



CAPE COD COMMISSION

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Date: August 4, 2008

To: Kathryn Zagzebski, President and Executive Officer
National Marine Life Center

From: Cape Cod Commission

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

Project & Location: National Marine Life Center
120 Main Street
Buzzards Bay, MA 02532

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 with conditions as a Project of Community Benefit (POCB) Hardship Exemption (HDEX). On June 30, 2008, the Commission received a letter with attachments from Kathryn Zagzebski, President/Executive Director of the National Marine Life Center (NMLC) describing a structural issue with one of the Grossman's Hardware buildings, such that the NMLC would be "*forced to rebuild rather than renovate this portion of the building.*" The letter further describes the proposed modifications.

Other Modification Decisions

The Commission Executive Director issued two prior Minor Modification Type 1 decisions, on April 26, 2006 and November 6, 2007. The first allowed the proposed project to be divided into two phases. The second dealt with minor changes to the utility building's exterior.



Jurisdiction

Section 12(a)(i) of the Commission's *Enabling Regulations* (revised March 2005) provides that an applicant "*who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision, may apply for a decision modification.*"

Section 12(c)(ii) of the *Enabling Regulations*, which describes a Minor Modification 2 as "*a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or a small change to the findings or a condition of the original approval, which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different increased impacts to the resources protected by the Act and/or RPP.*"

Findings

The Commission's Regulatory Committee considered the proposed changes to National Marine Life Center and the 2005 POCB/HDEX decision, as amended, and on August 4, 2008 voted unanimously to consider the proposed changes described in the June 30, 2008 letter from Ms. Zagzebski as a Minor Modification 2 according to Section 12(c)(ii) of the *Enabling Regulations* (revised, March 2005).

Modifications to the Decision

The following changes shall be made to the findings and conditions of the original POCB/HDEX decision, as amended in April and November 2006, to reflect the requested changes to the project.

CHANGES TO FINDINGS

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
- National Marine Life Center Rehabilitation Facility, Buzzards Bay, MA. *New Intake Structure/Utility Bldg.*, Site Plans and Exterior Elevations, Sheets S-0 to S-7, prepared by Blue Ridge Design, Inc., packet cover sheet dated 5/15/07, and Sheet M.1, Building Mechanicals, prepared by Comfort Design, Inc., dated 10/9/07, received by the Commission on October 23, 2007

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; Scheme C-2, -5+15 Option, Plans: Main Level (No. SKA-12), Mezzanine Level (No. SKA-13), Section Study (No. SKA-14), Street Elevation Study/North Elevation (No. SKA-15), East Elevation Study/Fire Station Side (No. SKA-16), South Elevation Study/Main Receiving Side (No. SKA-17), from Cosestudi, dated June 24, 2008 and Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008.

~~Phase Two-Three~~ 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 or Phase Two:

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 and Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008.

Community Character Findings:

Historic Preservation /Building Design

CC.4 Phase Two of the proposed project will involve construction of a new building to house the previously-approved animal hospital functions of the project, originally proposed to be in the existing Grossman's Lumber warehouse building. The footprint of the proposed new construction is roughly similar to what was previously approved. The new construction will increase the building height by approximately 8 feet to 32 feet, and the exterior materials will be changed from concrete block to steel panels on the sides and rear, with translucent panels on the street front.

CHANGES TO CONDITIONS

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 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, including 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~~ Scheme C-2, -5+15 Option, Plans: Main Level (No. SKA-12), Mezzanine Level (No. SKA-13), Section Study (No. SKA-14), Street Elevation Study/North Elevation (No. SKA-15), East Elevation Study/Fire Station Side (No. SKA-16), South Elevation Study/Main Receiving Side (No. SKA-17), from Cosestudi, dated June 24, 2008 and Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008.

~~Phase Two-Three~~ of the proposed Project 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, including 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~~ and the Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008.

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~~three(3) 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 new Hospital Building as described in a letter with attachments from Kathryn Zagzebski, received by the Commission on June 30, 2008 and as depicted on Scheme C-2, -5+15 Option, Plans: Main Level (No. SKA-12), Mezzanine Level (No. SKA-13), Section Study (No. SKA-14), Street Elevation Study/North Elevation (No. SKA-15), East Elevation Study/Fire Station Side (No. SKA-16), South Elevation Study/Main Receiving Side (No. SKA-17), from Cosestudi, dated June 24, 2008 and Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008. Phase Three shall consist of all remaining portions of the Project.

G.8 Prior to issuance of a demolition permit or building permit for ~~Phase One or Phase Two~~any Phase of construction, and prior to commencement of any construction or other work connected to ~~Phases Two or Three~~, 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.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~~Three. 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.12 Prior to receiving a Certificate of Occupancy from the Town of Bourne for either ~~any Phase -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 that completed Phase One.

Water Resources Conditions:

WR.2 Prior to requesting a Preliminary Certificate of Compliance for ~~Phase Two, Three~~, 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.

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, and with the new Hospital Building as described in a letter with attachments from Kathryn Zagzebski, received by the Commission on June 30, 2008 and as depicted on Scheme C-2, -5+15 Option, Plans: Main Level (No. SKA-12), Mezzanine Level (No. SKA-13), Section Study (No. SKA-14), Street Elevation Study/North Elevation (No. SKA-15), East Elevation Study/Fire Station Side (No. SKA-16), South Elevation Study/Main Receiving Side (No. SKA-17), from Cosestudi, dated June 24, 2008 and Layout Plan, Pesce Engineering & Associates, Sheet 1 of 1, dated June 24, 2008, revised July 18, 2008. Exterior building materials referenced on the above plans are required to be approved by Commission staff prior to issuance of a Preliminary Certificate of Compliance for any Phase. 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 Section 12 of the Commission's *Enabling Regulations*, as amended, ~~the Commission's policy on Revisions to Approved DRIs.~~ Modifications made during construction that are in accordance with the approved elevation drawings and other project plans as described in the November 17, 2005 Hardship Exemption/Project of Community Benefit decision, and subsequent Commission-approved modifications shall be considered as Minor Modifications 1 and may be approved by Commission staff.

Exterior Lighting

CC.3 Prior to requesting a Preliminary Certificate of Compliance by the Cape Cod Commission for any Phase ~~Phase One and Two~~, the Applicant shall submit information clarifying that Phase's ~~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 Final Certificate of Compliance for any 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.

Landscaping

CC.8 If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance for any 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.~~

HM.3 Prior to issuance ~~the a~~ Final Certificate of Compliance by the Cape Cod Commission for any 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.

Royden C. Richardson
Regulatory Committee Chair

August 8, 2008
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

8/7, 2008

Before me, the undersigned notary public, personally appeared

Royden C. Richardson in his capacity as Chair of the Cape Cod Commission's Regulatory Committee, 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.

Gail P. Hanley
Notary Public

My Commission expires:

10/13/11