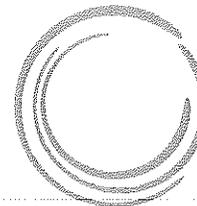


3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630



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

**CAPE COD  
COMMISSION**

Date: December 15, 2011

To: Luke Hinkle  
My Generation Energy, Inc.  
3 Diamonds Path, Unit 2  
South Dennis, MA 02660

From: Cape Cod Commission

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

Applicant: My Generation Energy, Inc.

Owner: Airport Nominee Trust  
J. Bruce MacGregor  
216 Thornton Drive  
Hyannis, MA 02601

Project: Airport Way Nominee Trust  
180 Airport Way  
Hyannis, MA 02601

Project #: TR11016

Registry of Deeds  
Book/Page#: 11953/1

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**DECISION OF THE CAPE COD COMMISSION**

**SUMMARY**

The Cape Cod Commission ("Commission") hereby approves with conditions, the application of My Generation Energy, Inc. (hereinafter the "Applicant") for the Airport Way Nominee Trust project as a Limited Development of Regional Impact (DRI) Project of Community Benefit Hardship Exemption pursuant to Sections 12, 13 and 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the construction of a 1.38 MW solar array at 180

Airport Way, Hyannis, Massachusetts. This decision is rendered pursuant to an 11-1 vote of the Commission on December 15, 2011.

### **PROJECT DESCRIPTION**

The project is located at 180 Airport Way, Hyannis, Massachusetts. The property is zoned Limited Industrial. It is in the newly-created Ground Mounted Solar Photovoltaic overlay district. The site is also in the Adult Use Overlay District and a portion of the site is located in the Wellhead Protection overlay district for the Town of Barnstable. The proposed project site is situated in a designated Resource Protection Area (RPA) on the Regional Land Use Vision Map (RLUVM) due to its location within a DEP Zone II/Wellhead Protection Area and is mapped as Priority and Estimated Habitat by the Natural Heritage and Endangered Species Program (NHESP).

The project site consists of approximately 12.5 acres of land, with approximately 50% presently developed for commercial/industrial use. The project site is located in a Significant Natural Resource Area due to the presence of mapped rare species habitat (for barrens buckmoth) and a public wellhead water supply protection area. The site is mapped as BioMap Core Habitat by the Natural Heritage and Endangered Species Program (NHESP) due to the presence of Species of Conservation Concern and rare species associated with the several coastal plain ponds in the vicinity of the project site.

According to the application materials, the Airport Way Nominee Trust (hereafter, the "Airport Way" or the "Applicant"), a Massachusetts Limited Liability Company applied for Project of Community Benefit ("POCB") hardship exemption relief from certain minimum performance standards of the Commission's 2009 Regional Policy Plan to enable the construction of a solar energy array with approximately 1,380,000 Watt (1.38MW) peak output. The application materials evaluate the environmental benefits with respect to two main attributes: (1) avoided fuel acquisition (mining, drilling, processing, transportation, and storage) and (2) avoided byproducts and emissions from traditional electricity generation. According to the application materials, over the first twenty-five years of this project's operation, an estimated 45 GigaWatt hours (GWh) of energy will be produced. The application states that this project eliminates the requirement for approximately 213 billion cubic feet of natural gas, 80 pounds of enriched uranium, 2,150 tons of coal and 371,250 gallons of crude oil as well as the direct environmental impact of mining, extracting, processing, transporting, and storing these fuels and their production byproducts. The application further states that the proposed project will avoid the release of 30,150 pounds of NOx, 52,200 pounds of SO<sub>2</sub>, and 31,666,500 pounds of CO<sub>2</sub> and eliminate the creation of 80 pounds of spent nuclear fuel material.

The Application materials state that the environmental, economic, and community leadership benefits of the proposed project qualify it as a Project of Community Benefit for purposes of Hardship relief.

### **PROCEDURAL HISTORY**

The applications for a Limited Development of Regional Impact ("Limited DRI") and a Project of Community Benefit Hardship Exemption were received by the Commission on October 3, 2011. The Commission received the referral from the Town of Barnstable Building Commissioner, through the Interim Town Manager, on October 12, 2011. The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(iii) of the Commission's

*Enabling Regulations (Revised March 2011) as "new construction or development that has a Total Project Area greater than 40,000 square feet."*

The Limited DRI Review and Project of Community Benefit Hardship Exemption applications were deemed to be substantially complete to proceed to a public hearing in a letter dated November 21, 2011.

In accordance with the Cape Cod Commission Act, a duly noticed public hearing on the DRI, Limited DRI and Project of Community Benefit Hardship Exemption was held on November 21, 2011 by an authorized subcommittee of the Commission at 5:30 pm at the Cape Cod Commission office at 3225 Main Street in Barnstable. A site visit was conducted prior to that hearing. An additional public hearing was held on November 28, 2011 at the Cape Cod Commission, followed by a subcommittee meeting. The subcommittee voted to continue the hearing to December 15, 2011 at 3:00 PM at the Assembly of Delegates Chamber of the First District Courthouse in Barnstable. At the subcommittee meeting which immediately followed the November 28, 2011 hearing, the subcommittee voted to limit the DRI review to the areas of Land Use, Wildlife & Plant Habitat, Open Space, Hazardous Materials/Waste, Solid Waste, Water Resources, and Economic Development and to approve the Limited DRI and Project of Community Benefit Hardship Exemption request and directed staff to draft a Limited DRI Project of Community Benefit Hardship Exemption approval decision with conditions.

The Subcommittee held a public meeting on December 5, 2011. At this meeting, the subcommittee reviewed the Limited DRI Project of Community Benefit Hardship Exemption approval decision and voted to recommend approval of the draft written decision at the Cape Cod Commission meeting on December 15, 2011.

A final public hearing was held before the full Cape Cod Commission on December 15, 2011. At the close of this hearing, the Commission voted to approve the project as a Limited DRI Project of Community Benefit Hardship Exemption, subject to conditions.

## **MATERIALS SUBMITTED FOR THE RECORD**

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

<b>TABLE 1: Materials Submitted for the Record</b>	
<b><i>Materials from Cape Cod Commission</i></b>	<b><i>Date Sent</i></b>
Email from Heather McElroy to Luke Hinkle re: open space calculation	8/10/11
Email from Elizabeth Enos to William Gallagher confirming receipt of materials	10/3/11
Letter sent via mail and email from EE to LH regarding application completeness	10/14/11
Email from EE to WG re: word document of completeness letter	10/18/11
Email from EE to WG confirming receipt of materials	10/19/11

Email from EE to WG regarding missing documents	10/20/11
Letter from EE to LH regarding DRI referral	10/21/11
Email correspondence between HM and LH regarding NRI requirement	10/21/11
Email from EE to LH regarding ED4.1	10/25/11
Email correspondence between EE and LH regarding Economic Development submission and scheduling	10/28/11
Email from EE to LH regarding Water Resources comments	10/28/11
Email from Andy Walsh to LH re: water resources comments	11/1/11
Email from AW to LH re: nitrogen loading	11/3/11
Materials from Town of Barnstable website re: signage	11/3/11
Email from Leslie Richardson to LH re: economic development	11/4/11
Email from EE to Reggie Donahue confirming receipt of plans	11/9/11
Email from EE to LH re: materials for subcommittee	11/10/11
Email correspondence between EE and Liza Cox re: copy of Staff Report	11/16/11
Email from EE to subcommittee and applicant re: public hearing and staff report	11/16/11
Memo to subcommittee with Staff Report	11/16/11
Email from EE to subcommittee and applicant requesting availability for meetings	11/17/11
Email from EE to Jo Anne Miller Buntich re: staff report	11/17/11
Hearing outline	11/21/11
Letter from EE to LH deeming the application complete	11/21/11
PowerPoint presented at hearing	11/21/11
Email from EE to JMB with attached refueling plan provided by the Applicant	11/22/11
Email from EE to the subcommittee with attached supplemental information provided by the Applicant and date for next meeting	11/22/11
Email from Gail Hanley to Linda Hutchenrider with attached hearing and meeting notices	11/22/11
Memo from Andy Walsh to EE re: Haz Mats	11/22/11
Hearing outline	11/28/11
Email from EE to LH requesting application fee and materials for mailing	11/29/11
Email from Gail Hanley to Lind Hutchenrider with attached hearing notice	11/30/11
Email from EE to LH re: materials for mailing	12/1/11
Email from EE to subcommittee, Applicant and JMB with attached draft decision	12/1/11
Email from EE to Alan Clapp re: draft decision	12/2/11
Memos to subcommittee and CCC for mailing including draft minutes of 12/5 and draft decision	12/8/11
Email correspondence between EE and Cynthia McGrath re: copy of draft decision	12/13/11

Email correspondence between EE and JMB re: copy of letter from RE	12/13/11
<b>Materials from Applicant</b>	<b>Date Received</b>
Email from Luke Hinkle to Heather McElroy thanking her for information	8/10/11
Application materials	10/3/11
Email from William Gallagher to Elizabeth Enos re: revised project description	10/3/11
Email from LH to EE re: application comments	10/14/11
Email from WG to EE requesting word document of letter	10/17/11
Letter in response to incompleteness letter	10/18/11
Emails from WG to EE with attached supplemental materials	10/19/11
Email from WH to EE re: location of information	10/20/11
Email from LH to HM re: Natural Resources Inventory	10/22/11
Email from LH to EE with info re: Economic Development	10/26/11
Email from LH to EE re: scheduling	10/27/11
Email from LH to Leslie Richardson re: ED4.1	11/5/11
Email correspondence between LH and Andy Walsh re: on-site transformer	11/8/11
Email from Ginny Warren to EE re: revised site plans	11/9/11
Email from LH to EE re: materials for the subcommittee	11/10/11
Revised application materials	11/14/11
Email from Reggie Donahue to EE re: updated plans	11/16/11
Email from LH to EE re: scheduling and staff report	11/16/11
PowerPoint presented at hearing	11/21/11
Revised refueling plan and construction management plan	11/21/11
Email from LH to EE re: most recent plans	11/29/11
Check for remainder of application fee	12/1/11
Email from LH to EE re: check in mail	11/30/11
Email from LH to EE re: materials for mailing	12/1/11
<b>Materials from Public</b>	<b>Date Received</b>
<b>Agencies/Towns/State/Federal</b>	
Letter and email from Richard Elrick, Energy Coordinator for the Town of Barnstable in support of the project	9/19/11
Email from Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable re: consistency with local bylaws, comprehensive plan and DCPCs	11/17/11
Email from JMB to EE re: refueling plan provided by the Applicant	11/28/11
Email from JMB to EE requesting copy of letter from RE	12/13/11
<b>Materials to/from Members of the Public</b>	<b>Date Received</b>
Email correspondence between EE and Liza Cox regarding copy of the staff report	11/16/11
Email from Alan Clapp thanking EE for draft decision	12/4/11
Email correspondence between Cynthia McGrath and EE re: copy of draft decision	12/13/11

## TESTIMONY

### November 21, 2011 Public Hearing

A Cape Cod Commission (Commission) subcommittee held a public hearing on the proposed Development of Regional Impact (DRI) for Airport Way Nominee Trust (the "Applicant") at 180 Airport Way in Hyannis, MA, for the purpose of taking comments and testimony on the project. Elizabeth Enos, Regulatory Officer for the Commission, presented the Staff Report, including the existing setting, project description, procedural overview, standards of review and approval, Commission staff analysis including Land Use, Economic Development, Water Resources, Coastal Resources, Natural Resources, Transportation, Waste Management, Energy, Affordable Housing, and Heritage Preservation and Community Character, and conclusions and recommendations. Luke Hinkle, on behalf of the Applicant, provided a PowerPoint presentation. The subcommittee discussed possible glare from the solar panels and potential effects on airplanes as well as containment of the on-site transformer and the pro-forma for the project and anticipated profits. Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, discussed the projects consistency with the Town of Barnstable's local development bylaws, local comprehensive plan, and applicable DCPCs. She stated that the FAA does not have any concerns about the project and that she was pleased to see that the Applicant submitted a new refueling plan as the project is in a Wellhead Protection Area. Bill Richardson of Jacobs Engineering (Airport Environmental and Aviation Consultants) stated that the airport is in favor of the project and that it does not conflict with long-term plans of the airport. The hearing was continued to Monday, November 28, 2011 at 1:00 PM at the Cape Cod Commission, Barnstable, MA.

### November 28, 2011 Public Hearing

A Commission subcommittee held a public hearing on the proposed DRI for Airport Way Nominee Trust at 180 Airport Way in Hyannis, MA, for the purpose of taking comments and testimony on the project. Elizabeth Enos, Regulatory Officer for the Commission, updated the subcommittee on the project, clarifying that the entire project site is located in a Wellhead Protection Area as designated by the Commission's Regional Policy Plan. Luke Hinkle, on behalf of the Applicant, clarified the amount of transformer fluid to be held within the on-site transformer. Richard Elrick, Energy Coordinator for the Town of Barnstable, spoke in favor of the project and urged the subcommittee to support the Hardship Exemption request. The hearing was continued to Thursday, December 15, 2011 at 3:00 PM at the Assembly of Delegates Chamber, 1<sup>st</sup> District Courthouse, Barnstable, MA.

### November 28, 2011 Subcommittee Meeting

A Commission subcommittee held a public meeting on the proposed DRI for Airport Way Nominee Trust at 180 Airport Way in Hyannis, MA, for the purpose of deliberating on the project. The subcommittee voted unanimously to approve the project as a Project of Community Benefit Hardship Exemption and Limited DRI. The subcommittee voted to limit DRI review to the issue areas of Land Use, Wildlife & Plant Habitat, Open Space, Hazardous Materials/Waste, Solid Waste, Water Resources, and Economic Development and to grant Hardship Relief with regards to the Open Space requirements. The subcommittee directed staff to draft a written decision.

### December 5, 2011 Subcommittee Meeting

Elizabeth Enos, Regulatory Officer with the Commission, reviewed the draft decision page by page with the subcommittee. The subcommittee voted unanimously to recommend approval of the draft written decision to the full Commission at the December 15, 2011 Cape Cod Commission meeting. The subcommittee also approved the minutes of the November 21, 2011

public hearing, the November 28, 2011 public hearing, and the November 28, 2011 subcommittee meeting.

## **JURISDICTION**

The applications for a Limited Development of Regional Impact ("Limited DRI") and a Project of Community Benefit Hardship Exemption were received by the Commission on October 3, 2011. The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(iii) of the Commission's *Enabling Regulations* (Revised March 2011) as "new construction or development that has a Total Project Area greater than 40,000 square feet."

## **FINDINGS**

The Commission has considered the Limited DRI / Project of Community Benefit Hardship Exemption application of My Generation Energy, Inc. for the proposed construction of a 1.38 MW solar array at 180 Airport Way, Hyannis, Massachusetts. Based on consideration of such applications and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Sections 12, 13 and 23 of the Act:

### **General Findings**

- GF1. The Commission finds that the project's DRI Review is limited to the issue areas of Land Use, Wildlife & Plant Habitat, Open Space, Hazardous Materials/Waste, Solid Waste, Water Resources, and Economic Development.
- GF2. As the date of the first substantive public hearing was November 21, 2011, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in May 2011.
- GF3. The project location is 180 Airport Way in Hyannis. The site is zoned for Limited Industrial use.
- GF4. The project site, as described in the application, is approximately 12.5 acres of land, with approximately 50% presently developed for commercial/industrial use.
- GF5. Airport Way Nominee Trust (the Applicant) proposes to construct a solar energy array with approximately 1,380,000 Watt (1.38MW) peak output on approximately 4.4 acres of land.
- GF6. The Commission adopts the November 17, 2011 written testimony and November 21, 2011 oral testimony of Ms. Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, and finds that the proposed project is consistent with Barnstable's local development bylaws, Districts of Critical Planning Concern and Local Comprehensive Plan.
- GF7. The Commission finds that the probable benefits of the proposed development are greater than the probable detriments of the proposed project. Probable benefits of the proposed project include providing energy to local businesses, providing a local green energy resource, the lack of impervious surfaces and reduction in nitrogen load, and the enhancement to wildlife as a result of replacing any future development at the site. The Commission further finds that the project meets Best Development

Limited DRI Project of Community Benefit Hardship Exemption Decision

Airport Way Nominee Trust

December 15, 2011

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Practices ED3.1 (Local Labor and Service Providers), ED3.2 (Local Ownership), and ED3.5 (Regional Import Substitution), which are benefits of the proposed project.

GF8. The Commission finds that the project will be constructed in accordance with the following plan set entitled "My Generation Energy" designed by Coastal Engineering Company, Inc., dated November 16, 2011 (attached to this decision as Exhibit A and incorporated by reference):

- Sheet Co.0.1 titled "Cover Sheet"
- Sheet C2.1.1 titled "Layout and Materials Plan"
- Sheet C2.2.1 titled "Site Plan Showing Drainage, Grading, and Utilities"
- Sheet C2.4.1 titled "Site and Erosion Control Details"
- Sheet C2.4.2 titled "Site and Drainage Details"

GF9. The Commission finds that the proposed project confers upon or results in distinct benefits to the community and the citizens of Barnstable County, consistent with Sections 1(a) and 1(c) of the Cape Cod Commission Act, and as such can be considered a Project of Community Benefit.

GF10. The Commission finds that the Applicant has met the burden of proving that a hardship exists in complying with Minimum Performance Standard OS1.2 and OS1.3 of the Regional Policy Plan, as full compliance with the requirements of MPS OS1.2 and OS1.3 would constitute a hardship by diminishing the community benefits to be conferred, and that 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. The Commission further finds that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

### **Affordable Housing**

AHF1. The Commission finds that the proposed project falls under the "Other" category for the purpose of the affordable housing mitigation required under AH3.1. The Applicant has provided sufficient documentation that the ongoing maintenance and operation of the solar array will require fewer than the equivalent of three full-time on-site or contracted employees. In addition, this project involves facilities in which a calculation of building square footage is not feasible or appropriate. Therefore, in accordance with Technical Bulletin #10-001 (Guidelines for Calculation of Mitigation for DRIs in "Other" Category for Minimum Performance Standard AH3.1), the Commission finds that the Affordable Housing Minimum Performance Standards are not applicable to this project and do not need to be included in the scope of DRI review.

### **Heritage Preservation and Community Character**

HPCCF1. The proposed project is located outside of any historic districts and there are no historic structures or cultural landscapes on the site. On August 15, 2011, the Massachusetts Historical Commission (MHC) determined that "the project is unlikely to affect significant historic or archaeological resources". Therefore, the Commission finds that the project is consistent with the Heritage Preservation section of the RPP.

HPCCF2. The proposed ground mounted solar panels will stand 7 feet above the ground, with each row of solar panels being approximately 12.5 feet wide, and 380 feet in length. Twenty rows of panels are proposed, located to the east of the existing buildings on-site. The facility will be located at least 64 feet from the front property line and enclosed within a 6-foot-high chain link fence.

There are no designated scenic views or regional roads in the vicinity of the project site. The project will be visible from Airport Way, which is a road that is characterized by wooded road edges, but also includes long stretches of chain link airport fencing and the existing industrial uses on the subject property and at the NSTAR substation. Airport Way dead-ends at the airport property and is not a frequently traveled street. The project may also be visible from locations on the airport property, and parts of the industrial areas of Barnstable around Airport Road and Attucks Lane, although these public locations are at least 2,000 feet from the nearest part of the facility.

Although the project will result in the clearing of a large area of woodland, a buffer to the road is retained that should maintain the existing wooded road edge character. Views from, and across the airport property are limited, with screening vegetation, and buildings on both the subject property, and vegetation on the airport property, screening any open views to the facility. The remainder of the property is mostly surrounded by wooded areas, except for the cleared area in the NSTAR right-of-way that is currently occupied by high tension wires and a substation. Therefore, the Commission finds that the project is consistent with, and will not involve deviation from, Minimum Performance Standard HPCC2.3 and is unlikely to have any significant impact on the community character of the region.

HPCCF3. The project does not involve the construction of a building, so MPS HPCC2.4 (consistency with regional context), HPCC2.5 (footprints over 15,000 sf) and HPCC2.6 (Building forms and facades) do not apply. MPS HPCC2.7 allows the use of non-traditional materials, forms and site designs in industrial parks or other areas not visible from scenic or regional roadways. In these cases, maintenance of adequate buffers on the subject property is required to screen the new development from view. The project will not be visible from any scenic or regional roadway and will be screened by wooded buffers around the periphery of the property. The Commission finds that the non-traditional forms and materials used in the facility are appropriate for an area zoned as Limited Industrial. Therefore, the Commission finds that the project is consistent with, and will not involve deviation from, Minimum Performance Standard HPCC2.7.

HPCCF4. The Commission finds that the project will not have significant impacts on the purposes and values identified by Section One of the Commission Act with respect to project siting, building design or cultural resources, and as such, do not need to be included in the scope of Limited DRI Review.

### **Landscaping**

LF1. The Commission finds that Minimum Performance Standards HPCC2.8 (Parking to the side and rear of buildings) and HPCC2.9 (Landscaping Improvements for Redevelopment) do not apply to the proposed project, as these standards address buildings and redevelopment. The proposed development has listed a planting schedule and narrative explaining how buffers will be kept on site. The Commission

Limited DRI Project of Community Benefit Hardship Exemption Decision

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finds that proposed plantings are consistent with landscaping standards set forth in the RPP. Requirements of HPCC2.10 include the submittal of a maintenance agreement, which the Applicant has provided and is deemed appropriate to meet the needs of the landscaping that is proposed onsite. As such, the Commission finds that the proposed project is consistent with HPCC2.10. As the project is located at the end of a previously developed industrial road and proposes to keep existing buffers and does not include a traditional building redevelopment, the Commission finds that landscaping does not need to be included in the scope of Limited DRI review.

### **Exterior Lighting Design**

EXLF1. Based on the materials submitted for the record, including clarification from the Applicant that there will be no illumination of onsite signage, the Commission finds that the Exterior Lighting issue area of the RPP is not applicable to the proposed project and should not be included in the scope of DRI review.

### **Transportation**

TF1. Based on the application materials, the project is not expected to generate any daily traffic. As the project will not generate more than 250 daily trips or more than 25 peak hour trips, the Commission finds that the proposed project is not anticipated to have a significant congestion impact on the roadway networks. The project will have access onto Airport Way, but according to the Cape Cod Metropolitan Planning Organization (MPO) functional classification, Airport Way is not considered a regional roadway. Therefore, the Commission finds that the proposed project will not substantially deviate from the transportation Minimum Performance Standards of the RPP or have significant impact upon the purposes and values identified in Section One of the Commission Act, and as such, the Commission finds that Transportation does not need to be included in the scope of Limited DRI review.

### **Coastal Resources**

CRF1. The Commission finds that the project site is located over two miles from the coast, and no impacts to coastal or marine resources are anticipated from the proposed project. Therefore, the Commission finds that Coastal Resources does not need to be included in the scope of Limited DRI review.

### **Energy**

EF1. The Commission finds that the energy standards in the RPP apply to commercial development and redevelopment, multi-family housing, and Wind Energy Conversion Facilities. As a commercial scale PV power generation facility, the Commission finds that the Energy Minimum Performance Standards in the RPP do not apply to this project, and as such, Energy does not need to be included in the scope of Limited DRI review.

### **Land Use**

LUF1. MPS LU1.1 states that "*development and redevelopment shall be consistent with the category of desired land use where the project is located as well as the characteristics of that category, both as identified on the Regional Land Use Vision Map (RLUVM). Notwithstanding this requirement, the Commission may find that development and redevelopment has met this requirement, if, in its discretion, it finds each of the following:*

- 1) *The proposed project is a redevelopment, or the expansion of a previously approved DRI;*
- 2) *The Commission finds that the proposed development does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category."*

The Commission finds that the proposed project site is a designated Resource Protection Area (RPA) on the Regional Land Use Vision Map (RLUVM). Under the 2009 RPP, RPAs are areas that warrant protection and where additional growth is not desired due to the presence of one or more sensitive resources. In order to comply with LU1.1, the proposed development must meet the two provisions outlined in the standard. Therefore, the Commission finds that the issue area of Land Use should be included in the scope of Limited DRI review.

- LUF2. The Commission finds that (1) the proposed project is the expansion of a previously approved DRI. On November 6, 1997, the Commission granted a DRI approval for the "Cape and Islands Steel Building," a steel fabrication building and saw house on the subject site. The Commission further finds that (2) the proposed development does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category, as the project results in a reduction in nitrogen load to the watershed, as outlined in the Water Resources section of this decision, an August 31, 2011 letter from the Natural Heritage and Endangered Species Program stated that the project will not result in a "take" of state listed rare species. As such, the Commission finds that the proposed development meets MPS LU1.1.

### **Hazardous Materials**

- HMF1. MPS WR2.2 and WM1.1 require that *"development and redevelopment that involves the use, treatment, generation, handling, storage, or disposal of Hazardous Materials or Hazardous Wastes, with the exception of household quantities, shall not be permitted in Wellhead Protection Areas, except as provided in WM1.2 and WM1.3."*
- HMF2. The RPP definition of Hazardous Waste is *"any Hazardous Waste, Universal Waste or Waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. Hazardous Wastes do not include Hazardous Materials and bio-medical wastes regulated by 105 CMR 480.000."* Hazardous Wastes do not include Hazardous Materials for the purposes of the Regional Policy Plan, including the requirements and limits articulated by the Minimum Performance Standards.
- HMF3. A Household Quantity of Hazardous Material or Hazardous Waste consists of any combination, or all of the following:
- (a) 275 gallons or less of oil on site at any time to be used for heating of a structure, or to supply an emergency generator;
  - (b) 25 gallons or equivalent dry weigh, total, of Hazardous Material(s) on site at any time, excluding oil for heating of a structure or to supply an emergency generator; and
  - (c) A quantity of Hazardous Waste generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on

the site.

- HMF4. The Commission finds that the project site is located in a Wellhead Protection Area (WHPA), Marine Water Recharge Area (Lewis Bay watershed), and a Potential Public Water Supply Area (PPWSA) which are subject to MPS WR2.2 and WM1.1.
- HMF5. The Commission finds that the proposed utility transformer located near the southwest corner of the PV array will contain approximately 368 gallons of non-toxic, vegetable oil-based fluid (Envirotemp FR fluid) as a coolant. Envirotemp FR3 fluid is formulated from seed oils (>98.5% vegetable oil) and performance enhancing additives and colorant.
- HMF6. The Commission finds that 1.5% of the Envirotemp FR3 fluid, or 5.5 gallons, meets the RPP definition of a Hazardous Material, and as such the proposed project shall be scoped for review in this issue area.
- HMF3. The Commission finds that as the development is proposing less than 25 gallons of Hazardous Materials, it complies with the household quantity of Hazardous Materials allowable pursuant to MPS WR2.2 and MPS WM1.1.

### **Waste Management**

#### *Hazardous Waste*

- WMF1. The Commission finds that the proposed project site is located in a Wellhead Protection Area (WPA), and as such Hazardous Waste shall be included in the scope of DRI review.
- WMF2. The Commission finds that as the project is located in a Wellhead Protection Area, the project shall be conditioned to comply with MPS WM1.1 and WR2.2 to ensure that Hazardous Materials and/or Hazardous Wastes do not exceed a Household Quantity.
- WMF3. The Commission finds that the project shall be conditioned to comply with MPS WM1.4, which requires a Pollution Prevention and Emergency Response Plan, and that the location of refueling site(s) for the project shall be subject to approval by the Town of Barnstable.
- WMF4. The Commission finds that the project shall be conditioned to comply with MPS WM1.5 to ensure compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.0.

#### *Solid Waste*

- WMF5. MPS WM2.1 requires that “[d]evelopment and redevelopment projects shall address the disposal of construction waste...” and that “a plan shall be provided to demonstrate how the applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the [DEP] as a waste ban material.” MPS WM2.2 describes the requirements of a construction and demolition (C&D) waste management plan. The Applicant’s 10/19/11 information states “*vegetation will be removed as necessary prior to grading. Stumps and branches will either be chipped on-site and used to stabilize sloped areas or removed and recycled off site.*” No estimate was provided with respect to the anticipated amount of land-clearing/grading wastes. The 10/19/11 information also

states that other “*solid waste generated during construction consists primarily of shipping material and packing such as cardboard, wooden pallets, plastic wrap, and PVC conduit cut-offs.*” As such, the Commission finds that Solid Waste shall be included in the scope of DRI review and that the project shall be conditioned to comply with MPS WM2.1 and WM2.2.

### **Water Resources**

- WRF1. The Commission finds that the project site is located in a Wellhead Protection Area (WHPA), Marine Water Recharge Area (Lewis Bay watershed), and a Potential Public Water Supply Area (PPWSA). The developed portion of the site is not located in a PPWSA and is mapped as a Water Quality Improvement Area. A public drinking water supply well (Airport Well) is located approximately 1,000 feet down-gradient of the site. A critical nitrogen threshold has been established by the Massachusetts Estuaries Project (MEP) for Lewis Bay. As such, the Commission finds that Water Resources shall be included in the scope of DRI review.
- WRF2. The Commission finds that the project includes installation of a stormwater management system, including two, deep sump catch basins, vegetated swales, sediment forebays, and a stormwater recharge basin. The stormwater system will manage runoff primarily from the developed portion of the site as well as potential runoff issuing from the solar project site. The Commission finds that Nitrogen loading analysis indicates that proposed treatment of stormwater runoff from the existing development will result in a net reduction of nitrogen load to the watershed.
- WRF3. The Commission finds that the proposed re-vegetation of the site with drought-tolerant vegetation and avoiding the use of pesticides or herbicides are best management practices in MPS WR1.5, and the project shall be conditioned to meet this standard.
- WRF4. The Commission finds that storm runoff generated by the 25 year, 24 hour storm will be directed into two, deep sump catch basins that will discharge into water quality swales located at either end of the recharge basin pursuant to MPS WR7.4.
- WRF5. The Commission finds that the nitrogen loading limit established by MPS WR2.6 is 1 ppm-N for projects in Potential Public Water Supply Areas (PPWSA), which includes most of the project site. The nitrogen loading limit established by MPS WR2.1 is 5 ppm-N for Wellhead Protection Areas (WHPA), which includes the entire project site and its surroundings. The Commission finds that pre- and post-construction nitrogen loading concentrations for both the project site and the developed portion of the lot within the drainage area of the proposed stormwater recharge basin are less than 1 ppm, and the project will result in a net reduction in nitrogen load to the watershed, consistent with MPS WR3.1. The Commission finds that the proposed development also meets the nitrogen loading standard pursuant to WR2.6, which applies to sites within PPWSA's, as the nitrogen loading concentrations are less than 1 ppm and the nitrogen loading standard for general aquifer protection pursuant to MPS WR1.1 and for WHPA's (i.e., 5 ppm-N).
- WRF6. The Commission finds that the project shall be conditioned to comply with MPS WR7.10, which requires development and redevelopment to submit a Professional Engineer-certified stormwater maintenance and operation plan demonstrating compliance with the Massachusetts Stormwater Guidelines.

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## **Wildlife & Plant Habitat**

- WPHF1. The Commission finds that the project site is located in a Significant Natural Resource Area (SNRA) due to the presence of mapped rare species habitat (for barrens buckmoth) and a public wellhead water supply protection area. The site is mapped as BioMap Core Habitat by the Natural Heritage and Endangered Species Program (NHESP) due to the presence of Species of Conservation Concern and rare species associated with the several coastal plain ponds in the vicinity of the project site, also known as the Hyannis Coastal Plain Ponds Complex due to the density of ponds with rare natural communities. The BioMap identifies areas that are a conservation priority. Due to the sensitive resources in the area, the Town of Barnstable and the State Division of Fisheries and Wildlife have acquired much of the land in proximity to the site for conservation purposes or water supply protection, including three parcels adjacent to the site along Airport Way. As such, the Commission finds that Wildlife and Plant Habitat shall be included in the scope of DRI review.
- WPHF2. The Commission finds the assessment of the natural resources on the site provided by the Applicant meets the requirements of WPH1.1. The assessment did not find habitat suitable for the barrens buckmoth on the site. A letter dated August 31, 2011 from the NHESP determined that the project will not result in a "take" of state listed rare species. The site assessment reports that the site is wooded with mature oaks, pitch and white pines, and a low and medium height shrub understory. There are no wetlands or vernal pools on the site or proximate to the area of clearing. According to the site assessment, the project was reconfigured to avoid potentially significant habitat located within the transmission easement. According to the Soil Survey for Barnstable County, the site contains Hinckley soils which are considered excessively drained and have a shallow organic layer.
- WPHF3. The Commission finds that clearing of vegetation and alteration of natural topography is minimized and the proposed project complies with MPS WPH1.2, provided that revegetation efforts are subject to review and approval by Commission staff.
- WPHF4. The Commission finds that fragmentation of wildlife and plant habitat is minimized, and that the project complies with MPS WPH1.3.

## **Open Space**

- OSF1. The Commission finds that full compliance with the requirements of MPS OS1.2 (Open Space Connections) would constitute a hardship, financial or otherwise, by diminishing the community benefits to be conferred and that full 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. The Commission further finds that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address it.
- OSF2. MPS OS1.3 requires that "All development, excepting municipal projects serving municipal purposes, that qualifies as a DRI shall provide permanently restricted upland open space." The Commission finds that the total open space mitigation requirement under MPS OS1.3 for the proposed project is 7.8 acres (twice the total new development area of 3.9 acres), with a cash equivalent of \$86,765 per acre, or \$676,767 for the proposed development.

OSF3. The Commission finds that full compliance with the requirements of MPS OS1.3 would constitute a hardship, financial or otherwise, by diminishing the community benefits to be conferred and that full 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. The Commission further finds that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address it.

OSF4. The Commission finds that the project shall be conditioned to require the Applicant to provide an evaluation of the revegetation one year after installation of the solar panels, prepared by a wildlife/plant biologist, to determine the success of the revegetation efforts in reestablishing a vegetated surface cover that has habitat value. If an inventory of existing vegetation at that time indicates that the site has failed to revegetate with a reasonable mix of shrubs and grasses, the Applicant shall submit a revegetation plan for Commission staff review and approval, which shall be executed in order to ensure meaningful habitat is established at the site.

### **Economic Development**

EDF1. Minimum Performance Standard ED1.1 requires that development be located in Economic Centers, Industrial Service Trade Areas, or Village centers. The Commission finds that the project is not so located and is considered new development and therefore must meet four waiver criteria under ED1.3.

EDF2. The Commission finds that the proposed project meets the following four criteria under MPS ED1.3:

1. Emerging Industry Cluster: The project is consistent with the region's Emerging Industry Clusters, which include marine sciences and technology; arts and culture; information and related technology; renewable and clean energy, and education and knowledge-based industries or other high-skill, high-wage, knowledge-based business activity.

2. Distributed Energy Generation: The facility will be a clean renewable distributed energy generator.

3. Green Design: By creating clean renewable energy the project meets the Green Design criteria.

4. Municipal Endorsement: The facility is located within the Town of Barnstable's Ground Mounted Solar Photovoltaic Overlay District. The purpose of the ordinance is to promote the creation of new large-scale ground-mounted solar photovoltaic installation like the proposed project.

EDF3. MPS ED4.1 requires that *"Development of infrastructure and/or capital facilities shall be in response to existing regional demand and shall improve the availability, reliability, quality, and cost of services."* The Commission finds that the proposed project meets this standard based on the following rationale:

*Availability:* This project would improve the availability of renewable solar energy on Cape Cod by directly serving existing Cape Cod businesses.

*Reliability:* The applicant, in their ED 4.1 Addendum, explains that this project will improve reliability in two ways. First, as solar energy the plant's peak generation period will exactly coincide with peak demand in the summer months on Cape Cod. Second, the plant will be located proximate to a feeder substation supplying power to the Cape's commercial hub in Hyannis reducing the demand on the transmission system to pull power from more distant resources.

*Quality:* The applicant outlines the environmental benefits of renewable energy and this project in particular on the first page of the project application:

*"Over the first twenty five years of this project's operation, an estimated 45 GigaWatt hours (GWh) of energy will be produced. ...Given the effectiveness with which each of the traditional fuel sources generates electricity, avoiding the traditional generation of 45 GWh eliminates the requirement for:*

- *213 billion cubic feet of natural gas (the volume of over 1,000 Goodyear Blimps) and*
- *80 pounds of enriched uranium (derived from mined ore resulting in 40,000 cubic yards of radioactive tailings) and*
- *2,150 tons of coal (3,700 cubic yards) and*
- *371,250 gallons of crude oil.*

*The direct environmental impact of mining, extracting, processing, transporting, and storing these fuels and their production byproducts will be avoided by this project.*

*The reduction in hazardous solid waste and atmospheric contamination provided for by this project is also a significant local, regional, and global benefit. The proposed project will avoid the environmental impact of solid waste and gaseous emission products from the traditional electricity generation it off-sets. Using the emissions from current electricity generation according to Cape Light Compact, the 45 GWh of solar electricity will avoid the release of the following:*

- *30,150 lbs of NOx*
- *52,200 lbs of SO<sub>2</sub>*
- *31,666,500 lbs of CO<sub>2</sub>*

*The project will also eliminate the creation of 80 pounds of spent nuclear fuel material. This nuclear waste has a half-life of 100,000 years and presently has no permanent storage plan."*

*Cost: As a net metered project, it will directly off-set the cost of energy for the consortium of developers that will own this project. As stated by the applicant "Since ownership of the proposed net metering project is local, the renewable energy it produces will offset local electricity expenses. The renewable energy attributes of the system, in particular the Solar Renewable Energy Certificates (SRECs), will also provide economic flow into the region."*

- EDF4. The application materials state, *"The proposed project's management, engineering, financing, accounting, legal services, construction, and maintenance are all being executed by local companies."* Therefore, the Commission finds that the project is consistent with Best Development Practice (BDP) ED3.1, which encourages DRIs to employ a majority of local residents and use a majority of local contractors, suppliers, professional service providers, and products during the planning, construction, and operational phases of the project. The Commission further finds that as the project is entirely locally owned, it is also consistent with BDP ED3.2 (Local Ownership), and as a local generator of electricity, the project meets BDP ED3.5 (Regional Import Substitution) by reducing the need to purchase energy generated outside of the region.

## CONCLUSION

Based on the above findings, the Commission hereby concludes:

1. That the probable benefits of the proposed project are greater than the probable detriments.
2. That upon satisfaction of the conditions identified in this decision and with the specified relief granted, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan.
3. The project is consistent with the Town of Barnstable's Local Comprehensive Plan and its local development by-laws.
4. The project is consistent with the applicable Town of Barnstable District of Critical Planning Concern.

## CONDITIONS

The Commission hereby approves, with conditions, the Limited DRI / Project of Community Benefit Hardship Exemption application of My Generation Energy, Inc. for the proposed construction of a 1.38 MW solar array at 180 Airport Way, Hyannis, Massachusetts, provided the following conditions are met:

### **General Conditions**

- GC1. This decision is valid for a period of seven (7) years and local development permits may be issued pursuant hereto for a period of seven (7) years from the date of this written decision.
- GC2. The applicant shall obtain all necessary federal, state, and local permits for the proposed project.
- GC3. 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.
- GC4. No development work, as the term "development" is defined in the Cape Cod Commission 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. All development shall be constructed in a manner consistent with the following plans and other information (attached to this decision as Exhibit A and incorporated by reference):
- Sheet Co.0.1 titled "Cover Sheet"
  - Sheet C2.1.1 titled "Layout and Materials Plan"
  - Sheet C2.2.1 titled "Site Plan Showing Drainage, Grading, and Utilities"
  - Sheet C2.4.1 titled "Site and Erosion Control Details"
  - Sheet C2.4.2 titled "Site and Drainage Details"

Any deviation to the proposed project from the approved plans, including but not limited to changes to the design, location, or other site work, shall require approval by the Cape Cod Commission through its modification process, pursuant to the Commission's *Enabling Regulations*. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

- GC6. Prior to the issuance of a Building Permit for development, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Preliminary Certificate of Compliance / Building Permit have been met. Such Certificate of Compliance shall not be issued unless all conditions connected to the Preliminary Certificate of Compliance have been met.
- GC7. Prior to the issuance of a Final Building Permit signoff by the Town of Barnstable, the Applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Final Certificate of Compliance / Final Building Permit signoff have been met. Such Certificate of Compliance shall not be issued unless all conditions connected to the Final Certificate of Compliance have been complied with.
- GC8. The Applicant shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek a Preliminary and a Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers, mailing addresses, and email addresses, for questions that may arise

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during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if needed, and inform the Applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue any Certificate of Compliance unless and until all conditions are complied with.

- GC9. The Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision, after reasonable notice to the Applicant, for the purpose of determining whether the conditions contained in this decision including those required prior to issuance of the Preliminary and Final Certificates of Compliance have been met.

### **Waste Management**

- WMC1. In accordance with Finding WMF2, Hazardous Materials on site at any time shall not exceed a Household Quantity, i.e. 25 gallons or equivalent dry weight, in order to meet MPS WM1.1 and WR2.2. Also, in accordance with Finding WMF2, Hazardous Wastes on site at any time shall not exceed a Household Quantity, defined by the Regional Policy Plan as a quantity of Hazardous Waste generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on the site.
- WMC2. In accordance with Finding WMF3, the Applicant shall provide to the Commission staff for review and approval, a Pollution Prevention and Emergency Response Plan for both the construction phase and normal operations that identifies potential contamination sources, threats of Hazardous Material and Hazardous Waste releases to the environment, describes material storage and handling details, containment and contingency plans for spill response, prior to issuance of a Preliminary Certificate of Compliance. The Plan should include the description of spill prevention and containment materials, training protocol for on-site contractors, contact information of the Massachusetts Department of Environmental Protection, and identification of a Licensed Site Professional (LSP) and local spill cleanup firm pursuant to the requirements of MPS WM1.4. The location of refueling site(s) for the project shall be subject to approval by the Town of Barnstable.
- WMC3. In accordance with Finding WMF4, the Applicant shall provide for Commission staff review and approval, prior to issuance of a Final Certificate of Compliance, evidence of (a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste; (b) a written plan or protocol to manage the Hazardous Waste prior to disposal; and (c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste in order to comply with MPS WM1.5 and Massachusetts Hazardous Waste Regulations, 310 CMR 30.000.
- WMC4. In accordance with Finding WMF5, prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval a plan that addresses the disposal of construction waste and which demonstrates how the Applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the [DEP] as a waste ban material.

### **Water Resources**

- WRC1. Prior to issuance of a Final Certificate of Compliance, the Applicant shall submit for Commission staff review and approval a Turf and Landscape Management Plan pursuant to MPS WR1.5 which requires that the project adopt Best Management Practices, including avoiding or minimizing the amount of pesticides and chemical fertilizers, or utilizing alternatives to synthetic chemical fertilizers and pesticides in favor of organic and biological methods.
- WRC2. In accordance with WRF6, prior to the issuance of a Final Certificate of Compliance, the Applicant shall submit for Commission staff review and approval a Professional Engineer-certified stormwater maintenance and operation plan demonstrating compliance with the Massachusetts Stormwater Guidelines including a schedule for inspection, monitoring and maintenance in order to meet MPS WR7.10.

### **Open Space**

- OSC1. One year after installation of the solar panels, the Applicant shall provide to Commission staff an evaluation of the revegetation prepared by a wildlife/plant biologist to determine the success of the revegetation efforts in reestablishing a vegetated surface cover that has habitat value. If an inventory of existing vegetation at that time indicates that the site has failed to revegetate with a reasonable mix of shrubs and grasses, the Applicant shall submit a revegetation plan for Commission staff review and approval, which shall be executed in order to ensure meaningful habitat is established at the site.

### **SUMMARY**

The Cape Cod Commission hereby approves with conditions the application of My Generation Energy, Inc. for the construction of a 1.38 MW solar array at 180 Airport Way, Hyannis, Massachusetts as a Limited DRI Project of Community Benefit Hardship Exemption as outlined in this decision pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended.

(Signature on last page)

  
Peter Graham, Commission Chair

12/15  
/11  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Dec 15, 2011

Before me, the undersigned notary public personally appeared Peter Graham, 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  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  
Notary Public

My Commission Expires:

9-28-18

