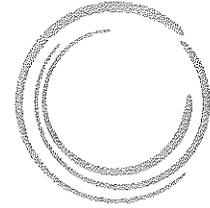


3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



**CAPE COD
COMMISSION**

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Date: September 27, 2010

To: Falmouth Economic Development & Industrial Corporation
c/o Town Hall, Falmouth
59 Town Hall Square
Falmouth, MA 02540

From: Cape Cod Commission

Re: DRI Hardship Exemption – Minor Modification #2
Section 23 of the Cape Cod Commission Act

Project Applicant: Falmouth Economic Development & Industrial Corporation (EDIC)

Property Owner: Falmouth Economic Development & Industrial Corporation (EDIC)

Project: Raymond Park Industrial Subdivision, Lot Reconfiguration
Edgerton Drive, Falmouth, MA

Project #: HDEX#07014

| Map/Parcel | Lot & Plan | Cert. of Title | Reg. of Deeds Book/Page |
|------------------------|-----------------------------------|----------------|----------------------------|
| 05-10-018-A004 FEDIC | Lot 4 Land Court Plan 39506- B | 170908 | |
| 05-10-019-002A Benthos | Lot 1 232/15 | | 02549-0149 |
| 05-10-019-C000 FEDIC | 233/39 | | 20008-113 |

SUMMARY

On September 13, 2010, the Cape Cod Commission (Commission) Regulatory Committee approved, with 4 members voting in favor and 1 member opposed, the request of the Falmouth Economic Development and Industrial Corporation (EDIC) for a Development of Regional Impact (DRI) Hardship Exemption Minor Modification #2 pursuant to Section 13 of Enabling Regulations governing review of Developments of Regional Impact (“DRI Enabling Regulations”), Barnstable County Ordinance 90-12, for the reconfiguration of industrial land

located in the Raymond Park Industrial Subdivision at Edgerton Drive in North Falmouth, MA. On September 27, 2010, the Commission's Regulatory Committee voted 5 in favor and 1 opposed to approve the written Minor Modification decision.

On August 21, 2008, the Cape Cod Commission issued the Falmouth Economic Development & Industrial Committee (Falmouth EDIC or Applicant) a DRI Hardship Exemption decision approving with conditions the proposed subdivision of land located in the Raymond Park industrial park at Edgerton Drive in North Falmouth. The proposal sought to combine and re-subdivide land into three lots totaling 8.19 acres. The 2008 approved configuration of lots is shown on Exhibit A attached to this decision and incorporated by reference.

MODIFICATION REQUEST

As part of this modification request, the Applicant is seeking to modify the 2008 decision to allow for an alternate plan which would include the combination of lots identified on the Preliminary Subdivision Plan as Lot 3A, Lot 3B and Lot 4B (Exhibit A). The proposed new configuration of lots is shown on Exhibits B1 and B2 attached to this decision and incorporated by reference; the Applicant is requesting approval of both potential plans. Exhibit B1 provides for the extinguishment of an access easement across the westerly abutting parcel, whereas the access easement remains in Exhibit B2. Furthermore, the Applicant seeks to allow as an alternate plan the development of one 30,000 square foot (s.f.) building on one consolidated lot, rather than three (3) 10,000 s.f. buildings on three lots. The Applicant is also requesting that should this plan be exercised, that the qualifying entity criteria be modified to allow up to 150 employees on site, rather than 50 employees on each site within three separate sites or lots.

JURISDICTION

A Minor Modification #2 is described in the Commission's Enabling Regulations as "*a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the findings or condition. A proposed change shall not result in different or increased impacts to the resources protected by the Act and/or the RPP.*"

On September 13, 2010, the Commission's Regulatory Committee voted to approve the request as a Minor Modification #2.

MINOR MODIFICATION DECISION

The Commission has considered the request of the Falmouth EDIC for a DRI Hardship Exemption Minor Modification 2 for the proposed reconfiguration of land at the Raymond Park Industrial Subdivision, located at Edgerton Drive in North Falmouth, MA. Based on consideration of such application and upon the information presented to the Regulatory Committee at its meeting on September 13, 2010 and submitted for the record, the Regulatory Committee makes amendments to the findings and conditions of the 2008 decision as identified below (added text is shown in bold, deleted text is stricken). All other findings and conditions of the 2008 decision continue to remain in effect.

General Findings:

F-G4 The Falmouth EDIC proposes to modify the 2003 Definitive Plan for the purpose of improving accessibility and marketability in a manner consistent with the 2006 Preliminary Plan, which shows reconfigured lots 3A, 3B and 4B (“**Option A**”).

The Falmouth EDIC proposes as an alternate plan to modify the 2003 Definitive Plan for the purpose of improving accessibility and marketability in a manner consistent with the Plan of Land which shows reconfigured Lot 10 prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to this decision as Exhibit B1 and incorporated by reference; or the Plan of Land which shows reconfigured Lot 10 prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to this decision as Exhibit B2 and incorporated by reference (“Option B”).

F-G9 The Falmouth EDIC seeks to further its goals and mission by seeking a Hardship Exemption from some of the minimum performance standards in the issue areas of water resources, open space and transportation for “qualifying entities” so called, that may purchase or lease lots 3A, 3B and 4B as reconfigured on the 2006 Preliminary Subdivision Plan (“**Option A**”) or Lot 10 as shown on plans attached to this decision and identified as **Exhibits B1 and B2 (“Option B”)**.

F-G11 Brian A. Currie, Falmouth Town Planner - based on policy guidance from a joint meeting with the Falmouth Board of Selectmen and Planning Board - testified at the July 17, 2008 public hearing and in an email dated July 22, 2008 concerning the standards to be considered for a qualifying entity. The Commission adopts this testimony and finds that, in order for a use to be considered a “qualifying entity” for **Option A**, the following characteristics must be met:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than 50 employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

Brian Currie provided further testimony at the September 13, 2010 Regulatory Committee meeting and in writing to Commission staff dated August 30, 2010 supporting the requested change from 50 employees to 150 employees for Option B. The Commission adopts this testimony and finds, that in order for a use to be considered a “qualifying entity” for Option B, that following characteristics must be met:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than **150** employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

F-G12 The Commission finds that the four items listed in F-G11 shall be the objective criteria for determining whether an entity that acquires a real property interest in **either Option A or Option B as identified in F-G4 lots 3A, 3B and 4B as reconfigured on the 2006 Preliminary Plan**, is a qualifying entity for purposes of condition C-G8.

Water Resources Findings:

F-W4 Development plans for the proposed subdivision have not been prepared. To establish a baseline, a 124.1 kilogram-N per year increase in nitrogen load to Rands Canal/Harbor can be expected if the 3-lot subdivision **pursuant to Option A** were to be developed as office space up to the DRI commercial threshold of 10,000 s.f. on each lot (a total of 30,000 s.f.). In such a case, the nitrogen load would exceed the critical nitrogen load by 73.2 kg-N per year, the corresponding nitrogen-offset would be \$122,300 (or \$40,767 per lot), and the nitrogen-loading concentration would be 5-ppm-N. Developments of Regional Impact are not permitted to exceed nitrogen-loading concentration of 5 ppm-N pursuant to MPS 2.1.1.1.

The Commission finds that the waiver of MPS 2.1.1.2C and its corresponding mitigation payment of \$122,300 (or \$40,767 per lot) **pursuant to Option A**, for qualifying entities, is appropriate because:

- i) a literal enforcement of the provisions of the Act would involve substantial hardship, both financial and otherwise;
- (ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

To establish a baseline, a 124.1 kilogram-N per year increase in nitrogen load to Rands Canal/Harbor can be expected if Lot 10 pursuant to Option B was to be developed as office space for a total of 30,000 s.f. In such a case, the nitrogen load would exceed the critical nitrogen load by 73.2 kg-N per year, the corresponding nitrogen-offset would be \$122,300, and the nitrogen-loading concentration would be 5-ppm-N. Developments of Regional Impact are not permitted to exceed nitrogen-loading concentration of 5 ppm-N pursuant to MPS 2.1.1.1.

The Commission finds that the waiver of MPS 2.1.1.2C and its corresponding mitigation payment of \$122,300 for Option B, for qualifying entities, is appropriate because:

- i) a literal enforcement of the provisions of the Act would involve substantial hardship, both financial and otherwise;

(ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Transportation Findings:

F-T1 The expected trip generation of **Option A** of this project is based on information contained in the Institute of Transportation Engineers Trip Generation manual 7th Edition. As shown in Table 2, the net increase in vehicle trips is significant during the morning and afternoon peak hours.

Table 1 – Trip Generation Estimates

| Development | Time Period | Vehicle trips |
|---------------------------------|---------------------|---------------|
| 15,000 SF medical-dental office | Morning Peak Hour | 58 |
| | Afternoon Peak Hour | 67 |
| | Daily traffic | 398 |

| Development | Time Period | Vehicle trips |
|------------------------------------|---------------------|---------------|
| 15,000 SF research and development | Morning Peak Hour | 26 |
| | Afternoon Peak Hour | 27 |
| | Daily traffic | 213 |

Table 2 – Trip Generation Estimates for the potential 30,000 SF development

| Time Period | Vehicle Trips |
|---------------------|---------------|
| Morning Peak Hour | 84 |
| Afternoon Peak Hour | 94 |
| Daily Traffic | 611 |

The expected trip generation of **Option B** of this project is based on information contained in the Institute of Transportation Engineers Trip Generation manual 8th Edition. As shown in Table 3, the net increase in vehicle trips is not significant during any time period.

Table 1 – Trip Generation Estimates (vehicles per hour)

| Time Period | Vehicle Trips |
|----------------------------|---------------|
| Average Daily | 115 |
| Morning Peak Hour | 22 |
| Afternoon Peak Hour | 22 |

Based on ITE Trip Generation manual, 8th Edition, Land Use Code 140 (Manufacturing).

F-T2 To assist the developer in determining the potential cost to offset the impacts of a 30,000 SF development scenario (15,000 SF medical-dental building and 15,000 SF research and development building) **pursuant to Option A**, Cape Cod Commission transportation staff have estimated the fair-share transportation impact mitigation payment based on other projects using the Cape Cod Commission Guidelines for

Transportation Impact Assessment Technical Bulletin 96-003, revised January 9, 2003, Part 2 – Fair Share Overview and Methodology. Based on the average cost of previous projects, the fair-share cost of transportation impacts can be assessed based on daily impacts. The cost to mitigate transportation impacts per daily trips is \$500 per daily trip. For the development impacts outlined in Table 2, the fair share cost to mitigate the transportation impacts would be \$305,500 (\$500 x 611 trips), or \$101,833 per lot.

To assist the developer in determining the potential cost to offset the impacts of a 30,000 SF development scenario of a manufacturing facility pursuant to Option B, Cape Cod Commission transportation staff have estimated the fair-share transportation impact mitigation payment based on other projects using the Cape Cod Commission Guidelines for Transportation Impact Assessment Technical Bulletin 96-003, revised January 9, 2003, Part 2 – Fair Share Overview and Methodology. Based on the average cost of previous projects, the fair-share cost of transportation impacts can be assessed based on daily impacts. The cost to mitigate transportation impacts per daily trips is \$500 per daily trip. For the development impacts outlined in Table 2, the fair share cost to mitigate the transportation impacts would be \$57,500 (\$500 x 115 trips).

- F-T4** The Commission finds that the waiver of MPS 4.1.1.1, 4.1.1.2, 4.1.3.4, 4.1.1.3, 4.1.1.5, 4.1.1.6, 4.1.1.9, 4.1.1.7, 4.1.2.1, 4.1.3.2 and its corresponding mitigation payment of \$305,500 (or \$101, 833 per lot) **pursuant to Option A, or \$57,500 pursuant to Option B**, for qualifying entities, is appropriate because:
- i) a literal enforcement of the provisions of the Act would involve `substantial hardship, both financial and otherwise;
 - (ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

General Conditions:

- C-G1** Parcel "C" and two (2) lots shown as lot 4 and lot 2A on an plan entitled: "*Definitive Subdivision Plan prepared for the Falmouth Economic Development & Industrial Corporation*" prepared by Holmes and McGrath, Inc., dated July 3rd, 2003, revised September 9, 2003, scale 1" = 80' (hereafter referred to as the "2003 Definitive Plan") may be re-subdivided into no more than three lots totaling approximately 8.19 acres (**Option A**). Any subdivision plan that may be approved by the Falmouth Planning Board, as it relates to Lots 3A, 3B and 4B as shown on the 2006 preliminary plan, shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit A. This re-subdivision shall also be consistent with a plan entitled: "*Preliminary Subdivision Plan, prepared for the Falmouth Economic Development & Industrial Corporation*" prepared by Holmes and McGrath, Inc., dated October 13, 2006, scale 1" = 80' (hereafter referred to as the "2006 Preliminary Plan") as may be reasonably altered by the Falmouth Planning Board in its discretion.

The modified definitive plan approved by the Falmouth Planning Board shall have a marginal note that the land shown as Lots 3A, 3B and 4B on the 2006 Preliminary Plan shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit A C.

In the alternative, Lots 3A, 3B and 4B as shown on the 2006 Preliminary Plan (Exhibit A) may be combined into one lot totaling 8.19 acres (Option B). Any plan that may be endorsed by the Falmouth Planning Board, as it relates to Lot 10 as shown on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B1); or the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to this decision as Exhibit B2, shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit D. The plan as it relates to Lot 10 may be reasonably altered by the Falmouth Planning Board in its discretion.

The modified plan endorsed by the Falmouth Planning Board shall have a marginal note that the land shown as Lot 10 on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B1); or the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B2) shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit D.

C-G6 Upon approval of the modified subdivision plan pursuant to either Option A or Option B by the Falmouth Planning Board, the Falmouth EDIC shall record the declaration of restrictions, appended to this decision as Exhibit AC or D accordingly, once it is approved by Commission counsel as to final form, together with the modified definitive plan and decision, if any, of the Falmouth Planning Board that creates new Lots 3A, 3B and 4B (Option A) or new Lot 10 (Option B). The modified definitive plan shall carry a marginal note as follows, *This plan is subject to a covenant dated _____, and a declaration of restrictions dated _____, to be recorded herewith.*

C-G7 If Option A is pursued by the Applicant, the mitigation required by conditions F-W1 and F-T1 shall be paid prior to the issuance of a building permit for each of lots 3A, 3B, and 4B as those lots are identified on the 2006 Preliminary Subdivision Plan unless the lot has a recorded waiver certificate from the Cape Cod Commission Executive Director for its use in accordance with Condition C-G8. If Option B is pursued by the Applicant, the mitigation required by conditions C-W1 and C-T1 shall be paid prior to the issuance of a building permit for lot 10 as the lot is identified on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B1); or the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B2) unless the lot has a recorded waiver certificate from the Cape Cod

Commission Executive Director for its use in accordance with Condition C-G8.

C-G8 Any entity that acquires a real property interest in 3A, 3B, or 4B pursuant to **Option A** as those lots are identified on the 2006 Preliminary Subdivision Plan may request a waiver of the mitigation required by conditions F-W1 and F-T1. A waiver may only be granted to a qualifying entity. In order for a use to be considered a “qualifying entity” for the purposes of this decision, the following criteria on the proposed use of the land must be met:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than 50 employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

Any entity that acquires a real property interest in **Lot 10 pursuant to Option B as the lot is identified on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B1); or the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. (Exhibit B2)** may request a waiver of the mitigation required by conditions C-W2 and C-T2. A waiver may only be granted to a qualifying entity. In order for a use to be considered a “qualifying entity” for the purposes of this decision, the following criteria on the proposed use of the land must be met:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than 150 employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

To process a request for waiver of mitigation, a letter from the Falmouth Planning Board addressed to the Executive Director of the Cape Cod Commission that provides evidence that the proposed use of the land meet each of the applicable criteria listed in condition C-G8 shall be necessary.

The Executive Director or his designee shall review the letter and, if in his determination the objective criteria have been met, shall issue a certificate in

recordable form which shall so certify and which shall waive the mitigation otherwise required. The waiver certificate shall only be applicable to the specific use and applicant referenced therein. Any subsequent change in use, change in the entity using the lot, or sale of the lot shall require an additional certificate to be obtained in order to waive the mitigation required by this decision.

Water Resources Conditions:

C-W2 If Option A is pursued by the Applicant, or its successors and assigns, prior to the issuance of a building permit, the applicant, or its successors or assigns, shall pay a nitrogen offset of \$40,767 per lot to be held by Barnstable County/Cape Cod Commission for use by the Town of Falmouth for the development of nitrogen management strategies for the Rands Canal/Harbor watershed. The nitrogen offset may be waived for each of lots 3A, 3B and 4B as those lots are identified on the 2006 Preliminary Subdivision Plan provided the applicant or its successors and assigns (hereinafter "applicant") record a waiver certificate for each parcel from the Executive Director of the Cape Cod Commission in accordance with Condition C-G8.

If Option B is pursued by the Applicant, prior to the issuance of a building permit for Lot 10, the applicant shall pay a nitrogen offset of \$122,300 to be held by Barnstable County/Cape Cod Commission for use by the Town of Falmouth for the development of nitrogen management strategies for the Rands Canal/Harbor watershed. The nitrogen offset may be waived for Lot 10 provided the applicant or its successors and assigns record a waiver certificate for the parcel from the Executive Director of the Cape Cod Commission in accordance with Condition C-G8.

Transportation Conditions:

C-T2 If Option A is pursued by the Applicant, prior to the issuance of a building permit, the applicant shall pay a trip generation offset of \$101,833.00 per lot to a transportation mitigation fund to be held by Barnstable County/Cape Cod Commission, as calculated in transportation finding F-T2. These funds shall be applied to any transportation project within the Town of Falmouth. The trip generation offset may be waived for each of Lots 3A, 3B and 4B as those lots are identified on the 2006 Preliminary Plan provided the Applicant records a waiver certificate for each parcel from the Executive Director of the Cape Cod Commission in accordance with Condition C-G8.

If Option B is pursued by the Applicant, prior to the issuance of a building permit for Lot 10, the applicant shall pay a trip generation offset of \$57,500 to a transportation mitigation fund to be held by Barnstable County/Cape Cod Commission, as calculated in transportation finding F-T2. These funds shall be applied to any transportation project within the Town of Falmouth. The trip generation offset may be waived for Lot 10 provided the Applicant records a waiver certificate for the parcel from the Executive Director of the Cape Cod Commission in accordance with Condition C-G8.

CONCLUSION

The Cape Cod Commission Regulatory Committee hereby approves the request of the Falmouth EDIC for a Development of Regional Impact Hardship Exemption Minor Modification #2 for the proposed reconfiguration of land in the Raymond Park Industrial subdivision located at Edgerton Drive in North Falmouth, MA . This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on September 27, 2010.

Royden Richardson
Royden Richardson
Chair, Cape Cod Commission Regulatory Committee

9/27/2010
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

9/27, 2010

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

Gail P. Hanley
My Commission Expires:

10.13.11

EXHIBIT A

NOTES

ZONING DISTRICT: FU, IIA
 NUMBER OF BUILDING LOTS: 4
 FLOOD HAZARD ZONE: 0

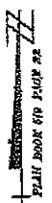
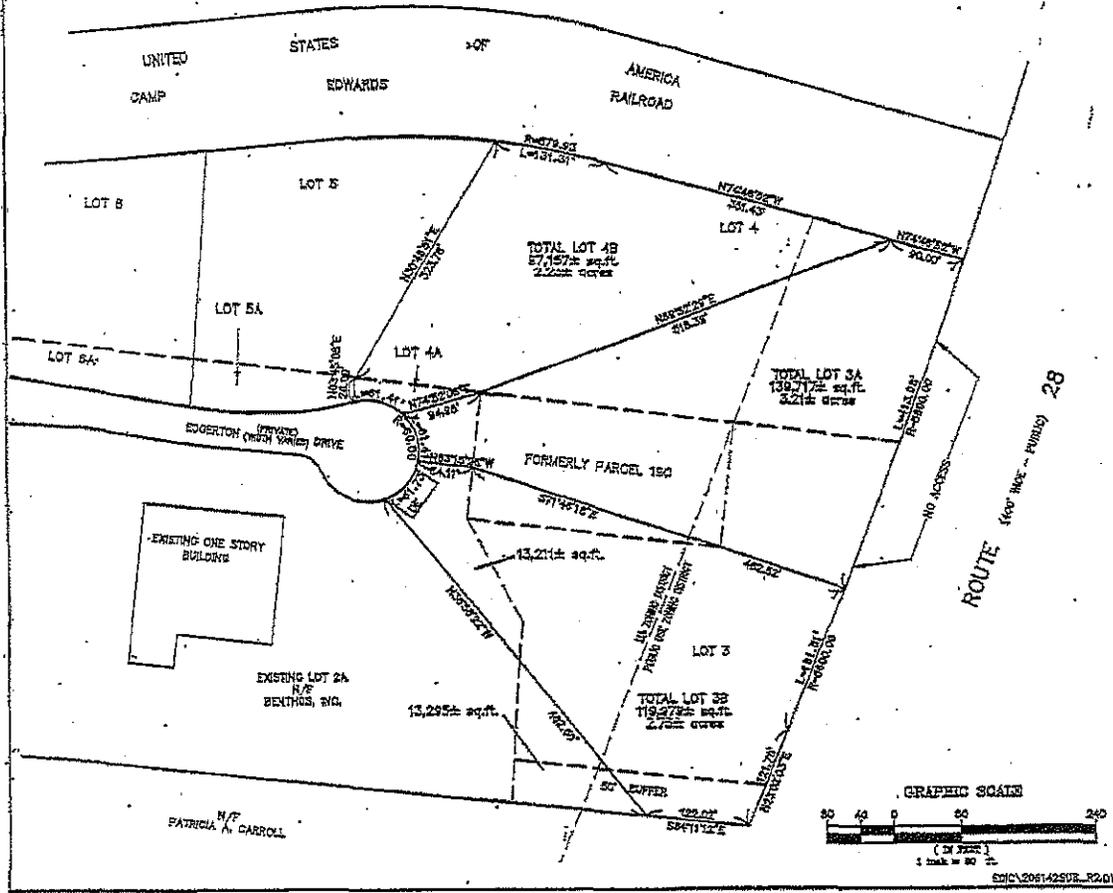
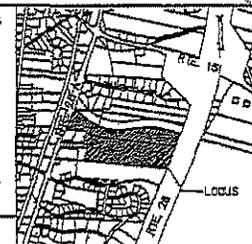
ZONING REQUIREMENTS

IIA ZONING DISTRICT

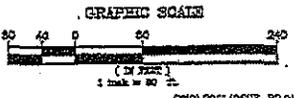
MINIMUM LOT AREA: 40,000 FT.²
 MINIMUM FRONTAGE: 100 FT.
 MINIMUM LOT WIDTH: 150 FT.
 MINIMUM FRONT YARD: 50 FT.
 MINIMUM SIDE YARD: 25 FT.
 MINIMUM SIDE YARD FOR PARKING LOT: 15 FT.
 MAXIMUM LOT COVERAGE: 40% BY STRUCTURES
 70% BY STRUCTURES, PAVING,
 AND PARKING

FU ZONING DISTRICT

MINIMUM LOT AREA: 45,000 FT.²
 MINIMUM FRONTAGE: 100 FT.
 MINIMUM LOT WIDTH: 150 FT.
 MINIMUM FRONT YARD: 35 FT.
 MINIMUM SIDE YARD: 10 FT.
 MINIMUM SIDE YARD FOR PARKING LOT: NONE
 MAXIMUM LOT COVERAGE: 40% BY STRUCTURES
 70% BY STRUCTURES, PAVING,
 AND PARKING



| DATE | DESCRIPTION | Drawn/Checked |
|--|-------------|----------------------------------|
| REVISIONS | | |
| PRELIMINARY SUBDIVISION PLAN | | |
| PREPARED FOR | | |
| FALMOUTH Economic Development & Industrial Corporation | | |
| IN | | |
| NORTH FALMOUTH MA | | |
| SCALE: 1"=80' | | DATE: OCT. 13, 2008 |
| helmes and mcgrath, inc. | | |
| civil engineers and land surveyors | | |
| 382 gifford street (SOB) 548-3584 (PHONE) | | |
| falmouth, ma. 02540 (SOB) 548-9872 (FAX) | | |
| DRAWN: FJR | | CHECKED: |
| JOB NO: 208142 | | DWG. NO.: 79-4-2 01 SHEET 1 OF 1 |



ENCLOSURE 208142 SUB-R2.DWG

EXHIBIT B2

NOTES

ZONING DISTRICT: PU, LIA
 FLOOD HAZARD ZONE: C
 ASSESSOR'S NUMBERS:
 05 10 018A004
 05 10 019C000
 05 10 019 002A

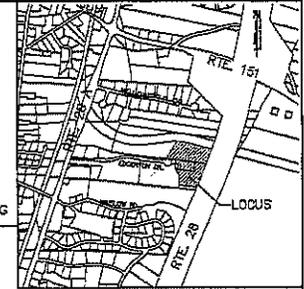
ZONING REQUIREMENTS

LIA ZONING DISTRICT:

MINIMUM LOT AREA _____ 40,000 FT.
 MINIMUM FRONTAGE _____ 100 FT.
 MINIMUM LOT WIDTH _____ 150 FT.
 MINIMUM FRONT YARD _____ 50 FT.
 MINIMUM SIDE YARD _____ 35 FT.
 MINIMUM SIDE YARD FOR PARKING LOT _____ 15 FT.
 MAXIMUM LOT COVERAGE: _____ 40% BY STRUCTURES
 _____ 70% BY STRUCTURES,
 PAVING, AND PARKING

PU ZONING DISTRICT:

MINIMUM LOT AREA _____ 45,000 FT.
 MINIMUM FRONTAGE _____ 100 FT.
 MINIMUM LOT WIDTH _____ 150 FT.
 MINIMUM FRONT YARD _____ 35 FT.
 MINIMUM SIDE YARD _____ 10 FT.
 MINIMUM SIDE YARD FOR PARKING LOT _____ NONE
 MAXIMUM LOT COVERAGE: _____ 40% BY STRUCTURES
 _____ 70% BY STRUCTURES,
 PAVING, AND PARKING



LOCUS MAP
NOT TO SCALE

AT A MEETING OF THE FALMOUTH PLANNING BOARD HELD _____
 IT WAS VOTED:
 "APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."

I certify that this plan was made in accordance with the rules and regulations of the Registers of Deeds.

HOLMES AND McGRATH, INC.

MARY ELLEN STREETER
 Registered Professional Land Surveyor Date _____

This survey and plan conform to the procedural and technical standards for the practice of Land Surveying in the Commonwealth of Massachusetts.

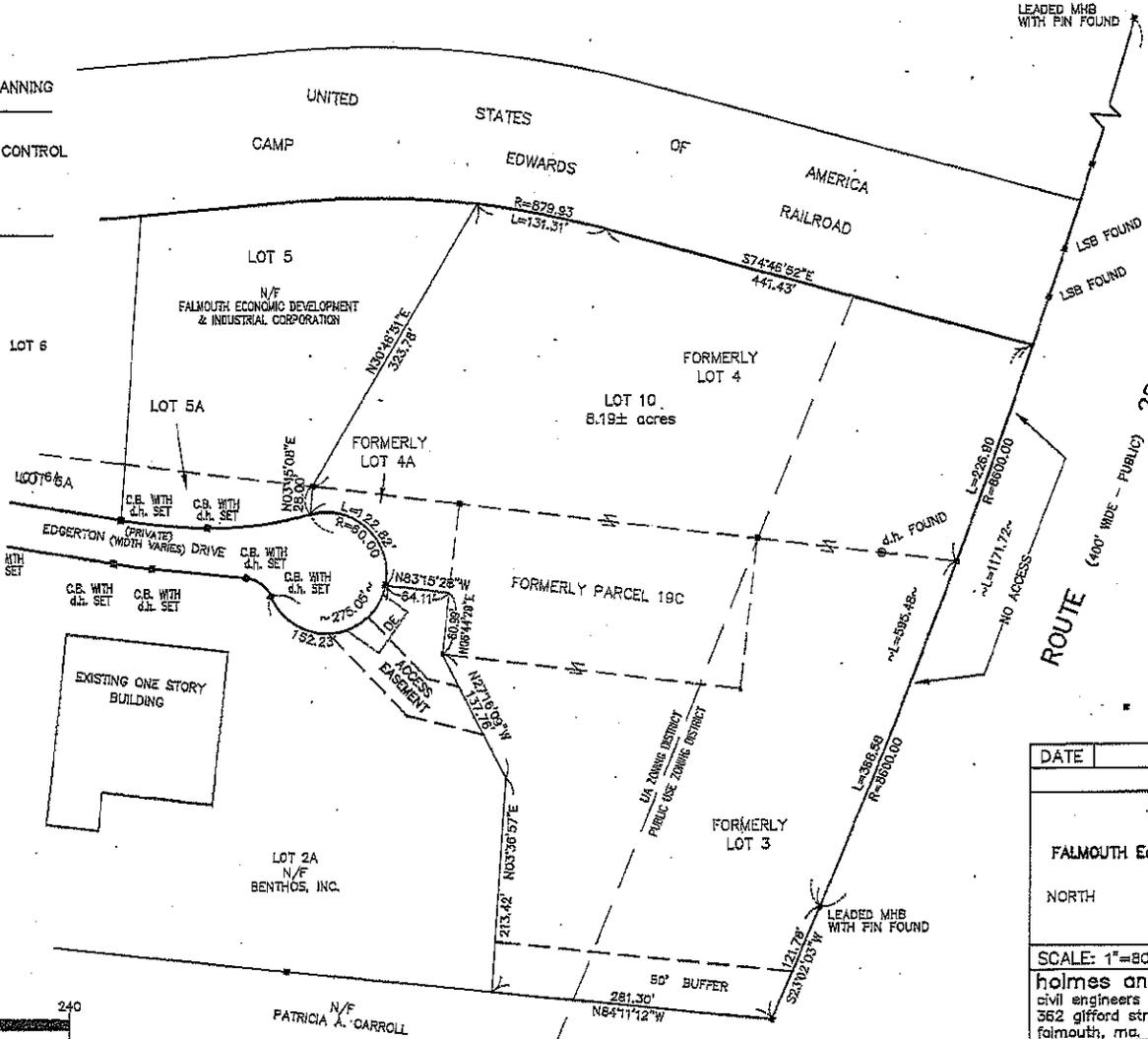
HOLMES AND McGRATH, INC.

MARY ELLEN STREETER
 Registered Professional Land Surveyor Date _____

Note: This plan is based on an on-the-ground instrument survey.

INDICATES CONCRETE BOUND WITH DRILLHOLE FOUND (UNLESS NOTED OTHERWISE)

PLAN BOOK 619 PAGE 82



ROUTE 28
 (400' WIDE - PUBLIC)

| DATE | DESCRIPTION | Drawn | Checked |
|--|---------------------|--------------|---------|
| REVISIONS | | | |
| PLAN OF LAND | | | |
| PREPARED FOR | | | |
| FALMOUTH Economic Development & Industrial Corporation | | | |
| IN | | | |
| NORTH | | FALMOUTH MA | |
| SCALE: 1"=80' | DATE: AUG. 27, 2010 | | |
| holmes and mcgrath, inc. civil engineers and land surveyors 362 gifford street (508) 548-3564 (PHONE) falmouth, ma 02540 (508) 548-9572 (FAX) | | | |
| DRAWN: PUR, LAC | CHECKED: | | |
| JOB NO: 210180 | DWG. NO.: 75-4-2 Z2 | SHEET 1 OF 1 | |

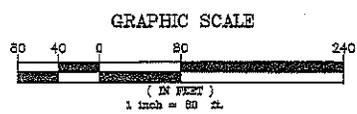


Exhibit A-C
DECLARATION OF RESTRICTIONS

I, ~~Mary Pat Flynn~~ **Carey M. Murphy**, as Chairman of the Falmouth Economic Development & Industrial Corporation, am authorized as legal signatory for documents of record as owners of a certain parcel of land that is 8.19-acres and as shown on a plan entitled "Definitive Subdivision Plan" prepared for the Falmouth Economic Development and Industrial Corporation by Holmes and McGrath, Inc., dated July 3, 2003, that is recorded in the Barnstable County Registry of Deeds in Book 586, Page 20, and which land is shown on a "Preliminary Subdivision Plan", prepared for the Falmouth Economic Development and Industrial Corporation, dated October 13, 2006, which is attached here as Exhibit A, and prepared by Holmes and McGrath, Inc., for good and valuable consideration, including without limitation the Hardship exemption referenced below, hereby make and declare said property subject to the following restrictive covenant and provisions:

1. Mitigation

Lots 3A, 3B, and 4B as identified on the Preliminary Subdivision Plan prepared for the Falmouth Economic Development and Industrial Corporation by Holmes & McGrath, Inc., dated October 13, 2006, are subject to the Cape Cod Commission Development of Regional Impact Decision Hardship Exemption Decision HDEX#07014.

As part of this decision, mitigation in the amount of \$142,600.00 per lot ("the mitigation payment") is required to be paid to the Cape Cod Commission/Barnstable County prior to the issuance of any building permit for each lot.

The mitigation required shall be paid prior to the issuance of a building permit for each of lots 3A, 3B and 4B as shown on a plan entitled "Preliminary Subdivision Plan" prepared for the Falmouth Economic Development & Industrial Corporation, dated October 13, 2006, or as such lots may be reconfigured by the Falmouth Planning Board in the course of its approval unless the lot has a recorded waiver certificate from the Cape Cod Commission Executive Director for its use in accordance with Paragraph 2.

2. Waiver

Any owner of lots 3A, 3B, or 4B may request a waiver of the mitigation payment. A waiver may only be granted to a qualifying entity. In order to be considered a "qualifying entity" for the purposes of this restriction, the user and the proposed use must satisfy all of the following criteria:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than 50 employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

To process a request for waiver of mitigation, the owner of each lots 3A, 3B, or 4B should submit a letter from the Falmouth Planning Board addressed to the Executive Director of the Cape Cod Commission that provides evidence that the proposed use of the lot and the entity meet each of the applicable criteria listed above.

The Executive Director or his designee shall review the letter and, if in his determination, the objective criteria have been met, shall issue a certificate in recordable form which shall so certify and which shall waive the mitigation otherwise required. The waiver certificate shall only be applicable to the specific use and applicant referenced therein. Any subsequent change in use, change in the entity using the lot, or sale of the lot shall require an additional certificate to be obtained in order to waive the mitigation required by this decision.

3. Duration

The restrictive covenants set forth herein shall be effective for fifty (50) years from the date of the recording hereof.

4. Benefit.

The foregoing restrictions are for the benefit of the Cape Cod Commission and for their successors and assigns and this restriction shall run with the land and shall apply to the successors to the Falmouth Economic Development and Industrial Corporation's right, title and interest. These restrictions shall be enforceable in equity. If any court grants equitable or declaratory relief to any grantee or successor seeking to enforce these restrictions, or any of them, the court shall also award said party its reasonable attorneys' fees in obtaining such relief.

WITNESS the execution hereof under seal as of the ____ day of _____, 2010.

Falmouth Economic Development and Industrial Corporation

By: _____
Carey M. Murphy, Chairman, FEDIC

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2010

Before me, the undersigned notary public, personally appeared _____, in his capacity as Chairman of the Falmouth Economic Development & Industrial Corporation, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

My Commission Expires:

WITNESS the execution hereof under seal as of the ____ day of August, 2008.

Falmouth Economic Development and Industrial Corporation

By: _____
Mary Pat Flynn, Chairman, FEDIC

COMMONWEALTH OF MASSACHUSETTS

~~BARNSTABLE, ss _____, 2008~~

~~On this day before me, the undersigned notary public, personally appeared _____, who proved to me through satisfactory evidence of identification which was _____ to be _____, whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized and voluntarily, for its stated purpose.~~

Notary Public
My commission Expires:

Exhibit A-D
DECLARATION OF RESTRICTIONS

I, ~~Mary Pat Flynn~~ **Carey M. Murphy**, as Chairman of the Falmouth Economic Development & Industrial Corporation, am authorized as legal signatory for documents of record as owners of a certain parcel of land that is 8.19-acres and as shown on a plan entitled "Definitive Subdivision Plan" prepared for the Falmouth Economic Development and Industrial Corporation by Holmes and McGrath, Inc., dated July 3, 2003, that is recorded in the Barnstable County Registry of Deeds in Book 586, Page 20, and which land is shown on a ~~"Preliminary Subdivision Plan"~~, prepared for the Falmouth Economic Development and Industrial Corporation, dated October 13, 2006, which is attached here as Exhibit A, and prepared by Holmes and McGrath, Inc. **the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to the September 27, 2010 Minor Modification #2 decision as Exhibit B1; or the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to the September 27, 2010 Minor Modification #2 decision as Exhibit B2**, for good and valuable consideration, including without limitation the Hardship exemption referenced below, hereby make and declare said property subject to the following restrictive covenant and provisions:

1. Mitigation

~~Lots 3A, 3B, and 4B as identified on the Preliminary Subdivision Plan prepared for the Falmouth Economic Development and Industrial Corporation by Holmes & McGrath, Inc., dated October 13, 2006;~~ **Lot 10 as identified on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to the September 27, 2010 Minor Modification #2 decision as Exhibit B1; or Lot 10 on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc. which is attached to the September 27, 2010 Minor Modification #2 decision as Exhibit B2** are subject to the Cape Cod Commission Development of Regional Impact Decision Hardship Exemption Decision HDEX#07014 **and subsequent modifications**. As part of this decision, **as modified**, mitigation in the amount of ~~\$142,600.00~~ per lot **\$179,800** ("the mitigation payment") is required to be paid to the Cape Cod Commission/Barnstable County prior to the issuance of any building permit for each **the** lot.

The mitigation required shall be paid prior to the issuance of a building permit for **Lot 10 as identified on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z1) dated August 27, 2010, prepared by Holmes and McGrath, Inc.; or Lot 10 on the Plan of Land prepared for the Falmouth Economic Development & Industrial Corporation (DWG. NO.: 79-4-2 Z2) dated August 27, 2010, prepared by Holmes and McGrath, Inc.** each of lots ~~3A, 3B and 4B~~ as shown on a plan entitled "Preliminary Subdivision Plan" prepared for the Falmouth Economic Development & Industrial Corporation, dated ~~October 13, 2006~~, or as such lots may be reconfigured by the Falmouth Planning Board in the course of its approval unless the lot has a recorded waiver certificate from the Cape Cod Commission Executive Director for its use in accordance with Paragraph 2.

2. Waiver

Any owner of ~~lots 3A, 3B, or 4B~~ **Lot 10** may request a waiver of the mitigation payment. A waiver may only be granted to a qualifying entity. In order to be considered a "qualifying entity" for the purposes of this restriction, the user and the proposed use must satisfy all of the following criteria:

- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
- 2) the use is a small business (i.e with less than ~~50~~ **150** employees on site);
- 3) the use has a majority of year-round, full time positions;
- 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

To process a request for waiver of mitigation, the owner of each ~~lots 3A, 3B, or 4B~~ **Lot 10** should submit a letter from the Falmouth Planning Board addressed to the Executive Director of the Cape Cod Commission that provides evidence that the proposed use of the lot and the entity meet each of the applicable criteria listed above.

The Executive Director or his designee shall review the letter and, if in his determination, the objective criteria have been met, shall issue a certificate in recordable form which shall so certify and which shall waive the mitigation otherwise required. The waiver certificate shall only be applicable to the specific use and applicant referenced therein. Any subsequent change in use, change in the entity using the lot, or sale of the lot shall require an additional certificate to be obtained in order to waive the mitigation required by this decision.

3. Duration

The restrictive covenants set forth herein shall be effective for fifty (50) years from the date of the recording hereof.

4. Benefit.

The foregoing restrictions are for the benefit of the Cape Cod Commission and for their successors and assigns and this restriction shall run with the land and shall apply to the successors to the Falmouth Economic Development and Industrial Corporation's right, title and interest. These restrictions shall be enforceable in equity. If any court grants equitable or declaratory relief to any grantee or successor seeking to enforce these restrictions, or any of them, the court shall also award said party its reasonable attorneys' fees in obtaining such relief.

WITNESS the execution hereof under seal as of the ____ day of _____, 2010.

Falmouth Economic Development and Industrial Corporation

By: _____
Carey M. Murphy, Chairman, FEDIC

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2010

Before me, the undersigned notary public, personally appeared _____, in his capacity as Chairman of the Falmouth Economic Development & Industrial Corporation, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

My Commission Expires: