



CAPE COD COMMISSION

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Date: August 21, 2008

To: Falmouth Economic Development & Industrial Corporation
c/o Town Hall, Falmouth
59 Town Hall Square
Falmouth, MA 02540

From: Cape Cod Commission

Re: DRI Hardship Exemption
Section 23 of the Cape Cod Commission Act

Project Applicant: Falmouth Economic Development & Industrial Corporation (EDIC)

Property Owner: Falmouth Economic Development & Industrial Corporation (EDIC)

Project: Raymond Park Industrial Subdivision, Lot Reconfiguration
Edgerton Drive, Falmouth, MA

Project #: HDEX#07014

| Map/Parcel | Lot & Plan | Cert. of Title | Reg. of Deeds Book/Page |
|------------------------|-------------------------------|----------------|-------------------------|
| 05-10-018-A004 FEDIC | Lot 4 Land Court Plan 39506-B | 170908 | |
| 05-10-019-002A Benthos | Lot 1 232/15 | | 02549-0149 |
| 05-10-019-C000 FEDIC | 233/39 | | 20008-113 |

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Falmouth Economic Development and Industrial Corporation (EDIC) for a Development of Regional Impact (DRI) Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act, and Section 8 of Enabling Regulations governing review of Developments of Regional Impact (“DRI Enabling Regulations”), Barnstable County Ordinance 90-12, for the subdivision and reconfiguration of industrial land located in the Raymond Park Industrial Subdivision at Edgerton Drive in North Falmouth, MA.

DRI Hardship Exemption
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PROJECT DESCRIPTION

Raymond Park is an industrial subdivision located at Edgerton Drive in North Falmouth, just south of the Route 28A and Route 151 intersection. The subdivision consists of nine (9) lots totaling 23.2 acres. Six (6) of the nine (9) lots are developed.

This proposal seeks to combine and re- subdivide one parcel, depicted as Parcel “C” and two (2) lots, shown as lot 4 and lot 2A on an plan entitled: “*Definitive Subdivision Plan prepared for the Falmouth Economic Development & Industrial Corporation*” prepared by Holmes and McGrath, Inc., dated July 3rd, 2003, revised September 9, 2003, scale 1” = 80’ (hereafter referred to as the “2003 Definitive Plan”) into three lots totaling approximately 8.19 acres. This re-configuration is shown as lots 3A, 3B and 4B on a plan entitled: “*Preliminary Subdivision Plan, prepared for the Falmouth Economic Development & Industrial Corporation*” prepared by Holmes and McGrath, Inc., dated October 13, 2006, scale 1” = 80’ (hereafter referred to as the “2006 Preliminary Plan”).

PROCEDURAL HISTORY

The Commission received application for both a Jurisdictional Determination (JD) and a Hardship Exemption from the Falmouth EDIC on June 22, 2007. The JD application was deemed incomplete July 10, 2007 and requested a more complete discussion of the lot divisions in the subdivision and associated ownership history. On October 23, 2007 Commission staff received a request to withdraw, without prejudice, the JD portion of the application from Commission review, which was formally withdrawn November 1, 2007. In January, 2008, the EDIC requested a meeting with Commission staff to discuss mitigation for this project. On February 4, 2008 Commission staff met with the Regulatory Committee to discuss the request to prepare a mitigation scenario for this project. Technical staff then worked with the EDIC and the Town to prepare a draft mitigation scenario based on the impact of identified issue areas as they relate to this project. On July 17, 2008, a duly noticed public hearing was conducted by an authorized Subcommittee of the Commission pursuant to Section 5 of the Act. Following the hearing, the Subcommittee held a meeting to deliberate on the project. At the July 17, 2008 meeting, the Subcommittee voted unanimously (5-0) to direct staff to draft a written decision for their review. The Subcommittee also voted unanimously (5-0) to hold a Subcommittee meeting on August 4th, 2008 at 12:30 PM at the Commission’s office to review the draft decision. On 8/4/08, the FEDIC and Brian Currie, Falmouth Town Planner, provided input to staff on the decision and a subcommittee meeting was noticed for August 7, 2008 at 2:00 PM at the Assembly of Delegates Chamber, First District Courthouse, Barnstable County. At the August 7, 2008 meeting, the subcommittee voted 3-0 to recommend approval of the project with conditions as outlined in the draft decision. A final public hearing was held before the full Commission on August 21, 2008, where the Commission voted unanimously to grant a Hardship Exemption.

MATERIALS SUBMITTED FOR THE RECORD

| <i>Materials From the Applicant</i> | <i>Date Submitted</i> |
|--|------------------------------|
| Application for Jurisdictional Determination and DRI Hardship Exemption from P. Butler | 6/22/07 |
| Jurisdictional Determination Narrative | 6/22/07 |
| Hardship Exemption Narrative | 6/22/07 |
| USGS Map | 6/22/07 |
| Definitive Subdivision Plan | 6/22/07 |
| Proposed Subdivision Modification Plan | 6/22/07 |
| List of anticipated local permits | 6/22/07 |
| Massachusetts Historical Commission Project Notification Form | 6/22/07 |
| Fee Calculation and Waiver Request | 6/22/07 |
| Certified Abutter's List | 6/22/07 |
| Letter of withdrawal of JD | 10/23/07 |
| Summary of existing development along Edgerton Drive from P. Butler | 11/15/07 |
| Request for Continuance from P. Butler | 6/16/08 |
| EDIC Financial Summary | 8/5/08 |
| <i>Materials from Commission Staff</i> | <i>Date Submitted</i> |
| Letter to P. Butler from P. Dascombe, JD incomplete | 7/10/07 |
| Letter to P. Butler from R. Christenberry, JD complete | 10/12/07 |
| Letter to P. Butler from R. Christenberry, HDEX complete | 5/13/08 |
| Memo to EDIC and Town from Commission Staff, FEDIC Mitigation Schedule | 4/4/08 |
| Staff Report | 6/10/08 |
| <i>Materials from Federal/State/Town</i> | |
| Qualifying Criteria from B. Currie | 7/22/08 |

TESTIMONY

Subcommittee Hearing July 17, 2008 (DRAFT Minutes, need approval)

The hearing came to order at 5:30 p.m. Mr. Zavala read the hearing notice. Mary Pat Flynn of the EDIC made a presentation for the Applicant and described the reasons for the Hardship Exemption request. She testified that the Falmouth EDIC is a 501 (c)(3) non-profit entity established in 1981, whose mission is to increase business and industrial investment; expand opportunities to own, manage, and operate commercial and industrial enterprises; provide funding assistance; and increase job opportunities in the Town of Falmouth.

Due to existing configuration of Lot 4 and Parcel 19C, accessibility is poor and therefore they are difficult to market. The cost of carrying the land without the ability to sell has put a financial strain on the EDIC. Mr. Spitz, Falmouth EDIC treasurer, testified that the EDIC is currently losing approximately \$8,000 per month due to legal fees, consultant fees, and mortgages. The modification of the 2003 Definitive Plan as depicted on the 2006 Preliminary Plan, while adding

two lots to the overall subdivision, would alleviate this financial burden and greatly increase marketability.

Ms. Ryan Christenberry gave the staff presentation, wherein she provided an overview of the existing conditions, the proposed subdivision and reconfiguration of the lot in question, and reviewed the requirements for considering the Hardship Exemption; that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Act.

Following discussion of the presentations provided, Mr. Zavala made a motion to recommend to the full Commission approval of the Hardship Exemption pursuant to Section 23 of the Act on the condition the applicant submit for the record a financial statement that supports the oral testimony received with regard to the financial nature of the hardship. Ms. Seldin seconded the motion, which was approved unanimously. Ms. Seldin made a motion to continue the hearing to the August 21st Commission meeting, which was approved unanimously.

The hearing adjourned at 6:15 p.m.

In addition to the list of materials submitted for the record, the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(d) of the DRI Enabling Regulations as any development that proposes to divide land into 10 or more industrial lots.

FINDINGS

The Commission has considered the application for a DRI Hardship Exemption from the Falmouth EDIC for the proposed subdivision and reconfiguration of land at the Raymond Park Industrial Subdivision, located at Edgerton Drive in North Falmouth, MA. Based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Section 23 of the Cape Cod Commission Act and Section 8 of the DRI Enabling Regulations:

General Findings:

- F-G1** Based on the date of the first substantive public hearing, this project was reviewed subject to the 2002 (revised) Regional Policy Plan.
- F-G2** The project does not lie within a District of Critical Planning Concern.

- F-G3** The project is consistent with the Falmouth Local Comprehensive Plan and municipal development bylaws.
- F-G4** The Falmouth EDIC proposes to modify the 2003 Definitive Plan for the purpose of improving accessibility and marketability in a manner consistent with the 2006 Preliminary Plan, which shows reconfigured lots 3A, 3B and 4B.
- F-G5** The land in question, lot 4 and parcel 19C, are owned by the Falmouth EDIC. Lot 2A is owned by Teledyne/Benthos, Inc.
- F-G6** The Falmouth EDIC is a 501 (c)(3) non-profit entity established in 1981, whose mission is to increase business and industrial investment; expand opportunities to own, manage, and operate commercial and industrial enterprises; provide funding assistance; and increase job opportunities in the Town of Falmouth. As a not-for-profit, strict conformance with all of the requirements of the current RPP standards poses a financial hardship, impairing the EDIC's ability to fulfill its mission of economic development in the Town of Falmouth.
- F-G7** The Falmouth EDIC seeks a DRI Hardship Exemption due to the cost of carrying land that is unmarketable due to poor configuration and accessibility. Falmouth EDIC testimony during the July 17, 2008 public hearing states that they are currently losing approximately \$8,000 per month due to legal fees, consultant fees, and mortgages. This testimony is supported by a financial summary pertaining to this project provided by the EDIC and received by the Commission August 5, 2008.
- F-G8** The Town of Falmouth, within its Local Comprehensive Plan, has stated as its first goal that it "Increase the number of permanent, year-round jobs providing living wages so that middle-class families can continue to reside and work in Falmouth".
- F-G9** The Falmouth EDIC seeks to further its goals and mission by seeking a Hardship Exemption from some of the minimum performance standards in the issue areas of water resources, open space and transportation for "qualifying entities" so called, that may purchase or lease lots 3A, 3B and 4B as reconfigured on the 2006 Preliminary Subdivision Plan.
- F-G10** The Commission finds that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise; and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Additionally, the applicant has met its burden of proof to show that a hardship exists. Specifically, the Commission finds that the Hardship Exemption is warranted and that granting relief solely to qualifying entities from some of the minimum performance standards of the RPP as outlined in this decision is the minimum relief necessary to address the hardship.

- F-G11** Brian A. Currie, Falmouth Town Planner - based on policy guidance from a joint meeting with the Falmouth Board of Selectmen and Planning Board - testified at the July 17, 2008 public hearing and in an email dated July 22, 2008 concerning the standards to be considered for a qualifying entity. The Commission adopts this testimony and finds that, in order for a use to be considered a “qualifying entity” the following characteristics must be met:
- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
 - 2) the use is a small business (i.e with less than 50 employees on site);
 - 3) the use has a majority of year-round, full time positions;
 - 4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.
- F-G12** The Commission finds that the four items listed in F-G11 shall be the objective criteria for determining whether an entity that acquires a real property interest in lots 3A, 3B and 4B as reconfigured on the 2006 Preliminary Plan, is a qualifying entity for purposes of condition C-G8.
- F-G13** The Commission finds that the project’s probable benefits outweigh its probable detriments.

Water Resources Findings:

- F-W1** The subdivision is not located in an existing or future Wellhead Protection Area.
- F-W2** The subdivision is located in a Marine Water Recharge Area. According to MPS 2.1.1.2.C, development shall not exceed the critical nitrogen load for marine waters. The 2002 RPP Water Resources Classification Map II shows the project in the Wild Harbor watershed. More recent information published by the U.S. Geological Survey indicates that the project is located in the Rands Canal/Harbor watershed.
- F-W3** The Massachusetts Estuaries Project (MEP) technical report, which will provide the basis for the critical nitrogen load referenced by MPS 2.1.1.2.C and the nitrogen Total Maximum Daily Load (TMDL) for Rands Harbor/Canal, has not been completed. A critical nitrogen load of 5.52 kilograms (kg-N) per year per acre was calculated for Rands Canal/Harbor by the Cape Cod Commission in 2002 and corresponds to a total fair-share nitrogen limit of 50.9 kg-N per year for the proposed 8.19-acre subdivision.
- F-W4** Development plans for the proposed subdivision have not been prepared. To establish a baseline, a 124.1 kilogram-N per year increase in nitrogen load to Rands Canal/Harbor can be expected if the 3-lot subdivision were to be developed as office space up to the DRI commercial threshold of 10,000 s.f. on each lot (a total of 30,000 s.f.). In such a case, the nitrogen load would exceed the critical nitrogen load by 73.2

kg-N per year, the corresponding nitrogen-offset would be \$122,300 (or \$40,767 per lot), and the nitrogen-loading concentration would be 5-ppm-N. Developments of Regional Impact are not permitted to exceed nitrogen-loading concentration of 5 ppm-N pursuant to MPS 2.1.1.1.

The Commission finds that the waiver of MPS 2.1.1.2C and its corresponding mitigation payment of \$122,300 (or \$40,767 per lot), for qualifying entities, is appropriate because:

- i) a literal enforcement of the provisions of the Act would involve `substantial hardship, both financial and otherwise;
- (ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Transportation Findings:

F-T1 The expected trip generation of this project is based on information contained in the Institute of Transportation Engineers Trip Generation manual 7th Edition. As shown in Table 2, the net increase in vehicle trips is significant during the morning and afternoon peak hours.

Table 1 – Trip Generation Estimates

| Development | Time Period | Vehicle trips |
|--|----------------------------|----------------------|
| 15,000 SF medical-dental office | Morning Peak Hour | 58 |
| | Afternoon Peak Hour | 67 |
| | Daily traffic | 398 |

| Development | Time Period | Vehicle trips |
|---|----------------------------|----------------------|
| 15,000 SF research and development | Morning Peak Hour | 26 |
| | Afternoon Peak Hour | 27 |
| | Daily traffic | 213 |

Table 2 – Trip Generation Estimates for the potential 30,000 SF development

| Time Period | Vehicle Trips |
|----------------------------|----------------------|
| Morning Peak Hour | 84 |
| Afternoon Peak Hour | 94 |
| Daily Traffic | 611 |

F-T2 To assist the developer in determining the potential cost to offset the impacts of a 30,000 SF development scenario (15,000 SF medical-dental building and 15,000 SF research and development building), Cape Cod Commission transportation staff have estimated the fair-share transportation impact mitigation payment based on other projects using the Cape Cod Commission Guidelines for Transportation Impact

Assessment Technical Bulletin 96-003, revised January 9, 2003, Part 2 – Fair Share Overview and Methodology. Based on the average cost of previous projects, the fair-share cost of transportation impacts can be assessed based on daily impacts. The cost to mitigate transportation impacts per daily trips is \$500 per daily trip. For the development impacts outlined in Table 2, the fair share cost to mitigate the transportation impacts would be \$305,500 (\$500 x 611 trips), or \$101,833 per lot.

F-T3 The Applicant is encouraged to provide an employee trip reduction plan. A standard employee trip reduction plan is listed below:

- Assemble information regarding carpooling and its benefits to be distributed to tenants and their employees.
- Designate an area where carpool information will be posted for all employees of the project.
- Implement a guaranteed ride home program (e.g. taxi service) for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees that carpool.
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Provide on-site services to decrease employee midday trip making, such as a lunchroom, microwave, refrigerator, and prepared foods (e.g. vending machines).
- Provide an on-site transportation coordinator. The transportation coordinator would be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Distribute to all employees a new employee information packet that could include information about the various TDM programs that are available and the ways in which employees can participate.
- Provide a quarterly bulletin or newsletter reminding employees about the TDM programs and making the employees aware of any new or modified services.
- Provide bicycle maps indicating the location of bicycle facilities in the area posted in central locations within the development to encourage bicycle commuting.
- Provide a reference in all promotional materials or link, in the case of a website, to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, website based materials and advertising developed for the project will include listing and links to available public transportation services serving the project site.

- Provide incentives each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit. These incentives could include free meals through coupons/discount cards for use toward the purchase of goods and services within the development or at adjacent retailers and entries into weekly raffles for prizes such as movie tickets, free meals and/or goods and services.

F-T4 The Commission finds that the waiver of MPS 4.1.1.1, 4.1.1.2, 4.1.3.4, 4.1.1.3, 4.1.1.5, 4.1.1.6, 4.1.1.9, 4.1.1.7, 4.1.2.1, 4.1.3.2 and its corresponding mitigation payment of \$305,500 (or \$101, 833 per lot), for qualifying entities, is appropriate because:

- i) a literal enforcement of the provisions of the Act would involve `substantial hardship, both financial and otherwise;
- (ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Natural Resource (Open Space) Findings:

F-OS1 The property subject to the DRI includes lots that have been previously developed, in addition to the 8.19 acres owned by the Falmouth EDIC, which are presently undeveloped. This undeveloped area is located in a mapped rare species habitat, as defined by the Natural Heritage and Endangered Species Program (NHESP). The Commission finds that filing with NHESP is not warranted at this time as no specific development is proposed. However, any future site clearing, construction or development proposed (other than the subdivision for marketing purposes presently proposed) should file with the NHESP for a determination as to the impacts on rare species or their habitat prior to the issuance of any permits. The Commission makes this finding for this project as part of a finding of hardship, and that granting the hardship will not derogate from the intents and purposes of the Act.

F-OS2 The open space requirement for this 23 acre subdivision, located in a Significant Natural Resource Area, is twice the total development area, which could be 30 – 40 acres depending on the total area of development that has already occurred. The Commission finds that this mitigation requirement, given the fact that the EDIC has already conveyed much of the subject property, poses a significant hardship for the EDIC to comply with. Based on the nature and extent of development in the Edgerton Drive area, the lack of adjacent protected, or even undeveloped land, and the possibility of the requirement of open space through the NHESP permitting process, the Commission finds that the waiver of MPS 2.5.1.3 and its corresponding mitigation payment is appropriate because:

- i) a literal enforcement of the provisions of the Act would involve `substantial hardship, both financial and otherwise;
- (ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

CONCLUSION

Based on the Findings above, the Commission hereby concludes:

1. The project does not fall within a District of Critical Planning Concern, and is consistent with the local development bylaws and the Falmouth Local Comprehensive Plan.
2. A Hardship Exemption is appropriate, and that the Applicant has fulfilled its burden to show that a hardship exists in conformance with all of the requirements of the RPP as further described in the Findings, above.
3. As further described in the Findings, above, a literal enforcement of the provisions of the Act and RPP would represent a substantial hardship to the Applicant. Relief from these requirements 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 relief necessary to address the hardship.
4. The Commission finds that the project's probable benefits outweigh its probable detriments.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of the Falmouth EDIC for the proposed subdivision and reconfiguration of lot 4 and parcel 19C, as shown on the 2003 Definitive Subdivision Plan, and reconfigured as 3A, 3B and 4B as shown on the 2006 Preliminary Subdivision Plan in the Raymond Park Industrial Subdivision located at Edgerton Drive in North Falmouth, provided the following conditions are met:

CONDITIONS

General Conditions:

- C-G1** Parcel "C" and two (2) lots shown as lot 4 and lot 2A on an plan entitled: "*Definitive Subdivision Plan prepared for the Falmouth Economic Development & Industrial Corporation*" prepared by Holmes and McGrath, Inc., dated July 3rd, 2003, revised September 9, 2003, scale 1" = 80' (hereafter referred to as the "2003 Definitive Plan") may be re-subdivided into no more than three lots totaling approximately 8.19 acres. Any subdivision plan that may be approved by the Falmouth Planning Board, as it relates to Lots 3A, 3B and 4B as shown on the 2006 preliminary plan, shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit A. This re-subdivision shall also be consistent with a plan entitled: "*Preliminary Subdivision Plan, prepared for the Falmouth Economic Development & Industrial Corporation*" prepared by Holmes and McGrath, Inc., dated October 13, 2006, scale 1" = 80' (hereafter referred to as the "2006 Preliminary Plan") as may be reasonably altered by the Falmouth Planning Board in its discretion.

The modified definitive plan approved by the Falmouth Planning Board shall have a marginal note that the land shown as Lots 3A, 3B and 4B on the 2006 Preliminary Plan shall be subject to the declaration of restrictions substantially in the form that is attached hereto as Exhibit A.

- C-G2** This DRI 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.
- C-G3** 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.
- C-G4** The Applicant shall obtain all necessary state and local permits for the proposed project.
- C-G5** 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.
- C-G6** Upon approval of the modified subdivision by the Falmouth Planning Board, the Falmouth EDIC shall record the declaration of restrictions, appended to this decision as Exhibit A, once it is approved by Commission counsel as to final form, together with the modified definitive plan and decision of the Falmouth Planning Board that creates new Lots 3A, 3B and 4B. The modified definitive plan shall carry a marginal note as follows, *This plan is subject to a covenant dated _____, and a declaration of restrictions dated _____, to be recorded herewith.*
- C-G7** The mitigation required by conditions F-W1 and F-T1 shall be paid prior to the issuance of a building permit for each of lots 3A, 3B, and 4B as those lots are identified on the 2006 Preliminary Subdivision Plan unless the lot has a recorded waiver certificate from the Cape Cod Commission Executive Director for its use in accordance with Condition C-G8.
- C-G8** Any entity that acquires a real property interest in 3A, 3B, or 4B as those lots are identified on the 2006 Preliminary Subdivision Plan may request a waiver of the mitigation required by conditions F-W1 and F-T1. A waiver may only be granted to a qualifying entity. In order for a use to be considered a "qualifying entity" for the purposes of this decision, the following criteria on the proposed use of the land must be met:
- 1) the use must have a high average weekly wage as identified by the Executive Office of Labor & Workforce Development - Covered Employment and Wages - for the preceding twelve (12) months for the town of Falmouth (Publication ES202 so called);
 - 2) the use is a small business (i.e with less than 50 employees on site);
 - 3) the use has a majority of year-round, full time positions;

4) the following uses are categorically excluded from consideration: Retail trade, transportation and warehousing, independent or assisted living facilities, and finance, insurance & real estate offices.

To process a request for waiver of mitigation, a letter from the Falmouth Planning Board addressed to the Executive Director of the Cape Cod Commission that provides evidence that the proposed use of the land meet each of the applicable criteria listed in condition C-G8 shall be necessary.

The Executive Director or his designee shall review the letter and, if in his determination the objective criteria have been met, shall issue a certificate in recordable form which shall so certify and which shall waive the mitigation otherwise required. The waiver certificate shall only be applicable to the specific use and applicant referenced therein. Any subsequent change in use, change in the entity using the lot, or sale of the lot shall require an additional certificate to be obtained in order to waive the mitigation required by this decision.

Water Resources Conditions:

C-W1 Prior to the issuance of a building permit, the applicant shall pay a nitrogen offset of \$40,767 per lot to be held by Barnstable County/Cape Cod Commission for use by the Town of Falmouth for the development of nitrogen management strategies for the Rands Canal/Harbor watershed. The nitrogen offset may be waived for each of lots 3A, 3B and 4B as those lots are identified on the 2006 Preliminary Subdivision Plan provided the applicant or its successors and assigns (hereinafter "applicant") record a waiver certificate for each parcel from the Executive Director of the Cape Cod Commission in accordance with Condition C-G8.

Transportation Conditions:

C-T1 Prior to the issuance of a building permit, the applicant shall pay a trip generation offset of \$101,833.00 per lot to a transportation mitigation fund to be held by Barnstable County/Cape Cod Commission, as calculated in transportation finding F-T2. These funds shall be applied to any transportation project within the Town of Falmouth.

Natural Resource/Open Space Conditions:

C-OS1 Prior to any development activity as defined by the Act (with the exception of subdivision and conveyance of individual lots), the applicant and/or subsequent owners of the subject lots shall file with the Natural Heritage and Endangered Species Program for compliance with the Massachusetts Endangered Species Act, and shall provide proof of such compliance to the Commission.

CONCLUSION

The Cape Cod Commission hereby approves with conditions the application of the Falmouth EDIC as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed subdivision and reconfiguration of land in the Raymond Park Industrial subdivision located at Edgerton Drive in North Falmouth, MA .

This decision is rendered pursuant to a vote of the Cape Cod Commission Subcommittee on August 21, 2008.

Mr. John D. Harris
Chairman of the Cape Cod Commission

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

_____, 2008

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

My Commission Expires: