maintenance agreement for all proposed landscaping. The March 16, 2005, letter report from Misty Hill Landscape Design, Ltd., as received by the Commission on March 21, 2005, and amended and received by the Commission on March 20, 2005, properly identifies the required items for a maintenance agreement to comply with MPS 6.2.9 based on guidelines identified by Commission staff.

F-CC5. No site lighting or signage is proposed for the project site at this time, therefore MPS 6.2.10 and 6.2.11 do not apply to the project. The Town may wish to install site lighting at a future date.

CONCLUSION

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

- The probable benefits of the Project are greater than the probable detriments.
- The Project complies with the Minimum Performance Standards of the 2002 Regional Policy Plan, except for MPS 2.4.1.4 where appropriate use of the Flexibility Clause will enable the interests protected by this MPS to be achieved by an alternative approach as identified in F-NR5.
- The Project is consistent with local zoning and with the Eastham Local Comprehensive Plan.

The Commission hereby approves with conditions the application of the Town of Eastham for the proposed Eastham Ocean Beach parking lot and stairway access project as a Development of Regional Impact, provided the following conditions are met:

CONDITIONS

General Conditions:

- C-G1.** The proposed Eastham Ocean Beach project shall be constructed in accordance with the following final plans and report:
- *Site-Plan Proposed Parking Eastham Ocean Beach*, sheet 1 of 3, prepared by Ryder & Wilcox, Inc., dated November 19, 2004 as revised February 1, 2005, and received by the Commission on March 21, 2005 (hereinafter *Site Plan*, sheet 1 of 3).
 - *Details—Proposed Parking Eastham Ocean Beach*, sheet 2 of 3, prepared by Ryder & Wilcox, Inc., dated November 19, 2004 as revised February 1, 2005, and received by the Commission on March 21, 2005 (hereinafter *Site Plan*, sheet 2 of 3).
 - *Site Mitigation Plan Eastham Ocean Beach*, sheet 3 of 3, prepared by Ryder & Wilcox, Inc., dated February 1, 2005 as revised March 16, 2005, and received by the Commission on March 21, 2005 (hereinafter *Site Plan*, sheet 3 of 3).
 - *Beach Access Stair System*, sheet 1 of 5, prepared by JDB Consulting Engineers, as revised March 30, 2005, and dated received by the Commission on March 30, 2005 (hereinafter *Stair System Plan*, sheet 1 of 5).
 - *Beach Access Stair System*, sheet 2 of 5, prepared by JDB Consulting Engineers, as revised September 1, 2004, and dated received by the Commission on March 21, 2005 (hereinafter *Stair System Plan*, sheet 2 of 5).
 - *Beach Access Stair System*, sheet 5 of 5, prepared by JDB Consulting Engineers, as revised September 25, 2004, and dated received by the Commission on March 21, 2005 (hereinafter *Stair System Plan*, sheet 5 of 5).

- *Landscape Plan for Eastham Ocean Beach*, prepared by Shawn E. Shea, Misty Hill Landscape Design, Ltd. dated March 16, 2005, as revised and received by the Commission on March 30, 2005 (hereinafter *Landscape Plan*).
 - Letter report from Misty Hill Landscape Design, Ltd. dated March 16, 2005, as received by the Commission on March 21, 2005, and revised and dated as received by the Commission on March 30, 2005 (hereinafter *Letter Report*).
- C-G2.** This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written Decision.
- C-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.
- C-G4.** The Applicant shall obtain all necessary federal, state, and local permits for the proposed project. The Applicant shall forward to the Commission staff for their review copies of any and all permits and approvals issued in relation to this project and issued subsequent to this Decision within 30 days of their issuance. 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 12, Modifications to Approved Projects, of the Cape Cod Commission Enabling Regulations, as amended.
- C-G5.** No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods relating to the Project have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- C-G6.** Prior to issuance of any Building Permit from the Town of Eastham, the Town shall obtain a Preliminary Certificate of Compliance from the Commission.
- C-G7.** Prior to issuance of the Final Certificate of Compliance from the Commission, the Town of Eastham shall receive a Certificate of Compliance from the Eastham Conservation Commission.
- C-G8.** Prior to the issuance of any parking stickers for the Eastham Ocean Beach parking lot and prior to opening the parking lot and/or beach access to the public, the Town must obtain a Final Certificate of Compliance from the Commission.
- C-G9.** Unless otherwise stated in this Decision, the Project shall be constructed in accordance with final plans listed above in C-G1 and all conditions of the Decision shall be met prior to issuance of a Final Certificate of Compliance for the proposed Project.
- C-G10.** The Town shall provide a minimum of 30 days notice of the intent to seek a Certificate of Compliance prior to issuance of all certificates associated with this Decision. The Commission is under no obligation to issue any Certificate of Compliance unless all conditions are complied with or secured consistent with this Decision.

- C-G11.** The Town shall incorporate a copy of this Decision into any contract documents and show proof of this inclusion in order to demonstrate that this Decision has been provided to the general contractor(s) prior to the start of any construction.

Water Resources Conditions:

- C-WR1.** The project's drainage shall be managed in accordance with requirements of MPS 2.1.3 and conceptual designs shown on the plan entitled *Site Plan*, sheet 1 of 5. Prior to the issuance of the Preliminary Certificate of Compliance, the stormwater operations and maintenance plan required by MPS 2.1.3.6 shall be approved by Commission staff and engineered drainage plans shall be submitted.

Coastal Resources Conditions:

- C-CR1.** The "break away" stair system shall be constructed and reconstructed according to the *Stair System Plan*, sheets 1 and 2 of 5. All work requiring alteration of the coastal bank shall ensue by hand. Alteration of the coastal bank, except for the installation of vertical foundation timber posts and their footings, shall be prohibited.

- C-CR2.** The Town shall monitor the structural integrity of the elevated platform and stair system throughout its service life by means of a marked horizontal member as shown on the *Stair System Plan*, sheet 2 of 5, and according to the protocol provided on the *Stair System Plan*, sheet 1 of 5. In addition, the Town shall monitor and maintain the structure as specified in the December 16, 2004 memorandum from the Town, which provides:

Beach access stairs shall be maintained over their useful life in accordance with design specifications. Any broken or deteriorated components shall be replaced as necessary to maintain the use and safety of the stairs. Exposure of greater than two feet of any vertical anchoring component shall trigger the relocation and resetting of the viewing platform and stairs landward. Any resetting and reconstruction would follow original stair specifications and construction sequencing.

- C-CR3.** Debris from damaged portions of the stairway shall be removed in a timely manner following storm events. Materials will be removed by means of a crane, which shall be kept at least fifty-feet from the existing top of the coastal bank at all times. All debris and reconstruction materials, tools and apparatus shall be stockpiled outside of the 100-foot buffer to the top of the coastal bank when not in use. Reconstruction activities shall be limited to replacement of the stairs of the same materials and design, and using the same construction methodology. Deviations in the design or construction methodology of replacement structures shall require the filing of amended plans for review as a project modification. Prior to the removal of any debris or the start of reconstruction activities, the Town shall consult with the Eastham Conservation Commission or its designee to develop a workplan that safeguards coastal resources protected by the Wetland Protection Act.

- C-CR4.** The lowest structural member of the proposed viewing platform and staircase shall be elevated above existing grade to a height sufficient to preclude wind erosion and enable plant growth, as determined by the Eastham Conservation Commission. Decking comprising the horizontal surface of the viewing platform shall be sufficiently spaced to allow for sunlight penetration. Final project plans shall reflect the elevation and spacing specified in the local Order of Conditions.
- C-CR5.** Development within the 100-foot protective buffer to the top of the coastal bank shall be limited to the pervious pedestrian footpath and elevated walkway. Routine pedestrian traffic within the 100-foot buffer to the top of the coastal bank shall be limited to the proposed walkway and viewing platform.

Natural Resources and Open Space Conditions:

- C-NR1.** If and when the natural cycles of erosion and sediment deposition create suitable nesting habitat for piping plovers, the Town shall take appropriate actions to protect nesting sites from human and domestic animal disturbance, consistent with NHESP requirements.
- C-NR2.** Prior to the issuance of the Preliminary Certificate of Compliance, the Town of Eastham shall provide the Cape Cod Commission with a conservation restriction of a form and substance satisfactory to the Commission or its designee and consistent with Massachusetts General Laws Chapter 184, § 31 – 33 and accompanying plan which provides that 8.08 acres located on the Eastham Ocean Beach Project site and identified as conservation restriction area on the plan entitled *Site Plan*, sheet 3 of 3, shall be preserved as permanent open space. Prior to the issuance of the Preliminary Certificate of Compliance: 1) the conservation restriction and accompanying plan shall be approved by Commission counsel; 2) proof of submittal of the conservation restriction to the Massachusetts Division of Conservation Services and to the Eastham Boards from whom approval is required shall be provided to the Commission; and 3) a letter from the intended grantee of the restriction that indicates a willingness to hold the conservation restriction shall be provided to the Commission.

In order to preserve the significant habitat values of the open space areas protected through this conservation restriction, the land subject to this conservation restriction shall remain undisturbed for conservation and rare species habitat preservation purposes. Reserved rights within the conservation restriction may include: 1) single lane driveway access to the adjacent property to the north; 2) installation of a public supply well for the purposes of potable water supply at the project site only; 3) maintenance of drainage structures associated with the parking area; and 4) other limited habitat management consistent with the conservation interests of this restriction for rare species protection. Every effort shall be made to locate a possible public supply well in the area outside of the rare moth habitat, and to minimize the area of disturbance.

- C-NR3.** Prior to recording of the conservation restriction, the perimeter of the conservation restriction area, with the exception of the boundary coincident with the top of the coastal bank, shall be marked with concrete bounds or through use of a Global Positioning System device with an accuracy of 1 meter or less. The method of boundary marking shall be approved by the conservation restriction grantee.
- C-NR4.** Prior to issuance of a Final Certificate of Compliance, the conservation restriction and site plan as specified and approved in C-NR2 above shall be executed and recorded at the Registry of Deeds or Registry District of the Land Court, and proof of recording shall be provided to the Commission.

Transportation Conditions:

- C-T1.** The Town shall allow entrance of bicyclists and pedestrians and provide reasonable accommodations for such users including a bicycle/pedestrian entrance path as noted on site plans, a bicycle rack capable of securing 100 bicycles, pedestrian walkways as noted on site plans, and handicapped accessible ramps as appropriate. Nonresidents or resident non-sticker holders accessing the site by means other than motor vehicle shall be allowed access to the beach access stairway.
- C-T2.** The Town shall coordinate planning for traffic operations with the Cape Cod National Seashore (CCNS) in the project area. The Town shall provide a traffic control officer at the site driveway at Ocean View Drive during all times the entrance booth is staffed. The town officer shall coordinate traffic operations with CCNS rangers in charge of traffic control in the project area, including any rangers posted at either end of Ocean View Drive for these purposes.
- C-T4.** Prior to the Final Certificate of Compliance for the project, the Town shall submit a letter to Commission staff signed and sealed by a Massachusetts registered Professional Civil Engineer verifying that the actual sight distances to the site driveway along Ocean View Drive meet or exceed AASHTO standards.
- C-T5.** Consistent with C-NR2, the Town shall place a conservation restriction on the land shown as conservation restriction area on the plan entitled *Site Plan*, sheet 3 of 3, for the purpose of transportation mitigation. The conservation restriction shall extinguish all development potential on this land that will generate additional traffic.
- C-T6.** The Town shall provide a telephone accessed voice message system providing information on the beach parking lot operational status with hourly updates during normal operational hours. The existence of the message system shall be advertised at the beach entrance kiosk and through the Town's regular public informational processes.

Hazardous Materials/Waste Conditions:

- C-HM1** On-site storage of hazardous materials or wastes shall be on an impervious surface, with containment and access control. Any hazardous waste generated during site preparation or construction shall be disposed of by a firm licensed by the Massachusetts Department of Environmental Protection for hazardous waste transport.

Heritage Preservation and Community Character Conditions:

- C-CC1.** Prior to issuance of a Final Certificate of Compliance, the Town shall implement the *Landscape Plan*.
- C-CC2.** 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 which 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 Town, 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.
- C-CC3.** Prior to any clearing or grading, on the site, the Town shall clearly mark in the field the limit of work with construction fencing. Flagging may be used in the area adjacent to Ocean View Drive. Prior to any clearing or grading, the placement of the fencing and flagging shall be approved by Commission staff.
- C-CC4.** Prior to issuance of a Final Certificate of Compliance from the Commission, the Town shall provide a fully executed landscape maintenance contract for three full growing seasons based on the *Letter Report*.
- C-CC5.** Plant materials specified by this Decision may be substituted with prior written approval of Commission staff.
- C-CC6.** Any future sight lighting proposed by the Town that is consistent with the Exterior Lighting Design Technical Bulletin, 95-001, as amended, shall be approved by Commission staff as a Minor Modification #1, according to Section 12 of the Enabling Regulations, as amended.

