CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136
E-mail: frontdesk@capecodcommission.org

Date:	November 13, 2008
To:	Mr. Patrick M. Butler, Esq. Nutter, McClennen & Fish, LLP P.O. Box 1630 Hyannis, MA 02601
From:	Cape Cod Commission
Re:	Development of Regional Impact Cape Cod Commission Act, Sections 12 and 13
Project Applicant:	Wise Living at Woods Hole, LLC 935 Main Street P.O. Box 785 Chatham, Massachusetts 02633
Property Owner:	Nautilus Partners, LLC 533 Woods Hole Road Falmouth, Massachusetts 02543
Project:	Wise Living at Woods Hole Independent Living Retirement Community 533 Woods Hole Road Falmouth, Massachusetts
Project #:	TR08017
Book/Page #:	15165/319
Map/Parcel:	51/05 000 002B

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Limited DRI application of Wise Living at Woods Hole LLC (Applicant) for the Wise Living at Woods Hole

senior independent living complex at 533 Woods Hole Road in Falmouth, Massachusetts, pursuant to Sections 12 and 13 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 13, 2008.

PROJECT DESCRIPTION

The project site is a 5.41-acre parcel of land located at 533 Woods Hole Road in Falmouth, Massachusetts. The site is located on the northern side of Woods Hole Road at its intersection with Church Street. The site overlooks Little Harbor and is situated approximately 0.25 miles east of Woods Hole Village. A motel abuts the site to the west and shares a driveway with the site. Another motel abuts the site to the east. A portion of the site is located in the Woods Hole Historic District; the Historic District extends 200 feet to the north into the site from Woods Hole Road. The property is zoned Business Redevelopment.

The project proposes to demolish the existing Nautilus Motor Inn and remove an existing pool and tennis courts. As part of the redevelopment project, the geodesic dome in the southeastern portion of the site will be rehabilitated. The site will be redeveloped with a two- and three-story, 43-unit independent senior living facility, together with standard amenities and ancillary services, and with 102 associated parking spaces, 87 of which are proposed to be contained within an underground parking garage below the residential building. Also proposed is a new tennis court in the northwest portion of the site. The building proposal designs the building in a "shingle" style with gambrel roof forms, shingle cladding/roofing, and extensive porches and balconies. Also proposed is landscaping and stormwater and wastewater infrastructure.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact (DRI) under Section 3(f)(i) of the Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended (DRI Enabling Regulations) as a change of use with a gross floor area greater than 10,000 square feet. Pursuant to §4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use and as provided in §4(a)(iii) of the DRI Enabling Regulations, the Applicant then applied for a Limited DRI Determination. In accordance with §4(b) of the DRI Enabling Regulations, which required the Regulatory Committee to determine the scope of the DRI review, and pursuant to a vote of the Regulatory Committee on August 13, 2008, the proposed project proceeded with Limited DRI review in the areas of affordable housing and historic preservation / community character.

PROCEDURAL HISTORY

The Applicant submitted a request for a Limited DRI Determination in April 2006. At that time, the proposed project consisted of the demolition of the existing Nautilus Motor Inn and the construction of a 57-unit senior independent living facility, with the geodesic dome remaining on the site. The application was determined to be incomplete as the Applicant was still considering

the most appropriate means of rehabilitating the dome structure and resolving zoning issues concerning whether the use was allowed at the property.

Since April 2006, the Applicant has sought input on strategies for rehabilitating the dome structure from a variety of sources, including Commission staff, Massachusetts Historic Commission, and the Falmouth Historic District Commission. In addition, in November 2007 Falmouth Town Meeting re-zoned the property from Residential C to Business Redevelopment to allow up to eight units per acre of residential development via Special Permit. During this time, the Applicant also conducted public meetings with the Woods Hole community and project abutters in order to address concerns about the project design.

After modifications to the redevelopment plans were submitted, including an architectural re-design of the proposed residential building from 57 to 43 units, the application was deemed complete on August 1, 2008. Pursuant to Section 5 of the Cape Cod Commission Act (Act), a duly noticed public hearing to consider the application was held by the Regulatory Committee of the Commission on August 13, 2008 at the Gus Canty Recreational Center in Falmouth, MA. In accordance with Section 4(b)(vi) of the DRI Enabling Regulations, the Regulatory Committee reviewed the proposed change of use to determine the scope of the project review, which was limited to those RPP issue areas where the Regulatory Committee found that the impacts of the redevelopment are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee considered whether the project's impacts involve deviation from the minimum performance standards (MPS) of the Regional Policy Plan (RPP) in determining the scope of DRI review. The public hearing was closed on August 13, 2008 and the Regulatory Committee voted unanimously that the project be subject to Limited DRI review in the two resource issue areas of: 1) Affordable Housing; and 2) Community Character / Heritage Preservation.

On September 2, 2008, the Commission received a DRI Referral Form from Mr. Brian A. Currie, Town Planner, for the Town of Falmouth. On September 16, 2008 the Commission received the DRI Application and deemed it complete. A duly noticed public hearing for the review of the Change of Use DRI was held at the Falmouth Public Library on September 25, 2008 at which the subcommittee deliberated on the project and directed staff to draft a decision. The subcommittee met on October 30, 2008 and at that meeting the subcommittee reviewed a draft decision and made a recommendation to approve the proposed Wise Living at Woods Hole senior independent living complex with conditions. A final public hearing was held before the full Commission on November 13, 2008 at which time both the public hearing and record was closed. At this hearing, the Commission voted unanimously to approve the project as a DRI, with conditions.

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 public meetings and hearings, 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 Submitted***
Email from E. Cox to K. Senatori	9/2/08
Email from E. Cox to K. Senatori	9/3/08
Email from E. Cox to K. Senatori with attached affordable housing narrative	9/10/08
Memorandum from P. Butler, E. Cox to P. Ruchinskas re: Affordable Housing Component	9/10/08
Email from E. Cox to K. Senatori re: MHC	9/11/08
Email from E. Cox to K. Senatori re: suggested edits to minutes and Change of Use Decision	9/12/08
Email from E. Cox to K. Senatori re: updated memo	9/16/08
Letter from P. Schmidt, EGA, re: rooftop mechanical equipment and sound attenuation	9/16/08
Application Cover Sheet and filing fee	9/16/08
Memorandum from P. Butler, E. Cox to K. Senatori re: affordable housing clarification	9/16/08
Memorandum from E. Cox to P. Dascombe re: materials to distribute to subcommittee	9/17/08
Emails from E. Cox to K. Senatori re: site visit	9/17/08
Email from E. Cox re: staff report request	9/18/08
Powerpoint slides from public hearing presentation	9/25/08
Purchase and Sale Agreement for land off Woods Hole Road and Oshman Way	9/25/08
Email from A. Brigham to K. Senatori re: file	9/25/08
Illustrative Site Plan, HBLA Inc.	9/25/08
Letter to MHC from Deacon Marvel	9/29/08
Email from E. Cox to K. Senatori re: MHC	10/1/08
Email from E. Cox to K. Senatori re: plans	10/8/08
Email from E. Cox to K. Senatori re: AH site visit to Penikese	10/8/08
Fax from C. Wise to P. Ruchinskas – offer to purchase 3 Little Harbor	10/10/08
Email from C. Wise to P. Ruchinskas re: offer to purchase	10/10/08
Email from C. Wise to P. Ruchinskas re: Penikese / Oshman	10/15/08
Email from C. Wise to K. Senatori re: trees	10/17/08
Email from C. Wise to P. Ruchinskas with attached Penikese layouts	10/17/08
Illustrative Site Plan submitted via email from C. Wise to K. Senatori	10/17/08
Email from C. Wise to P. Ruchinskas re: 4 units at Little Harbor Road	10/17/08
Sound Barrier info received via email from C. Wise to K. Senatori	10/17/08
Falmouth Engineering Plot Plan received via email from C. Wise	10/17/08
Email from C. Wise to P. Ruchinskas re: vote to sell Penikese	10/17/08
Emails from E. Cox to K. Senatori re: decision	10/23/08
Memo and attachments from P. Butler, E. Cox to K. Senatori	10/29/08
Email from E. Cox to K. Senatori with attached revised plans	11/3/08
Email from E. Cox to K. Senatori re: copies for Commission meeting	11/3/08
Email from E. Cox to K. Senatori re: tennis court	11/3/08
Email from E. Cox to K. Senatori re: correspondence with B. Currie	11/3/08
Email from E. Cox to K. Senatori re: suggested language for AH-F1	11/5/08

Email from E. Cox to K. Senatori re: replacement and reserve account	11/5/08
Email from E. Cox to K. Senatori re: additional suggested edits	11/11/08
Materials from Commission Staff	***Date Submitted***
Email to E. Cox from K. Senatori re: minutes	9/2/08
Email to E. Cox from K. Senatori re: AH proposal	9/3/08
Email to B. Currie and M. McCollem from K. Senatori re: public hearing	9/4/08
Email to E. Cox from K. Senatori w/ attached Change of Use Decision	9/8/08
Emails to E. Cox from K. Senatori re: questions / DRI filing	9/11/08
Email to B. Currie and M. McCollem from K. Senatori re: AH proposal	9/11/08
Email to E. Cox from K. Senatori re: suggested edits, filing	9/12/08
Email to E. Cox from K. Senatori re: revised AH proposal	9/15/08
Email to E. Cox from K. Senatori re: site visit	9/17/08
Email to E. Cox from K. Senatori re: staff report, letters	9/18/08
Email to E. Cox from K. Senatori w/attached Staff Report	9/18/08
Email to B. Currie from K. Senatori w/attached Staff Report	9/18/08
Memorandum, Minutes and Staff Report to Regulatory Committee	9/18/08
Email to E. Cox from K. Senatori w/attached revised Staff Report	9/19/08
Email to B. Currie from K. Senatori w/attached revised Staff Report	9/19/08
Email to B. Currie from K. Senatori re: by-laws and LCP	9/19/08
Email to B. Currie from K. Senatori re: certified LCP	9/23/08
Emails to A. Brigham from K. Senatori re: file	9/25/08
Email to J. McCluskey from P. Dascombe re: unable to attend hearing	9/25/08
Emails to E. Cox from K. Senatori re: requests for information	10/1/08
Email to E. Cox from K. Senatori re: AH request	10/2/08
Email to E. Cox from K. Senatori re: Penikese site visit	10/8/08
Email to B. Currie and M. McCollem from K. Senatori re: meeting	10/14/08
Email to B. Currie and M. McCollem from K. Senatori re: Oshman	10/14/08
Email to C. Wise from P. Ruchinskas re: Penikese/Oshman	10/15/08
Email to M. McCollem from K. Senatori re: Penikese permit	10/15/08
Email to E. Cox from K. Senatori re: Penikese units	10/15/08
Emails to C. Wise from K. Senatori re: landscaping plans	10/17/08
Email to C. Wise from P. Ruchinskas re: Penikese layout	10/17/08
Email to E. Cox from K. Senatori with draft Decision attachment	10/21/08
Emails to E. Cox from K. Senatori with revised draft decision	10/23/08
Memorandum, Minutes and draft Decision to Subcommittee	10/23/08
Email to B. Currie, M. McCollem with attached draft Decision	10/29/08
Email to P. Butler, E. Cox with attached draft Decision	10/29/08
Email to B. Currie from K. Senatori re: draft decision	10/30/08
Email to B. Currie from P. Ruchinskas re: affordable housing	10/31/08
Email to B. Currie, M. McCollem from K. Senatori re: subcommittee meeting	10/31/08
Email to E. Cox from K. Senatori re: materials for Commission	11/3/08
Email to E. Cox from K. Senatori re: clay tennis court	11/3/08
Email to E. Cox from K. Senatori re: Town of Falmouth	11/3/08

Email to E. Cox, P. Butler from K. Senatori with revised decision	11/3/08
Email to B. Currie, M. McCollem from K. Senatori with revised decision	11/3/08
Email to E. Cox from K. Senatori re: Town correspondence	11/3/08
Email to Diane Thompson with draft decision and Penikese P&S	11/5/08
Email to M. McCollem with attached suggested language and map for Village of Woods Hole definition	11/5/08
Email to P. Butler, E. Cox from K. Senatori w/revised draft decision	11/10/08
Email to B. Currie, M. McCollem from K. Senatori w/revised draft decision	11/10/08
Materials from Town of Falmouth	***Date Received***
Referral Form from B. Currie, Town Planner	9/2/08
Email from M. McCollem re: AH proposal	9/11/08
Email from B. Currie to K. Senatori w/attached letter	9/23/08
Email from B. Currie to K. Senatori re: LCP	9/23/08
Letter from B. Currie to K. Senatori re: bylaws	9/24/08
Email from M. McCollem to K. Senatori re: Oshman Way	10/15/08
Email from M. McCollem to K. Senatori re: Penikese units	10/15/08
Letter from B. Currie to Subcommittee re: draft decision	10/30/08
Materials from Others	***Date Received***
Email from J. McCluskey re: public hearing	9/25/08
Letter from DOCOMOMO to S. Korjeff	9/24/08
Correspondence from A. Lattinville, MHC, to S. Korjeff	9/23/08
Correspondence from A. Lattinville, MHC, to S. Korjeff	9/25/08
Comment letter from Sands of Time Motor Inn	9/25/08
Comment letter from Massachusetts Historical Commission	11/10/08

TESTIMONY

Subcommittee Public Hearing, September 25, 2008
Attorney Pat Butler of Nutter McClennen and Fish LLP presented the Applicant's proposal on behalf of Wise Living at Woods Hole LLC. Mr. Deacon Marvel, the great-nephew of Buckminster Fuller and an architect, presented a 14-step rehabilitation plan for the dome. Ms. Kristy Senatori, Regulatory Officer for the Commission, presented the applicable standards and the key issues identified in the staff report.

Two member of the public spoke at the hearing; issues raised included not enough recognition by the Chamber of Commerce that this is an attraction for tourists, sound issues and the HVAC units on the roof specifically at roof level and above, and the issue of which trees will remain on-site and landscaping.

The subcommittee members had comments and questions regarding standards for noise and air quality, landscaping, Massachusetts Historical Commission, underground utilities, lighting, and conditions to the decision.

A unanimous vote was made on the motion to continue the hearing to November 13, 2008 at 3:00pm and to direct staff to draft the DRI decision for subcommittee review.

FINDINGS

The Commission has considered the application of Wise Living at Woods Hole, LLC for the limited DRI project at 533 Woods Hole Road in Falmouth, MA, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General Findings

G-F1. The project that is the subject of this Decision is as follows:

The project site is a 5.41-acre parcel of land located at 533 Woods Hole Road in Falmouth, Massachusetts. The site is improved with a 53-room motel (Nautilus Motor Inn); the motel was designed by local architect, E. Gunnar Peterson, and was constructed in several stages between 1954 and 1980. Three two- and three-story buildings comprising the motel are situated around a small exterior swimming pool and grass area. A tennis court is located in the northwest portion of the site. The motel operates seasonally and is closed for the winter months.

The site is also improved with a geodesic dome structure building designed by R. Buckminster Fuller. The dome consists of a 170-seat restaurant (Dome Restaurant) that is not currently in use. The restaurant includes the former dining area (geodesic dome) and an attached kitchen, bar, and storage area. The dome was constructed on the site in 1953-1954 and has been altered since its original construction. The dome has been determined eligible for listing on the National Register of Historic Places.

G-F2. The project proposes to demolish the existing Nautilus Motor Inn and remove the existing pool and tennis courts. As part of the redevelopment project, the geodesic dome in the southeastern portion of the site will be rehabilitated. The site will be redeveloped with a two- and three-story, 43-unit senior independent living facility, together with standard amenities and ancillary services, and with 102 associated parking spaces, 87 of which will be in an underground parking garage below the residential building. Also proposed is a new tennis court in the northwest portion of the site. The proposed "shingle" style building will have gambrel roof forms, shingle cladding/roofing, and extensive porches and balconies. The second-story portion of the proposed building spans the width of the façade closest to Woods Hole Road in order to reduce the bulk of the building at the street. Also proposed is landscaping and stormwater and wastewater infrastructure. A Bioclear Wastewater Treatment System is proposed in the location of the former tennis court in the northwest portion of the site.

G-F3. The project proposes development of affordable housing units including units within the building at 3 Little Harbor Road in Falmouth, known as the Penikese building, and may also develop affordable units within a lot on Oshman Way.

G-F4. *Local Comprehensive Plan Consistency:* The Act requires that the proposed development be consistent with the Local Comprehensive Plan (LCP) of the municipality if the municipality has adopted a LCP, which has been certified by the Commission as consistent with the RPP. The Commission finds that this standard is inapplicable as the Town of Falmouth does not have a Commission certified LCP.

G-F5. *Municipal Development By-laws Consistency*: The Act requires that the proposed development be consistent with municipal development by-laws. According to a letter received by the Commission on September 24, 2008 from Mr. Brian A. Currie, Town Planner for the Town of Falmouth, the proposed project is consistent with the Town's development by-laws. Therefore, the Commission finds that the proposed project is consistent with Falmouth local development by-laws.

G-F6. *District of Critical Planning Concern (DCPC) Consistency*: The Act requires that if the proposed development is located within a DCPC that it is consistent with the regulations approved or adopted by the Commission. The Commission finds that this standard is inapplicable as the proposed development is not located within a DCPC.

G-F7. *Probable benefit is greater than probable detriment*: The Act requires that the probable benefit from the proposed development be greater than the probable detriment. The Commission finds that the probable benefit of the project is greater than the probable detriment.

G-F8. In a decision dated September 2, 2008 (CU06009), the Regulatory Committee determined that the review of the project was limited to the issue areas of affordable housing and community character / heritage preservation. During the course of the Regulatory Committee review, the Regulatory Committee questioned whether the existing easterly driveway provided an adequate intersection sight distance. "Intersection Sight Distance" is the distance required for a driver in a driveway or on a side street to decide if an adequate gap exists in the traffic stream to safely pull out into traffic. The Applicant committed to exploring the feasibility of restricting the eastern driveway to entrance only.

G-F9. All conditions pertaining to this decision shall remain in effect regardless of any subsequent change in ownership of the property. The term "Applicant" shall be applicable to all legal successors of the current owner of the property, and shall be complied with to validly execute the terms of this decision.

Affordable Housing Findings

AH-F1. The RPP requires that 10% of a project's proposed residential units be affordable units; in this case a total of five (5) affordable units are required- either on or off site. The Applicant has committed to providing the affordable housing off site and within or proximate to the Village of Woods Hole (which, for the purposes of this decision shall be considered all land located to the south-southwest of the south sides of: (a) Quissett Harbor Road, (b) Oyster Pond Road (where Oyster Harbor Road runs in an east-west direction), and (c) the line extending easterly to the ocean where Oyster

Pond Road intersects Surf Drive, all as shown as within the circled area on the sketch plan attached hereto as Exhibit A). MPS 5.1.9 states that "the type (i.e. rental, homeownership), bedroom composition, and unit size of the affordable housing units resulting from MPS 5.1.1 and 5.1.2 shall be subject to the area's priority housing needs as determined by the Commission in coordination with the Five Year Consolidated Plan and Local Comprehensive Plans." In the Barnstable County HOME Consortium's HUD Consolidated Plan- 2005-2009, affordable rental housing for both elderly (one to two person) and small related (two to four person) households was identified as a high priority need with non age-restricted affordable home ownership housing as the second priority need. One of the policies within the draft 2005 Falmouth local comprehensive plan was to distribute affordable housing throughout all of the town's Planning Districts, and Woods Hole currently has no units that count towards the Town's 10% affordability goal. The Commission finds that the Applicant's intent to satisfy the affordability requirement off site within the village of Woods Hole rather than within the facility is consistent both with the region's affordable housing needs as over age 55 restricted ownership housing is the region's lowest affordable housing need as noted in the HUD Consolidated Plan-2005-2009 and also is consistent with the most recent draft of the local comprehensive plan.

AH-F2. The Applicant has proposed to meet the five (5) unit affordability requirement in the following manner: the four (4) units within the Penikese Building, plus: a) an additional unit, to be approved by Commission staff, within the Village of Woods Hole; or b) a fifth unit permitted within the Penikese Building; or c) a parcel of land within the Village of Woods Hole (as defined in finding AH-F1) which can accommodate one (1) unit of affordable housing; or d) one unit within the Wise senior living community at 533 Woods Hole Road. The Applicant has submitted an executed purchase and sale agreement for the two-lot Oshman Way subdivision off Woods Hole Road, and the agreement has a projected closing date of April 30, 2009. The Falmouth planning staff has confirmed that both lots are buildable and zoned for single-family residential use. One lot contains a partially completed (framed, weather-tight, interior studs) single-family home of approximately 6,000 square feet. The Applicant has also submitted an offer to purchase dated August 28, 2008 and an executed purchase and sale agreement dated October 20, 2008 for the Penikese Building at 3 Little Harbor Road. The agreements have a projected closing date of three years from the date of the purchase and sales agreement. The Penikese building is currently owned by Woods Hole Oceanographic Institution (WHOI) and used for short and long-term student housing. The offer and purchase and sale is conditioned upon WHOI securing construction financing and all regulatory permits for new student housing within the three year period. The Applicant has also submitted information that confirms that the property is currently permitted for four residential units.

The specific language in 5.1.1 about the off site option is to provide "equivalent housing units off site through the purchase of existing units, redevelopment, new construction, or a contribution of land that can support the required number of affordable units." In making an assessment of "equivalency" the Commission has measured alternatives against what would have been provided on site. Wise Living is

an ownership model, and according to the plans submitted, all units within the facility will contain two bedrooms. Unit sizes range from about 1,403–2,632 square feet with the majority of units ranging from 1,800–2,000 square feet. For equivalency purposes, the off-site units should total at least ten bedrooms with most, if not all, of the units having at least two bedrooms. While the sizes of affordable housing units are typically smaller than market rate units, the size of the off site units should at a minimum meet the requirements of the state's Department of Housing and Community Development (DHCD) Local Initiative Program (LIP). Those requirements are currently 700 square feet for a one-bedroom unit; 900 square feet for a two-bedroom unit; and 1,200 square feet for a three-bedroom unit. Finally, even though Wise Living is an ownership model, given the regional need for affordable rental housing, any off-site units that are rental units should be considered to have met the equivalency standard.

Commission staff inspected the Penikese Building and reviewed preliminary unit design plans prepared by Falmouth Engineering dated October 14, 2008 provided by the Applicant. The existing building has approximately 4,100+ square feet of gross residential area, and the preliminary unit design plans envision four (4) two-bedroom units with unit sizes of approximately 900-1,200 square feet. The Applicant has committed to meeting all applicable building code requirements in the reconfiguration of the Penikese property and has also committed to capitalize a replacement reserve for the Penikese property whether its eventual use is rental or condominium units. The existing building on one of the Oshman Way lots has the ability to provide at least two bedrooms and far exceeds LIP square footage requirements, while the vacant lot has the ability to accommodate construction of a single-family home that meets the equivalency requirements. Therefore, based upon the properties the Applicant has under site control, the Commission finds that the Applicant's off-site proposal meets MPS 5.1.1 both with respect to equivalency and also with respect to the number of units as there are six (6) potential units. In addition, the Commission finds that the Applicant has satisfied MPS 5.1.3: "Prior to final review by the Commission for DRIs, an applicant must demonstrate that off-site lots are buildable and/or units habitable."

AH-F3. The Applicant has committed to complying with MPS 5.1.5: "For DRIs, all affordable housing contributions shall be initiated upon the conveyance of any of the subdivision lots or the issuance of a building permit for any of the lots, whichever occurs first." The Applicant has indicated that it may pursue equivalent alternative affordable housing options than those described in AH-F2; however, any alternative affordable housing proposal that differs from AH-F2 shall require a DRI modification.

AH-F4. The Applicant has committed to complying with MPS 5.1.7 that requires affordable units to be subject to the Commission's Affordable Housing Deed Restriction. The intent of the restriction is to preserve in perpetuity the long-term affordability of the units in order to provide housing opportunities for future low-income households.

AH-F5. The Applicant will be required to submit an affirmative, fair marketing/selection plan, subject to Commission approval, that describes how the units will be made available

to, and rented or owned by, eligible households (MPS 5.1.10). A monitoring agreement with a third party organization will be required to assess compliance.

AH-F6. Prior to occupancy of the affordable units, the Applicant will demonstrate that the occupants are income eligible (MPS 5.1.11). A monitoring agreement with a third party organization will be required to assess compliance.

AH-F7. In accordance with MPS 5.2.2, at least one of the affordable units will need to be a legally handicapped accessible unit.

Community Character / Heritage Preservation Findings

Architecture

CC-F1. For redevelopment projects, MPS 6.2.5 allows buildings up to an individual footprint of 50,000 square feet without any requirement for full screening. According to the plans submitted, the proposed building will have a building footprint of 40,372 square feet and therefore, as a redevelopment project, full screening of the new building is not required under MPS 6.2.5.

CC-F2. MPS 6.2.4 requires development within historic districts to be designed in a manner that is consistent with the character of the area and that elements of the building mass, height, scale, roof shape, roof pitch, building materials and proportions between doors and windows to be maintained. MPS 6.2.5 also requires that the design of all structures that exceed a building footprint of 10,000 square feet incorporate variation into the massing, façade, and roof configuration in order to reduce the apparent mass of the building and "*shall include a minimum of 10 feet of set-back or projection in the façade footprint for every 50 feet of façade length*." The site is partially located within the Woods Hole Historic District. The Woods Hole Historic District includes a mix of building types and styles with varying mass and bulk. The project architects have incorporated a number of features typical of the "shingle" style into the proposed building and exhibited within the historic district. For example, shingled walls without corner boards are incorporated, and gambrel cross gables and stone cladding are typical of this style of building. Plans submitted on November 3, 2008 show either red cedar shingle or asphalt architectural shingles on the roof at the option of the Applicant. The design incorporates variation by projecting forward parts of the façade that are consistent with the dimensional requirements of MPS 6.2.5. The upper floor of the building is enclosed within the gambrel roof and the design incorporates balconies and dormers that in combination decrease the overall bulk and mass of the structure in a manner consistent with MPS 6.2.4 and 6.2.5. In addition, the portion of the building closest to Woods Hole Road has been designed as a two-story element that both partially screens the larger building elements behind and presents a less massive street profile. The Commission therefore finds that the project is consistent with the requirements of MPS 6.2.4 and 6.2.5.

CC-F3. The Applicant submitted details of the proposed rooftop equipment in a September 16, 2008 Memorandum from Peter Schmidt of EGA. This memorandum includes a section and roof plan that illustrates that the HVAC units will be located on the flat portion of the roof surrounded by the sloped or parapet walls of the building. At the

September 25, 2008 hearing, the Applicant committed to screening the roof top equipment in a manner that hid the equipment from adjacent views and also committed to ensuring the noise concerns of adjacent neighbors would be addressed through sound attenuating walls. Condition CC-C1 requires details of the proposed equipment location and screening be provided to the Commission prior to issuance of a building permit and that the drawings illustrate the screening of the equipment and that the appropriate sound attenuation has been achieved.

Parking

CC-F4. MPS 6.2.7 requires that the parking shall be located to the rear and side of the building to promote traditional village design. The proposed development includes an underground parking garage that accommodates 87 parking spaces, with 15 surface spaces located to the rear of the building in proximity to the main entrance. The Commission therefore finds that the proposed project is consistent with this standard.

Landscaping

CC-F5. MPS 6.2.9 requires that developments implement a landscape plan and requires a maintenance agreement or irrigation system be provided. The proposed plans include a significant amount of landscaping for the project, particularly in the more visually sensitive locations at the westerly front driveway entrance and between the building and the abutting residences behind the property located on Fern Lane. The landscape plan includes a mix of trees, evergreen and ornamental shrubs that are consistent with the Commission's recommended plant list and the requirements of MPS 6.2.9. No landscape maintenance plan has been submitted, however, condition CC-C3 requires that a draft maintenance plan be submitted prior to issuance of a building permit and that an executed maintenance agreement be submitted prior to occupancy of the building. Therefore, the Commission finds that that the proposed project is consistent with MPS 6.2.9.

CC-F6. The Applicant has committed to retaining an arborist to monitor and ensure the landscape plans are adhered to during construction of the senior independent living facility.

Utilities

CC-F7. MPS 6.2.12 requires that all on-site utilities for development be placed underground. The project plans appear to show the on-site utilities serving the development will be located underground in a manner consistent with this standard. The Applicant confirmed that this is the case at the September 25, 2008 hearing, and therefore the Commission finds that the project is consistent with this standard.

CC-F8. Other Development Review Policy (ODRP) 6.2.18 states that "Undergrounding of overhead utility lines as part of any roadway improvement project is encouraged." Plans submitted by the Applicant and statements made at the public hearing on September 25, 2008 indicate the Applicant intends to pursue undergrounding the street utilities in front of the property along Woods Hole Road. The Applicant also represented that the extent of this utility undergrounding depended on financial considerations and the cooperation and agreement of NStar as well as potential agreements from adjacent property owners, and upon the ability to obtain all

necessary permits and approvals for such work, and further that the cost of such undergrounding of street utilities is financially and commercially reasonable. Meeting an ODRP can be considered as a project benefit by the Commission in its weighing of probable detriments and benefits. However, although the undergrounding of utilities is strongly encouraged by the Commission and would likely improve the visual character of this part of the historic district, accomplishing this goal relies in part on the agreement of third parties. At the time of the Commission decision, no agreement has been reached with the necessary third parties. Therefore, the Commission cannot make a finding that the project meets this ODRP at this time.

Exterior Lighting

CC-F9. No site plans showing the existing exterior lighting scheme were provided. However, based on color photographs and a site visit, the existing exterior lighting consists of on-building mounted fixtures, few of which are consistent with the Commission's requirements.

CC-F10. The most recent revised exterior lighting information for the proposed project was received by the Commission on August 6, 2008. This design consists of 15 pole-mounted lights on 12-foot poles, twenty-seven 41-inch bollards, 3 on-building arm mounted lights, and 49 recessed fixtures. Based on the revised information submitted, including technical cuts and a foot-candle plan that shows initial foot-candle levels, the proposed design is consistent with the Commission's standards, including Technical Bulletin 95-001.

Heritage Preservation

CC-F11. The Wise Living site includes the Woods Hole Geodesic Dome, designed and built by R. Buckminster Fuller in 1953-54, which has been formally determined eligible for listing on the National Register of Historic Places. The dome is a significant example of modern architecture in Falmouth and the Massachusetts Historical Commission (MHC) determined that the Woods Hole Geodesic Dome may also be eligible for designation as a National Historic Landmark. The dome was originally constructed to serve as the restaurant for the modern-style Nautilus Motor Inn, which was designed by Falmouth architect E. Gunnar Peterson beginning in 1954. The majority of the motel buildings were constructed on the late 1950s and early 1960s. Many of the motel buildings have been altered through the addition of a second floor and other structures were added to the complex over time.

CC-F12. MPS 6.1.1 requires preservation of an historic structure's character-defining features. It also requires additions or alterations to historic structures to be consistent and to not diminish the building's historic and architectural significance. The Wise Living proposal includes demolition of all of the motor inn buildings except for the dome. Most of the motel buildings have been altered over time, as noted in the Applicant's concept plan proposing their demolition, and do not have the same level of integrity as the dome. Because of the alteration and reduced integrity, demolition of the motel buildings may be considered consistent with the RPP. The dome will be renovated and incorporated into the proposed senior living facility on the site. The Commission finds that preservation of the dome's defining features is a benefit of this development.

CC-F13. The Applicant has submitted a "Concept Plan" for Rehabilitation of the Dome, which outlines the work they propose, including reinforcing the existing structural frame, providing new roof sheathing, removing the existing kitchen wing, and constructing a new entrance. The proposed work involves additional analysis and architectural evaluations that need to be completed before final plans can be developed for the Dome's rehabilitation. Review of the final plans by Commission staff, with advisory assistance from MHC staff and members of International Working Party for Documentation and Conservation of Building Sites and Neighborhoods of the Modern Movement (DOCOMOMO) (a nation-wide organization dedicated to preserving modern architectural monuments), will be necessary to ensure that the Dome's integrity is preserved and the work is consistent with RPP MPS 6.1.1.

CC-F14. The Applicant has agreed to put a Preservation Restriction (PR) on the dome, providing for its long-term preservation and maintenance. The Applicant will be required to identify a state or local preservation organization to hold the Preservation Restriction. The Applicant will also have to have the restriction approved by MHC in accordance with Chapter 184 of Massachusetts General Laws, and record it at the Registry of Deeds. The PR will include provisions for the establishment of a dome maintenance fund, which will be funded by monies collected at the time of the sale of the individual units within the project. The amount that each unit owner will have to contribute to this fund at the time of purchase will be determined based upon the costs associated with the dome restoration plan.

CC-F15. Due to the requirement for a state permit, MHC staff reviewed the original project proposal and indicated that a Memorandum of Agreement (MOA) between the Applicant and MHC would be required to address the impacts on the National Register-eligible dome structure and possibly on the motel buildings. The MOA process will involve discussions with the Applicant, Commission staff, and local preservation representatives, and may identify additional activities required of the Applicant.

CC-F16. The proposed project is located within the Woods Hole Historic District and will require review by the Falmouth Historic Districts Commission.

CONCLUSION

Based on the findings above, the Commission hereby concludes:

- The proposed project is consistent with the applicable Minimum Performance Standards of the Regional Policy Plan.
- The proposed project is consistent with Falmouth local development by-laws.
- The project does not fall within a District of Critical Planning Concern (DCPC).

- The probable benefits of the proposed project outweigh the probable detriments resulting from the development. Other project benefits include:

    - Reduction in nitrogen load
    - Reduction in nitrogen load to Little Harbor
    - Reduction in wastewater flows
    - Significant stormwater improvements, including LID-measures, pre-treatment and improved quality
    - Decrease in traffic generated
    - Decrease in impervious coverage
    - Increase in naturally vegetated areas
    - Increased tax revenue
    - Reduction in quantity of hazardous materials

The Commission hereby approves with conditions the application of Wise Living at Woods Hole, LLC redevelopment project as a DRI, provided the following conditions are met:

CONDITIONS

General Conditions

G-C1. This decision pertains to the Wise Living at Woods Hole senior independent living complex and all work shall be constructed in a manner consistent with the following plans and documents:

- Wise Living at Woods Hole Independent Living Retirement Community, sheets C1.2.1, C2.0.1, C2.1.1, C2.2.1, C2.4.1 – C2.4.4, L-1 – L-5, A1.P. A1.1 – A1.3, A1.R, A2.1 – A2.4, A3.1, A3.2, A4.1 – A4.5, prepared by EGA Architects dated 6/13/08 and received by the Commission on 6/20/08; sheets A2.1, A2.2, A2.3, and A2.4 revised 10/31/08 and received by the Commission on 11/3/08.
- Proposed Tennis Court Location, Wise Living at Woods Hole, Drawing 1, prepared by EGA Architects dated 10/31/08 and received by the Commission on 11/3/08.
- *Landscape* Plans, Wise Living at Woods Hole Independent Living Retirement Community, sheets L1 – L5, prepared by HBLA Architects dated 6/13/08 and revised 8/5/08.

Any deviation or revision from the approved plans or documents, including but not limited to building location, landscaping, building materials, or other site work, shall require approval by the Cape Cod Commission through a modification process, pursuant to the Commission's Enabling Regulations in effect at the time of the review. The Commission modification process allows for an administrative review of minor or "de minimus" changes that may be applicable to small revisions to the documents listed above, however, more significant revisions requires action by the Regulatory Committee or full Commission. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

G-C2. This DRI 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-C3. 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-C4. The Applicant shall obtain all necessary state and local permits for the proposed project.

G-C5. 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-C6. Prior to issuance of a demolition permit or building permit from the Town of Falmouth for any development as described and illustrated by those plans listed in Condition G-C1, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision required before issuance of the Preliminary Certificate have been met.

G-C7. Prior to receiving either a temporary or Final Certificate of Occupancy from the Town of Falmouth, and/or prior to receiving either a temporary or Final Certificate of Occupancy for completion of the building, the Applicant shall obtain a Final Certificate of Compliance from the Commission.

G-C8. Prior to issuance of a Final Certificate of Compliance by the Commission, staff shall conduct a site inspection to verify compliance this decision. If, based on the site inspection, the site is found not to be in compliance with the Commission's decision, the Applicant shall modify the project to conform to the decision or obtain an appropriate modification of this decision. Such modification shall take place prior to issuance of the Final Certificate of Compliance.

G-C9. The Applicant shall provide a minimum of 30 days notice prior to issuance of all certificates associated with this decision. Commission staff shall complete an inspection under this condition within seven business days of such notification and inform the Applicant in writing of any deficiencies and corrections needed. The Applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision at reasonable times and after reasonable notice, for the purpose of determining whether conditions contained in the decision are met.

Affordable Housing Conditions

AH-C1. The Applicant, in conformance with the 10% affordability requirement of MPS 5.1.1, shall meet the five (5) unit affordability requirement in the following manner: provide four (4) units within the Penikese Building, and provide one additional unit from the following list: a) an additional unit, to be approved by Commission staff, within the

Village of Woods Hole (as defined in finding AH-F1); or b) a fifth unit permitted within the Penikese Building; or c) a parcel of land, to be approved by Commission staff, within the Village of Woods Hole which can accommodate one (1) unit of affordable housing; or d) one unit within the Wise Living senior independent living community at 533 Woods Hole Road, or any combination of the foregoing. A minimum of ten (10) bedrooms shall be provided, and at least four (4) of the affordable units shall contain at least two bedrooms each. All affordable units shall meet the DHCD LIP minimum square footage requirements. The applicant shall indicate prior to the issuance of a Preliminary Certificate of Compliance which of the foregoing will be utilized to comply with this condition.

AH-C2. Any alternative affordable housing option that differs from AH-C1 shall require a DRI modification.

AH-C3. The affordable units provided by this decision shall have income eligibility requirements. Income eligibility for the affordable units shall be for households at or below 80% of area median income. The income limits are established for Barnstable County by the U.S. Department of Housing and Urban Development (HUD), as may be adjusted from time to time. If the affordable units are rental units, the rents charged shall be the "high" HOME rents of HUD's HOME Investment Partnerships Program, as may be adjusted from time to time, for Barnstable County. If the affordable units are ownership units, eligible households shall be first time homebuyers, and the pricing of the units shall be in accordance with the Barnstable County HOME Consortium's methodology (attached hereto as Exhibit B). If any of the affordable units are within the Wise Living facility, then the eligibility, pricing, and asset requirements shall be those of the most current DHCD Chapter 40B guidelines.

AH-C4. Prior to the issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide to the Commission copies of the following:

a) For the Penikese Building to be used to meet MPS 5.1.1:

1. A plan for the use of the building shall be submitted to Commission staff for its review and approval. The plan shall include the number of affordable units; whether the units are to be rented or owned; and whether the units are to be owned by the Applicant or transferred. If the property is to be transferred, the plan shall identify the new owner and its experience in managing properties of this type.

2. The Applicant shall submit to Commission Counsel for review and approval a draft of a deed restriction requiring affordability of four (4) units in accordance with Condition AH-C2. The Applicant shall record these deed restrictions at the Barnstable County Registry of Deeds prior to the Commission's issuance of a Preliminary Certificate of Compliance.

3. The final construction specifications and plans for the Penikese building shall be in conformance with the size and bedroom requirements of Condition AH-

C1. If the one handicapped accessible affordable unit is to be located in the building, the plans should identify the accessible unit. In addition, a letter from an architect confirming that the plans meet all federal and state handicapped accessibility requirements shall be submitted to Commission staff for review and approval.

4. A draft monitoring agreement shall be submitted to Commission staff for its review and approval. The monitoring agreement shall be between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the affirmative fair housing marketing plan requirements. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

b) If an Additional Unit in Woods Hole is used to meet MPS 5.1.1:

1. A unit plan shall be submitted to Commission staff for its review and approval. The plan shall indicate whether the unit is to be rented or owned; and whether the unit is to be owned by the Applicant or transferred. If the property is to be transferred, the plan shall identify the new owner and its experience in managing properties of this type.

2. The Applicant shall submit to Commission Counsel for review and approval a draft of a deed restriction requiring affordability of the unit in accordance with Condition AH-C2. The Applicant shall record this deed restriction at the Barnstable County Registry of Deeds prior to the Commission's issuance of a Preliminary Certificate of Compliance.

3. The final construction specifications and plans for the additional unit shall be in conformance with the size and bedroom requirements of Condition AH-C1. If the one handicapped accessible affordable unit is to be located in the building, the plans shall identify the accessible unit. In addition, a letter from an architect confirming that the plans meet all federal and state handicapped accessibility requirements shall be submitted to Commission staff for review and approval.

4. A draft monitoring agreement shall be submitted to Commission staff for its review and approval. The monitoring agreement shall be between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall

report on the Applicant's compliance with condition AH-C2 and with the affirmative fair housing marketing plan requirements. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

c) If a lot at Oshman Way is used to meet MPS 5.1.1:

1. i) If the property is to be transferred, prior to any transfer the Applicant shall submit to Commission Counsel for review and approval a draft of a deed restriction requiring affordability of the lot in accordance with Condition AH-C2. The Applicant shall record this deed restriction at the Barnstable County Registry of Deeds prior to the Commission's issuance of a Preliminary Certificate of Compliance.

   ii) If the lot is to be developed by the Applicant, the Applicant shall submit to Commission Counsel for review and approval a draft of a deed restriction requiring affordability of the lot in accordance with Condition AH-C2. The Applicant shall record this deed restriction at the Barnstable County Registry of Deeds prior to the Commission's issuance of a Preliminary Certificate of Compliance.

2. If the lot is to be developed by the Applicant, the Applicant shall provide final construction specifications and plans to Commission staff for its review and approval. The plans and specifications shall be in conformance with the size and bedroom requirements of Condition AH-C1. If the one handicapped accessible affordable unit is to be located in the building, the plans shall identify the accessible unit. In addition, a letter from an architect confirming that the plans meet all federal and state handicapped accessibility requirements shall be submitted to Commission staff for review and approval.

3. If the lot is to be developed by the Applicant, the Applicant shall submit a draft monitoring agreement to Commission staff for its review and approval. The monitoring agreement shall be between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the affirmative fair housing marketing plan requirements. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor

by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

d) If a unit in the Wise Living facility is used to satisfy MPS 5.1.1:

1. Recorded deed restriction requiring the affordability of one (1) unit as described in Condition AH-C2. The deed restriction shall be reviewed and approved prior to recording by Commission Counsel. The deed restriction must be recorded prior to the issuance of a Preliminary Certificate of Compliance.

2. The Applicant shall provide final construction specifications and plans to Commission staff for its review and approval. The plans and specifications shall identify the location of the affordable unit and shall be in conformance both with the size and bedroom requirements of Condition AH-C1 and with MPS 5.1.8. If the one handicapped accessible affordable unit is to be located in the building, the plans shall identify the accessible unit. In addition, a letter from an architect confirming that the plans meet all federal and state handicapped accessibility requirements shall be submitted to Commission staff for review and approval.

3. The Applicant shall submit a draft monitoring agreement to Commission staff for its review and approval. The monitoring agreement shall be between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the affirmative fair housing marketing plan requirements. The report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

AH-C5. Prior to the issuance of a Final Certificate of Compliance, the Applicant shall submit to the Commission staff the following for its review and approval:

a) For the Penikese Building to be used to meet MPS 5.1.1:

1. A copy of the affirmative fair housing marketing plan (AFHMP) that has been submitted to DHCD along with a copy of DHCD's approval of the plan.

2. A monitoring agreement for approval by Commission staff, that is executed between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the

AFHMP. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

3. Evidence that a replacement and maintenance reserve account has been established. The Applicant shall be required to capitalize this account by providing an amount equal to 2.5% of the assessed value of the building.

4. A copy of the certificate(s) of occupancy for the property.

b) If an Additional Unit in Woods Hole is used to meet MPS 5.1.1:

1. A copy of the AFHMP that has been submitted to DHCD along with a copy of DHCD's approval of the plan.

2. A monitoring agreement for approval by Commission staff, that is executed between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the AFHMP. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

3. Evidence that an appropriate replacement and maintenance reserve account is established. The Applicant shall be required to capitalize that account for the single unit in accordance with the provisions of M.G.L. c. 183A or, in the event that the unit is not part of a condominium, the capitalization shall be an appropriate amount based upon the condition of the unit and building. This provision shall not apply if the unit is a single family dwelling.

4. A copy of the certificate of occupancy for the additional unit.

c) If a lot on Oshman Way is used to meet MPS 5.1.1:

1. If the lot is to be developed by the Applicant, a copy of the AFHMP that has been submitted to DHCD along with a copy of DHCD's approval of the plan.

2. A monitoring agreement for approval by Commission staff, that is executed between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with condition AH-C2 and with the AFHMP. If there are rental units, the report shall list each unit occupied within the building by an income eligible household, the household's income, and the rents charged for the affordable apartments. If there are ownership units, the report shall provide verification of the first time homebuyer status and income eligibility of the purchasers of the units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

d) If a unit in the Wise Living facility is used to meet MPS 5.1.1:

1. A copy of the AFHMP that has been submitted to DHCD along with a copy of DHCD's approval of the plan.

2. A monitoring agreement for approval by Commission staff, that is executed between the Applicant and an organization with experience in income and rent certifications that shall provide for the submission of an annual monitoring report to the Applicant and to the Commission. The monitoring agent shall report on the Applicant's compliance with conditions AH-C2 and with the AFHMP. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.

3. Evidence that a replacement and maintenance reserve account is established. The Applicant shall be required to capitalize this account for the single unit in accordance with the provisions of M.G.L. c. 183A.

Community Character / Heritage Preservation Conditions

CC-C1. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit for Commission staff's review and approval plans that show the proposed screening of all roof top mechanical equipment proposed. The plans shall also demonstrate that the screening proposed will hide the equipment from adjacent properties and that the placement and sound attenuation measures undertaken are consistent with the requirements of Massachusetts State Implementation Plan (SIP) and the Department of Environmental Protection (DEP) Air Pollution Control Regulations, 310 CMR 7.00.

CC-C2. The project shall be landscaped in accordance with the plans identified in Condition G-C1. No plant substitutions may be made without the prior written approval of Cape Cod Commission staff.

CC-C3. A draft landscape maintenance contract shall be submitted for staff approval prior to issuance of the Preliminary Certificate of Compliance for the project. Prior to installation of plant material and prior to the issuance of any Final Certificate of Compliance, an executed landscape maintenance contract consistent with the approved draft shall be submitted to Commission staff for its review and approval. The landscape maintenance contract(s) shall run for a minimum of three growing seasons (a growing season is defined as the period between March 15 and October 31).

CC-C4. All required exterior lighting and/or other landscape improvements shall be completed prior to issuance of any Final Certificate of Compliance for each building or phase of construction. Any work not complete at the time a Final Certificate of Compliance is sought from the Commission 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 that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. Commission staff may request an estimate for the incomplete work from up to three vendors. The escrow agreement 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.

CC-C5. The Applicant shall install exterior lighting for the project, which is consistent with MPS 6.2.10 and Technical Bulletin 95-001. The installation of billboards, off-site advertising (excepting approved directional signs) and internally lit or flashing signs shall be prohibited. In addition, any signs shall be down-lit in conformance with Technical Bulletin 95-001.

CC-C6. The Applicant shall construct/install the project's exterior lighting consistent with the following plans, except that a *flat glass lens* shall be used for the A and A-1 fixtures shown on sheet L-4:

1. *Landscape - Layout and Materials Plan*, from HBLA, drawing date 6/30/08, latest revision date 8/5/08, drawn by AMW, sheet L-1

2. *Landscape – Grading and Drainage Plan*, from HBLA, drawing date 6/30/08, latest revision date 8/5/08, drawn by AMW, sheet L-2

3. *Landscape – Planting and Lighting Plan*, from HBLA, drawing date 6/30/08, latest revision date 8/5/08, drawn by AMW, sheet L-3

4. *Landscape – Site and Building Photometrics Plan*, from HBLA, drawing date 6/13/08, latest revision date 8/5/08, drawn by CF/AMW, sheet L-4

CC-C7. Should unexpected conditions arise during construction that require adjustments to any exterior lighting fixtures, including substitutions of fixture heads, the Applicant shall obtain written approval from Commission staff prior to substitution or installation of the revised design. Modifications to the exterior lighting design that are in accordance with MPS 6.2.10 and Technical Bulletin 95-001 may be considered as Minor Modifications #1 according to Section 12.0 of the *Enabling Regulations* (revised, March 2005) and may approved by Commission staff.

CC-C8. Prior to issuance of a Certificate of Use/Occupancy by the Town of Falmouth, and prior to issuance of a Final Certificate of Compliance from the Commission, in-the-field verification of light levels and the installed exterior lighting must be conducted by Commission staff to verify conformance with the requirements of the Technical Bulletin 95-001, MPS 6.2.10 and Finding CC-C7. Until the Commission staff issues a written confirmation that the exterior lighting design is consistent with the Technical Bulletin 95-001, MPS 6.2.10 and Finding CC-C7, no Final Certificate of Compliance may be issued.

CC-C9. The Applicant shall implement the 14-point "Concept Plan" developed for the preservation and rehabilitation of the dome by their architect, Deacon Marvel.

CC-C10. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit final specifications and drawings detailing items 1 through 9 of the proposed "Concept Plan" for Commission staff review and approval. Commission staff will seek advisory assistance from MHC and DOCOMOMO staff in their review of the final specifications and drawings to determine their consistency with RPP MPS 6.1.1 and federal standards for treatment of historic structures.

CC-C11. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall complete the consultation process and sign a Memorandum of Agreement (MOA) with MHC to address impacts to historic resources on the site. If the MOA process identifies additional activities or mitigation required of the Applicant, such mitigation shall be completed prior to issuance of a Certificate of Occupancy.

CC-C12. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall draft a Preservation Restriction for the dome in accordance with Chapter 184 of Massachusetts General Laws and submit it to MHC for their review. Prior to issuance of a Final Certificate of Compliance, the Applicant shall identify a state or local preservation organization to hold the Preservation Restriction, shall have the restriction approved by MHC in accordance with Chapter 184 of Massachusetts General Laws, and shall record it at the Registry of Deeds.

The Commission hereby approves with conditions the application of Wise Living at Woods Hole, LLC for the proposed redevelopment project at 533 Woods Hole Road in Falmouth, MA as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended.

This decision is rendered pursuant to a vote of the Cape Cod Commission on November 13, 2008.

_____

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

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2008

Before me, the undersigned notary public, personally appeared _____, in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/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: