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CAPE COD
COMMISSION

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LIMITED DEVELOPMENT OF REGIONAL IMPACT DECISION

DATE: September 17, 2015

TO: Eliza Cox, Esq.
Nutter McClennen & Fish LLP
1471 Iyannough Road
Hyannis, MA 02601

PROJECT APPLICANT/
PROPERTY OWNER: Monomoy Properties LLC

PROJECT: Atkins Road Subdivision
TR/LR 14005

PROJECT SITE/
LOCATION: off Atkins Road, E. Sandwich, MA

TITLE REFERENCE: Deed Book 22684 Page 86
Plan Book 124 Page 123

ASSESSORS' INFORMATION: Map 34 Parcels 5 through 12, 51 through 56, & 67 through 83

SUMMARY

The Cape Cod Commission (Commission) hereby approves, with conditions, the application by Monomoy Properties LLC (Applicant) as a Limited Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the *Act Establishing the Cape Cod Commission, c. 716* of the Acts of 1989, as amended, (Act) and Sections 3, 5, and 7 of the Commission's *Enabling Regulations*, as amended, (*Enabling Regulations*) for a 23 lot residential subdivision off Atkins road in East Sandwich. This project is also subject to a DRI scoping decision dated March 23, 2015 in which DRI review was limited in scope to the Regional Policy Plan (RPP) issue areas of Land Use, Water Resources, Wildlife & Plant Habitat, Waste Management, Open

Space/Recreation, Community Character (HPCC Goal 2) and Affordable Housing. This decision is rendered pursuant to a vote of the Commission on September 17, 2015.

PROJECT DESCRIPTION

The project proposes the subdivision of approximately 36.911 acres of land off Atkins Road in East Sandwich into 23 residential building lots, road layout, and an approximate 27.58 acre open space lot; the project also proposes common residential subdivision improvements such as landscaping, sidewalks and drainage facilities (collectively, the "Project").

The Project Site is undeveloped, largely undisturbed and naturally vegetated, though it includes some large areas of existing disturbance and paths.

PROCEDURAL HISTORY

The full DRI Scoping application was received by the Commission on December 30, 2014. The DRI Scoping application was deemed complete on March 5, 2015.

DRI review was limited to the issues areas of Land Use, Water Resources, Wildlife & Plant Habitat, Waste Management, Open Space/Recreation, Community Character (HPCC Goal 2) and Affordable Housing by a Limited DRI Scoping Decision, dated March 23, 2015. This Decision was accepted and adopted as final by the Committee on Planning and Regulation at its meeting on March 19, 2015.

The Limited DRI application was received on February 13, 2015. The DRI mandatory town referral was received by the Commission on May 7, 2015. The Applicant submitted additional materials in March, May, June and July 2015. The DRI hearing period was opened for procedural purposes by hearing officer on July 2, 2015 at Cape Cod Commission offices located at 3225 Main Street, Barnstable, Massachusetts. The DRI application was deemed complete, sufficient to proceed to a substantive public hearing, on August 3, 2015.

One letter has been received into the project file by the Commission for the project, submitted by the Association to Preserve Cape Cod, dated 8/26/15.

A substantive hearing on the Limited DRI was held August 27, 2015, at 5:30 pm at the Town of Sandwich Human Services Building located at 270 Quaker Meetinghouse Road, Sandwich, Massachusetts by a subcommittee consisting of members Harold Mitchell (Chair), Richard Roy, John McCormack, Richard Conron, and John D. Harris. At this hearing, the subcommittee discussed the project, took public testimony, heard a presentation on the Project by the Applicant, and were presented with a Project staff report (dated August 14, 2015) prepared by Commission staff. The subcommittee continued the hearing to September 10, 2015, 5 PM at Cape Cod Commission offices, 3225 Main Street, Barnstable, MA to consider a draft written Limited DRI decision for recommendation to the full Cape Cod Commission. At the hearing, the subcommittee discussed the project, took public testimony and were presented with the draft Limited DRI Decision prepared by Commission staff. The subcommittee voted to recommend the draft Limited DRI Decision to the full Commission for adoption and approval of the project, subject to conditions set out in the decision. The subcommittee continued the hearing to

September 17, 2015 at 3 PM at the Barnstable First District Courthouse, Assembly of Delegates Chambers, 3195 Main Street, Barnstable, MA.

JURISDICTION

The Project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(c) of the Commission's Enabling Regulations (revised November 2014) as "(a)ny development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994, including assembly and recombination of lots. This threshold shall include any development activity in conjunction with any land division of 30 acres or more not otherwise exempted from review under Section 22(e) of the Act."

The Project is being reviewed in light of the 2009 Regional Policy Plan (RPP), as amended August 2012, which is the RPP in effect at the time of the first public hearing on the application.

Section 7(c)(viii) of the Commission's *Enabling Regulations* contains the standards to be met for DRI approval, which include consistency with the Act, the RPP, Districts of Critical Planning Concern (DCPCs) (as applicable), municipal development by-laws, and the Local Comprehensive Plan. The Commission must also find that the probable benefit from the proposed development is greater than the probable detriment.

FINDINGS

The Commission hereby finds as follows:

GENERAL FINDINGS

GF1. The proposed development ("Project") consists of the subdivision of approximately 36.911 acres of land off Atkins Road in East Sandwich into 23 residential building lots, road layout, and an approximate 27.58 acre open space lot; the Project also proposes common residential subdivision improvements such as landscaping, sidewalks and drainage facilities.

GF2. The Project Site is approximately 36.911 acres of land off Atkins Road in East Sandwich, which land is currently identified on Sandwich Tax Assessors' Map 34 as Parcels 5 through 12, 51 through 56, & 67 through 83.

GF3. The Project qualifies as a mandatory DRI pursuant to Section 3(c) of the DRI Enabling Regulations: Chapter A of the Code of Cape Cod Commission Regulations (as amended Nov. 2014)

GF4. The Project is subject to a Limited DRI Scoping Decision, dated March 23, 2015, which was accepted and adopted as final by the Committee on Planning and Regulation at its meeting on March 19, 2015 ("Scoping Decision").

GF4a. This Scoping Decision limited DRI review to the RPP issue or subissue areas of Land Use, Water Resources, Wildlife & Plant Habitat, Waste Management, Open Space/ Recreation, Community Character (HPCC Goal 2) and Affordable Housing; the RPP issue and sub-issue areas of Economic Development, Coastal Resources,

Marine Resources, Wetlands, Transportation, Energy, and Heritage Preservation (HPCC Goal 1) were scoped out of DRI review.

GF5. A mandatory DRI referral from the Sandwich Planning Board was received by the Commission on May 7, 2015.

GF6. A Limited DRI application, subject to the Scoping Decision, was received on February 13, 2015. The Applicant, which is also the record owner of the Project Site, submitted additional materials in March, May, June and July 2015.

GF7. The DRI public hearing period was opened for procedural purposes by hearing officer on July 2, 2015 at Cape Cod Commission offices located at 3225 Main Street, Barnstable, Massachusetts.

GF8. The DRI application was deemed complete, sufficient to proceed to a substantive public hearing, on August 3, 2015.

GF9. Pursuant to the Scoping decision, this Project is reviewed according to the 2009 Regional Policy Plan (RPP), as amended in August 2012.

GF10. The following plans, documents and materials have been submitted describing the Project and the Project Site:

- Local By-law/ LCP Consistency letter from Sandwich Town Planner 7/9/15
- Open Space/ Disturbed Area Plan 9/9/15
- NHESP Comment/ "No Take" Letter 7/9/15
- Letter from Sandwich Water Dept re: Water Service-Pipeline Extension 6/23/15
- Atkins Nitrogen Loading-rev 6-2-15
- Atkins Road Subdivision Limited DRI Scoping Decision 3/23/15
- Application for Limited DRI Review 2/11/15, including record deeds and plans
 - List of Required Land Use Permits and Approvals for the Project
- Project Site Plan Set
 - Photometric Plans rev. 11/25/14
 - General Notes rev. 9/9/15
 - Existing Conditions Plan rev. 9/9/15
 - Overall Lotting Plan rev. 9/9/15
 - Lotting Plan rev. 9/9/15
 - Site Plan rev. 9/9/15
 - Plan and Profile Road "A" rev. 9/9/15
 - Plan and Profile Road "B" rev. 9/9/15
 - Plan and Profile Cul-de-sacs rev. 9/9/15
 - Landscape Plan rev. 9/9/15
 - Details Plan rev. 9/9/15
- Stormwater Report rev. 12/2/14
- MHC Project Notification Form and Determination of No Significant Resources
- USGS Quadrangle Map 9/20/13
- Sandwich Water Dept PPWSA Release Correspondence 10/30/13

Atkins Road Subdivision, E. Sandwich
Limited DRI Decision

- Traffic Study Parameters Memo and Proposed Traffic Study Parameters Response 7/16/13
- MEPA ENF Certificate 3/12/10
- Endangered Species Assessment 10/22/08

GF11. Based on the letter dated July 9, 2015 from Sandwich Town Planner, Blair Haney, the Project is consistent with Sandwich's Local Comprehensive Plan and applicable municipal development by-laws, subject to obtaining the required permits for subdivision approval including:

- 1) A Cluster Development Special Permit from the Town of Sandwich Planning Board;
- 2) Definitive Subdivision Approval from the Town of Sandwich Planning Board, including:
 - a. Demonstration of compliance with and/or obtaining a waiver from the Town of Sandwich Subdivision Rules and Regulations Section 4.B.3 which stipulates that "No street shall have a length where a condition of restricted access exists which is greater than 500 feet."

GF12. The Cape-wide Fertilizer Management District of Critical Planning Concern (DCPC) designation applies to the Project Site. No local DCPC's apply to the project site. However, as Town of Sandwich implementing regulations were neither adopted nor are in effect pursuant to the Cape-wide Fertilizer Management DCPC, consistency with such implementing regulations is inapplicable to the Project.

G13. The probable benefits of the Project include:

- 1) The proposed easement to the Town of Sandwich Natural Resources Department to provide town staff access to conservation land adjoining the project Site to its east.
- 2) The Project is located in a Significant Natural Resource Area. In accordance with the RPP, the applicant is required to provide open space at the rate of 2 to 1 in comparison to the proposed development. This corresponds to approximately 23 acres of open space for this project. The Applicant proposes to provide a total of 27.58 acres of permanently restricted open space, which is in excess of the RPP's open space dedication requirement.
- 3) Working with the Sandwich Water District, the Applicant is proposing to install a 12-inch water main under Route 6 to serve the Project. The proposed water main will extend water service from the Service Road on the south side of the highway to the Project, and will be interconnected with the existing 12-inch water main at the existing terminus of Atkins Road. The water main will operate at a higher hydraulic grade line than the existing main in Atkins Road, and this will be hydraulically isolated by a closed gate valve. The interconnection will afford the Sandwich Water District redundancy in its water supply, as well as the potential to boost water pressures in the surrounding neighborhood, should the Sandwich Water District opt to install a pressure-reducing valve in the future. In the event of a fire, the District could use the new Atkins Road hydraulic zone to increase pressures and water flow, which will significantly increase the Town's ability to fight fires.
- 4) RPP BDP WR 1.7 Use of Water-conservation Technologies – water conservation devices will be installed in all houses of the subdivision to achieve a 40% reduction of water use.
- 5) RPP BDP WR1.8 Alternatives to Chemical Fertilizers and Pesticides – Organic fertilizers will be used to maintain plantings within the subdivision road right of ways.
- 6) RPP BDP WR1.9 Greater Protection of Groundwater/Surface water – the proposed development will result in a lower Nitrogen load than the 5 ppm standard.

- 7) RPP BDP OS2.2 Provision of Recreation Areas – Walking trails and benches will be provided for passive recreation for residents of the subdivision within the open space lot.
- 8) The proposed emergency access easement to the Town that terminates at Marie Lane would allow for access and faster response time to the Project Site and neighboring properties for first responders in the event of an emergency.

Regional Policy Plan Findings

LAND USE

LUF1. The Project Site is mapped as “Other” on the approved Land Use Vision Map (LUVM) for Sandwich. Land Use MPS LU1.1 (Development Location) requires that projects be located in appropriately mapped area. Though the Town has adopted a LUVM, given that the area has been left unmapped by the Town, the Project is consistent with the LUVM and meets MPS LU1.1.

LUF2. MPS LU1.2 (Compact Development) requires that residential subdivisions of five or greater lots cluster development if consistent with local by-laws, which cluster plans shall use site designs that maximize contiguous open space, respect the natural topography and character of the site, and employ shared wastewater treatment, community water supply alternatives and Low Impact Development (LID) landscaping to allow more compact development. The Project proposes a clustered site design consistent with MPS LU1.2:

LUF2a. The RPP defines cluster development as: “a form of development that permits a reduction in lot area requirements, frontage, and setbacks to allow development on the most appropriate portions of a parcel of land in return for provision of a compensatory amount of permanently protected open space within the property subject to a development application;”

LUF2b. Sandwich’s Cluster Development zoning by-law provisions and its LCP identify cluster development as the preferred form of subdivision design within the Town, which form of development is allowed by special permit in the subject zoning district, subject also to definitive subdivision plan approval;

LUF2c. The Project maximizes contiguous open space by minimizing the size of the building lots and clustering them to the north of the Site, towards existing development off-site, away from the most valuable site habitat and adjoining abutting town conservation land to the east. The Project exceeds RPP Open Space requirements for open space to development ratio;

LUF2d. The Project respects the topography and character of the Site, though site design is challenging as the Site has significant variation in topography that makes compact subdivision design difficult. To navigate and follow the existing natural site topography and minimize grading, the Project proposes an extended entrance road and two separate subdivision spur roads that end in cul-de-sacs, which, given the variation in topography, creates two streets with separation between clusters of building lots;

LUF2e. The Project proposes to employ (shared) municipal water service infrastructure, subject to the Applicant working with the Town’s Water District to extend and upgrade municipal water supply to the Project Site.

LUF2f. The Project proposes to employ a Low Impact Development (LID) stormwater design through its use of vegetated swales and use of natural depressions for stormwater infiltration.

LUF2g. The Project does not propose shared wastewater infrastructure, and the Applicant seeks RPP flexibility for the use of individual Title 5 septic systems on building lots to handle wastewater. The RPP allows flexibility in the application of a minimum performance standard to a project where it can be demonstrated by an applicant that the interests protected by a given minimum performance standard can be achieved by an alternate approach. The Commission grants such flexibility and finds that the proposed use of individual Title 5 systems is equally protective of and will not be more detrimental to the protected resources on site than would be allowable under MPS LU1.2. The Project is able to meet applicable nitrogen loading standards with the use of standard Title 5 septic systems given the Scorton Creek watershed in which the Project is located, and the use of shared wastewater infrastructure neither allows the Project to be any more compact than is proposed, given the size of the lots and topography of the Site, nor does the use of Title 5 systems require the Project to be less compact than what could be proposed employing shared wastewater infrastructure.

LUF3. The Project does not involve as its principal purpose the development of significant infrastructure nor does it abut agricultural lands, thus Land Use Goals LU2 (Capital Facilities and Infrastructure) and LU3 (Rural Lands), and their corresponding MPSs, do not apply to the Project.

WATER RESOURCES

WRF1. The Project is consistent with the General Aquifer Protection goal of the RPP and associated minimum standards (WR Goal 1 and MPSs WR1.1-1.5):

WRF1a. Minimum Performance Standard WR1.1 limits project nitrogen loads to 5 milligrams-N per liter (ppm-N). Nitrogen loading calculations submitted by the applicant indicate a project nitrogen load of 6.2 ppm-N with the use of standard Title 5 septic systems and design flows. By incorporating actual wastewater flows, as provided by Technical Bulletin 91-001, the Project proposes a nitrogen load of 4.3 ppm-N per Technical Bulletin 91-001 that meets and is lower than the 5 ppm-N nitrogen loading limit under MPS WR1.1;

WRF1b. Pursuant to MPS WR 1.2, the Project proposes to connect to municipal water service, and sites building lots greater than 400 ft. from any private drinking water well;

WRF1c. MPS WR1.3 does not apply to the Project, as the Project does not propose to withdraw more than 20,000 gpd of water;

WRF1d. The Project does propose cluster development consistent with MPS WR1.4. The Project seeks RPP flexibility from a provision of MPS WR 1.4 that requires shared wastewater infrastructure. The Applicant proposes individual Title 5 septic systems to serve each of the proposed building lots, which would be constructed by individual lot owners. The Commission grants such flexibility and finds that the proposed use of individual Title 5 systems is equally protective of and will not be more detrimental to the protected resources on site than would be allowable under MPS WR 1.4. The Project is

able to meet applicable nitrogen loading standards with the use of standard Title 5 septic systems given the Scorton Creek watershed in which the Project is located, and the use of shared wastewater infrastructure neither allows the Project to be any more compact than is proposed, given the size of the lots and topography of the Site, nor does the use of Title 5 systems require the Project to be less compact than what could be proposed employing shared wastewater infrastructure.

WRF1e. The Project proposes the use of native, drought- and pest-resistant plantings as part of the common subdivision landscaping plan pursuant to MPS WR1.5. As a condition of this decision, the Applicant shall provide a landscape maintenance protocol, and undertake and maintain common landscaping according to such protocol.

WRF2. The Project is consistent with the Drinking Water goal of the RPP and associated minimum standards (WR Goal 2 and MPSs WR2.1-2.6).

WRF2a. The Project is not located within an existing Wellhead Protection Area.

WRF2b. The Project is partially located in a Potential Public Water Supply (PPWSA) identified in the RPP. However, as the Applicant submitted a letter dated 10/30/2013 from the Sandwich Water District indicating that the District has no plans to develop a water supply on the Project Site, the Commission releases the PPWSA designation on the Project Site.

WRF3. The Project is consistent with Marine Water Recharge Area goal of the RPP and associated minimum standards (WR Goal 3 and MPSs WR3.1-3.6), as the Project is located in the Scorton Creek watershed. The Massachusetts Estuaries Project report for Scorton Creek, published in 2013, indicates that the estuary is not presently nitrogen overloaded and that the estuary has sufficient capacity to assimilate additional nitrogen from the Project.

WRF4. The Project is not located within a Freshwater Recharge Area (RPP Section WR4). Therefore, the RPP goal and associated minimum standards under this Section do not apply to the Project.

WRF5. The Project is not located in a Water Quality Improvement Area (RPP Section WR5). Therefore, the RPP goal and associated minimum standards under this Section do not apply to the Project.

WRF6. A wastewater treatment facility is not proposed to treat project wastewater. Therefore, the RPP goal and associated minimum standards under RPP Section WR6 do not apply to the Project.

WRF7. Based on a review of the Applicant's Stormwater Report (which includes the Stormwater Operations & Maintenance Plan) and site plan set (which includes an erosion control plan and drainage plans/details), the Project is designed consistent with the Stormwater goal of the RPP and associated minimum performance standards (WR Goal 7 and MPSs WR7.1-7.11). A series of proprietary and traditional stormwater designs are proposed to manage project runoff primarily from new roadways. Stormwater is proposed to be discharged to naturally low areas on the site. As a condition of this decision, pursuant to MPS WR7.10, a professional engineer will certify in writing that the proposed stormwater system was constructed and performing as designed and approved.

WILDLIFE & PLANT HABITAT

WPHF1. Consistent with MPS WPH1.1, the Applicant provided a satisfactory habitat assessment for the Project Site in its application materials. With regard to MPS WPH1.5, there are no vernal pools on the Site.

WPHF2. The Project Site is mapped for rare species habitat for Eastern box turtle. The Applicant initiated discussions with the Natural Heritage and Endangered Species Program (NHESP) regarding layout and design of the Project early in project development. On July 9, 2015, the Applicant received a comment letter from NHESP in response to the Applicant's filing of development plans (dated 2/5/15 and revised 1/5/15). Based on the plan submitted, the NHESP indicated that the Project will not result in a prohibited take of endangered species. Based on the NHESP determination, the Project is consistent with MPS WPH1.4. As a condition of this decision, the Applicant shall file, and provide evidence of such filing to Commission staff, with NHESP copies of the final Project plans, including a copy of the Open Space/ Disturbed Area Plan, and the Applicant shall provide Commission staff with any further comments on the plans from NHESP.

WPHF3. The Project is consistent with MPSs WPH 1.2 and 1.3 as the Project's cluster design minimizes clearing of vegetation and alteration of natural topography, and protects large unfragmented areas of open space providing for wildlife corridors. The disturbed area of the water line through the open space lot shall be naturalized after construction, and the proposed construction within the proposed emergency access and conservation land access easement areas will be pervious pavers and gravel, respectively, providing opportunities for wildlife travel within the open space lot.

WPHF4. Consistent with MPS WPH 1.6, the habitat assessment on the Project Site did not identify the presence of invasive species. As a condition of this decision, the Applicant shall incorporate best management practices into its construction site plans and provide a copy of the same for Commission staff review and approval to ensure that invasive species are not introduced to the Project Site during Project development.

OPEN SPACE & RECREATION

OSF1. The Project Site is mapped Significant Natural Resource Area (SNRA) in the RPP due to the presence of rare species habitat on the Site. The Project's cluster design is consistent with MPS OS1.1 and OS1.5.

OSF1a. A provision in MPS OS 1.5 requires that residential subdivisions of greater than five building lots provide shared wastewater infrastructure to maximize the compact footprint of the proposed development. The Project seeks RPP flexibility from that provision. The Applicant proposes individual Title 5 septic systems to serve each of the proposed building lots, which would be constructed by individual lot owners. The Commission grants such flexibility and finds that the proposed use of individual Title 5 systems is equally protective of and will not be more detrimental to the protected resources on site than would be allowable under MPS OS1.5. The Project is able to meet applicable nitrogen loading standards with the use of standard Title 5 septic systems given the Scorton Creek watershed in which the Project is located, and the use of shared wastewater infrastructure neither allows the Project to be any more compact than is proposed, given the size of the lots and topography of the Site, nor does the use of Title 5

systems require the Project to be less compact than what could be proposed employing shared wastewater infrastructure.

OSF2. The Project proposes to permanently protect contiguous open space that abuts other permanently protected open space to the east of the Site, consistent with MPS OS1.2. The Applicant has discussed with the Sandwich Conservation Commission its willingness to hold a conservation restriction over the proposed open space. As a condition of this decision, the Applicant shall grant a permanent conservation restriction (CR) pursuant to MGL Ch. 184 ss. 31-33 over the 27.6 ac. +/- open space lot.

OSF3. As the Project Site is located in mapped SNRA, it is required to permanently protect open space at a ratio of 2:1 to development area. Consistent with OS 1.3, the Project proposes to meet and exceed the required 2:1 ratio.

OSF3a. The Applicant's "Disturbed Area & Open Space Plan" (dated 7/28/15 and revised 7/29/15) itemizes the total disturbed area on the site, calculating a total of approximately 11.5 acres. The Plan indicates that a total of approximately 27.6 acres of open space will be provided on the site, exceeding the requirement by approximately 4.6 acres. Of the 27.6 acres, 2.2 acres will be disturbed during construction and revegetated; 1.6 acres of this construction impact is a result of grading for road installation and drainage, and 0.6 acre is for the installation of a water line from the south. Within this 27.6 acres, the project proposes to protect 25.4 acres of undisturbed woodland and box turtle habitat which is consistent with MPS OS1.4.

OSF3b. The Project also proposes some minor or temporary activities within the open space lot, which will likely not result in long-term adverse impacts to the interests of habitat protection in the open space lot:

i. The drainage easement at the end of cul-de-sac A is a cleared area that is proposed to be physically located outside of the open space lot, but ends and discharges into a natural bowl within the open space lot. During significant storm events this bowl may fill with stormwater to elevation 126 ft (estimated) at times, and over time the introduction of water at this location may change the vegetation and soil type of this area;

ii. The Applicant agreed, at its own cost, to provide a limited access easement within the open space lot to the Town of Sandwich from the subdivision road to the adjacent property to the east, which the town owns for conservation. Improvement within this easement will result in some additional minor alteration to the existing vegetation and a gravel way within this area to allow for gated vehicle access for town staff access. Such access is a feature that OS MPSs 1.1 and 1.2 support, and gating this easement area and restricting access to town natural resources staff will minimize activity within this area;

iii. The Applicant proposes to create a new 6' wide dirt walking trail and provide associated benches to connect with existing trails on the site for residents of the proposed subdivision. OS MPSs 1.1 and 1.2 support such access for passive recreation.

iv. The Applicant proposes to grant to the town an access easement, and construct a gated pervious paver drive within the area shown on the Project plans as a 30 ft wide access easement area linking the two cul-de-sacs and terminating at the western property line tangent to Marie Lane. This easement area is located within the proposed

open space, but depending on the level of use or maintenance that drive receives, may contribute to some fragmentation and reduction of the existing woodland habitat value of this area, and of the 1.2 acres of open space located between the cul-de-sacs and behind the residential building lots. Its gated, limited access to town staff, and pervious paver construction, should serve to minimize any impacts associated with fragmentation.

iv. The Applicant proposes to locate and construct, and grant the Town Water District any necessary easement for the same, for a water service line under Route 6 and continuing through the open space lot to the existing water main in Atkins Road, in order to supply water to the Project Site and augment municipal water pressure in the general area. The path of the water line through the open space lot is yet to be determined, but the area of associated disturbance is estimated to be .6 ac. and will be naturalized and re-vegetated by the Applicant when the water line construction is completed.

OSF4. Consistent with MPS OS 1.6, the Project's clustered and compact design maximizes contiguous open space with, and prevents adverse impacts to, the town conservation land to the east of the Project Site.

OSF5. MPS OS 1.7 and MPS OS1.8 do not apply to the Project as it does not propose a parking garage, and is not located in a GIZ or Economic Center.

WASTE MANAGEMENT

WMF1. The Project does not involve the storage or use of hazardous materials and/or wastes, thus Waste Management Goal WM1 (Hazardous Materials and Waste) does not apply to the Project.

WMF2. A significant amount of clearing and grading wastes will be produced by the Project. To comply with MPS's WM2.1 (Construction Waste) and WM2.2 (C&D Waste Plan), the Applicant must provide as a condition of this decision a detailed narrative of these anticipated wastes and disposal needs.

WMF3. As there are no anticipated Project-related wastes post-construction, MPS's WM2.3 (Post-construction Waste) and WM2.4 (Food-waste Recycling) do not apply to the Project.

COMMUNITY CHARACTER (HPCC Goal 2)

Landscaping

CCF1. Within the context of residential subdivisions, the Commission reviews landscaping proposed within common areas of the subdivision. The Minimum Performance Standards that apply to landscape review are MPS HPCC2.10 (*Landscape Plan Requirements*) and MPS WR1.5 (*Turf and Landscape Management Plan*).

CCF2. HPCC2.10 requires that development implement a landscape plan that addresses the functional aspects of landscaping, such as drainage and innovative stormwater technologies, erosion prevention, screening and buffering, provision for shade, and energy conservation; retention of existing vegetative buffers necessary to prevent adverse visual impacts from development; and a maintenance agreement for a minimum of three growing seasons to insure

that any new plantings are properly established. Relatedly, MPS WR1.5 requires that development adopt Best Management Practices such as a turf and landscape management plan that incorporates water conservation measures including the use of native and drought resistant plantings and the use of drip irrigation, and minimizes the amount of pesticides and chemical fertilizers.

CCF3. The Project does include a functional landscape/planting plan that uses plants that are characteristic of the region, and includes native and drought resistant plant material, and incorporates some LID design through vegetated and natural drainage areas, and thus is consistent with MPS HPCC2.10 and MPS WR1.5.

CCF4. On its landscape plan, the applicant did not specifically detail the method of re-vegetating disturbed and graded areas within the road layout and drainage facilities. As a condition of this decision, the Applicant shall provide a Landscape Maintenance protocol that details the installation and ongoing maintenance of proposed plantings and vegetation within common areas, the specific methods of revegetation of disturbed and graded areas (presumably with conservation seed mix, which type should be specified, and/ or specific ground cover plantings), and installation and ongoing maintenance of proposed drainage areas that are functionally part of the landscape. Such protocol should also identify the responsible party for undertaking such work and maintaining such areas consistent with information submitted during DRI review (such as the Stormwater O&M plan, landscape and open space/ disturbed area plan) and the relevant RPP standards (such as provision for irrigation and minimization of fertilizer and pesticide use, and replacement of plantings or vegetation that die). The Applicant shall incorporate such provisions into protective covenants for the subdivision and provide them to Commission staff for review prior to recording of the protective covenants and commencement of any development, release of lots from covenant, or lot conveyance; and a copy of such protective covenants reviewed and approved by Commission staff as recorded shall be provided to Commission staff.

Exterior Lighting/Signage

CCF5. The Project proposes lighting as shown on the plan set titled *Photometrics Plan*, prepared by BSC Group for Monomoy Properties LLC, dated January 25, 2014, and revised March 16, 2015. The plan set, inclusive of its proposed Sternberg Lighting Omega LED (model 1521RLED-CFG-4ARC45T3) fixture, is consistent with MPS HPCC2.11 (Exterior Lighting). Specifically, the proposed lighting utilizes an appropriate decorative luminaire and mounting height, creates a total cutoff of light at less than 90-degrees from vertical, provides total cutoff of all light at the property line of the Project, and meets the maximum initial horizontal foot-candle level of not more than 8.0 foot-candles as measured directly below the luminaires at grade.

CCF6. No subdivision signage is proposed. To the extent that any subdivision signage is to be proposed, Commission staff shall review any associated signage and sign lighting proposed in the future for consistency with MPSs HPCC2.11 and HPCC2.12.

CCF7. The Project proposes underground utilities and is consistent with MPS HPCC 2.13.

Building and Site Design

CCF8. As this decision pertains to the subdivision of land and not to the construction of the dwellings on the subdivided lots, MPS's HPCC2.1-2.9 do not apply to the Project.

AFFORDABLE HOUSING

AHF1. The applicable Affordable Housing MPS for this residential subdivision of land is **AH1.2** (Ten-percent Requirement for Subdivisions of 10-plus Lots). Further, MPS **AH1.4** (Calculation of Affordable Units) stipulates that for the purposes of calculating the 10-percent affordable housing contribution, all numbers shall be rounded to the highest whole figure. Thus, to meet MPS AH1.2 for the proposed 23-lot subdivision, three (3) lots are required to be restricted for affordable housing purposes.

AHF2. As a condition of this decision, the Applicant shall work with Commission staff to satisfy the 10% affordability requirement with one of the methods identified in MPS AH 1.1 through 1.3 in including a cash in lieu payment, or designation of and gifting to a grantee qualified for affordable housing purposes to receive the donation of three (3) lots in the subdivision that are commensurate in size with the market rate lots, and are appropriately dispersed throughout and integrated into the subdivision.

AHF3. MPS AH1.14 and AH2.4 do not apply as the Project does not propose to displace existing residents or reduce existing dwelling units.

AHF4. AH Section 3 does not apply to the Project as it proposes a residential subdivision of land.

CONCLUSION

Based on the foregoing, the Commission further finds that:

1. Subject to the Conditions, below, the Project complies with the applicable MPS' under the scoped issue areas of Land Use, Water Resources, Wildlife & Plant Habitat, Waste Management, Open Space/Recreation, Community Character (HPCC Goal 2) and Affordable Housing. Additionally, the Project must remain consistent with the DRI Scoping decision, dated March 23, 2015, and all of its conditions.
2. With specific emphasis on general finding GF11, above, the Project is consistent with Sandwich's applicable municipal development by-laws and its LCP.
3. With specific emphasis on general finding GF12, above, consistency with district of critical planning concern implementing regulations is not applicable to the Project.
4. With specific emphasis on general finding GF13, above, the probable benefit of the Project is greater than the probable detriment of the Project.
5. The Commission hereby approves the Limited DRI application of Monomoy Properties LLC for the Project, subject to the Conditions, below.

CONDITIONS

GENERAL CONDITIONS

GC1. This decision is valid for a period of 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.

GC2. This decision shall be appurtenant to and run with the property which is the subject Project Site. This decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns.

GC4. Failure to comply, and remain in compliance, with all findings and conditions stated herein, and with all related Commission laws and regulations, shall be deemed cause to revoke or modify this decision.

GC5. The March 23, 2015 DRI Scoping Decision for the Project, and its terms and conditions, are hereby incorporated herein. Any Project changes may require modification to said Scoping Decision and also, accordingly, to this decision. In the event that there are inconsistencies in terms between this decision and the Scoping Decision, this decision shall control.

GC6. No local permitting review shall be undertaken and no local permits, licenses, or approvals shall be issued pursuant to this decision until this decision is final and the Commission Clerk certifies in writing that the decision appeal period has elapsed or if such an appeal has been filed, until the appeal has been finally dismissed, adjudicated, or otherwise disposed of.

GC7. The Project shall be undertaken, constructed and maintained in accordance with the Findings and Conditions set out herein, including the plan sets and other information and documents referenced herein under general finding GF10, above. All other plans and documents required to be submitted as conditions of this decision shall hereby be incorporated into this condition and GF10 as and when received, reviewed, and approved by Commission staff.

GC8. Prior to the commencement of any site or construction work on the Project Site, or issuance of any local building, road work or other construction permits authorizing the same; conveyance of building lots; or release of lots from planning board covenant, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision required to have been satisfied prior to the issuance of a Preliminary Certificate of Compliance have been satisfied, and that the project is in compliance with this decision.

GC8a. This decision does not prohibit the conveyance of the entire Project Site by mortgage deed or otherwise, including such conveyance prior to issuance of a Preliminary or Final Certificate of Compliance, subject to the Findings and Conditions herein.

GC9. Prior to any release of individual lots from planning board covenant; issuance of building permits for construction on building lots; or conveyance of building lots, the Applicant shall obtain a Final Certificate of Compliance from the Commission that state that all conditions in this decision required to have been satisfied prior to the issuance of a Final Certificate of Compliance have been satisfied and that the Project is in compliance with this decision.

GC10. Commission staff shall undertake a review of the Project's compliance with this decision, including the applicable conditions hereof, upon the Applicant's request to the Commission for issuance of a Preliminary or Final Certificate of Compliance. At the time the Applicant requests such a Certificate, it shall provide Commission staff a list of key project contact(s), along with

Atkins Road Subdivision, E. Sandwich

Limited DRI Decision

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their telephone numbers, mailing addresses, and email addresses, in the event questions arise during the Commission's compliance review. As part of its compliance review, Commission staff may make, and the Applicant hereby authorizes, a site inspection, as needed, at reasonable times and after reasonable notice to Applicant. Upon review, the Commission shall either prepare and issue the requested Certificate, or inform the Applicant in writing of any compliance deficiencies and the remedial action required for the issuance of the requested Certificate.

GC11. Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall obtain all necessary federal, state, and local permits for the Project. Specifically, the Applicant shall obtain all necessary municipal permits, licenses and approvals for the Project, including but not limited to a Cluster Development Special Permit and Definitive Subdivision Approval, and provide Commission staff a copy of the same (as recorded with the Barnstable Registry of Deeds, where applicable).

GC11a. The Project's consistency with municipal development by-laws shall be evidenced and confirmed by the Applicant obtaining all said necessary municipal permits, licenses and approvals.

GC12. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit final project plans as approved by state, federal, and local authorities for review by Commission staff who shall determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those project plans and other information approved, referenced and incorporated herein, the Applicant shall be required to seek a modification to this decision for such changes in accordance with the "*Modification*" section of the Commission's *DRI Enabling Regulations* in effect at the time the modification is sought.

GC13. Prior to the issuance of a Preliminary Certificate of Compliance, but not until the appeal period for this decision has elapsed, or if such an appeal has been filed, until the appeal has been finally dismissed, adjudicated or otherwise disposed of, the Commission shall record a copy of this decision with the Barnstable Registry of Deeds. This decision shall not be effective until a copy of the same has been so recorded.

GC14. Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide written proof to the Commission that a copy of this decision has been received by the Project general contractor(s).

SPECIAL CONDITIONS

The following Conditions shall be satisfied prior to issuance of a Preliminary Certificate of Compliance:

SC1. The Applicant shall file with NHESP, and provide evidence of such filing to Commission staff, the final Project plans approved by the Commission, including a copy of the Open Space/ Disturbed Area Plan, and the Applicant shall provide Commission staff with any further comments on the plans from NHESP.

SC2. The Applicant shall incorporate best management practices into its construction site plans and provide a copy of the same for Commission staff review and approval to ensure that invasive species are not introduced to the Project Site during Project construction.

SC3. The Applicant shall identify a qualified grantee and provide evidence to commission staff of said grantee's willingness to accept a permanent conservation restriction (CR), over the 27.6 ac. +/- open space lot. The Applicant shall provide a draft CR and CR Plan over said open space lot, pursuant to MGL Ch. 184 ss. 31-33, for review and approval by Commission staff, which restricts said open space lot in perpetuity for conservation purposes. The draft CR and CR Plan shall be prepared consistent with this decision, including the Open Space/ Disturbed Area Plan referenced herein. The location of the water line, details about the water line construction and restoration of the water line construction area on the open space lot shall be provided in the draft CR and on the CR Plan.

SC4. The Applicant shall provide for Commission staff review and approval draft protective covenants for the subdivision that includes a requirement that homeowners in the subdivision shall install water conservation technologies and devices to achieve a 40% reduction of water use in homes; maintenance provisions for subdivision roads, open space and other infrastructure such as sidewalks.

SC4a. The landscape maintenance provisions shall detail the installation and ongoing maintenance of the proposed plantings and vegetation within common areas of the subdivision; the specific methods of revegetation of disturbed and graded areas (e.g. conservation seed mix, composition of the seed mix, and/ or specific ground cover plantings); incorporation of the Landscape Plan; and installation and ongoing maintenance of proposed drainage areas that are functionally part of the landscape. Such provisions shall also identify the responsible party for undertaking such work and maintaining such areas, including the drainage areas, consistent with information referenced in general finding GF10 herein (such as the Stormwater Report/ O&M Plan, Landscape plan and Open Space/ Disturbed Area Plan) and provisions in MPS HPCC2.10 and MPS WR1.5 (related to irrigation and minimization of water use; minimization of fertilizer and pesticide use; use of organic, slow release fertilizer; and replacement of plantings or vegetation that die).

SC5. The Applicant must provide a construction waste management protocol pursuant to MPSs WM2.1 (Construction Waste) and WM2.2 (C&D Waste Plan) for Commission staff review and approval and incorporation into general finding GF10 herein.

SC6. The Applicant shall identify how it intends to meet the 10% affordability requirement for the 23 lot subdivision with one of the methods identified in MPS AH 1.1, 1.2 and 1.3, which methods could include a cash in lieu payment, or designation of and deeding to a grantee qualified for affordable housing purposes to receive the donation of three (3) lots in the subdivision that are commensurate in size with the market rate lots, and are appropriately dispersed throughout and integrated into the subdivision. The method of meeting the affordability requirement is at the election of the Applicant, subject to approval by Commission staff that the method is consistent with the applicable Affordable Housing MPSs of the RPP.

SC6a. If the Applicant elects to restrict lots in the subdivision, the lots shall be identified by the Applicant and approved by Commission staff, and copies of Affordable Housing Restrictions and related documents shall be provided for Commission staff review and

approval for the three lots proposed to be restricted; if a cash in lieu payment is proposed, Commission staff will determine the payment based on the relevant minimum performance standards under RPP AH Goal1; if the Applicant elects to donate three lots to a qualified housing entity willing to accept such donation, the Applicant shall provide Commission staff evidence that such grantee is willing to accept such donation, and the Applicant shall identify said three lots it intends to donate for Commission staff's review and approval.

The following Conditions shall be satisfied prior to issuance of a Final Certificate of Compliance:

SC7. All road work, grading, landscaping, drainage, lighting, the water service line, improvements within the emergency access easement and access easement to the town conservation land, and the walking trails within the open space lot shall be completed, as approved hereunder.

SC7a. No subdivision signage or sign lighting is proposed. To the extent that any subdivision signage is to be proposed in the future, the Applicant shall provide Commission staff for review and approval copies of plans for such signage and sign lighting, which shall be consistent with MPSs HPCC2.11 and HPCC2.12.

SC8. Pursuant to MPS WR7.10 (Stormwater Operation and Maintenance Plan), a Professional Engineer shall inspect the stormwater system and submit a letter to Commission staff certifying that the system, designed consistent with applicable Water Resources Goal 7 and its corresponding MPSs, was installed and functions as designed.

SC9. The Applicant shall grant a limited access easement to the Town over the open space lot, as shown on the Open Space/ Disturbed Area Plan, and provide Commission staff a copy of such easement for review and approval to ensure that it is consistent with this decision prior to execution, and a recorded copy when executed, to allow town staff access to the Town's conservation land to the east of the Project Site. The easement area shall be gated, with access limited to town staff, and may not be improved with impervious surface. The Applicant shall undertake the work to gate and improve the access within the easement area for the benefit of the town.

SC10. The Applicant shall grant an emergency access easement to the Town over the open space lot, as shown on the Open Space/ Disturbed Area Plan, and provide Commission staff a copy of such easement for review and approval to ensure that it is consistent with this decision prior to execution, and a recorded copy when executed, to allow town emergency staff access over and to the Project Site. The easement area shall be gated, with access limited to town emergency staff, and shall be improved with pervious paving or other pervious material acceptable to the Town. The Applicant shall undertake the work to gate and create the access within the easement area for the benefit of the town.

SC11. The Applicant shall grant the Town Water District any necessary easements, and provide Commission staff a copy of such easement for review and approval to ensure that it is consistent with this decision prior to execution, and a recorded copy when executed, to allow the proposed

municipal water service line to be constructed and located under Route 6, through the Project Site and connected to the existing water main in Atkins Road.

SC12. Walking trails, as shown on the Open Space/ Disturbed Area Plan, and benches shall be provided for passive recreation for residents of the subdivision within the open space lot.

SC13. The Applicant shall record and provide the Commission a final recorded copy of said CR and CR Plan as are referenced in Special Condition SC4 herein. The Applicant shall have any mortgages over the open space lot subordinated to the CR prior to recording the CR, or released, and the Applicant shall provide Commission staff evidence of the same, or evidence that there is no mortgage encumbering the open space lot.

SC14. The final protective covenants referenced in Special Condition SC5 herein, as approved by Commission staff, shall be recorded with a recorded copy provided to the Commission. A recorded copy of the document establishing a homeowner's association, or equivalent entity, created to administer and enforce said covenants shall be provided to the Commission.

SC15. Depending on the method the Applicant has selected and the Commission staff has approved to meet the 10% affordability requirement in MPSs AH 1.2 and 1.4, the Applicant shall either restrict three lots in the subdivision by recording the approved Affordable Housing restriction documents against the three lots approved by the Commission staff, with recorded copies provided to the Commission; make a cash in lieu payment, as approved by Commission staff, to a qualified housing entity; or gift conveyance of three lots, approved by Commission staff, to a qualified housing entity willing to accept such donation, with a recorded copy of such deed provided to the Commission. Prior to recording an Affordable Housing Restriction, or deeding the affordable lots to a qualified housing entity, as the case may be, the Applicant shall have any mortgages over the affordable lots subordinated or released with respect to the affordable lots, and the Applicant shall provide Commission staff evidence of the same, or evidence that there is no mortgage encumbering the affordable lots.

SEE NEXT PAGE FOR SIGNATURES

SIGNATURES

Executed this 17th day of September 2015.

Richard E. Roy
Signature

Richard E. Roy Chair
Print Name and Title

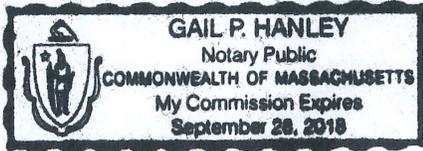
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

September 17, 2015

Before me, the undersigned notary public, personally appeared Richard E. Roy,

in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [] 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.



SEAL

Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18