CAPE COD COMMISSION

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DECISION OF THE CAPE COD COMMISSION

Date:	April 17, 2008
To:	Robert H. Ament, Esq. P.O. Box 919 Falmouth, MA 02541
From:	Cape Cod Commission
Re:	Development of Regional Impact Exemption Request Section 12(k) of the Cape Cod Commission Act
Applicant:	Teledyne Benthos, Inc. c/o Francis E. Dunne, Jr. 49 Edgerton Drive North Falmouth, MA 02556
Project #:	EX/TR #08001
Project:	Teledyne Benthos, Inc. Addition 49 Edgerton Drive North Falmouth, MA 02556
Property Owner(s):	Teledyne Benthos, Inc
Map/Parcel:	05-10-19-2A
Book/Page:	2549/149
Land Court Cert. Of Title:	n/a

SUMMARY

The Cape Cod Commission (Commission) hereby grants the Development of Regional Impact (DRI) Exemption request of Teledyne Benthos, Inc. for the proposed addition to their existing facility located at 49 Edgerton Drive, North Falmouth, MA 02556, pursuant to Section 12(k) of

the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. This Decision is rendered pursuant to a vote of the Commission on April 17, 2008.

PROJECT DESCRIPTION

Teledyne Benthos, Inc. proposes to add 14,850 square feet (SF) to an existing 27,750 SF electronic manufacturing and research facility for a total of 42,600 SF. The existing building is located at 49 Edgerton Drive, North Falmouth. The applicant also proposes to construct a below grade 3,626 SF open storage area and an 858 SF loading ramp. Parking and driveway redesign, and drainage, septic system and landscaping improvements are also proposed. The applicants propose to utilize low impact development techniques to help address stormwater and nitrogen loading concerns.

The project site is comprised of 6.19 acres and is zoned as Light Industrial A. Regional resources in the vicinity of the project site include Significant Natural Resource Area and Route 28A (a regional roadway). The project is not located in a wellhead protection area and is outside of the North Falmouth Historic District and the North Falmouth Village National Register Historic District.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact (DRI) under Section 3(e)(ii) of the DRI Enabling Regulations governing review of DRIs, which require DRI review of "additions to existing buildings that result in an increase greater than 10,000 square feet of Gross Floor Area."

PROCEDURAL HISTORY

The applicant and property owner, Teledyne Benthos, Inc., filed a Development of Regional Impact (DRI) Exemption and DRI application on January 2, 2008. The Town of Falmouth Planning Board referred the project to the Commission as a mandatory DRI on January 18, 2008.

A hearing officer of the Commission opened a pro-forma hearing for procedural purposes on March 17, 2008, at 10:00 a.m. for the DRI application.

A duly noticed Public Hearing pursuant to Section 5 of the Act was held on the DRI and the DRI Exemption by an authorized Subcommittee of the Commission on Monday, March 24, 2008 at 7:00 p.m. at the Gus Canty Recreation Center, Falmouth, MA. At this hearing, the Subcommittee voted unanimously to recommend to the full Commission that a DRI Exemption be granted for the proposed project.

On March 24, 2008, the Subcommittee also voted to authorize the Subcommittee Chair to review the draft DRI Exemption Decision, and to continue the DRI hearing to April 17, 2008. The DRI

Exemption hearing was continued to a pro forma hearing on April 3, 2008 at 10:00 am, at which time a hearing officer of the Commission closed the DRI Exemption hearing for procedural purposes.

The Cape Cod Commission held a duly noticed Public Hearing on Thursday, April 17, 2008, where the project was considered for a DRI Exemption. At that hearing the full Commission voted unanimously to grant a DRI Exemption to Teledyne Benthos, Inc. for their proposed project.

TESTIMONY

Public Hearing – March 24, 2008
Robert Ament, attorney for the applicant, introduced the Teledyne Benthos project team and described the proposed addition. Ron Marsiglio, President of Teledyne Benthos, Inc., presented a history of the company, its operations, and mission to the Subcommittee. He made a case for the quality of jobs and positive economic impact that the company has in the town of Falmouth and on the Cape. Commission staff summarized the outstanding RPP-related issues raised in the Staff Report dated 3/20/08. The applicant indicated that they would further revise the Landscape Plan to address the need for additional landscaping in the bio-retention basins, and indicated that an official sign-off from the Natural Heritage and Endangered Species program was forthcoming.

No public testimony was given.

The Subcommittee deliberated on the exemption request, discussing issues such as local workforce statistics, avoidance of impact to the surrounding rare species habitat, and the avoidance of community character impacts due to the project's location.

The Subcommittee voted unanimously (4-0) to recommend approval of the DRI Exemption request to the full Commission.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below) the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of the public hearing, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
Materials from the Applicant	***Date Received***
DRI/DRI Exemption Application	1/2/08
Site Plans, sheets 1-8	1/2/08; revised 3/17/08, 4/2/08;
Hazardous Waste Disposal information	1/11/08

Ltr. from L. Moynihan with attachments	2/8/08
Emails from A. Bonacker to A. Adams re: Hazardous materials management	2/20/08
Email from G.Siroonian to A. Adams re: lighting	2/20/08
Elevations (sheets A-0.1, EX-1, A-1-4)	3/12/08
Landscape/Lighting Plan (sheet L-1)	3/12/08; revised on 3/24/08, 4/2/08
Ltr from L. Moynihan with attached revised plans	3/12/08
Ltr. from Holmes & McGrath to S. Justus re response to 3/4/08 letter	3/17/08
Company "talking points" brochure to Subcommittee	3/24/08
Materials from Commission Staff	***Date Prepared***
Ltr to R. Ament/L. Moynihan re incomplete application	1/15/08
Ltr to R. Ament/L. Moynihan re complete application	2/21/08
Emails from A. Adams to G. Siroonian re lighting	2/21/08
Ltr to R. Ament/L. Moynihan re outstanding resource issues	3/4/08
Email from S. Michaud to M. McGrath re water resources issues	3/12/08
Email from S. Michaud to R. Lizardi-Rivera re nitrogen calculations	3/17/08
Staff Report	3/20/08
Email from S. Michaud to applicants re: bioretention landscaping	3/25/08
Materials from Town of Falmouth	***Date Received***
DRI Referral from the Planning Board	1/18/08
Letter of support for the DRI Exemption from the Board of Selectmen	3/21/08
Materials from NHESP	
Email from A.Coman to H. McElroy re MESA exemption	3/21/08
Ltr. from T. French re "exempt from MESA review" determination	4/3/08

FINDINGS

The Commission has considered the application of Teledyne Benthos, Inc., for a DRI Exemption regarding the proposed addition to their existing facility. Based upon its consideration of such application and information presented at the public hearing and submitted for the record, the Commission makes the following Findings pursuant to Section 12(k) of the Act:

General Findings:

F-G1. The project qualifies as a DRI under Section 3(e)(ii) of the DRI Enabling Regulations governing the review of DRIs, Barnstable County Ordinance 90-12, as amended, which provides that "additions to existing buildings that result in an increase greater than 10,000 square feet of Gross Floor Area" shall be subject to mandatory DRI review.

F-G2. Teledyne Benthos, Inc. proposes to add 14,850 square feet (SF) to an existing 27,750 SF electronic manufacturing and research facility for a total of 42,600 SF. The existing building is located at 49 Edgerton Drive, North Falmouth, Massachusetts. The applicant also proposes to construct a below grade 3,626 SF open storage area and an 858 SF loading ramp. Parking and driveway redesign, and drainage, septic

system and landscaping improvements are also proposed. The applicants propose to utilize low impact development techniques to help address stormwater and nitrogen loading concerns.

The project site is comprised of 6.19 acres and is zoned as Light Industrial A. Regional resources in the vicinity of the project site include Significant Natural Resource Area and Route 28A (a regional roadway). The project is not located in a wellhead protection area and is outside of the North Falmouth Historic District and the North Falmouth Village National Register Historic District.

F-G3. Based on the information submitted for Commission review, the Commission finds that the location, character and environmental effects of the proposed project will prevent its having any significant impacts on the resources, values and purposes protected by the Act outside of the Town of Falmouth and, therefore, although it literally qualifies as a DRI, it does not require DRI review. The applicant has met its burden to show the project is exempt.

F-G4. Based on the information submitted for Commission review, the Commission finds that any change in the impacts of the proposed project as articulated in this Decision, and/or a change to the Findings of this Decision will require further Commission review according to Section 12, Modifications to Approved Projects, of the *Enabling Regulations* (as amended).

F-G5. The proposed project is to be constructed according to the following plans:

- *Site Plan*, sheets 1-8 of 8, as revised 4/1/08, by Holmes and McGrath, Inc., dated as received by the Commission on 4/2/08;
- *Elevation*, sheets A-4 and A-4.1, issued 1/8/08, by RESCOM Architectural, Inc.;
- *Elevations Material & Color*, sheet A-4.2, issued 1/8/08, by RESCOM Architectural, Inc.;
- *Roof Plan*, sheet A-5, issued 1/8/08, by RESCOM Architectural, Inc.; and,
- *Landscape/Lighting Plan*, sheet L-1, as revised 4/1/08, by Rescom Architectural, Inc., dated as received by the Commission on 4/2/08;

Water Resources Findings:

F-WR1. The project is not located in a wellhead protection area. The 2002 RPP Water Resources Classification Map shows the project in the Wild Harbor watershed. A more recent map published by the U.S. Geological Survey in 2004 shows the project in the Rands Harbor watershed.[1] The Massachusetts Estuaries Project has not yet established critical nitrogen loads for Wild Harbor and Rands Harbor.

[1] *Walter, D.A., Masterson, J.P., and Hess, K.M., 2004, Ground-Water Recharge Areas and Travel times to Pumped Wells, Ponds, Streams, and Coastal Water Bodies, Cape Cod, Massachusetts, USGS Scientific Investigations Map I-2857, 1 sheet.*

F-WR2. The project will increase lot coverage from 36% to 41% and will result in increased stormwater runoff primarily from roof areas. DRIs are required to treat stormwater runoff using vegetation or a similar Low-Impact-Development method.

Three (3) new stormwater retention basins shown on the Site Plan—Proposed Grading, Drainage & Utilities Plan, as revised 4/1/08, will receive runoff from approximately 34% of paved areas. The Landscape/Lighting Plan, as revised 4/1/08, indicates a diversity and density of plantings in the basins that work toward enhancing the treatment of stormwater runoff and stabilization of basin slopes.

F-WR3. Existing Title-5 wastewater flows of 2,440 gallons per day (gpd) are managed using a *standard* Title-5 septic system. Actual measured water-use for a 30-month period from 2002 to 2006 is 1,022 gpd.

The expanded facility's Title-5 wastewater flows are 3,500 gpd. Expected water use is 1,750 gpd. Wastewater generated by the expanded facility will be treated using a *denitrifying* RUCK® septic system. The Commission's nitrogen-loading technical bulletin (TB-91-001) recognizes a wastewater-effluent nitrogen reduction from 35 milligrams per liter (ppm-N) for the standard system to 25-ppm-N based on DEP-piloting approval of the RUCK® system.

F-WR4. The regional standard for nitrogen-loading concentrations in groundwater measured across project sites is 5 ppm-N. The project results in a reduced nitrogen-loading concentration achieved through use of denitrifying septic technology and a significant reduction (approx. 53%) in managed turf. Using an average of actual & projected water-use and Title-5 wastewater flows, the nitrogen load is reduced from 5.3 ppm-N under existing conditions to 4.9 ppm-N under proposed conditions.

Natural Resources Findings:

F-NR1. The applicant has submitted a natural resources inventory that addresses the requirements of the RPP. In addition, the proposal to expand the existing building appears to have been designed to minimize impacts on natural resources, consistent with the RPP. All of the proposed development is located within previously disturbed areas, or areas located outside of significant natural resource areas, and outside of mapped rare species habitat.

In a letter dated 4/3/08, the Natural Heritage and Endangered Species Program determined that the proposed work will not impact rare species habitat, and that the project as proposed "appears to be exempt from a MESA review." Consequently, the Commission finds that the project will not impact wildlife habitat of regional significance.

Economic Development Findings:

F-ED1. The Commission finds that Teledyne Benthos has provided sufficient information in compliance with MPS 3.1.1 to determine that the project will have a positive economic impact on the regional economy.

F-ED2. The Commission finds that the project will result in the retention and potential creation of high quality, year-round jobs. The applicant currently employs 118 people; of which thirty (30) are engineers, thirty-three (33) are in manufacturing, ten (10) are quality insurance specialists, and forty-five (45) are in marketing, sales, and administration. Sixty-six percent of these positions pay over $46,000 annually. Total payroll for 2006 was over $6 million and employees receive benefits including health, dental, vision, flexible spending, 401K, life and disability insurance as well as the standard vacation, sick, and holiday leave. The applicant estimates that the addition will accommodate a total of 175 employees while significantly improving the working conditions for existing staff.

F-ED3. The Commission finds that Teledyne Benthos currently retains and attracts income to the region through exports, employment of local workers (72% of total), and use of local service providers. At the time of Benthos' purchase by Teledyne, the company's annual revenues were in excess of $24 million. The company was founded by a local resident and has close ties to the Woods Hole Oceanographic Institution; it fills an important niche in the emerging marine sciences and technology industry and is consistent with the Cape's economic, environmental, and cultural strengths. These benefits will continue and most likely increase with the proposed addition and improvements in production and working conditions.

F-ED4. The Commission therefore finds that the proposed project will result in a net benefit to the regional economy.

Transportation Findings:

F-T1. Edgerton Drive connects to Route 28A, which is defined in the RPP as a regional road. The existing building currently has two driveways on Edgerton Drive, both of which the applicant proposes to retain. Because each access is located on the secondary road (Edgerton Drive), the Commission finds that the two existing driveways can be retained.

F-T2. The applicant's transportation engineer has calculated the expected trip generation of this project based on information contained in the Institute of Transportation Engineers Trip Generation manual 7th Edition. As shown in Table 1, the net increase in vehicle trips is not significant during the morning or afternoon peak hours.

Table 1 – New Trip Generation Estimates (vehicles per hour)

Time Period	Vehicle Trips
Morning Peak Hour	16
Afternoon Peak Hour	18

Based on ITE Trip generation manual, 7th Edition.

F-T3. The standard of review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. As stated above, this project is not expected to generation more than 25 new peak hour trips; therefore no regional intersection would be impact by 25 or more new peak hour trips.

F-T4. Although the proposed project will not include a significant amount of new traffic, the Cape Cod Commission encourages the applicant to provide an employee trip reduction plan.

Hazardous Materials and Waste Management Findings:

F-HM1. Teledyne Benthos, Inc. uses, handles, and stores hazardous materials including industrial grade isopropyl alcohol, methyl chloride, and urethanes and generates hazardous wastes including waste petroleum distillates, waste corrosives, lead solder, methyl ethyl keytone, methylene chloride, and fluorescent lamps as part of company business. The company also uses epoxy resins, nitrogen gas, and lithium batteries, but these were not *"hazardous materials"* as defined by the 2002 (revised) RPP.

F-HM2. To address MPS 4.3.1.1, Teledyne Benthos, Inc. provided a copy of the company's Environmental Management System (EMS) manual (*last revised August 31, 2007*). The EMS manual "*sets forth operational policies and guidelines designed to assure continued compliance with applicable federal, state, and local environment laws, regulations, permits and corporate policies."* (EMS manual, pg. 2) The EMS also dealt with topics specific to Teledyne Benthos, Inc. operations including reviewing audit procedures related to hazardous materials use and waste generation, waste stream profiling, communication with employees of new source reduction initiatives, control of hazardous materials ordering procedures, and updating the EMS.

F-HM3. As of the date of the Commission Subcommittee public hearing, Teledyne Benthos, Inc. was registered with the Massachusetts Department of Environmental Protection (DEP) with dual hazardous waste status as a Small Quantity Generator of Federally-regulated hazardous waste *and* a Very Small Quantity Generator (VSQG) of state-regulated hazardous waste (*Source: DEP Notification of Hazardous Waste Activity Form, 6/12/07*). Teledyne Benthos, Inc. generated or was allowed to generate up to approximately 290 gallons per month of hazardous waste, and was allowed to store the waste for at most up to 180 days before it was shipped off site. The North Falmouth facility also generated Universal Wastes, including batteries, and mercury-containing lamps. Teledyne Benthos, Inc. uses a company with a valid DEP hazardous waste transporter license.

F-HM4. To address MPS 4.3.1.2, Teledyne Benthos Inc. submitted documentation that the company had a defined waste management system in place, with company personnel whose job it was to ensure compliance with the state Hazardous Waste Regulations. Teledyne Benthos Inc. staff also indicated that an audit would be made of the company's hazardous materials use and hazardous waste generation as part of the proposed new project, with the intent of reducing the amount of hazardous waste Teledyne Benthos Inc. generated.

F-HM5. The company's Emergency Action Plan (*updated September 7, 2007*) indicated the project was consistent with MPS 4.3.1.4.

Heritage Preservation/Community Character Findings:

Heritage Preservation

F-CC1. The proposed project is located well outside the boundaries of the North Falmouth Historic District and the North Falmouth Village National Register Historic District. No individual historic properties have been identified near the project area, and the proposed addition will not involve disturbing any additional land area, so it will not impact historic or archaeological resources. On January 29, 2008, the Massachusetts Historical Commission issued their determination that the project is unlikely to affect significant historic or archaeological resources.

Community Character

F-CC2. The proposed project is not located in an area of distinctive neighborhoods or a scenic area where the design must respond to the surrounding context. The proposed 14,850 SF addition, appended to the existing 27,750 SF building, will not exceed the 50,000 square feet allowed for redevelopment projects under MPS 6.2.5.

F-CC3. The proposed addition creates a façade that is 160 feet long without any setback or projection. As such, it does not meet MPS 6.2.5, which requires at least 10 feet of setback or projection in the footprint for every 50 feet of façade length. The proposed use of vertical metal panel siding and Dry-Vit as exterior building materials are also not consistent with traditional materials called for in the Commission's Design Guidelines. MPS 6.2.6, however, addresses development in industrial parks and similar areas, and allows the use of non-traditional building materials and forms as long as adequate buffers are maintained to limit visual impacts on scenic and regional roadways. Given that the roadway leading to the project is characterized by office and industrial uses, the project site is set well back from major roadways and has adequate buffers, and the addition is proposed on an already disturbed portion of the site, the use of MPS 6.2.6 is appropriate and variation from the requirements of MPS 6.2.5 is allowed.

Landscaping

F-CC4. The proposed project is located at the cul-de-sac end of Edgerton Drive, and is well buffered from surrounding development and regional roadways by existing

vegetation. The applicant has proposed landscaping around the addition and in an existing lawn area along Edgerton Drive, as well as planting in bio-retention areas. Due to its location, the proposed project is unlikely to have significant community character impacts from a landscape perspective.

F-CC5. Project plans indicate a total of 15 parking spaces will be added as a result of the proposed addition. Five additional spaces are located in front of the building, while the remainder spaces are to the rear of the site. The parking spaces in front of the building will not have significant community character impacts.

Exterior Lighting Finding

F-CC6. Existing site lighting consists of unshielded on-building mounted sodium vapor fixtures. According to the *Landscape/Lighting Plan* (L-1, as revised 4/1/08 by Rescom Architectural Inc.), eleven (11) new on building mounted exterior lights will be added as part of the proposed project. The proposed new fixtures will be Lithonia Lighting 400-watt high-pressure sodium wall packs mounted at 17 feet above finished grade. The lights will be equipped with an add-on visor, and will produce fewer than 8.0 foot-candles when first installed. Based on the information submitted, these lights are consistent with the Commission's Exterior Lighting Technical Bulletin.

CONCLUSION

Based upon the above Findings, the Cape Cod Commission hereby concludes that as proposed, the location, character, and environmental effects of the Teledyne Benthos, Inc. proposed project, as described in this Decision, will prevent its having any significant impacts on the values and purposes protected by the Act outside of the Town of Falmouth (the municipality in which the development is located). Based upon the above Findings, the Commission hereby grants the Applicant a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for the proposed addition to Teledyne Benthos, Inc. to be located at 49 Edgerton Drive, North Falmouth, MA.

Prior to the issuance of a Certificate of Occupancy from the Town of Falmouth, the Applicant must receive a Certificate of Consistency from the Cape Cod Commission. This provision is necessary to ensure that the project for which the Applicant received a DRI Exemption (from mandatory DRI review) was constructed according to the proposed plans referenced herein in Finding F-G5 and is consistent with all Findings of this Decision. The Applicant shall provide a minimum of 15 business days notice of the intent to seek a Certificate of Consistency from the Commission.

The Commission hereby approves the DRI Exemption application of Teledyne Benthos, Inc. for the proposed project to proceed without mandatory DRI review. This Decision is rendered pursuant to a vote of the Cape Cod Commission on April 17, 2008.

This Exemption Decision shall be strictly construed, and is valid for three years from the date of issuance.

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Ms. Elizabeth Taylor Date
Vice-Chairman, Cape Cod Commission

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2008

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

_____
Notary Public
My Commission Expires: