CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136
E-mail: frontdesk@capecodcommission.org

Date:	February 7, 2008
To:	Mr. Patrick M. Butler, Esq. Nutter, McClennen & Fish, LLP P.O. Box 1630 Hyannis, MA 02601
From:	Cape Cod Commission
Re:	Change of Use/Limited DRI DRI Enabling Regulations, Sections 3 and 4
Project Applicant:	Berkshire -Hyannis, LLC 41 Taylor Street, 4th floor Springfield, MA 01103
Property Owners:	M.D.M. Realty Trust and Star Nominee Trust
Project:	Circuit City Redevelopment Project 624 and 640 Iyannough Road, Route 132 Hyannis, Massachusetts 02601
Project #:	TR 07020
Book/Page #:	5490/97
Map/Parcel:	311/12 and 311/13
Lot/Plan:	Lot 10, LCP 25266D

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Berkshire-Hyannis, LLC as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Circuit City redevelopment project in Hyannis, MA. The decision is rendered pursuant to a vote of the Commission on February 7, 2008.

PROJECT DESCRIPTION

The proposed Circuit City redevelopment project consists of the demolition of two existing buildings with a combined square footage of 10,610 square feet located at 624 and 640 Iyannough Road in Hyannis. The site is currently occupied by an existing 4,000-square-foot office building most recently occupied by Rogers & Gray Insurance and a 6,160-square-foot Star City Grill. The two buildings, to be located on a 2.53-acre parcel, will be demolished and replaced with a new 22,475 square foot electronics superstore. The sole tenant of the proposed building will be Circuit City. The applicant is proposing a number of improvements to the project site including elimination of one curb cut along Route 132, enhanced landscaping, enhanced storm water management and drainage, and an increased landscape buffer along Route 132.

The project is proposed to be constructed within the Town of Barnstable's Highway Business (HB) and Business (B) zoning districts, and will be located within the Town of Barnstable's Groundwater Protection Overlay District. The project site is also located within the Route 132 Regional Commercial Center and Growth Activity Center designated by the Barnstable Local Comprehensive Plan. As such, growth management initiatives in this area include encouraging infill, reduction of curb cuts and maintaining this area as a "regional shopping and commercial center."

The site is bounded by a McDonald's restaurant to the west, a Best Western motel to the east, an airport access road to the north and Route 132 to the south. The majority of the development along this portion of Route 132 (between the rotary and Independence Drive) consists of "strip development" with large buildings surrounded by parking lots, as typified by the Cape Cod Mall and the K-Mart plaza. However, the site in question is currently one of the few breaks in this development pattern with mature trees, landscaping and modestly scaled buildings.

PROCEDURAL HISTORY

A duly noticed public hearing was conducted pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on April 5, 2007. At that public hearing, the Regulatory Committee made a determination that the proposed Circuit City redevelopment project to be located at 624 and 640 Iyannough Road in Hyannis, MA was a change of use and should be reviewed as a limited DRI for the issue areas of community character, economic development, stormwater management and transportation. A duly noticed public hearing pursuant to Section 5 of the Act for the limited DRI review was held on October 29, 2007. The hearing was continued to a hearing on November 29, 2007, and continued to January 9, 2008. A duly noticed public hearing was held on January 22, 2008. The record and the hearing were closed. A subcommittee meeting was held on January 31, 2008 and a duly noticed public hearing was held on February 7, 2008.

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 the Applicant	***Date Submitted***
Memo from Wasyl Hnaitw, architect to CCC staff	April 20, 2007

Memo from Wasyl Hnatiw, architect to CCC staff	April 23, 2007
Memo from Wasyl Hnatiw, architect to CCC staff	April 24, 2007
Memo from Wasyl Hnatiw, architect to CCC staff	April 25, 2007
Memo from VHB regarding proposed rotary plan	April 25, 2007
Memo from Wasyl Hnatiw, architect to CCC staff	April 26, 2007
Memo from Nutter, McClennan and Fish regarding economic development	May 4, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	May 7, 2007
Elevations for proposed Circuit City	June 7, 2007
Memo from Nutter, McClennan and Fish regarding site plans	July 16, 2007
Site plans from VHB submitted to staff	July 16, 2007
Memo from Nutter, McClennan and Fish regarding building elevations	July 31, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	August 6, 2007
Memo from Nutter, McClennan and Fish regarding transportation	August 6, 2007
Email from Liza Cox to Patty Daley regarding transportation issues	August 22, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	August 23, 2007
Memo from Nutter, McClennan and Fish regarding transportation	August 27, 2007
Memo from Nutter, McClennan and Fish regarding economic development	September 25, 2007
Economic Impact Analysis submitted by UMASS Dartmouth	September 27, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	October 2, 2007
Memo from Nutter, McClennan and Fish regarding filing fee	October 10, 2007
Memo from Loval Davis, VHB regarding traffic analysis	October 14, 2007
Memo from VHB from Daniel Lovas to Greg Smith	October 15, 2007
Memo from Nutter, McClennan and Fish regarding community character	October 16, 2007
Review of Circuit City Site Analysis by UMASS Dartmouth	October 17, 2007
Memo from Nutter, McClennan and Fish regarding transportation issues	October 17, 2007
Building elevations from project architect Wasyl Hnaitw	October 17, 2007
Memo from VHB regarding technical memo for rotary reconfiguration	October 19, 2007
Memo from Nutter, McClennan and Fish regarding economic development	Octobe r 23, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	October 24, 2007
Rotary reconfiguration plans submitted by VHB	October 29, 2007
Memo from Nutter, McClennan and Fish regarding economic issues	November 1, 2007
Memo from Nutter, McClennan and Fish regarding economic issues	November 6, 2007
Memo from VHB regarding transportation issues	November 9, 2007
Memo from Nutter, McClennan and Fish regarding procedural issues	November 12, 2007
Memo from Nutter, McClennan and Fish regarding traffic/econ. develop.	November 20, 2007
Site Plan detailing building's compliance with MPS 625	November 28, 2007
Layout and Materials Plan (C-2) by VHB	November 29, 2007
Circuit City project benefits fact sheet submitted by Nutter, McClennan	November 29, 2007
Circuit City ODRP Analysis submitted by Nutter, McClennan	November 29, 2007
Barnstable Rotary Concept 5 reconfiguration plans	January 9, 2008
Memo from Nutter, McClennan and Fish regarding procedural issues	January 9, 2008
Table submitted by VHB regarding ITE land use codes for Chili's site	January 14, 2008
Memo from Nutter, McClennan and Fish regarding transportation mitigation	January 15, 2008
Memo from Nutter, McClennan and Fish regarding Mass Historic filing	January 16, 2008

Site plans from VHB submitted to staff	January 22, 2008
Circuit City building elevations	January 22, 2008
Redevelopment consistent with Barnstable LCP powerpoint slide	January 22, 2008
Annual net fiscal results- nonresidential prototypes	January 22, 2008
Site Access Exhibit submitted by VHB	January 25, 2008
Stormwater Operations and Maintenance Manual prepared by VHB and revised February 1, 2008	February 1, 2008
Materials from Commission Staff	***Date Submitted***
Memo from Richard Schell, traffic peer reviewer, to Glenn Cannon	September 19, 2007
Memorandum from staff on issue areas of limited DRI review	November 28, 2007
Memorandum from staff on issue areas of limited DRI review	January 17, 2008
Materials from Town of Barnstable/state	***Date Received***
Letter from EOT regarding traffic issues	May 1, 2007
Circuit City Site Analysis conducted by Suffolk University	September 14, 2007
Stantec Consulting Services traffic peer review report	October 1, 2007
Barnstable Municipal Airport letter	October 12, 2007
Town of Barnstable referral form	October 22, 2007
Email from Patty Daley to Mr. Mosby	November 1, 2007
FXM economic development peer review report	November 28, 2007
Letter from Steven Seymore regarding traffic impacts	November 28, 2007
FXM technical memorandum	January 18, 2008
Materials from Others	***Date Received***
Letter from Felicia Penn in opposition to project	October 29, 2007
Letter from Dolores Pelletier in support of project	November 1, 2007
Letter from Banknorth in support of project	November 20, 2007
Letter from Cape Opticians in support of project	November 26, 2007
Letter from Mr. Michael Wyman in support of project	November 26, 2007
Letter from Cheryl Crowell Wyman in support of project	November 26, 2007
Letter from Henry Farnham in support of project	November 27, 2007
Letter from Cape Cod Ambulance in support of project	November 27, 2007
Letter from Cheryl Smith in support of project	November 27, 2007
Letter from Ann Canedy in support of project	November 28, 2007
Letter from Rogers and Gray Insurance in support of project	November 28, 2007
Letter from Cape Cod Healthcare in support of project	November 29, 2007
Letter from Rogers and Gray Insurance in support of project	January 2, 2008

TESTIMONY

Note: see minutes in project file for complete public hearing and subcommittee meeting proceedings.

At the **October 29, 2007** public hearing, the applicant provided an overview of the proposed Circuit City redevelopment project. Staff provided an overview of issues associated with community character, economic development, stormwater management and transportation. The Subcommittee heard oral testimony at the hearing from:

Attorney Butler from Nutter, McClennan and Fish, representing Berkshire-Hyannis, LLC, discussed the community character issues associated with the proposed project. He also discussed transportation issues associated with the project.

Mr. Waysl Hnatiw, the project architect, described the perspective drawings and discussed the façade of the structure. He said the project could not meet the requirements of MPS 6.2.5 for façade variation because it would modify the building's sales floor. He also described other changes to the building design based on discussions with Commission staff.

Randy Hart (VHB), the applicant's transportation consultant, reviewed the transportation issues. He discussed site access, and noted the project would eliminate two existing access curb cuts along Route 132, consolidating them into one right-turn in and out access point. He also noted the project would include a mitigation package to create a raised median on Route 132 to enforce the turning restrictions. Mr. Hart discussed the proposed improvements to the Airport rotary.

Attorney Butler said the project complied with the RPPs requirements for stormwater management. He said the project also met the RPP requirements for nitrogen loading.

On economic development, Attorney Butler cited the RPPs requirements for providing data. He said the project also looked at the RPPs Other Development Review Policies (ODRPs), and suggested the project met several of these ODRPs. He noted the applicant had proposed a $70,000 package to advance workforce training and affordable housing.

Dr. Clyde Barrow of UMASS Dartmouth discussed the project's economic development impacts. He looked at a variety of factors, including the impact to local businesses of Circuit City and employment and fiscal impacts versus prior site uses.

Attorney Butler noted the existing restaurant could re-open as a restaurant without any zoning or Cape Cod Commission review.

Mr. Smith stated the staff was still working on community character and transportation issues.

Ms. Patty Daley, Director of Comprehensive Planning for theTown of Barnstable, said the town had two primary concerns. Ms. Daley said the location of the project relative to the Airport rotary was a concern. She noted the project would increase rotary traffic by 1%, which translates into 25 or more vehicle trips, which is a safety issue relative to the RPP standards.

Ms. Daley said the Town's second concern is over the available vacant commercial space in Barnstable. She said the Town would prefer Circuit City to move into existing vacant space, such as the building in the K-Mart Plaza. She also addressed the project's economic impacts, noting the Town had commissioned a study by Suffolk University, a copy of which had been provide to Dr. Barrow. She said the Town was interested in having the applicant fund a peer review of Dr. Barrow's work.

Mr. Steve Seymore, Barnstable Growth Management Engineer, discussed transportation issues relating to safety concerns the Growth Management Department had about the rotary signage and striping plan.

Mr. Brian Cowvell of Barnstable asked how could relocating the proposed project to the K-Mart Plaza could be fair.

Mr. Joe Chilli of Barnstable said the Commission should be concerned about the message that this review was sending to off and on-Cape businesses. He said the message was very negative.

Ms. Susan Kadar, responding to Mr. Chilli's comments, noted the Subcommittee had not made its determination on the project yet. She expressed confusion about the multiple peer reviews. She asked how many peer reviews there were for the transportation issues.

Mr. Roy Richardson asked if Dr. Barrow's report took into account recent reports from the Cape Cod Chamber of Commerce on the continuing changes in the area's demographics. He said this indicated a need to bring back younger people to the Cape and the need to develop more work-force training and housing.

Mr. John Tortolot, Berkshire Development, said his company was proud to be working with Mr. Robinson. He said the workforce housing and good jobs are an important social step, and Mr. Robinson demonstrates commitment to this by wanting to expand the insurance business.

Ms. Annette Chilli of Barnstable asked what would happen to the other vacant buildings on or near the Airport rotary (Chili's restaurant, Mitchell's, etc.) when businesses want to move into these parcels? She asked what is going to happen when these parcels are redeveloped?

Mr. Robert Jones said the Suffolk University report noted certain businesses would be negatively impacted, such as Nantucket Sound.

Mr. Frank Hogan said transportation issues were key to this project. He also noted weighing the project benefits versus detriments was important. In this vein, he said reducing two curb cuts to one is a benefit to this project. Mr. Hogan said requiring a right turn was also a positive thing.

Mr. Jones said he appreciated what the Town was trying to do along the corridor, but also said it was important to consider the cost of delay to the business.

Ms. Elizabeth Taylor had questions on the economic benefits given the full and part time staff and asked what the pay scale of the positions would be. She had concerns about the changes to the Airport rotary, and whether they would improve the situation.

Attorney Butler said the program being proposed by the applicant – pavement marking and signage – will address issues at the Airport rotary. He said it would increase capacity and decrease accidents.

Mr. Hart said the program that was implemented at Latham, NY was based on the unique design of that rotary, and the recommended changes to the Airport rotary are based on its unique configuration.

Mr. Richardson said his questions dealt with whether the economic forecast took into account workforce issues. He reiterated his desire to understand which LCP is being looked at in terms of consistency, and what the pros and cons were of the business locating in the vacant building in the K-Mart Plaza.

Ms. Daley said the Town had asked Circuit City to move into an existing vacant building, not any particular vacant building. She stated that the town had asked the applicant to identify an already-built structure to move into. She said that was the Town's thinking in this case.

At the **November 29, 2007** public hearing, the applicant provided an overview of the proposed Circuit City redevelopment project. Staff provided an overview of issues associated with community character, stormwater management and transportation. The Subcommittee heard oral testimony at the hearing from:

Attorney Butler said the applicant believed the project met the RPP Minimum Performance Standards (MPS) for stormwater management.

Ms. Gabriel Belfit said Commission water resources staff had one correction to be made to the Stormwater Operations and Maintenance Manual prepared by VHB.

Attorney Butler addressed community character issues, and said the project had addressed all the applicable MPS in the 2002 Regional Policy Plan issue area.

Mr. Steven Chinard of VHB reviewed the revised site plan and changes to the building design and façade for the Subcommittee members. He said the applicant believed the design now met the RPP standards for all the building facades.

Mr. Wasyl Hnaitw, architect for the applicant's project team, further explained the revisions to the building facades. He said the building faces now have the appropriate amount of variation along each face.

Attorney Butler said the project team believed that the project met the RPP standards as they related to the Airport Rotary. He said the Town of Barnstable should determine the signage related to the rotary changes. He noted the Town had submitted a letter prior to this hearing on transportation issues, which Attorney Butler said he had not had time to review and assumed stated that the project's mitigation still does not work.

Mr. Glenn Cannon, Commission transportation engineer, said the staff's concern with the proposed signage at the rotary is that these signs will need to be relatively large, so that vehicle drivers can read them in advance of the vehicles entering the Airport Rotary. He said this means the signs may likely have community character issues.

Attorney Butler said there would be plenty of opportunity for local review of the signage, including formal Town approvals. He said the signage could be modified and handled through a condition of an approval.

Mr. Cannon noted that the changes to the Airport Rotary were significant.

Ms. Kadar said she had a number of concerns on transportation and economic development, saying the project's trip generation is high. She noted credits do not remove vehicles from the roads. Ms. Kadar noted the Airport Rotary operates at Level of Service (LOS) D/F since 2004, and that the LOS D is exceeded by an additional 550 vehicles per hour generated by this project. She expressed concern for this volume of traffic.

Mr. Jones said there was an inherent difficulty: encourage this type of operation in existing business zones, and then express concern over traffic increases. He said traffic and congestion are a fact on Route 132. He said the question was how to concentrate traffic in certain areas.

Mr. Richardson said he drives through the Airport Rotary frequently. He said his experience indicates further discussions are needed between the applicant and the Town of Barnstable to find solutions. Mr. Richardson said Ms. Kadar had valid points. He said there might be other possibilities. He discussed whether there were options that kept more traffic off Route 132.

Ms. Patty Daley, Barnstable Growth Management Department, said the Commission needed to take the traffic flow issues seriously. She said the Federal Aviation Administration will not have or allow private curb cuts on the road behind the proposed Circuit City. Ms. Daley said that if the community does not accept the transportation improvements, they will not work. Ms. Daley said the length of the proposed median needed to be increased, as the current design would still allow for u-turns on Route 132.

Mr. Dan Loris, VHB engineer, said the design of the rotary improvements have been reviewed by the Commission's consultants, and some suggestions have been made to the designs. He said Stantec believes there will be an overall benefit to the rotary from the proposed improvements.

Mr. Cannon said VHB should come back with an alternative design based on the Town of Barnstable's letter outlining its concerns of the proposed reconfiguration. He said this needed further discussion between all parties involved.

On economic development issues, Attorney Butler said the Commission staff's review does not discuss the existing businesses, such as Rodgers & Grey, but focuses on Circuit City. He said the staff's comments were done without any interview of the Blooms, one of the property owners. He said the applicant would like Dr. Barrow to discuss the economic development issues.

Mr. Charles Robinson, owner of the Rodgers & Grey insurance company, said the problems at the Airport Rotary and the fixes to make it less hazardous than it is now should not be put on the proposed project. He said the proposed business was nonetheless willing to put $700,000 towards fixing the transportation issues. Mr. Robinson said the Town should also participate in taking care of the problems.

Ms. Carol Bloom, owner of the Star City Grill property, said she sympathized with and appreciated the time the Commission members had taken in reviewing the project. Ms. Bloom said that the length of the process was exhausting, and that she was counting on the sale of her property to secure the financial future of her children and grandchildren. She said the proposed developer, Berkshire Development, was willing to help resolve the transportation issues.

Mr. Don Keeran, Association for the Preservation of Cape Cod assistant director, urged the Commission to heed the Town of Barnstable's concerns. He said the Town's involvement was key, and one project should not be the determinant of what the Rotary solution may be. He said the system was one of piecemeal mitigation, project by project. He said, however, the Rotary issues needed a more comprehensive solution.

Mr. Greg Smith stated the Commission staff and applicant needed to have additional meetings on the issues of economic development and transportation.

At the **January 22, 2008** public hearing, the applicant provided an overview of the proposed Circuit City redevelopment project. Staff provided an overview of issues associated with economic development and transportation. The Subcommittee heard oral testimony at the hearing from:

Attorney Patrick Butler discussed a new transportation mitigation proposal that included an $800,000 cash contribution by the applicant to the Town of Barnstable that would be used by the town to acquire the Chili's restaurant parcels located adjacent to the Hyannis rotary. He stated that the intent of the acquisition was to remove it from development and have the trips that Chili's would no longer produce be used to offset the trips associated with the proposed 22,475 square foot Circuit City. This cash donation would be in lieu of the proposed raised median, and rotary striping and signage plan that had been previously proposed by the applicant.

Patty Daley, interim Director of the Growth Management Department in Barnstable, stated that for the record the town was very pleased with this proposed mitigation plan.

Randy Hart, traffic engineer for VHB, Inc., referred to a civil plan that had been prepared by his company that reflected a re-design to the curb cut along Route 132. This re-design, in his opinion, would serve to deter people from making illegal lefts into and out of the site.

Ms. Kadar felt that this was a win-win situation and wondered if the Chili's building would be razed by the town when it acquired the site.

Ms. Daley stated that she felt this would be the case.

Ms. Taylor asked if the applicant or counsel knew the purchase price for the Chili's site. She also wanted to know what kind of guarantee would be provided to ensure that the transaction occurred.

Ms. Daley stated that the purchase and sale agreement is in place.

Mr. Hogan asked if the applicant and town were amenable to the idea of using the funds ($70,000) that were earmarked for affordable housing could be used to make other transportation improvements that would deal with the concern about illegal left turns.

Mr. Richardson thought that the proposal being brought forth by the applicant was a good one and while the left turn issue on Route 132 was an issue, he was comfortable with the traffic mitigation proposal.

Mr. Butler discussed economic development issues and felt that the purchase of the Chili's parcel had an economic benefit. He referred to the Tischler "Green Paper".

Leslie Richardson, Commission staff economic development specialist, provided an overview of the economic development benefits and detriments analysis she had provided to the subcommittee. She stated that per her analysis of the information provided to staff, 93 percent of the wages are below what the Department of Housing and Urban Development (HUD) considers low income. As such, the majority of workers employed at Circuit City could not afford to purchase a home on Cape Cod. She also stated that the Cape is saturated with electronics stores and the subcommittee should be concerned with how commercially zoned land is used.

Ms. Kadar stated that she had reviewed the information provided by the applicant and staff and she felt the proposed Circuit City would have an impact on market share. As such, there could be adverse impacts to existing businesses on the Cape, most notably K and M Appliances and Nantucket Sound. She was also concerned that this was not a local business and as such, the money would not stay in the local economy. Ms. Kadar also said, based on her review of the classified job ads, there are many positions of the type to be provided by the applicant already unfilled.

Ms. Taylor stated her concerns about Circuit City's corporate practice of 2007 wherein it was indicated that Circuit City has closed or moved many stores. She noted there were 18 stores in the area that provide the merchandise Circuit City sells, and these are local businesses that spend most of their money here on Cape Cod.

Mr. Richardson felt that there was a niche for Circuit City here on the Cape and that he did not feel local businesses would be adversely impacted.

Dr. Clyde Barrow of UMASS Dartmouth discussed the retail experience in Dartmouth, MA along Route 6. All of the retail businesses do well. He also suggested the subcommittee consider the economic benefit of Rogers and Gray relocating here on the Cape and increasing their workforce.

Attorney Butler compared Circuit City to BJ's Wholesale Warehouse, in that BJ's did not have negative economic benefits.

Ms. Richardson warned that no research has been undertaken to determine the economic impact of BJ's.

Mr, Chuck Robinson stated that he supported the project as Rogers and Gray would be relocating from their existing site and his company would continue to grow.

Mrs. Rose Chili of Barnstable stated that the Home Depot did not have adverse economic development impacts on other hardware stores, and that BJ's did not have an adverse impact on other grocery stores. She asked the subcommittee to not deny Circuit City from coming to the Cape.

Don Kerran of APCC stated the applicant had addressed APCC's traffic mitigation concerns with the $800,000 donation to acquire the Chili's site.

Mr. Joseph Chili of Barnstable asked what had happened to the proposed raised median.

Attorney Butler responded that the monies that were going to be used to construct the raised median were now to be used for the acquisition of the Chili's site and a raised median may be built at some point in the future by someone other than the applicant.

Mr. Cannon stated the project did comply with the applicable transportation MPSs, providing that the staff and VHB could reach agreement on both the reconfiguration to the curb cut to minimize left turns in and out of the site, and craft language regarding the need to invoke the flexibility clause for the acquisition of the Chili's site, as it could not be held in conservation restriction as required in MPS 4.1.2.7 (a).

Ms. Kadar asked if delivery trucks could use the rear access instead of needing to use Route 132.

Attorney Butler stated the rear access was a controlled gate for only emergency vehicles per a request by the Airport Commissioners.

Mrs. Bloom, owner of the Star City Grill property, asked if there was ever a developer who came to the Cape who offered the town so much.

Mr. Joe Duggas of Barnstable wanted to know if there would be a conservation restriction put on the Chili's site and what the tax implications of the Circuit City would be on the town.

Ms. Daley stated there would be a restriction on the property for future use.

Attorney Butler stated that there would be no drain on the town's fiscal resources and there would be thousands of additional dollars in tax revenue from the Circuit City.
Mr. Cannon asked for clarification from the town on the language of how the Chili's site would be preserved.

Ms. Daley stated that the town would want some flexibility from the Commission on this issue, as the Conservation Commission would not want to hold a CR on this parcel.

JURISDICTION

The proposed Circuit City redevelopment project qualifies as a DRI under Section 3(f)(i) of the DRI Enabling Regulations as a change of use with a gross floor area greater than 10,000 square feet. Pursuant to Section 4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use. Further, as provided in Section 4(a)(iii), the applicant then applied for a Limited DRI Determination in accordance with Section 4(b), which required the Regulatory Committee to determine the scope of the DRI review required.

FINDINGS

The Commission, through the Regulatory Committee, has considered the application of Berkshire-Hyannis, LLC for the proposed change of use project at 624 and 640 Iyannough Road (Route 132), Hyannis, 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 Sections 3 and 4 of the DRI Enabling Regulations:

GENERAL FINDINGS

G1 The proposed project consists of the redevelopment of a parcel currently hosting a 4,000-square-foot office building occupied by Rogers & Gray Insurance and a 6,160-square-foot Star City Grill restaurant. The proposed Circuit City redevelopment project consists of the demolition of two existing buildings with a combined square footage of 10,610 square feet located at 624 and 640 Iyannough Road in Hyannis. The two buildings will be replaced with a new 22,475 square foot electronics superstore. The building will be owned by Berkshire-Hyannis, LLC and the sole tenant of the proposed building will be Circuit City, Inc.

G2 As the first public hearing for the limited DRI review was conducted on April 5, 2007, the project is being reviewed under the 2002 Regional Policy Plan.

G3 The project site is located within the Route 132 Regional Commercial Center and Growth Activity Center designated by the Barnstable Local Comprehensive Plan, which was adopted by the Cape Cod Commission in February 1998.

G4 The project does not lie within a District of Critical Planning Concern (DCPC).

G5 The project is consistent with the Town of Barnstable's 1998 Local Comprehensive Plan.

G6 The applicant will seek a special permit to allow for the use, which is considered a "conditional use" in the Highway Business Zoning District. A special permit will also be sought for relief

from the maximum impervious coverage based on the pre-existing, non-conforming nature of the property. The applicant will also seek a variance for relief from the 100-foot front yard setback requirement.

G7 The Commission has found that the proposed project shall be constructed according to the following plans:

- Site Construction Plans entitled "Berkshire Development Iyannough Road Barnstable, Massachusetts Site Alternative" prepared by VHB dated February 23, 2007 and last revised on February 1, 2008 (the "Site Alternative Plans").
- Exterior building elevations completed by Casco Project Managers for Berkshire Development received by staff dated January 22, 2008;
- Floor plan and roof plan completed by Casco Project Managers received by staff dated January 30, 2008;
- Stormwater Management System Operations and Maintenance Manual prepared by VHB dated February 1, 2008; and
- Landscape maintenance Plan (in accordance with Condition CC1).

G8 The Commission finds that the probable benefits of the redevelopment outweigh the probable detriments. This finding is supported by findings WR1, WR2, WR3, ED2 (this project will enable the relocation and expansion of Rogers and Gray Insurance Company in Hyannis), ED3 (location in a growth activity center per ODRP 3.2.3), ED6, CC5, T6, T7, T9 and T14.

WATER RESOURCES FINDINGS

WR1 MPS 2.1.1. states "*all development and redevelopment shall not exceed a 5-ppm nitrogen loading standard".* The proposed development incorporates more landscaped areas as compared to the existing use. The applicant determined fertilizer will be applied to these areas, and calculations were submitted, indicating a small increase in nitrogen loading. This increase in nitrogen remains well below the RPP 5-ppm nitrogen loading standard.

Wastewater flows were not included in the nitrogen calculations, as the Circuit City will be connected to the Hyannis Wastewater Treatment Facility and will generate approximately 80% less wastewater compared to the existing uses. As such, the nitrogen loading standard is adequately addressed.

WR2 MPS 2.1.1.A.5 states *development and redevelopment shall adopt a turf and landscape management plan that incorporates water conservation and minimizes the use of pesticides and chemical fertilizer through best management practices*.

The applicant has proposed to incorporate vegetated bio-retention areas to improve treatment of stormwater on site. The plans incorporate a landscape management plan that specifically addresses the bio-retention. The plants will be watered during the first year by the landscape contractor, and only during extended drought periods thereafter. Pesticide application should be prohibited in the landscape contract. To further reduce nitrogen loading, staff recommends that after the vegetation is established, additional fertilizer is applied to the bio-retention areas only if soil testing indicates it is necessary and only if organic fertilizers are used and incorporated into the soil below the mulch layer.

WR3 MPS 2.1.3.3 states *development and redevelopment shall use best management practices such as vegetated swales and other bio-retention areas for treatment prior to infiltration*. The applicant is proposing to utilize a variety of stormwater Best Management Practices (BMPs) to handle stormwater onsite and meet the Commissions MPS 2.1.3.2, Town of Barnstable Regulations, and the State of Massachusetts Stormwater Policy Guidelines. Structural BMP's include hooded catch basins, a Stormceptor sediment trap, bio-retention cells within the parking area, and vegetated swales incorporated into the foundation plantings. In order to avoid an increase in impervious surfaces from the existing to proposed conditions, permeable pavers are proposed for the perimeter parking area. Rooftop runoff, which is classified as clean, will be directly infiltrated into a subsurface infiltration basin. Overflow catch basins with subsurface infiltration are provided to accommodate the 25-year storm. Non-structural BMP's proposed include regular pavement sweeping, catch basin cleaning, and enclosure and maintenance of the dumpster area.

The stormwater plan is a significant improvement over existing conditions and will provide better treatment of the project's stormwater. The improved treatment will remove 90% of sediments through the combination of structural and non-structural BMP's, and all stormwater will be infiltrated onsite.

WR4 MPS 2.1.3.6 *requires a stormwater maintenance and operation plan for approval by the Commission.* The Stormwater Operation and Maintenance Manual for the Circuit City site dated February 1, 2008 was expanded to include maintenance of each stormwater BMP.

WR5 To comply with MPS 2.1.3.7, the stormwater system adjacent to the loading dock area has incorporated a shut-off valve to protect the groundwater from potential contamination due to an accidental spill. Hazardous material impacts are not expected to be significantly different from the existing development.

ECONOMIC DEVELOPMENT FINDINGS

ED1 The following findings are based on the following information relating to the proposed Circuit City store along Route 132 in Hyannis, including:

- *Circuit City Site Analysis*, prepared for the Town of Barnstable by Suffolk University/Cape Cod Public Policy Institute/Center for Public Management dated September 14, 2007;
- *Economic Impact Analysis*, prepared for Berkshire Development, LCC by the Center for Policy Analysis at the University of Massachusetts at Dartmouth dated September 2007, revised December 2007;
- *Review of Circuit City Site Analysis by Suffolk University*, Prepared for Berkshire Development, LCC by the Center for Policy Analysis at the University of Massachusetts at Dartmouth dated October 2007;
- *Security and Exchange Commission Form 10-K*: *Circuit City Stores, Inc* for FY ending February 28, 2007 and second quarter Form 10-Q;
- *The Fiscal Impacts of a Circuit City on the Town of Barnstable, Massachusetts,* prepared for Berkshire Development, LCC by the Center for Policy Analysis at the University of Massachusetts at Dartmouth dated January 2007 (received January 16, 2008);
- *Memorandum: Peer Review of Circuit City Economic Impact Analysis - September 2007,* Prepared for the Town of Barnstable by FXM Associates dated January 18, 2008;
- *Cape Cod Commission Staff Reports* dated November 28, 2007 and January 17, 2008; and

- *Minutes of Subcommittee Hearings and Meetings* dated October 29 and November 22, 2007 and January 22, 2008.

ED2 The Commission finds that expert reports and testimony, public input, and discussions during the public hearings provide conflicting evidence as to the overall impact of this project on the regional economy. The reports submitted by the applicant listed in ED1 addressed the market, economic, and fiscal impacts of the project; concluding/suggesting that Circuit City would have no adverse impacts on the regional economy but would instead benefit the region in each of these areas. Commission staff, after a careful analysis of all the documents listed in ED1 did not come to the same conclusion and questioned some of the methodology used (see project file for all of the applicant's reports and the staff analysis). Public testimony, letters received by the Commission, and discussions recorded in hearing minutes between the applicant, staff, and Commission members (refer to the project file) included statements both in support of and against the project on economic grounds. Some parties cited the benefits of added competition, potential reductions in product prices, and jobs that would provide supplemental income to students, spouses, and retirees. Some parties argued that the project would not negatively impact existing businesses because Circuit City would fill a unique market niche and/or there is enough demand for consumer electronics that the addition of Circuit City would not reduce the sales of existing businesses. Conversely, some parties cited the detriments of adding more retail to an economy already dominated by retail, adding low-paying full-time jobs with wages unequal to the cost of housing in the region, and adding more part-time and low-wage jobs when numerous similar jobs are currently available. Parties discussed the negative impacts of non-locally owned businesses on the overall wealth of the region while others responded by noting the positive impacts of retaining the locally owned business of Rogers and Gray Insurance. Similar pros and cons were argued relative to the location of the project, the necessity of constructing a new stand-alone building, the net fiscal impacts of the project, the corporate practices of Circuit City, and the likelihood of the land being used for other uses with more positive or negative impacts on the region's economy. The Commission concludes that it is essential to determine the nature of the impacts of this type of project on the Cape's economy and for this reason the Commission finds that the overall economic development impacts of the proposed Circuit City are as yet indeterminable and that ongoing reporting be conducted.

ED3 The Commission finds that the applicant has provided the economic data sufficient to comply with MPS 3.1.1. As the project is located in a growth center, it complies with MPS 3.2.1and MPS 3.2.2.

ED4 The Commission finds that the jobs and wages proposed by the applicant will not advance the RPP goal *"to encourage the creation and diversification of year-round employment opportunities"* that are well-paid, include benefits, and lead to career advancement. The wages proposed by Circuit City average $26,803 per year. This figure is 20% lower than the electronics sector average wage for Barnstable County in 2006 ($33,400) and more than 60% lower than the Cape's Median Family Income for 2006 ($70,995). Some benefits are provided for those meeting eligibility requirements as outlined in information provided by the applicant dated January 30, 2008.

ED5 The Commission finds, pursuant to the 2002 RPP, Section 3 - ODRP 3.3.2, that the project may increase the need for affordable housing in the region. Ninety-three percent of the jobs pay less than the *low income* (based on the Department of Housing and Urban Development's

thresholds for public housing assistance); ten positions would be below *very low income* and all part-time positions would fall into the *extremely low income* bracket. Only four positions would not be eligible for public housing assistance.

ED6 The Commission finds that the applicant will, as part of this project, contribute $30,000 to the Barnstable Housing Authority for affordable housing and $30,000 to the Cape Cod Community College for workforce training. The applicant will also provide the Barnstable Public Schools with $10,000 in Circuit City equipment vouchers. All will be one-time financial contributions. Pursuant to the 2002 RPP, Section 3, Other Development Review Policy 3.3.2, these contributions will be considered a benefit.

ED7 The Commission finds that existing businesses on the Cape already meet local demand for consumer electronics based on the Cape's population and spending power. While the Commission received testimony that the added competition would be positive and would not hurt existing businesses, contrary evidence was provided in the Commission staff analysis; thus the Commission finds that the impact of Circuit City on existing businesses and regional competitiveness is undetermined.

ED8 The Commission finds that the continued ownership of the property locally will help retain wealth in the regional economy and thus mitigate some of the losses associated with non-local ownership.

ED9 The Commission finds that the net economic impact of the project on the regional economy is unknown. The term "economic impact" in this finding refers to the direct, indirect, and induced jobs, income, and output that may be associated with the project. Based on the applicant's economic impact analysis, Circuit City will have a minimal positive impact on the local economy with a ratio of less than 1:1 for both jobs and earnings. However, this impact is generated using an additive model that assumes Circuit City will not negatively impact existing businesses, which is an assumption not supported by the Commission staff's market analysis.

ED10 The Commission finds Circuit City would generate $27,238 in property taxes annually; $7,773 more than currently generated by the property. The Commission also finds the net fiscal impact of the project is unknown. The applicant provided on January 16th, 2008 a fiscal impact analysis that took into account the cost side as well as the revenue side of the equation. The report, prepared by the Center for Policy Analysis at UMass Dartmouth for the Applicant, found the project would have a positive net impact of approximately $9,000 per year. However, the *Fiscal Impact Analysis of Residential and Nonresidential Land Use Prototypes* completed for the Town of Barnstable by Tischler & Associates in July 2002 finds the net fiscal impact of "big box retail" is -$468/1,000 square feet. Using this data, Circuit City would cost the town $10,998 annually in services over the revenue generated. Without more time and access to the models used for these fiscal analyses, the Commission is unable find either a net positive or net negative fiscal impact.

COMMUNITY CHARACTER FINDINGS

CC1 The proposed project is not located within an historic district and there are no known historic resources on the project site. On August 10, 2006, Massachusetts Historical Commission (MHC) determined that the proposed project was unlikely to have significant effect on historic or

archaeological resources. The Commission finds the proposed Circuit City project is thus consistent with Minimum Performance Standards in the Heritage Preservation section of the RPP.

CC2 For redevelopment projects, the RPP allows the expansion of buildings up to an individual footprint up to 50,000 square feet without any requirement for full screening (MPS 6.2.5). The proposed building will have a building footprint of 22,475 square feet and therefore, as a redevelopment project, the Commission finds full screening of the new building is not required under MPS 6.2.5.

CC3 MPS 6.2.5 also requires *the design of all structures that exceed a building footprint of 10,000 square feet incorporate variation into the massing, façade, and roof configuration in order to reduce the apparent mass of the building* and "*shall include a minimum of 10 feet of set-back or projection in the façade footprint for every 50 feet of façade length*." The Commission's Design Guidelines (*Technical Bulletin 96-001 - Designing the Future to Honor the Past: Design Guidelines for Cape Cod*) also recommend a variety of additional design approaches that are aimed at guiding the mass and scale of development on the Cape and encouraging best practices in design. The exterior of the proposed single-story building is clad predominantly with painted 4" lap-siding, with Concrete Masonary Unit (CMU) used at the base of the walls as a water table and varying in depth around the perimeter. The façade is proposed to have patterning in the siding at the most visible corners and a band that carries around the majority of the building. The sloped portions of the roof include dormers with louvers and are proposed to be clad with asphalt shingles, and cornices cap the walls on the remainder of the perimeter. The plans dated February 1, 2008 show that the proposed building will meet the dimensional requirements of MPS 6.2.5 and the building design also incorporates a variety of design strategies that are aimed at reducing the overall mass of the structure. For instance, the walls, facades and roof heights are all varied in order to give the appearance of smaller sub-masses rather than a single large structure. In addition, changes in materials, colors and the proportions of both on each facade reinforce the variation in the building. The proposed landscaping also contributes to the overall design goal of minimizing the bulk and mass of the building from the street side and also serves to soften the appearance from off-site public views. The Commission finds that the proposed building is consistent with MPS 6.2.5 and Technical Bulletin 96-001: "*Designing the Future to Honor the Past: Design Guidelines for Cape Cod*."

CC4 MPS 6.2.7 requires that *"Parking shall be located to the rear or the side of a building or commercial complex in order to promote traditional village design in commercial areas unless such location would have an adverse or detrimental impact on environmental or visual features on the site, or is infeasible."* The proposed building is located within the 100-foot front setback area required under local zoning. This location requires a variance from the Town of Barnstable. However, the proposed location allows all the parking required under local zoning to be located behind and to the side of the building, rather than between the building and the street. From a community character perspective, the proposed plan is more desirable and provided the applicant is able to secure the necessary zoning relief from the Town of Barnstable, the Commission finds that the project as proposed is consistent with MPS 6.2.7.

CC5 MPS 6.2.9 requires that all development implement a landscape plan that addresses the functional aspects of landscaping, and requires a maintenance agreement or irrigation system, as appropriate. The proposed landscape plan incorporates bio-retention areas, protects existing mature trees on the site and provides significant landscaping along Route 132 to help screen the proposed building from this regional roadway. Additional screening is proposed adjacent to other

existing development. The landscape plan provides a variety of trees, shrubs and groundcover that are suitable to the site and are not invasive species. The Commission finds that the applicant will need to provide a maintenance agreement to ensure the continued viability of the proposed landscaping.

TRANSPORTATION FINDINGS

T1 Berkshire-Hyannis, LLC proposes to construct a 22,475 square foot Circuit City on Route 132 in Hyannis on a site that is currently developed with a defunct restaurant and an insurance office building. Route 132 is a regional roadway as defined in the 2002 RPP and the project is located within one of the Town of Barnstable's certified Growth Activity Centers.

T2 The applicant has offered to provide the Town of Barnstable with $800,000 toward the purchase of an existing business (the Chili's parcel) located adjacent to the Airport Rotary and a separate piece of property located at 0 Iyannough Road (together referred to as the "Traffic Mitigation Properties"). The Town of Barnstable would ensure that no future development would occur on these parcels of land that is inconsistent for the purposes for which they are acquired. The Town of Barnstable and the applicant have proposed that the estimated trip generation of the existing business be credited to the Berkshire Development project.

The Chili's property is located at 545 Iyannough Road (Route 132) and consists of approximately 0.72 acres of land. It is located on the south side of Route 132 and on the north side of Route 28 adjacent to the Wendy's restaurant.

The parcel next to Wendy's is identified as follows by the Barnstable Assessor's Office:

0 Iyannough Road (Route 132), Hyannis
Assessor's Map 311, Parcel 24
Consisting of 0.23 acres
Owned by Brinker New England 1, LLC

The former Chili's parcel is identified as follows by the Barnstable Assessor's Office:
545 Iyannough Road (Route 132), Hyannis
Assessor's Map 311, Parcel 42
Consisting of 0.72 acres
Owned by Brinker New England 1, LLC

The former Chili's restaurant was permitted for 266 seats and consists of approximately 7,882 square feet. In addition to the property at 545 Iyannough Road, the Town of Barnstable will acquire the vacant land located at 0 Iyannough Road. The parcel of land is triangular in shape and abuts the Wendy's property to the west and the rotary to the east. It is presently unpaved and utilized by Wendy's for over-flow parking.

T3 As stated in transportation finding T2, the Town of Barnstable would acquire the Traffic Mitigation Properties and prevent any future development, including town sanctioned parking, from occurring on these parcels and the parcels shall be secured such that no motor vehicles can

park on site. The 2002 RPP allows the donation of vacant developable land (MPS 4.1.2.7 and MPS 4.1.2.8) to offset the trip reduction requirements and to offset the mitigation required for congestion. The applicant is requesting that this parcel of land (545 Iyannough Road) offset both RPP requirements. The RPP requires that these parcels of land either be held by the Town Conservation Commission or have a permanent conservation restriction placed on the parcel.

The parcels of land (identified as 0 Iyannough Road and 545 Iyannough Road) are shown on an undated plan titled "Existing Conditions, Barnstable, Massachusetts" prepared by Vanasse Hangen Brustlin, Inc.

T4 The Commission finds that it is appropriate to utilize the flexibility clause from the requirement set forth in MPS 4.1.2.7.(a) that title to the Traffic Mitigation Properties (as defined in condition T1) be held by the Town's Conservation Commission or placed under a permanent conservation restriction and held by an appropriate conservation land trust. Based on the location and existing condition of the Traffic Mitigation Properties, the Commission finds that the interests protected by MPS 4.1.2.7 (a) may be protected by the alternate approach of allowing the traffic mitigation properties to be deeded to the Town of Barnstable. As required by this decision, the Traffic Mitigation Properties will be held by the Town of Barnstable ("Town") and that portion of the properties acquired through Community Preservation Act funds shall be used as open space. The remainder of the Traffic Mitigation Properties shall be used for municipal purposes, including landscaping, open space, and roadway and related improvements and shall not contain uses that directly generate traffic. In accordance with the requirements of the flexibility clause, the Commission finds that the deeding of the Traffic Mitigation Properties to the Town with the aforesaid restriction meets the spirit and intent of MPS 4.1.2.7 and will not be more detrimental to the protected resource than is allowed under MPS 4.1.2.7.

T5 The Commission finds that the Town of Barnstable has indicated that it will not utilize or occupy the structure situated on 545 Iyannough Road, Hyannis (the so-called former Chili's restaurant building). As it deems appropriate, the Town of Barnstable may secure the Transportation Mitigation Properties to prevent unauthorized access by the public.

T6 The Circuit City store is proposed to occupy two existing parcels. Each parcel currently has a full access driveway on Route 132. The proposed Circuit City store would consolidate these driveways and further restrict the turning movements at the proposed driveway to right-turn-in/right-turn-out. The Commission finds the consolidation of two (2) existing full access driveways into one (1) turn restricted (right-turn-in/right-turn-out only) to be a significant safety improvement. The proposed Route 132 driveway shall be constructed based on the plan titled "Site Access Exhibit" for the Proposed Circuit City in Barnstable, Massachusetts by Vanasse Hangen Brustlin, Inc. dated January 29, 2008.

T7 This finding outlines the net trip generation decrease for the proposed electronic superstore based on the traffic credits given for its location in a certified growth center, the on-site development (the existing office and the defunct restaurant) and the acquisition of the Chili's parcel.

<u>Trip Generation for the proposed Circuit City</u>

According to the March 22, 2006 technical memorandum, the proposed 22,475 square foot development is expected to generate the following trips after the ten (10) percent

certified growth center traffic credit (as allowed in the RPP) has been applied to the trip generation estimates:

Average weekday	952 trips
Average morning peak hour	N/A
Average evening peak hour	95 trips
Average Saturday	1,334 trips
Average Saturday peak hour	135 trips

The proposed site has been previously developed and as requested in the March 22, 2006 technical memorandum, the following traffic credit was given for the previous development:

Average weekday	634 trips
Average morning peak hour	N/A
Average evening peak hour	57 trips
Average Saturday	422 trips
Average Saturday peak hour	50 trips

The expected net increase in off-site traffic from the project, after allowing for the traffic from the previous development, is as follows:

Average weekday	318 trips
Average morning peak hour	N/A
Average evening peak hour	38 trips
Average Saturday	912 trips
Average Saturday peak hour	85 trips

<u>Trip Generation for the Chili's Parcel (based on previous use as a restaurant)</u>

Based on the applicants' trip generation estimates the Chili's parcel has the potential to generate the following traffic:

Average weekday	1,285 trips
Average morning peak hour	125 trips
Average evening peak hour	112 trips
Average Saturday	1,652 trips
Average Saturday peak hour	234 trips

The expected net decrease in off-site traffic from the project, after allowing for the traffic from the Chili's parcel is as follows:

Average weekday	-967 trips
Average morning peak hour	N/A
Average evening peak hour	-87 trips
Average Saturday	-740 trips
Average Saturday peak hour	-149 trips

The removal of the existing development from the Chili's parcel and application of the traffic credit to the Berkshire Development project results in the proposed Circuit City project theoretically not having any traffic to mitigate.

T8 The RPP requires DRI's to perform Level of Service analysis and provide for full mitigation of project impacts on all regional road links (MPS 4.1.3.4) within the study area of the project.

Based on the traffic credits outlined in Finding T3, all site-generated traffic has been mitigated. Therefore, the project would not have a study area or have any traffic congestion to offset.

T9 All DRI's are required to reduce new vehicle trips in and out of the site by 25 percent over what is typically expected for the land use (MPS 4.1.2.1). Based on the increase in average daily traffic of 952 trips per day, and an existing traffic credit of 634, the trip reduction requirement for this project is 80 [952-634) x .25] daily vehicle trips. The proponent has offered an employee based trip reduction plan and the Town of Barnstable has offered the traffic credit from the Chili's parcel to offset the trip reduction requirements for the RPP. The Commission adopts this credit and finds that new vehicle trips have been reduced by 25% over what is expected for this land use.

Although the traffic credits from the Chili's parcel more than offset the trip requirements of the RPP, the applicant has agreed to maintain the employee trip reduction project previously agreed upon to assist employees in their daily commute.

The Applicant shall provide an employee/patron trip reduction program that includes the following in-kind strategies:

- Assemble information regarding carpooling and its benefits to be distributed to tenants and their employees.
- Designate an area where carpool information will be posted for all employees of the project.
- Implement a guaranteed ride home program (taxi service) for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees that carpool.
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Work with tenants to provide on-site services to decrease employee midday trip making. The on-site services shall include a lunchroom, microwave and refrigerator.
- Provide an on-site transportation coordinator. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Implement an annual employee trip reduction plan review to be held at least once a year.
- Distribute to all employees a new employee information packet that will include information about the various TDM programs that are available and the ways in which employees can participate.
- Provide a quarterly bulletin or newsletter reminding employees about the TDM programs and making the employees aware of any new or modified services.

- Provide bicycle maps indicating the location of bicycle facilities in the area will be posted in central locations within the development to encourage bicycle commuting.
- Provide a reference in all promotional materials or link, in the case of a website, to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, website based materials and advertising developed for the project will include listing and links to available public transportation services serving the project site.
- Provide incentives each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit. These incentives may include free meals through coupons/discount cards for use toward the purchase of goods and services within the development or at adjacent retailers or entries into weekly raffles for prizes such as movie tickets, free meals and/or goods and services.

T10 The RPP requires analysis of crashes at all intersections of regional roads, where the project is expected to increase traffic by 25 or more trips during the project's average peak hour (MPS 4.1.1.2).

The RPP standard of review for safety impacts is 25 or more new peak hour trips through a high crash location. As stated in transportation finding T3, the Commission finds proposed project is not expected to generate more than 25 new peak hour trips; therefore no regional intersection would be impacted by 25 or more new peak hour trips.

T11 MPS 4.1.1.1 states *Development and redevelopment shall not degrade safety for pedestrians, bicyclists, or motor vehicle operators or passengers.*

The Airport Rotary is listed in the top 1,000 crash locations as reported by the Massachusetts Highway Department and is the fifth highest crash location on Cape Cod. The intersection experiences an average of approximately 31 crashes per year.

The Town of Barnstable and the applicant will work together to acquire the Traffic Mitigation Properties, one of which currently is the location of a defunct restaurant. The Town of Barnstable would prevent any future development that is inconsistent for the purposes for which they are acquired from occurring on these properties and secure the properties such that no unauthorized motor vehicles can park on site.

The Commission finds the acquisition and removal of the former restaurant would remove a significant traffic generator from the Airport Rotary and removing the associated existing curb cuts would be considered a significant safety improvement.

T12 The Applicant has proposed a right turn in/right turn out only driveway onto Route 132 and a gated driveway at the back of the property for emergency access only from Barnstable Road. The Barnstable Municipal Airport Commission has not authorized the use of the emergency access as of the date of this approved decision. Previously, the applicant had proposed a raised median within Route 132 extending between the site southern property line and the adjacent property (the "Partial Median") to assist in the enforcement of the proposed right-turn-in/right-turn-out Route 132 driveway. Unwanted left turns at right-turn-in/right-turn-out driveways were a major concern during the review process. During the hearing process, the Town of Barnstable represented that several public safety officials did not support the Partial Median. Commission transportation staff supported the Partial Median as a way of enforcing the proposed right-turn-

in/right-turn-out Route 132 driveway. At the January 22, 2008 public hearing, Ms. Patty Daley, Interim Director of the Barnstable Growth Management Department stated the Town of Barnstable is currently studying Route 132 and is considering requiring a longer raised median on Route 132 further enforcing the right-turn-in/right-turn-out requirement. The applicant has proposed an elongated right-turn-in/right-turn out traffic island to further restrict the possibility of unwanted left turns into or out of the site.

T13 A consideration in the Town of Barnstable Route 132 study is to provide full access to the rear of this property from Barnstable Road and a betterment would be assessed to the property for future construction of an access road and traffic signal onto Route 132. The applicant has agreed to pay the betterment if this proposal comes forward.

T14 The Massachusetts Executive Office of Transportation (EOT) is currently conducting a Hyannis Access Study, and has recently released concept plans for the Airport Rotary. All of the concept plans require land taking around the existing rotary and all the concept plans require land takings from the Traffic Mitigation Properties. The Town of Barnstable has stated on the record that acquiring the Traffic Mitigation Properties will assist in expediting the construction of improvements at the Airport Rotary. Commission staff notes that land acquisition can be the most time consuming portion of any transportation project.

CONDITIONS

GENERAL CONDITIONS

G1 This DRI decision is valid for 7 (seven) years and local development permits may be issued pursuant hereto for 7 (seven) years from the date of this written decision.

G2 Failure to comply with all conditions stated herein shall be deemed cause to revoke or modify this decision.

G3 The applicant shall obtain all state and local permits necessary or applicable for the proposed project.

G4 No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings relating to such appeal have been completed.

G5 The proposed Circuit City redevelopment project (#TR 07020) on Route 132 in Hyannis, MA shall be constructed in accordance with the following plans:

- Site Construction Plans entitled "Berkshire Development Iyannough Road Barnstable, Massachusetts Site Alternative" prepared by VHB dated February 23, 2007 and last revised on February 1, 2008 (the "Site Alternative Plans").
- Exterior building elevations completed by Casco Project Managers for Berkshire Development received by staff dated January 22, 2008;
- Floor plan and roof plan completed by Casco Project Managers received by staff dated January 30, 2008;
- Stormwater Management System Operations and Maintenance Manual prepared by VHB dated February 1, 2008; and
- Landscape maintenance Plan (in accordance with Condition CC1).)

G6 Any changes in the final plans shall require a modification from the Cape Cod Commission in accordance with Section 12 of the Cape Cod Commission Enabling Regulations. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the Town of Barnstable Zoning Board of Appeals shall be submitted to the Commission upon receipt of local approvals for review by Commission staff to determine their consistency with Section 12 of the Cape Cod Commission Enabling Regulations.

G7 Prior to the issuance of a building permit, the applicant shall obtain a preliminary Certificate of Compliance from the Commission that states all conditions in this decision pertaining to issuance of a building permit have been met. Prior to receiving a permanent or temporary Certificate of Occupancy for the proposed project, the applicant shall obtain a final Certificate of Compliance from the Cape Cod Commission. Unless otherwise stated in this decision, the project shall be constructed in accordance with final plans listed in this decision in Condition G5 and all conditions of this decision shall be met prior to issuance of a Final Certificate of Compliance of the proposed project. The project shall not be open for business to the public until a final Certificate of Compliance is received from the Cape Cod Commission.

G8 The applicant shall notify Commission staff of the intent to seek a Preliminary or Final Certificate of Compliance at least thirty (30) days prior to the anticipated date of building permit or occupancy permit issuance. Such notification shall include a list of key contact(s) along with their telephone numbers for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. Upon prior notice, the applicant shall allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met, and at any time in the future to determine continuing compliance with the conditions of this and/or subsequent modification decisions.

G9 The applicant shall be responsible for providing proof of recording of the decision prior to issuance of a Preliminary Certificate of Compliance.

G10 The applicant shall demonstrate that a copy of this decision has been provided to the general contractor and all tenants (if applicable) prior to the start of construction.

COMMUNITY CHARACTER CONDITIONS

CC1 Prior to issuance of a Preliminary Certificate of Compliance from the Commission, the applicant shall submit for Commission staff approval a draft landscape maintenance contract for three full growing seasons based on a sample landscape maintenance contract/maintenance plan provided by Commission staff. A growing season is defined as the period between March 15th and October 31st. Prior to issuance of a Final Certificate of Compliance, the applicant shall provide a fully executed landscape maintenance contract for three full growing seasons.

CC2 Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

CC3 If all required landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount of the cost to be determined by submission estimates for work for approval by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements shall be completed within six (6) months of issuance of a Final Certificate of Compliance from the Commission.

CC4 Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall submit plans for any proposed signs for staff approval to ensure their consistency with MPS 6.2.11. Such plans shall include proposed materials, method of illumination and dimensions.

CC5 Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall apply to, appear before, and obtain a decision from the Town of Barnstable Zoning Board of Appeals on the variance from the 100' front yard setback requirements to permit the project to be constructed in accordance with the civil plan set entitled "Berkshire Development Iyannough Road Barnstable, Massachusetts Site Alternative" prepared by VHB dated February 23, 2007 and last revised on February 1, 2008 (the "Site Alternative Plans"). If the Zoning Board of Appeals approves the variance, the project shall be constructed in accordance with the Site Alternative Plans. In the event that the Zoning Board of Appeals does not approve the variance, the applicant may construct the project in accordance with the plans entitled "Berkshire Development Iyannough Road Barnstable, Massachusetts" prepared by VHB dated February 23, 2007 and last revised on December 28, 2007, which show the proposed structure complying with the 100-foot front yard setback.

ECONOMIC DEVELOPMENT CONDITIONS

ED1 Prior to the issuance of a Final Certificate of Compliance, the applicant shall contribute $30,000 to the Barnstable Housing Authority for affordable housing, $30,000 to the Cape Cod Community College for workforce training and $10,000 in Circuit City equipment vouchers to the Barnstable Public Schools.

ED2 Prior to the issuance of a Final Certificate of Compliance, the applicant shall provide a report to the Commission detailing the number of Cape Cod contractors, local suppliers, and workers employed during the construction phase of the project. The applicant shall note those businesses that are women or minority owned.

ED3 Prior to the issuance of a Final Certificate of Compliance, the applicant shall provide a report to the Commission detailing the number of new jobs created, the position titles, wages, and benefits paid by Circuit City for each position, the number of these positions filled by Cape Cod residents, and the number of minorities, disabled, elderly, unemployed or underemployed persons expected to fill the new positions.

ED4 Beginning one year from the date of occupancy for a period of five (5) years, Circuit City will provide to Commission staff and the Town of Barnstable annual reports addressing the following:

- The number of employees receiving job training through the Cape Cod Community College or other local training entities, including the types of training, number of part-time and full-time employees, number of Cape Cod residents, and the annual dollar value paid by Circuit City to the College and tuition reimbursements to employees.

- Local vendor purchasing, including the number and types of vendors being used and the approximate annual financial benefits to the community, to the extent such information is not subject to proprietary restrictions or confidentiality agreements.

WATER RESOURCES CONDITIONS

WR1 Pesticides shall not be used on any of the bio-retention islands. Fertilizers shall only be used if a soil test indicates a specific insufficiency of necessary soil nutrients, and only if organic fertilizers are used and incorporated into the soil below the mulch layer.

WR2 There shall be an emergency stormwater shutoff value located by the Stormceptor adjacent to the building loading dock. The emergency shutoff valve should be inspected and tested in conjunction with the Stormceptor maintenance schedule found in the Operations and Maintenance Manual. The site supervisor should be trained to operate the shutoff valve, and ensure that all supervisory staff are aware of this water supply protection safety feature in the event of a spill in the loading dock area.

WR3 The Stormwater Operations and Maintenance Manual shall be finalized and approved by Commission staff prior to the issuance of a Preliminary Certificate of Compliance. A copy of the approved plan shall be provided to the Cape Cod Commission and the Town of Barnstable Engineering Department that includes:

- names and addresses of the person(s) responsible for operation and maintenance,
- person(s) responsible for financing maintenance and emergency repair, and
- maintenance schedule for all drainage structure, including swale's and permeable pavers and the signatures of the owners

TRANSPORTATION CONDITIONS

T1 Prior to the issuance of the Preliminary Certificate of Compliance, the applicant shall:

a. Submit evidence that the properties addressed 0 and 545 Iyannough Road (Route 132), Hyannis (the "Traffic Mitigation Properties") have been acquired by the Town of Barnstable (the "Town") and that the applicant contributed a total of $800,000 toward the purchase of said Properties. The deed may reserve the right to use a portion of the Traffic Mitigation Properties for future roadway and related improvements, but the entirety of the Traffic Mitigation Properties shall be used in a manner that does not generate additional traffic on area roadways;

or, in the alternative, at the sole discretion of the Town of Barnstable after consultation with the applicant:

b. Provide evidence to the Cape Cod Commission staff of the following: (1) the payment of Seven Hundred Fifty Thousand Dollars ($750,000) (the "Traffic Mitigation Fund") to the Town of Barnstable to be held in escrow to be utilized and applied in accordance with an escrow agreement mutually acceptable to the Town of Barnstable (the "Town") and the applicant for the purchase of the

Traffic Mitigation Properties, (2) the delivery to the Town of an assignment of the Purchase and Sale Agreement dated January 10, 2008, by and between Brinker New England I, LLC and Berkshire Hyannis LLC relating to the Traffic Mitigation Properties, (3) delivery to the Town of a title commitment issued by a recognized title insurance company for the issuance of a title insurance policy insuring good, clear and marketable title to said Properties, and (4) delivery to the Town of an environmental site assessment in accordance with M.G.L. c. 21E acceptable to the Town.

It is expressly acknowledged that the Traffic Mitigation Fund, together with the fifty thousand dollar ($50,000) deposit already paid by the applicant to place the Traffic Mitigation Properties under purchase and sale agreement (the "Deposit"), shall be applied by the town toward the purchase price of the Traffic Mitigation Properties and that the applicant shall not be responsible for the payment of any additional monies toward the purchase of the Traffic Mitigation Properties. The specific financial obligations of the applicant and the Town in connection with the purchase of the Traffic Mitigation Properties shall be contained within the escrow agreement described herein.

T2 Prior to receiving a Final Certificate of Compliance, the applicant shall implement and maintain the trip reduction plan as outlined in transportation finding T9.

T3 As stated in transportation finding T3, the Town of Barnstable shall use best efforts to secure the Traffic Mitigation Properties located at 0 Iyannough Road and 545 Iyannough Road such that no unauthorized motor vehicles can park on site.

CONCLUSION

Based on the findings above, The Cape Cod Commission hereby approves with conditions the Development of Regional Impact application of Berkshire-Hyannis, LLC for the construction of a new 22,475 square-foot Circuit City retail store in Hyannis, MA. This decision is rendered pursuant to a vote of the subcommittee on February 7, 2008.

Prior to the issuance of a Certificate of Occupancy from the Town of Barnstable, the Applicant must receive a Certificate of Compliance from the Cape Cod Commission. This provision is necessary to ensure that the project for which the Applicant received a Limited DRI Decision (required DRI review of community character, economic development, stormwater resources and transportation) was constructed according to the proposed plans referenced herein in **Finding G7** and is consistent with all Findings of this Decision. The Applicant shall provide a minimum of thirty (30) business days notice of the intent to seek a Certificate of Compliance from the Commission.

_____ _____

Mr. Robert Jones Date
Chairperson, Cape Cod Commission

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2008

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

_____
My Commission Expires:

CERTIFICATE OF COMPLIANCE

The following is a list of those Conditions listed in the February 7, 2008 decision approved by a vote of the Cape Cod Commission for the Circuit City retail store to be located on 624 and 640 Iyannough Road in Hyannis, MA (project number TR 07020).

Preliminary Certificate of Compliance (conditions subject to satisfactory compliance prior to the Town of Barnstable issuing a building permit) include:

Conditions G9, G10, CC1, CC4, CC5, WR3 and T1.

Final Certificate of Compliance (conditions subject to satisfactory compliance prior to the Town of Barnstable issuing an occupancy permit) include:

Conditions ED1, ED2, ED3 and T2.