



## CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

DATE: June 29, 2006

TO: Attorney Patrick M. Butler  
Nutter, McClennen & Fish  
1523 Iyannough Road  
P.O. Box 1630  
Hyannis, MA 02601-1630

FROM: Cape Cod Commission

RE: Development of Regional Impact and Hardship Exemption  
Cape Cod Commission Act, Sections 12, 13 and 23

CO-APPLICANTS: Enoch T. Cobb Trust  
David Cole, Trustee of Enoch T. Cobb Trust  
420 South Street, Hyannis, MA 02601  
JDJ Housing Development, LLC  
c/o The Keller Company, 683C Main Street, Osterville, MA 02655

PROJECT #: TR-05009/HDEX-05009

PROJECT: Supply New England, 755 Independence Drive, Hyannis, MA

PROPERTY OWNER: Enoch T. Cobb Trust  
David Cole, Trustee of the Enoch T. Cobb Trust  
420 South Street, Hyannis, MA 02601

MAP/PARCEL: 332/10-2

BOOK/PAGE: 4036/119

---

### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Enoch T. Cobb Trust, David Cole, Trustee, and JDJ Housing



Development LLC, (JDJ) co-applicants, and as represented by Attorney Patrick M. Butler, Nutter, McClennen & Fish, as a Development of Regional Impact (DRI) Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Supply New England project. This decision is rendered pursuant to a vote of the Commission on June 29, 2006.

### PROJECT DESCRIPTION

The proposed project, as described on the Development of Regional Impact (DRI) referral form, is to construct a new 26,132 square foot warehouse/showroom building (with a 21,120 square foot footprint) and 3,800 square feet of outdoor storage space on a leased site in Hyannis. It also encompasses 42,440 square feet of pavement for parking and vehicle access. JDJ Housing Development, LLC, proposes to lease just over three (3) acres of a 12.80 acre parcel in Independence Park, which is owned by the Enoch T. Cobb Trust, David Cole, Trustee. The 3-acre site will then be sub-leased to Supply New England (formerly R.B. Corcoran Company), an existing business with stores in Barnstable County which sells/distributes plumbing and heating-related supplies. These include hard goods (pipe, fittings, faucets, towel bars, sinks, shower stalls, etc.) and chemicals (including clog removers, cleaners, and pipe cements). Taking the latest site plan revision (*Proposed Grading & Landscape Plan* and *Proposed Utilities Plan*, Supply New England, 755 Independence Park Drive, Barnstable MA – latest revision date 9/16/05, with green/orange color offsets, by DownCape Engineering Inc.) into account, the project consists of a building with a 21,120 square foot footprint, including 5,016 square feet of display area and 3,800 square feet of outdoor storage and parking spaces. Revised plans received on September 21, 2005 reflect a reduced paved area, the size of which is not quantified on these plans.

The project site locus (Site), as shown on plans entitled *Existing Conditions Plan* of the *Site Development Plans* for SUPPLY NEW ENGLAND #755 Independence Drive, Barnstable, MA (dated 1/12/05; revised 06/10/05) is 12.80 acres of land in Hyannis, MA, within Independence Park. The proposed project area is 3 leased acres of the Site. The Site is currently vacant, partially wooded with wetland areas, is located within a Significant Natural Resource Area that has been mapped for rare species habitat, unfragmented forest, and a potential public water supply area, and is zoned Industrial/Limited. It is also located in a Growth Activity Center according to the Commission-certified Barnstable Local Comprehensive Plan. The proposed project area and remaining portions of the project Site are traversed by a utility easement.

### PROCEDURAL HISTORY

The Barnstable Town Manager referred this project to the Cape Cod Commission as a Development of Regional Impact (DRI) on August 9, 2005. The Commission received the referral form on August 10, 2005. The application was deemed complete on August 11, 2005. A duly noticed public hearing was held on August 30, 2005 at 7:00 pm at the Assembly of Delegates Chamber, First District Courthouse, in Barnstable, MA. The public hearing was continued to September 12, 2005 at 12:30 PM at the Cape Cod Commission office in Barnstable, MA. The Subcommittee voted

unanimously at this meeting to recommend to the full Commission to deny the DRI Exemption. The Applicant requested at this continued public hearing that it be allowed to submit additional information for reconsideration by the Subcommittee. On September 16, 2005, the Commission received a Memorandum and revised site plans from Nutter, McClennen and Fish. The Subcommittee held a meeting on September 21, 2005 at 9:30 am at the Commission's office in Barnstable Village, MA. The materials submitted by the Applicant to the Commission on September 16, 2005 were reviewed by the Subcommittee at the meeting on September 21, 2005. After hearing the Applicant's request for reconsideration, and reviewing the newly submitted information the Subcommittee decided not to reconsider its unanimous vote to deny the exemption request and agreed to let the denial vote stand. The public hearing on the DRI exemption was continued to September 22, 2005 at the Commission's office where it was closed by a hearing officer of the Commission, with the record kept open. The public hearing on the DRI was continued to 10:00 am on October 11, 2005 at the Commission's office. The vote of the full Commission on September 29, 2005 was to deny the DRI exemption.

On November 11, 2005, the co-applicants submitted a Hardship Exemption/Project of Community Benefit (POCB) request. The application was amended to include both JDJ Housing Development, LLC and the Enoch T. Cobb Trust as co-applicants. The co-applicants, through Nutter, McClennen, and Fish, applied to the Commission for consideration of the project as a Hardship Exemption/POCB pursuant to Section 8 of the *Enabling Regulations*. On March 16, 2006, the Hardship Exemption application was deemed complete. Based on the amended application, the project is now under consideration for a Hardship Exemption/POCB application, or, in the alternative, a DRI. The Commission and the co-applicants entered into an extension agreement to extend the decision period on the DRI application to the close of business on May 1, 2006. On March 22, 2006, a public hearing was held by a Subcommittee for consideration of the Hardship Exemption request. On March 23, 2006, the Commission and the co-applicants entered into an extension agreement to extend the decision period on the DRI application to the close of business on June 29, 2006. On June 1, 2006, the Subcommittee held a meeting to discuss the Hardship Exemption request. The Subcommittee discussed these issues with the staff and voted to recommend approval of the Hardship Exemption to the full Commission based on a finding being included in the draft decision that the Subcommittee found that the remainder of the parcel would undergo DRI review, if a development was proposed, and it is unlikely that the rear portion of the site will be developed given the resource and site constraints. The Subcommittee also voted to hold a meeting on June 12, 2006 to review a draft written decision. At the meeting on June 12, 2006, the Subcommittee reviewed a draft written decision. They also voted to hold a meeting on June 15, 2006. At the meeting on June 15, 2006, the Subcommittee reviewed a draft written decision. They also voted to recommend approval of the project to the full Commission as a Hardship Exemption. The Subcommittee also voted to extend the time frame for a decision by the Commission until July 28, 2006. On June 15, 2006, the Commission and the co-applicants entered into an extension agreement to

extend the decision period on the DRI application to the close of business on July 28, 2006.

### Materials Submitted for the Record

#### From the Co-Applicants and Consultants

DRI exemption application and attachments	4/12/05	
Letter, Attorney Butler and Cox, DRI exemption cover	4/12/05	
Copy of a check for \$9,000	4/12/05	
Letter, Attorney Cox, additional application materials	4/15/05	
Commission Application cover sheet for a DRI exemption	4/15/05	
E-mail, from Dan Ojala, site design issues	4/18/05	
Letter, Attorney Cox, abutters list and copy of MHC green card	4/20/05	
Letter, Attorney Butler & Cox, letter of intent - Cobb Trust/JDJ	4/29/05	
Memo, Attorney Butler, additional application materials	6/15/05	
Memo, Attorney Butler, revised site plans	6/15/05	
Memo, Attorney Butler, information on economic development	6/20/05	
Memo, Attorney Butler, additional application materials	6/20/05	
E-mail, Attorney Cox, scheduling of hearing	6/22/05	
E-mail, Attorney Cox, scheduling of hearing	6/22/05	
Memo, Attorney Butler, transportation information	7/11/05	
Fax, Attorney Butler, letter from Cobb Trust, sale of CR	7/13/05	
Letter, Attorney Butler, scheduling of hearing	8/3/05	
E-mail, Attorney Cox, scheduling of hearing	8/10/05	
Memo, Attorney Butler and Cox, revised landscape plan, Stephen Stimson	8/19/05	
Memo, Attorney Cox, copies of applicant's materials for public hearing	8/22/05	
Memo, Attorney Cox, revised floor plan and elevation drawings	8/23/05	
Color photographs of interior/exterior of store in Hyannis	8/30/05	
White sheet, Attorney Butler, water resources information	8/30/05	
Yellow sheet, Attorney Butler, comparison with other projects	8/30/05	
Green sheet, Attorney Butler, discussion of exemption	8/30/05	
E-mail, Dan Ojala to Attorney Butler and Cox, revised plans/drawings	9/7/05	
Memo, Attorney Cox, revised plans/drawings from Dan Ojala as E-mailed	9/7/05	
Copy of part of Change of Use decision, Attorney Butler	9/12/05	
Memo, Attorney Butler, revised project information	9/16/05	
E-mail, Attorney Butler, Memo from Trustee of Cobb Trust	9/20/05	
Memo, to Cobb Trust from Attorney Butler, discussion on sale of CR	9/21/05	
E-mail, Attorney Cox, request to fax Memo to Cobb Trust Trustee, copying sets of materials, question on number of copies needed for the mailing	9/22/05	
Memo, Attorney Cox, with copies of materials for full Commission	9/22/05	
Colored sheets of paper – green and pink – from Attorney Butler, points made in presentation at the full Commission meeting (received at the meeting)	9/29/05	
Materials from a three-ring binder, from Attorney Butler, additional materials presented at the full Commission meeting	9/29/05	
Sketch Plan, by DownCape Engineering, dated 9/12/05	9/29/05	
Fax, Attorney Cox, Memo from Horsley Witten Group	9/29/05	
Copy, Memo from Horsley Witten Group	9/30/05	
Letter from Attorney Butler to John Lipman	9/30/05	
Fax, Attorney Butler, continue hearing of 10/11/05	10/2/05	
Notice of Appeal between JDJ Housing Development, LLC vs. Cape Cod Commission	11/4/05	
Letter from Attorney Butler to Dorr Fox	11/11/05	
Memo from Attorney Butler to Andrea Adams	11/28/05	

Supply New England – HDEX Decision – 6/29/06

Memo from Attorney Butler to Dorr Fox and Andrea Adams	11/30/05
Memo from Attorney Butler to Andrea Adams, Dorr Fox, Attorney Wielgus, Hardship Exemption Application	1/27/06
E-Mail from Attorney Butler to Andrea Adams, Rectrix & Supply New England	2/27/06
Memo from Attorney Butler to Andrea Adams	2/28/06
Memo from Attorney Butler to Andrea Adams	3/10/06
Proposed Floor Plans (A1.1, A2.1, and A2.2), NDA Architects	3/13/06
Memo from Attorney Butler to Andrea Adams	3/14/06
MESA Project Review, dated February 1, 2006	3/15/06
Memo from Attorney Butler to Andrea Adams, hearing	3/15/06
Memo from Attorney Butler to Andrea Adams and Attorney Wielgus	3/15/06
Letter from Attorney Butler to Andrea Adams, fee waiver request	3/27/06
Colored parcel maps of Israel Pond and Rose Motel parcels	5/4/06
Memo from Attorney Butler, outline of points discussed w/Town	5/17/06
Memo from Attorney Butler, follow-up to meeting	5/25/06
Fax from Attorney Butler, to Jon Witten, proposed language GF9	6/12/06
Aerial plan from Attorney Butler, Israel Pond (?)	6/1/06
Fee waiver request form, from Attorney Butler	6/20/06
Concept ANR plan, from Attorney Butler	6/22/06
Copy, application cover, stamped by Town Departments	Various

#### **From the Commission**

Letter, to Attorney Butler, DRI exemption application not complete	4/13/05
E-mail, to Dan Ojala, from Scott Michaud, water resources issues	4/15/05
Staff Routing form	4/21/05
E-mail, to Attorney Cox, application materials	6/22/05
Memo to staff with application materials	6/23/05
Letter, to Attorney Butler and Cox, scheduling of hearing	8/2/05
E-mail, to Commission staff, scheduling of hearing	8/8/05
E-mail, to and from Susan Kadar, project description, hearing date	8/10/05
Fax cover sheet, to Attorney Cox, DRI referral form	8/10/05
E-mail, to Robin Giangregorio, receipt of DRI referral form	8/10/05
Fax cover sheet, to Attorney Butler, letter	8/11/05
Letter, to Attorney Butler, DRI referral received and application complete	8/11/05
Fax cover sheet, to Joan Pierce, Massachusetts Department of Fish and Wildlife, copy of Project Summary from applicant	8/18/05
Memo, to Subcommittee, site visit, hearing location and time	8/22/05
Staff report	8/24/05
Fax cover sheet, to Attorney Cox, Robin Giangregorio, and Ed Maroney, copy of staff report and date for hearing	8/24/05
E-mail, to Tom Broadrick, Director of Planning, copy of staff report, site visit date and time, and date and time for hearing	8/24/05
Locus map (aerial photo) for site visit	8/29/05
E-mail, to Attorney Cox, no written comments on project from public or others as of morning of August 30, 2005	8/30/05
Hearing Notice	8/30/05
Minutes	8/30/05
E-mail, to Attorney Butler and Cox, Town staff, Subcommittee update, Minutes	9/9/05
Fax cover sheet, to APCC, copy of staff report	9/6/05
E-mail, to staff, revised plans received from applicant	9/7/05
E-mail, to Sharon Rooney and Sarah Korjeff, revised building elevations	9/7/05
E-mail, to staff, revised plans received from applicant	9/8/05
E-mail, to Subcommittee, draft Minutes, Subcommittee Update, other info.	9/8/05

E-mail, transmission error message	9/8/05
E-mail, to Roslyn Garfield, draft Minutes, Subcommittee Update, other info.	9/8/05
E-mail, to John Harris, draft Minutes, Subcommittee Update, other info.	9/8/05
Subcommittee update	9/8/05
E-mail, to Scott Michaud, request for copies of information for file	9/8/05
Outline of steps for the Subcommittee Chair	9/12/05
E-mail, from Susan Kadar, concerns about project	9/12/05
Hearing Notice	9/12/05
Sign In Sheet	9/12/05
Minutes	9/12/05
E-mail, to Ed Maroney, copy of Project Update	9/14/05
E-mail, to Subcommittee and staff, meeting on September 21, 2005	9/16/05
E-mail, to Subcommittee, applicant and Town Director of Planning, meeting on September 21, 2005 and copies of Commission materials	9/20/05
Subcommittee update	9/20/05
Fax cover sheet, to Attorney Butler	9/20/05
Meeting Notice	9/21/05
Hearing Notice	9/22/05
Memo, to Commission Members, including Subcommittee Members, copy of draft decision and other materials for consideration Commission meeting	9/22/05
Fax cover sheet, to Roslyn Garfield, copy of revised draft decision	9/22/05
Fax confirmation sheet, to Attorney Cox, Memo to Cobb Trust	9/22/05
Fax cover sheet, confirmation sheet, to Attorney Butler and Town Director of Planning, copy of draft decision as approved by Subcommittee Chair	9/23/05
Draft decision for full Commission hearing, distributed at 9/21/05 meeting	9/29/05
Hearing Notice for hearing before full Commission	9/29/05
Memo, to Commission Chair and Subcommittee Chair, outline of anticipated steps as part of the hearing before the full Commission	9/29/05
E-mail, to Commission staff, next steps in project review	10/4/05
Letter from Attorney Wielgus to Attorney Butler	10/7/05
Hearing Notice	10/11/05
Minutes, Hearing Officer	10/11/05
Memo from Andrea Adams to Subcommittee	11/14/05
Hearing Notice	11/17/05
Minutes, Hearing Officer	11/17/05
Letter from Andrea Adams to Attorney Butler	11/22/05
Letter from Andrea Adams to Attorney Butler	11/23/05
Extension Agreement	11/23/05
Letter from Andrea Adams to Attorney Butler	12/13/05
Letter from Attorney Wielgus to Attorney Butler	12/14/05
Memo, from Andrea Adams to Commission staff	12/14/05
Letter from Andrea Adams to Attorney Butler	1/12/06
Letter from Andrea Adams to Attorney Butler	1/12/06
Letter from Dorr Fox to Attorney Butler dated	1/17/06
Letter from Andrea Adams to Attorney Butler	2/17/06
E-Mail from Andrea Adams to Commission staff members and Subcommittee members about public hearing	2/22/06
E-Mail from Andrea Adams to Commission staff members and Subcommittee members about public hearing	2/22/06
E-mail from Andrea Adams to Commission staff members and Subcommittee members about project information	2/22/06
Letter from Andrea Adams to Attorney Butler	2/23/06
Fax from Andrea Adams to Attorney Butler	2/27/06
Memo from Andrea Adams to Tim Boesch	3/2/06

E-Mail from Sarah Korjeff to Andrea Adams	3/3/06
E-Mail from Andrea Adams to Subcommittee	3/7/06
E-Mail from Andrea Adams to Commission staff	3/7/06
Minutes, Hearing Officer	3/13/06
Staff report	3/16/06
E-Mail from Andrea Adams to Attorney Butler, staff report	3/16//06
Letter from Andrea Adams to Attorney Butler	3/16/06
E-Mail from Andrea Adams to Subcommittee, E-mail from Attorney Butler	3/20/06
Memo from Andrea Adams to Subcommittee, hearing	3/22/06
Sign – in sheet, hearing	3/22/06
E-Mail from Andrea Adams to Attorney Butler, extension fee	3/23/06
Extension Agreement	3/23/06
Agenda of Executive Committee	4/3/06
E-Mail from Sarah Korjeff to Andrea Adams and Sharon Rooney, design issues	4/7/06
Memo to Commission Members from Andrea Adams, key motions	4/20/06
Staff report	5/24/06
Hearing Notice	6/1/06
Hearing Attendance Sheet	6/1/06
Minutes	6/1/06
Fax cover sheet, draft decision to Attorney Butler	6/8/06
Fax cover sheet, to Patty Daley, Town, draft decision	6/9/06
Fax cover sheet, to Tom Broadrick, Town, draft decision	6/9/06
Meeting Notice	6/12/06
Minutes	6/12/06
E-mail, to Subcommittee, revised draft decision and minutes	6/12/06
E-mail, to Commission members, draft decision and other materials	6/12/06
E-mail, to Attorney Butler, revised draft decision	6/12/06
E-mail, to Daley and Broadrick, Town, revised draft decision	6/13/06
E-mail, to Subcommittee, meeting on 6/15/06	6/14/06
Meeting Notice	6/15/06
Minutes	6/15/06
Extension Agreement	6/15/06
Fax cover sheet, to Attorney Butler, revised draft decision	6/20/06
Memo to Subcommittee, about September 21, 2005 meeting	Undated
Memo to Subcommittee, information for 6/1/06 hearing	Undated
Memo to Subcommittee, information for 6/12/06 meeting	Undated

#### **From Federal, State or Local Officials**

Fax, DRI referral form, from Town of Barnstable	8/10/05
Letter, from APCC, expresses concerns about the project	9/20/05
E-mail, from Patty Daley, Town of Barnstable, project issues	5/18/06

#### **From the Public**

No written comments received

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of the Commission's proceedings are incorporated into the record by reference.

### TESTIMONY

#### ***Public Hearing***

*Below is a summary of the Public Hearings. Please see the record for the full Minutes, and Minutes of any Subcommittee meetings.*

At the March 22, 2006 Public Hearing, Attorney Patrick Butler presented the project and outlined the applicant's application for a Hardship Exemption. Commission Counsel, Attorney Jessica Wielgus presented the Commission staff report. Joseph Keller offered comments and Richard Andres requested clarity regarding the applicants and their relationship to the adjoining project. The Subcommittee discussed open space, natural resources and transportation issues.

At the June 1, 2006 Public Hearing, Mr. Butler presented an alternative proposal for open space and transportation with the intent of obtaining an approval for the hardship exemption. The Subcommittee discussed these issues with the staff and decided to recommend approval of the Hardship Exemption to the full Commission since the remainder of the parcel would undergo DRI review, if a development was proposed, and it is unlikely that the rear portion of the site will be developed given the resource and site constraints.

### JURISDICTION

The proposed project qualifies as a Development of Regional Impact under Section 3(e) of the *Enabling Regulations* as amended, as "*new construction of any building or buildings...with a Gross Floor Area greater than 10,000 square feet...*".

### FINDINGS

The Commission has considered the application of the co-applicants, the Enoch T. Cobb Trust and JDJ Housing Development, LLC for the Supply New England project, and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following findings pursuant to Sections 12, 13 and 23 of the Act:

#### **General**

GF1. The proposed project qualifies as a Development of Regional Impact because it is new construction of a building with a Gross Floor Area greater than 10,000 square feet.

GF2. The most recent site plans (dated 9/16/06) indicate the proposed building consists of 21,120 square feet of plumbing supply warehouse and 5,280 square feet consisting of ancillary retail, wholesale, and showroom space. Based on these

plans, the project will also include 3,800 square feet of ancillary outdoor storage and 41 parking spaces. As noted in Finding CCF3 and Condition CCC2, any inconsistencies between the site plan and interior floor plans must be resolved prior to issuance of a Preliminary Certificate of Compliance by the Commission.

GF3. This project was reviewed subject to the 2002 (revised) Regional Policy Plan.

GF4. The Town of Barnstable has a Cape Cod Commission certified Local Comprehensive Plan (LCP).

GF5. The proposed project will require an Order of Conditions from the Barnstable Conservation Commission, and Barnstable Site Plan review.

GF6. At a public hearing June 1, 2006, a Commission Subcommittee determined the proposed project was eligible for consideration of a Hardship Exemption.

GF7. The Commission finds that the Enoch T. Cobb Trust, a co-applicant, has a financial hardship in meeting some of the requirements of the Regional Policy Plan. This is based in part on the Enoch T. Cobb Trust's unique financial situation, in that its primary source of funding is through the lease or sale of land holdings, and that its sole mission is to benefit the school children of the town of Barnstable. The Commission finds that for Minimum Performance Standards (MPS) 2.1.1.2.F, 2.3.1.2, 2.5.1.3, 4.1.1.2, 4.1.2.1, 4.1.3.4, 4.1.3.7, and 6.2.5, the Enoch T. Cobb Trust has demonstrated that a hardship exists, and that a literal enforcement of the provisions of the Cape Cod Commission Act (Act) would involve substantial hardship. The Commission also finds that desirable relief may be granted without substantial detriment to the public good, and without substantially derogating from the purposes of the Act.

GF8. Subsequent to the recording of this decision, any further development on or within the 12.8 acre project site locus (Site), including but not limited to the re-division or subdivision of the Site, would be a modification of this decision and, accordingly, reviewed pursuant to the Cape Cod Commission Act.

GF9. The Enoch T. Cobb Trust may, in accordance with this decision, prepare, file, obtain endorsement upon, and record an Approval Not Required (ANR) Subdivision Plan creating two lots, one of which shall consist of the project area/leased premises as shown on the plan entitled Site Layout Plan of the Site Development Plans for SUPPLY NEW ENGLAND #755 Independence Drive, Barnstable, MA (dated 1/12/05; revised 9/7/05), and the second of which shall consist of the remaining portion of the Site. The lots shall be created to conform with the provisions of Section 240-33(E) of the Barnstable Zoning Ordinances. The ANR Plan shall contain a notation that the lots created shall be subject to the terms and provisions of this Development of Regional Impact Hardship Exemption decision.

### **Natural Resources/Open Space**

NRF1. The entire 12.8 acre project site locus is mapped Priority Habitat in the 11<sup>th</sup> Edition of the Natural Heritage Atlas. The Site is also mapped as a potential public water supply area and portions are mapped unfragmented forest according to the RPP significant natural resource areas map. Portions of the Site are located within a land area known as the Hyannis Coastal Plain Ponds Complex, a collection of coastal plain ponds which provide habitat for globally rare species.

NRF2. The applicants did not provide a complete natural resources inventory of the Site as required by MPS 2.4.1.1, but they did provide a preliminary review of natural conditions on the Site by a biologist with the Horsley Witten Group. The biologist identified three distinct wetland types on the Site, including coastal plain pondshore, isolated shrub-dominant wet basin depressions, and wet meadow/scrub-shrub wetlands. According to project plans, 3.2 acres of the Site are wetland, the remaining 9.6 acres are upland. The 3 acre project area does not contain wetlands, though portions of a buffer to an isolated shrub-scrub wetland are located within the project area. Portions of a utility easement run through the Site from north to south.

NRF3. The Site is mapped priority habitat for rare species. The RPP requires that DRIs not adversely impact rare species or their habitats. The Natural Heritage and Endangered Species Program (NHESP) has provided comments on the project, dated March 3, 2006, stating that "this project, as currently proposed, will not result in a prohibited "take" of state listed species." The letter goes on to state "to ensure that no alteration occurs beyond the "Work Limit Line" as shown on the plan dated 9/16/05 and that future activities are compatible with state-listed species and their habitat documented in the immediate vicinity of the subject property, we strongly encourage that the remaining portion(s) of the property be placed under long-term habitat protection."

NRF4. The Commission finds that based on the location of wetlands and upland on the Site, the location of the utility easement, the access constraints, and the comments from the NHESP, that it is unlikely that the remaining 9.7 acres of the Site may be developed.

NRF5. The proposed building and parking area were located within the 100 foot buffer to a wetland on-Site, but have been moved out of this area. Disturbance and construction of a retaining wall will occur within the last 20 feet of the 100 foot wetland buffer, which is inconsistent with MPS 2.3.1.2. The applicant has made efforts through the DRI review process to minimize the impact to the wetland buffer by removing the building footprint from this area. Consequently, given the Site constraints and project requirements, the proposed alteration is unavoidable and has been minimized. The Commission finds it appropriate to grant relief from the wetland buffer requirements through the hardship exemption.

NRF6. The location of the project at the front of the Site, adjacent to the road and in a previously disturbed area, and away from the more sensitive resources at the back of

the Site, complies with several MPSs in the RPP, including MPS 2.4.1.1 which requires that site layout minimizes impacts to wildlife and plant habitat, MPS 2.4.1.2 which requires minimizing the clearing of natural vegetation and alteration of topography, MPS 2.4.1.3, which requires minimizing the fragmentation of wildlife and plant habitat, MPS 2.4.1.4 which prohibits projects which would adversely impact rare species or their habitat, and MPS 2.5.1.1 which requires clustering development away from sensitive resources.

NRF7. NHESP also stated in their letter dated March 3, 2006 that destructive off-road vehicle use is known to occur in the area, and that the property owner should take steps to control off-road vehicle access.

NRF8. The development area is approximately 3 acres for the project. Since the project is located in a significant natural resource area, the open space requirement (MPS 2.5.1.3) is twice the development area, or a total of 6 acres of open space.

NRF9. The Commission's preferred location for the open space for this project is on the project Site, given the sensitivity of the resources present. However, the applicant has maintained that the charitable nature of the Cobb Trust, and its fiduciary responsibilities to maximize the returns on its property, pose a hardship in meeting the open space requirements. The Cobb Trust has represented their intention to protect the rear portion of the Site for conservation purposes, but wishes to sell a conservation restriction or the fee in the land. The Town of Barnstable has indicated their interest in purchasing the remaining 9.7 acres of the Site, and has been a party to several discussions between staff and the applicant toward that effort. Consequently, the Commission finds that the Enoch T. Cobb Trust, co-applicant, has demonstrated a hardship in meeting the open space requirements, and that the relief granted is the minimum relief necessary, and that granting such relief will not nullify or substantially derogate from the purposes of the Act.

NRF10. JDJ has proposed to permanently protect 2.5 acres of upland located on two lots identified on Barnstable Town Assessor's maps as map 332/parcel 005 and map 253/parcel 019/parcel extension T00. These two parcels are both located adjacent to ponds, one to Israel pond within the Hyannis Coastal Plain Ponds Complex, and the other Shallow Pond located south of Route 132, and are both mapped priority habitat for rare species. Both parcels are also located adjacent to previously protected open space. The Israel Pond parcel is pristine, and will be an excellent addition to the permanently protected land in the area, though the exact acreage of this parcel is still in question. The Shallow Pond parcel contains an existing boarding house, and portions of the site have been disturbed with land clearing, brushing, and considerable dumping. The natural resource values of this parcel are less than the onsite parcel's, but its habitat value can be restored through cleanup and revegetation.

NRF11. The protection of the pondshore and wetland buffers to these two ponds may be considered mitigation for the small area of disturbance within the 100 foot buffer on the project Site (see Finding NRF5).

NRF12. Invasive species management is an interest of the Commission, MPS 2.4.1.6. Given the highly sensitive nature of the Site, the applicant should make every effort to avoid the introduction of invasive species to the Site.

### **Water Resources**

WRF1. Impacts to water resources consist of the project's nitrogen load to groundwater from the project's standard Title-5 septic system, and nitrogen and other contaminants associated with stormwater runoff from 42,440 square feet of the 3.1-acre portion of the Site to be paved.

WRF2. Groundwater flowing beneath the Site is located in contributing areas to existing and potential public water supplies and contributing areas to the Lewis Bay estuarine system.

WRF3. Projects in Potential Public Water Supply Areas (PPWSAs) are limited by MPS 2.1.1.2.F.2 to a parcel-wide nitrogen-loading concentration of 1 ppm. All other standards applicable to Wellhead Protection Areas pursuant to MPS 2.1.1.2.A also apply to PPWSAs.

WRF4. The project's nitrogen loading concentration may exceed 1 ppm if –

- In accordance with MPS 2.1.1.2.F, supporting information demonstrates that the PPWSA will not be used as a potential water supply; *or*
- Relief is granted to the project from having to meet MPS 2.1.1.2.F through a Hardship Exemption.

In the absence of supporting information demonstrating that this property is not required as a potential public water supply, and given physical constraints of the Site described in NRF4 and WRF6, and the fiduciary constraints of the Cobb Trust which prevent the Trust from permanently protecting the rear 9.7 acres of the Site through this DRI decision, the Commission finds it appropriate to grant relief from MPS 2.1.1.2.F and that the relief granted is the minimum relief necessary, and that granting such relief will not nullify or substantially derogate from the purposes of the Act.

WRF5. Projects in Wellhead Protection Areas are limited by MPS 2.1.1.2.A.1 to a parcel-wide nitrogen-loading concentration of 5 ppm and required by MPS 2.1.1.2.A.5 to adopt a turf-management plan that incorporates best-management practices.

WRF6. Nitrogen loading to groundwater is directly related to on-site wastewater disposal. Use of a standard Title-5 septic system with 379 gallons of Title-5 wastewater design flow is proposed. The project results in a nitrogen-loading concentration of 1.3 ppm if 9.7 acres of the parcel are not developed. The portion of the project parcel not subject to lease is not likely to be developed because the associated upland is interspersed with 3.2 acres of wetlands. If actual water-use

information is used for comparable development (FW Webb & Co), the project's estimated Title-5 wastewater flows would be 274 gpd, reducing the nitrogen-loading concentration from 1.3 ppm to 1.0 ppm, consistent with MPS 2.1.1.2.F.2. Alternatively, connection of the project to sewer reduces the project's nitrogen-loading concentration to 0.99 ppm, likewise consistent with the 1-ppm standard.

WRF7. JDJ Housing Development, LLC, a co-applicant, has agreed to apply to the Massachusetts Department of Environmental Protection and to the town of Barnstable for a municipal sewer connection for this project.

WRF8. The project is required to meet MPS 2.1.3.3 and MPS 2.1.3.2 which respectively require use of vegetation to treat runoff and consistency with Massachusetts Stormwater Policy Guidelines. The guidelines prescribe use of catch basins in conjunction with pre-treatment in critical areas such as Wellhead Protection Areas, and also prescribe spill control in areas with higher potential pollutant loads such as fleet-truck storage.

Project stormwater will be managed largely through use of catch basins and subsurface leach pits. Project plans currently include a mechanical shutoff (gate valve) at the loading dock trench drain, in compliance with MPS 2.1.3.7. Project plans revised and submitted on September 7, 2005 show removal of a proposed stormwater infiltration basin from the 100-foot wetland buffer and incorporation of a vegetated swale in the parking island. The swale will treat runoff from approximately 1/6<sup>th</sup> of the proposed impervious pavement. The project's Operations and Management (O&M) plan will need to be updated to reflect the September 7, 2005 changes and should incorporate information and provisions identified in Condition WRC3.

### **Hazardous Materials/Wastes**

HMWF1. The Site is located in a Wellhead Protection Area, so MPS 4.3.1.3 applies to this project which limits the amount of hazardous materials and wastes to a "household quantity" as defined by the RPP. A May 27, 2005 Commission staff site visit to their Hyannis store indicated that Supply New England had at least 50 gallons of hazardous materials on hand, which is an amount in excess of the limit set by the Regional Policy Plan.

HMWF2. MPS 4.3.1.1 requires DRIs to make "reasonable efforts to minimize their hazardous material use and/or waste generation through source reduction, reuse, material substitution, employee education, and recycling." As noted in HMWF1, the company sells an array of hazardous materials targeted to the plumbing/heating industry. To address MPS 4.3.1.1, the company could institute a program of actively seeking the least-toxic products to sell.

HMWF3. MPS 4.3.1.2 requires "compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.000." In addition to the hazardous materials offered for sale, the company also generates some wastes regulated by 310 CMR 30.000,

including used fluorescent bulbs.

HMWF4. MPS 4.3.1.4 requires that DRIs “prepare an emergency response plan that identifies potential threats to employee safety and health and threats of environmental releases.” The company currently handles, stores and sells a variety of hazardous materials.

### **Economic Development**

EDF1. JDJ has provided sufficient economic data, as prescribed in technical bulletin 04-002, to comply with MPS 3.1.1. Overall, the impacts of this project on the regional economy will be neutral given that Supply New England is an existing business already located in Barnstable. This project may, according to the co-applicants, result in the addition of two full-time positions. Currently, Supply New England employs 16 full-time people with benefits. As a wholesale/retail business, this project will be appropriately located in an industrial zone. While this project will not add diversity to the regional economy, it does serve an important sector of the economy and its retention in the area will maintain current levels of competition.

### **Community Character**

#### **Building Design**

CCF1. The latest submittals included elevation drawings for all four facades of the building, dated 8/4/05. These elevations indicate the general building materials but do not indicate proposed colors. The applicants also submitted samples of the proposed exterior masonry blocks and product information about the proposed exterior metal panels, but did not indicate their color choices in either case.

CCF2. Given the non-traditional materials proposed, the size of the building mass (in excess of 15,000 square feet), and limited screening, natural or neutral color tones should be used on both the metal wall panels and the metal roof. As with all metal exterior materials, a matte finish is also appropriate to limit reflectivity.

CCF3. The most recent interior floor plan (received by the Commission on March 14, 2006) does not match the most recent site plan (received on September 21, 2005). The interior floor plan has four straight sides, while the site plan shows a building with one wall articulated in such a way as to reduce encroachment into the wetland buffer. This inconsistency is required to be addressed at the time of the Preliminary Certificate of Compliance.

#### **Site Design/Landscaping**

CCF4. MPS 6.2.5 states that for all new development, no individual structure shall exceed a footprint of 15,000 square feet unless it is fully screened or located in a Growth Incentive Zone (GIZ). Full screening may be achieved through the use of traditionally scaled frontage buildings or a vegetated buffer at least 200 feet in depth. The proposed development has a footprint of 21,120 square feet, and a GIZ does not

encompass the proposed project. Therefore, the project must be fully screened. Due to site constraints, including an existing wetland to the south, full compliance with MPS 6.2.5 would render the site unbuildable and would therefore constitute a substantial hardship. JDJ submitted a revised landscape plan prepared by Stephen Stimpson Associates dated August 19, 2005 that provides a 50 ft wooded buffer with a mixture of evergreen and deciduous trees and shrubs to screen the proposed building from Independence Park Drive. Granting partial relief from MPS 6.2.5 will not nullify or substantially derogate from the intent and purposes of the Act nor result in a substantial detriment to the public good.

CCF5. MPS 6.2.6 allows the *use of nontraditional materials and forms in industrial parks or areas not visible from scenic or regional roadways* provided the project maintains adequate buffers to ensure that the proposed development will not be visible from scenic or regional roadways. The proposed project is located within Independence Park, an existing industrial park in the town of Barnstable. Therefore, application of MPS 6.2.6 is appropriate for this project. As noted above, the applicant proposes to maintain a 50ft wooded buffer along Independence Park Drive to screen the proposed development from this roadway. Curb cuts have been consolidated into one entrance/exit on Independence Drive, which allowed for a greater landscaped buffer area along this roadway. The finished grade of the proposed building is also set 14ft below the roadway, which will also help to screen the building. Therefore, the proposed project is consistent with MPS 6.2.6.

MPS 6.2.9 requires all development to implement a landscape plan that *addresses the functional aspects of landscaping, and requires all development to provide a maintenance agreement for all proposed landscaping*. Based on a revised landscape plan dated August 19, 2005, the proposed landscape plan is consistent in part with MPS 6.2.9. The applicant has not submitted a draft maintenance agreement for all proposed landscaping for three years, as required by this MPS.

CCF6. MPS 6.2.7 requires parking to be located to the side or rear of the buildings. Proposed parking is located to the side of the building, consistent with this MPS.

CCF7. MPS 6.2.11 prohibits the installation of internally illuminated signs. No information was submitted concerning proposed signage for the site.

#### Exterior Lighting

CCF8. MPS 6.2.10 of the 2002 RPP requires that *“development and redevelopment conform with the Cape Cod Commission’s exterior lighting design standards and submission requirements, Technical Bulletin 95-001.”* As of the date of this decision, no information was provided on the proposed project’s exterior lighting.

### **Transportation Resources**

TF1. Based on the definition in MPS 4.1.3.1, area regional roadways include Independence Drive, Attucks Way, Kidds Hill Road, Mary Dunn Road, Route 6A, and Route 132.

TF2. In compliance with MPS 4.1.1.10, the Commission determined trip generation for the project from the Institute of Transportation Engineer's (ITE) *Trip Generation* manual. Based on classification of 21,120 square feet of the building as warehouse (first floor and mezzanine), 5,280 square feet of the building as Building Materials and Lumber Supply (retail, wholesale, and showroom area), and 5,500 square feet of outdoor storage as warehousing and utilizing techniques in the ITE manual, the project is estimated to generate 37 new weekday morning peak hour trips, 48 new weekday afternoon peak hour trips, and 397 new weekday daily trips.

TF3. MPS 4.1.1.1 requires development to not degrade safety for all users. The proposed project has acceptable driveway sight distances, includes a sidewalk easement, accommodates all expected users, and generates a moderate amount of traffic not expected to affect area intersection safety and consequently complies with this MPS.

TF4. MPS 4.1.1.2 requires all projects to analyze safety and provide for necessary safety mitigation at intersections impacted by 25 or more new peak hour trips. The project is expected to impact Independence Drive at Kidds Hill Road, Attucks Way, and Route 132 at this level. However, the Hardship Exemption has been applied to this standard. The Commission finds, based on the cost to the Enoch T. Cobb Trust of such analysis, and based on sufficient infrastructure and recent improvements for area intersections:

- The Enoch T. Cobb Trust, a co-applicant, has met its burden of showing that a hardship exists,
- Literal enforcement of the Minimum Performance Standards would be a hardship for the Enoch T. Cobb Trust,
- Relieving the requirements of MPS 4.1.1.2 to not require safety analysis and mitigation of the locations impacted by peak hour traffic is the minimum relief required to alleviate the hardship, and,
- The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

TF5. MPS 4.1.1.3 requires all developments to meet access management guidelines for driveway spacing. The proposed driveway is more than 500 feet from the nearest intersections and will be located opposite a driveway for a housing complex. A break will be provided in the median of Independence Drive to allow for full access to the development. Consequently, the project complies with the MPS.

TF6. MPS 4.1.1.5 requires all human made objects to be placed to minimize obstructions, safety conflicts, and glare including placement of utilities underground where appropriate. The project will be required to comply with this provision and with Commission lighting standards as the project development proceeds. All utilities will be required to be underground. Consequently, the project complies with the MPS.

TF7. MPS 4.1.1.6 requires minimization of impacts to adjacent roadways and accommodation of all users. The site plan shows the development driveway and parking spaces are situated such that maneuvers in the parking lot should not affect travel on Independence Drive. All users of the site are expected to arrive by motor vehicle. Some employees may choose to walk or bicycle to the site, but few are expected. MPS 4.1.1.6 also requires provisions for walking and bicycling connections on the property where appropriate. The co-applicants will provide a 10 foot sidewalk right of way at the front of the property, if it is needed.

TF8. MPS 4.1.1.7 requires provision of safe driveway sight distances. The co-applicants' engineer and Commission staff believe sight distances will meet the standards. The co-applicants will be required to have sight distances certified for standards compliance before occupancy.

TF9. MPS 4.1.1.9 limits driveway widths to state standards which is 24 feet plus turning radii for this project. The co-applicants will be required to finalize the site plan including meeting this standard and submit the site plan for Commission staff review.

TF10. MPS 4.1.2.1 requires all developments to reduce expected daily traffic by 25%. However, a Hardship Exemption has been applied to this standard. The Commission finds, based on the cost to the Enoch T. Cobb Trust of such mitigation:

- The Enoch T. Cobb Trust, a co-applicant has met its burden of showing that a hardship exists,
- Literal enforcement of the Minimum Performance Standards would be a hardship for the Enoch T. Cobb Trust,
- Relieving the requirements of MPS 4.1.2.1 to limit trip reduction mitigation to \$5,000 is the minimum relief required to alleviate the hardship, and,
- The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

TF11. MPS 4.1.2.5 requires accommodation of non-automobile users and creation of safe walking and bicycling links where appropriate. The co-applicants will be relocating an existing utility easement access drive and allow users who have a right to use this access continued use and access to the remaining land behind the development. The development site topography, location, and area development does not lend itself to new pedestrian or bicycle connections, except for a sidewalk easement being provided along Independence Drive. Therefore, the project complies with MPS 4.1.2.5.

TF12. MPS 4.1.2.6 requires parking spaces to be limited to the number of spaces required under zoning. The co-applicants will be required to meet this MPS through the Commission site plan review condition.

TF13. MPS 4.1.3.2 requires level of service analysis for all new access to the regional road system and these accesses must operate at level of service C or better. The co-applicants' engineer's analysis and Commission staff analysis has shown the driveways will operate at level of service C during peak hours. Therefore, the project complies with MPS 4.1.3.2.

TF14. MPS 4.1.3.4 requires developments to perform level of service analysis and mitigate peak hour impacts on all regional roadway links and intersections. However, a Hardship Exemption has been applied to this standard. The Commission finds, based on the cost to the Enoch T. Cobb Trust of such mitigation:

- The Enoch T. Cobb Trust, a co-applicant, has met its burden of showing that a hardship exists,
- Literal enforcement of the Minimum Performance Standards would be a hardship for the Enoch T. Cobb Trust,
- Relieving the requirements of MPS 4.1.3.4 to limit peak hour impact mitigation to \$15,000 is the minimum relief required to alleviate the hardship, and,
- The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

TF15. MPS 4.1.3.7 prohibits developments if the project is estimated to add new traffic such that within five years of project completion warrants for new road widening or signalization are met in historic districts, on scenic roads, or if such changes impact natural resources or community character. The co-applicants did not perform an analysis to determine compliance with this MPS. A Hardship Exemption has been applied to this standard. The Commission finds, based on the cost to the Enoch T. Cobb Trust of such analysis, and on the limited impact to such locations due to the project's moderate peak hour trip generation:

- The Enoch T. Cobb Trust, as co-applicant has met its burden of showing that a hardship exists,
- Literal enforcement of the Minimum Performance Standards would be a hardship for the Enoch T. Cobb Trust,
- Relieving the requirements of MPS 4.1.3.7 to not require the analysis is the minimum relief required to alleviate the hardship, and,
- The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

#### CONCLUSION

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

The Enoch T. Cobb Trust, a co-applicant has demonstrated that literal compliance with the Act and the RPP would involve substantial hardship to it, as noted in Findings GF6, GF7, NRF5, NRF9, WRF4, CCF4, TF4, TF10, TF14, and TF15. Desirable relief may be granted to the applicant without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, and the Commission grants the minimum relief necessary to address the hardship.

The Commission also concludes that the proposed project is consistent with the 2002 Regional Policy Plan (as revised), with the exception of MPSs 2.1.1.2.F, 2.3.1.2, 2.5.1.3, 4.1.1.2, 4.1.2.1, 4.1.3.4, 4.1.3.7, and 6.2.5.

The Commission hereby approves, with conditions, the application of the Enoch T. Cobb Trust and JDJ Housing Development, LLC, as co-applicants, for the proposed Supply New England project as a DRI Hardship Exemption, provided the following conditions are met:

### CONDITIONS

#### **General**

GC1. This Hardship Exemption decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.

GC2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC3. JDJ shall obtain all state and local permits for the proposed project. If a sub-tenant other than Supply New England is selected, such selection shall be reviewed by the Commission Regulatory Committee for consistency with this decision.

GC4. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

GC5. JDJ shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to the project which are issued subsequent to this decision. A copy of final plans approved by the town of Barnstable, including the Conservation Commission or other state or local agencies shall be submitted to the Cape Cod Commission upon receipt of local approvals.

GC6. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed by Commission staff to determine consistency with the Commission's *Enabling Regulations* in effect at the time to determine whether the change in the final plans is a modification to the approved project. If the Commission staff determines that the final plans require a modification, the co-applicants shall also as necessary seek a modification to this

decision in accordance with the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC7. Prior to issuance of a Building Permit, or any development activity on the site (as the term "development" is defined in the Commission Act), JDJ shall obtain a Preliminary Certificate of Compliance from the Commission stating that the conditions in this decision that are required to be satisfied before issuance of a Preliminary Certificate of Compliance have been met.

GC8. Prior to issuance of a Certificate of Use/Occupancy, JDJ shall obtain a Final Certificate of Compliance from the Commission stating that the conditions in this decision that are required to be satisfied before issuance of a Final Certificate of Compliance have been met.

GC9. JDJ shall notify Commission staff in writing at least sixty (60) calendar days prior to its intent to seek a Preliminary and a Final Certificate of Compliance for the project. Such notification shall include a list of key contact(s), along with their telephone numbers, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if warranted, within fourteen (14) business days of such notification and inform JDJ in writing of any deficiencies and corrections needed. JDJ understands that the Commission has no obligation to issue any Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. JDJ agrees to allow Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in this decision, including those linked to each Certificate, have been met.

GC10. Consistent with the Barnstable Zoning Board of Appeals' (ZBA) Comprehensive permit dated July 9, 2004 (per the ZBA vote) for the proposed project called *The Village Green* this DRI decision is conditioned that there shall be no residential development on the project site locus.

#### **Natural Resources/Open Space**

NRC1. JDJ shall restore the disturbed areas of the wetland buffer following construction with native shrubs, trees and grasses. The applicant shall submit a restoration plan for Commission staff approval prior to receipt of a Preliminary Certificate of Compliance.

NRC2. Prior to issuance of a Preliminary Certificate of Compliance for the Supply New England project, the Cobb Trust shall provide the Cape Cod Commission with a draft 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 the Israel Pond parcel, identified by Barnstable Assessor's map 332, parcel 005 shall be preserved as permanent open space.

The restriction and site plan shall be approved by Commission counsel, 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 60 days prior to the receipt of the Final Certificate of Compliance. In order to preserve the significant habitat values of the parcel, the land subject to this conservation restriction shall remain undisturbed for conservation and wildlife habitat preservation purposes, with the exception that walking trail access may be provided and used by the Barnstable school system consistent with this condition. The conservation restriction shall be conveyed to an appropriate conservation entity, including the state Division of Fisheries and Wildlife, the Town of Barnstable, or the Barnstable Land Trust.

Alternately, the Cobb Trust may opt to convey the Israel Pond parcel to the state Division of Fisheries and Wildlife, the Town of Barnstable, or the Barnstable Land Trust for conservation purposes prior to issuance of a Preliminary Certificate of Compliance for the Supply New England project. The form and substance of the deed shall be approved by Commission counsel prior to recording.

NRC3. Prior to issuance of a Preliminary Certificate of Compliance for the Supply New England project, JDJ shall clean up the dumping that has occurred on the Rose Lodge /Shallow Pond parcel, and shall revegetate those portions of the area to be conservation restricted that are presently cleared of all vegetation. Commission staff shall approve a revegetation plan prior to implementation.

NRC4. Prior to issuance of a Preliminary Certificate of Compliance for the Supply New England project, JDJ shall provide the Cape Cod Commission with a draft 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 2 acres of the Shallow Pond parcel, identified by Barnstable Assessor's map 253, parcel 019, parcel extension T00, shall be preserved as permanent open space.

The restriction and site plan shall be approved by Commission counsel, 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 60 days prior to the receipt of the Final Certificate of Compliance. In order to preserve the significant habitat values of the parcel, the land subject to this conservation restriction shall remain undisturbed for conservation and wildlife habitat preservation purposes, with the exception that walking trail access may be provided. The conservation restriction shall be conveyed to an appropriate conservation entity to be approved by Commission counsel, including but not limited to the Town of Barnstable or the Barnstable Land Trust.

NRC5. Prior to issuance of a Preliminary Certificate of Compliance for the Supply New England project, the co-applicants shall provide a plan for Commission staff approval for controlling off-road vehicle access to the Site. Prior to issuance of a Final Certificate of Compliance, the co-applicants shall implement the plan.

NRC6. The co-applicants shall make every effort to prevent the introduction of invasive species to the site, particularly during construction. Any fill or loam brought to the site should be free of invasive species, and construction vehicles shall be inspected prior

to entering the site to ensure that invasive species have not “caught a ride” in the tire treads, wheel wells, or earth moving buckets.

### **Water Resources**

WRC1. The project shall apply for a connection permit from the Massachusetts Department of Environmental Protection and to the town of Barnstable to connect to town sewer to enable the project to meet the 1-ppm standard set forth in MPS 2.1.1.2.F.2. If the applications are approved, the project shall connect to sewer. In the interim, the proposed project may use a Title-5 septic system as proposed.

WRC2. Prior to the issuance of the Preliminary Certificate of Compliance, JDJ and the sub-tenant shall designate on the site plans the area draining to the vegetated swale (*i.e.* north-east corner of the paved parking area, at the 63-foot contour note on the *Proposed Grading & Landscape Plan*, revised September 7, 2005) as the fleet-truck storage and parking area in accordance with MPS 2.1.3.2. The co-applicants shall also designate the fleet-truck storage and parking area with signs and pavement markings. Prior to issuance of the Final Certificate of Compliance, Commission staff will verify designation of the fleet-truck storage and parking area.

WRC3. Prior to the release of any Certificate of Compliance, the Operations & Management plan shall be updated by JDJ, and shall be submitted for approval by Commission staff, as noted in Finding WRF9, to ensure that the project meets MPSs 2.1.1.2.A.5 and MPS 2.1.3.6. The revised O&M plan shall reflect the project’s grading changes noted in Finding WRF9. At minimum, the plan shall contain the following information and provisions:

- Identify the party responsible for implementing the plan in accordance with MPS 2.1.3.2;
  - Detailed spill prevention and containment plan to be posted in a conspicuous place within the project building, particularly to address spills in areas that drain to the vegetated swale from the designated fleet-truck storage and parking area, in accordance with MPS 2.1.3.2;
  - Identify best management practices and provide a cumulative account of total suspended solids removal up to a minimum of 80% in accordance with MPS 2.1.3.2;
  - Inspection, monitoring, maintenance schedule;
  - Engineer’s stamp certifying that the stormwater system is capable of handling the 25-year 24-hour storm in accordance with MPS 2.1.3.2;
  - Detailed spill prevention, response and containment components, in accordance with MPS 2.1.3.2, which in particular address releases in areas that drain to the vegetated swale from the designated fleet-truck storage and parking area;
- and
- Detailed turf-management plan that emphasizes water-conservation measures and minimizes use of chemical fertilizers and pesticides

through best-management practices in WHPAs in accordance with MPS 2.1.1.2.A.5.

### **Community Character**

#### **Building Design**

CCC1. Prior to issuance of a Preliminary Certificate of Compliance from the Commission, JDJ shall submit for Commission staff approval the proposed color and finish of the exterior masonry blocks, metal wall panels and metal roof.

CCC2. Prior to issuance of a Preliminary Certificate of Compliance from the Commission, JDJ shall submit for Commission staff approval an interior floor plan.

#### **Site Design/Landscaping**

CCC3. Prior to issuance of a Preliminary Certificate of Compliance from the Commission, the applicant shall submit for Commission staff approval a draft landscape maintenance contract for three full growing seasons based on guidelines provided by Commission staff. A growing season is defined as the period between March 15<sup>th</sup> and October 31<sup>st</sup>. Prior to issuance of a Final Certificate of Compliance, the applicant shall provide a fully executed landscape maintenance contract for three full growing seasons.

CCC4. Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

CCC5. If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements shall be completed within six (6) months of issuance of a Final Certificate of Compliance from the Commission.

CCC6. Prior to issuance of a preliminary Certificate of Compliance, the applicant shall submit plans for any proposed building or pylon signs for staff approval to ensure their consistency with MPS 6.2.11. Such plans shall include proposed materials, method of illumination and dimensions.

### Exterior Lighting

CCC7. All exterior lighting for the proposed project shall be consistent with MPS 6.2.10 and Technical Bulletin 95-001.

CCC8. Prior to issuance of the Preliminary Certificate of Compliance, JDJ shall submit for review and approval by Commission staff information on the project's proposed exterior lighting, including fixture cuts, lamp and shielding. This submission may be made in writing/paper copies, or by providing Commission staff with information on the fixture manufacturer(s) so that a search of the Internet may be conducted by Commission staff. Unless the Commission staff approves the proposed exterior lighting in writing, no Preliminary Certificate may be issued.

CCC9. Should unexpected conditions arise that require redesign or adjustments to the project's exterior lighting fixtures, including substitutions of fixture heads, the applicant shall first obtain written approval from the Commission prior to implementing the changes, including prior to installation. Modifications made to the exterior lighting design that are found by Commission staff to be in accordance with Technical Bulletin 95-001 may be approved by Commission staff.

CCC10. . Prior to issuance of a Final Certificate of Compliance, in-the-field verification of light levels and the lighting design must be conducted by Commission staff to verify conformance with the requirements of this decision, Technical Bulletin 95-001 and MPS 6.2.10.

### Noise

NC1. Prior to issuance of the Preliminary Certificate of Compliance, JDJ and the sub-tenant shall confirm whether or not the project will involve an emergency generator.

### **Hazardous Materials/Wastes**

HAZC1. No more than 25 gallons or its dry weight equivalent in total of hazardous materials or hazardous wastes shall be used, treated, generated, handled, or stored on-site at any time. There shall be no on-site disposal of hazardous materials or wastes. Compressed gas or natural gas shall be used for heating and emergency power generation. The project shall be constructed without floor drains except for those required in lavatory/bathrooms per the Massachusetts Plumbing Code.

HAZC2. JDJ and the sub-tenant shall establish and maintain a program to properly handle, store and dispose of used fluorescent light bulbs and any other hazardous waste generated by the facility.

HAZC3. Prior to issuance of a Final Certificate of Compliance, JDJ and the sub-tenant shall submit for review and approval by Commission staff a copy of a program to seek out least-toxic products, and to properly dispose of used fluorescent light tubes and any other hazardous waste generated by the facility. No Final Certificate of Compliance shall be issued until JDJ and the sub-tenant submit the information required by this condition and Commission staff issues a written approval of the

program(s) as consistent with MPS 4.3.1.1 and 4.3.1.2 of the 2002 RPP and this decision.

HAZC4. Prior to the issuance of a Final Certificate of Compliance, JDJ and the sub-tenant shall submit for review and approval by Commission staff a copy of an emergency response plan which is consistent with MPS 4.3.1.4. No Final Certificate of Compliance shall be issued until the co-applicants submit the information required by this condition and Commission staff issues a written approval of the revised emergency response plan as consistent with MPS 4.3.1.4 and this decision.

### **Transportation Resources**

TC1. Before the issuance of the Preliminary Certificate of Compliance, the final site plan shall be submitted for Commission transportation staff review and approval for consistency with the 2002 Regional Policy Plan and this decision.

TC2. All landscaping, signage, lighting and other human made objects shall be located to prevent interference with site driveway sight distances, to minimize safety conflicts, and to minimize glare. These details shall be shown on the final site plan and supporting documents and this requirement is subject to review and approval by Commission transportation staff as specified in Condition TC1. Prior to issuance of the Final Certificate of Compliance, the landscaping, signage, lighting, and other human made objects shall be complete and meet the requirements stated herein.

TC3. All development utilities shall be located underground to prevent interference with site driveway sight distances and to minimize safety conflicts. This detail shall be shown on the final site plan and supporting documents and this requirement is subject to review and approval by Commission transportation staff as specified in Condition TC1. Prior to issuance of the Final Certificate of Compliance, the utilities shall be in place underground.

TC4. The co-applicants shall provide a ten (10) foot sidewalk right-of-way on the development Site along the Independence Drive frontage for construction of a public sidewalk should the town of Barnstable decide to construct such a sidewalk at any time in the future and should the right-of-way be needed to accomplish the sidewalk construction. This detail shall be shown on the final site plan and is subject to review and approval by Commission staff as specified in Condition TC1.

TC5. Prior to the issuance of the Final Certificate of Compliance, but after substantial completion of the site driveway, the Independence Drive median break, landscaping, signage, and utilities, the co-applicants shall retain a Massachusetts registered Professional Engineer to evaluate actual sight distances. The co-applicants shall submit a signed and sealed letter from said Professional Engineer detailing evaluation results at the driveway and certifying that the sight distances meet the American Association of State Highway Transportation Officials requirements for safe stopping sight distances. This requirement shall apply both to the intersection of the site driveway with Independence Drive and to the Independence Drive median break.

TC6. The width of the site driveway shall be limited to 24 feet maximum. Appropriate turning radii may also be added per mutual agreement of the applicant and Commission transportation staff. These details shall be shown on the final site plan and this requirement is subject to review and approval by Commission staff as specified in Condition TC1. Prior to issuance of the Final Certificate of Compliance, the site driveway shall be completed according to the final approved site plans.

TC7. The co-applicants shall allow access across the development site for all users who currently have access rights to the utility easement and service roadway.

TC8. The number of parking spaces shall be limited to the minimum required by the town of Barnstable. The number of parking spaces shall be shown on the final site plan and documentation calculating the required number of spaces shall be submitted to Commission transportation staff. Upon mutual agreement of the Commission transportation staff and the applicant, the number of spaces may be reduced below the town minimum and/or may include landscape reserve spaces. However, in no case shall the total number of spaces (built and reserve) exceed the town minimum. This requirement is subject to review and approval by Commission transportation staff as specified in Condition TC1. Prior to issuance of the Final Certificate of Compliance, the parking spaces shall be completed according to the final approved site plans.

TC9. Prior to the issuance of a Preliminary Certificate of Compliance, JDJ shall pay a fee of \$20,000. These funds shall be held by Barnstable County/Cape Cod Commission. Twenty-five percent of funds collected under this requirement shall be expended upon the recommendation of the Cape Cod Commission Executive Director to support projects or strategies that encourage alternatives to automobile travel. These include but are not limited to planning, design, or construction of alternatives to automobile travel. These include but are not limited to planning, design, or construction of alternatives to automobile travel such as bicycle paths and sidewalks; supporting, marketing, or promoting bus or shuttle services; the purchase of land capable of generating trips and the reservation of such land in a way that permanently prohibits trip generation; and/or the monitoring of traffic volumes, speeds, and vehicle classification. The remaining seventy-five percent of the funds shall be expended upon the recommendation of the Cape Cod Commission Executive Director, and may be used for the above purposes and may also be used to fund the expansion of roadway capacity including but not limited to planning, engineering, permitting, and construction. Funds shall be expended within the project's impact area or within the Town of Barnstable. Any funds remaining after 10 years from the time of receipt of the funds shall be transferred to the Cape Cod Regional Transit Authority or its successor agency to fund public transportation on Cape Cod.

SUMMARY

The Cape Cod Commission hereby approves with conditions the application of the Enoch T. Cobb Trust and JDJ Housing Development, LLC, as co-applicants, for a Development of Regional Impact Hardship Exemption as outlined in this decision pursuant to Sections 12, 13 and 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Supply New England project located in Barnstable, MA.



\_\_\_\_\_  
Commission Chair

7/10/06

\_\_\_\_\_  
Date

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

7/10, 2006

Before me, the undersigned Notary Public, personally appeared Alan Platt in his capacity as Chairman 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 personal knowledge of the undersigned.



\_\_\_\_\_  
Notary Public

My Commission Expires:

10/13/11