

## CAPE COD COMMISSION

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Date: June 12, 2006

To: Mr. Andrew L. Singer  
Singer & Singer, LLC  
P.O. Box 67  
Dennisport, MA 02639

From: Cape Cod Commission

RE: Limited Development of Regional Impact Determination for  
Change of Use  
DRI Enabling Regulations, Sections 3 and 4

Applicant: Orleans Enterprises, Inc.  
16 O'Connor Road  
Orleans, MA 02653

Project # CU #06010

Project: Orleans Toyota Redevelopment  
16 O'Connor Road  
Orleans, MA 02653

Property Owner(s): Francis J. Russell, Trustee  
O'Connor Lane Realty Trust  
16 O'Connor Road  
Orleans, MA 02653

Map/Parcel: 47/95  
Book/Page: n/a  
Land Court Cert. Of Title: 170075      Lot 11      Plan 36352B

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### DECISION OF THE CAPE COD COMMISSION

Limited DRI Determination for Change of Use  
Orleans Toyota Redevelopment – CU#06010  
June 12, 2006  
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## SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby determines that the redevelopment proposed by Orleans Enterprises, Inc. (Applicant) of the property located at 16 O'Connor Road, Orleans, MA, into a vehicle sales and service center qualifies for Section 3(f)(i) thresholds under the criteria established under Section 4(b) of Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended (DRI Enabling Regulations), and may proceed without Development of Regional Impact (DRI) review. This Decision is rendered pursuant to a vote of the Regulatory Committee on June 12, 2006.

## PROJECT DESCRIPTION

The Applicant proposes the redevelopment of a former plastics manufacturing business into a vehicle sales and service center. The proposed project is located on a 5.04-acre site at 16 O'Connor Road, Orleans. The property is located in an Industrial Zoning District and is bordered by the Exit 12 ramp of Route 6 to the west and north. The site is largely paved and an electric company easement crosses much of the property.

Three buildings currently exist on site. The largest building is the original warehouse building that was previously owned and operated by the plastics company. Since relocating to the property in 2003 Orleans Toyota has constructed a 2,400 square foot (SF) stand-alone showroom building and a 784 SF stand-alone car wash building. Upon relocation to this property Orleans Toyota first occupied just under half of the existing building. At this time, they wish to expand their operations into the remainder of the vacant building and to reconstruct the interior space to satisfy their business needs.

The previous use was comprised of:

21,546 SF	first floor (main building)
<u>12,875 SF</u>	<u>mezzanine floor (main building)</u>
34,421 SF	Total

The proposed square footage for the new use is to be:

22,829 SF	first floor (main building)
4,089 SF	mezzanine floor (main building)
2,400 SF	stand alone showroom building
784 SF	stand alone car wash building
<u>20,608 SF</u>	<u>exterior display area</u>
50,710 SF	Total

The square footage change to the main building from the previous to the proposed use is due to the removal of a large part of the mezzanine and the partial enclosure of the front and rear loading areas/docks, but there will be no change to the exterior size of the building.

### PROCEDURAL HISTORY

The Commission received a Limited DRI Determination for Change of Use application from Orleans Enterprises, Inc. on April 27, 2006. A duly noticed public hearing pursuant to Section 5 of the Cape Cod Commission Act (Act) to consider the application was held by the Regulatory Committee of the Commission on June 12, 2005, at the Cape Cod Commission office in Barnstable, MA. The public hearing and record were closed on this date, after which the Regulatory Committee voted unanimously that the project not be subject to mandatory DRI review in any Regional Policy Plan (RPP) issue area, and therefore be returned to local review.

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

<b>TABLE 1: Materials Submitted for the Record</b>	
<b><i>Materials from the Applicant</i></b>	<b><i>Date Received</i></b>
Application of Orleans Enterprises, Inc. for Limited DRI Determination for Change of Use	4/27/06
Letter to T. Boesch from W. Scully, MS Transportation Systems, Inc. re: traffic analysis	5/5/06
E-mail from A. Singer to S. Justus re: submittal of nitrogen calculations	5/15/06
Letter to A. Singer from S. Sequin re: nitrogen loading calculations	5/17/06
E-mail from A. Singer to S. Justus re: receipt of MHC determination of no impact	5/17/06
E-mail from A. Singer to S. Justus re: square footage calculations	5/23/06
E-mail from A. Singer to S. Justus re: square footage calculations	5/24/06
E-mail from A. Singer to S. Justus re: forwarding materials <ul style="list-style-type: none"> <li>• Letter from A. Singer to S. Justus re: exterior lighting specifications</li> <li>• Massachusetts Historical Commission determination</li> </ul>	5/26/06
Revised Project Plans, including: <ul style="list-style-type: none"> <li>• Ryder &amp; Wilcox Site Plan, dated 5/26/06 with supplemental detail sheets</li> <li>• Conserv Floor Plans, dated 3/24/06 and 2/3/06</li> </ul>	5/31/06
E-mail from A. Singer to S. Justus re: notification of removal of NSTAR pole-mounted lights	6/8/06
<b><i>Materials from Commission Staff</i></b>	<b><i>Date Prepared</i></b>
Letter from D. Fox to J. Carter re: determination as a Change of Use	1/4/05
Letter from S. Justus to A. Singer re: outstanding information requested about exterior lighting	5/22/06

Staff Report prepared for June 12, 2006 Public Hearing	6/6/06
<i>Materials from Town of Orleans</i>	<i>Date Received</i>
Letter from Capt. William Quinn, Orleans Fire Inspector, to S. Justus re: letter of support	6/1/06
Letter from Jon Fuller, Chairman, Orleans Board of Selectman, to Cape Cod Commission re: project support and five points for consideration	6/12/06

## TESTIMONY

### *Public Hearing on June 12, 2006:*

After hearing the following testimony, the Subcommittee voted 6-0 that the Orleans Toyota Redevelopment project is not subject to DRI review in any RPP issue area and the Applicant may proceed without further review by the Cape Cod Commission:

Ms. Justus, Commission staff, discussed the Change of Use review standards and summarized the proposed project and Staff Report dated June 6, 2006, which identified four issue areas of concern that the staff focused its review of relative impacts on, including water resources, transportation, hazardous materials, and community character.

Mr. Andrew Singer, attorney for the Applicant, introduced the Applicant's project team that was present and then summarized the proposed renovations. He explained the net reduction in overall floor space due to the removal of a portion of the mezzanine. Mr. Singer stated that the six pole-mounted exterior lights of concern had been removed by NSTAR as of last week. The wall pack lights will be shielded and will comply with the Commission Technical Bulletin and do comply with Orleans' local lighting bylaw. Regarding the grass pavers, the Applicant will look into replacing the material with what the Town has or will approve during the upcoming local review process. Regarding traffic, Mr. Singer discussed the reconstruction of the Eldredge Parkway intersection and relocation of Lots Hollow Road in the near future –all do operate and will remain to operate at Level of Service A. He stated that excellent site distances are in effect. He submitted to the Committee that the proposed expansion of the operation will not be more detrimental than the prior use and requested that no further DRI review be required for this proposal.

Mr. Meservey, Orleans Planning Director, delivered a letter from the Board of Selectman to the Regulatory Committee. He stated that the Town is happy to see what was formerly a run down site as a viable business today. He indicated that from the Town's perspective they do not see impacts from this project, mainly in regards to traffic, which is what they were most concerned about. Mr. Meservey discussed the five suggestions presented in the letter that the Town wishes the Commission to consider in their review. These included exterior lighting, location of and limitations on the outdoor display areas, site signage, and additional landscaping. The Town does not want vehicles to be displayed near the corner of Lots Hollow Road. Additionally, large directional signs that have been installed directing customers to the showroom are not consistent with the local bylaw and they hope can be addressed at local site plan review. The Town would

like low level landscaping installed. Generally, Orleans finds this to be a positive project for the Town.

Mr. Zavala asked whether the Applicant and staff had received the letter from the Selectman. He inquired if the 14-day rule for receiving new information should apply to this delivery. He asked staff if these considerations have regional impact and would affect a decision by the Commission. He indicated that most likely these issues are issues to be handled between the Town and Applicant. Ms. Justus indicated that these are not new issues to the staff as she had spoken with Mr. Meservey prior to preparing the staff report. She stated that references to the Town issues could be made in Findings. Regarding the request for additional landscaping, she indicated that because none existed previously it was an "even" issue for the purpose of the Limited DRI review standard. A Decision's findings could address the delineation of the display area because plans showing the current location of the proposed display area would be included as part of any Decision.

Mr. Zavala asked if a Condition would then be imposed on the Applicant. Ms. Justus said that no Conditions would be in a Decision if no further DRI review was deemed warranted, but if they chose to review it for Community Character, then Conditions could be made.

Ms. Garfield asked for further detail about the directional signs, particularly whether these signs were on or off the site. Mr. Meservey indicated that the sign is on the property.

Ms. Kadar addressed the issue of community character and indicated her familiarity with the area and the fact that the area is not a "pretty" area of the town and therefore is appropriate for this use. Regardless of any landscaping that may be done, this building will just not be "pretty" and never was. She stated that she determines there to be nothing at issue in terms of needing regulatory review.

Mr. Singer added that regarding the outdoor display area, a requested finding would be that no more square footage is to be added but not to preclude the possible reconfiguration of it so that the Applicant could accommodate requests from the Town, if any, to reconfigure its location.

There was no public testimony given.

## JURISDICTION

The proposed project qualifies as a DRI under Section 3(f)(i) of the DRI Enabling Regulations as a Change of Use with a gross floor area greater than 10,000 square feet. Pursuant to Section 4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use. Further, as provided in Section 4(a)(iii), the Applicant then applied for a Limited DRI Determination in accordance with Section 4(b), which requires the Regulatory Committee to determine the scope of the DRI review required.

## FINDINGS

The Commission, through the Regulatory Committee, has considered the application of Orleans Enterprises, Inc. for the proposed Change of Use project at 16 O'Connor Road, Orleans, MA, 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 3 and 4 of the DRI Enabling Regulations:

### General Findings:

- F-G1.** The project that is the subject of this Decision is as described above in the Project Description on page 2.
- F-G2.** In accordance with Section 4(b)(vi) of the DRI Enabling Regulations, the Regulatory Committee reviewed the proposed Change of Use to determine the scope of the project review, which may be limited to those RPP issue areas where the impacts are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee did consider whether the project's impacts involve deviation from the Minimum Performance Standards (MPS) of the RPP in determining the scope of DRI review. The Regulatory Committee, in making its determination, considered the resources protected by the Act and the RPP. Those RPP issue areas that the Regulatory Committee determined to be relevant to this Change of Use project review and considered in their scope of review included water resources, transportation, hazardous materials and waste management, and community character.
- F-G3.** The proposed project is to be constructed according to the following plans:
- *Site Plan – Automobile Sales and Service Business*, prepared for Orleans Toyota by Ryder & Wilcox, Inc., dated May 26, 2006, dated as received by Commission on 5/31/06.
  - *Building Renovations for Orleans Toyota*, prepared by ConServ Group Inc., dated 3/24/06 (sheets T-1, A-1, and A-3) and 2/3/06 (sheet A-2), and dated as received by Commission on 5/31/06.

### **Water Resources Findings:**

- F-WR1.** The project site lies within a contributing area to the Marine Embayment, Little Namskakett Creek. Recent USGS modeling indicated that the project lies in the Marine Recharge Area to Little Namskakett Marsh, which is not identified as having water quality problems at this time. The project is not within a wellhead protection area or a contributing area to a lake or pond. The potential for water resource impacts from the Change of Use are determined to be no more detrimental overall than the immediate prior use.
- F-WR2.** Nitrogen loading from wastewater and stormwater for the proposed use were estimated and compared to prior use actual water use figures from the Orleans Water Department. According to Orleans Water Department records annual water use was approximately 189 gallons per day (gpd) when only the previous use operated on site. The highest water use recorded since Orleans Toyota began operating on site was 162,000 gallons from July 03-July 04 (or 444 gpd). Ryder & Wilcox, the Applicant's consultant, uses 444 gpd to project future water use from the proposed Orleans Toyota as 813 gpd.
- F-WR3.** Nitrogen loading calculations, based on water use data, both actual and predicted, range from a low of 1.7 parts per million (ppm) from the old manufacturing use to a high of 3.35 ppm estimated for the expansion of Orleans Toyota. While nitrogen loading calculations do increase from the previous use, they remain well below the 5 ppm nitrogen loading standard required by the RPP for Marine Embayments.
- F-WR4.** The stormwater system has been substantially upgraded since the site was occupied by Orleans Toyota, and discharge that formerly flowed to off site locations are now wholly contained onsite. Additionally, a hazardous materials spill prevention protocol has been put in place. According to the Applicant, the on site car wash recycles or evaporates the water it uses so that it does not contribute to stormwater flows.

### **Transportation Findings:**

- F-T1.** Per MPS 4.1.3.1 area regional roadways expected to be impacted by the project include:
- Lots Hollow Road
  - Finlay Road
  - Eldredge Park Way
  - Route 6A Old King's Highway
  - Route 6
  - West Road
  - Old Colony Way
  - Route 28
  - Main Street

- F-T2.** The manufacturing business had been in operation within the previous five years and the project was given credit for traffic generated by this business. Per MPS 4.1.1.10, the Commission based trip generation for the prior use on the Institute of Transportation Engineer's (ITE) *Trip Generation* manual. Due to pertinent operations and market information submitted by the Applicant, the Commission determined trip generation estimates based on service and sales visits over the last year of operation at the site, the change in the number of service bays, and the change in the number of employees were appropriate. The pertinent operations and market information includes: fewer operating hours than most new car dealerships, older driver area market, location on a local road in an industrial park with low visibility, and lower number of employees per square feet than ITE averages. The resulting estimated trip generation increase due to the project is 190 to 230 new daily trips including 33 to 43 new weekday afternoon peak hour trips.
- F-T3.** The RPP requires that redevelopment not degrade safety to the traveling public. This redevelopment is located in an existing, developed industrial area, on a local roadway. No new curb cuts or roadway modifications are proposed. A brief review of six years of state crash records showed no crashes at the site driveways and only one crash at the intersection of Lots Hollow Road and O'Connor Road. The majority of other nearby intersections including Lots Hollow Road at Finlay Road, Finlay Road at Route 28, Lots Hollow Road at Eldredge Park Way, and Eldredge Park Way at Route 28 each had fewer than six crashes over the six years, resulting in a less than one crash per year average, which is acceptable according to MPS 4.1.1.2. The intersection of Route 6A, Eldredge Park Way, and West Road is a high crash location with about 6.7 crashes per year. MassHighway and the Town of Orleans has undertaken a major reconstruction of this intersection to improve traffic flow and safety, the completion of which is expected in late 2006 or early 2007.
- F-T4.** The eastern driveway at the project site is located about 435 feet from the O'Connor Road / Lots Hollow Road intersection and the western driveway is located about 220 feet from the eastern driveway. Consequently, the proposed project meets the RPP access management requirements of MPS 4.1.1.3.
- F-T5.** Various stakeholders have expressed concern about glare from Orleans Toyota's exterior lights reaching Route 6 and the Route 6 exit ramp. All but one of the outside building lights have been converted to cutoff fixtures and full compliance with the Orleans exterior lighting bylaw is expected. The Applicant had previously requested NSTAR to remove pole-mounted exterior lights in the parking lot, which has been completed. No other visual obstructions have been found. Consequently, the development meets the RPP requirements of MPS 4.1.1.5.
- F-T6.** A preliminary review of sight distances by Commission staff showed sufficient sight distances for speeds along O'Connor Road. Consequently, the development meets the RPP sight distance requirements of MPS 4.1.1.7.



**F-T7.** MPS 4.1.1.1, 4.1.1.6, and 4.1.2.5 require accommodation for pedestrians and bicyclists where appropriate. There are no sidewalks in the project area. Some employees may be able to walk or bike to work and some people leaving their cars for servicing may walk or bike. In addition, people traveling to the nearby ice skating rink (which may include pedestrians and bicyclists) must use the portion of O'Connor Road in front of the project site. O'Connor Road is a fairly narrow 20 feet near the site and has both car and truck traffic. Consequently, it would likely be useful for the Town and/or the Applicant to construct a sidewalk along the sites frontage on Lots Hollow Road and O'Connor Road. However, since the project is not located on a regional roadway, it is appropriate for the Town and Applicant to address this issue during the local review process.

**F-T8.** MPS 4.1.1.6 and 4.1.2.5 require pedestrian and bicycle connections through the property where appropriate. However, except for general access issues discussed above in finding F-T7, these are not appropriate given the limited access highway surrounding two sides of the project site.

**F-T9.** MPS 4.1.1.9 limits driveway curb cut openings to 24 feet. Preliminary Commission staff measurements showed that driveways are 31 feet and 67 feet wide. Given the low volumes on O'Connor Road, the wide driveways will not cause a large amount of unnecessary turning movement conflicts. Also, O'Connor Road is not a regional roadway. Consequently, it is appropriate for the Town and Applicant to address these issues during the local review process.

**F-T10.** MPS 4.1.2.1 requires 25% trip reduction for all projects where new trips are generated, which for this project would be 48-58 daily trips. The Applicant is incorporating several support measures that may reduce trips to and from the site. These include:

- Van service for auto repair clients to get to and from the dealership, which may reduce pick-up and drop-off trips for repair clients;
- Improved/expanded service waiting area which may encourage more auto repair clients to stay during repairs; and,
- An employee lounge including a microwave and refrigerator, which may discourage midday trip making by employees.

**F-T11.** Estimated summer peak traffic counts on area roadways are as follows:

- Lots Hollow Road north of O'Connor Road – 224 vehicles per hour
- O'Connor Road west of Lots Hollow Road – 97 vehicles per hour

These volumes are considered to be very low and thus the area roadways should be able to handle the moderate increase in trip generation from the proposed project.

**F-T12.** Level of Service (LOS) analysis for March 2006 traffic counts showed good results for both the site driveways and the intersection of O'Connor Road and Lots Hollow Road. Factoring this data to summer peak periods and adding a five-year general

growth factor found that the summer LOS at these locations is expected to be good with the project in place.

- F-T13.** The congested regional road locations most impacted by this project include the intersection of Lots Hollow Road and Eldredge Park Way and the intersection of Route 6A and Eldredge Park Way / West Road. The Town is improving both intersections for safety and congestion reasons. Consequently, these intersections should be able to handle the moderate project trip generation increases.

**Hazardous Materials and Waste Management Findings:**

- F-HM1.** The project site is not located in a Wellhead Protection District/Zone II Area, therefore MPS 4.3.1.3 did not apply to the review of this project.
- F-HM2.** During a 2004 Commission review of Orleans Toyota (that was proposed on a different site and for which no Decision was ultimately rendered) the Applicant submitted information to demonstrate how they would address Section 4.3 of the RPP as they are addressed at the Applicant's Hyannis location. It is understood by the Commission that the Applicant has similar plans in place for the Orleans location, and therefore that the project would be consistent with the hazardous materials and waste RPP standards.

**Community Character Findings:**

- F-CC1.** The proposed project involves the re-use and redevelopment of an existing building that is already currently partly occupied by Orleans Toyota. Since Orleans Toyota began operating at the facility in 2003, the building has been modernized and upgraded in a manner that has improved the appearance of the building exterior without changing the bulk, mass, or scale of the structure. The proposed expansion into the currently vacant portion of the building will result in some minor exterior changes in the façade, including the replacement of some of the existing windows on the lower portions of the south and west elevations with new windows and doors. The expansion will not affect the overall bulk and mass of the building. When considering the exterior upgrades made to date and the proposed additional upgrades it is found that the proposed project would result in a net improvement in the architecture of the building.
- F-CC2.** The site is nearly entirely paved with minimal existing vegetation. A narrow, vegetated buffer is present between the site and Route 6, a regional roadway. The project plans and the Applicant have not indicated any removal of the remaining vegetation on site.
- F-CC3.** The application states that the Applicant "*is working with NSTAR to eliminate existing non-conforming lighting on utility poles in the parking area and NSTAR easement.*" This lighting is at issue for associated light pollution and compliance with

local zoning bylaws, as well as transportation safety concerns from glare reaching Route 6 and the Route 6 Exit 12 ramp. According to information provided to the Regulatory Committee at the June 12, 2006 public hearing, all the lights on the NSTAR poles have been removed. Application information also indicates that new 70-watt metal halide wall packs will be mounted on the building. The Applicant indicated at the June 12, 2006 Public Hearing that these on-building lights are equipped with a full cutoff visor, and are consistent with the Orleans exterior lighting bylaw. These wall packs are also consistent with the Commission's exterior lighting design standards 2.1 to 2.4 of Technical Bulletin 95-001.

### CONCLUSION

Based on the findings above, the Commission hereby determines that the proposed Change of Use at 16 O'Connor Road, Orleans, MA is not subject to mandatory review as a Development of Regional Impact (DRI) in any Regional Policy Plan issue area in accordance with Sections 3 and 4 of the DRI Enabling Regulations because the impacts of the proposed project are not more detrimental than those of the immediate prior use.

The Commission hereby approves the application of Orleans Enterprises, Inc. for the proposed Change of Use redevelopment project to proceed without mandatory DRI review. This Decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on June 12, 2006.

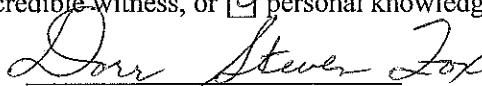
  
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Mr. Frank H. Hogan Date  
Chairman of the Regulatory Committee

### COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

*June 29, 2006*

Before me, the undersigned notary public, personally appeared Mr. Frank H. Hogan, in his capacity as Chairman of the Regulatory Committee of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

  
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Notary Public  
My Commission Expires:

Limited DRI Determination for Change of Use  
Orleans Toyota Redevelopment - CU#06010  
June 12, 2006  
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