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CAPE COD
COMMISSION

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Date: January 8, 2013

To: Jonathan Fitch
Attorney at Law
3010 Main Street (Rte. 6A)
Barnstable, MA 02630

From: Cape Cod Commission

Re: Development of Regional Impact Scoping Decision
Cape Cod Commission Act, Section 13(a)
Cape Cod Commission *Enabling Regulations*, Section 5

Applicant/Owner: Howland Development Corp. and Snake Pond Realty Trust

Project: Greenwood Meadows

Project #: LR/TR 12041

Project Location: Farmview Drive, Sandwich, MA

(Recording information attached to decision)

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through an authorized Subcommittee, hereby determines that mandatory Development of Regional Impact (DRI) review of the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA shall be limited to the issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management, and that Howland Development Corp. and Snake Pond Realty Trust (Applicant) may proceed with its application for said Limited Development of Regional Impact approval This decision is rendered pursuant to a vote of a duly authorized Subcommittee of the Commission on January 8, 2013.

PROJECT DESCRIPTION

The Applicant is proposing to develop a 16.56 acre solar field, accessed via a proposed 15-foot wide gravel road extending from Farmview Drive.

According to the application materials, the solar field will occupy approximately 16.56 acres of the project site. The area of the project site on which the solar field is proposed contains approximately 12.23 acres of forested upland (including 4.86 acres of early successional Pitch Pine forest habitat), and 4.33 acres of previously disturbed area. The proposed 15-foot wide gravel road will extend for approximately 560 feet through the currently forested upland. The limit of disturbance associated with the gravel road totals 0.24 acres. This proposed fifteen foot road width includes two, foot-wide shoulders on either side of the road.

PROCEDURAL HISTORY

The applications for a Limited Development of Regional Impact ("Limited DRI") and DRI were received by the Commission on October 9, 2012. 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 Applicant submitted additional application materials in November and December 2012. The Limited DRI application was deemed substantively complete to proceed to a public hearing on December 5, 2012.

The Limited DRI scoping hearing was opened by a duly noticed public hearing held on December 20, 2012 at the Jan Sebastian Meeting Room located at 16 Jan Sebastian Drive in Sandwich, Massachusetts. The subcommittee conducted a site visit prior to the hearing. At this hearing, the Subcommittee voted to continue the public hearing to 4:00 PM on January 8, 2013 at the Commission's office in Barnstable, MA. A duly noticed public meeting took place following the public hearing on December 20, 2012, at which the subcommittee voted to limit the scope of DRI review to the RPP issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management, and voted unanimously to direct Commission staff to draft a written Limited DRI scoping decision.

At the continued public hearing on January 8, 2013, the Subcommittee reviewed a draft written Limited DRI scoping decision page by page. The Subcommittee voted unanimously to approve the draft written decision.

MATERIALS SUBMITTED FOR THE RECORD

TABLE 1: Materials Submitted for the Record	
<i>Materials from Cape Cod Commission</i>	<i>Date Sent</i>
Letter from Elizabeth Enos (EE) to Jonathan Fitch (JF), Attorney representing the Applicant, re: Hardship Exemption	10/10/12
Letter from EE to JF requesting additional materials	10/19/12
Email correspondence between Richard Tabaczynski (RT) and James Sherrard (JS) re: refueling in PPWSA	10/30/12
Email correspondence between EE and JF re: Conservation and Management Permit	11/2/12
Email correspondence between EE and JF re: mandatory referral	11/5 - 11/6/12
Email correspondence between JS and Dan Mahoney of the Town of	11/9/12

Sandwich re: PPWSA designation	
Email from EE to JF requesting additional materials	11/15/12
Email correspondence between JS and RT re: PPWSA	11/27/12
Letter from Gail Hanley (GH) to JF re: mandatory referral	11/28/12
Email correspondence from EE to JF re: certified list of abutters	12/3/12
Email from EE to subcommittee re: public hearing	12/3/12
Letter from EE to JF deeming application complete	12/5/12
Email from GH to Sandwich Town Clerk with attached hearing notice for posting	12/13/12
Email from EE to JF and Nathan Jones, Town Planner for the Town of Sandwich with attached Staff Report	12/14/12
Hearing Outline and PowerPoint from 12/20 hearing	12/20/12
Email from GH to Sandwich Town Clerk with attached hearing notice for posting	1/2/13
<i>Materials from Applicant</i>	<i>Date Received</i>
Application materials from the Applicant	10/9/12
Letter from JF re: Limited review application	10/16/12
Email from RT to JS re: refueling in PPWSA	10/30/12
Email correspondence from JF to EE re: Conservation and Management Permit	11/1 – 11/2/12
Email from JF with attached CMP information	11/2/12
Letter from JF with attached supplemental materials	11/2/12
Email correspondence from JF to EE re: mandatory referral	11/6/12
Email correspondence from JF to EE requesting update on completeness	11/15/12
Email from RT to JS re: Sandwich Water District	11/16/12
Email correspondence from RT to JS re: PPWSA	11/26 – 11/27/12
Email from JF to EE with supplemental materials, including copy of Power Purchase Agreement with the Town of Sandwich	12/7/12
Statement of Probable Benefits hand delivered by the Applicant at 12/20 public hearing	12/20/12
<i>Materials from Public Agencies/Towns/State/Federal</i>	<i>Date Received</i>
Email from Nathan Jones, Town Planner for the Town of Sandwich re: consistency with local regulations	12/10/12
Email from Don Keeran from the Association to Preserve Cape Cod re: agricultural soils	12/19/12
Letter from the Sandwich Water District re: PPWSA designation	12/21/12
<i>Materials to/from Members of the Public</i>	<i>Date Received</i>

TESTIMONY

December 20, 2012 Public Hearing

A public hearing was held at 5:00 PM on December 20, 2012 at the Jan Sebastian Meeting Room in Sandwich, Massachusetts.

Attorney Jonathan Fitch, representing the Applicant, provided a general overview of the project and explained how the solar panels work.

Gary Hogg, a consultant from Ethos Energy, explained that he had been working with the Applicant since September 2011 to determine the potential for solar at the site. Mr. Hogg stated that the Applicant has entered into an agreement with the Town of Sandwich to purchase 100% of the power, which will help the Town in achieving designation as a "Green Community".

Brian Madden, Senior Wildlife Scientist with LEC Environmental Consultants, explained that he has been working closely with the Natural Heritage and Endangered Species Program (NHESP) to permit the project and reviewed the requirements of the permitting process and considerations in siting the project.

Rich Tabaczynski, Vice President and Project Manager with Atlantic Design Engineers discussed stormwater and drainage at the site. Mr. Tabaczynski also described the area that would be used for refueling during construction and noted that the Sandwich Water District has written a letter to the Commission which states that they are not considering the area for a potential public water supply at this time.

Elizabeth Enos, Regulatory Officer with the Commission, provided an overview of the Staff Report and a general overview of the project, including the existing setting, project description, procedural overview, standards of review and approval, the Commission staff analysis, and conclusions and recommendations. In her PowerPoint presentation, Ms. Enos discussed the project's consistency with the Regional Policy Plan and the Minimum Performance Standards in each issue area. Ms. Enos stated that Commission staff suggests that DRI review be limited to the Regional Policy Plan (RPP) issue areas of the Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management. Ms. Enos requested additional materials from the Applicant and noted that the Commission has received written testimony from Nathan Jones, Town Planner for the Town of Sandwich, in which he notes that the project is consistent with the Local Comprehensive Plan (LCP) and municipal development bylaws. Further, Ms. Enos stated that the project is not located in whole or in part within a designated District of Critical Planning Concern (DCPC) and that the Commission will need to deliberate on the probable benefits and probable detriments from the proposed project.

Nathan Jones, Town Planner for the Town of Sandwich, stated that the project meets the requirements of section 9.3 of the LCP and section 41.80 of the May 2012 Zoning By-Laws for Large Scale Ground Mounted Solar Photovoltaic Installations. Mr. Jones stated that the Green Committee supports the project and that the Town is in negotiations for energy buyback.

The subcommittee and the Applicant discussed the Power Purchase Agreement with the Town of Sandwich, the maintenance required at the site and what would be needed to keep the panels clean, and refueling at the site.

The subcommittee voted to close the record on the limited review and leave the record open on the DRI and continue the public hearing on the Limited DRI/DRI to January 8, 2013 at 4:00 PM at the Cape Cod Commission located at 3225 Main Street, Barnstable.

December 20, 2012 Public Meeting

The Subcommittee voted to limit the scope of DRI review to the issue areas of Land Use,
Greenwood Meadows Limited DRI Review Scoping Decision

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Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management and directed Commission staff to draft a written Limited DRI Review Scoping Decision for review and approval by the subcommittee.

January 8, 2013 Public Meeting

Elizabeth Enos, Regulatory Officer with the Commission reviewed the draft Limited DRI Review Scoping Decision page by page with the subcommittee and voted unanimously to approve the draft written decision.

JURISDICTION

The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(iii) of the Commission's *Enabling Regulations* (Revised July 2012) as "*new construction or development that has a Total Project Area greater than 40,000 square feet.*"

The Applicant has applied for 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 Howland Development Corp. and Snake Pond Realty Trust for the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA, 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 December 20, 2012, this project was reviewed subject to the 2009 RPP, as amended in August 2012.

GF2. The Commission considered the Limited DRI Scoping Checklist in its deliberations on the scope of DRI review.

GF3. The Commission finds the proposed project consists of a 16.56 acre solar field, accessed via a proposed 15-foot wide gravel road extending from Farmview Drive.

According to the application materials, the solar field will occupy approximately 16.56 acres of the project site. The area of the project site on which the solar field is proposed contains approximately 12.23 acres of forested upland (including 4.86 acres of early successional Pitch Pine forest habitat), and 4.33 acres of previously disturbed area. The proposed 15-foot wide gravel road will extend for approximately 560 feet through the currently forested upland. The limit of disturbance associated with the gravel road totals 0.24 acres. This proposed fifteen foot road width includes two, foot-wide shoulders on either side of the road.

GF4. The proposed project is proposed to be constructed in accordance with the following plan set titled "Special Permit Site Plans for the Greenwood Meadows Solar Project" by Atlantic Design Engineers, Inc. dated September 13, 2012 and other documents, and is subject to further DRI review:

- Sheet 1 of 11: Cover Sheet
- Sheet 2 of 11: Overall Existing Conditions Plan
- Sheet 3 of 11: Overall Site Layout Plan
- Sheet 4 of 11: Site Layout Plan
- Sheet 5 of 11: Site Layout Plan
- Sheet 6 of 11: Overall Grading and Erosion Control Plan
- Sheet 7 of 11: Grading and Utilities Plan
- Sheet 8 of 11: Grading and Utilities Plan
- Sheet 9 of 11: Grading and Utilities Plan
- Sheet 10 of 11: Overall Landscaping and Lighting Plan (Lighting subsequently removed)
- Sheet 11 of 11: Details Plan

Land Use

LUF1. The Commission finds that the proposed project site is mapped a Resource Protection Area (RPA) on the Town of Sandwich Land Use Vision Map. RPAs are areas that warrant protection, and where additional growth is not desired, due to the presence of one or more sensitive resources. As such, the Commission finds the RPP issue area of Land Use shall be included in the scope of DRI review.

Economic Development

EDF1. The Commission finds that the proposed project site is located outside of an Economic Center or Industrial Trade Area. The Commission finds that in accordance with the Scoping Checklist, Economic Development shall be included in the scope of DRI review.

Water Resources

WRF1. As mapped on the Cape Cod Water Resources Classification Maps I and II, the project site is located within a Wellhead Protection Area (WHPA), multiple Marine Water Recharge Areas (MWRA) contributing to the Waquoit Bay, Green Pond and Bournes Pond watersheds, a Fresh Water Recharge Area (FWRA) contributing to the Ashumet Pond sub-watershed, and a Potential Public Water Supply Area (PPWSA). A public drinking water supply well (MMR "J" Well) is located approximately 400 feet down gradient of the southeastern portion of the project site. As such, the Commission finds that Water Resources shall be included in the scope of DRI review.

Coastal/Marine Resources

The Commission finds that upon application of the RPP and Limited DRI Review Scoping Checklist to the project, the issue areas of Coastal Resources and Marine Resources do not apply, and as such, the issue areas of Coastal Resources and Marine Resources shall not be included in the scope of DRI review.

Wetlands

WETF1. Upon application of the RPP and Limited DRI Review Scoping Checklist to the project, Commission finds the sub-issue area of Wetlands does not apply and shall not be included in the scope of DRI review.

Wildlife & Plant Habitat/Open Space and Recreation

WLPH/OSF1. Due to the project's proposed impacts to and location within rare species habitat and location within a Significant Natural Resource Area, the Commission finds that the RPP

issue areas of Wildlife and Plant Habitat and Open Space and Recreation shall be included in the scope of DRI review.

Transportation

TF1. The Commission finds that trips to the site will be limited to construction and infrequent maintenance activities, and the proposed project will not generate any new daily vehicle trips. Based on application of the RPP and the scoping checklist for new development, the proposed project will not generate more than 250 new daily trips or more than 25 new peak hour trips at a high crash location, nor does it abut a regional roadway as the project will be accessed via Farmview Drive. As such, the Commission finds that the issue area of Transportation does not apply to the proposed project and shall not be included in the scope of DRI review.

Waste Management

WMF1. As the project site is overlain by both a Potential Public Water Supply Area and Wellhead Protection Area, and involves greater than 25,000 s.f. of new development and a significant amount of land clearing and/or construction and demolition waste, the Commission finds that Hazardous Waste be included in the scope of DRI review.

Energy

EF1. The Commission finds that as a commercial scale PV facility, the Energy MPSs in the RPP do not apply to this project, and as such, Energy shall not be included in the scope of DRI review.

Affordable Housing

AHF1. The project falls under the "Other" category for the purpose of the affordable housing mitigation required under MPS AH 3.1. 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 AH 3.1), the Commission finds that the Applicant is exempt from the mitigation requirements of MPS AH 3.1 and that Affordable Housing shall not be included in the scope of DRI review.

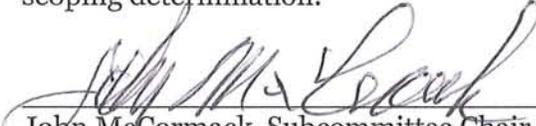
Heritage Preservation and Community Character

HPCCF1. The Commission finds that the RPP issue area of Heritage Preservation and Community Character shall not be included in the scope of DRI review due to the low height of the project structures, their location outside of scenic, historic or otherwise distinctive areas, and the absence of historic or archaeological resources on the as evidenced by a May 3, 2012 letter from Massachusetts Historical Commission. Further, as stated in the Applicant's 12/7/12 supplemental materials, lighting is not being proposed as part of the project.

CONCLUSION

Based on the above findings, the Commission, through an authorized Subcommittee, hereby determines that the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA as outlined in this decision shall be reviewed as a Limited Development of Regional Impact in the RPP issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management in accordance with Sections 5 and 7 of the Commission's *Enabling Regulations*.

As a condition of any Limited DRI approval, the Applicant shall be required to obtain from the Commission a Certificate of Compliance prior to issuance of a Building Permit and/or prior to issuance of a Certificate of Use/Occupancy to ensure that development will be undertaken in accordance with the plans and information presented to the Subcommittee in making its scoping determination.


John McCormack, Subcommittee Chair

Date 1/31/13

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

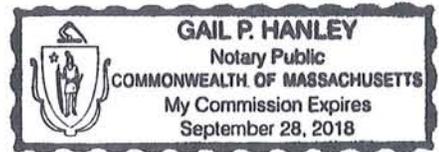
Jan 31, 2013

Before me, the undersigned notary public personally appeared

John McCormack 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.


Notary Public

My Commission Expires: 9-28-18



ATTACHMENT

Recording Information for Greenwood Meadows Project

LR-TR12041

Registered Owner: Snake Pond Realty Trust, Michael A. Howland, Trustee

Title Reference:

Land Court Certificate of Title No. 137565 Land Court Plan 6139-7,

Sheet 1, Lots	947	955	963
	948	956	964
	949	957	985
	950	958	986
	951	959	987
	952	960	1000
	953	961	
	954	962	

Sandwich Tax Assessors Map 05, Parcels 291, 292, 293, 294, 295, 296, 297, 298, 319, 320, and 321
Map 01, Parcels 001, 002, 003, 004, 005, 006, 007, 008, 009, 010 and 011