CAPE COD COMMISSION

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DATE: May 18, 2006

TO: Michael J. Princi
Wynn & Wynn, P.C.
300 Barnstable Road
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANTS: Silvia Aviation I, LLC
1284 Main St.
Osterville, MA 02655

Silvia Aviation II, LLC
1284 Main St.
Osterville, MA 02655

PROJECT #: TR(12h)06006HDEX06006

PROJECT: Silvia Aviation

BOOK/PAGE: Barnstable Municipal Airport (which includes the Silviation Aviation leased areas): Book 697/Page 294

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Hardship Exemption application of Silvia Aviation I and Silvia Aviation II (hereinafter "Silvia Aviation") pursuant to Section 23 of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on May 18, 2006.

PROJECT DESCRIPTION

The project consists of two substantially complete metal airport hangar buildings, "Silvia Aviation I" and "Silvia Aviation II," at the Barnstable Municipal Airport. Each building is

approximately 9,740± s.f., for a total gross floor area approximately 19,480±. They are located on two adjacent 32,000 s.f. leased areas, for a total site area of 64,000 s.f. The applicants lease each site from the Airport.

PROCEDURAL HISTORY

The town of Barnstable reviewed and permitted the development as two separate projects without referring them to the Commission for Development of Regional Impact (DRI) review. In December 2005, a representative from an abutting property informed the Commission of his concerns that the development, which was substantially complete, may trigger mandatory DRI review by the Commission.

At a public meeting on January 12, 2006, the Commission found that the hangars constitute one project at approximately 19,500 s.f. and qualify as a DRI under Section 3(e) of the Commission's Enabling Regulations as new construction of any building or buildings with a gross floor area greater than 10,000 s.f.. The Commission asserted jurisdiction under Section 12(h) of the Act. The applicant submitted a DRI Exemption application, DRI Hardship Exemption application and DRI application which were deemed complete on April 14, 2006. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on May 4, 2006. The public hearing was continued to the May 18, 2006 Cape Cod Commission meeting at the Assembly of Delegates chambers in the 1st District Courthouse in Barnstable Village, MA, where the hearing and the record were closed. The subcommittee held a public meeting to deliberate on this project on May 4, 2006. At the May 4, 2006 public meeting, the subcommittee voted unanimously to recommend to the full Commission that the hardship exemption be approved with conditions. At the final public hearing before the full Commission on May 18, 2006 the Commission voted 8 in favor, 2 opposed to approve the hardship exemption, subject to conditions.

Materials submitted for the record

From the applicant:	*Date received:*
• Letter from M. Princi to M. Fenn & T. Perry re: occupancy	1/31/06
• DRI application, DRI Exemption application, DRI Hardship Exemption application with supporting materials as listed on cover sheet.	2/17/06
• Letter from M. Princi re: storm drains.	3/2/06
• Letter from M. Princi re: occupancy permit	4/11/06
• Additional application materials including O&M plan/stormwater; Skimmer Box drain information; RPP compliance matrix; revised statements in support of hardship exemption and DRI exemption; signage information; airport manual re: hazardous materials handling/storage; project budget.	4/11/06
• Letter from M. Princi re: occupancy permit	4/12/06
• Revised stormwater O&M plan	5/3/06
• 2 emails from M. Princi re: hazardous materials	5/8/06
• Email from M. Princi to R. Weil re: hazardous materials	5/8/06

From Commission:	*Date sent:*
• Letter to M. Princi re: DRI notification	1/26/06
• Letter to M. Princi re: incomplete application	3/3/06
• Staff report, cover letter to subcommittee	4/28/06

- Email to M. Princi re: hazardous materials 5/8/06

From State and Local Officials: *Date received:*
- Letter from Ruth Weil, Barnstable Director of Growth Management 5/4/06
- 2 emails from R. Weil to M. Princi re: hazardous materials 5/8/06

From the public: *Date received:*
- Flyer and letter about Silvia Aviation 4/13/06
- Letter from P. Butler in support of hardship exemption 5/3/06

The application and notices of public hearings relative thereto, the Commission staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

A public hearing was held at the First District Courthouse in Barnstable, MA on May 4, 2006. Attorney Michael Princi, representing the applicants, described the project and its procedural history. He focused his comments on the hardship exemption request, explaining that compliance with DRI requirements would result in substantial hardship to the applicant given that the project was reviewed and approved by the town of Barnstable and construction is complete.

Martha Hevenor presented a summary of the staff report and staff comments in the areas of transportation, water resources, hazardous materials, natural resources/open space, and community character. She said the staff recommended granting a hardship exemption with conditions regarding hazardous materials and stormwater management.

The subcomittee focused its discussion on hazardous materials.

JURISDICTION

Silvia Aviation qualifies as a DRI under Section 3(e) of the DRI Enabling Regulations as "new commercial construction greater than 10,000 square feet."

FINDINGS

The Commission has considered the application of Silvia Aviation for a DRI hardship exemption and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Section 23 of the Act:

General

G1. In April 2005, the town of Barnstable issued a building permit for Silvia Aviation I, a 9,755± s.f. hangar building on a 32,000 site at the Barnstable Municipal Airport. In June 2005, the town issued a building permit for Silvia Aviation II, a 9744± s.f. hangar. The town did not recognize that the project triggered Commission DRI review and did not refer it to the Commission for DRI review.

G2. The Cape Cod Commission voted to assert jurisdiction over the project on January 12, 2006. Silvia Aviation I was complete and ready for occupancy. Silvia Aviation II was 75% complete.

G3. The Commission may grant a hardship exemption, in whole or in part, where it specifically finds that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or derogating from the intent and purpose of the Act.

G4. The applicant would suffer substantial hardship if required to revise the project to meet the minimum performance standards of the RPP, given that that construction was nearly complete when the Commission asserted jurisdiction. Compliance with the RPP would require revised site design, removal of work already completed, provision of additional site improvements, and additional expenses not budgeted for. The additional work would further delay full occupancy of the project. To support the applicant's claim of financial hardship, a financial statement documenting project costs was provided. The applicant also provided a time-line of the project's review and permitting history in the town of Barnstable to demonstrate that it completed the local permitting process without the project's being referred to the Commission as a DRI.

Transportation

T1. The applicant has constructed two private airplane hangars with capacity to house a total of 11 general aviation aircraft (four in Silvia Aviation I, seven in Silvia Aviation II). Limited ancillary spaces are included in each hangar including two small bathrooms, a small pilot's lounge, and a mechanical room. The hangars are located on existing airport property on the "East Ramp." The access for the development is through a controlled airport gate on Mary Dunn Road north of Route 28. Area regional roadways per MPS 4.1.3.1 include: Route 28/Iyanough Road, Willow Street/Yarmouth Road, Camp Street Yarmouth, Camp Street Barnstable, East Main Street, Barnstable Road, and Route 132.

T2. For 11 new general aviation aircraft being based at the airport, the Institute of Transportation Engineers *Trip Generation* manual (6th ed.) shows that the facility is estimated to generate 55 new weekday trips including six new weekday morning and six new weekday afternoon peak hour trips on average. Based on the nature of the use, the location of the facility, and the access to the facility, the project will draw trips from other towns.

T3. Since the facility is not expected to generate 25 or more new peak hour vehicular trips on regional roadways or at connections to regional roadways, no crash analysis is required and the project complies with MPS 4.1.1.2.

T4**.** Since the facility will access the public roadway system through an existing airport roadway connection, the project will not be adding any new driveway curb cuts on public roadways. The state-wide crash database does not indicate a crash history at the location of the project access (Mary Dunn Road and Route 28/Iyanough Road) that would require further review under the RPP. The location and use of the facility is not appropriate for pedestrian or bicycle through traffic or access. Consequently, the project is consistent with MPS 4.1.1.1, MPS 4.1.1.3, MPS 4.1.1.6, and MPS 4.1.2.5.

T5. MPS 4.1.1.5 requires minimization of visual obstructions and distractions for drivers. Since the project is not located on or adjacent to a public roadway, it will not have impacts in this area and complies. MPS 4.1.1.5 also requires utilities to be placed underground. The project's utilities are underground and thus the project complies.

T6. MPS 4.1.2.1 requires all projects to reduce expected daily and peak hour traffic by 25%. . Given the cost necessary to meet this requirement, the applicant's hardship, and the limited peak hour and daily traffic generation of the development, the Commission grants relief from MPS 4.1.2.1.

T7. Five parking spaces are shown on the site plan for Silvia Aviation I and ten spaces for Silvia Aviation II for a total of fifteen spaces. The number of spaces is consistent with the zoning by-laws of Barnstable as determined by the Town's development review process and therefore complies with MPS 4.1.2.6.

T8**.** MPS 4.1.3.2 requires Level of Service analysis at all access and egress points onto the regional roadway system. The project will access the public roadway system through an existing airport roadway and is expected to generate little new traffic on a peak hour basis. Given the cost necessary to meet this requirement, the applicant's hardship, and the development's limited peak hour traffic generation, the Commission grants relief from MPS 4.1.3.2.

T9. MPS 4.1.3.4 requires mitigation of all peak hour project impacts on regional roadways. Given the cost necessary to meet this requirement, the applicant's hardship, and the development's limited peak hour traffic generation the Commission grants relief from MPS 4.1.3.2.

T10. Given the project's expected limited trip generation; its access through existing roadway intersections; no new roadway construction; no outstanding crash history at the project access points; its limited parking, and its limited viability for pedestrian and bicycle traffic access and through the project site, the project is not expected to have regional transportation impacts and thus the relief granted does not result in substantial detriment to the public good or substantially derogate from the intent or purpose of the Act

<u>Water Resources</u>

WR1. The project consists of two (2) already-constructed airplane hangars with approximately 19,500 s.f. gross floor area. The balance of the 1.5-acre site leased from Barnstable Municipal Airport has been entirely paved. Cape Cod berm generally contains stormwater runoff on site, and catch basins have been installed to remove sediment entrained in stormwater runoff.

WR2. The project is located in a Wellhead Protection Area (WHPA) that provides drinking water to Hyannis. Minimum performance standards of the RPP set water-quality criteria for managing stormwater runoff (MPS 2.1.3.2) and nitrogen loading to groundwater in WHPAs (MPS 2.1.1.2.A.1).

WR3. Projects in WHPAs are required to limit hazardous materials pursuant to MPS 2.1.1.2.A.2 and MPS 4.3.1.3. (Additional findings relative to hazardous materials are located in the hazardous materials section of this decision.)

WR4. The project results in a 4.8-ppm site-wide nitrogen-loading concentration in groundwater, which meets the 5-ppm nitrogen-loading standard set forth by MPS 2.1.1.2.A.1. The project's primary source of nitrogen loading to groundwater is a total of 512 gallons per day of Title-5 wastewater flows from both hangars. Project wastewater is managed separately for the two (2) hangars using standard Title-5 septic systems. Other sources of project nitrogen loading are derived from stormwater runoff from impervious aprons around the hangars and hangar roofs.

WR5. The RPP requires consistency with the Massachusetts Stormwater Policy Guidelines (MPS 2.1.3.2) and use of *"best management strategies such as vegetated swales and ... wetland detention basins"* to treat stormwater runoff for development and redevelopment projects (MPS 2.1.3.3). These standards require DRIs to use bio-filtration to treat stormwater runoff before it is infiltrated to groundwater.

WR6. The project's stormwater catch basins and leaching facilities were installed prior to the Commission's review. Reconfiguration of the project's drainage to meet RPP standards under MPS 2.1.3.3 would involve substantial hardship to the applicant.

WR7. In lieu of constructing bio-filtration stormwater infrastructure in accordance with MPS 2.1.3.3, the applicant has agreed to install StormPod® model catch-basin inserts, manufactured by Fabco Industries, Inc., in all project catch basins. The inserts use replaceable filters to remove contaminants such as petroleum hydrocarbons and metals. The project already meets nitrogen-loading limits. Catch-basin monitoring, maintenance and insert-filter replacements are important to ensure the inserts' effectiveness and to further ensure that the filters are not being by-passed, as they're designed to do when clogged.

Monitoring and maintenance tasks consistent with requirements of MPS 2.1.3.6 are detailed in a plan submitted by the applicant on May 2, 2006: Operation & Maintenance of Stormwater Facilities at Silvia Aviation (Stormwater O&M Plan).

WR8. Given the applicant's hardship in complying with the RPP stormwater management requirements, the Commission grants relief from MPS 2.1.3.3. The applicant's agreement to install catch basin inserts to treat stormwater runoff will address stormwater impacts such that the relief granted does not result in substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Act.

<u>Hazardous Materials</u>

HAZ1. The Barnstable Municipal Airport, including the two Silvia Aviation hangars, is located within in one or more existing Wellhead Protection/Zone II Areas. MPS 4.3.1.3 limits use, treatment, generation, storage or disposal of hazardous materials and hazardous wastes in WPA/Zone II to household quantities.

HAZ2. According to the application materials, the project consists of two hangars that will provide interior storage/garage space for piston-engine planes and jets already based at the airport.

HAZ3. The applicants submitted the following information regarding the project's compliance with MPS 4.3.1.3:

- A project narrative (item 28), which states that *no hazardous materials are stored on site.*
- Site plans, which do not show any areas inside or outside the hangars for maintenance activities, chemicals handling or storage, or hazardous materials/waste handling or storage. The site plans also indicate that piped gas service is available to the hangars, eliminating the need to store and handle liquid petroleum fuel for building heating or emergency power generation.
- A January 10, 2006 letter from the Airport Manager, as well as the application narrative, site plans, and plumbing schematics which indicate the hangars will have an in-floor radiant heat system, thereby reducing the need for de-icing of planes.
- A copy of the sample hangar lease agreements which prohibit aircraft maintenance.

Planes to be housed in the hangars will have hazardous materials in them; however, in prior DRIs, the Commission has not counted the amount of gasoline, oil and other hazardous materials inside the mechanical areas of planes towards the RPP's hazardous material/waste limit.

HAZ4. The sample hangar lease agreements state that hazardous materials "shall not be stored in/on the Leased Premises unless they are stored in accordance with…" state regulations and local fire codes. The lease documents allow aircraft fueling, deicing, aircraft washing and major aircraft maintenance as long as the Airport Manager approves these activities. The quantity limit of MPS 4.3.1.3 is more restrictive than these leases, the lease between Silvia Aviation and the Barnstable Municipal Airport, and state or local fire regulations.

HAZ5. The application materials do not address how the project will comply with the MPS 4.3.1.2, which requires developments to be in accordance with the Massachusetts Hazardous Waste Regulations. The hangars may generate used fluorescent bulbs (a regulated waste in Massachusetts) and possibly other hazardous waste. As Lessor to individuals who garage planes in the hangars, Silvia Aviation will be responsible for proper management and disposal of these and any other hazardous wastes generated by the facility.

HAZ6. The application materials did not address how the project would minimize hazardous material use and/or waste generation as required by MPS 4.3.1.1.

HAZ7. MPS 4.3.1.3 requires preparation of an emergency response plan. The application includes an emergency response outline as part of the stormwater management plan.

<u>Natural Resources/Open Space</u>
NROS1. The project site is located within a Significant Natural Resources Area (SNRA) due to its location within a public wellhead protection area. The site is not mapped for rare species habitat.

NROS2. In accordance with MPS 2.5.1.3, DRIs are required to provide permanently protected open space in an amount proportional to the development area. The open space requirement for Silvia Aviation could be up to 120,000 s.f., depending on how much of the site was previously disturbed. Compliance with this requirement would entail substantial hardship due to the applicant's inability to provide open space on the site, which is entirely developed and owned by the town of Barnstable, and the financial hardship that purchasing off-site open space would entail. As such, the Commission grants relief from this requirement. Given the existing conditions on the site and the surrounding area at the Barnstable Airport, such relief does not result in substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Act.

Community Character

CC1. MPS 6.2.6 allows for nontraditional building forms and materials within industrial parks and other areas not visible from scenic or regional roadways or other distinctive areas. Views of the project site from Willow Street, the nearest regional roadway, are screened by a wooded buffer area along the edge of the aiport property, the railroad bed, and commercial structures between Willow Street and the project site. Given the project's location and specialized use, it meets the RPP requirements.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes:

The applicant demonstrated that literal compliance with the Act and the RPP would involve substantial hardship, as noted in Findings G3, T6, T8, T9, WR6, and NROS2. Desirable relief may be granted to the applicant without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, and the Commission grants the minimum relief necessary to address the hardship.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Silviation Aviation I and Silvia Aviation II to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the Silvia Aviation project located in Hyannis MA., provided the following conditions are met:

CONDITIONS

General

G1. This DRI hardship exemption decision is valid for 7 years, meaning that local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

G2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

G3. The applicant shall obtain all state and local permits for the project.

G4. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project subsequent to this decision.

G5. Prior to receiving a final Certificate of Occupancy from the Town of Barnstable for Silvia Aviation I, the applicant shall obtain a Certificate of Compliance from the Commission.

G6. Prior to receiving a temporary or final Certificate of Occupancy from the Town of Barnstable for Silvia Aviation II, the applicant shall obtain a Certificate of Compliance from the Commission.

G7. Silvia Aviation II shall not be open for business to the public until a Certificate of Compliance is received from the Cape Cod Commission.

G8. The applicant shall notify Commission staff of the intent to seek a Certificate of Compliance at least thirty (30) days to the anticipated date of receipt of such Certificate. Such notification shall include a list of key contact(s) 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 applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The applicant agrees to allow Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.

G9. The applicant shall provide proof of recording of the decision prior to issuance of a Certificate of Compliance.

Water Resources

WR1. Prior to issuance of a Certificate of Compliance, all project catch basins shall be fitted with StormPod® model catch-basin inserts manufactured by Fabco Industries, Inc. and verified by Commission staff.

WR2. The applicant shall implement the the Stormwater O&M Plan, and keep detailed monitoring and maintenance records on site and available for public and Commission review on request.

Hazardous Materials

HAZ1. The project shall not use, treat, generate, handle or store more than 25 gallons or its dry weight equivalent in total of hazardous materials or hazardous wastes on site. There shall be no on-site disposal of hazardous materials or wastes. There shall be no floor drains in areas where planes are to be parked/stored, and natural gas shall be used for heating and emergency power generation.

HAZ2. Silvia Aviation shall establish and maintain a program to properly handle, store and dispose of used fluorescent light bulbs and any other hazardous waste generated by the facility.

HAZ3. Prior to issuance of a Certificate of Compliance, Silvia Aviation shall submit for Commission review and approval a copy of a program to perform the following:

1) survey the facility and tenants for activities that involve hazardous materials or generate hazardous wastes;
2) minimize the use of hazardous materials and/or hazardous waste generation; and
3) properly handle and store any hazardous materials, and properly dispose of used fluorescent light tubes and any other hazardous waste generated by the facility.

No Certificate of Compliance shall be issued until the applicant submits the information required by this condition and Commission staff issues a written approval of the program(s) as consistent with MPS 4.3.1.1 and 4.3.1.2 of the 2002 RPP and this decision,

HAZ4. Prior to the issuance of a Certificate of Compliance, the applicant shall submit for Commission review and approval a copy of a revised emergency response plan which is consistent with MPS 4.3.1.4, with condition HAZ3 and with the Barnstable Municipal Airport's Spill Prevention, Control and Countermeasures Plan. No Certificate of Compliance shall be issued until the applicant submits the information required by this condition and Commission staff issues a written approval of the revised emergency response plan as consistent with MPS 4.3.1.4 and this decision,

The Cape Cod Commission hereby approves with conditions the hardship exemption application of Silvia Aviation pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the Silvia Aviation project located in Hyannis, MA

_____

Alan Platt, Chair Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2006

Before me, the undersigned notary public, personally appeared _____, in his/her capacity as Chair 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.

_____

Notary Public

My Commission Expires: