



CAPE COD COMMISSION

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Date: November 17, 2005

To: Sallie Riggs, Project Manager

From: Cape Cod Commission

RE: Development of Regional Impact
Project of Community Benefit Hardship Exemption
Cape Cod Commission Act, Section 23

Applicant: National Marine Life Center
Kathy Zagzebski

Project: National Marine Life Center
120 Main Street
Buzzards Bay, MA

Project #: HDEX # 05018

Book/Page: Lot 2, Town of Bourne Barnstable Registry, Map 23 Book 2655, page 259; Lots 179, 180, 181, former Penn Central Lot Town of Bourne Barnstable Registry, Map 23.3 Book 2655, page 259; U.S. Army Corp of Engineers Map 16, Parcel 15 1/97, Book 453, Page 287.

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Project of Community Benefit (POCB) Hardship Exemption (the "Project") application of the National Marine Life Center (NMLC) for the redevelopment on Main Street in Buzzards Bay, MA 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 November 17, 2005.

PROJECT DESCRIPTION

The Project is located at 120 Main Street, Buzzards Bay, MA. The property is approximately 4.7 acres, and is zoned as a General Business B-2 District.

Project of Community Benefit/Hardship Exemption Decision – National Marine Life Center
Buzzards Bay, MA
November 17, 2005

The proposed Project consists of the renovation and upgrading of an existing marine animal rehabilitation facility and marine life education center in downtown Buzzards Bay. The proposed Project is located on Town-owned Lots 2, 179, 180, 181, and a portion of the former Penn Central Railroad lot, and a lot along the Cape Cod Canal, owned by the Army Corps of Engineers.

The renovation includes removal of an existing 2,800 square feet (sf) storage area on the main building, adding a 2,840 sf accessory structure to a 16,446 sf building for a total of 16,486 sf of building; replacing 30,091 sf of aged asphalt with 35,808 sf of pavers and new asphalt for the driveway; replacing a paved parking area with gravel; and installation of two seawater uptake pipes and one pipe for occasional release of treated seawater at the Cape Cod Canal. The interior of the building will also be renovated to include seawater tanks and marine animal life support filtration systems for the rehabilitation of marine mammals and turtles, office space, a marine educational and discovery center, and a store.

The site is adjacent to town owned land, which recently has been the subject of an international design competition sponsored by the Buzzards Bay Village Association. The very successful competition garnered 159 entries from 21 countries, with plans for development of “Bridge Park” with a goal of making a connection between the village and the Cape Cod Canal to serve all of the community, and to encourage creative ideas for the revitalization of the downtown. In the background is the highly visible and scenic Buzzards Bay train bridge, and entrance to the Army Corps of Engineers Canal service roads, which are used as popular biking and walking ways. The property also abuts connections to the proposed Greenbelt Pathways trail system linked to the village.

The site was the former Grossman’s Hardware and Mobil Oil sites, and abuts Army Corps of Engineers property. The site is highly altered by prior uses, and a wetland on the property has become degraded by past alterations and invasive species.

PROCEDURAL HISTORY

The applicant filed an application for review as a Project of Community Benefit through the Hardship Exemption process on May 15, 2005. The application was deemed complete on September 16, 2005.

A duly noticed public hearing was held on October 20, 2005 at the Upper Cape Cod Technical High School in Bourne, MA. Following the hearing, the subcommittee voted unanimously to recommend to the full Commission that the Project be granted a Hardship Exemption (Project of Community Benefit), with conditions.

A final public hearing was held before the full Commission on November 17, 2005. At this hearing the Commission voted unanimously to approve the Hardship Exemption with conditions.

MATERIALS SUBMITTED FOR THE RECORD

By Applicant:

- Sign plan by Wendy Mellinger, dated May 30, 2003, of the architectural firm Chermayeff, Sollogub and Poole Inc., Boston, MA
- Memo dated October 20, 2005
- Email from Sallie Riggs to Glenn Cannon dated October 7, 2005
- Letter from Sallie Riggs dated October 4, 2005
- Copy of DEP Stormwater management form received September 7, 2005
- Copy of memo from Christine Wallace, Horsley Witten Group, to Sallie Riggs dated August 24, 2005
- Plan and elevations dated May 30, 2003 by CSP Architects, received August 22, 2005.
- Memo from Sallie Riggs to M. Twombly received August 11, 2005
- Streetscape plans received August 11, 2005
- Mass. Historic Commission Filing with MHC stamp received August 11, 2005
- Sources of funding as of June 30, 2004
- Plans of seawater intake and discharge pipelines dated April 5, 2005, received April 15, 2005
- Application dated May 31, 2005; includes Existing Conditions site plans 1-6 prepared by Tibbetts Engineering, dated January 3, 2005; included development plans dated May 30, 2003 Utility Building Plans A1.6, Building Elevations A2.1, North-South Building Sections A2.3, Wall Sections A3.1, Life Support Legend LS0.1, Life Support Schedules LS0.2, Life Support Below Grade LS1.1, Life Support Lower Piping LS1.2, Life Support High Piping LS1.3, Site Plan A0.1
- Prior letters of support (2001-2003) from Edmond LaFleur - Bourne Public Schools, Robert Gagosian - WHOI, Marie Oliva – CC Canal Region Chamber of Commerce, New England Aquarium MOU, Dr. Philip Kosch - Tufts University, Senator Therese Murray, Robert Ballard – Sea Research Foundation, Daniel Morast – International Wildlife Coalition, New England Division of the Army Corps of Engineers, David Pittenger – National Aquarium in Baltimore, Bob Durand – Executive Office of Environmental Affairs, Nancy Foster, NOAA, Senator Edward Kennedy, Senator John Kerry, John O'Brien – Cape Cod Chamber of Commerce.
- 100% Construction Documents, National Marine Life Center, Outdoor Exhibits, and External Exhibit Sound Key Plan, dated 5/03, prepared by Chermayeff, Sollogub and Poole, Inc., sheets X1.0 and X0.1

By State:

- Letter from State Representative Matthew Patrick dated October 24, 2005
- Letter from State Representative Susan Williams Gifford, dated October 14, 2005
- Letter from Senator Therese Murray dated October 11, 2005

By Town:

- Letter from Coreen Moore, Town Planner, dated October 18, 2005
- Letter from John Harding, Bourne Financial Development Corporation, dated October 12, 2005
- Letter from Tom Guerino, Town Administrator, dated October 3, 2005

By Commission Staff:

- October 14, 2005 – Staff Report
- Letter to Sallie Riggs from M. Twombly, dated June 13, 2005

By Interested Parties:

- Letter from Rick Gurnon, Mass. Maritime Academy, dated October 27, 2005
- Letter from Tom Moccia, Buzzards Bay Village Association, dated October 20, 2005
- Letter from Barry Motta, Superintendent of the Upper Cape Cod Regional Technical School, dated October 20, 2005
- Letter from Katie Touhey, Director of the Cape Cod Stranding Network, at the public hearing on October 20, 2005
- Letter from Dr. Abt, Chairman of the Board of Directors for the Cape Cod Stranding Network, at the public hearing, October 20, 2005.
- Letter from Marie Oliva, Cape Cod Canal Region Chamber of Commerce, dated October 17, 2005
- Letter from Jeffrey P. Luce, Community Relations and Economic Development Specialist, NSTAR Electric, in support of the project

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 our proceedings are incorporated into the record by reference.

TESTIMONY

Hearing #1 - October 20, 2005 – Upper Cape Cod Regional Technical School, Bourne, MA

Richard Largay, acting Chair of the Board of Trustees, said that the National Marine Life Center is privately funded, having to raise all funds for the construction of the Project and operations of the facility, and has an economic hardship.

Kathy Zagzebski, Executive Director of the NMLC, gave a power point presentation about the mission of the NMLC, an explanation about the business, educational and operations of the facility as a hospital for the rehabilitation of stranded marine animals, including small whales, seals and turtles. Ms. Zagzebski described the renovation of the building and site. Ms. Zagzebski also described benefits of the project.

Mr. Zavala asked about partnerships with other marine oriented businesses. Ms. Zagzebski noted that the NMLC works closely with other public and private organizations.

Mr. Zavala asked about the potential for businesses to “spin-off” from the NMLC similar to the way WHOI has fostered other businesses. Ms. Zagzebski noted that the likelihood of medical

treatment discoveries, medical techniques or new technologies being generated by research was high.

Mr. Doherty asked if the NMLC was in touch with the Regional Competitiveness Council and others in the marine technology industries. Ms. Zagzebski said she would be meeting with these and many other groups.

Mr. Doherty asked how many visitors the facility had. Ms. Zagzebski said approximately 4000-6000 each summer, and noted that the facility is currently open to the public in the summer.

Mr. Zavala asked about future staffing. Ms. Zagzebski said at full buildout, staff would be approximately 26, and they also would work with hundreds of volunteers.

Martha Twombly, staff planner, reviewed the standards for review of a Project of Community Benefit (POCB), and said the staff recommended that the NMLC met the criteria. She noted that the project met most of the Minimum Performance Standards (MPS) for redevelopment, except in stormwater, hazardous materials, and lighting, and recommended that the Sub-committee limit review to those three areas. Hydrologist Ed Eichner explained that the stormwater standards were difficult to meet due to site constraints and the proximity of groundwater in this area. He stated that the proposed stormwater system was an improvement over the existing situation, and said that staff could work with NMLC during compliance to make further improvements without causing costly design changes.

Mr. Doherty noted that not all funds for NMLC were from private sources, and that the County had made some contributions to NMLC.

Mr. Zavala asked about the capacity of the parking lot. Ms. Zagzebski said it was smaller than the existing parking area and more efficient. She said she believed there was capacity for the NMLC operations. Tim Boesch, Commission traffic engineer, concurred.

Mr. Zavala noted that the project should meet the MPSs to the maximum extent feasible, and asked about stormwater. Mr. Eichner said that NMLC is meeting it to the best extent without expensive redesign and construction measures.

Public Testimony

Speaking in support of the project were: Tom Cahir, former state representative, Katie Touhey from the Cape Cod Stranding Network, Tom Moccia, Executive Director of the Buzzards Bay Village Association, John Harding, Chairman of the Board of the Bourne Financial Development Corporation, Dr. Donald Abt, veterinarian from the Cape Cod Stranding Network, Bill Norman of the Army Corps of Engineers.

Doty Adkins read a letter into the record on behalf of Coreen Moore, Bourne Town Planner, stating that the planning board was supportive of the project, that it was a key to the revitalization of Buzzards Bay, and that the streets could handle any traffic generated.

JURISDICTION

The National Marine Life Center qualifies as a Development of Regional Impact under Section 3(e) of the DRI Enabling Regulations as “any development with a gross floor area greater than 10,000 square feet (sf).”

FINDINGS

The Commission has considered the application of the National Marine Life Center for the proposed redevelopment, and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following Findings pursuant to the 2002 Regional Policy Plan and Section 23 of the Act:

General Findings:

- G.1** The proposed National Marine Life Center is the redevelopment of an existing commercial site with a hospital facility for the rehabilitation of stranded marine animals, and to provide public education, opportunities for scientific research and educational internships. The application explains the need for high quality, accessible services for marine animals as most strandings occur on Cape Cod.
- G.2** As the first substantive public hearing was held on October 20, 2005, this Project has been reviewed in accordance with the 2002 Regional Policy Plan.
- G.3** The Project will be built in accordance with the following plans: Existing Conditions site plans 1-6 prepared by Tibbetts Engineering, dated January 3, 2005; included development plans dated May 30, 2003 Utility Building Plans A1.6, Building Elevations A2.1, North-South Building Sections A2.3, Wall Sections A3.1, Life Support Legend LS0.1, Life Support Schedules LS0.2, Life Support Below Grade LS1.1, Life Support Lower Piping LS1.2, Life Support High Piping LS1.3, Site Plan A0.1; Sign Plan by Wendy Mellinger, dated May 30, 2003, of the architectural firm Chermeyeff, Sollogub and Poole Inc., Boston, MA.
- G.4** The Project is not located in a District of Critical Planning Concern, is consistent with local zoning and will require site plan review from the Bourne Planning Board. Bourne does not currently have a certified local comprehensive plan (LCP), however the draft LCP puts a high priority on the revitalization of Buzzards Bay.
- G.5** The NMLC relies heavily upon significant grants and private funding to meet its capital requirements and operating funds. The Applicant’s Hardship Exemption filing explains that there exists significant competition for grants for animal welfare purposes such as this nonprofit medical care facility for stranded marine animals. As such, strict

conformance with the requirements of the RPP would result in additional expenditures that could constitute a hardship by diminishing the community benefits to be conferred.

- G.6** The NMLC confers distinct benefits to the community and citizens of Barnstable County by advancing the protection and enhancement of scientific, cultural, educational and economic values. Benefits include: opportunities in the environmental research community to study marine animals during rehabilitation and following/tracking their release into the wild; school programs and internships for local high schools and colleges; benefits to the community with partnerships with other businesses and organizations; as an attraction to draw people to Main Street and to enhance revitalization of Buzzards Bay; economic benefits through job creation of high-quality, year-round jobs; and benefits to marine animals for more successful rescue and rehabilitation.

Coastal Resource Findings:

- CR.1** The Project is a water-dependent project as defined in the 2002 RPP, due to the need for the marine life facility to be in close proximity to the sea for intake and discharge of ambient seawater required to fulfill its primary purpose. The facility should keep an archive and log of water samples to describe any circumstances involving the discharge of untreated or partially treated water to minimize impacts to fish, shellfish, and crustaceans consistent with MPS 2.2.3.8.
- CR.2** The Project entails construction within portions of the buffer zone to mean high water, the buffer zone to the top of the coastal bank and within the FEMA flood zone. Development and redevelopment are generally not allowed in these protected buffer zones. However, the 2002 RPP exempts water dependent projects from protective coastal buffer zone provisions (MPS 2.2.2.4), and the Project meets criteria for redevelopment in a flood zone (MPS 2.2.2.2).
- CR.3** The area that will be disturbed by the proposed development is already altered, and the proposed construction will not contribute to adverse environmental impacts to the coastal attributes including coastal habitat and living marine resources in the area as required by MPS 2.2.3.8.
- CR.4** The proposed Project will benefit the town of Bourne and regional interests by providing educational opportunities focusing on marine topics for residents and visitors. The operation of the facility may benefit living marine resources by reducing morbidity from small group stranding events, from the stranding of individual small and medium-sized marine mammals, from injuries, and from the entanglement and ‘cold-stunning’ of sea turtles.

Water Resource Findings:

- WR.1** The National Marine Life Center (NMLC) is located adjacent to the Cape Cod Canal.

As such, it is not located within any of the primary water recharge areas described in the RPP and the general stormwater and regional 5 ppm nitrogen loading minimum performance standards apply.

- WR.2** With an approved connection to the Buzzards Bay wastewater collection system, the proposed NMLC will meet the regional 5-ppm nitrogen-loading standard (MPS 2.1.1.1.). Wastewater on the site is currently disposed of in the sewer system that serves the village of Buzzards Bay. This system pipes wastewater from the village to the Wareham municipal treatment facility. Based on water use, the current NMLC generates 241 gallons per day of (gpd) wastewater, while the proposed expansion has a Title 5 design flow of 12,474 gpd.
- WR.3** Given the site's constraints, including its existing development, the low elevation, and adjacent wetlands, the project would need significant redesign to meet the RPP's Minimum Performance Standards (MPSs) for stormwater.
- WR.4** The applicant has proposed the re-engineering of two features to better treat stormwater on the site: a 200-ft vegetated swale along the southwest side of the property and a bioretention area/raingarden along the southern side of the parking lot. A narrative describing the changes to these features was received on October 4, 2005 by Commission staff, but a revised stormwater plan detailing these features has not yet been received.
- WR. 5** The conceptual stormwater design proposed will meet the goal of the RPP's stormwater section and produce a significant improvement in stormwater treatment. As proposed in the narrative, the project will meet the following applicable stormwater MPSs: 2.1.3.1 (no new direct discharge of untreated stormwater), 2.1.3.3 (use of vegetated swales and non-structured wetland detention basins), and 2.1.3.6 (submittal of an approved stormwater system maintenance and operation plan).
- WR.6** MPS 2.1.3.2 requires that stormwater treatment designs for projects before the Commission to be based on a 25-year, 24-hour storm and that stormwater is managed and infiltrated on site. The unique circumstances of the NMLC site, including the relatively small parcel size, existing development on the site, available unsaturated thickness, the adjacent wetlands, and the proximity to the ocean/Cape Cod Canal warrant an exception to this requirement. The NMLC is proposing to improve the current stormwater design and treatment on the site by treating the first 0.5 inch of all storms (the portion that contains most of the pollutants) and providing significant improvement in total suspended solids removal, before allowing the treated stormwater to discharge to offsite wetlands and the Canal. This design minimizes discharge on site.

Therefore, the Commission finds that:

- i. The Applicant has met its burden showing that a hardship exists,

- ii. Literal enforcement of the Standards would be a hardship for the Applicant,
- iii. Fully relieving the NMLC of the requirements of MPS 2.1.3.2 to allow for treating the first 0.5 inch with the enhancements described in the submitted narrative is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

WR.7 MPS 2.1.3.5 requires that stormwater treatment designs for projects before the Commission include a minimum two (2) foot separation between the maximum high water table and the point of infiltration. The unique circumstances of the NMLC site, including the low elevation and the proximity to the ocean/Cape Cod Canal, limit the available unsaturated thickness and warrant an exception to this requirement. The NMLC is proposing to improve the current stormwater design and treatment on the site by treating the first 0.5 inch of all storms (the portion that contains most of the pollutants) and providing significant improvement in total suspended solids removal, before allowing the treated stormwater to discharge to offsite wetlands and the Canal. This design minimizes discharge on site.

Therefore, the Commission finds that:

- i. The Applicant has met its burden showing that a hardship exists,
- ii. Literal enforcement of the Standards would be a hardship for the Applicant,
- iii. Partially relieving the NMLC of the requirements of MPS 2.1.3.5 to allow for the enhancements described in the submitted narrative is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

Natural Resource Findings:

NR.1 The project site is not located in a Significant Natural Resource Area, nor is it mapped for any other significant habitat interests. The site is almost entirely previously disturbed, with large portions of the site paved or rubble/gravel with minimal vegetation. A bordering vegetated wetland (BVW), which drains through a culvert to a channel containing salt marsh species and then through a second culvert out to the canal, is located at the rear of the site.

NR.2 Redevelopment of the site will result in little change in the impervious area on the site.

Proposed wetland buffer alterations will result in changes to the buffer zone, which are neither worse nor greater in extent than the existing conditions. The greatest area of alteration is 23,454 sf of pavement that will be replaced with gravel and a stormwater swale immediately adjacent to the BVW onsite. As required by MPS 2.3.1.2, the Commission finds that this alteration is no worse than the existing condition of the buffer, and there is no feasible alternative location for parking and stormwater management. In addition, approximately 9,000 sf of wetland buffer will be altered temporarily for the installation of the intake and discharge pipes to the canal. These buffer areas will be restored following installation, and the Commission finds that the activity can be permitted through the provisions for wetland dependent projects in MPS 2.3.1.2.

- NR.3** The proposed upland seed mix for restoration of the upland portions of the wetland buffer contained dame's rocket (*Hesperis matronalis*), an invasive species. The applicant agreed to substitute the proposed seed mix from Southern Tier Consulting with another mix from New England Wetland Plants, such as New England Erosion Control/Restoration mix for upland sites.
- NR.4** According to the NMLC, the BVW will be restored to salt marsh by the Army Corps of Engineers through a separate permitting process. It is unknown when that project may proceed.

Open Space Finding:

- OS.1** An open space set aside is not required for the Project. Virtually no part of the upland portion of the site is undisturbed, and consequently under the redevelopment standard MPS 2.5.1.4, no open space is required.

Transportation Findings:

- T.1** The Institute of Transportation Engineer's (ITE) *Trip Generation* manual does not include trip generation estimates for marine life rehabilitation, research, and educational centers. The Applicant has estimated a net increase of 400 cars per day. Peak hour traffic can be expected to be about 10 percent of the daily traffic or approximately 40 vehicle trips.
- T.2** The NMLC has estimated the trip distribution of the project. The NMLC estimates that Twenty-five (25%) percent of the traffic approaches from the west and seventy-five (75%) percent approaches from the east. Using these estimates, Cape Cod Commission staff calculates that 10 cars would impact the west end of Main Street, Buzzards Bay and 30 cars would impact the east end of Buzzards Bay.
- T.3.** MPS 4.1.1.2 requires further analysis at locations with three or more crashes per year, and where proposed developments are expected to generate 25 or more peak hour trips. Based on a review of the crash data available at the Cape Cod Commission, the regional

intersection of Main Street and Saint Margaret's Street has fewer than 3 crashes per year. Therefore, further crash evaluation is not required by the RPP.

- T.4** MPS 4.1.2.1 states that all development and redevelopment not located within Growth Incentive Zones shall implement adequate and acceptable measures to reduce and/or offset 25% of the expected increase in summer site traffic resulting from the development on a daily and project peak-hour basis. The National Marine Life Center has proposed a trip reduction program that includes walking, carpooling, public transportations for employees and patrons, a transportation coordinator and a guaranteed ride home program as outlined in Transportation Condition 1.

Economic Development Findings:

- ED.1** The NMLC is compatible with, and complements, Cape Cod's environmental, cultural, and economic strengths. The Center's focus on the rehabilitation of injured marine animals along with its educational and science programs will reinforce the Cape's existing marine industry, an economic niche that has been identified as a priority in the Regional Policy Plan, the Comprehensive Economic Development Strategy, and the Governor's Regional Competitiveness Council. The Center's interest in opening their operation to visitors will add strength to the region's tourism economy by reinforcing the opportunity for tourists to learn about and understand our fragile environment while contributing to our economy.
- ED.2** The Applicant has provided long-term employment data along with brief job descriptions for each position being created for the NMLC facility. This shows that two upper management positions in the salary range of \$ 65,000.00 to \$90,000.00, and approximately 24 positions with salaries ranging from \$ 20,000.00 to \$ 40,000.00 will be created. This is in compliance with MPS 3.1.1 in the interests of creating high quality, full time jobs on Cape Cod.

The Executive Director, Animal Care Manager, and a support/outreach coordinator are currently on staff, and other positions are contingent on the proposed expansion. The NMLC will provide volunteer and internship opportunities to fill positions including: Animal Care Givers, Education Associates, Museum Guides, and Retail Associates. In addition, the NMLC "will work with colleges and universities to develop and supervise internships for veterinary, vet tech, retail, and engineering students, as well as teachers in training."

- ED.3** The NMLC is located appropriately to preserve and potentially enhance the cultural heritage and quality of life of the region. The Town of Bourne actively recruited the NMLC to its current location in downtown Buzzards Bay. The Town and the NMLC have a lease agreement for the property at a cost of \$1 per year for 50 years. The NMLC is considered a cornerstone project in the Town's effort to revitalize Buzzard's Bay, and is consistent with the RPP's Economic Development Goal 3 which looks to preserve the

Cape's environment and cultural heritage, minimize adverse impacts, and enhance the quality of life.

- ED.4** While the Town of Bourne has not completed its Local Comprehensive Plan with designated growth centers, the Project is located in the village center of Buzzards Bay, and therefore complies with the intent of MPS 3.2.2. The town has also begun to assess the possibility of applying for a Growth Incentive Zone designation for Buzzards Bay.
- ED.5** *Goal 3.3 encourages employment diversification through “the creation and diversification of year-round employment opportunities.”* The NMLC expansion should result in a small complement of skilled year-round positions that will add diversity to the local Buzzards Bay economy and complement important sectors of the regional economy. If the full scope of this project is realized it will serve to diversify year-round employment opportunities.
- ED.6** The proposed project complies with a number of Other Development Review Policies (ODRPs) within the economic development section of the RPP. These include:
- ODRP 3.1.5: livable-wage jobs, knowledge-based employment
 - ODRP 3.1.6: encourage cultural tourism
 - ODRP 3.1.8: reuse of existing buildings
 - ODRP 3.2.3: mixed use, pedestrian friendly, concentrated development
 - ODRP 3.2.4: village scale development
 - ODRP 3.2.7: infill of existing strip development with adequate infrastructure
 - ODRP 3.3.1: permanent, well-paying, year-round jobs with benefits and career path opportunities

Community Character Findings:

Historic Preservation /Building Design

- CC.1** On April 21, 2005, the Massachusetts Historical Commission determined that the project is unlikely to affect significant historic or archaeological resources. A survey of historic properties in Buzzards Bay was conducted several years ago and no significant properties were identified on the proposed project site. The proposed work will not impact historic resources and thus is consistent with the RPP performance standards related to heritage preservation.
- CC.2** The proposed project is consistent with RPP performance standards related to project siting. The site is located within the developed area of Buzzards Bay, reinforcing the distinction between village centers and outlying areas required by MPS 6.2.1. The proposed project also follows traditional streetscape patterns, with the building sited close to Main Street and parking located to the rear as required by MPS 6.2.7.
- CC.3** The proposed project is consistent with RPP performance standard 6.2.5 regarding

building massing and design. The existing structure is approximately 17,000 sf, with a proposed addition of 2,840 sf. The proposed structure is thus well under the 50,000 sf footprint allowed for redevelopment projects under MPS 6.2.5. Though the design of the structure is not traditional in nature, it effectively modifies the existing industrial structure into a more visually varied building by adding clerestory windows and using different exterior building materials.

- CC.4** The small utility building (2,500 sf) on site is proposed to be flat roofed and sided with metal panels, similar to portions of the main building. The applicant will need to provide samples of the proposed metal siding material to demonstrate that it has a neutral color and matte finish to reduce reflectivity.

Lighting

- CC.5** Much of the proposed project's exterior lighting complies with MPS 6.2.10 based on Technical Bulletin 95-001, including:
- Five BEGA metal halide on-building lights mounted at 12 foot heights at the back of the building to service two delivery entrances to the animal hospital.
 - Twenty SE'LUX SATURN 3 metal halide lights on 12 foot poles and seven SE'LUX SATURN bollard lights for pedestrian-scale fixtures.
- CC.6** Technical Bulletin 95-001 standard 2.2 states that "...*Up-lighting* is unacceptable." Up-lighting is defined by the Technical Bulletin as "any luminaire that is aimed or capable of being aimed above the horizontal plane." Technical Bulletin standard 2.3 also requires that "all luminaires, regardless of their intended use or mounting configuration shall have a total cutoff of light at less than 90 degrees from vertical...and the lighting fixture should only be visible from below." In-ground or wall wash lights are up lighting, and do not meet standard 2.3's 90-degree cutoff requirement. The proposed on-building mounted BEGAs and the SATURN bollards, depending on the actual model used, may also not be consistent with standard 2.3. The Applicant has proposed the use of this type of lighting to provide seamless illumination of the tile mosaics covering the exterior walls for marketing purposes. The building design is unique in that it does not include overhanging roof structures to mount down-aiming light fixtures. To redesign the building to accommodate lighting that complies with Technical Bulletin 95-001 Standard 2.2 would add major costs, and warrants an exception to the requirement.

Therefore, the Commission finds that:

- i. The Applicant has met its burden showing that a hardship exists,
- ii. Literal enforcement of the Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of Technical Bulletin 95-002 Standard 2.2 to allow for up-lighting on the building, is the minimum relief required to

alleviate the hardship, and,

- iv. The relief does not nullify or derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

CC.7 The metal halide lights selected are consistent with Technical Bulletin standard 2.1. The 20 pole-mounted SATURN lights are consistent with standard 2.3. All lights have acceptable reflectors, consistent with part of Technical Bulletin standard 2.4, and are consistent with the pole-mounting height or height limit requirements of standard 2.5. Technical Bulletin standard 2.6 requires that all lights not exceed 8.0 foot-candles. The Bulletin grants an exception to the foot-candle level for fixtures under 42 inches tall. No foot-candle plans were submitted during the Commission's review, so it was not possible to determine foot-candle levels or how much, if any, light will fall outside of property boundaries.

CC.8 The NMLC proposes up-lighting for four (4) lights to be used to illuminate the sea life replicas in the plaza area. Given the limited number of fixtures, and the difficulty in illuminating the display in another way based on its configuration, there is no alternative lighting method that would be less detrimental.

Therefore, the Commission finds that:

- i. The Applicant has met its burden showing that a hardship exists,
- ii. Literal enforcement of the Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 6.2.10 and Technical Bulletin 95-001 to allow for up-lighting for the sculptures, is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

Noise

CC.9 RPP MPS 2.6.1.1. requires that DRIs *shall be in compliance with...DEP's Air Pollution Control Regulations*. Under state regulations, noise is considered to be an air contaminant. Common noise sources associated with other project reviews have included construction equipment, heating/cooling equipment and emergency generators. The NMLC has considered sound attenuation measures in its building design, and indicates that steps will be implemented during project construction to limit noise impact to surrounding areas.

Landscaping

CC.10 MPS 6.2.8 requires *redevelopment to provide adequate buffers between parking areas and the street and significant improvement to interior parking lot landscaping to improve the visual character of the site*. The existing building screens a substantial portion of the parking lot, which is also located to the rear of the building. There is no landscaping within the existing parking area, while a modest amount is proposed within the redesigned parking lot. In addition, the town of Bourne installed streetscape improvements in 2003, including street trees, which help to buffer the parking from the roadway. For these reasons, MPS 6.2.8 has been met.

CC.11 MPS 6.2.9 requires a maintenance agreement for a period of three years for any proposed landscaping. Proposed landscaping is limited to beach grass, switch grass and grass/wildflower mix for wetland buffer areas, which require very little maintenance. Requiring a 3-year landscape maintenance agreement/contract would cost a significant amount of money, and represent a hardship to the Applicant. A maintenance contract would also be unnecessary considering the low-maintenance, native species proposed for landscaping.

Therefore, the Commission finds that:

- i. The Applicant has met its burden showing that a hardship exists,
- ii. Literal enforcement of the Standards would be a hardship for the Applicant,
- iii. Fully relieving the requirements of MPS 6.2.9 to allow for a 3-year landscape maintenance contract, is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

CC.12 MPS 6.2.11 prohibits the installation of internally illuminated signs. The applicant submitted a plan for a proposed freestanding sign that includes cut letters mounted to the sign face, without any lighting proposed. Therefore, MPS 6.2.11 does not apply to this Project.

Hazardous Materials/Wastes Findings:

HM.1 The Project is not located in a Wellhead Protection Area/Zone II, or in an area mapped as a Potential Public Water Supply Area. Three MPSs that relate to hazardous materials/waste management were considered during the Commission's review. These

MPSs require that development and redevelopment make reasonable efforts to minimize hazardous material use and/or waste generation, to be in compliance with Massachusetts Hazardous Waste Regulations, and to prepare an emergency response plan.

HM.2 The site is the former Grossman's Hardware and was a Mobil fuel off-loading facility. In terms of hazardous materials/wastes attributable to the project, lubricants will be kept on site to service pumps and other utilities. The facility will also use antibiotics to treat injured sea-life and, when necessary, euthanizing solution. Both will be delivered as injectables, so the facility will generate used syringes. According to an October 20, 2005 Memorandum from the NMLC, the facility will generate wastes contaminated with animal body fluids. The project will use natural gas for building heating, cooling and emergency power generation.

HM.3 The NMLC has a materials management system, including an inventory program and specific drug disposal procedures. The facility will generate specimens and biopsy materials, however, the Memo states these are sent for off-site analysis, and are therefore disposed of by these other facilities. Carcass/necropsy wastes are proposed to be disposed of at the Bourne landfill. If this option is not available, the October 20, 2005 Memo states that other options will be sought. The facility will also generate special wastes that are regulated in Massachusetts, including electronics, computers and fluorescent bulbs. The applicant's October 20, 2005 Memo states the NMLC will prepare an emergency response plan.

CONCLUSION

Based on the Findings above, the Commission hereby concludes:

- 1.) That the probable benefits of the proposed development outweigh the probable detriments.
- 2.) The Cape Cod Commission finds that the proposed Project is a Project of Community Benefit as defined by Section 1(c) of the DRI Enabling Regulations, in light of its expressed benefits to the community and the region, its opportunities for education and internships, and particularly regarding the need for a marine animal facility on Cape Cod. The Cape Cod Commission further finds that a Project of Community Benefit/Hardship Exemption is appropriate, and that the Applicant has fulfilled its burden to show that a hardship exists in conforming with all of the requirements of the RPP. A literal enforcement of the provisions of the Act would involve additional studies or redesigns that would represent a financial hardship to the Applicant. Partial relief from remaining stormwater management (MPS 2.1.3.2, MPS 2.1.3.5), landscaping (MPS 6.2.9), and lighting (MPS 6.2.10 and Technical Bulletin 95-001), may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The relief granted relates directly to the nature of the identified hardship and is the minimum necessary to address the hardship.

The CCC hereby approves with conditions the Project of Community Benefit/Hardship Exemption application of the National Marine Life Center for the Project described in the redevelopment plans provided the following conditions are met:

General Conditions:

G.1 The proposed National Marine Life Center shall be constructed in accordance with the following final plans: Existing Conditions site plans 1-6 prepared by Tibbetts Engineering, dated January 3, 2005; included development plans dated May 30, 2003 Utility Building Plans A1.6, Building Elevations A2.1, North-South Building Sections A2.3, Wall Sections A3.1, Life Support Legend LS0.1, Life Support Schedules LS0.2, Life Support Below Grade LS1.1, Life Support Lower Piping LS1.2, Life Support High Piping LS1.3, Site Plan A0.1; Sign Plan by Wendy Mellinger, dated May 30, 2003, of the architectural firm Chermeyeff, Sollogub and Poole Inc., Boston, MA.

Any deviation during construction from the approved plans shall require approval by the Cape Cod Commission through a modification process pursuant to the Commission's Enabling Regulations. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modification to the approved plans.

G.2 This Hardship Exemption decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

G.3 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.

G.4 The Applicant shall obtain necessary state and local permits for the proposed project.

G.5 No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G.6 Prior to issuance of a building permit for any phase of proposed construction, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and/or information submitted as part of the DRI review. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed subject to Section 12 of the Cape Cod Commission Enabling Regulations, Modifications to Approved DRIs, as amended, which are in effect at the time of review.

G.7 Prior to issuance of a demolition permit or building permit for any phase of construction, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission,

which states that all conditions in this decision pertaining to issuance of a building permit have been met.

- G.8** The Applicant shall be responsible for providing proof of recording of the Decision prior to issuance of a Preliminary Certificate of Compliance.
- G.9** The Applicant shall demonstrate that a copy of this decision has been provided to the general contractor prior to the start of construction.
- G.10** The Applicant shall provide the Commission with an annual progress report to be submitted on or before the anniversary of the date of this decision until such time as the applicant receives a Final Certificate of Compliance. The annual progress report shall describe the status of local development permitting and project construction, including the expected date of commencement of site preparation work. The Applicant shall report any project changes in the annual progress report.
- G.11** Prior to receiving a Certificate of Occupancy from the Town of Bourne, the Applicant shall obtain a Final Certificate of Compliance from the Cape Cod Commission.
- G.12** The Applicant shall provide a minimum of 30 days notice prior to seeking issuance of all certificates associated with this decision. 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 Applicants understand 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 Applicants agree 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.

Coastal Resource Conditions:

- CR.1** In order to minimize impacts to fish, shellfish, and crustaceans under MPS 2.2.3.8, installation of the intake and discharge pipes under the existing canal road shall ensue using either boring or directional drilling methods. Adequate siltation controls shall be maintained on the site at all times and disturbed areas shall be revegetated immediately following construction.
- CR.2** NMLC shall provide the Cape Cod Commission with copies of any permits for work proposed to occur in or which may effect coastal and wetland resource areas, within 30 days of receipt, to insure consistency with MPS 2.2.3.8.

Water Resources Conditions:

WR.1 Wastewater from the NMLC shall be discharged into the Buzzards Bay municipal sewer system.

WR.2 Prior to requesting a Preliminary Certificate of Compliance, a stormwater design plan for the site shall be submitted for review and approval by Cape Cod Commission staff. The design plan shall be consistent with the NMLC narrative submitted on October 4, 2005. Commission Staff shall solicit comments from local officials in order to ensure that the final design plan also meets local regulations.

Natural Resources Conditions:

NR1. The applicant shall revegetate the wetland buffer with an appropriate seed mix that does not contain plant species listed as invasive. The Applicant shall submit documentation, which identifies the contents of the proposed seed mix to be planted. Staff shall review this documentation to determine whether the mix contains any invasive species, and approve the final restoration plan prior to the Final Certificate of Compliance provided the mix does not contain any such invasive species.

Transportation Conditions:

T1. The National Marine Life Center has proposed a trip reduction program that includes walking, carpooling, and public transportation for both employees and patrons, with a transportation coordinator and a guaranteed ride home program. The following actions shall also be included in this program:

- Assemble information regarding carpooling and its benefits to be distributed to patrons and employees.
- Designate an area where carpool information will be posted for all employees.
- Implement a guaranteed ride home program for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees and patrons that carpool.
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Provide on-site services to decrease employee midday trip making. The on-site services shall include a lunchroom, microwave, refrigerator, and prepared foods.
- Provide an on-site transportation coordinator. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Develop employee work hours to match transit schedules for transit riders.
- Distribute to all employees a new employee information packet that will include

information about the various TDM programs that are available and the ways in which employees can participate.

- Provide bicycle maps indicating the location of bicycle facilities in the area will be posted in central locations to encourage bicycle commuting.
- Provide a reference in all promotional materials or link (in the case of a website), to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, web-based materials and advertising developed for the Project will include links to available public transportation services serving the project site.

Community Character Conditions:

Heritage Preservation

- CC.1** The Applicant shall construct the National Marine Life Center buildings in accordance with approved plans and elevation drawings dated 5/30/03 by CSP Architects and received by the Commission on August 22, 2005. Should unexpected conditions arise during demolition and construction that require redesign of the building, the applicant shall obtain approval from Cape Cod Commission staff prior to the start of construction consistent with the Commission's policy on Revisions to Approved DRIs. Modifications made during construction that are in accordance with the approved elevation drawings shall be considered as Minor Modifications #1 and approved by Commission staff.
- CC.2** Prior to requesting a Preliminary Certificate of Compliance from the Cape Cod Commission, the Applicant shall provide samples of the proposed metal siding materials to demonstrate that the material is not reflective and is neutral in color.

Exterior Lighting

- CC.3** Prior to requesting a Preliminary Certificate of Compliance by the Cape Cod Commission, the Applicant shall submit information clarifying the project's exterior lighting design. This includes but is not limited to the model number/catalogue ordering information for proposed on-building mounted BEGAs and the SATURN bollards and foot-candle plans showing the estimated initial and maintained condition of all fixtures except for those at or under 42 inches in height.
- CC.4** All exterior light fixtures for the project shall be consistent with MPS 6.2.10 and Technical Bulletin 95-001 *except* for four (4) lights used to illuminate the proposed sea life replicas, and those used to illuminate the building's exterior tile mosaics.
- CC.5** Prior to issuance of a Final Certificate of Compliance, Commission staff will conduct a site inspection to verify the exterior lighting design is consistent with Conditions CC.3 and CC.4.

Noise

- CC.6** Prior to requesting a Preliminary Certificate of Compliance from the Cape Cod Commission, the Applicant shall submit a protocol for noise-related complaints or issues from abutters related to demolition, site preparation and/or construction noise impacts.

Landscaping

- CC.7** Plant materials specified by this decision may be substituted provided prior written approval of Commission staff is obtained by the Applicant.
- CC.8** If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, any work which is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements shall be completed within six (6) months of issuance of a final Certificate of Compliance from the Commission.

Hazardous Materials/Wastes Conditions:

- HM.1** Prior to requesting a Final Certificate of Compliance, the Applicant shall submit for Commission review and approval a written description of its materials management system, drug inventory and disposal procedures, carcass/necropsy waste disposal protocols, and emergency response plan. These plans will be reviewed by Commission staff for consistency with MPS 4.3.1.1 and MPS 4.3.1.2.
- HM.2** Prior to requesting a Final Certificate of Compliance, the Applicant shall submit for Commission review and approval a written description of its program to manage used equipment including electronics, computers and fluorescent bulbs in a manner consistent with the Massachusetts Hazardous Waste regulations. This description will be reviewed by Commission staff for consistency with MPS 4.3.1.2.
- HM.3** Prior to issuance a Final Certificate of Compliance by the Cape Cod Commission, Commission staff will conduct a site inspection to verify the site's use of hazardous materials and its generation of hazardous waste in a manner consistent with MPS 4.3.1.2. Commission staff shall only be required to conduct this site inspection after the Commission has approved the written protocols noted in HM.1 and HM.2.

The Cape Cod Commission hereby approves with conditions the application of the National Marine Life Center as a Project of Community Benefit/ Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended, for the proposed redevelopment in Buzzards Bay, MA.

Alan Platt, Chair

Date

Commonwealth of Massachusetts
County of Barnstable

On this _____ day of November, 2005, before me, the undersigned notary public, personally appeared Alan Platt, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
Commonwealth of Massachusetts

My Commission Expires: _____