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CAPE COD COMMISSION

Date: October 17, 2013

To: Eliza Cox, Esq.
Nutter McClennen & Fish LLP
PO Box 1630
Hyannis, MA 02601

From: Cape Cod Commission

Re: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

Applicant: Falmouth Hospital Association, Inc.

Project & Location: Falmouth Hospital
100 Ter Heun Drive
Falmouth, MA 02540

Project #: TR/HDEX# 13008

Map/Parcel: 38/01/009A/004
Lot/Plan: Lot 4 Plan 358/13
Book/Page: Book 1012 Page 442
Book 1095 Page 46

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions, the application of Falmouth Hospital Association, Inc. (the Applicant), represented by Attorney Eliza Cox (of Nutter McClennen & Fish, LLP) as a Development of Regional Impact (DRI) Project of Community Benefit (POCB) Hardship Exemption pursuant to Sections 12,13 and 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and Sections 7 and 9 of the Cape Cod Commission *Enabling Regulations*, as amended, (herein, "Enabling Regulations) for an approximately 19,000 square foot single story addition to Falmouth Hospital (Hospital) which will enable the reconfiguration of the Hospital's emergency department in Falmouth, MA. This decision (herein, "Decision) is rendered pursuant to a vote of the Commission on October 17, 2013.

PROJECT DESCRIPTION
As described in the Applicant's *Project Narrative*, the proposed project involves construction of a new, 19,000 square foot addition to the existing Hospital at the Ter Heun campus. The new structure will be one story on slab. The project also involves the renovation of an additional 3,000 square feet of interior space, resulting in a 22,000 square foot Emergency Department. Post-renovation, the *Project Narrative* states the Emergency Department *"will continue to include 40 treatment bays..." No additional rooms or beds are proposed.* The project also includes new support spaces, a clinical core, dedicated emergency entrance, waiting area, and ambulance drop-off bays, as well as site plan changes to accommodate the new structure.

PROCEDURAL HISTORY
The Commission received a Development of Regional Impact (DRI) Hardship Exemption Project of Community Benefit application on July 3, 2013. The Commission received a referral of the project as a DRI from the Falmouth Planning Board, through Brian Currie, the Falmouth Town Planner, on July 10, 2013. Commission staff sent a letter to the Applicant's representative, Attorney Cox, on July 25, 2013 stating that the DRI application was not complete. In July and August 2013, the Applicant's consultants submitted additional information. The DRI application was deemed complete by a letter dated August 28, 2013, a copy of which was sent to the Applicant's representatives. A Hearing Officer opened the DRI hearing period by a pro-forma hearing on September 6, 2013. A substantive public hearing was held by a Hearing Officer on September on Thursday, September 26, 2013 at the Gus Canty Community Center, 790 Main Street, Falmouth, MA. At this public hearing, the Hearing Officer, Attorney Jonathon Idman, heard presentations on the project by the Applicant's representatives and Commission staff. Hearing Officer Idman also heard comments from Brian Currie, the Falmouth Town Planner. Attorney Idman directed Commission staff to prepare a draft written decision, based on the testimony and other information provided, for his recommendation to the Commission, and continued the hearing to October 17, 2013 at 3:00 PM at the full Cape Cod Commission meeting, at the Assembly of Delegates Chambers, First District Courthouse, Barnstable, MA.

JURISDICTION
The project qualifies as a DRI pursuant to Section 3(e)(i) of the Commission's *Enabling Regulations* (revised March, 2013; Revised Fee Schedule Effective July 1, 2013) *"as new construction of any building or buildings (including accessory and auxiliary structures) with a Gross Floor Area greater than 10,000 square feet."*

FALMOUTH HOSPITAL EMERGENCY DEPARTMENT RECONFIGURATION
MATERIALS SUBMITTED FOR THE RECORD

TABLE 1: Materials Submitted for the Record

Materials from Cape Cod Commission	***Dated***
Email, Andrea Adams (AA) to Glenn Cannon and Steven Tupper: Copy of 2003 decision for medical building	5/30/13
Letter, Gail Hanley to Attorney Eliza Cox (ECox): Letter notifying Applicant that project is subject to Commission review	7/15/13
Email, AA to Commission staff: Please provide comments on the application's completeness	7/11/13
Email, Paul Ruchinskas to AA: Comments likely to be similar to those for Cape	7/16/13

Cod Hospital in Hyannis	
Email, Steven Tupper to AA: Completeness comments	7/16/13
Email, Ryan Bennett, to AA: Completeness comments	7/17/13
Email, Sarah Korjeff to AA: Completeness comments	7/18/13
Email, Tabitha Harkin to AA: Completeness comments	7/18/13
Email, AA to Commission staff: Review information for application completeness	7/22/13
Email, James Sherrard (JS) to AA: Water Resources comments	7/22/13
Email, Leslie Richardson to AA: Application complete	7/23/13
Letter, AA to ECox: Letter on application completeness	7/25/12 *(sic)*
Email, AA to ECox: PDF of letter on application completeness	7/25/13
Email, Paul Ruchinskas to ECox: Questions on project	7/29/13
Email, Gail Hanley to AA, Jonathon Idman (JI): Timelines for opening hearing	7/31/13
Email, AA to ECox: Follow up comments from water resources	7/25/13
Email, AA to Tabitha Harkin and Scott Michaud: Draft landscape maintenance contract	8/12/13
Email, Tabitha Harkin to AA: Landscape maintenance agreement is satisfactory	8/13/13
Email, AA to JS: Draft landscape maintenance agreement from ECox	8/13/13
Memo, Glenn Cannon and Steven Tupper: Application complete	8/12/13
Email, JS to AA: Comments on draft landscape maintenance contract	8/14/13
Email, AA to ECox: Comments from JS on water resources issues	8/14/13
Letter, Gail Hanley to ECox: Cost of noticing and copy of hearing notice	8/20/13
Email, AA to Commission staff: Review application for completeness	8/22/13
Email, Sarah Korjeff to AA: Application complete	8/22/13
Email, AA to ECox: Letter on project – Application complete	8/28/13
Email, AA to ECox: Scheduling of hearing in early October	8/30/13
Email, JI to ECox: Hearing date moved to 9/26/13	8/30/13
Email, AA to Commission staff: Request for comments for staff report	9/4/13
Email, JS to ECox: Comments on landscape maintenance contract and consistency with RPP standards	9/4/13
Letter, Gail Hanley to ECox: Cost of noticing and copy of hearing notice	9/5/13
Email, JS to ECox: Revised landscape plan dated 9/5/13 is satisfactory	9/5/13
Hearing Notice (Pro-forma Hearing Officer)	9/6/13
Hearing Officer Minutes (Pro-forma)	9/6/13
Steven Tupper to AA: Transportation comments	9/9/13
Email, AA to Brian Currie: Seeking his input on local criteria for Commission project approval (DCPCs, bylaws)	9/10/13
Email, AA to Brian Currie: Thanks for his comments; Note hearing date, time and location	9/10/13
Email, AA to Leslie Richardson, Heather McElroy and JS: Request for comments for staff report	9/10/13
Email, Heather McElroy to AA: No additional open space requirement	9/10/13
Email, AA to Brian Currie: Seeking additional comments on consistency with local bylaws, zoning, etc.	9/24/13
Email, AA to ECox: Coordination for the public hearing	9/23/13
Email, AA to Brian Currie: Seeking additional comments on consistency with	9/24/13

local bylaws, zoning, etc.	
Email, AA to ECox: Seeking additional comments on consistency with local bylaws, zoning, etc.	9/24/13
Staff Report	9/24/13
Email, AA to Brian Currie and ECox: Transmit copy of staff report and seek clarification on consistency with local bylaws, zoning	9/24/13
Email, AA to JI: Coordination for the public hearing	9/24/13
Email, AA to ECox: Coordination for public hearing	9/25/13
Email, JI to ECox: When project would be brought to full Commission	9/25/13
Hearing Notice (Substantive Hearing Officer)	9/26/13
Hearing Sign In Sheets	9/26/13
Minutes from Hearing Officer Public Hearing	9/26/13
Email, AA to ECox: Copy of draft decision	10/8/13
Email, AA to ECox and Ryan Bennett: Discussion of Energy Condition	10/10/13
Email, Ryan Bennett to ECox and AA: Proposed changes to Energy Condition	10/10/13
Email, AA to ECox, with attached amended draft decision	10/10/13
Cover Memo to Full Commission transmitting information from Commission staff and Applicant	10/10/13
Email, JI to AA, with attached draft PowerPoint: Comments on Power Point?	10/11/13
Email, JI to AA: Minor corrections to draft decision	10/11/13
Email, AA to Brian Currie with attached draft decision: Copy of document to be reviewed on October 17, 2013	10/16/13
Email, AA to Brian Currie: Note date and time of Commission meeting	10/16/13
Copy of Commission Staff Power Point used at the Commission meeting	10/17/13
Materials from Applicant	***Date Received***
Letter from Atty. Ament to Falmouth Building Commissioner re: zoning	5/9/2013
Falmouth Bldg. Comm. response to Ament letter re: zoning confirmation	5/14/2013
Letter from Atty. Ament to Falmouth BOS re: LCP	6/7/13
Letter, Attorney Eliza Cox (ECox) to Jonathon Idman (JI) with attachments: Copy of DRI/HDEX/POCB application; 2 full size plan sets; fee payment; certified abutters list	7/3/13
DRI/HDEX/POCB application materials: Application Cover Sheet; Project Narrative; Timeline; Budget; USGS Quad Map and aerial photos; Title information; List of required permits/approvals; MHC project notification form; stormwater operations/maintenance plan; waste management protocols; construction waste plan; energy conservation initiatives; open space report; compliance with economic development standards; affordable housing report; transportation analysis; architectural design and proposed materials; exterior fixture cuts; project plan set; filing fee calculation; certified abutters list	7/3/13
Letter, ECox to Brona Simon, MHC: Filing of Project Notification Form	7/5/13
Copy of Fee Payment	7/15/13
Email, Attorney Ament, to JI, with attachment: Copy of application for Site Plan Review	7/15/13
Email, ECox to AA: Will send draft landscape maintenance contract	7/25/13
Email, ECox, to AA: Response to exterior lighting comments	7/25/13
Letter, ECox to AA: MHC Project Notification Form stamped "no significant impact" by MHC	7/31/13
Email, ECox to AA: draft landscape maintenance contract	8/2/13

Letter, ECox, to AA: VHB Memo/LOS analysis	8/8/13
Letter, ECox to AA, with attachments: *Letter from Jerry Potamis concerning capacity at wastewater treatment plant; updated stormwater management plan; updated nitrogen loading calculations; revised Design Summary; three 11 x 17 inch plan sets*	8/22/13
Email, ECox to AA and JI: Difficulty with proposed hearing date	8/29/13
Email, ECox to AA, JI: Received JI Email on change to hearing date	8/30/13
Email, ECox to JS: Seeking clarification on his comments on landscape maintenance contract	9/4/13
Email, ECox, to JS, with attachments: Discussion of draft landscape maintenance agreement *Attachments: Two versions of agreement*	9/5/13
Email, ECox, to JS: Thanks for analysis	9/5/13
Email, ECox to AA: Coordination of public hearing	9/22/13
Email, ECox to AA: Will provide short presentation at hearing	9/24/13
Email: ECox to AA: Coordination of public hearing	9/25/13
Three 11x17 inch colored site plans illustrating placement of new Emergency Department addition relative to the rest of the hospital	9/26/13
Letter from Atty. Ament to Idman, re: zoning and LCP (references 8/9/13, 8/14/13 and 6/7/13 letters)	9/30/13
Email, ECox to AA and JI: w/ attached LEED Checklist from Isgenuity	10/7/13
Email, ECox to AA and JI: Comments on draft decision	10/9/13
Email, ECox, to AA: Coordinating copies and comments on draft decision	10/10/13
Email, ECox to Ryan Bennett: Please communicate thoughts on Energy Condition to Architect, Martin Batt	10/10/13
Email, ECox to Ryan Bennett and AA: Comfortable with proposed Energy Condition #1 language	10/10/13
Email, ECox to AA and JI: Suggested minor corrections to draft decision	10/11/13
Materials from Public Agencies	***Date Received***
Referral Form – Includes 7/8/13 application to Falmouth Planning Board for site plan review filed by Attorney Ament	7/10/13
Letter, Office of Falmouth's Town Manager: Letter in support of project reflecting vote of Board of Selectmen on 6/17/13 to unanimously support the project	7/5/13
Email, Brian A. Currie, Falmouth Town Planner: Comments on local criteria for approval	9/10/13
Email, Brian Currie, to AA: Additional comments on consistency with local bylaws, zoning	9/24/13
Letter, Julian M. Suso, Falmouth Town Manager: In support of project	9/26/13
Email, Brian Currie to AA: Seeking proposed final motion on project	10/11/13
Materials from General Public or Interested Parties	***Date Received***
No materials or comments received from the public or interested parties	None

TESTIMONY

September 26, 2013 Public Hearing

Attorney Idman, the Commission's Chief Regulatory Officer, opened the Hearing on September 25, 2013 at 5:00 PM. Mr. He introduced himself and read the Hearing Notice. He explained the order of the hearing, noted that he had conducted a site visit earlier that day with the Applicant's representatives, and asked the Applicant's representative to make a presentation.

Attorney Eliza Cox, Nutter, McClennen and Fish, introduced the Applicant's project team. She said the Applicant would respond to a few points in the staff report, and that the Applicant's architect would then describe the proposed project. She noted that Falmouth Hospital sits on a 21-acre campus, and is part of Cape Cod Healthcare. She said the facility has 91 beds, and that the Emergency Department was last expanded in 1998. Attorney Cox described the number of patient visits, noting they approach 25,000 annually. She noted the facility is particularly busy in the summer months. Attorney Cox said the Applicant had engaged the services of a consultant to assess the size of the Emergency Department, and the results of that work indicated that 40 treatment bays, which is what the Department has now, is the correct size, but that the Department is still cramped. She described the proposed project, which consists of a 19,000 square foot addition and 3,000 square feet of interior space renovation, for a total project area of 22,000 square feet. Attorney Cox noted that Falmouth Hospital will be fundraising for the proposed project and has a firm budget of approximately $11.5 million. As such, she said the facility design must stay within this financial constraint.

Martin Batt, architect with Isgenuity, used large size site plans and drawings mounted on foamcore to describe the project's design. He said the project is constrained in that the Southwest corner of the existing Hospital building is the logical location for the new Emergency Department addition in terms of the new addition's relationship to existing mechanicals and other Departmental support functions. Mr. Batt described proposed changes to the ambulance bays, and the look, height and massing of the proposed addition. He noted the proposed expansion would allow patients to have individual, private treatment bays, positioned around a central staff location.

Mr. Batt used a large rendering of the proposed addition to describe the exterior. He said the materials to be used were similar to those on the Clarke Center. He said the project team was using the grade change in the area to building the structure partially into the topography. Mr. Batt said this would provide better building insulation and additional screening. Mr. Batt said the Applicant had looked at the possibility of LEED certification, but that meeting the criteria was not feasible for an Emergency Department, primarily because of loss of HVAC control out the ambulance bays, and the need to tie into existing HVAC equipment to save money. He said the Applicant is nonetheless looking to incorporate several LEED designs into the new building to also save money. He described the proposed site and landscaping changes to accommodate the new addition.

Attorney Cox addressed the criteria for a DRI approval. She noted the site was not located in a District of Critical Planning Concern. Attorney Cox noted that Falmouth did not have a Commission-certified Local Comprehensive Plan (LCP), so this criterion was not applicable. Nevertheless, she noted that Attorney Ament had provided an analysis of the project's consistency with the LCP. Attorney Cox also noted that the Falmouth Board of Selectmen had also submitted a letter to the Commission in support of the project. Attorney Cox said that the recent comments from Mr. Currie, Falmouth's Town Planner, and an additional letter from Attorney Ament indicate the project is consistent with Falmouth zoning. She said the only local review is Site Plan review because the proposed structure is over 1,000 square feet in size.

Attorney Cox noted the Applicant had requested the project be granted a Hardship Exemption and Project of Community Benefit. She described the Applicant's reasons for the request, noting the proposed project would be paid for by a fund-raising campaign. She noted that Falmouth Hospital was a critical healthcare facility on Cape Cod, and as such, was a public benefit. She referred Mr. Idman to the Town's letter supporting the project.

Attorney Cox commented on the Energy and Open Space sections of the staff report. On Energy, Attorney Cox suggested the Applicant could submit its investigations with respect to LEED certification, including a LEED checklist, in connection with Minimum Performance Standard E1.5. She noted that solar panels were not practicable, as illustrated by the site visit, given the amount of trees close to the building, and shadowing from the existing building elements. She also said Falmouth Hospital had considered roof-mounted solar panels before, but that as a healthcare facility, the insurance carriers are reluctant to allow anything on the roof that might compromise its integrity.

On Open Space issues, Attorney Cox noted that no new open space is required because the project will be sited on already disturbed areas. She also suggested that because the Hospital had been through prior Cape Cod Commission review for the Faxon Center in 1994, that the Hospital had satisfied the open space requirement for the entire 21-acre campus at that time.

Attorney Cox addressed possible benefits of the project, by noting the Best Development Practices enumerated in the staff report. She also said the Hospital has important energy efficiency programs, and that the nature of the project, which was to improve patient care and privacy, was itself a benefit.

Hearing Officer Attorney Idman asked the Applicant's representatives to describe the changes to the project's architectural plans/designs made since the DRI/HDEX/POCB application was filed in July 2013.

Mr. Batt said the changes consisted largely of adjusting the amount of glass panels to be used, changes to portions of the ambulance canopy, and removal of a window that would have looked into the ambulance bay. He said some of the overhangs on the building elements had been changed or reduced, and the type of metal panels to be used had been adjusted.

Hearing Officer Attorney Idman requested that the Applicant submit a revised set of plans for the record because the project, if approved, would be conditioned to be constructed according to the most current set of plans.

Hearing Officer Attorney Idman asked Ms. Adams to summarize the staff report.

Andrea Adams, the Commission's Senior Regulatory Planner, summarized the staff report. She noted the Commission's jurisdiction over the project as a DRI. She noted that Commission staff had reviewed the proposed development's consistency with the Commission's Minimum Performance Standards (MPS) of the 2009 Regional Policy Plan (as amended 8/17/12), and other regulatory standards. Ms. Adams noted that based on this analysis, Commission staff suggests that MPS LU1.1 (Development Location) MPS LU 2.2 (Co-Location of Telecommunication Facilities), MPS LU3.1 *(Buffers to Agricultural Uses)* and MPS LU3.2 *(Impacts to Agricultural uses)* do not apply to this project. She also noted that staff suggests the proposal is consistent with MPS LU1.2 (Compact Development) and MPS LU2.1 (Connections to Existing Infrastructure).

According to the Regional Policy Plan's Economic Development section, she said the proposed project was Redevelopment and therefore must meet two waiver criteria under MPS ED1.3. Ms. Adams said that based on the information provided by the Applicant, Commission staff suggests the proposed project has met waiver criteria for Municipal Endorsement and Emerging Industry

Cluster. This is evidenced by the June 17, 2013 letter from the Falmouth Selectmen endorsing the project. The expansion of the hospital's Emergency Department meets the waiver criterion definition of an Emerging Industry Cluster as a high-skill, high-wage, knowledge-based business activity. She said the other MPS in this section of the RPP, MPS ED2.1 (Gaming) and MPS ED4.1 (Demonstrated Need and Public Benefit) do not apply.

In the area of Water Resources, Ms. Adams said staff notes Nitrogen Loading calculations are below the General Aquifer protection limit of 5 ppm-N and suggest that the project meets MPS WR1.1.

Ms. Adams said that Commission staff's analysis of the project suggests that the proposed project is in compliance with MPS WR1.2 (Identification of Drinking Water Wells), and has satisfied MPS WR1.5, as well as MPS WR3.1 and MPS WR3.2 which deal with impacts to marine water quality.

Ms. Adams said Commission staff's review of the project also suggests that it is consistent with MPS WR7.2 regarding stormwater management, and with the Massachusetts Stormwater Management Handbook. She said staff suggests the project meets MPS WR7.3, MPS WR7.4, MPS WR7.5, and MPS WR7.6 and MPS WR7.8, regarding different aspects of stormwater management. Ms. Adams said that Commission staff has reviewed the Erosion Control Plan shown in the Applicant's Site Plan set, and suggests the project meets MPS WR7.9 (Best Management Practices during Construction) as well as MPS WR7.10.

Ms. Adams also said that staff suggests that MPS WR1.3 (Groundwater Study Requirement), MPS WR1.4 (Cluster Development), Minimum Performance Standards in RPP Section 2 (Drinking Water Quality and Quantity), Section 4 (Freshwater Ponds and Lakes), Section 5 (Water Quality Improvement Areas), Section 6 (Public and Private Wastewater Treatment Facilities) and MPS WR3.4, MPS WR3.5 and MPS WR3.6 which regulate impacts to marine water quality do not apply to the proposed project. She also said staff suggests that MPS WR7.7 and MPS WR7.11, which deal with a stormwater management system, do not apply.

Ms. Adams said that Commission staff recommends that the project be conditioned to require certification by a Professional Engineer that the stormwater system is operating as designed one year after construction of the system has been completed to ensure compliance with MPS WR7.10.

With regard to the MPS which regulate Hazardous Materials in certain Water Resources areas, Ms. Adams noted the project site is not located within a WHPA as shown on the Water Resources Classification Map I in the RPP. As such, Commission staff suggests MPS WM1.1, WM1.2, WM1.3 and WM1.4 do not apply to the proposed project.

Ms. Adams said that Commission staff suggests that the Coastal Resources Minimum Performance Standards and Marine Resources Minimum Performance Standards do not apply. Ms. Adams also said that staff suggests there are no impacts to wetland, wildlife, or plant habitat resources. She also indicated that there is no open space required for this project as there is no new disturbance of undeveloped areas, pursuant to the manner in which open space requirements are calculated pursuant to MPS OS1.3.

Ms. Adams said that Commission staff further suggests that the project meets MPS OS1.1 as the building expansion is proposed on existing impervious area, and clustered with existing

development, and that MPS OS1.2, MPS OS1.4, MPS OS1.5, MPS OS1.6, MPS OS1.7, MPS OS1.8 do not apply.

In the Regional Policy Plan issue area of Transportation, Ms. Adams said that as the number of employees is not anticipated to increase as a result of this proposed expansion, no new trips are anticipated to be generated. Therefore, Commission staff suggests that the project complies with MPS TR0.1 (*Sources of Trip Generation Data*). Ms. Adams also said Commission staff suggests that the project complies with MPS TR1.1 (No Degradation of Safety), MPS TR1.7 (Bicyclists and Pedestrians Safety and Access/Egress Requirements), MPS TR1.9 (Mitigation Timing), MPS TR2.3 (Interconnections), MPS TR2.7 (Bicycle and Pedestrian Accommodations), and MPS TR2.9 (Parking Spaces), MPS TR3.1 (Operational Requirements)

Ms. Adams noted that the Applicant has elected to continue the robust Travel Demand Management program currently in place as a result of previous Commission reviews and approvals at the site. Therefore, Commission staff suggests that the project complies with MPS TR2.10 (Acceptable Trip-reduction Strategies). As no other trip reduction strategies are proposed (or are required), Ms. Adams said Commission staff suggests that MPS TR2.11 (Other Trip-reduction Strategies) does not apply to this project.

She said that based on the site visit, Commission Transportation staff suggests that the project complies with MPS TR1.8 (Sight-distance Requirements).

Ms. Adams noted that Commission staff suggests that MPS TR0.2 (Traffic Credit for Past Uses), MPS TR0.4 (Alternative Method for Compliance within Economic Centers), MPS TR0.5 (Incentive for Mixed Use in Economic Centers), MPS TR1.2 (Crash Frequency at Key Locations) and MPS TR1.3 (Identification of Safety Impact), MPS TR1.4 (Standards for Driveway Construction), MPS TR1.5 (Route 6 Access/Egress), MPS TR2.1 (Trip Reduction Outside of Growth Incentive Zones or Economic Centers), MPS TR2.2 (Trip Reduction Inside of Growth Incentive Zones or Economic Centers), MPS TR2.4 (Incentives for Connection Between Adjacent Properties), TR2.5 (Estimating Trip Reduction), MPS TR2.8 (Preservation of Frontage), MPS TR2.12 (Trip-generation Credits), MPS TR2.13 (Inflation Factor), MPS TR2.14 (Use of Trip-reduction Funds), MPS TR3.2 (Credit for Trip-reduction), MPS TR3.4 (Mitigation of Congestion Impacts Required), MPS TR3.5 (Mitigation Fee), MPS TR3.6 ("Fair-share" Payments), MPS TR3.7 (Restriction on Widening or New Signals), MPS TR3.8 (Year-round Structural Mitigation), MPS TR3.9 (Bicycle and Pedestrian Accommodation), MPS TR3.11 (No Capacity Increase on Controlled-access Highways), MPS TR3.12 (Consistency with Other Plans), MPS TR3.13 (Operation and Maintenance), MPS TR3.14 (Traffic Monitoring Devices), MPS TR3.15 (Inflation Factor), and MPS TR3.16 (Use of Congestion Mitigation Funds) do not apply to this project.

With respect to MPS TR2.6 (Bus Stops, Turn-outs, and Shelters), Ms. Adams noted that Commission staff suggests these Minimum Performance Standards do not apply because the Hospital is not directly located on a fixed-route public transit route, because fixed-route transit services are available in the vicinity of the site and the Hospital has demonstrated an effort to provide safe and convenient access to these services. Additionally, existing para-transit services adequately serve the Hospital.

With respect to MPS TR3.10 (Preserve Existing Right-of-Way), Ms. Adams noted that no new trips are anticipated to be generated, therefore, no congestion mitigation is required. She said this MPS applies to the project, but there is no impact.

Ms. Adams also said that Commission staff recommends that the project be conditioned to comply with MPS TR0.3 (Permits for Roadwork prior to Construction) to ensure that all necessary approvals and permits from the Town of Falmouth associated with roadwork are obtained and copies submitted to the Commission prior to issuance of a Building Permit and prior to issuance by the Commission of a Preliminary Certificate of Compliance.

She also said that in the application material, new signage is proposed to better direct employees, patients, and visitors on and to the project site. Ms. Adams said Commission staff recommends that the project be conditioned to comply with MPS TR1.6 (Sight-Distance Obstructions), specifically with the provision that prior to issuance by the Commission of a Final Certificate of Compliance, and prior to issuance of the local Certificate of Use and Occupancy, Commission Transportation staff shall conduct a site visit to confirm that no signs, vegetation, or other visual obstructions have been placed in a manner that would create an obstruction to safe sight distance at the site drives.

In the RPP issue of Waste Management, Ms. Adams said Commission staff's analysis indicates the Construction Waste Management Plan is adequate and the Hospital has programs in place to comply with MPS WM2.1, MPS WM2.2 and MPS WM2.3 for the proposed project's construction and post-construction phases.

She said that based on this, Commission staff suggests that the project be conditioned to comply with MPS WM2.1 and MPS WM2.2 for the construction phase, so that the Construction Waste Management Plan is implemented as and when the project is being built.

Ms. Adams said that Commission staff suggests that MPS WM2.4 does not apply to the proposed project because the amount of food waste produced by the Hospital should not significantly increase as a result of the proposed project.

On management of Hazardous Waste, Ms. Adams said Commission staff suggests the Hospital is a Small Quantity Generator of Hazardous Waste and has a state Generator Identification Number, which indicates the Hospital, is registered with the DEP as a generator of Hazardous Waste, and that the application materials submitted indicate the Hospital has already complied with MPS WM1.5.

Concerning the RPP issue area of Energy Resources, Ms. Adams suggested the project is subject to MPS E1.1 *(Redevelopment Energy Audit)*, MPS E1.2 *(Energy Star Certification)*, and MPS E1.5 *(On-site Renewable Energy Generation)*, among other Energy standards. Ms. Adams also noted the Applicant is seeking relief from these Minimum Performance Standards as a POCB.

Ms. Adams noted that MPS E1.1 applies to the portion of the project subject to redevelopment, and not to the entirety of the existing building. In this case, an energy audit would be required for the approximately 3,000 square foot portion of the existing building to be redeveloped, not to the entire Hospital. Staff suggests that this requirement may be waived given the energy efficiency improvements and conservation efforts the entire hospital has already undertaken, as described in the Applicant's *Energy Conservation Initiatives* portion of the DRI submittal. Ms. Adams also said that Commission staff suggests that the Commission could find that the standard imposes a substantial financial hardship on the Applicant and such desirable relief may be granted from MPS E1.1 without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Ms. Adams said that MPS E1.5 requires the provision of on-site renewable energy generation. She said staff suggests the Applicant explore whether the proposed addition's south facing roof would be suitable for a solar array of sufficient size to meet this requirement. Ms. Adams said that as an alternative method for meeting this standard, Commission staff suggests the Applicant explore further design to the proposed addition consistent with the LEED Rating System. This option for compliance with MPS E1.5 does not require a determination of LEED Certifiability, and concomitant costs, but rather that the building design is consistent with a minimum number of self-selected LEED credits and criteria.

Ms. Adams said that MPS E1.3 is a standard that targets building envelope efficiencies and has been adopted as part of the MA Building Code. As such, she said that Commission staff recommends that the project should be conditioned to meet MPS E1.3, with evidence of compliance provided for Commission staff's review and approval prior to issuance by the Commission of any Preliminary Certificate of Compliance.

Ms. Adams said Commission staff suggests that MPS E1.4 and MPS E1.7 to MPS E1.11 do not apply to this project.

In the Regional Policy Plan issue area of Affordable Housing, Ms. Adams noted that as a non-residential redevelopment project, Commission staff suggests that only the MPS under Regional Policy Plan AH Goal 3 apply to the project.

Ms. Adams noted that the Applicant is proposing to add approximately 19,000 square feet to the existing Hospital Emergency Department, per MPS AH 3.5 the affordable housing mitigation is calculated solely on the basis of the additional square footage and is $191,510.

As noted in the application materials, Ms. Adams said the Applicant last updated the emergency room in 1998 and designed it to accommodate upwards of 25,000 patients annually in 40 treatment bays; 7 of which are located in hallways. The Hospital had over 41,000 emergency room patients in 2012 and during high volume periods Hospital staff are forced to treat patients in public spaces.

Ms. Adams also noted that the Applicant is not proposing to add any additional treatment areas and also is not proposing to add any employees to the Emergency Room. In addition, Falmouth Hospital is a non-profit organization and will need to privately fundraise to finance the $11,500,000 cost of the expansion.

Based upon all of these factors, Ms. Adams said Commission staff suggests that the Commission could find both that the Affordable Housing mitigation poses a substantial financial hardship to the Applicant and also that a waiver of the Affordable Housing mitigation requirement could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Act.

In the Regional Policy Plan issue area of Heritage Preservation and Community Character, which addresses historic resources, project design, landscape design and exterior lighting, Ms. Adams noted that staff suggests the proposed project complies with MPS HPCC1.1 (Historic Structures), MPS HPCC1.2 (Cultural Landscapes), and MPS HPCC1.3 (Archaeological Sites).

Ms. Adams noted that based on Commission staff's analysis of the project, staff suggests the project complies with MPS HPCC2.2 (Protection of Existing Roadway Character) and MPS HPCC2.3 (Avoid Adverse Visual Impacts). She said Commission staff also suggests that MPS HPCC2.1 (Strip Development) does not apply because strip development is not proposed.

Ms. Adams said the proposed building design features comply with MPS HPCC2.4 (Consistency with Regional Context) because of the addition's low design and limited visibility from off-site and because it is located outside of areas with a distinctive or traditional character.

She said that given the location of the addition behind the existing Hospital building, its one-story height, and the existing vegetation along Ter Huen Drive, the new addition is consistent with the screening requirements of MPS HPCC2.5 (Footprints Over 15,000 Square Feet).

Ms. Adams noted that the longest facade of the proposed addition (the south façade), which is approximately 250 feet long, includes 10 feet of variation for every 50 feet of façade length in the form of projections and recesses in the façade wall as required by MPS HPCC2.6 (Building Forms and Facades).

Ms. Adams noted that the north and west facades of the addition do not include significant variation, but when viewed against the existing hospital building they appear as a separate massing that projects from the main building and thus provide variation from the existing facades. Given the structure's limited visibility off site, she said Commission staff suggests that the Commission could find both that full design compliance for these two facades with MPS HPCC2.6 poses a substantial financial hardship to the Applicant, and granting Hardship relief as a POCB from MPS HPCC2.6 for these two facades would not substantially derogate from the intent and purposes of the Act or result in substantial detriment to the public good.

She said that Commission staff suggests the project complies with MPS HPCC2.7 (Non-Traditional Materials and Designs), and that the proposed parking lot design includes significant improvements to interior parking lot landscaping; therefore, staff suggests this project is consistent with MPS HPCC2.8.

As a *Redevelopment*, Ms. Adams said this project is subject to review under MPS HPCC2.9 regarding landscaping for *Redevelopment*. She noted the proposed design significantly improves parking lot landscaping and landscape buffers within the project site to better screen the building and the parking area from the minor subdivision road it fronts. Therefore, Ms. Adams said Commission staff suggests the project is consistent with MPS HPCC2.9.

Ms. Adams said Commission staff suggests the Applicant has submitted a well-designed landscape plan that emphasizes sustainable practices and addresses the functional aspects of landscaping, including landscape design elements such as low water and native plantings and minimal lawn. To ensure compliance with MPS HPCC2.10, Commission staff recommends as a condition of approval that the Applicant submit a landscape maintenance agreement covering three (3) growing seasons prior to issuance by the Commission of a Final Certificate of Compliance. This maintenance agreement may be in the form of an amendment to the current maintenance agreement for existing site landscaping.

On the issue of exterior lighting, she said many aspects of the design are consistent with MPS HPCC2.11 and the Commission's Exterior Lighting Technical Bulletin. At the same time, Ms. Adams noted that the project will also have lights at the entrance/exit doors and recessed

fixtures in the patient entrance and ambulance canopies. However, Attorney Cox's Email indicates the exact type of fixture, lamping and placement of these lights has not yet been finalized. She said Commission staff suggest that the project be conditioned to require that the Applicant provide information on the final type, number, lamping, location and foot-candle levels of all exterior fixtures, designed to be consistent with MPS HPCC2.11 and the Commission's Exterior Lighting Technical Bulletin, for Commission staff review and approval prior to issuance of the Preliminary Certificate of Compliance, and before installation of any fixtures. Commission staff also recommends that the project be conditioned to provide Commission staff a field visit once the lighting is installed, to verify its compliance with the approved lighting design before issuance of the Final Certificate of Compliance. Ms. Adams said that Commission staff also suggests the Applicant clarify, prior to the Commission rendering any decision on the project, what, if any, new or revamped site signage will be installed as part of this project, and how and/or if those signs will be illuminated.

Ms. Adams discussed the criteria for approval in addition to consistency with the Minimum Performance Standards of the Regional Policy Plan. She noted the written testimony received by the Commission on the project's consistency with the Falmouth Local Comprehensive Plan, Districts of Critical Planning Concern and local development bylaws.

Concerning the project's probable benefits, she noted that staff suggests that based on an analysis of the materials submitted to date that the proposed project meets Best Development Practice (BDP) LU1.3 for redevelopment and re-use, BDP TR2.16 (Alternative Modes of Travel), BDP ED3.1 (Local Labor and Service Providers) and BDP ED3.2 (Local Ownership).

Public Testimony

Hearing Officer Attorney Idman asked for testimony from Federal, State, or local public officials.

Mr. Brian Currie, the Falmouth Town Planner, submitted a letter from Julian Suso, Falmouth's Town Administrator, into the record. He said the letter was in support of the project.

Hearing Officer Attorney Idman asked for testimony from anyone else in attendance. Hearing none, he laid out the next steps in the process. He noted that as Hearing Officer, he was still looking for some additional information from the Applicant's representatives. This included a discussion of the Hospital's investigations of LEED certification and criteria, a discussion of the difficulty of roof-mounted solar, an updated set of project plans, a zoning analysis letter, and exterior lighting plans. He said it would be helpful to have the exterior lighting plans now, because if Commission staff could review them, it may eliminate the need for conditions in the decision related to exterior lighting.

Attorney Cox noted the proposed exterior lighting design would be similar to that for Cape Cod Hospital in Hyannis.

Hearing Officer Attorney Idman said the next step would be for Commission staff to draft a written decision, and that this document would be based on the staff report.
Hearing Officer Attorney Idman directed Commission staff to draft a written decision to recommend the project to the Commission, consistent with the testimony and other information submitted for the record, and continued the hearing and the record to Thursday, October 17, 2013 at 3:00 PM at the full Cape Cod Commission meeting in the Assembly of Delegates Chamber, First District Courthouse, Barnstable, MA for the purpose of the Commission's

consideration of a draft written decision. Hearing Officer Attorney Idman adjourned the proceedings at 6:15 PM.

FINDINGS
Having considered testimony and other information submitted for the record, the Commission makes the following findings:

General Findings
GF1. As the date of the first substantive public hearing was September 25, 2013, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in August, 2012 (Ordinance 12-07)(herein, "RPP" or "Regional Policy Plan").

GF2. According to the Applicant's submissions and other information received from the Town, local permits required include Site Plan Review, a local Building Permit, and an Occupancy Permit. The project will also require licensure by the Massachusetts Department of Public Health. The project requires neither local Design Review Committee approval, nor discretionary zoning relief or approval by way of a special permit, variance, or otherwise.

GF3. As of the date of this decision, according to the Commission records, Falmouth has a Local Comprehensive Plan (LCP) that was certified by the Commission in 1998. An update to that LCP is currently underway, but the Town has not yet completed the re-certification process. Notwithstanding, the project is consistent with the current Falmouth LCP, according to a letter from the Applicant's representative Robert Ament, Esq, dated 9/30/13, and testimony from Brian Currie, Falmouth's Town Planner.

GF4. According to a September 9, 2013 Email from Brian Currie, Falmouth's Town Planner, the *"Falmouth Emergency Room Department Expansion & Reconfiguration is consistent with municipal development bylaws, as hospitals are allowed as a matter of right in a Public Use zoning district."*

GF5. Mr. Currie's September 9, 2013 Email further states that *"the project is not located in a District of Critical Planning Concern."*

GF6. As discussed further in the respective RPP Issue Area findings, below, the project meets the following BDP's in the RPP. The proposed project meets RPP Best Development Practice (BDP) LU1.3 for redevelopment and re-use. By implementing the TDM program as detailed in the application materials, the project meets BDP TR2.16 (Alternative Modes of Travel). The proposed project also meets BDP ED3.2 (Local Ownership).

GF7. The Commission finds the project will be constructed in accordance with the following plan set titled *Falmouth Hospital: Falmouth Emergency Department* prepared by Isgenuity, dated 6/21/13, as revised 10/3/13, received by the Commission on 10/8/13, and with other information received as part of the DRI/HDEX/POCB application:

1. Sheet A2.0, Existing Site Plan, dated 10/3/13
2. Sheet A2.1, Site Plan, dated 10/3/13
3. Sheet A2.2, Planting Plan, dated 10/3/13
4. Sheet A2.3, Level 1 Demolition Plan, dated 10/3/13
5. Sheet A2.4, Overall Floor Plan, dated 10/3/13
6. Sheet A2.5, Lower Roof Plan, dated 10/3/13

7. Sheet A2.6, Upper Roof Plan, dated 10/3/13
8. Sheet A3.0, Exterior Elevations, dated 10/3/13
9. Sheet A3.1, Ambulance Drive, dated 10/3/13
10. Sheet C1.01, Civil Overall Plan, dated 6/21/13
11. Sheet C1.02, Civil Layout Plan, dated 6/21/13
12. Sheet C1.03, Existing Conditions Plan, dated 6/21/13
13. Sheet C1.04, Grading and Drainage Plan, dated 10/3/13
14. Sheet C1.05, Civil Utilities Plan, dated 6/21/13
15. Sheet C1.06, Civil Construction Details, dated 6/21/13
16. Site Photometrics Plan, done by Reflex Lighting, dated 6/19/13 and the package of fixture cuts submitted with the Application materials, received by the Commission on 7/3/13

GF8. The Applicant has applied for a Project of Community Benefit Hardship Exemption. The Enabling Regulations, as amended, define a Project of Community Benefit (POCB) as *"A project determined by the Commission to confer upon or result in distinct benefits to the community and the citizens of Barnstable County, consistent with Sections 1(a) and 1(c) of the Act."*

GF9. Although the project largely complies with the Regional Policy Plan's Minimum Performance Standards (MPS), the Applicant has sought relief from literal compliance with certain Energy, Affordable Housing, and Community Character MPS.

GF10. Section 1 of the Commission Act basically charges the Commission with protecting, preserving and furthering Cape Cod's unique and diverse values and resources through appropriate and coordinated land use. Among the values and resources specifically enumerated in Section 1 of the Act which might have specific relevance to the project is *"the provision of adequate capital facilities."* Additionally, there are values and resources that are furthered by the project, but which not specifically enumerated, such as those that relate to the general health and welfare of the citizens of Barnstable County.

GF11. The Applicant, Falmouth Hospital Association, Inc., is a Massachusetts non-profit, 501(c) 3 corporation. Falmouth Hospital is part of Cape Cod Healthcare, Inc.'s regional healthcare system which provides a broad array of health services and broad accessibility to those services across the region. According to the application materials, in FY 2011, Cape Cod Healthcare provided $21,400,000 in charity and subsidized care to over 34,000 patients. Of that figure, approximately $4,700,000 was provided at Falmouth Hospital.

GF12. Funding for the expansion will come largely from fundraising by the CCHC Foundation. The Applicant has a limited budget to permit and construct the expansion. The financial commitments necessary to literally comply with certain MPS are more appropriately and effectively used to fund permitting and construction, continue providing high quality health services and undertaking charitable activities to the community.

GF13. The Applicant's Co-Counsel, Robert H. Ament, submitted a letter to the Commission dated September 30, 2013, received October 2, 2013 which describes the proposed project's consistency with Falmouth's zoning bylaws.

Land Use Findings
LUF1. The Town of Falmouth has not adopted a Land Use Vision Map; therefore the Commission finds that Minimum Performance Standard (MPS) LU1.1 *(Development Location)* does not apply to this project.

LUF2. While the proposed expansion is single story, it will be connected to an existing building, built on existing paved area, and the parking will be expanded and shared with existing site uses such that the project is clustered on the site to the maximum extent feasible. Further, the site is served by existing infrastructure capable of supporting the expansion. For these reasons, the proposal is consistent with MPS LU1.2 *(Compact Development)* and MPS LU2.1 *(Connections to Existing Infrastructure).*

LUF3. There are no telecommunications facilities proposed; therefore MPS LU 2.2 *(Co-Location of Telecommunication Facilities)* does not apply to this project because the project is not a telecommunications facility. The site is not located adjacent to agricultural lands; therefore MPS LU3.1 *(Buffers to Agricultural Uses)* and MPS LU3.2 *(Impacts to Agricultural uses)* do not apply to this project.

Economic Development Findings
EDF1. MPS ED1.1 (Location in Economic Centers) requires that developments be located in *Economic Centers* or *Industrial and Service Trade Areas or where appropriate, villages as designated on the Regional Land Use Vision Map*. For Towns without a Land Use Vision Map, all DRIs must meet the waiver requirements under MPS ED1.3. The Town of Falmouth does not have a Land Use Vision Map. As such, the proposed project must meet MPS ED1.3 waiver criteria.

EDF2. MPS ED1.2 (Industrial and Service Trade Areas) reserves *Industrial and Service Trade Areas* for light industry, warehousing, business-to-business wholesale, research and development facilities and other uses related to the development, production, and/or distribution of goods. For Towns without a Land Use Vision Map, all DRIs shall meet waiver requirements under MPS ED1.3. Falmouth does not have a Land Use Vision Map, so the proposed project must meet waiver requirements under MPS ED1.3.

EDF3. MPS ED1.3 (Waiver) allows the Commission to waive MPS ED1.1 and MPS ED1.2 if the Applicant demonstrates that it meets alternative criteria laid out in this standard. New development must meet four of the listed criteria and Redevelopment must meet two criteria. *Redevelopment* is defined by the Regional Policy Plan in relevant part as the *"reconstruction, reuse, intensification, or change in use of any developed property within the Developed Area...."* The definition of *Developed Area* in the RPP is, in relevant part, *"any area that currently contains buildings, paved parking, and other development-related infrastructure or that has had such infrastructure removed but was in use within the past five (5) years..."* The proposed project consists of a 19,000 single story addition to the existing Emergency Department which will be built on areas of existing parking, paved areas and landscaped islands, which is Developed Area as defined in the RPP. As such, the proposed project meets the definition of *Redevelopment*, and must satisfy two waiver criteria under MPS ED1.3. The proposed project meets the waiver criteria for *Municipal Endorsement* and *Emerging Industry Cluster*. This is evidenced by the June 17, 2013 letter from the Falmouth Selectmen endorsing the project. The proposed project also meets the waiver criterion definition of an *Emerging Industry Cluster* as it involves a high-skill, high-wage, knowledge-based business activity.

EDF4. MPS ED1.4 (Resource-based Economic Areas) states that *"[d]evelopment shall not eliminate or significantly impair the current and future function of working agricultural land, working waterfronts and harbors, fin- and shell-fishing grounds, and recreational areas."* The proposed project is not adjacent to any working agricultural land, working waterfronts and harbors, or fin- and shell-fishing grounds or recreational areas, and as such, this MPS does not apply to the project.

EDF5. MPS ED2.1 (Gaming) states that "[*d]evelopment shall not involve Class III gaming given the stresses it places on the region's environment, transportation infrastructure, and economy."* The proposed project does not involve Class III gaming and therefore this MPS is not applicable to this project.

EDF6. MPS ED4.1 (Demonstrated Need and Public Benefit) states that *"[d]evelopment of infrastructure and/or capital facilities shall be in response to existing regional demand and shall improve the availability, reliability, quality, and cost of services."* This MPS does not apply because the proposed project is not the development of infrastructure or a capital facility.

EDF7. BDP ED3.2 (Local Ownership) states that *"commercial DRIs are encouraged to allow for local ownership of non-formula businesses consistent with the economic, environmental and community character goals of* [the 2009, as amended] *RPP."* Tab 15 of the Application states that Falmouth Hospital Association, Inc. is a Massachusetts, not-for-profit, 501(c)(3) organization with a 16-member Board of Directors, all of whom reside in Barnstable County. As such, the proposed project has satisfied BDP ED3.2.

Water Resources Findings

WRF1. The project site is not located in the following water resource areas as identified on the Cape Cod Commission's Water Classification maps I and II referenced in the RPP; Potential Public Water Supply Area (PPWSA), Wellhead Protection Area (WHPA), Freshwater Recharge Area, Water Quality Impaired Area or a Marine Water Recharge Area.

WRF2. As the project's wastewater is directed to the Falmouth Wastewater Treatment Facility and no additional wastewater flows are proposed, nitrogen loading for the proposed project is limited to roof, pavement and maintained lawn area contributions. Existing and proposed nitrogen loading calculations were provided by the Applicant and reviewed by Commission Water Resources staff. Due to an overall decrease in maintained lawn area associated with the project, a surface type with a high nitrogen loading concentration, the proposed nitrogen contribution is slightly lower than existing conditions (2 to 2.1 ppm, respectively). The proposed project's Nitrogen Loading calculations are below the General Aquifer protection limit of 5 ppm-N and the project meets MPS WR1.1.

WRF3. As the project proposes no increase in nitrogen loading the proposed project is in compliance with MPS WR1.2 (Identification of Drinking Water Wells).

WRF4. As the project proposes no additional groundwater withdrawals MPS WR1.3 (Groundwater Study Requirement for groundwater withdrawals of greater than 20,000 GPD) does not apply to the proposed project.

WRF5. As the project proposes no subdivision of land, MPS WR1.4 (Cluster Development) does not apply to the project.

WRF6. The Landscape Maintenance Contract/Maintenance Plan submitted by the Applicant meets the requirements for water conservation measures and minimizes use of pesticides and fertilizers, and thus satisfies MPS WR1.5.

WRF7. The project site is not located within a Wellhead Protection Area (WHPA), a Potential Public Water Supply Area (PPWSA), a Water Quality Improvement Area (WQIA) or a Freshwater Recharge Area (FWRA) as shown on the Water Resources Classification Map I referenced in the RPP. As such, the Minimum Performance Standards in Section 2 (Drinking Water Quality and Quantity), Section 4 (Freshwater Ponds and Lakes) and Section 5 (Water Quality Improvement Areas) of the Water Resources Section do not apply to the proposed project.

WRF8. As the project proposes neither additional wastewater flows nor public or private wastewater treatment facilities the Minimum Performance Standards in RPP Water Resources Section 6 (Public and Private Wastewater Treatment Facilities) and MPS WR3.6 do not apply to the proposed project.

WRF9. As the project proposes no increase in nitrogen loading the project meets MPS WR3.1 and MPS WR3.2. As such, the Commission also finds that MPS WR3.3 does not apply. As the proposed project does not exceed a Critical Nitrogen Loading Rate MPS WR3.4 and MPS WR3.5 do not apply.

WRF10. According to the project's Stormwater Maintenance Plan, the proposed building addition of approximately 19,000 square feet will result in increased impervious area of 9,350 square feet, a less than 2% increase from existing impervious cover. New drainage structures are proposed on site to collect stormwater from proposed improvements. In addition, stormwater runoff from roadways and parking lots will be captured and treated on site for the first inch of runoff from a 25-yr 24-hr event. As such, the proposed project will meet with MPS WR7.2 and the Massachusetts Stormwater Management Handbook to attain 80% total suspended solids (TSS) removal and achieve nutrient reduction, which require that all infiltration systems capturing runoff from roadways and parking lots shall provide for at least 44% TSS removal prior to discharge to an infiltration system.

WRF11. Roof runoff will be captured and directed to the proposed stormwater management improvements. As such the project meets MPS WR7.3.

WRF12. Proposed nitrogen loading is reduced from existing conditions for the proposed expansion. In addition, the drainage network discharges to a detention basin with natural vegetation where, through gradual leaching, some filtration of pollutants will be achieved. As such, the project meets the requirements for both MPS WR7.4 and MPS WR7.6.

WRF13. The project is designed to capture 100% of the 25-yr 24-hr event, including frozen flow. As such, the project meets MPS WR7.5.

WRF14. The proposed project is not within a designated area referenced in MPS WR7.7, and as such MPS WR7.7 does not apply.

WRF15. Based on the proposed and existing stormwater infrastructure, the proposed infiltration areas for the project meet MPS WR7.8 (Minimum Two-foot Separation to Groundwater).

WRF16. The project meets MPS WR7.9 (Best Management Practices during Construction) with the Erosion Control Plan shown in the Applicant's Site Plan set.

WRF17. The proposed Stormwater Operations and Maintenance and Stormwater Pollution Prevention Plans submitted with the Professional Engineer-certified Stormwater Report meets MPS WR7.10.

WRF18. The proposed project is not within a WHPA as shown on the Water Resources Classification Map I referenced in the RPP and as such, MPS WM1.1, WM1.2, WM1.3 and WM1.4 WR7.11 do not apply.

Coastal and Marine Resources Findings

CMRF1. All of the Coastal Resources Minimum Performance Standards pertain to activities affecting, within or proximate to coastal resources, including flood hazard areas. The project site is not located within an area affecting, containing or proximate to such coastal resources, and consequently, the Coastal Resources MPS do not apply to the project.

CMRF2. All of the Marine Resources Minimum Performance Standards pertain to activities affecting, within or proximate off shore marine resource areas. The project site is an upland site and does not affect or contain such marine resources, and consequently the Marine Resources MPS do not apply.

Natural Resources Findings: Wetlands, Wildlife and Plant Habitat

NRF1. The proposed project is an expansion of the Hospital building entirely into, within, or on existing developed areas on the site, including the existing parking lot and landscaped areas, with no clearing of any existing vegetation or new disturbance of naturally vegetated site areas. Additionally, the site is neither mapped for rare species habitat, nor does it contain or is proximate to wetlands. As such, all the MPS under the RPP sub-issue areas of Wetlands and Wildlife and Plant Habitat do not apply to the project.

Open Space Findings

OSF1. There is no open space required for this project as there is no new disturbance of undeveloped areas, pursuant to the manner in which open space requirements are calculated pursuant to MPS OS1.3. Additionally, open space has been previously set aside on-site pursuant to prior DRI decisions for the Hospital.

OSF2. The project meets MPS OS1.1 as the building expansion is proposed on existing impervious area, and clustered with existing development; MPS OS1.2, MPS OS1.7 and MPS OS1.8 do not apply because there is no additional open space required; MPS OS1.5 does not apply because a residential subdivision is not proposed; and MPS OS1.4 and MPS OS1.6 do not apply because the resource areas referenced in those standards do not exist on, adjacent to, or within close proximity to the project site.

Transportation Findings

TRF1. The overall number of treatment bays (40 bays) will not increase with the proposed expansion. Accordingly, the proposed expansion will not result in an increase in the number of employees. An appropriate metric for trip generation, as presented in the *ITE Trip Generation Manual 9th Edition* for Land Use Cod 610 (Hospital), is employees. As the number of employees is not anticipated to increase as a result of this proposed expansion, no new trips are anticipated

to be generated. As such, the project complies with MPS TR0.1 (*Sources of Trip Generation Data*).

TRF2. No traffic credits for past use are proposed; therefore, MPS TR0.2 (Traffic Credit for Past Uses) does not apply to this project.

TRF3. No new trips are anticipated to be generated by the proposed project; therefore, MPS TR0.4 (Alternative Method for Compliance within Economic Centers), MPS TR0.5 (Incentive for Mixed Use in Economic Centers), MPS TR1.2 (Crash Frequency at Key Locations) and MPS TR1.3 (Identification of Safety Impact) do not apply to this project.

TRF4. Based on review of the Commission staff's review of the Applicant's transportation analysis, the project complies with MPS TR1.1 (No Degradation of Safety) because the proposed Emergency Department project is not anticipated to generate any new trips; the site planning and access/egress for the site do not adversely impact the adjacent road system and adequately and safely accommodate all users of the system including pedestrians, bicyclists, and motorists; sight distances at the project's access/egress points were reviewed and found to be sufficient as part of the transportation review of the previous Falmouth Hospital Expansion approved by the Commission in a decision dated October 23, 2003, and a site visit by Commission staff confirmed no changes to the site access/egress points are proposed by the Applicant, and adequate interconnections for motorists, pedestrians and bicyclists already exist between the Hospital campus and adjacent buildings and uses on the same side of Ter Heun Drive.

TRF5. No modifications are proposed to the site access/egress; therefore, MPS TR1.4 (Standards for Driveway Construction) does not apply to this project.

TRF6. The site is not located within the limited-access portion of Route 6; therefore, MPS TR1.5 (Route 6 Access/Egress) does not apply to this project.

TRF7. The Applicant has proposed new signage to better direct employees, patients, and visitors on and to the project site. It is appropriate that the project be conditioned to comply with MPS TR1.6 (Sight-Distance Obstructions), specifically with the provision that prior to issuance by the Commission of a Final Certificate of Compliance, and prior to issuance of the local Certificate of Use and Occupancy, Commission Transportation staff shall conduct a site visit to confirm that no signs, vegetation, or other visual obstructions have been placed in a manner that would create an obstruction to safe sight distance at the site drives.

TRF8. The site planning and access/egress for the site do not adversely impact the adjacent road system and adequately and safely accommodate all users of the system including pedestrians, bicyclists, and motorists; therefore, the project complies with MPS TR1.7 (Bicyclists and Pedestrians Safety and Access/Egress Requirements).

TRF9. Sight distances at the project's access/egress points were reviewed and found to be sufficient as part of the transportation review of the previous Falmouth Hospital Expansion approved by the Commission in a decision dated October 23, 2003 (HDEX#02032). No changes to the site access/egress points are proposed by the Applicant. Commission Transportation also staff visited the site to confirm that no extenuating factors have impacted sight distance at the projects access/egress points and that sufficient sight distance exists at all access/egress location. The current project does not change or affect the adequacy of the sight distances.

Based on the site visit, the Commission finds that the project complies with MPS TR1.8 (Sight-distance Requirements).

TRF10. No mitigation to address or offset safety concerns is proposed by the Applicant or required; therefore, the project complies with MPS TR1.9 (Mitigation Timing).

TRF11. No new trips are anticipated to be generated by the proposed project; therefore, MPS TR2.1 (Trip Reduction Outside of Growth Incentive Zones or Economic Centers); MPS TR2.2 (Trip Reduction Inside of Growth Incentive Zones or Economic Centers), MPS TR2.4 (Incentives for Connection Between Adjacent Properties) and MPS TR2.5 (Estimating Trip Reduction) do not apply to this project.

TRF12. Adequate interconnections already exist between the Hospital campus and adjacent buildings and uses on the same side of Ter Heun Drive, such as to the Bramble Bush Medical complex and an Assisted Living facility; therefore, the project complies with MPS TR2.3 (Interconnections).

TRF13. The Hospital is not directly located on a fixed-route public transit route for this reason, building a bus shelter, bus turn-out, or bus stop is not appropriate this location. Fixed-route transit services are available in the vicinity of the site and the Hospital has demonstrated an effort to provide safe and convenient access to these services. Additionally, existing para-transit services adequately serve the Hospital. For these reasons, the Commission does not require construction of a bus stop, turn-out, and/or shelter either on the site or along the project's roadway frontage as consistent with MPS TR2.6.

TRF14. The Applicant's site planning and transportation analysis accommodates and addresses users of all types of transportation modes, including pedestrians, bicyclists, and motorists and minimizes motor vehicle interactions with bicycles and pedestrians; therefore, the project complies with MPS TR2.7 (Bicycle and Pedestrian Accommodations).

TRF15. There is sufficient right-of-way existing within the Town-owned roadway layout to accommodate future bicycle and pedestrian accommodations and/or relocation of utilities, and no construction of additional pedestrian or bicycle connections, or future reservations for the same, are required or necessary on or across the project site also in part because there are existing bicycle and pedestrian connections from the Hospital site to adjacent parcels; therefore, the project complies with MPS TR2.8 (Preservation of Frontage).

TRF16. Parking supply and demand has been studied at the facility, as detailed in the application material from the Applicant's Transportation engineer. Based on this information, the reduction in the number of parking spaces included in the site layout, 31 fewer than currently exist, is justified and therefore, that the project complies with MPS TR2.9 (Parking Spaces).

TRF17. No new trips are anticipated to be generated by the proposed project; therefore, no trip reduction is required. Based on the materials submitted, the Applicant has elected to continue the robust Travel Demand Management (TDM) program currently in place as a result of previous Commission DRI reviews and approvals at the site. As such, the project complies with MPS TR2.10 (Acceptable Trip-reduction Strategies). As no other trip reduction strategies are proposed (or are required) MPS TR2.11 (Other Trip-reduction Strategies) does not apply to this project.

TRF18. As no trip reduction credits or payments are proposed, MPS TR2.12 (Trip-generation Credits), MPS TR2.13 (Inflation Factor) and MPS TR2.14 (Use of Trip-reduction Funds) do not apply to this project.

TRF19. MPS TR3.1 (Operational Requirements) requires Level of Service analysis at all access and/or egress points onto the road system. Level of Service analysis of the site driveways was presented in the Applicant's August 2, 2013 Memorandum prepared by VHB, and no new access or egress points onto the road system are proposed; therefore, the project complies with MPS TR3.1. No credits for trip reduction are required or proposed; therefore, MPS TR3.2 (Credit for Trip-reduction Mitigation) does not apply to this project.

TRF20. The above-referenced August 2, 2013 VHB Memorandum and additional information submitted by Randall C. Hart of VHB on the parking supply and demand were prepared in accordance with Technical Bulletin 96-003 and comply with MPS TR3.3 (Traffic Study).

TRF21. As no new trips are anticipated to be generated, no adverse congestion impacts are anticipated and thus, no congestion mitigation is required. Accordingly, MPS TR3.4 (Mitigation of Congestion Impacts Required), MPS TR3.5 (Mitigation Fee), MPS TR3.6 ("Fair-share" Payments), MPS TR3.7 (Restriction on Widening or New Signals), MPS TR3.8 (Year-round Structural Mitigation), MPS TR3.9 (Bicycle and Pedestrian Accommodation), MPS TR3.10 (Preserve Existing Right-of-Way), MPS TR3.11 (No Capacity Increase on Controlled-access Highways), MPS TR3.12 (Consistency with Other Plans), MPS TR3.13 (Operation and Maintenance), MPS TR3.14 (Traffic Monitoring Devices), MPS TR3.15 (Inflation Factor), and MPS TR3.16 (Use of Congestion Mitigation Funds) do not apply to this project.

Solid Waste Findings

SWF1. MPS WM2.1 requires submission of a plan to demonstrate how the *"applicant proposes to handle solid wastes, construction and demolition (C&D) wastes, and recyclable materials currently categorized by the DEP as a waste ban material."* MPS WM2.2 requires that any C&D plan provided specify the types of C&D wastes generated during construction, the method for separating out wallboard and sheet rock, and methods to dispose of or recycle the remaining C&D materials. MPS WM2.3 requires that a *"solid waste and recycling management plan shall be provided that identifies how both solid wastes and recyclable materials will be handled in the post-construction phase."* MPS WM2.4 requires a food-waste recycling plan be provided by *"...those developments (primarily supermarkets) generating significant amounts of food waste."*

SWF2. Application materials provided to the Commission include a narrative description of the Hospital's existing recycling programs for office paper, cardboard, glass, plastic and aluminum containers, which the Applicant proposes to continue, including after completion of the proposed expansion. Attorney Cox, representing the Applicant, also provided a copy of a Construction Waste Management Plan to be implemented by the Suffolk Construction Company, the construction company for the proposed project. The Construction Waste Management Plan is adequate, and the Hospital has recycling programs in place, to comply with MPS WM2.1, MPS WM2.2 and MPS WM2.3 for the proposed project's construction and post-construction phases.

SWF3. It is appropriate that the project be conditioned to comply with MPS WM2.1 and MPS WM2.2 for the construction phase, so that the Construction Waste Management Plan is implemented as and when the project is being built.

SWF4. The proposed project is described in the application materials as a 19,000 square foot, single story addition to the existing Hospital building, the renovation of 3,000 square feet of existing interior space, and associated site plan changes. The narrative included as part of the Hardship Exemption application describes how the proposed building addition will not add to already existing Emergency Department treatment capacity based on 40 existing treatment bays. Based on this, few new in-Hospital patients or facility staff would result from the proposed project, and therefore, the amount of food waste produced by the Hospital should not significantly increase as a result of the proposed project. Therefore MPS WM2.4 does not apply to the proposed project.

Hazardous Waste Findings

HWF1. MPS WM1.5 states *"any development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00 for the purposes of Cape Cod Commission review by providing the Commission with evidence of the following:*

(a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste;
(b) a written plan or protocol to manage the Hazardous Waste prior to disposal;
(c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste."

HWF2. According to the Water Classification maps referenced in the Regional Policy Plan, the Falmouth Hospital campus is not located in either an existing Wellhead Protection Area or a Potential Public Water Supply Area.

HWF3. According to information available from the Massachusetts Department of Environmental Protection (DEP), Falmouth Hospital is a Small Quantity Generator of Hazardous Waste and has a state Generator Identification Number, which indicates the Hospital, is registered with the DEP as a generator of Hazardous Waste. The application (Tab 11) states that the Hospital has a contract with Triumvirate, a company that is registered and licensed by the DEP to dispose of the Hazardous Waste. The Hospital's biomedical waste, which is not classified by the Regional Policy Plan as Hazardous Waste, is separately handled by SteriCycle.

HWF4. The application materials submitted to the Commission include copies of the Hospital's Hazardous Materials Management Plan, its Hazardous Materials and Waste Management Program, a policy on Mercury Spills, its Universal Waste Policy for management of fluorescent bulbs and several other policies dealing with specialty wastes generated by medical procedures, such anesthetizing gas, and chemotherapy drugs. These policies and programs are updated as needed by Hospital staff.

WHF5. Given that the Hospital is already a DEP-registered generator of Hazardous Waste, the application materials submitted indicate the Hospital has complied with MPS WM1.5.

Energy Findings

EF1. The Commission finds that the proposed project is subject to MPS E1.1 *(Redevelopment Energy Audit)*, MPS E1.2 *(Energy Star Certification)*, and MPS E1.5 *(On-site Renewable Energy Generation)*, among other Energy standards. The Applicant is seeking relief from these Minimum Performance Standards as a Project of Community Benefit (POCB), and the Commission grants such relief, as detailed in the Energy findings, below.

EF2. MPS E1.1 applies to the portion of the project subject to redevelopment, and not to the entirety of the existing building. In this case, an energy audit would be required for the approximately 3,000 square foot portion of the existing building to be redeveloped, not to the entire Hospital. MPS E1.2 requires nonresidential redevelopment to achieve ENERGY STAR Target rating of 75 or higher. Full compliance with and literal enforcement of MPS E1.1 and MPS E1.2 would impose a substantial financial hardship on the Applicant, in that it would compromise the project's limited funding, and such desirable relief may be granted from MPS E1.1 without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission grants hardship relief to the project as a POCB from MPS 1.1 & 1.2 also considering the energy efficiency improvements and conservation efforts the entire hospital has already undertaken, as described in the Applicant's *Energy Conservation Initiatives* portion of the DRI submittal.

EF3. MPS E1.5 requires the provision of on-site renewable energy generation. However, the Commission may waive this requirement for a project demonstrated to be LEED Certifiable. The Applicant has provided testimony that because of building and tree line shadowing, it is not feasible to install photovoltaic panels onto the Hospital building, existing or expanded as proposed. Further, because of topography, existing natural vegetation and existing open space set asides on site, a ground mounted PV area is not feasible. Finally, the Applicant has indicated that Cape Cod Healthcare looked into solar panels at several locations, and the Hospital's insurance carrier has significant concerns with solar installation on the roof of the Hospital structures. The proposed expansion cannot achieve full LEED certifiability because of the nature of the underlying Hospital use (security measures, air quality requirements.) However, the Applicant has provided a LEED checklist indicating that the project achieves several criteria on the checklist with its design (for instance, building the addition into the existing topography provides natural building insulation and energy efficiency). Full compliance with and a literal enforcement of MPS E1.5 would impose a substantial financial hardship on the Applicant, in that it would compromise the project's limited funding, and such desirable relief may be granted from MPS E1.5 without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. To the extent relief from MPS E1.5 is required, the Commission grants such hardship relief to the project as a POCB.

EF4. MPS E1.3 is a standard that targets building envelope efficiencies and has been adopted as part of the MA Building Code. Based on this, it is appropriate to condition the project to meet MPS E1.3, with evidence of compliance provided for Commission staff's review and approval prior to issuance by the Commission of any Preliminary Certificate of Compliance.

EF5. The proposed use does not contain any multi-family units; therefore MPS E1.4 does not apply to this project.

EF6. MPS E1.7 to MPS E1.11 apply to wind energy conversion facilities (WECFs). The Applicant is not proposing to install any WECFs as part of the proposed project; therefore, these MPS do not apply to this project.

Affordable Housing Findings

AHF1. As a non-residential redevelopment project, only the Minimum Performance Standards under Regional Policy Plan AH Goal 3 apply.

AHF2. As the Applicant is proposing to add approximately 19,000 square feet to the existing Hospital Emergency Department, per MPS AH3.5 the affordable housing mitigation is calculated solely on the basis of the additional square footage and is $191,510.

AHF3. As noted in the application materials, the Applicant last updated the Emergency Department in 1998 and designed it to accommodate upwards of 25,000 patients annually in 40 treatment bays; 7 of which are located in hallways. The Hospital had over 41,000 Emergency Department patients in 2012 and during high volume periods Hospital staff are forced to treat patients in public spaces.

AHF4. The current Emergency Department is approximately 5,780 square feet, and the Applicant is proposing to renovate approximately 3,000 square feet of the existing space along with the 19,000 square feet in the proposed expansion to increase the size of the Emergency Department to 22,000 square feet.

AHF5. The Applicant is not proposing to add any additional treatment bays s and also is not proposing to add any employees to the Emergency Department. In addition, Falmouth Hospital is a non-profit organization and will need to privately fundraise to finance the $11,500,000 cost of the expansion.

AHF6. Based upon all of these factors, the Commission grants hardship relief to the project as a POCB from the Affordable Housing mitigation otherwise required. Compliance with the Minimum Performance Standards under Regional Policy Plan AH Goal 3 poses a substantial financial hardship to the Applicant and a waiver of the Affordable Housing mitigation requirement therein can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Act.

Heritage Preservation and Community Character Findings

HPCCF1. The Falmouth Village historic district is located nearby along Route 28 but does not contain the Hospital property. The proposed expansion of Falmouth Hospital Emergency Department will not impact historic structures or cultural landscapes; therefore the proposed project complies with MPS HPCC1.1 (Historic Structures) and MPS HPCC1.2 (Cultural Landscapes).

HPCCF2. The Massachusetts Historical Commission issued comments on July 25, 2013 (a copy is in the application materials) stating that the project is unlikely to affect significant historic or archaeological resources. As such, the project complies with MPS HPCC1.3 (Archaeological Sites).

HPCCF3. The proposed project is located and designed such that it is unlikely to be visible from roadways or public areas off the hospital site. It is one story in height with low clerestory windows, and is built into low lying topography of the site abutting the existing Hospital building. It is not anticipated to impact scenic roadways, vistas or other scenic resources, and as such, the Commission finds the project complies with MPS HPCC2.2 (Protection of Existing Roadway Character) and MPS HPCC2.3 (Avoid Adverse Visual Impacts). MPS HPCC2.1 (Strip Development) does not apply because strip development is not proposed.

HPCCF4. The Applicant provided a design narrative with its application materials, relating the addition to the surrounding context. The proposed design is a one-story structure with a central clerestory that allows natural light to enter the interior from a series of roof-level windows above. The building uses contemporary forms and materials including a flat roof, horizontally-oriented metal panel siding, and a glass curtain wall entrance. Some of these features match existing elements and materials used on the Hospital building. The addition is generally consistent with the region's traditional development features, though because the addition is not located in an historic or distinctive area, there is some flexibility allowed in the design. The design complies with MPS HPCC2.4 (Consistency with Regional Context) because of the addition's low design and limited visibility from off-site and because it is located outside of areas with a distinctive or traditional character.

HPCCF5. The proposed 19,000 square foot addition is designed as a distinctly different massing from the existing Hospital, and is fully screened from public ways by existing vegetation, which is proposed to be retained. Given the location of the addition behind the existing Hospital building, its distance from roadways, its one-story height, and the existing vegetation along Ter Heun Drive, the new addition will have limited visibility off-site and is consistent with the screening requirements of MPS HPCC2.5 (Footprints Over 15,000 Square Feet), given that the Applicant proposes to retain the existing naturally vegetated buffer around the perimeter of the site and along abutting road frontages.

HPCCF6. The proposed addition generally has a varied building form, both in its extension from the main block of the Hospital building, and in the proposed variation of the addition's facades. The longest facade of the proposed addition (the south façade), which is approximately 250 feet long, includes 10 feet of variation for every 50 feet of façade length in the form of projections and recesses in the façade wall as required by MPS HPCC2.6 (Building Forms and Facades). This facade will also be partially screened by a retaining wall, covered ambulance drop-off and vegetation. The east façade also includes the required amount of variation.

HPCCF7. The north and west facades of the addition have less variation than the main south façade (much of the north façade is proposed to be built into the existing topography), but when viewed against the existing hospital building they appear as a separate massing that projects from the main building and thus provide variation from the existing facades. Given the structure's limited visibility off site, the Commission grants relief from MPS HPCC 2.6 as literal enforcement and full design compliance with MPS HPCC2.6 for these two facades would pose a substantial financial hardship to the Applicant, and granting hardship relief as a POCB from MPS HPCC2.6 for these two facades would not substantially derogate from the intent and purposes of the Act or result in substantial detriment to the public good.

HPCCF8. The proposal includes use of non-traditional materials, such as insulated metal panels and glass curtain walls. However, because of the project's location outside a distinctive area and the fact that it is not visible from scenic or regional roadways, the design and materials are appropriate and the project complies with MPS HPCC2.7 (Non-Traditional Materials and Designs).

HPCCF9. It is appropriate that the project be conditioned to retain the existing perimeter vegetated site buffer, to ensure that the project is adequately screened from public roadways and areas off site.

HPCCF10. MPS HPCC2.8 specifies parking lots be situated to the side and rear of buildings and include good design practices that reinforce traditional regional development. With regards to parking for the proposed Emergency Department expansion, it proposes reconstruction on an existing parking lot interior to the site where that parking lot does not front the minor subdivision road (Ter Heun Drive), and the Applicant has proposed landscaping to screen the addition of emergency vehicle ramps and new construction. The proposed lot design for the proposed Emergency Department includes significant improvements to interior parking lot landscaping; therefore, this project is consistent with MPS HPCC2.8.

HPCCF11. As a Redevelopment, the Commission finds that this project is subject to review under MPS HPCC2.9 regarding landscaping for redevelopment. The Commission finds the proposed design significantly improves parking lot landscaping and landscape buffers within the project site to better screen the building and the parking area from the minor subdivision road it fronts. Therefore, the project is consistent with MPS HPCC2.9.

HPCCF12. In compliance with MPS HPCC2.10, the Applicant has submitted a well-designed landscape plan that emphasizes sustainable practices and addresses the functional aspects of landscaping, including landscape design elements such as low water and native plantings and minimal lawn. It is also appropriate to condition the project to ensure compliance with MPS HPCC2.10 such that the Applicant submit a landscape maintenance agreement covering three (3) growing seasons for review and approval by Commission staff prior to issuance by the Commission of a Final Certificate of Compliance. This maintenance agreement may be in the form of an amendment to the current maintenance agreement for existing site landscaping.

HPCCF14. MPS HPCC2.11 requires "*site lighting and exterior building lights in all development shall:*

1. *Employ "shoe-box" type or decorative fixtures, consistent with the architectural theme of the development and which are fully shielded;*
2. *Use a mounting configuration that creates a total cutoff of all light at less than ninety (90) degrees from vertical (flood, area, and up-lighting are prohibited);*
3. *Provide total cutoff of all light at the property lines of the parcel to be developed; and*
4. *Meet a maximum initial horizontal foot-candle level of not more than 8.0 foot-candles, as measured directly below the luminaire(s) at grade."*

HPCCF15. The proposed exterior lighting for the proposed project consists of four (4) pole-mounted fixtures (2 single and 2 double heads) and 16 illuminated bollards. Pole lights will be used in the reconfigured parking lots and the bollards will demarcate the curved frontage and sidewalk along the new construction. The pole mounts will light emitting diode (LED) heads. LED lamping is not specifically mentioned in either MPS HPCC2.11 or the Commission's Exterior Lighting Technical Bulletin, 95-001, as amended. However, LEDs as a light source have been found to be consistent with MPS HPCC2.11 and the Technical Bulletin in past DRI reviews. According to an Email from Attorney Cox received on 7/25/13, the parking lot pole lights will have a 3 foot base, but the final, total fixture height will be 20.0 feet, which the Commission finds is consistent with Technical Bulletin 95-001 (as amended).

HPCCF16. According to the 7/25/13 Email from Attorney Cox, the proposed new bollards will be either 36 or 42 inches in total height, and will use LEDs, which the Commission finds is consistent with MPS HPCC2.11 and Technical Bulletin 95-001. The bollards are exempt from the 8.0 foot-candle maximum of MPS HPCC2.11 by the Cape Cod Commission's Exterior Lighting Technical Bulletin because the overall fixture height is too short to provide a realistic

reading at finished grade. The style of bollard selected also has fins so the light emitted is directed downwards, toward the ground. This down-directed configuration is consistent with how the Commission's standards have been applied to bollard lights in keeping with MPS HPCC2.11 and Technical Bulletin 95-001.

HPCCF17. According to the 7/25/13 Email from Attorney Cox, the project will also have lights at the entrance/exit doors and recessed fixtures in the patient entrance and ambulance canopies. However, Attorney Cox's Email indicates the exact type of fixture, lamping and placement of these lights has not yet been finalized. As such, it is appropriate that the project be conditioned to require that the Applicant provide information on the final type, number, lamping, location and foot-candle levels of all exterior fixtures, designed to be consistent with MPS HPCC2.11 and the Commission's Exterior Lighting Technical Bulletin, for Commission staff review and approval prior to issuance of the Preliminary Certificate of Compliance, and before installation of any fixtures.

HPCCF18. It is also appropriate to condition the project to require the Applicant to provide Commission staff a field visit once the lighting is installed, to verify its compliance with the approved lighting design before issuance of the Final Certificate of Compliance.

HPCCF19. It is appropriate that the project shall be conditioned that prior to the Final Certificate of Compliance, the Applicant shall submit for Commission staff review and approval the design of any, new or revamped site signage that will be installed as part of this project, and how and/or if those signs will be illuminated. Until the Commission staff issues a written approval of the design, the Final Certificate shall not be issued.

CONCLUSION

Based on the above findings, the Commission hereby concludes and further finds:

1. That the probable benefits of the proposed project are greater than the probable detriments. This is specifically supported by Finding GF6. The nature of the use itself, i.e. providing high quality, accessible health care to the region, is a benefit. In addition, the project will enhance the community's health care experience by providing a state-of-the art, modernized Emergency Center, designed and sized to meet all current code requirements, which will significantly improve patient privacy, safety and comfort with private exam rooms and improved visibility into the treatment areas.

2. That upon satisfaction of the conditions identified in this decision and with relief granted in the areas of Affordable Housing MPS AH3.5, Energy Resources MPS E1.1, MPS E1.2, and MPS E1.5, and Heritage Preservation and Community Character MPS HPCC2.6, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan.

3. That as of the date of this decision, according to the Commission records, Falmouth has a Local Comprehensive Plan (LCP) that was certified by the Commission in 1998. An update to that LCP is currently underway, but the Town has not yet completed the re-certification process. The project is consistent with the 1998 Commission-certified LCP. This is specifically supported by Finding GF3.

4. That provided that the Applicant successfully obtains all necessary municipal permits, licenses and approvals, including any required zoning relief, the project can be found consistent with municipal development by-laws. This is supported by Finding GF4.

5. That *"the project is not located in a District of Critical Planning Concern"* unique to Falmouth. However, the project is located within the Cape-wide Fertilizer Management District of Critical Planning Concern, Barnstable County Ordinance 13-07. The project is consistent with the Cape-wide Fertilizer Management District of Critical Planning Concern because it complies with all the Minimum Performance Standards associated with landscaping under the Heritage Preservation/Community Character section of the Regional Policy Plan, including the provision for a Landscape Maintenance Agreement.

6. The proposed project constitutes a POCB as so defined in the *Enabling Regulations* Section 1(c) of the *Enabling Regulations* defines a POCB as *"a project determined by the Commission to confer or result in distinct benefits to the community and citizens of Barnstable County, consistent with Sections 1(a) and 1(c) of the Act."* This is supported by Findings GF8, GF10, GF11 and GF12.

7. Thus, full and literal compliance with Affordable Housing MPS AH3.5, Energy Resources MPS E 1.1, MPS E1.2 & MPS E1.5, and Heritage Preservation and Community Character MPS HPCC2.6 would constitute a substantial financial hardship by diminishing the community benefit to be conferred by the project and by diminishing the project's limited financing; the Applicant has requested the minimum extent of relief needed to address the hardship, within the issue areas and sub-issue areas identified in this Decision; and the relief granted would not nullify or substantially derogate from the intent and purposes of the Act or result in a substantial detriment to the public good.

CONDITIONS

The Commission hereby approves, with conditions, the Project of Community Benefit DRI Hardship Exemption application of the Falmouth Hospital Association, Inc. for the 19,000 square foot addition to the Hospital's current emergency department located at 100 Ter Heun Drive, Falmouth, MA, provided the following conditions are met:

General Conditions

GC1. Subject to Section 13(e) of the Act, this decision is valid for a period of 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.

GC2. The Applicant shall obtain all necessary federal, state, and local permits for the proposed project, including but not limited to local Site Plan Review. Obtaining a local building permit shall ratify and confirm the project's consistency with municipal development by-laws.

GC3. Failure to remain consistent with the findings herein, and comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC4. This decision shall not be effective and no development work, as the term *"development"* is defined in the Cape Cod Commission Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until such appeal has been dismissed or adjudicated in favor of the Applicant.

GC5. Prior to issuance of a Building Permit for any proposed *"development"* as defined by the Cape Cod Commission Act and as approved herein, the applicant shall submit final plans as

approved by state, federal, and local boards for review by Commission staff to determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those plans approved as part of this decision, the Commission shall require that the Applicant seek a modification to this decision in accordance with the Modification Section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC6. The project shall be constructed in accordance with the following plan set titled *Falmouth Hospital: Falmouth Emergency Department* prepared by Isgenuity, dated 6/21/13, as revised 10/3/13, received by the Commission on 10/8/13, and with other information received as part of the DRI/HDEX/POCB application:

1. Sheet A2.0, Existing Site Plan, dated 10/3/13
2. Sheet A2.1, Site Plan, dated 10/3/13
3. Sheet A2.2, Planting Plan, dated 10/3/13
4. Sheet A2.3, Level 1 Demolition Plan, dated 10/3/13
5. Sheet A2.4, Overall Floor Plan, dated 10/3/13
6. Sheet A2.5, Lower Roof Plan, dated 10/3/13
7. Sheet A2.6, Upper Roof Plan, dated 10/3/13
8. Sheet A3.0, Exterior Elevations, dated 10/3/13
9. Sheet A3.1, Ambulance Drive, dated 10/3/13
10. Sheet C1.01, Civil Overall Plan, dated 6/21/13
11. Sheet C1.02, Civil Layout Plan, dated 6/21/13
12. Sheet C1.03, Existing Conditions Plan, dated 6/21/13
13. Sheet C1.04, Grading and Drainage Plan, dated 10/3/13
14. Sheet C1.05, Civil Utilities Plan, dated 6/21/13
15. Sheet C1.06, Civil Construction Details, dated 6/21/13
16. Site Photometrics Plan, done by Reflex Lighting, dated 6/19/13 and the package of fixture cuts submitted with the Application materials, received by the Commission on 7/3/13

GC7. Any deviation to the proposed project from the approved plans, including but not limited to changes to the design, location, lighting, landscaping, or other site work, shall require approval by the Cape Cod Commission through its modification process, pursuant to the Commission's *Enabling Regulations* in effect at the time the modification is sought. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC8. Prior to the issuance of a Building Permit for the project, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this Decision required to have been met prior to issuance of a Preliminary Certificate of Compliance, have been met. Such Certificate of Compliance shall not be issued unless all applicable conditions have been complied with.

GC9. Prior to the issuance of a Certificate of Use/Occupancy for the project, the applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions in this Decision required to have been met prior to issuance of a Final Certificate of Compliance, have been met. Such Certificate of Compliance shall not be issued unless all applicable conditions have been complied with.

GC10. Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide written proof to the Commission that a copy of this Decision has been provided to the general contractor(s) at least thirty (30) calendar days prior to commencement of construction.

GC11. Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall seek and obtain relief from local zoning requirements or discretionary zoning approvals, if needed, to comply with municipal development bylaws.

GC12. The Applicant shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek each Preliminary and each Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers and email addresses, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if needed, and inform the Applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue any Certificate of Compliance unless and until all conditions are complied with, and the Applicant is otherwise in compliance with the Decision.

GC13. At the time a certificate of Compliance is sought, the Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision, after reasonable notice to the Applicant, for the purpose of determining whether the conditions contained in this Decision including those linked to each Preliminary and Final Certificate of Compliance have been met, and whether the project is otherwise in compliance with this Decision.

GC14. If any required construction, site work and/or landscape improvements, including exterior lighting, are not complete at the time the Final Certificate of Compliance is sought from the Commission, the Final Certificate may issue subject to an escrow agreement to secure performance of any such required work which is incomplete, with the escrow agreement of form and content satisfactory to Commission staff. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the final determination of the cost, scheduling and scope of the required work to be approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The funds shall be deposited by bank or treasurer's check payable to the Barnstable County Treasurer. Prior to the release of the escrow funds, the completed work must be reviewed and approved by Commission staff. Any escrow agreement shall provide that all work shall be completed within six months of issuance of the Final Certificate of Compliance.

Water Resources Conditions

WRC1. To ensure compliance with MPS WR7.10, the Applicant shall submit to Cape Cod Commission staff a certification by a Professional Engineer that the stormwater system is operating as designed and approved one year after construction of the system has been completed.

Transportation Conditions

TC1. To ensure compliance with MPS TR0.3 (Permits for Roadwork prior to Construction), the Applicant shall submit to the Cape Cod Commission copies of any and all necessary approvals and permits from the Town of Falmouth associated with roadwork and site access/egress prior to issuance of a Building Permit and prior to issuance by the Commission of a Preliminary Certificate of Compliance.

TC2. To ensure compliance with MPS TR1.6 (Sight-Distance Obstructions), the Cape Cod Commission staff shall conduct a site visit to conduct a site visit to confirm that no signs, vegetation, or other visual obstructions have been placed in a manner that would create an obstruction to safe sight distance at the site drives. The Applicant authorizes Commission staff to make a site visit to confirm the same. Until the Commission staff issues a written result of such inspection, the Final Certificate of Compliance shall not be issued.

Solid Waste Conditions
SWC1. To ensure compliance with MPS WM2.1 and MPS WM2.2 for the construction phase, the Applicant shall submit written evidence to the Cape Cod Commission that the Construction Waste Management Plan was implemented when the project was under construction. The Applicant authorizes Commission staff to make a site visit to confirm the same. Until the Commission staff issues a written confirmation of receipt of this information, the Final Certificate of Compliance shall not be issued.

Energy Resources Conditions
EC1. To demonstrate compliance with MPS E1.3, the Applicant shall submit to Commission staff's copies of materials, including plans and construction drawings as necessary, to be submitted to the Building Commissioner showing compliance with ASHRAE standard 90.1-2007 section 5.4, which has been incorporated into the Massachusetts State Building Code, prior to issuance by the Commission of any Preliminary Certificate of Compliance.

Landscape Design Conditions
HPCCC1. To ensure compliance with MPS HPCC2.10, the Applicant shall submit a landscape maintenance agreement covering three (3) growing seasons for review and approval by Commission staff prior to issuance by the Commission of a Final Certificate of Compliance. This maintenance agreement may be in the form of an amendment to the current maintenance agreement for existing site landscaping, which shall also be consistent with RPP MPS WR1.5.Until the Commission staff issues a written approval of this information, the Final Certificate of Compliance shall not be issued.

HPCC2. The Applicant shall retain all existing perimeter site vegetation to ensure adequate building screening.

Exterior Lighting Design Conditions
ELC1. All exterior lighting for the development, including but not limited to site, building and sign lighting shall be in conformance with MPS HPCC2.11 and Technical Bulletin 95-001 (as amended).

EXLC2. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval information on exterior lighting for the site, signage and buildings to confirm that the exterior lighting selected is consistent with MPS HPCC2.11 and Technical Bulletin 95-001 (as amended).

EXLC3. If changes are made to the exterior lighting design referenced in General Condition GC6 as construction proceeds, prior to selection and installation of the revised exterior lighting fixtures, the Applicant shall submit for Commission staff review and approval additional exterior lighting design information sufficient to allow Commission staff to determine if the proposed alternate fixtures are consistent with conditions relating to exterior lighting. Alternate

exterior light fixtures found to be consistent with conditions related to exterior lighting then may be utilized upon written Commission staff approval.

EXLC4. Prior to issuance by the Commission of the Final Certificate of Compliance, Commission staff shall conduct a site visit to verify conformance with exterior lighting conditions, and the Applicant authorizes the same. If this inspection finds that the installed exterior lighting design is inconsistent with the exterior lighting conditions, the Applicant shall make amendments and changes necessary to bring the lighting design into compliance with the exterior lighting conditions. If such adjustments are required, Commission staff must conduct a follow-up site inspection to verify the adjusted design is consistent with the exterior lighting conditions. Such adjustments and inspections to the exterior lighting design shall occur prior to prior to issuance of a Final Certificate of Compliance by the Commission.

SUMMARY

The Cape Cod Commission hereby approves, with conditions, the application of the Falmouth Hospital Association for a 19,000 square foot addition to the current Emergency Department, including renovation of an additional 3,000 square feet of interior space, resulting in a 22,000 square foot Emergency Department. The project is located at 100 Ter Heun Drive Falmouth, MA 02540 and is approved as a DRI Project of Community Benefit Hardship Exemption as outlined in this decision pursuant to Sections 7 and 9 of the *Enabling Regulations*, (as amended), and Sections 12, 13 and 23 of the Act, c. 716 of the Acts of 1989, as amended.

SEE SIGNATURES ON NEXT PAGE

SIGNATURES

Executed this 17th day of October 2013.

Signature

John H. McCormack, Jr., Chairman
Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss October 17, 2013

Before me, the undersigned notary public, personally appeared John H. McCormack, Jr. 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.

Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18

GAIL P. HANLEY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018