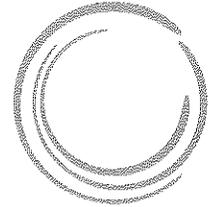


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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

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

Date: March 17, 2011

To: Stuart Bornstein
Gladstone, LLC
297 North Street
Hyannis, MA 02601

From: Cape Cod Commission

Re: Limited DRI Review Scoping Decision
Cape Cod Commission Act, Section 13(a)
Cape Cod Commission *Enabling Regulations*, Sections 3, 5, & 7

Applicant: Gladstone, LLC

Property Owner: Gladstone, LLC

Project: 31 Aaron's Way/Gladstone LLC

Project Location: 31 Aaron's Way, West Yarmouth

Project #: LR 11002

Map and Parcel: 73/9.2.3

Barnstable Registry of Deeds: Lot 20A Book 18952 Page 298
Plan Book 593 Page 8

Barnstable Land Court: Lot 20 Certificate of Title # 153578
Land Court Plan # 37201-D

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through an authorized Subcommittee, hereby determines that the proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth, MA qualifies as and shall be reviewed as a Development of Regional Impact (DRI) pursuant to Section 13(a) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and Sections 3, 5, and 7 of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2, 2010) to limit the scope of DRI review. Gladstone, LLC, (Applicant), may proceed with Limited Development of Regional Impact review in the Regional



Policy Plan (RPP) issue areas of Land Use, Wetlands, Open Space, Hazardous Waste Management and Energy. This decision is rendered pursuant to a vote of a duly authorized Subcommittee of the Commission on March 17, 2011.

PROJECT DESCRIPTION

The proposed project that is the subject of this Scoping decision is a proposal to move 17,150 square feet of a 23,000 square foot metal frame building currently located at 77 High School Road Extension, Hyannis to a vacant site located at 31 Aaron's Way, West Yarmouth. The building move is possible as the lot on which it sits was sold to the Hyannis Fire Department, and the existing 23,000 square foot building must be moved or demolished, so the Fire Department can expand. The subject property at 31 Aaron's Way in West Yarmouth is comprised of one lot, encompassing approximately 1.5 acres or 50,000 square feet, that is zoned B3. The Limited DRI application states that the proposed use will be predominately warehouse (93%), with a support office and a showroom in the rest of the space.

PROCEDURAL HISTORY

On August 31, 2010, Commission staff received a DRI referral of the project from Yarmouth's Building Commissioner. The Commission received a Limited DRI application from the Applicant on September 13, 2010. In a letter dated September 2, 2010, Commission staff informed the Applicant that the project had been referred to the Commission as a DRI. In letters dated September 29, 2010, November 18, 2010, December 20, 2010, Commission staff informed the Applicant that the Limited DRI application was incomplete. In a letter dated December 30, 2010, Commission staff advised the Applicant that the DRI hearing period would close on January 26, 2011. On October 29, 2010, Commission staff opened a pro-forma hearing on the DRI review by Hearing Officer. On January 6, 2011, the Applicant informed Commission staff by Email of a withdrawal of the project at the local level. On January 20, 2011, the full Commission accepted the Applicant's withdrawal of the project from Commission review. On January 25, 2011, Commission staff received a referral of the project as a DRI from Yarmouth's Building Commissioner. On January 31, 2011, Commission staff received an Email from the Applicant resubmitting the Limited DRI application for consideration.

The Applicant submitted additional application materials between September 15, 2010 and February 8, 2011. The Limited DRI application was deemed substantively complete to proceed to a public hearing on February 23, 2011.

The Limited DRI scoping hearing was opened by a duly noticed public hearing held on February 24, 2011 at Fire Station #2, 340 Route 6A, Yarmouthport, MA. At this hearing, the Subcommittee voted unanimously that the proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth shall be scoped for Limited DRI review in the RPP issue areas of Land Use, Wetlands, Open Space, Hazardous Wastes Management and Energy. The Subcommittee also voted unanimously to direct Commission staff to draft a Limited DRI scoping decision for the proposed warehouse project, and to continue the public hearing to March 17, 2011 beginning at 1:30 PM at the Cape Cod Commission's office in Barnstable, MA for the purpose of reviewing a draft written Limited DRI scoping decision.

At the continued public hearing on March 17 2011, the Subcommittee reviewed a draft written Limited DRI scoping decision. The Subcommittee reviewed and corrected a draft written Limited DRI Review decision.

The Subcommittee voted to include the Regional Policy Plan issue areas of Land Use, Wetlands, Open Space, Hazardous Waste Management and Energy in the DRI review.

The Subcommittee voted to approve the draft decision, as amended. The Subcommittee voted to close the hearing and the record.

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 hearings relative thereto, Commission staff's notes and correspondence, 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.

TABLE 1: Materials Submitted for the Record	
Materials from Cape Cod Commission	Date Sent
Email, Heather McElroy (HM) to Karen Green (KG): Development envelope and open space issues	8/24/10
Email, Glen Cannon (GC) to Andrea Adams (AA): Transportation comments	8/30/10
Certified Letter with attachments, AA to Stuart Bornstein (SB): DRI referral of project	9/2/10
Telephone Log, AA with Deirdre Kyle (DK): Concerns about DRI referral and Limited Review (LR) timelines	9/8/10
Email, AA to Commission staff: Comments on LR application completeness	9/15/10
Email, AA to Commission staff: Comments on LR application completeness	9/15/10
Letter, AA to SB: LR application not complete	9/29/10
Letter from Gail Hanley, Commission Clerk, to Stuart Bornstein (SB): Noticing pro forma hearing	10/12/10
Hearing Notice	10/29/10
Hearing Officer Minutes	10/29/10
Email, AA to KG: Application is not complete	11/3/10
Letter, AA to SB: LR application is not complete	11/18/10
Email, Ryan Christenberry (RC) to AA: LR application completeness	12/15/10
Email with attachment, AA to DK: Letter on application completeness	12/20/10
Letter, AA to SB: Letter on application (Also sent as Email on 12/20/10)	12/20/10
Letter, AA to SB: Application incomplete, hearing timeline, close of hearing	12/30/10
Email, RC to AA: LR application complete for Energy issues	1/11/11
Email, Kristy Senatori (KS) to KG: Update on status or withdrawal	1/11/11
Email, AA to GC and KS: Withdrawal of application before full Commission	1/20/11
Copy of Cape Cod Commission Agenda for 1/20/11: Acceptance of project withdrawal	1/20/11
Email, KS to KG: Status of re-referral of project	
Hearing Notice – Close hearing	1/26/11

Certified Letter with attachments, AA to SB: DRI referral and hearing timeline	1/27/11
Fax, AA to Yarmouth Fire Department: Room reservation forms	2/2/11
Email, AA to Dan Ojala, DownCape: Exterior lighting	2/2/11
Email, AA to KG: Hearing date and location	2/3/11
Letter, GH to SB: Hearing notice	2/7/11
Email, AA to DK: Copies of applicant's information for Subcommittee	2/8/11
Email, AA to Commission staff: Distributed copy of Mr. Marasco's Email	2/9/11
Email, AA to DK: Copy of Dr. Marasco's comments	2/9/11
Email, AA to Dr. Marasco: Inclusion of comments in the record	2/9/11
Email, AA to Subcommittee Members: Scheduling of site visit	2/14/11
Email, AA to DK: Site visit and information for Subcommittee	2/14/11
Staff Report on Limited Review Scope	2/16/11
Email, AA to KG and DK: Copy of staff report	2/16/11
Cover Memo, AA to Subcommittee: Information on site visit; Hearing date and location; Copies of information; Copies of Comment letters	2/16/11
Email, with attachment: AA to Dr. Marasco – Copy of staff report	2/17/11
Email and Letter, AA to DK/SB: LR application substantially complete	2/23/11
Email, AA to Curtis Sears: Copy of 2/16/11 Staff Report	2/24/11
Hearing Outline/Agenda	2/24/11
Staff Report Power Point (Presented at public hearing)	2/24/11
Hearing Notice	2/24/11
Meeting Notice	2/24/11
Minutes of Public Hearing	2/24/11
Cover Memo, AA to Subcommittee: Distribute copy of draft Minutes of 2/24/11 hearing and copy draft written decision	3/10/11
Email, AA to DK, KG and Terry Sylvia: Distribute copy of draft written decision	3/10/11
Email, AA to KG: Applicant's duty to provide Town with materials	3/10/11
Minutes of Continued Public Hearing	3/17/11
Hearing Notice for Continued Public Hearing	3/17/11
Materials from Applicant	Date Received
Cover letter and attachments, Stuart Bornstein (SB): Application cover sheet; Fee Waiver Request Form; Check for \$2,500; Project Description; Legal Description, MHC Project Notification; NHESP Letter (7/12/10); Locus Map; Copy MHC Response (9/10/10); Abutters List; Reduced size Site Plans (7/8/10)	9/13/10
Large size site plan set (4 sheets) (2 copies of the set)	9/15/10
Fax, Cover letter and attachments, Deirdre Kyle (DK): 4 black/white photos of building in Hyannis; Site Plan (6/4/10); MHC Response (9/10/10); Copy of Order of Conditions (8/20/10)	10/27/10
Hard Copy, Cover letter and attachments, DK: 4 color photos of building in Hyannis; Site Plan (6/4/10); MHC Response (9/10/10); Copy of Order of Conditions (8/20/10); Water use data (10/29/10); Estimated nitrogen loading	10/29/10
Cover letter and attachment, DK: Building Elevation drawing	11/15/10
Email and attachment, DK: Scaled building elevation drawing	11/16/10

Cover letter and attachments, DK: Exterior materials color chips chart; Chart on solar reflective index; Brochure on JM Fiberglass insulation; Cut sheet for RUUD wallpack exterior light; Department of Environmental Protection (DEP) Stormwater Report Checklist (dated 7/22/10); Stormwater Management System Narrative (DownCape Engineering – dated 7/22/10); Drainage Calculations (DownCape Engineering – dated 7/22/10); Construction Erosion/Sedimentation Control Plan and Stormwater System Inspection Schedule (DownCape Engineering – dated 7/22/10)	12/8/10
Large size plan set (4 sheets) (1 copy)	12/8/10
Email, DK to AA: Application completeness	12/14/10
Email with attachments, DK to AA: Energy resources information; 12/27/10 Email response on energy use from Grant Elgin to DK; Copy of ANSI/ASHRAE Standard 90.1-2007 (pgs 18, 23, 29, 30); Color brochure from Kingspan Solar PV systems	1/5/11
Email, DK to Karen Green, Town of Yarmouth: Withdrawal of project	1/6/11
Email, DK to AA: Energy resources; Target Energy Performance results	1/6/10
Email, DK to AA: Withdrawal of project	1/20/11
Email, DK to AA: Scheduling of public hearing	1/25/11
Email, DK to AA: Request to reuse Limited Review application	1/31/11
Cover Memo and attachments, Dan Ojala, DownCape, to AA: Revised plans (2/7/11); Low Impact Landscaping Plan (2/7/11); Photometrics Plan (2/8/11); Nitrogen Loading calculations (10/29/10); Water Use data (10/29/10); Copy of Yarmouth Zoning (Section 406); Updated Stormwater Plan (2/8/11) (Also provided on CD)	2/8/11
Email, DK to AA: Copies of applicant's information for Subcommittee	2/15/11
Cover letter, DK to AA: Cover to copies of applicant's information for Subcommittee	2/16/11
Color Aerial photo of proposed project site (Used/Distributed to Subcommittee at public hearing)	2/24/11
Minutes of Public Hearing	2/24/11
Notice of Continued Hearing	3/17/11
Minutes of Continued Hearing	3/17/11
Materials from Public Agencies/Towns/State/Federal	Date Received
Email, Terry Sylvia, Town Planner to Kristy Senatori (KS); Preliminary Site Plan Review comments	7/12/10
Letter, Division of Fisheries & Wildlife, Natural Heritage and Endangered Species Program comments	7/12/10
Email, Karen Greene (KG), Yarmouth Director of Community Development, to KS: Questions on project referral and Conservation Commission actions	8/18/10
KG to James Brandolini (JB) and others; Project referral to Cape Cod Commission	8/19/10
DRI Referral Form	8/31/10
Email, KG to JB: Project withdrawal at local level	1/11/11
Email, with attachment, JB to KS: DRI referral	1/25/11
Email, KG to AA: Copies of Applicant's materials	3/10/11

Materials from General Public	Date Received
Email, William Marasco: Comments on project	2/9/11

TESTIMONY

February 24, 2011 Public Hearing

A public hearing was held at 6:00 PM on February 24, 2011 at Fire Station #2, 340 Route 6A, Yarmouthport, MA.

Stuart Bornstein, Deirdre Kyle, Andrew Garalay, and Grant Elgin, representing the Applicant, gave a presentation about the proposed project.

Ms. Andrea Adams, Commission Senior Regulatory Planner, presented the staff report using a PowerPoint presentation.

The Subcommittee found that the RPP issue area of Affordable Housing did not need to be included in the Limited DRI review scope because the proposed project does not involve substantial deviation from the Minimum Performance Standards of the RPP and does not have significant impact upon the purposes and values identified in Section One of the Act.

The Subcommittee voted unanimously that the proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth shall be scoped for Limited DRI review in the RPP issue areas of Land Use, Wetlands, Open Space, Hazardous Wastes Management and Energy.

The Subcommittee voted unanimously to direct Commission staff to draft a written Limited DRI scoping decision.

The Subcommittee voted unanimously to continue the hearing to March 17, 2011 at 1:30 PM at the Commission's office for the purpose of reviewing a draft written Limited DRI scoping decision.

March 17, 2011 Continued Public Hearing

A continued public hearing was held beginning at 1:30 PM at the Commission's office.

The Subcommittee voted to approve draft minutes from the February 24, 2011 hearing as corrected.

The Subcommittee reviewed and corrected a draft written Limited DRI Review decision.

The Subcommittee voted to include the Regional Policy Plan issue areas of Land Use, Wetlands, Open Space, Hazardous Waste Management and Energy in the DRI review.

The Subcommittee voted to approve the draft decision, as amended. The Subcommittee voted to close the hearing and the record.

JURISDICTION

The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(i) of the Commission's *Enabling Regulations* (Revised May 2010, Corrected June 2010) as new construction of a commercial building with a Gross Floor Area greater than 10,000 square feet.

The Applicant has applied for a Limited DRI Review. In accordance with Section 5(a) of the *Enabling Regulations*, “[f]or any project that is a DRI...the proponent may apply to the Commission to limit the scope of the DRI review.

FINDINGS

The Commission, through a Subcommittee, has considered the Limited DRI Scoping application of the for the proposed 17,150 square foot warehouse, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Section 13(a) of the Act and Sections 3, 5 and 7 of the *Enabling Regulations*:

General Findings

GF1. As the date of the first substantive public hearing on the proposed project was February 24, 2011, this project was reviewed subject to the 2009 RPP, as amended in May 2010 and effective June 2010.

GF2. The proposed project involves the development of an undeveloped site. As such, the Commission considered the New Development Scoping Checklist in its deliberations on the Limited DRI review scope.

GF3. The proposed project that is the subject of this Scoping decision is a proposal to move 17,150 square feet of a 23,000 square foot metal frame building currently located at 77 High School Road Extension, Hyannis to a vacant site located at 31 Aaron’s Way, West Yarmouth. The building move is occurring because the lot on which it sits was sold to the Hyannis Fire Department, and the existing 23,000 square foot building must be moved or demolished, so the Fire Department can expand. The subject property at 31 Aaron’s Way in West Yarmouth is comprised of one lot, encompassing approximately 1.5 acres or 50,000 square feet, that is zoned B3. The Limited DRI application states that the proposed use will be predominately warehouse (93%), with a support office and a showroom in the rest of the space.

GF4. The proposed project is proposed to be constructed in accordance with the following plans and other documents, and is subject to further DRI review:

- Scaled elevations schematic line drawing, dated 11/16/10, provided by Email by Deirdre Kyle, Holly Management
- Project description and other information described in December 7, 2010 cover letter from Deirdre C. Kyle, Paralegal, Holly Management Corporation (Received by Commission 12/8/10)
- Color choices fro roof and exterior walls as shown on paint color system samples provided as part of December 7, 2010 letter from Holly Management Corporation
- Project Specifications from American Buildings, Solar Reflectance, Thermal Emittance and Solar Reflective Index, provided as part of December 7, 2010 letter from Holly Management
- Sample Saver System – R-value Insulation for Metal Buildings, provided as part of December 7, 2010 letter from Holly Management
- Stormwater Report, including Stormwater Operations and Maintenance Narrative, Pollution Prevention Plan, and Erosion Control and Sedimentation Plan, Created by Daniel Ojala 7/22/10, Received by Commission as part of December 7, 2010 letter from Holly Management

- Target Finder Energy Performance Results printout, dated 1/6/11, provided by Email to Commission by Deirdre Kyle, Holly Management
- Exterior Lighting cut sheet, RUUD wall pack and estimated foot-candle plan (Received by Commission 2/8/11)
- Revised Plan set, *Existing Conditions, Layout and Landscape Plan, Grading & Drainage, Detail Sheet of Plan of Land*, Prepared by Daniel Ojala, DownCape Engineering, dated June 25, 2010, latest revision February 7, 2011 (Received by Commission 2/8/11)
- Low Impact Landscape Plan narrative, Prepared by Daniel Ojala, DownCape Engineering, dated 2/7/11
- Stormwater Operations and Maintenance Plan revision, Prepared by Daniel Ojala, DownCape Engineering, dated 7/22/10, revised 2/8/11

Land Use

LUF1. The New Development Scoping Checklist refers to the Land Use Vision Map (LUVV) and a project's consistency with the land use categories and their characteristics per the RPP and adopted Land Use Vision Map. According to the LUVV, the area in West Yarmouth where the proposed new development is to be located is mapped Economic Center. The RPP defines an Economic Center as "[a]reas...appropriate for growth and redevelopment. These areas serve the region or sub-region and could include characteristics such as civic and institutional uses, retail, and mixed use." The Limited DRI application describes the proposed project as primarily a *warehouse*. The Commission finds through the Subcommittee that the proposed *warehouse* land use type may be inconsistent with the category of Economic Center as defined in the RPP.

LUF2. Minimum Performance Standard (MPS) LU1.1 requires 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. It also states in part that:

"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; and,*
- 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."*

LUF3. The proposed project is new development on a vacant site in West Yarmouth. The Commission, through the Subcommittee, finds the proposed project is not an expansion of a previously approved DRI. Further, the Commission finds, through the Subcommittee, that the proposed development may potentially present a threat to the resources or characteristics of the Economic Center. As such, the Commission finds, through the Subcommittee, that the proposed expansion may not be consistent with MPS LU1.1, and that RPP Land Use issue area shall be included in the DRI review scope.

Economic Development

EDF1. The New Development Scoping Checklist includes four questions related to economic development, including the project's location relative to the Land Use Vision Map types,

whether it is located in a resource-based economically productive area (*as defined by MPS ED1.4 as including working agricultural land, working waterfronts/harbors, fin- and shellfishing grounds and recreational areas*), involves Class III gaming, or develops new infrastructure as defined by the RPP.

EDF2. The proposed project is a 17,150 square foot warehouse use. The Commission, through the Subcommittee, finds that the question on the Scoping Checklist triggering Commission review for this proposed project is whether *“the project [is] located outside of an Economic Center or an Industrial & Service Trade Area.”* According to the LUV, the area in West Yarmouth where the proposed new development is to be located is mapped as an Economic Center. As such, the Commission, through the Subcommittee, finds that DRI review under the RPP Economic Development section is not warranted, and does not need to be included in the Limited DRI review scope.

Affordable Housing

AHF1. As the Applicant is proposing to move a 17,150 square foot building to the currently vacant Aaron’s Way site, the project qualifies as the construction of additional commercial development under the New Development Scoping Checklist and could be scoped for affordable housing under Goal AH 3 in the Regional Policy Plan.

AHF2. Upon consideration of information submitted for the record, the Commission, through the Subcommittee finds that the RPP issue area of Affordable Housing does not need to be included in the Limited DRI review scope because the proposed project does not involve substantial deviation from the MPS of the RPP and does not have significant impact upon the purposes and values identified in Section One of the Act for affordable housing.

Natural Resources: Wildlife & Plant Habitat, Wetlands, Open Space

NRF1. The project site is located within a Significant Natural Resource Area (SNRA) due to the presence of Wellhead Protection Area and state listed rare species habitat. The site is currently vegetated, comprised of a mix of oaks and pitch pines with a low shrub understory, on a lot a little over an acre in size. A wetland is located offsite, though within 100 feet of the project site boundary. For these reasons, the New Development Scoping Checklist directs that the project be reviewed for Wildlife and Plant Habitat, Wetlands, and Open Space interests.

NRF2. Properties adjacent to the north, west and south of the site are presently developed with office buildings, a kitchen/bath showroom and the NStar Utility offices. Given the disturbed nature of the properties surrounding the site, the small size of the site, and the fact that the Natural Heritage and Endangered Species Program has indicated that the project *“will not result in a prohibited “take” of state listed species,”* the Commission, through the Subcommittee, finds the preparation of a Natural Resources Inventory for the project site is not required.

NRF3. The site is effectively fragmented from remaining habitat in the area, with the exception of the easterly property boundary, which abuts an NStar easement and land containing a small wetland. Based on these site characteristics, the Commission, through the Subcommittee, finds the proposed project is unlikely to have impacts on wildlife or plant habitat concerns. Further, the Commission, through the Subcommittee, finds that for the purposes of review in the areas of wildlife and plant habitat, the project does not involve substantial deviation from the MPS of the RPP, and does not have significant impact on the purposes and values identified by Section One

of the Commission Act. As such, the Commission, through the Subcommittee, finds the Limited DRI scope did not need to include review subject to the RPP Wildlife and Plant Habitat sections.

NRF4. Project related development, including parking areas, driveways, and stormwater facilities are located within 100 feet of a wetland. The Commission, through the Subcommittee, finds that development within the 100-foot wetland buffer is in conflict with the requirements of MPS WET1.2 and MPS WET 1.4. The Commission, through the Subcommittee, finds the proposed development may cause potential adverse impacts to the vegetated wetland buffer from the proposed site alteration, pavement, and stormwater discharge. For these reasons, the Commission, through the Subcommittee, finds the project involves substantial deviation from the Wetlands MPS of the RPP, and has a significant impact on the purposes and values identified by Section One of the Commission Act with respect to Wetlands resources. As such, the Commission finds through the Subcommittee, that the RPP Wetlands section shall be included in the Limited DRI review scope.

NRF5. The New Development Scoping Checklist indicates that if a project is located in an SNRA, it should be scoped for open space issues. Also, MPS OS1.3 includes a requirement that states, "[w]here new development is proposed within SNRAs, open space shall be provided within these areas." For these reasons, the Commission, through the Subcommittee, finds the project involves substantial deviation from the Open Space MPS of the RPP, and has a significant impact on the purposes and values identified by Section One of the Commission Act with respect to Open Space. As such, the Commission finds, through the Subcommittee, that the RPP Open Space section shall be included in the Limited DRI review scope.

Water Resources

WRF1. The Scoping Checklist for New Development suggests that the RPP Water Resources issue area should be included in the DRI review scope because the proposed project is located within a Wellhead Protection Area, and due to the fact that the project is proposing a septic system to treat wastewater from the proposed project.

WRF2. Based on the information submitted as part of the Limited DRI Review application, the Commission, through the Subcommittee, finds that it is appropriate to exclude the RPP Water Resources section from the scope of the Limited DRI review based on the following information. The information submitted below indicates proposed development does not involve substantial deviation from the Water Resources MPS of the RPP, and does not have significant impact upon the purposes and values identified by Section One of the Commission Act with respect to Water Resources issues.

1. Details provided on the proposed stormwater management system indicating the project will use bioretention and will directly infiltrate roof runoff
2. Submission of an adequate and complete post-construction Stormwater Operation and Maintenance Plan including specific maintenance for the bioretention areas, and appropriate design specifications for the bioretention areas
3. Nitrogen loading calculations demonstrating the project will not exceed 5.00 parts per million based on actual water use data from an adjacent, similar use.
4. The project is not located in a Potential Public Water Supply Area.
5. Town of Yarmouth's Aquifer Protection Overlay District regulations, demonstrating an adequate level of protection from the possible use, handling, and/or storage of Hazardous Materials. This regulation is consistent with the RPP, and prohibits the use, or storage of chemicals, pesticides, fuels and other potentially toxic or hazardous

materials in quantities greater than those normally associated with normal household use.

6. Submission of a Low Impact Design landscape management plan, indicating specific plants and methods to assure the establishment of vegetation that will assist in site stabilization, and treatment of stormwater quality without excessive irrigation or fertilization.

Hazardous Waste Management

HWF1. The Scoping Checklist for New Development includes questions concerning a project's potential to use, handle, generate, treat, or store Hazardous Wastes. MPS WM1.5 requires that "[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste..." be in compliance with the state's Hazardous Waste regulations and specifies three items be provided to show compliance with this requirement for purposes of Commission review:

- (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.

HWF2. The site in West Yarmouth is located in an existing Wellhead Protection Area. The Commission, through the Subcommittee, finds the proposed warehouse use as a category that often includes the use, handling, generation, treatment or storage of Hazardous Wastes. For this reason, the Commission, through the Subcommittee, finds the project may involve substantial deviation from the Hazardous Waste Management MPS of the RPP, and may have a significant impact on the purposes and values identified by Section One of the Commission Act with respect to Hazardous Waste Management. As such, the Commission finds, through the Subcommittee, that the RPP Hazardous Waste Management section shall be included in the Limited DRI review scope.

Solid Waste Management

WMF1. The New Development Scoping Checklist includes a question about whether a project involves greater than 25,000 square feet of development. The proposed project is a 17,150 square foot building. The Applicant has also indicated an intent to reuse much of the existing building. As such, the Commission, through the Subcommittee, finds the proposed project will not involve substantial deviation from the Solid Waste/Recycling MPS of the RPP or have significant impacts on the purposes and values identified by Section One of the Commission Act with respect to Solid Waste and Recycling Management. As such, the Commission finds, through the Subcommittee that the Solid Waste/Recycling Management section of the RPP does not need to be included in the DRI review scope.

Heritage Preservation and Community Character

HPCCF1. The site at 31 Aaron's Way is currently undeveloped, and on September 10, 2010 the Massachusetts Historical Commission confirmed that there are unlikely to be any culturally or archaeologically significant resources on the site.

HPCCF2. The site in West Yarmouth is zoned for industrial use, and is not within a distinctive neighborhood. The site is located between existing buildings that along with the existing vegetation on the periphery of the lots provide a buffer to the adjacent roadways. As such, the

Commission, through the Subcommittee, finds it unlikely that the new structure will be visible from the adjacent regional roadway system. The Applicant also submitted a landscape plan for the proposed development, which is consistent with MPS HPCC2.9 and MPS HPCC2.10. Under the RPP, non-traditional materials and forms are allowed in industrial parks that are not visible from regional roads provided an adequate buffer is maintained to screen development from view. Based on existing buffers to adjacent roadways, and the proposed landscape plan, the Commission, through the Subcommittee, finds the proposed project will not involve substantial deviation from MPS HPCC2.7.

HPCCF3. According to information submitted by the Applicant on February 7, 2011, exterior lighting will consist of seven (7) on building mounted wall packs provided by RUUD Lighting. A site photometric plan provided by DownCape Engineering on 2/7/11 and technical cuts for proposed fixture indicate the wall pack exterior lights will conform to the MPS HPCC2.11 and Technical Bulletin 95-001 (as amended). Testimony provided by the Applicant's representative at the February 24, 2011 hearing confirmed the maximum fixture mounting height will be 15.0 feet above finished grade, which is consistent with the Technical Bulletin requirements.

HPCCF4. Based on this information, the Commission, through the Subcommittee, finds the proposed project will not have significant impacts on the purposes and values identified by Section One of the Commission Act with respect to building design, landscape design, cultural resources and exterior lighting. The Commission, through the Subcommittee, finds the RPP Building Design, Landscape Design, Cultural Resources and Exterior Lighting sections do not need to be included in the DRI review scope.

Energy

EF1. According to the New Development Scoping Checklist, and the Limited DRI application cover letter (December 8, 2010), the Applicant has sought consultation regarding energy efficient design for a warehouse use. The Applicant has also indicated an intent to pursue *Energy Star* certification through submittal of a Statement of Energy Design Intent, prepared through the Energy Star Target Finder program for a non-refrigerated warehouse use (Email dated 1/6/11).

EF2. The project entails new commercial development in excess of 10,000 square feet, located in an Economic Center, but is not *mixed use* as defined by the Regional Policy Plan. The Commission, through the Subcommittee, finds that the proposed project may involve a substantial deviation from RPP Energy MPS or may have significant impacts, both quantitative and qualitative, on the purposes and values identified by Section One of the Commission Act with respect to Energy issues. As such, the Commission finds through the Subcommittee that the RPP Energy section shall be included in the DRI review scope.

Transportation

TF1. Based on calculations done by Commission Transportation staff, the unadjusted estimated trip generation for the proposed 17,150 square foot warehouse based on data for similar facilities, as outlined in the Institute of Transportation Engineers (ITE) *Trip Generation*, Eighth Edition, 2008, is shown in the table on the next page, below.

Proposed Development	Morning Peak Hour ¹	Afternoon Peak Hour ¹	Daily ¹
17,150 square foot Warehouse	5	5	61

¹Based on ITE LUC 150, Warehouse, 17,150 square feet

TF2. Based on limited trip generation for a 17,150 square foot warehouse, the Commission, through the Subcommittee, finds the proposed project is not anticipated to have a significant congestion impact on the roadway networks. The standard of review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. A high crash location is defined as a location where three (3) or more crashes have occurred for three (3) consecutive years. The Commission, through the Subcommittee, finds the proposed warehouse project is not estimated to generate a significant amount of new traffic; therefore the Commission, through the Subcommittee, finds the proposed warehouse project would not cause a degradation in public safety.

TF3. Based on the site driveway location as shown on the plan titled *Full Building Concept Plan of Land at 31 Aaron's Way in West Yarmouth, MA*, dated June 4, 2010 by Daniel A. Ojala, the Commission, through the Subcommittee, finds the proposed site driveway will not have a significant impact on regional traffic. In addition, the proposed site does not abut a regional roadway.

TF4. Based on the information submitted, the Commission, through the Subcommittee, finds the proposed warehouse project does not trigger any of the New Development Scoping Checklist questions, nor does the project substantially deviate from the Transportation MPS of the RPP or have significant impact upon the purposes and values identified in Section One of the Commission Act relative to Transportation resources. Further, the Commission, through the Subcommittee, finds that the project does not have a significant impact on the regional roadway system, and that the RPP Transportation issue area does not need to be included in the Limited DRI review scope.

CONCLUSION ON NEXT PAGE

CONCLUSION

Based on the above findings, the Commission, through an authorized Subcommittee, hereby determines that the proposed 17,150 square foot warehouse with a support office and a showroom, as outlined in this decision shall be reviewed as a Development of Regional Impact in the RPP issue areas of Land Use, Wetlands, Open Space, Hazardous Waste Management, and Energy, in accordance with Sections 5 and 7 of the DRI *Enabling Regulations*.

The Commission, if it finds that the proposed project may be approved through a Limited DRI review, shall require as part of that Limited DRI review issuance of a Certificate of Compliance either prior to issuance of a Building Permit or prior to issuance of a Certificate of Use/Occupancy to ensure that development in those RPP issue areas not included in the Limited DRI review scope will be built in accordance with the plans and information presented to the Subcommittee to make this determination.

Richard Roy
Richard Roy, Subcommittee Chair

March 28, 2011
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

March 28, 2011

Before me, the undersigned notary public personally appeared

Richard Roy in his capacity as Chairman of the Commission Subcommittee, 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: 10.13.11