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: September 29, 2005

TO: Attorney Patrick M. Butler
Nutter, McClennen & Fish
1523 Iyannough Road
P.O. Box 1630
Hyannis, MA 02601-1630

FROM: Cape Cod Commission

RE: Development of Regional Impact Exemption
Cape Cod Commission Act, Section 12(k)

APPLICANT: JDJ Housing Development, LLC

SITE OWNER: Enoch T. Cobb Trust

PROJECT #: DRI EX # 05009/ DRI TR # 05009

PROJECT: Supply New England

BOOK/PAGE: Book 4036 Page 119

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of JDJ Housing Development, LLC (Applicant) for an exemption from review as a Development of Regional Impact (DRI) pursuant to Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Supply New England project (Project). The decision is rendered pursuant to a vote of the Commission on September 29, 2005.

PROJECT DESCRIPTION

The proposed Project, as described in the exemption application and DRI referral form, is to construct a new 26,132 square foot warehouse/showroom building (with a 21,120 square foot footprint) and 9,100 square feet of outdoor storage space on a leased site in Hyannis. It also encompasses 42,440 square feet of pavement for parking and vehicle access. The Applicant, JDJ Housing Development, LLC, proposes to lease just over three (3) acres of a 12.80 parcel in Independence Park, which is owned by the Enoch T. Cobb Trust, David Cole, Trustee. The 3-acre site will then be sub-leased to Supply New England (formerly R.B. Corcoran Company), an existing business with stores in Barnstable County which sells/distributes plumbing and heating-related supplies. These include hard goods (pipe, fittings, faucets, towel bars, sinks, shower stalls, etc.) and chemicals (including clog removers, cleaners, and pipe cements). On several dates since the Commission received the exemption application on April 12, 2005, the Applicant submitted revised site plans. Taking the latest revision into account, the Project consists of a building with a 21,120 square foot footprint, including 5,016 square feet of display area and 3,800 square feet of outdoor storage and parking spaces. Revised plans received on September 21, 2005 reflect a reduced paved area, the size of which is not quantified on these plans.

The site is currently vacant, partially wooded with wetland areas, is within a Significant Natural Resource Area that has been mapped for rare species habitat, and is zoned Industrial/Limited. It is also located in a Growth Activity Center according to the Commission-certified Barnstable Local Comprehensive Plan. The site, including the area to be leased for the new project, is also crossed by electrical transmission lines.

PROCEDURAL HISTORY

The Barnstable Town Manager referred this project to the Cape Cod Commission as a Development of Regional Impact (DRI) on August 9, 2005. The Commission received the referral form on August 10, 2005. The application was deemed complete on August 11, 2005. A duly noticed public hearing was held on August 30, 2005 at 7:00 pm at the Assembly of Delegates Chamber, First District Courthouse, in Barnstable, MA. The public hearing was continued to September 12, 2005 at 12:30 PM at the Cape Cod Commission office in Barnstable, MA. The Subcommittee voted unanimously at this meeting to recommend to the full Commission to deny the DRI Exemption. The Applicant requested at this continued public hearing that it be allowed to submit additional information for reconsideration by the Subcommittee. On September 16, 2005, the Commission received a Memorandum and revised site plans from Nutter, McClennen and Fish. The Subcommittee held a meeting on September 21, 2005 at 9:30 am at the Commission's office in Barnstable Village, MA. The materials submitted by the Applicant to the Commission on September 16, 2005 were reviewed by the Subcommittee at the meeting on September 21, 2005. After hearing the Applicant's request for reconsideration, and reviewing the newly submitted information the Subcommittee decided not to reconsider its unanimous vote to deny the exemption request and agreed to let the denial vote stand. The public hearing on the DRI exemption was continued to September 22, 2005 at the

Commission's office where it was closed by a hearing officer of the Commission, with the record kept open. The public hearing on the DRI was continued to 10:00 am on October 11, 2005 at the Commission's office. The vote of the full Commission on September 29, 2005 was to deny the DRI exemption.

Materials submitted by the Applicant:

DRI exemption application and attachments	4/12/05
Letter, Attorney Butler and Cox, DRI exemption cover	4/12/05
Copy of a check for $9,000	4/12/05
Letter, Attorney Cox, additional application materials	4/15/05
Commission Application cover sheet for a DRI exemption	4/15/05
E-mail, from Dan Ojala, site design issues	4/18/05
Letter, Attorney Cox, abutters list and copy of MHC green card	4/20/05
Letter, Attorney Butler and Cox, letter of intent between Cobb Trust and JDJ Housing	4/29/05
Memo, Attorney Butler, additional application materials	6/15/05
Memo, Attorney Butler, revised site plans	6/15/05
Memo, Attorney Butler, information on economic development	6/20/05
Memo, Attorney Butler, additional application materials	6/20/05
E-mail, Attorney Cox, scheduling of hearing	6/22/05
E-mail, Attorney Cox, scheduling of hearing	6/22/05
Memo, Attorney Butler, transportation information	7/11/05
Fax, Attorney Butler, letter from Cobb Trust about sale of conservation restriction	7/13/05
Letter, Attorney Butler, scheduling of hearing	8/3/05
E-mail, Attorney Cox, scheduling of hearing	8/10/05
Memo, Attorney Butler and Cox, revised landscape plan from Stephen Stimson	8/19/05
Memo, Attorney Cox, copies of applicant's materials for public hearing	8/22/05
Memo, Attorney Cox, revised floor plan and elevation drawings	8/23/05
Color photographs of interior/exterior of store in Hyannis	8/30/05
White sheet, Attorney Butler, water resources information	8/30/05
Yellow sheet, Attorney Butler, comparison with other projects	8/30/05
Green sheet, Attorney Butler, discussion of exemption	8/30/05
E-mail, Dan Ojala to Attorney Butler and Cox, revised plans/drawings	9/7/05
Memo, Attorney Cox, revised plans/drawings from Dan Ojala as E-mailed	9/7/05
Copy of part of Change of Use decision, Attorney Butler	9/12/05
Memo, Attorney Butler, revised project information	9/16/05
E-mail, Attorney Butler, Memo from Trustee of Cobb Trust	9/20/05
Memo, to Trustee of Cobb Trust from Attorney Butler, discussions on sale of conservation restriction	9/21/05
E-mail, Attorney Cox, request to fax Memo to Cobb Trust Trustee, copying sets of materials, question on number of copies needed for the mailing	9/22/05
Memo, Attorney Cox, with copies of materials to be submitted to the full Commission	9/22/05

Colored sheets of paper – green and pink – from Attorney Butler, points made in Applicant's presentation at the full Commission meeting (received at the meeting) 9/29/05

Materials from a three-ring binder, from Attorney Butler, additional materials presented at the full Commission meeting as part of the Applicant's presentation, copies of Commission decisions 9/29/05

Sketch Plan, by DownCape Engineering, dated 9/12/05, from Attorney Butler 9/29/05

Copy, application cover, stamped by Town Departments Various

Materials from the Cape Cod Commission:

Letter, to Attorney Butler, DRI exemption application not complete 4/13/05

E-mail, to Dan Ojala, from Scott Michaud, water resources issues 4/15/05

Staff Routing form 4/21/05

E-mail, to Attorney Cox, application materials 6/22/05

Memo to staff with application materials 6/23/05

Letter, to Attorney Butler and Cox, scheduling of hearing 8/2/05

E-mail, to Commission staff, scheduling of hearing 8/8/05

E-mail, to and from Susan Kadar, project description and proposed hearing date 8/10/05

Fax cover sheet, to Attorney Cox, DRI referral form 8/10/05

E-mail, to Robin Giangregorio, receipt of DRI referral form 8/10/05

Fax cover sheet, to Attorney Butler, letter 8/11/05

Letter, to Attorney Butler, DRI referral received and application complete, discussion of hearing date 8/11/05

Fax cover sheet, to Joan Pierce, Massachusetts Department of Fish and Wildlife, copy of Project Summary from applicant 8/18/05

Memo, to Subcommittee, site visit, hearing location and time 8/22/05

Staff report 8/24/05

Fax cover sheet, to Attorney Cox, Robin Giangregorio, and Ed Maroney, copy of staff report and date for hearing 8/24/05

E-mail, to Tom Broadrick, Director of Planning, copy of staff report, site visit date and time, and date and time for hearing 8/24/05

Locus map (aerial photo) for site visit 8/29/05

E-mail, to Attorney Cox, no written comments on project from public or others as of morning of August 30, 2005 8/30/05

Hearing Notice 8/30/05

Draft Minutes 8/30/05

E-mail, to Attorney Butler and Cox, Town staff, Subcommittee update, Minutes 9/9/05

Fax cover sheet, to APCC, copy of staff report 9/6/05

E-mail, to staff, revised plans received from applicant 9/7/05

E-mail, to Sharon Rooney and Sarah Korjeff, revised building elevations 9/7/05

E-mail, to staff, revised plans received from applicant 9/8/05

E-mail, to Subcommittee, draft Minutes, Subcommittee Update, other info. 9/8/05

E-mail, transmission error message 9/8/05

E-mail, to Roslyn Garfield, draft Minutes, Subcommittee Update, other info.	9/8/05
E-mail, to John Harris, draft Minutes, Subcommittee Update, other info.	9/8/05
Subcommittee update	9/8/05
E-mail, to Scott Michaud, request for copies of information for file	9/8/05
Outline of steps for the Subcommittee Chair	9/12/05
E-mail, from Susan Kadar, concerns about project	9/12/05
Hearing Notice	9/12/05
Sign In Sheet	9/12/05
Draft Minutes	9/12/05
E-mail, to Ed Maroney, copy of Project Update	9/14/05
E-mail, to Subcommittee and staff, meeting on September 21, 2005	9/16/05
E-mail, to Subcommittee, applicant and Town Director of Planning, meeting on September 21, 2005 and copies of Commission materials	9/20/05
Subcommittee update	9/20/05
Fax cover sheet, to Attorney Butler	9/20/05
Meeting Notice	9/21/05
Hearing Notice	9/22/05
Memo, to Commission Members, including Subcommittee Members, copy of draft decision and other materials for consideration at the full Commission meeting	9/22/05
Fax cover sheet, to Roslyn Garfield, copy of revised draft decision	9/22/05
Fax confirmation sheet, to Attorney Cox, copy of Memo to Trustee of Cobb Trust	9/22/05
Fax cover sheet, confirmation sheet, to Attorney Butler and Barnstable Director of Planning, copy of draft decision as approved by Subcommittee Chair	9/23/05
Draft decision for full Commission hearing as distributed at 9/21/05 meeting	9/29/05
Hearing Notice for hearing before full Commission	9/29/05
Memo, to Commission Chair and Subcommittee Chair, outline of anticipated steps as part of the hearing before the full Commission	9/29/05
Memo, to Subcommittee, about September 21, 2005 meeting	Undated

Materials from Federal, State and Local Officials, Interested Parties, Public:

Fax, DRI referral form, from Town of Barnstable	8/10/05
Letter, from APCC, expresses concerns about the project	9/20/05

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

PUBLIC TESTIMONY

The following is a summary of testimony received at the public hearings. See the project file for complete Minutes of the hearings and any Subcommittee meetings.

Hearing # 1 – Assembly of Delegates Chambers – August 30, 2005
Ms. Garfield opened the hearing at 7:05 PM. Mr. Harris read the hearing notice.

Attorney Butler (Nutter), described the project. Attorney Butler said these 3 acres would be leased through a long-term ground lease to the Applicant, which would construct a 21,120 square foot building, as well as a 2,500 square foot showroom and 37 parking spaces. Attorney Butler noted the site plan had been modified to have a single entrance/exit as a result of meetings with Commission staff and Barnstable Site Plan Review. He said the project also included landscaping, and that development had been moved away from the wetland. Attorney Butler noted that there was a roadway on the site leading to the balance of the property behind the leased 3 acres, which the Cobb Trust would retain control over. Attorney Butler noted that no portion of the site was located inside the 50 foot wetland buffer. Attorney Butler said the Conservation Commission would have jurisdiction over that portion of the site within 100 feet of the wetland. Attorney Butler said the project was also subject to Site Plan Review. Attorney Butler said it was in the Industrial Zone. He noted it was in a Growth Activity Center in Barnstable's Local Comprehensive Plan. Attorney Butler said the area was specifically designated for warehouse-type uses, and that it was also in an Economic Opportunity Area. Attorney Butler said the project was the relocation of an existing business. Attorney Butler also distributed a white sheet with other plumbing supply companies, and their estimated water usage versus the project. Attorney Butler said the Town could adequately handle the hazardous materials and stormwater issues. Attorney Butler said a letter had been submitted for the record noting Mr. Cole's hope to place the balance of the parcel under a conservation restriction. He did note that the Trust would need to reach a financial accommodation with the Town of Barnstable, the Conservation Trust or the Division of Wildlife and Fisheries. On economic development, Attorney Butler said the impacts were positive. Attorney Butler said that Supply New England's location, character and environmental effects were not significant, were local, and within Barnstable.

Ms. Adams summarized the staff report. She noted the project qualified as a DRI under section 3(e) of the *Enabling Regulations* as amended. Ms. Adams said the Commission received a DRI referral from the Town of Barnstable on August 10, 2005. She noted the Applicant had filed for consideration of a DRI exemption, and listed the criteria for a DRI approval. Ms. Adams addressed the project's impacts as a way to gauge whether the project should be granted a DRI exemption. On Natural Resources and Open Space, Ms. Adams noted the project site was located in a Significant Natural Resource Area as defined by the RPP, and the whole site was mapped by Massachusetts Natural Heritage as a priority habitat site for rare plant and animal species. She said the RPP required a minimum 100 foot undisturbed vegetated buffer area from wetlands to protect their natural functions, and that the rear of the building, outdoor storage area, and other construction activities were located within or would occur within the buffer area. Ms. Adams said the project was located in a number of regional water resource areas, including the Marine Water Recharge Area for Lewis Bay, a Wellhead Protection Area and a Potential Public Water Supply Area. She recommended review of the project as a DRI, to further limit the project's nitrogen loading concentration in groundwater to 1 ppm. She said it was also important that the project adequately treat stormwater. Ms. Adams said that based on her site visit to the company's existing store, it would likely have hazardous materials on hand in quantities in

excess of the RPPs limit. Ms. Adams said the company was an existing business, and that the move was not designed to increase the size of their operation, which would suggest a negligible impact on long-term regional employment. Ms. Adams recommended that the Subcommittee and staff needed an opportunity to review information to determine the project's community character impacts. On Transportation issues, Ms. Adams summarized the project's estimated trip generation, and noted that the project's impacts on the intersection of Route 132 and Independence Drive was a concern, because this intersection experienced a significant number of crashes per year, and has been the subject of many meetings regarding poor operations and safety issues. Ms. Adams noted the Applicant had modified the proposed access plan to create only one curb cut on Independence Drive. She also said a cut in the median as the result of a 40(B) housing project on the opposite side of Independence Drive would not be turn-restricted. In conclusion, Ms. Adams said Commission staff recommended to the Subcommittee that the project would have significant impacts on regional resources. As such, she said staff did not believe that the project should be granted a DRI exemption, but rather that the Supply New England project be reviewed as a DRI. She noted that if the Subcommittee reviewed Supply New England a DRI, it would be important to consider all the tests for an approval.

Ms. Kadar asked about the relative transportation impact/benefit from moving the existing business from Route 28 to the proposed project site.

Mr. Boesch said staff expected the original site on Route 28 to be rented to another company, so the transportation benefit from moving the plumbing supply company to the new Independence Drive site would be negligible.

Ms. Frazer asked for clarification concerning Independence Drive's classification, since it connected to Route 132.

Mr. Boesch said Independence Drive was classified as a regional roadway from the intersection of Route 132 to just before its last section. He said staff believed the last portion would eventually be classified as regional.

Ms. Kadar asked for clarification relative to wetlands not providing a nitrogen loading credit.

Mr. Michaud said the Applicant's nitrogen loading calculations reflect only the leased area, which was just under 3 ppm. He said the comment in the staff report was to highlight the issue of lowering the nitrogen impacts.

Attorney Butler agreed that the nitrogen calculations reflected only the leased area. He said with the upland area on the rest of the site, it dropped to under 1 ppm.

Mr. Michaud said that the calculation with the upland resulted in a concentration of just under 2 ppm. He said this was why the staff report had discussed using a composting toilet.

Ms. Kadar said critical issues for her were the wetland buffer and stormwater.

Attorney Butler questioned whether the impact to the wetland buffer was a significant impact to an environmental effect outside Barnstable. He noted the Applicant was cognizant of the wetland, and had tried to move development on the site. Attorney Butler said the Barnstable Conservation Commission had jurisdiction within the 100 foot buffer, and could issue a decision that ran with the land. Attorney Butler said the Subcommittee could determine that the issue did not rise to the level of such significant impact that the project needed to be a DRI.

Ms. Kadar understood Attorney Butler's argument, but disagreed with it, saying that all wetlands needed protection, regardless of the Town in which they are located. She said wetlands protection was a Cape Cod (regional) issue.

Attorney Butler noted the emergency shut-off for spills from the loading dock, and the vegetated swale.

Mr. Ojala noted the 100 foot setback. He said the project could be modified to not have infiltration in the 100 foot wetland buffer. He said what was needed to do this was some re-grading. Mr. Ojala said the grass lined swale could be re-configured to a smaller one. He noted there would still be re-grading just outside the 50 foot buffer line, but that it would be re-seeded. Attorney Butler suggested there were other ways to address the wetlands issues, such as looking off-site protections, cash contributions, or educational programs. Attorney Butler said these could be part of Site Plan Review or the Order of Conditions.

Ms. Frazer asked if the Applicant's belief that the project was a less-intensive stormwater use was based on reduced parking, or differing with the staff's traffic generation figures.

Attorney Butler said no, the Department of Environmental Protection had a category called "commercially intensive parking" for the purposes of calculating stormwater pollution impacts. He said "intense" was like the Cape Cod Mall, not the Supply New England project.

Mr. Michaud noted the vegetated swale as the project was proposed would treat relatively clean roof runoff, which could be directly infiltrated into groundwater. Mr. Michaud said staff was interested in seeing runoff from the parking area treated to a higher level.

Ms. Garfield asked if the business was retail.

Attorney Butler said he would not characterize it as such.

Mr. Harris asked if the Applicant had now found a way to address Ms. Kadar's issue concerning the 100 wetland buffer.

Mr. Ojala said the stormwater could be directed such as to infiltrate outside the 100 foot wetland buffer.

Attorney Butler suggested the parking area could be moved further away from the wetland, but that the building and work limit would still be in the buffer.

Mr. Harris said if the Commission agreed to a reduced buffer zone, then other applicants could request a similarly smaller buffer. He was concerned about precedent. He also said he would like the Conservation Commission's opinion in writing.

Attorney Butler said Mr. Gatewood, Barnstable's Conservation Administrator, had given the Applicant an informal read of a project that had not yet been acted on by the Conservation Commission. Mr. Gatewood had indicated a comfort level with the proposed project, but declined to put anything in writing, because he was the Conservation Administrator, but that it would be the Conservation Commission that had to act on an application.

Mr. Harris reiterated that it was important to get things in writing.

Ms. Kadar asked for clarification regarding the intent of the Trust relative to a conservation restriction on the property.

Attorney Butler said Mr. Cole was having discussions with the Town, the Barnstable Land Trust and Department of Wildlife and Fisheries to find the best method to place a conservation restriction on the property. He said Mr. Cole was obligated to maximize the value of the restriction to the benefit of the Trust.

Public Comment

Mr. Broadrick, Barnstable Planning Director, said the Town Manager's office supported the project. He noted the Cobb Trust's benefit to school children. Mr. Broadrick also noted the Town was in the process of re-zoning the area where the existing business was located. He said the hope was to re-zone it such that a non-supply-type business, with less retail impact, would go onto the vacated space on Route 28. Mr. Broadrick said the trips would therefore be transferred to the Industrial Park. Mr. Broadrick expressed confidence in Mr. Gatewood's ability to provide a preliminary reaction to a project by the Conservation Commission. Mr. Broadrick noted that the stormwater discharge could be moved out of the buffer.

Mr. Cole, Trustee, Cobb Trust, described the history of the Trust. He noted that the Trust provided a variety of benefits to Barnstable school children, such as paying for enrichment trips. He characterized the project as a benign use of industrial land. Mr. Cole said he would like to see the back part of the site go to Fish and Wildlife, but that he had a duty to maximize the return to the Trust.

Mr. Corcoran described his plumbing supply company. He said the proposed project would allow his company to keep a branch on Cape Cod. Otherwise, Mr. Corcoran said he would have to move 50 employees out of Barnstable County.

Mr. Keller said there was a need for quality warehouse space on Cape Cod. He noted that Mr. Corcoran's lease at the present site on Route 28 was almost up. Mr. Keller said the project would have few impacts.

Mr. Frazer said she, and she believed also the Subcommittee, recognized the benefit of the Cobb Trust to Barnstable's school children.

Mr. Virgilio said it was important for the Subcommittee to digest the information they had received.

Attorney Butler addressed the zoning issues. He said the site could be used for retail, and a development less than 10,000 square feet in size. He said it was important to consider the monetary implications to the Cobb Trust of restricting the wetlands under a conservation restriction.

Ms. Kadar noted some issues were not entirely resolved, and which needed to be addressed before the Subcommittee could come to a decision. Ms. Kadar said these included the issue of the conservation restriction and open space, hazardous materials, stormwater, and the overall building design. She noted the Subcommittee and staff had not had time to review information on the building design received before the hearing.

Attorney Butler asked for comments on reducing the landscaped buffer versus reducing impacts to the wetland buffer.

Ms. Kadar said she would like to see the results of such discussions and project changes.

Mr. Harris asked how wide the landscaped buffer was.

Attorney Butler and Mr. Ojala said they thought is was 30 feet.

Mr. Virgilio said it was important to consider different configurations of the project to address the issues.

Mr. Fox described the project time-line, given that the review involved both a DRI and a DRI exemption request. Based on this, he said the Subcommittee needed to consider another meeting or hearing no later than September 12, 2005. He said the final hearing needed to be held before the full Commission no later than September 29, 2005, at least on the DRI exemption.

Attorney Butler said he thought the Applicant and Commission staff could make headway on resolving issues.

Mr. Hogan moved to continue the hearing and leave the record open to September 12, 2005 at 12:30 PM, at the Cape Cod Commission's office. Mr. Virgilio seconded the motion. The Subcommittee voted unanimously for the motion.

Hearing # 2 – Cape Cod Commission Office – September 12, 2005

Ms. Garfield opened the continued hearing at 12:30 PM. Ms. Garfield introduced the Subcommittee members, and asked the Cape Cod Commission (Commission) staff to present a report.

Attorney Wielgus reviewed the standard for granting a DRI exemption, Section 12(k) of the Commission Act. Attorney Wielgus said that the Subcommittee needed to make a finding that this proposed development, which literally qualifies as a DRI may, nonetheless, be exempted because it will have no significant impacts on the values and purposes specified in Section One of the Act outside of the municipality in which it is proposed, due to its location, character and environmental impacts. Attorney Wielgus said it was important to define the term "significant impact." She said the Act's definition of a "DRI" helps in this case, in that a DRI is a development, because of its magnitude, or the magnitude of its impact on the natural or built environment is likely to present development issues significant to or affecting more than one municipality. She said when the Subcommittee was deciding whether the project had any significant impacts or not, the Subcommittee needed to look at whether the project was significant to or affecting more than one municipality.

Attorney Wielgus said that Section One of the Act also provided guidance on the purposes and values protected by the Commission. She noted that the Commission had been created to protect the unique region known as Cape Cod. Attorney Wielgus said Section One of the Act recognizes that the Cape's unique values would be irreparably damaged by uncoordinated uses and development. Because of this, she said the Act created the Cape Cod Commission to protect these unique values.

Attorney Wielgus noted that the number one purpose in Section One of the Act was to further the conservation and preservation of natural, undeveloped areas, wildlife, flora and habitats for endangered species. Attorney Wielgus said it was important for the Subcommittee to consider if the proposed Supply New England project impacted anything significant to or affecting more than one municipality. She said that the Significant Natural Resources Area (SNRA) mapping indicated that there were natural, undeveloped areas, wildlife, flora and habitats for endangered species that were significant to or affecting more than one municipality. Attorney Wielgus noted all of the DRI exemptions indicated by Attorney Butler, save Infinium Software, were outside the SNRA area. She noted that the Infinium Software building existed in 1981, 10 years prior to the Commission Act. Attorney Wielgus also noted that the part of the project which was the subject of the DRI exemption was located outside of the SNRA area.

Attorney Wielgus read from a description published by Massachusetts Natural Heritage Program (MNHP) which indicated Coastal Plain Ponds provide habitat for at least 43 rare plant and animal species, as well as state protected and globally restricted rare plants. She noted a prime Commission purpose was to protect wildlife, flora and habitats for endangered species such as these. She said this was a key distinction between the Supply New England project and the other DRI exemptions referred to by Attorney Butler.

Attorney Wielgus said that NHL Skate fell in the Significant Natural Resources Area, but noted that it was reviewed as a DRI. She also noted that a Natural Resources Inventory had been done for the NHL Skate property, and that no rare species were found. Attorney Wielgus said there was a possibility, however, that there were rare and endangered species on the Supply New England site. She said the Commission did not know this – it was the Commission's obligation

to find this out. Attorney Wielgus suggested that the Commission needed to find out if rare species that were significant to or affecting more than one municipality were present on the Supply New England site. If rare species were present on the Supply New England site, this affected more than one municipality.

Attorney Wielgus noted the Commission's charge also included protection of the public drinking water supply. She noted that the other projects that had received DRI exemptions were on sewer, which posed less of a potential impact to the public water supply. She noted that Hurricane Katrina's impact on New Orleans was a illustration of how municipalities were interconnected in terms of their economy and infrastructure.

Attorney Wielgus noted that the Marine Water Recharge Area of Lewis Bay straddled the Barnstable/Yarmouth town line. She said this was a regional resource.

Attorney Wielgus said transportation was also a regional issue. She noted the plumbing supply business would attract customers from the entire region, not just Barnstable. She said several regional roads would be impacted, including Independence Drive.

In closing, Attorney Wielgus said the project's location, character and environmental effects did have significant impacts to Barnstable and other municipalities. She noted the location in the mapped rare species habitat. She noted the regional nature of the business – plumbing supply. Attorney Wielgus said it was also not possible to grant an exemption because the environmental impacts were unknown. She suggested that granting an exemption was not appropriate, but that there were other processes the Applicant could pursue.

Ms. Adams noted that staff had received an E-mail from Ms. Kadar, an alternate, concerning the project. She said that Ms. Kadar could not be present at the continued hearing, but wanted to communicate her thoughts to the Subcommittee. Ms. Adams distributed a copy of the E-mail. Ms. Adams also noted that Commission staff had met with the applicant's representatives prior to the hearing. She noted that stormwater discharge was outside of the 100-foot wetland buffer. Ms. Frazer asked if any of the other exemptions in the area had encroached on wetlands. She noted that the Supply New England site being in a SNRA had answered her question.

Mr. Ojala (Coastal Engineering) suggested that development of the LA-Z BOY project had encroached on wetland buffers.

Attorney Butler noted all of the exemptions pointed out by Attorney Wielgus were in a Zone II area, with the exception of part of the Shepley Wood Products site.

He agreed with Attorney Wielgus' presentation. The Subcommittee had to make a finding that the location, character and environmental affects prevent the project from having any significant impacts on the values and purposes protected by the Act outside of the municipality. He said the impacts have to occur outside of the municipality, not just to a regional resource.

Attorney Butler noted the amount of wastewater flow described on his yellow handout. He noted these flows were going to Barnstable's wastewater treatment plant, which was located in the Wellhead Protection Area.

Attorney Butler said the wetlands impacts are all within the Town of Barnstable. He said the Barnstable Conservation Commission would require a filing with the Massachusetts Natural Heritage Program and an inventory. Attorney Butler said Conservation Commission had to adopt any findings made by the Massachusetts Natural Heritage Program.

Attorney Butler said the Applicant had looked at whether the building could be moved. Attorney Butler said the parking area and roof runoff were removed from the 100 foot buffer. He said a vegetated swale had been added to the parking lot. Attorney Butler said the impacts had been reduced.

On hazardous materials, Attorney Butler noted Barnstable had a stringent zoning bylaw which will apply to the project. He said the project will not be allowed to have hazardous materials in excess of household quantities. He distributed part of the decision of the Commission relating to the Country Lake Motel Change of Use, and requested that the Subcommittee ask Barnstable Site Plan Review to make a similar finding.

Attorney Butler noted the yellow sheet he had distributed at the first hearing included traffic as an example of the types of impacts that were occurring. He said the Supply New England project compared to other uses where there were significant amounts of traffic, but that were not deemed to be significant from the perspective of having impacts outside of the municipality.

On open space and the issue of a conservation restriction, he said it was uncertain if the applicant could go any further. Attorney Butler said if the exemption was granted, there was no requirement for a conservation restriction.

Attorney Butler noted that the development of the Supply New England project would take place pretty much in a disturbed and cleared area, as well as being underneath a power-line easement. He said this was a relatively deminimus amount of disturbance.

Mr. Ojala suggested development of the LA-Z BOY project affected a100 foot wetland buffer on the site.

Attorney Butler said the question to be answered was will development in the particular project location cause a significant impact outside of Barnstable. Attorney Butler said that because the project was located in an industrial zone, the disturbed character of the land, and the minimal environmental effects of the project will prevent its having any significant impacts on the values and purposes outside of Barnstable.

Mr. Hogan said the most difficult decisions he has had to make deal with exemptions, since these projects trip a threshold where regional interests lie. Mr. Hogan said based on the first hearing, he got the impression that there was a desire for the Subcommittee to discuss the project's

merits, rather than dealing with the narrower issue of impacts, and whether it should be exempt or reviewed as a DRI. He said the project had impacts. He suggested that the nature of the company itself was regional – it had branches in several Cape and off-Cape towns. Mr. Hogan said he felt the impacts were regional, and justified reviewing it as a DRI. He expressed concern over the balance of the property. He said the property had regional impacts in terms of wetlands, habitat and open space protection. Mr. Hogan said protecting the 9 acres behind the proposed development was key – it had to be more than an intent.

Mr. Harris said it was important to consider whether the other projects that had received an exemption were on septic systems or on sewer. He said the 100 foot buffer should not be marginalized. He said it was also important to know that there was a firm commitment to protect the bulk of the property from development. He noted that making comparisons between the project site and the NHL Skate site in terms of natural resources was not useful give the distance between the two.

Attorney Butler said many of the other projects were connected to sewer. He noted the sewer plant discharged to the same water resources area.

Mr. Michaud said it was important to consider the level of treatment. He noted the sewer plant's effluent was treated to 10 ppm or better level for nitrogen. He said the Supply New England project would result in about 25 ppm based on state published numbers for denitrifying septic systems.

Mr. Ojala suggested the project would have 15-16 people, and a very low wastewater flow. He suggested the applicant would attempt to connect to the sewer when it was possible to do so.

Mr. Harris questioned whether the 100 foot wetland buffer was a concern.

Attorney Butler said the Applicant had moved all the drainage outside of the 100 foot buffer. Attorney Butler said the Barnstable Conservation Commission could adequately address the concerns. He said that all of the work, except for a minor part of the parking lot, would be outside of the 50 foot buffer. He said the area between the 50 foot buffer line and the 100 foot buffer line would be revegetated.

Ms. Frazer said she shared her colleagues desire to focus on the exemption question. She said the Subcommittee needed to look to its own charge, as members of the Cape Cod Commission. She said that it may be that Barnstable's Conservation Commission had a similar goal, but that this did not absolve the Commission members from their responsibilities in this and other areas.

Attorney Butler said the question of a conservation restriction did not get reached until the Commission had made a determination that there were significant impacts outside the municipality. Attorney Butler said in order to approve the project, it seemed that the Applicant should file a Hardship Exemption. Attorney Butler suggested the Applicant could look at what else could be done to the site to get everything completely outside the 100 foot buffer. He

suggested, however, that this might cause other problems, such as zoning issues, or by reducing the landscaping, which was another Commission concern.

Ms. McElroy said that the site was mapped as rare species, and that it was one of the Cape Cod Commission's charges to address rare species. Ms. McElroy noted that in addition to being mapped as rare species habitat, the whole area was part of the Hyannis Coastal Plain Ponds Complex. She said that when the Massachusetts Natural Heritage Program describes the habitat types, vegetation, rare plants and animals that might be found in these habitats, the Program uses this Coastal Plain Ponds Complex as an example.

Public Comments

Mr. Broadrick said that if the Subcommittee exempted the project from Commission review, he and his staff would attempt to work closely with Commission staff through the Site Plan Review process. In terms of additional drinking water wells considering the Potential Public Water Supply Area, he said he was not in a position to comment on this as yet. He said that if this was something the Town wanted to pursue, it would have to purchase the land from the Cobb Trust. Mr. Broadrick said it was not clear yet if the Town needed or wanted to use that land. He said there was no plan right now to use it, but there was no definite answer at this time.

Mr. Fox said the hearing on the DRI exemption had to be closed by September 22, 2005 and that the only date for a hearing by the full Commission on the exemption was September 29, 2005. He said the DRI timeframe was longer. Mr. Fox said the Subcommittee needed to decide the question today so that staff would have enough time to draft up a decision.

Ms. Adams said the Subcommittee had heard from the Commission Counsel as to what the Commission's charge is in terms of an exemption. She suggested that if Commission members wanted to ensure that an issue was addressed, the most direct way to do it was through a decision with conditions. She said there were also other technical issues that were not addressed.

Mr. Fox said that staff's point was that the Cape Cod Commission cannot place conditions on an exemption, but rather only a DRI or a Hardship Exemption. As such, Mr. Fox said the Subcommittee was trusting that local Site Plan Review would follow through, but that the Cape Cod Commission does not have control over this.

Attorney Butler said that the Commission has allowed Barnstable Site Plan Review to implement conditions on past exemptions to address issues of concern. He said these conditions have been implemented, and the issues addressed.

Mr. Fox said he did not think the Town ever done transportation mitigation through Site Plan Review. He said he had discussed this with Mr. Broadrick, and that Site Plan Review would be willing to attempt it. Mr. Fox said that this was something that should be more done through the Cape Cod Commission. He also said he did not remember open space being preserved through Site Plan Review. Mr. Fox said it was staff's perspective that these were issues that should be addressed through a DRI review.

Mr. Broadrick said Site Plan Review would be prepared to work with Commission staff to try to do the traffic mitigation and protect the rare species and open space through the Conservation Commission.

Mr. Harris asked if Commission staff or the rest of the Subcommittee was in agreement that the 100 foot buffer was not being breeched.

Ms. Frazer, Ms. Hevenor and Ms. McElroy said no.

Attorney Butler said the other exemptions in the area had had impacts that were not significant enough to create impacts outside of the municipality.

Ms. Frazer moved to deny the exemption request. Mr. Hogan seconded the motion.
The Subcommittee voted unanimously to deny the exemption request.

Mr. Harris asked what the next step was.

Attorney Butler asked if the Subcommittee would reconsider its vote within the remaining timeline if the Applicant addressed the wetland buffer and open space issues.

Mr. Harris said the RPP standards should not be breeched. He said, however, the applicant should be given every opportunity to address conformance with the standards. He expressed concern about impacts to the drinking water. Mr. Harris said the regional standards needed to be implemented.

Attorney Butler said the applicant will try to look at the 2 or 3 major issues, including the wetlands buffers, open space and conservation restriction, and how to address them before the full Commission must vote on the project.

Mr. Mumford noted that there were other regional issues that had not been discussed.

Mr. Fox said the DRI exemption hearing should be continued to 9:00 AM on September 22, 2005 at the Commission's office where the intent would be to close it with a hearing officer.

Attorney Butler said the applicant may want to file a Hardship Exemption application, or suggested that it might be possible to include it in the current review.

Mr. Fox said the hearings had not been noticed for a Hardship Exemption. He also suggested that if something dramatically changed, that the Subcommittee might reconvene as a group on September 22, 2005, if possible.

There was discussion of procedural matters. Consensus was to proceed with a continued hearing on the DRI exemption to 9:00 AM on September 22, 2005 at the Commission's office where the intent would be to close it with a hearing officer. There was also discussion of whether to hold a

Subcommittee meeting. Commission staff were directed to poll members on this after receipt of any additional information from the Applicant.

Mr. Harris moved to continue the hearing on the DRI exemption to 9:00 AM on September 22, 2005 at the Commission's office where the intent would be to close it with a hearing officer. Mr. Harris also moved to continue the DRI hearing to 10:00 AM on October 11, 2005 at the Commission's office. Mr. Hogan seconded the motions. The Subcommittee voted unanimously for the motions.

JURISDICTION

The proposed Supply New England project qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the *Enabling Regulations* as amended, as *"new construction of any building or buildings…with a Gross Floor Area greater than 10,000 square feet…"*.

STANDARD OF REVIEW

The Applicant has sought a complete exemption from Cape Cod Commission review of the project as a Development of Regional Impact pursuant to section 12(k) of the Cape Cod Commission Act ("Act"). Section 12(k) of the Act, provides, in pertinent part:

> Any applicant may apply to the commission for an exemption from Commission review because the location, character and environmental effects of the development will prevent its having any significant impacts on the values and purposes protected by this act outside the municipality in which the development is to be located…The Commission shall make a finding whether a proposed development which literally qualifies as a development of regional impact may nonetheless be exempted from Commission review because it will have no significant impacts on the values and purposes specified in section one outside the municipality in which it is proposed due to its particular location, character and environmental effects.

*Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990, as amended, Section 12(*k).

The values identified in Section One of the Act are as follows:

> The region commonly known as Cape Cod…possesses unique natural, coastal, scientific, historical, cultural, architectural, archaeological, recreational, and other values; there is a regional, state and national interest in protecting, preserving and enhancing these values; these values are being threatened and may be irreparably damaged by uncoordinated or inappropriate uses of the region's land and other resources.

The purposes identified in Section One of the Act are as follows:

> The purpose of the Cape Cod Commission shall be to further: the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply and solid, sanitary and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of historical, cultural, archaeological, architectural and recreational values.

The definition of *Development of Regional Impact* provides background of the definition of the phrase "significant impact". This definition provides:

> A development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality.

Section 7 of the Cape Cod Commission Enabling Regulations (as revised March 2005), which is entitled Developments of Regional Impact Exemptions requires that "the burden shall be on the Applicant to show that a project is exempt".

FINDINGS

The Commission has considered the exemption application of JDJ Housing Development, LLC for the proposed Project, and based on consideration of such application and upon the information presented at public hearings and submitted for the record, makes the following findings pursuant to Sections 12 (k) of the Act:

General Findings:

G1. The proposed Project literally qualifies as a Development of Regional Impact because it is new construction of a building with a Gross Floor Area greater than 10,000 square feet.

G2. The proposed Project is within a Significant Natural Resources Area that has been mapped for rare species habitat by the Massachusetts Natural Heritage and Endangered Species Program. It is also in the vicinity of the Hyannis Coastal Plain Ponds Complex.

G3. It is a purpose of the Cape Cod Commission to:
• protect groundwater, surface water and ocean water quality.
• provide adequate Capital Facilities, including transportation and water supply.
• further the conservation and preservation of natural undeveloped areas, wildlife, flora, and habitats for endangered plant and animal species.

G4. The proposed Project as described on plans entitled *Site Development Plans*, Supply New England, 755 Independence Park Drive, Barnstable MA – dated 1/12/05, by DownCape Engineering Inc., (five sheets plus cover page), and by *Proposed Exterior Elevations*, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A2.1 and by *Proposed Floor Plan*, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A2.1, where these plans, proposed exterior elevations and floor plan were received by the Commission on April 12, 2005, is a plumbing supply business including warehousing, contractor sales, retail sales, and showroom. The proposed development described on these plans and exterior elevations includes:

Main Building:	21,120 square foot warehouse
	5,280 square foot retail / showroom area
	26,400 Total gross floor area
Additional:	9,100 square foot outdoor storage
	41 parking spaces

G5. The proposed Project, as revised according to the latest plans received by the Commission on September 21, 2005, is a plumbing supply business including warehousing, contractor sales, retail sales, and showroom. The proposed development described on September 21, 2005 plans entitled *Proposed Grading & Landscape Plan* and *Proposed Utilities Plan*, (together on one large sheet), Supply New England, 755 Independence Park Drive, Barnstable MA – latest revision date 9/16/05, with green/orange color offsets, by DownCape Engineering Inc., shows a building with a footprint of 21,120 square feet, including 5,016 square feet of display area, and 3,800 square feet of outdoor storage. The proposed Project shown on these plans also includes parking spaces, the number of which is not shown on the plan.

G6. The project site is currently zoned for Industrial/Limited. It is also located in a Growth Activity Center according to the Commission-certified Barnstable Local Comprehensive Plan.

G7. The overall site consists of 12.80 acres of land in Hyannis, MA, within Independence Park. The proposed Project site is 3 leased acres of the larger parcel. The site is currently vacant, partially wooded with wetland areas. The site, including the area to be leased for the proposed Project, is also crossed by electrical transmission lines.

G8. According to the application form, the proposed Project will require an Order of Conditions from the Barnstable Conservation Commission, and Barnstable Site Plan review.

G9. This decision is based on the following plans as submitted by the Applicant. These include large and 11 x 17 inch versions:

Site Development Plans, Supply New England, 755 Independence Park Drive, Barnstable MA – dated 1/12/05, by DownCape Engineering Inc., (five sheets plus cover page)

Site Development Plans, Supply New England, 755 Independence Park Drive, Barnstable MA – dated 1/12/05, by DownCape Engineering Inc., (five sheets plus cover page), revised 6/10/05

Site Development Plans, Supply New England, 755 Independence Park Drive, Barnstable MA – dated 1/12/05, by DownCape Engineering Inc., (five sheets plus cover page), revised 9/7/05

Proposed Floor Plan, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A1.1

Proposed Exterior Elevations, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A2.1

Proposed Floor Plan, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 8/4/05, NDA Architects, plan A1.1, received by Commission on August 23, 2005

Proposed Exterior Elevations, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 8/4/05, NDA Architects, plan A2.1, received by Commission on August 23, 2005

Proposed Exterior Elevations, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 8/4/05, NDA Architects, plan A2.2, received by Commission on August 23, 2005

Proposed Grading & Landscape Plan and *Proposed Utilities Plan*, (together on one large sheet), Supply New England, 755 Independence Park Drive, Barnstable MA – latest revision date 9/16/05, with green/orange color offsets, by DownCape Engineering Inc. (received by Commission on September 21, 2005)

G10. Submissions by the Applicant did not address impacts from the Project's size, location and character relating to conformance with the Massachusetts Hazardous Waste regulations, waste minimization, emergency response planning, building design, signage, exterior lighting and noise issues.

Water Resource Findings:

WR1. The DRI exemption application is for construction of a warehouse and showroom in a leased area of 3.1-acre parcel totaling 12.80 acres. The proposal as described on plans entitled *Site Development Plans*, Supply New England, 755 Independence Park Drive, Barnstable MA – dated 1/12/05, by DownCape Engineering Inc., (five sheets plus cover page), and by *Proposed Exterior Elevations*, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A2.1 and by *Proposed Floor Plan*, Supply New England, 755 Independence Park Drive, Barnstable MA – revision date 3/4/05, NDA Architects, plan A1.1, also included 42,440 square feet of pavement for parking and vehicle access. Plans were received by the Commission on September 16, 2005 and September 21, 2005 reflecting a reduced paved area, the size of which is not quantified on the revised plans.

WR2. At the September 12, 2005 continued public hearing, the Applicant's engineer, Dan Ojala, stated that a municipal sewer connection was not available to the Project site. He also stated that it was unknown if or when the Town of Barnstable would allow the Project a municipal sewer connection.

WR3. The Project site is located in a Wellhead Protection Area according to Regional Policy Plan Water Resources Classification Map I, upgradient of the Mary Dunn well field which supplies drinking water to Hyannis. The Hyannis water supply provides drinking water to a regional economic hub upon which areas outside the Town of Barnstable are dependent. The Hyannis water supply is therefore a regional resource likely to present development issues significant to or affecting more than one municipality.

WR4. The Project is located in a Potential Public Water Supply Area according to Water Resources Classification Map I. If the Project was reviewed as a DRI, a 1-ppm nitrogen loading standard for Potential Public Water Supply Areas would apply. A nitrogen loading calculation submitted by the Applicant results in a 2.9 ppm nitrogen loading concentration in groundwater beneath the site and shows that the Project is unable to achieve a 1-ppm nitrogen loading concentration using a standard Title-5 septic system.

Revised Project plans received by the Commission September 16, 2005 reflect changes in building and pavement layout. Revised nitrogen loading calculations were not submitted to reflect changes in impervious paved areas. However, the reduction in pavement will not bring the nitrogen loading concentration below 1 ppm.

A September 16, 2005 Memo from Nutter, McClennen & Fish indicates that a composting toilet will be used. However, the Memo does not specify the type of composting toilet that will be used. In the absence of the permanent protection of upland areas in non-leased portions of the Project parcel, a waterless composting toilet would be necessary to bring the project's nitrogen loading to below 1 ppm.

Barnstable Director of Planning Thomas Broadrick provided oral testimony at the September 12, 2005 continued public hearing indicating that the Town could not ensure that the parcel would not be used as a future water supply. Because the Project site is a Potential Future Public Water Supply Area to Hyannis, a regional economic center, the proposed Project would have significant impacts upon the protection of groundwater and provision of adequate Capital Facilities, including water supply; these impacts would be significant to and affecting more than one municipality.

WR5. The Project is located in the Marine Water Recharge Area draining to Lewis Bay according to Water Resources Classification Map II. Lewis Bay and its watershed crosses both the Barnstable and Yarmouth town lines. Protection of the estuary is significant not only to Barnstable and Yarmouth, but also to Cape Cod as a region.

WR6. The Massachusetts Stormwater Policy Guidelines provide for specific types of advanced treatment for drainage from areas with higher potential pollutant loads (e.g. fleet truck storage areas). The Project plans, including drainage plans received by the Commission on September

16, 2005, were used to determine Project water resources impacts. The drainage plan received by the Commission on September 16, 2005 indicates that a vegetated drainage swale incorporated into Project plans will capture runoff from approximately 1/6th of paved parking and driveway areas. The plan is inconsistent with the narrative submitted on September 16, 2005 indicating that the drainage swale receives drainage from all directions. It does not appear that the swale depicted on the revised Project plans is adequate to address stormwater treatment in accordance with the Massachusetts Stormwater Policy Guidelines, which require specific treatment of drainage with higher potential pollutant loads. The Supply New England site, as a warehouse for plumbing and bath supplies, is expected to have a delivery service, and may have a fleet truck storage area.

WR7. The specific information noted below was requested from the Applicant's Project engineer so that the significance of project impacts could be gauged. However, the information was not provided to the Commission:

a) An exhibit of water-use information over a five-year period for comparable land uses to quantify expected wastewater flows and nitrogen loading;
b) Details of the proposed composting toilet to gauge: the level of wastewater treatment, the characteristics of any wastewater discharge at the site and the project's nitrogen loading; and
c) Stormwater runoff calculations to assess the effectiveness of the proposed vegetated drainage swale.

WR8. Based on the information received, the Commission cannot make a finding that the Project will have no significant impacts on the values and purposes protected by the Act outside of the municipality in which the development is proposed, due to its particular location, character and environmental effects.

Hazardous Materials/Wastes Findings:

HMW 1. Based on maps created for the 2002 (revised) Regional Policy Plan, the site is located in an existing Wellhead Protection District/Zone II area and a Potential Public Water Supply Area. Given Cape Cod's Sole Source Aquifer, drinking water is a regional resource. The application states that Supply New England keeps approximately 24 gallons of chemicals on hand. However, a May 27, 2005 Commission staff site visit to their Hyannis store indicated that Supply New England had at least 50 gallons of hazardous materials on hand, which is an amount in excess of the limit set by the Regional Policy Plan. For this reason, the Project will have significant impacts on the values and purposes protected by the Act, especially protection of groundwater, outside of Barnstable, due to its location, character and environmental effects.

Natural Resources / Open Space Findings:

NROS1. The first purpose of the Cape Cod Commission in Section One of the Act is to further the conservation and preservation of natural, undeveloped areas, wildlife, flora and habitats for endangered species. The 12.80 acre Project site is entirely located in a Significant Natural Resources Area as mapped by the Regional Policy Plan. The entire site has also been mapped by

the Massachusetts Natural Heritage Program as a priority habitat site for rare plant and animal species. 3.1 acres of wetland are located throughout the central and southern portion of the site.

NROS2. Section One of the Commission Act recognizes that there is a regional, state and national interest in protecting Cape Cod's unique natural values.

NROS3. The Project site is located in the vicinity of the Hyannis Coastal Plain Pond Complex. Coastal plain pondshores have an abundance of State-protected and globally restricted rare plants. According to the Massachusetts Natural Heritage and Endangered Species Program, coastal plain pondshores and ponds can provide habitat for up to 43 rare animal and plant species.

NROS4. The Applicant did not conduct a natural resources inventory (NRI) of the site or submit any other documentation demonstrating that development on the site would not impact rare plant or wildlife species. Because no NRI was conducted, the nature and value of the resources present could not be determined. For this reason, the Commission cannot make a finding that the Project will have no significant impacts on the habitats for endangered plant and animal species for which there are regional, state, and national interests in protecting outside of the municipality of Barnstable due to its particular location, character and environmental effects.

NROS5. The RPP requires a minimum 100 foot undisturbed vegetated buffer area from wetlands to protect their natural functions. Clearing and grading activities, and the work limit area would occur inside the 100 foot buffer.

NROS6. The Project, as proposed, would not result in permanent protection of sensitive resources on the site.

NROS7. Because of the Project's location within the Significant Natural Resources Area mapped as rare species habitat, and the potential environmental effects to rare plant and animal species within the site, the Cape Cod Commission cannot make a finding that there are no significant impacts outside of Barnstable on the values and purposes specified by Section One of the Act, especially the purpose of furthering the conservation and protection of natural, undeveloped areas, wildlife, flora and habitat for endangered species.

Transportation Findings:

T1. Based on the Institute of Transportation Engineers *Trip Generation* manual (7th ed.), the proposed Project would generate the following new traffic:

Use	ITE Code	Size	Units	AM Peak Hour	PM Peak Hour	Total Weekday
Warehousing (outdoor and indoor)	150	26,620	KSF	15	16	132
Building Materials and Lumber (retail/showroom)	812	5,280	KSF	21	32	265
TOTAL		31.9		36	48	397

T2. Given the size, nature, and location of the proposed Project, as well as the limited number of such developments on Cape Cod, the development would attract traffic from outside the Town of Barnstable, affecting regional travel.

T3. Development traffic traveling on regional roadways would impact trips with an origin, a destination, or both outside of Barnstable, affecting regional travel.

T4. The development would impact the following regional roadways:

- Independence Drive
- Attucks Way
- Kidds Hill Road
- Mary Dunn Road
- Route 6A
- Route 132

T5. The development would have impacts on the regional intersection of Independence Drive and Route 132, affecting regional travel. This intersection has been identified as having a higher than statewide average crash rate.

T6. The development would have impacts on the regional intersection of Mary Dunn Road and Route 6A, affecting regional travel.

T7. The project would involve breaking the median on Independence Drive, contrary to access management principals. The turning traffic at the driveway/median break would affect regional traffic traveling to and from Route 132, Mary Dunn Road, and other sections of Independence Drive.

T8. The Commission finds that there will be significant impacts to the purpose of provision of adequate Capital Facilities, including transportation outside of Barnstable, due to its location, and the character of the proposed business.

CONCLUSION

The Cape Cod Commission finds that the Applicant has not met its burden to show that the proposed Project is exempt. The Cape Cod Commission hereby denies JDJ Housing Development, LLC, a Development of Regional Impact exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act, c. 716 of the Acts of 1989, as amended for the proposed Supply New England Project, located in Independence Park in Hyannis, MA, because the Applicant has not met its burden to show that the proposed Project, because of its location, character and environmental effects will prevent its having any significant impacts on the values and purposes protected by this Act outside the municipality in which the development is to be located. The Cape Cod Commission concludes that there will be significant impacts on the values and purposes protected by this Act outside of the municipality of Barnstable due to the Project's particular location, character and environmental effects.

_____ _____

Alan Platt, Chair Date
Cape Cod Commission

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2005

Before me, the undersigned notary public, personally appeared _____, in his 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 personal knowledge of the undersigned.

_____
Notary Public

My Commission Expires: