



CAPE COD COMMISSION

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Date: April 26, 2006

To: Sallie Riggs, Project Manager

From: Cape Cod Commission

RE: Modification of a Development of Regional Impact
Project of Community Benefit Hardship Exemption

Applicant: National Marine Life Center
Kathy Zagzebski

Project: National Marine Life Center
120 Main Street
Buzzards Bay, MA

Project #: HDEX # 05018

Book/Page: Lot 2, Town of Bourne Barnstable Registry, Map 23 Book 2655, page 259; Lots 179, 180, 181, former Penn Central Lot Town of Bourne Barnstable Registry, Map 23.3 Book 2655, page 259; U.S. Army Corp of Engineers Map 16, Parcel 15 1/97, Book 453 , Page 287.

Background

The above referenced project, the National Marine Life Center was approved, with conditions, by a vote of the Cape Cod Commission (Commission) on November 17, 2005. The project was approved as a Project of Community Benefit (POCB) Hardship Exemption.

In a letter and other submissions received by the Commission on April 14, 2006, Sallie K. Riggs, representing the National Marine Life Center (NMLC) requests that the project be separated into two phases. Ms. Riggs' correspondence describes the first phase as installation of the seawater intake and outfall pipes and a utility building. The second phase would encompass the rest of the proposed project.

Ms. Riggs' April 14th letter also describes three changes to the proposed project. First, the two proposed seawater intake pipes have been reduced from 12-inches to 4 inches in diameter. The single discharge pipe has also been reduced from 16 to 6 inches in diameter. The second project change is that the seawater intake/discharge pipes will be installed using directional drilling, rather than trenching as originally proposed. The third and final project change noted in Ms. Riggs' letter is that the foot-print and height of the previously-proposed utility building has



changed. The foot-print has increased from 2,025 square feet to 2,100 square feet. However, the smaller dimension of the building will face Main Street. The building's elevation will also change slightly, resulting in a finished exterior elevation of 28 feet, 11 inches as opposed to the originally planned 34 feet, 9 inches.

Determination

The Executive Director of the Cape Cod Commission has determined that the requested revisions to the findings and conditions of the original decision to accommodate two project phases as described in Ms. Riggs' letter constitute *de minimus* changes and are approved as Type 1 Minor Modifications. The following changes shall be made to the findings and conditions of the original POCB Hardship Exemption decision to reflect the requested project phasing as described above.

Changes to Original Decision

General Findings:

G.3 Phase One of the Project will be built in accordance with the following plans:

- Site Design Plans, sheets C 2.0 and C 3.0, prepared by Tibbetts Engineering, dated 3/13/06, received by the Commission on April 14, 2006
- Intake Structure Location Plan, sheet A-100, prepared by Chermayoff & Poole, Inc., dated 3/1/06, received by the Commission on April 14, 2006
- Exterior Elevations, sheet A-200, prepared by Chermayoff & Poole, Inc., dated 8/3/05, received by the Commission on April 14, 2006

Phase Two of the Project will be built in accordance with the following plans, except as modified or replaced by those plans noted above for Phase One:

Existing Conditions site plans 1-6 prepared by Tibbetts Engineering, dated January 3, 2005; included development plans dated May 30, 2003 Utility Building Plans A1.6, Building Elevations A2.1, North-South Building Sections A2.3, Wall Sections A3.1, Life Support Legend LS0.1, Life Support Schedules LS0.2, Life Support Below Grade LS1.1, Life Support Lower Piping LS1.2, Life Support High Piping LS1.3, Site Plan A0.1; Sign Plan by Wendy Mellinger, dated May 30, 2003, of the architectural firm Chermeyeff, Sollogub and Poole Inc., Boston, MA.

Coastal Resources Findings:

CR.5 Correspondence received by the Commission from Sallie K. Riggs on April 14, 2006 indicates that modifications have been made to the previously proposed utility building (part of Phase One of the Project) which involves the placement of fill to raise the grade from the existing +5 feet, 10 inches (estimated at +7 feet, 4 inches in the original application) to finish grade of + 7 feet, 10 inches. This aspect of the modified utility building plans is not consistent with MPS 2.2.2.7, which prohibits activity that increases the existing site elevations in land subject to coastal storm flow. At the same time, regulations against placement of fill on land subject to coastal storm flow are generally adopted to pre-empt attempts to use material brought to the site to raise elevations out of the regulated floodplain, and to limit the additive effects of

artificial fill in the floodplain. And, efforts to render low-lying parcels in the floodplain "buildable" for retail or residential space increase exposure of people and property to damage and loss from floods. In this case, the utility building does not contain retail or living space. As such, the proposed design is unlikely to increase risks to people or property on the parcel during flooding events. In addition, the fill is not proposed as a means of increasing site elevation to circumvent restrictions on development in the natural floodplain. Finally, the Project received Commission approval as a Project of Community Benefit in a decision dated November 17, 2005. Based on these factors, the Executive Director has determined that it is appropriate to relieve the utility building part of the Project from the requirements of MPS 2.2.2.7.

Community Character Findings:

Historic Preservation /Building Design

CC.4 The small utility building (2,500-sf)-2,100 square feet on site is proposed to be flat roofed and sided with metal panels, similar to portions of the main building. The Applicant will need to provide samples of the proposed metal siding material to demonstrate that it has a neutral color and matte finish to reduce reflectivity.

General Conditions:

G.1 Phase One of the proposed Project shall be constructed in accordance with the following plans:

- Site Design Plans, sheets C 2.0 and C 3.0, prepared by Tibbetts Engineering, dated 3/13/06, received by the Commission on April 14, 2006
- Intake Structure Location Plan, sheet A-100, prepared by Chermayoff & Poole, Inc., dated 3/1/06, received by the Commission on April 14, 2006
- Exterior Elevations, sheet A-200, prepared by Chermayoff & Poole, Inc., dated 8/3/05, received by the Commission on April 14, 2006

Phase Two of the proposed Project The proposed National Marine Life Center shall be constructed in accordance with the following final plans except as these plans for Phase Two are modified or replaced by those submitted to the Commission on April 14, 2006 for Phase One:

Existing Conditions site plans 1-6 prepared by Tibbetts Engineering, dated January 3, 2005, included development plans dated May 30, 2003 Utility Building Plans A1.6, Building Elevations A2.1, North-South Building Sections A2.3, Wall Sections A3.1, Life Support Legend LS0.1, Life Support Schedules LS0.2, Life Support Below Grade LS1.1, Life Support Lower Piping LS1.2, Life Support High Piping LS1.3, Site Plan A0.1; Sign Plan by Wendy Mellinger, dated May 30, 2003, of the architectural firm Chermeyeff, Sollogub and Poole Inc., Boston, MA.

Any deviation during construction from the approved plans shall require approval by the Cape Cod Commission through a modification process pursuant to the Commission's *Enabling Regulations*. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modification to the approved plans.

G.7 The Project may be split into two phases by the Applicant, where Phase One shall consist of installation/construction only of the seawater intake and outfall pipes and the proposed utility building. Phase Two shall consist of the remaining portions of the Project.

~~G.7~~—G.8 Prior to issuance of a demolition permit or building permit for any phase ~~Phase One or Phase Two~~ of construction, and prior to commencement of any construction or other work connected to Phase Two, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission, which states that all conditions in this decision pertaining to issuance of a building permit or to the relevant Project Phase have been met.

~~G.8~~—G.9 The Applicant shall be responsible for providing proof of recording of the Decision prior to issuance of a Phase One Preliminary Certificate of Compliance.

~~G.9~~—G.10 The Applicant shall demonstrate that a copy of the original this decision and any modifications have has been provided to the general contractor prior to the start of any construction.

~~G.10~~—G.11. The Applicant shall provide the Commission with an annual progress report to be submitted on or before the anniversary of the date of this decision until such time as the applicant receives a Final Certificate of Compliance for Phase Two-. The annual progress report shall describe the status of local development permitting and project construction, including the expected date of commencement of site preparation work. The Applicant shall report any project changes in the annual progress report.

~~G.11~~—G.12 Prior to receiving a Certificate of Occupancy from the Town of Bourne for either Phase One or Phase Two, and prior to commencement of any construction or other work connected with Phase Two, the Applicant shall obtain a Final Certificate of Compliance from the Cape Cod Commission for Phase One.

G.13 Prior to receiving a Certificate of Occupancy for Phase Two, the Applicant shall obtain a Final Certificate of Compliance from the Cape Cod Commission for Phase Two.

Water Resources Conditions:

WR.2 Prior to requesting a Preliminary Certificate of Compliance for Phase Two-, a stormwater design plan for the site shall be submitted for review and approval by Cape Cod Commission staff. The design plan shall be consistent with the NMLC narrative submitted on October 4, 2005. Commission staff shall solicit comments from local officials in order to ensure that the final design plan also meets local regulations.

Natural Resources Conditions:

NR1. The applicant shall revegetate the wetland buffer with an appropriate seed mix that does not contain plant species listed as invasive. The Applicant shall submit documentation, which identifies the contents of the proposed seed mix to be planted. Staff shall review this

documentation to determine whether the mix contains any invasive species, and approve the final restoration plan prior to the Final Certificate of Compliance for Phase One provided the mix does not contain any such invasive species.

Community Character Conditions:

Heritage Preservation

CC.1 The Applicant shall construct the National Marine Life Center buildings in accordance with approved plans and elevation drawings dated 5/30/03 by CSP Architects and received by the Commission on August 22, 2005 except as these plans are modified or replaced by the plans submitted to the Commission on April 14, 2006 which relate to Phase One. Should unexpected conditions arise during demolition and construction that require redesign of the building, the applicant shall obtain approval from Cape Cod Commission staff prior to the start of construction consistent with the Commission's policy on Revisions to Approved DRIs. Modifications made during construction that are in accordance with the approved elevation drawings shall be considered as Minor Modifications #1 and approved by Commission staff.

CC.2 Prior to requesting a Preliminary Certificate of Compliance for Phases One and Two from the Cape Cod Commission, the Applicant shall provide samples of the proposed metal siding materials to demonstrate that the material is not reflective and is neutral in color.

Exterior Lighting

CC.3 Prior to requesting a Preliminary Certificate of Compliance by the Cape Cod Commission for Phase One and Two, the Applicant shall submit information clarifying the project's exterior lighting design. This includes but is not limited to the model number/catalogue ordering information for proposed on-building mounted BEGAs and the SATURN bollards and foot-candle plans showing the estimated initial and maintained condition of all fixtures except for those at or under 42 inches in height.

CC.5 Prior to issuance of the a Final Certificate of Compliance for Phase One and for Phase Two, Commission staff will conduct a site inspection to verify the exterior lighting design for the relevant Phase is consistent with Conditions CC.3 and CC.4.

Noise

CC.6 Prior to requesting a Preliminary Certificate of Compliance from the Cape Cod Commission for Phase One, the Applicant shall submit a protocol for noise-related complaints or issues from abutters related to demolition, site preparation and/or construction noise impacts.

Landscaping

CC.8 If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance for Phase Two is sought from the Commission, any work which is incomplete shall be subject to an escrow agreement of form and content satisfactory to

Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the 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 for Phase Two from the Commission.

Hazardous Materials/Wastes Conditions:

HM.1 Prior to requesting a Final Certificate of Compliance for Phase Two, the Applicant shall submit for Commission review and approval a written description of its materials management system, drug inventory and disposal procedures, carcass/necropsy waste disposal protocols, and emergency response plan. These plans will be reviewed by Commission staff for consistency with MPS 4.3.1.1 and MPS 4.3.1.2.

HM.2 Prior to requesting a Final Certificate of Compliance for Phase Two, the Applicant shall submit for Commission review and approval a written description of its program to manage used equipment including electronics, computers and fluorescent bulbs in a manner consistent with the Massachusetts Hazardous Waste regulations. This description will be reviewed by Commission staff for consistency with MPS 4.3.1.2.

HM.3 Prior to issuance a Final Certificate of Compliance by the Cape Cod Commission for Phase Two, Commission staff will conduct a site inspection to verify the site's use of hazardous materials and its generation of hazardous waste in a manner consistent with MPS 4.3.1.2. Commission staff shall only be required to conduct this site inspection after the Commission has approved the written protocols noted in HM.1 and HM.2.

SEE NEXT PAGE FOR SIGNATURE

SIGNATURE PAGE

[Signature]
Executive Director

4/26/06
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

4/26/06, 2006

Before me, the undersigned notary public, personally appeared MARGARET L. FENN in her capacity as Executive Director of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that she 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.

[Signature]
Notary Public

My Commission expires:

